

IN THE MATTER OF

A complaint made under 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

Mr. YIN, Richard Yingneng
Membership No. F01894

RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants:

Members: Mr. NG, Wai Yan (Chairman)
Mr. CHAN, Conrad
Mr. NG, Chi Keung, Victor
Mr. CHIU, Ling Cheong, Anthony

ORDER

Upon considering the Complaint against Mr. YIN, Richard Yingneng (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 9 March 2018, letter from the Respondent to the Council of the Institute dated 29 September 2017, the written submission of the Respondent dated 2 October 2018 and the relevant documents, and the submission of the representative of the Complainant on the sanction and costs on 23 August 2018, the Disciplinary Committee (the "DC") is satisfied by the admission of the Respondent and evidence adduced before it that the following complaints are proved:

- First Complaint Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely section 100.5(a) as elaborated in section 110.2 of the Code of Ethics for Professional Accountants (“Code”), when he put forward a non-existent Mutual Understanding and Agreement in a Letter of Confirmation dated 5 December 2008, thereby making materially false or misleading statements.
- Second Complaint Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely section 100.5(e) as elaborated in section 150.1 of the Code, when he was found to have acted in breach of his duties as director under the GEM Listing Rules and common law, thereby failing to comply with relevant laws and regulations and avoid any action that discredits the profession.
- Third Complaint Section 34(1)(a)(viii) of the PAO applies to the Respondent in that his failure to observe the Code as set out in the First and/or Second Complaints above amounted to professional misconduct.

IT IS ORDERED THAT:-


The name of the Respondent be removed from the register of certified public accountants for 2 years with effect from the 60th day of the date of this Order pursuant to section 35(1)(a) of the PAO.

The Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant and the DC in the sum of HK\$37,000 under section 35(1)(iii) of the PAO (i.e. Complainant’s costs of HK\$33,000 and the Clerk to the DC’s costs of HK\$4,000).

Dated 25th March 2019

Mr. NG, Wai Yan
Chairman

Mr. NG, Chi Keung, Victor
Member



Mr. CHAN, Conrad
Member

Mr. CHIU, Ling Cheong, Anthony
Member

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REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the "**Institute**") against Mr. YIN, Richard Yingneng, a certified public accountant (the "**Respondent**"). Sections 34(1)(a)(vi) and 34(1)(a)(viii) of the PAO applied to the Respondent.
2. The particulars of the complaint as set out in a letter dated 9 March 2018 (the "**Complaint**") are as follows:-

Background

- (1) In April 2017, the Institute was made aware of certain announcements issued by the Securities and Futures Commission (“SFC”). It was announced that the Court of First Instance under HCMP 2502/2012 (“the Court”) had issued a disqualification order against the Respondent in 2015 for breaching his fiduciary duties under the Listing Rules, and his failure to act diligently, honestly and in a company’s best interests.

The Complaints

First Complaint

- (2) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely section 100.5(a) as elaborated in section 110.2 of the Code of Ethics for Professional Accountants (“Code”), when he put forward a non-existent Mutual Understanding and Agreement in a Letter of Confirmation dated 5 December 2008, thereby making materially false or misleading statements.

Second Complaint

- (3) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely section 100.5(e) as elaborated in section 150.1 of the Code, when he was found to have acted in breach of his duties as director under the GEM Listing Rules and common law, thereby failing to comply with relevant laws and regulations and avoid any action that discredits the profession.

Third Complaint

- (4) Section 34(1)(a)(viii) of the PAO applies to the Respondent in that his failure to observe the Code as set out in the First and/or Second Complaints above amounted to professional misconduct.

