

5. Ng admitted to the complaints against him. By a letter dated 10 March 2018, the Complainant and Ng made a joint application to the Disciplinary Committee (“**Committee**”) constituted to deal with this matter to dispense with the steps set out in rules 17 to 30 of the Disciplinary Committee Proceedings Rules. This joint application was approved by the Committee.
6. On 4 June 2018, the Complainant informed the Committee that UC has been removed from the register of corporate practice on 4 April 2018 and therefore it would no longer pursue the complaint as against UC.
7. The Committee directed the Complainant and Ng to make written submissions on sanctions and costs. The Complainant and Ng provided their submissions on sanctions and costs on 25 and 26 June 2018 respectively. Neither the Complainant nor Ng requested for an oral hearing.

Section B – Background

8. South Sea Petroleum Holdings Limited (“**Company**”) was incorporated in Hong Kong and its shares are listed on the Main Board of The Stock Exchange of Hong Kong Limited (stock code: 00076).
9. The financial statements of the Company and its subsidiaries (“**Group**”) for the year ending 31 December 2014 (“**2014 Financial Statements**”) disclosed that the financial statements were prepared in accordance with the Hong Kong Financial Reporting Standards (“**HKFRS**”) issued by the Hong Kong Institute of Certified Public Accountants.¹
10. UC was appointed as the auditor of the Company in January 2015.² Ng was the practicing director of UC³ and issued the auditor’s report on behalf of UC for the 2014 Financial Statements. The auditor’s report stated that the audit for the year was conducted in accordance with the Hong Kong Standards on Auditing (“**HKSAs**”) and expressed an unmodified opinion⁴ on the financial statements.
11. As a result of the review of the 2014 Financial Statements, the Financial Reporting Council (“**FRC**”) identified potential auditing irregularities. In September 2016, the Council of the FRC directed the Audit Investigation Board (“**AIB**”) to conduct an investigation into a transaction concerning the selling of graphite ore recognized in the year 2013 (“**Transaction**”), which formed the comparative information of the 2014 Financial Statements.
12. In June 2017, the FRC referred a report of the AIB dated 4 May 2017 (“**AIB Report**”) to the Institute pursuant to section 9(f) of the Financial Reporting Council Ordinance, Cap. 588.

¹ AIB Report, Annex 1B (page 38)

² Announcement of the Company dated 16 January 2015

³ Ng left UC on 2 March 2017

⁴ AIB Report, Annex 1B (pages 28 and 29)

13. The AIB Report identified non-compliance with financial reporting standards and auditing irregularities in relation to the Transaction.

Section C - The Complaints

14. By letter dated 8 January 2018, the Complainant made the following complaints against Ng and UC (the "Complaints"):-

First Complaint

- (1) Section 34(1)(a)(vi) of the Professional Accountants Ordinance ("PAO") applies to Ng and UC in that, in the audit of the 2014 Financial Statements, they failed or neglected to observe, maintain or otherwise apply one or more of the following professional standards in the manner as set out in paragraph 41 below:
- (a) Paragraph 6 of HKSA 510 *Initial Audit Engagements – Opening Balances* ("HKSA 510"); and/or
 - (b) Paragraph 15 of HKSA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Hong Kong Standards on Auditing* ("HKSA 200"); and/or
 - (c) Paragraph 18 of HKSA 540 *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures* ("HKSA 540"); and/or
 - (d) Paragraphs 11 to 13 of HKSA 700 *Forming an Opinion and Reporting on Financial Statements* ("HKSA 700").

Second Complaint

- (2) Section 34(1)(a)(vi) of the PAO applies to Ng in that the non-compliances with professional standards in the audit mentioned in the First Complaint indicate that he failed to conduct the audit with professional competence and due care and was thereby in breach of section 100.5(c) as elaborated in section 130.1 of the Code of Ethics for Professional Accountants ("COE").

Third Complaint

- (3) Section 34(1)(a)(vi) of the PAO applies to Ng in that, in issuing the auditor's report for the 2014 Financial Statements as the practising director responsible for the audit, he failed or neglected to observe, maintain or otherwise apply paragraph 19 of HKSA 220 *Quality Control for an Audit of Financial Statements* ("HKSA 220") because he had failed to appoint an engagement quality control reviewer for the audit.

