

IN THE MATTER OF

A Complaint made under Section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) ("PAO") and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Investigation Committee of the
Hong Kong Institute of Certified Public
Accountants

COMPLAINANT

AND

RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants ("**Institute**")

ORDER

Upon reading the complaints against the Respondent, a certified public accountant, as set out in the respective letter from the Chairman of the Investigation Committee of the Hong Kong Institute of Certified Public Accountants ("**Complainant**") dated 3 March 2009, the written submissions on behalf of the Respondent dated 30 September and 17 November 2009, the written submissions of the Complainant dated 25 September and 28 December 2009, the Disciplinary Committee is satisfied by the admission of the Respondent and the evidence adduced before it that the following complaints are proved:-

1. That section 34(1)(a)(vi) of the PAO applied to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply Statement of Auditing Standards 400 "Audit Evidence" as he had failed or neglected to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusion on which to base the audit opinion contained in the audit report of [a listed company] and its subsidiaries for the year ended 30 June 1998.

2. That section 34(1)(a)(vi) of the PAO applied to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply Statement of Auditing Standards 440 "Representations by Management" as he had failed or neglected to evaluate whether the representations made by the management of [the listed company's group] of companies affecting the going concern assumption were reasonable, and to seek other corroborative audit evidence of such representations.

IT IS ORDERED that:-

- (1) the name of the Respondent be removed from the register of certified public accountants for 15 months, such removal to take effect at the beginning of the 46th day after the day on which this order is made under section 35(1)(a) of the PAO;
- (2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant under section 35(1)(iii) of the PAO amounted to HK\$190,896.00.

Dated the 17th day of March 2010

IN THE MATTER OF

A Complaint made under Section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) ("PAO") and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Investigation Committee of the
Hong Kong Institute of Certified Public
Accountants

COMPLAINANT

AND

RESPONDENT

REASONS FOR DECISION

1. Complaints were made by the Chairman of the Investigation Committee of the Hong Kong Institute of Certified Public Accountants ("Institute") as Complainant against the Respondent, a certified public accountant. Section 34(1)(a)(vi) of the PAO applied to the Respondent.
2. The particulars of the Complaints under the letter dated 3 March 2009 ("Complaint") from the Chairman of the Investigation Committee of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels were as follows:-

First Complaint

Section 34(1)(a)(vi) applied to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely Statement of Auditing Standards 400 "Audit Evidence", as he had failed or neglected to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion contained in the audit report of [a listed company] and its subsidiaries for the year ended 30 June 1998.

Second Complaint (Alternative to the First Complaint)

Section 34(1)(a)(vi) applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely Statements of Auditing Standards 230 "Documentation", as he had failed or neglected to document matters which were important in providing evidence to support the audit opinion contained in the audit report of [a listed company] and its subsidiaries for the year ended 30 June 1998, or that he had failed or neglected to prepare working papers which were sufficiently complete and detailed to provide an overall understanding of the audit to another experienced auditor.

Third Complaint

Section 34(1)(a)(vi) applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely Statement of Auditing Standards 440 "Representations by Management". During the course of his audit of the 1998 Financial Statements, the Respondent had failed or neglected to evaluate whether the representations made by the management of [a listed company] and its subsidiaries affecting the going concern assumption were reasonable, and to seek other corroborative audit evidence of such representations.

3. The Respondent admitted the Complaint against him. He did not dispute and admitted the facts set out in the Complaint. The Disciplinary Committee ("Committee") is satisfied by the documentary evidence adduced by the Complainant and the admission by the Respondent of all the complaints against him that the First and Third Complaints are proved.
4. The Complainant and Respondent agreed that the steps under Rules 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with. The parties do not request for a hearing.
5. The Committee considers that the subject matter of the Complaint relates to the Respondent's unqualified audit opinion on the consolidated financial statement of a listed company in 1998. The Respondent's failure or negligence amount to a serious non-compliance with professional standards. Non-compliance with professional standards on listed company's financial statements concerns broader public interest.
6. The Complainant drew the Committee's attention to consider the public interest element involved in the matter as it concerns deficiencies in the audit of a listed company. The Committee considers that the sanction should provide a more effective deterrent against such deficiencies for the purpose of enhancing and preserving Hong Kong's position as an international financial centre.

7. The Committee also bears in mind the need to have a fair balance between the general interest of the community and the impact upon the Respondent's life. Besides the public interest element, it is of equal importance to consider the Respondent's personal circumstances, the circumstances in which the said refusal or negligence occurred and the seriousness or consequence of such non-compliance.
8. The Respondent's first submission in mitigation failed to reveal the circumstances in which the non-compliance occurred. Such information has always been an important consideration for sanction. The Respondent and Complainant were requested to make a second submission in order to provide the Committee with further information.
9. The Committee disagrees with the Respondent's submission that the effect of the Respondent's default on the stock market and shareholders was minimal and negligible. The Committee considers that the financial statements of a listed company is a matter of public interest and public or investors' interests are highly likely to be affected either here or there. The absence of any identified victim is not normally a matter giving rise to mitigation.
10. The Committee considers that age, admission of complaints and good character are relevant factors in considering the sanction order.
11. Having considered all the facts and materials presented to the Committee, including submissions from the Respondent and the Complainant, recent disciplinary decisions, the Guideline to Disciplinary Committees For Determining Disciplinary Orders and matters discussed aforesaid, the Committee considers that an order that the Respondent be removed from the register of certified public accountants pursuant to Section 35(1)(a) of the PAO is appropriate and the Committee will adopt the starting point of removal for a period of 2 years.
12. The Committee allows one-third discount because of the Respondent's admission to the Complaint thereby saving the Committee's time and costs. The delay in making the Complaint would be considered as exceptional circumstances. However, such delay was to a certain degree due to the Respondent's failure to comply with the request made by the Investigation Committee to provide it access to the audit working papers. The Committee therefore decides to take one month off. There are no other mitigating factors as the Committee cannot find any additional hardship or further exceptional circumstances. The sanction order in this part is 15 months.

13. The Complainant sought an order for costs of and incidental to the investigation instituted in this case as well as that of the present proceedings. The Committee decides to allow for such order as there is no reason or justification to deviate from the precedent cases. The Committee considers that the fees for the legal advisors to the Complainant is reasonable in view of the voluminous of the papers and the fact that it was incurred before any contest by the Respondent. Further, the costs of the Investigation Committee is not doubt-counted. The costs order is therefore HK\$190,896.00

14. In conclusion, the Committee orders that:-

- (1) the name of the Respondent be removed from the register of certified public accountants for 15 months, such removal to take effect at the beginning of the 46th day after the day on which this order is made, under section 35(1)(a) of the PAO;
- (2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant under section 35(1)(iii) of the PAO amounted to HK\$190,896.00.

Dated the 17th day of March 2010