Key particulars in support of the First and Second Complaints

- (5) The Respondent was appointed as Chairman of First China Financial Network Holdings Ltd. ("**First China**") on 1 June 2005, re-designated to Non-Executive Director on 12 June 2008, and resigned with effect from 9 December 2008.
- (6) In November 2007, First China completed an acquisition of the entire interest of a PRC company ("**Acquisition**") from Fame Treasure Ltd. ("**Fame Treasure**").
- (7) On 16 December 2008, First China issued a Clarification Announcement ("**CA**") stating that prior to the Acquisition, First China and Fame Treasure had an alleged mutual understanding and agreement ("**MUA**") that net assets in excess of RMB 8 million would be distributed as dividends. The MUA was not referred to in the agreement or supplemental agreement relating to the Acquisition, but was allegedly confirmed by (inter alia) the Respondent in a Letter of Confirmation ("**LC**") dated 5 December 2008. The sum of RMB 18,692,000 was distributed as dividend pursuant to the MUA.
- (8) In November 2012, the Respondent was named as one of the respondents in a court action filed by the SFC under section 214 of the Securities and Futures Ordinance for breach of director's duty to First China by falsely putting forward the non-existent MUA. The Court found that the MUA did not in fact exist, and that in putting forward the MUA in the LC and the CA, the Respondent acted dishonestly. He therefore breached his duties as director both under the GEM Listing Rules and under common law. As a result, RMB 18,692,000 was wrongly paid to Fame Treasure.
- (9) In response to the SFC's application, the Court ordered the Respondent to be disqualified from being a director or involved in the management of any listed or unlisted corporation in Hong Kong for four years.
- (10) The Court held that the Respondent had made false or misleading statements concerning the MUA dishonestly, and also failed to comply with

the relevant laws and regulations concerning director's duties, namely Rule 5.01 of the GEM Listing Rules and common law.

- (11) As such, the Respondent failed to comply with sections 100.5(a), 100.5(e), 110.2(a) and 150.1 of the Code.

Key particulars in support of the Third Complaint

- (12) The Court held that the Respondent "had acted dishonestly in respect of the MUA" and that such a breach of trust by a fiduciary is a very serious matter, and a large sum of money was involved.
- (13) In addition to dishonesty, there is also the breach of director's duties, as the Respondent failed to consider the matter carefully with due regard to the interests of the company.
- (14) A CPA is expected to carry out his professional duties with integrity, competence and due care. The Respondent failed to act with integrity and to fulfil his duties as director of First China to ensure the company complied with relevant laws and regulations. His improper actions undermined the professional reputation of a CPA.
- (15) It was undisputed that the legal saga and the resulting judgment have not only brought disgrace to the Respondent personally, but also discredit to the profession.
- (16) Further, SFC's public announcement and the court's judgment of the Respondent's non-compliances had an adverse impact on both the Respondent and the accountancy profession.
- (17) Based on the above, the Respondent's breaches also amounted to professional misconduct in accordance with section 34(1)(a)(viii) of the PAO.

3. By a letter dated 25 April 2018, the Respondent admitted all complaints against him, namely the First Complaint, Second Complaint, and Third Complaint (collectively known as the "**Complaints**"). He did not dispute the facts as set out in the Complaints. The parties agreed that the steps set out in Rules 17 to 30 of

the Disciplinary Committee Proceedings Rules (“DCPR”) are not necessary and should be dispensed with.

4. By letter from the Clerk to the Disciplinary Committee (under the direction of the Disciplinary Committee (“DC”)) to the parties dated 1 August 2018, the parties were informed that the DC had approved their joint application to dispense with the steps set out in Rule 7 to 30 of the DCPR in light of the admission made by the Respondent and directed the parties to make written submissions on sanctions and costs by 29 August 2018.
5. The Complainant provided his submissions on sanctions and costs on 23 August 2018, including the following: -
 - (a) The Complainant submitted the sanction for the Respondent should include removal from the register of certified public accountants, for such period as the DC thought fit.
 - (b) The Complainant submitted the rationale for such an approach is because this is a case of professional misconduct and breach of fundamental principles of a professional accountant. The Court of First Instance referred to the breach of trust by a fiduciary as a very serious matter. The pronouncements from the court would bring discredit to the profession.
 - (c) The Complainant referred the DC to the case of two disciplinary cases that dealt with the making of false statements involving listed companies, namely, D-08-0326O and D-15-1018H. In both of these cases, the Respondent was removed from the register.
 - (d) The Complainant referred the DC to the case of D-17-1259C which dealt with the same matter, where the respondent was also one of the defendants in the same court proceeding as the current case. The court found this defendant more culpable and ordered a 5-year disqualification. On the respondent’s admission, the DC issued a removal order for a period of three years. This decision may be taken into account but is not binding on the DC.