Section D – Facts and Circumstances in support of the Complaints

First Complaint

15. On 18 December 2013, a subsidiary of the Company ("**Subsidiary**") entered into a contract to sell 33.45 million tons of graphite ore at US\$7.90 per ton, totalling US\$264,255,000, to a customer ("**Customer**"). It was agreed that the sales proceeds would be paid by instalments with a minimum annual payment of US\$26,425,500 starting from the year 2014. The outstanding receivable was secured by the unutilized graphite ore of the Customer which was stored in a third party's warehouse.
16. It was further agreed that the Customer would increase the annual payment if more than 3.345 million tons of graphite ore were withdrawn from the warehouse in a year, so that annual payment could reflect the actual withdrawal of graphite ore from the warehouse.
17. The Group recognized the revenue arising from the Transaction at its invoiced amount of US\$264,255,000 and trade receivable totalling about US\$262,930,000 (invoiced amount minus deposits received) in the financial statements for the year ended 31 December 2013 ("**2013 Financial Statements**").⁵
18. In the statement of financial position as at 31 December 2014, a trade receivable balance of US\$211,404,000 (2013: US\$237,830,000) was presented under non-current assets under the item "long term portion of trade receivable".⁶
19. According to paragraphs 9 and 11 of Hong Kong Accounting Standard 18 *Revenue* ("**HKAS 18**"), if there is a significant lag between the time when the goods or services are provided and the time when the consideration is received the time value of money should be taken into account. That is, deferred payments might indicate that there is both a sale and a financing transaction. If there is a financing element it is necessary to discount the consideration to present value in order to arrive at the fair value.
20. Based on the terms of the Transaction, the payment arrangement of the Transaction effectively constituted a financing transaction because, in substance, the Customer was allowed to settle the purchase proceeds of US\$264,255,000 over ten years with a minimum annual payment of US\$26,425,000.
21. In recognizing the revenue and trade receivable in accordance with HKAS 18, the discounting effect of the Transaction had been ignored by the Group in 2013 and the former auditor⁷ concurred with the non-compliance with the accounting requirements and issued an unmodified opinion.

⁵ AIB Report §3.1.3.1

⁶ AIB Report, Annex 1B (page 32)

⁷ JP Union & Co.

22. It was estimated that if using a discount rate of 5% per annum to discount the trade receivable which was expected to be fully paid over ten years, the Transaction would have been recognized at US\$204 million instead of US\$264.3 million in 2013 and the difference would have been material to the 2013 Financial Statements.⁸
23. Following the same estimation, an imputed interest income of unwinding discount of US\$10.2 million should have been recognized in the 2014 Financial Statements, which was material to the 2014 Financial Statements⁹.
24. UC's procedures on the opening balances and comparative information relating to the Transaction were limited to verifying the recognized amount to invoice balance, confirmation and sight of the agreement without considering the appropriateness of accounting treatment of the payment terms which effectively constituted a financing transaction¹⁰.
25. When explaining the measurement of revenue and receivable from the Transaction, UC initially suggested that the trade receivable "*could be settled anytime even within 1 year. Thus the fair value of the consideration required to discount all future receipts using an imputed rate of interest was not applicable in this case...*"¹¹
26. UC's above suggestion demonstrated a lack of understanding on the part of Ng of the requirements of paragraphs 9 and 11 of HKAS 18.
27. When explaining that the trade receivable could be classified as a current asset, UC cited the requirements under paragraph of 68 of Hong Kong Accounting Standard 1 *Presentation of Financial Statements* ("**HKAS 1**").¹² UC's reliance on paragraph 68 of HKAS 1 for its conclusion shows Ng's failure to understand the relevant requirements under HKAS 1.
28. Paragraph 66 of HKAS 1 sets out the criteria for classifying an asset as current.¹³ Applying the criteria to a sales transaction, if the trade receivable from a customer could be fully received within twelve months from the end of the reporting period, or within the entity's normal operating cycle, the trade receivable shall be classified as current.
29. Paragraph 68 of HKAS 1 states that the operating cycle of an entity is the time between the acquisition of assets for processing and their realisation in cash or cash equivalents and that when the entity's normal operating cycle is not clearly identifiable, it is assumed to be twelve months.

