

IN THE MATTER OF

A Complaint made under Section 34(1)(a) and Section 34(1A) of the Professional Accountants Ordinance (Cap.0) ("the PAO") and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar 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 ("the Institute")

ORDER

Upon reading the complaint against [the Respondent], a certified public accountant, as set out in a letter from the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Complainant") dated 14 June 2010, the written submission of the Respondent dated 31 August 2010, the written submission of the Complainant dated 2 September 2010, and the relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and evidence adduced before it that the following complaint is proved:

That Section 34(I)(a)(ii) of the PAO applied to the Respondent in that he being at all material times a certified public accountant, was convicted in Hong Kong on [Date], of two criminal charges of insider dealing, contrary to section 291 (1)(a) and 291 (1)(b) of the Securities & Futures Ordinance.

IT IS ORDERED that-

1. the Respondent be reprimanded under Section 35 (1)(b) of the PAO;
2. the Respondent pay a penalty of HK\$200,000 under Section 35(1)(c) of the PAO;
3. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$32,392 under Section 35(1)(iii) of the PAO.

Dated the 8th day of November 2010.

IN THE MATTER OF

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

BETWEEN

The Registrar of the Hong Kong
Institute of Certified Public
Accountants

COMPLAINANT

AND

RESPONDENT

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Institute") as Complainant against the Respondent, a certified public accountant. Section 34(1)(a)(ii) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a Letter dated 14 June 2010 ("the Complaint") from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels were as follows:-
 - (a) On [Date], [the Respondent] was convicted in the Eastern Magistrates' Courts of 2 criminal charges :
 - i) insider dealing, contrary to s291(1)(a) of the Securities and Futures Ordinance ("SFO"); and
 - ii) insider dealing, contrary to s291(1)(b) of the SFO,
 - (b) [The Respondent] was sentenced to a total of 8 months' imprisonment, fined \$130,000 and ordered to pay the costs of \$54,394.50 to the Securities and Futures Commission.
 - (c) Section 29I(1) of the SFO provides :

"A person connected with a listed corporation and having information which he knows is relevant information in relation to the corporation shall not-

(a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;
or

(b) counsel or procure another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them."

- (d) In July 2007, a proposal for a swapping of assets of [Company C] and [Company D] was under preparation.
- (e) At all material times, [the Respondent] was a certified public accountant being employed as Accounting Manager of [Company A], a wholly-owned subsidiary of [Company B].
- (f) In July 2007, [the Respondent] received instructions from his superior to negotiate with the auditors who were to conduct a special audit in anticipation of the asset swap.
- (g) On 6 August 2007, [the Respondent] placed order to purchase 156,000 shares of [Company C] in his own account (only 124,000 shares were executed) and another 142,000 shares through his wife's account (only 76,000 shares were executed).
- (h) On the same date, [the Respondent] was present at a meeting held for discussing the implementation of the proposed asset swap as well as preparing for an announcement of the proposal to the public. In the meeting, the financial advisor to [Company D] also explained that the proposal involved an injection of [Company D] properties in China and Macau into [Company C]. At that time, [Company C]'s asset value was just a few hundred million HK dollars, and it was estimated that the injection would be much more than the original asset value of [Company C].
- (i) On [Date], [the Respondent] purchased 40,000 [Company C] shares and another 26,000 shares through his wife's securities account.
- (j) On [Date], trading in [Company C] shares was suspended and a joint public announcement giving basic information as to the proposed asset swap was issued by [Company D] and [Company C].
- (k) On [Date], trading of [Company C] shares resumed. The share price rose about 72%.
- (l) Between 16 August and 12 September 2007, [the Respondent] disposed of all his [Company C] shares and made a profit of some HK\$325,740 at a profit margin of 87.70%. During the same period, the [Company C] shares in his wife's account were also sold and a profit of some HK\$166,700 was made with a profit margin of 71.14%.

- (m) The Magistrate in convicting [the Respondent] of 2 charges of insider dealing was satisfied that as on 7 August 2007, [the Respondent] was already in possession of relevant information in relation to [Company C], and that with that information [the Respondent] dealt in its shares (s291(1)(a) of the SFO) and also counseled or procured his wife to deal in its shares (s291(1)(b) of the SFO).
- (n) [The Respondent]'s appeal against his two convictions to the Court of First instance was dismissed by the Court on [Date].
3. The Respondent admitted the Complaint against him. He did not dispute the facts as set out in the Complaint. The parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
4. By a letter dated 17 August 2010 addressed to the Complainant and the Respondent, the Clerk to the Disciplinary Committee ("DC"), under the direction of the DC, informed the parties that they should make written submissions to the DC as to the sanctions and costs and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
5. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the particulars in support of the Complaint, the Respondent's personal circumstances, and the conduct of the Complainant and the Respondent throughout the proceedings.
6. The DC orders that:-
- a) the Respondent be reprimanded under Section 35 (1)(b) of the PAO;
 - b) the Respondent pay a penalty of HK\$200,000 under Section 35(1)(c) of the PAO;
and
 - c) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$32,392 under Section 35(1)(iii) of the PAO.

Dated the 8th day of November 2010