- (e) The Complainant submitted a removal order on the side of leniency in favour of the Respondent, of no less than two years, given the Respondent's level of involvement and profiteering from the dishonest act. The Complainant agreed with the court's sentiment that the Respondent is less culpable than the Respondent in D-17-1259C as he did not derive any financial benefit and that there is little risk of the Respondent from committing similar misconduct should he become in charge of a company again.
 - (f) The Complainant submitted that the Respondent should pay the costs and expense of and incidental to the proceedings of the Institute, including the costs and expenses of the DC.
 - (g) The Complainant had submitted a list of past disciplinary cases from 2013 to 2018, showing that costs were awarded to the Institute for all complaints proved.
6. The Respondent provided his submissions on sanctions and costs on 2 October 2018, including the following: -
- (a) The Respondent submitted he had cooperated during the investigation and did not appoint legal representatives; his early admission of guilt would also bring a conclusion to the case in a shorter period of time with related cost savings.
 - (b) The Respondent submitted his demonstration of remorse by volunteering to remove himself from the register.
 - (c) The Respondent submitted he was not the principal offender and submitted that the Court viewed him as the "least culpable party". He also submitted that he had taken appropriate steps to prevent the breach, or even remedy it once it was identified "by way of the Carecraft procedure". The Court of First Instance agreed that the Respondent was the "least culpable party because he did try to resist Wang's pressure" but declined to give the Respondent significant credit as he refused to accept that he acted dishonestly in Court.

- (d) The Respondent submitted that the breach was an isolated event given the Respondent's good compliance history, and is unlikely to be repeated again. The Court accepted that such conduct was entirely out of the Respondent's character. The Court also indicated that there was unlikely to be a real risk of the Respondent committing similar misconduct, and that a period of disqualification of some years would be the end of any active participation in management by the Respondent.
- (e) The Respondent referred to the case of D-17-1259C which involved the other defendant in HCMP 2502/2012. The Respondent submitted that any penalty imposed on him should be appropriately reduced from any benchmark set by the other defendant for the reasons submitted above.
- (f) The Respondent submitted the sanction from the DC should run concurrently with the court's disqualification order so as to allow for the financial burden of the civil penalties to be limited. The Respondent submitted a removal order for the period of one year.
- (g) The Respondent referred to the case of D-17-1259C, where the Respondent in that case was ordered to pay costs of HK\$35,857, significantly less than the amount, HK\$52,412, set to his account. The Respondent submitted that the background to the other respondent's matter and his were very similar, and that none of his actions should have disproportionately increased time or costs for the Institute. For the given reasons, he asked the DC to consider the quantum of costs to be ordered against him.

Order and Sanctions

7. By letter from the Clerk to the DC dated 2 November 2018, the parties were notified that a sanctions hearing scheduled on 22 January 2019 to give the parties an opportunity to be heard.
8. The sanctions hearing was convened at 3 pm on 22 January 2019. By a letter from the Clerk to the DC to the parties dated 8 January 2019, as one of the DC members was now unavailable for the sanctions hearing, the parties were requested to confirm if they consented to the sanctions hearing proceeding with

only 4 members or whether they would like to adjourn the sanctions hearing. By letter from the Complainant dated 9 January 2019 and by email from the Respondent dated 16 January 2019, and at the hearing on 22 January 2019 both parties consented to the sanctions hearing proceeding with only 4 members.