⁸ AIB Report §3.2.5

⁹ AIB Report §3.2.5

¹⁰ AIB Report §3.2.6

¹¹ AIB Report §3.1.3.5 and Annex 3A; cf their later representation referred to at §39 below.

¹² AIB Report §3.1.3.6 and Annex 3D

¹³ AIB Report §3.2.5

30. Based on the contract terms of the Transaction, the trade receivable from the Transaction would not be fully paid by the Customer within twelve months from the end of the reporting period. The Group classified a majority of the receivable as long-term asset (paragraph 18 above) in the statement of financial position as at 31 December 2014 (and 2013).
31. Although the Transaction was recognised in 2013, it was material to the 2014 Financial Statements in that the unsettled trade receivable arising from the Transaction was a major asset of the Group as of 31 December 2014 and that the revenue and receivable arising from the Transaction recognised in 2013 formed the comparative information of the 2014 Financial Statements.
32. The 2014 audit was UC's first audit engagement for the Company. UC should have properly planned and performed their audit procedures for the opening balances and comparative information to address the inherent risks related to initial audits.
33. HKSA 510 sets out the audit procedures that are required to be performed on opening balances and comparative information. Specifically, paragraph 6 of HKSA 510 requires an auditor to obtain sufficient appropriate audit evidence about whether the opening balances contain misstatements that materially affect the current period's financial statements.
34. Paragraph 15 of HKAS 200 requires an auditor to plan and perform an audit with professional scepticism recognizing that circumstances may exist that cause the financial statements to be materially misstated. Professional scepticism is an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence.
35. Paragraph 18 of HKSA 540 requires an auditor to evaluate, based on the audit evidence, whether the accounting estimates in the financial statements are either reasonable in the context of the applicable financial reporting framework, or are misstated.
36. In view of the size of the Transaction and its payment terms, UC should have identified the Transaction with additional risks of material misstatement and performed corresponding assessment and / or testing. There was no evidence in the audit working papers supporting that UC had properly evaluated the payment terms of the Transaction and assessed the effect on the measurement of the revenue and receivable arising from the Transaction in accordance with paragraphs 9 and 11 of HKAS 18.
37. Paragraphs 11 to 13 of HKSA 700 set out the requirements with which an auditor should comply in forming an opinion on whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework.

38. UC failed to challenge the appropriateness of recognising the revenue and trade receivable arising from the Transaction at the invoiced amount and did not identify that the accounting treatment was a non-compliance with HKAS 18, which would have a significant impact to the 2014 Financial Statements. The Respondent and UC failed to perform adequate audit procedures on the measurement of the revenue and receivable arising from the Transaction to support its unmodified opinion on the 2014 Financial Statements.
39. The Respondent's legal representative wrote to FRC in March 2017 stating that:
- (1) The Respondent agreed with the findings and conclusions in the draft AIB Report. He had wrongly relied upon the representations from the management of the Group that there was no schedule of deferred repayment and that the sales proceeds could be settled within one year, and therefore, discounting all future cash flows was not required for the Transaction; and
 - (2) The Respondent wrongly followed the previous accounting treatment as he was not aware of the investigation on the 2013 Financial Statements in that respect. He admitted that more audit work should have been done.
40. The incumbent Managing Director of UC did not provide any submissions in respect of the findings and conclusion of the AIB.
41. Based on the findings above, Ng and UC have breached:
- (1) Paragraph 6 of HKSA 510, and/or paragraph 15 of HKSA 200, and/or paragraph 18 of HKSA 540, by failing to obtain sufficient appropriate evidence on the opening balances, failing to challenge the appropriateness of the accounting treatment of the Transaction with a sceptical mind, and failing to evaluate whether accounting estimates pertaining to the revenue and trade receivable arising from the Transaction were reasonable in the context of the applicable financial reporting framework; and/or
 - (2) Paragraphs 11 to 13 of HKSA 700 by failing to perform adequate audit procedures on the measurement of the revenue and trade receivable arising from the Transaction and evaluate whether the 2014 Financial Statements were presented in accordance with the applicable financial reporting framework, i.e. HKFRS.

Second Complaint

42. In light of the audit deficiencies identified in the First Complaint, Ng failed to conduct the audit of the 2014 Financial Statements with professional competence and due care. As a result, he was in breach of section 100.5(c) as elaborated in section 130.1 of the COE.