9. At the hearing on 22 January 2019 both parties confirmed that there was no objection to the DC proceeding on the basis of a 4-member panel and had no objection to the members sitting on the panel proceeding.
10. At the hearing, Ms. Elaine Chung for the Complainant submitted, inter alia, that the sanctions should be proportionate to the nature and seriousness of the offence. She submitted that the High Court had found that the Respondent had acted dishonestly and in breach of fiduciary duty and that the amount involved, was substantial. She acknowledged that Lee Yiu Sun was found to be more culpable and was disqualified as a director for 5 years whereas the Respondent was disqualified for 4 years.
11. The Respondent confirmed that he had admitted the facts in the Complaints and was remorseful. He also submitted, inter alia, that he had offered to resign from the HKICPA and hoped that acceptance of his resignation could have saved costs and time and that he was less culpable than Lee Yiu Sun. He also raised objections to the Complainant's costs and the difference in costs in these proceedings compared to the Lee Yiu Sun disciplinary proceedings.
12. Mr. Donald Leo on behalf of the Complainant submitted in reply that under section 49 of the PAO, the Council of the HKICPA may refuse to accept the resignation of a certified public accountant if it has reason to believe that such accountant has been guilty of conduct, or that circumstances exist, which could justify the removal of his name from the register under section 35(1)(a); and/or it is aware that a complaint concerning such accountant has been preferred and is before the Council or a Disciplinary Committee.
13. After considering the evidence, the admission by the Respondent, submissions of the parties, the disqualification order against the Respondent held by the Court and the Respondent not contesting these proceedings, the DC found that all three complaints were proved.

14. 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 Complaints, the Respondent's personal circumstances and the conduct of the Respondent throughout the proceedings.

15. The DC considered, inter alia, but not limited to the following matters:-

- (a) The offences which the Respondent committed were serious, as breach of trust by a fiduciary is a very serious matter.
- (b) The Respondent had worked in securities commissions in Australia and Hong Kong before joining the private sector.
- (c) The amount involved was a substantial sum (over RMB18,000,000) but the Respondent did not derive any financial benefit from his dishonest conduct.
- (d) The Court accepted that the Respondent was the least culpable party as he did try to resist the instigator's pressure and had tried to find a legitimate way to return the windfall.
- (e) The Respondent had a clear criminal and disciplinary record in Hong Kong prior to the offenses, and the judge had accepted that it was out of character for the Respondent.
- (f) About 3 years have lapsed since the Respondent's 4 year disqualification order. The Respondent is now over 66 and as the judge noted in the disqualification order, it is unlikely that the Respondent will be actively participating in company management.
- (g) The Respondent refused to accept that he had acted dishonestly in the Court proceedings but admitted the facts and was remorseful at the DC hearing.
- (h) In a letter dated 29 September 2017, the Respondent admitted that he had inadvertently failed to disclose the complaint against him under the

Declaration of Convictions in his annual membership renewal for the HKICPA.

- (i) The level of sanctions and costs should be proportionate to the degree of seriousness of the Respondent's conduct.
- (j) In the Lee Yiu Sun disciplinary proceedings which involved substantially similar facts as these proceedings, Mr. Lee was removed from the HKICPA register for a period of 3 years. It is acknowledged that the Respondent was less culpable than Mr. Lee.
- (k) The Complainant had properly exercised its discretion not to accept the Respondent's offer to resign pursuant for section 49 of the PAO.

16. In view of the above, the DC considers that Respondent should be removed from the register of certified public accountants for a period of 2 years.

17. The costs incurred by the Institute in disciplinary proceedings are financed by membership subscriptions and registration fees, and since it was the Respondent's conduct which has brought himself within the disciplinary process, the DC is of the view that he should pay the costs and expenses of the proceedings and not have them to be funded or subsidised by other members of the Institute.

18. The Complainant submitted a statement of costs which set out the respective hourly charging rates of the staff members of the Institute who had worked on this matter and the respective amount of time spent by them. Based on the statements and submissions by the Complainant, and bearing in mind both parties' submissions, the volume of documents involved and the necessity for a hearing, the Complainant's costs shall be in the sum of HK\$33,000, and costs of the Clerk to the DC shall be HK\$4,000. The total costs awarded against the Respondent shall be in the sum of HK\$37,000.

19. The DC therefore orders that:-

- (a) The name of the Respondent be removed from the register of certified public accountants for a period of 2 years with effect from the 60th day of the date of this Order under section 35(1)(a) of the PAO.

(b) The Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant/Clerk of the DC in the sum of HK\$37,000 (i.e. Complainant's costs of HK\$33,000 and the Clerk to the DC's costs of HK\$4,000) under section 35(1)(iii) of the PAO.

Dated 25 March 2019

Mr. NG, Wai Yan
Chairman

Mr. NG, Chi Keung, Victor
Member

Mr. CHAN, Conrad
Member

Mr. CHIU, Ling Cheong, Anthony
Member