Third Complaint

43. The relevant facts concerning the engagement quality control review are set out in section 3 of the AIB Report.
44. Paragraph 19 of HKAS 220 requires the engagement director for audits of listed companies to ensure appointment of an EQCR, discuss significant audit matters with the EQCR, and date the auditor's report after the completion of the engagement quality control review.
45. There was no evidence that Ng had fulfilled the above requirements of paragraph 19 of HKAS 220 by appointing an EQCR.
46. The Respondent's legal representatives wrote to FRC in March 2017 stating that Ng "*honestly believed he had in fact appointed [an EQCR] to perform the required task. That said, [Ng] should have ascertained [the EQCR's] role and duties at the outset and should not simply follow previous practices adopted in the past*". The basis for this assertion was Ng's allegation that the EQCR engaged for the previous year audit (2013) had agreed to continue to act in that role for the year 2014, even though no engagement letter has ever been signed and no review work had actually been carried out. There was no documentary evidence of any review work done.
47. In the circumstances, Ng's alleged belief has no factual basis. He was in breach of paragraph 19 of HKSA 220.

Conclusion

48. Based on the findings above and Ng's admission, the Committee finds all three complaints proved as against Ng.

Section E - Sanctions and Costs

49. The Committee notes that it has a wide discretion on the sanctions it might impose and is not bound by the decisions of a previous committee. Each case is fact specific.
50. The Complainant submitted that a reprimand and a financial penalty of not less than \$100,000 would be appropriate in the circumstances of this case. In particular, the Complainant emphasised that (a) the present case concerns a listed company and therefore there is an element of public interest involved and (b) Ng has been subject to two prior disciplinary proceedings in 2016 under which he paid penalties of \$20,000 and \$50,000 respectively, plus costs.
51. As to costs, the Complainant submitted that Ng should pay the costs and expenses of and incidental to the proceedings of the Institute including the costs and expenses of the Committee, as it was the Respondent's own conduct that brought on the disciplinary proceedings under PAO.

52. Ng did not object to the imposition of a reprimand or the payment of a financial penalty and costs but submitted that a penalty of \$50,000 would be appropriate in the present cases. In support of his submissions, Ng highlighted a number of factors for the Committee's consideration, including:
- (1) He has been cooperative throughout and admitted to the complaints at an early juncture;
 - (2) He is remorseful;
 - (3) He does not currently have any listed companies as clients;
 - (4) No allegation of fraud, dishonest, illegal or immoral conduct was involved;
 - (5) No losses were sustained by anyone including the listed company as a result of the breaches.
53. In considering the proper order to be made in this case, the Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaint, Ng's personal circumstances, and the conduct of Ng throughout the proceedings. The Committee considered, in particular, the following facts and matters specific to this case:
- (1) The Company is a listed company and the audit work in the present case affects the investing public. The public is entitled to expect that practising accountants discharge their duties and conduct their work to the highest standards of probity, independence and competence. If public confidence is shaken, then the price to be paid by the profession as a whole will be very high.
 - (2) The absence of actual loss is not a significant mitigating factor, having regard to the public interest at stake. The potential loss of investor confidence in the accuracy of audits of publicly listed companies remains a serious and grave concern, and the sanction should reflect this.
 - (3) Ng has frankly admitted his failures, obviating the need for a full hearing, thereby saving concomitant time and costs. We accept his remorsefulness, taken together with his early admission of wrongdoing, indicate a desire on his part to accept his failures and correct his practice.
 - (4) We consider the lack of listed companies currently engaged as clients by Ng is irrelevant, as there is nothing to prevent Ng from engaging in audits for publicly listed companies in the future.
 - (5) This is now the third time Ng has been subject to disciplinary proceedings. The Complainant highlighted that one of the prior proceedings involved a law firm, and thereby a public interest component similar to the present proceedings. This public interest component is less clear than the obvious public interest present in the case of a listed company. As such, we do attach

significant weight to the public interest element involved in the prior proceedings.

- (6) In our view, the two recent prior disciplinary proceedings warrant a deterrent sanction in this case to provide a salutary reminder to Ng not to reoffend again in the future and that professional incompetence will not be tolerated by the Institute.
- (7) We are satisfied that the costs and expenses set out in the Statement of Costs dated 7 June 2018 in the total sum of HK\$59,374.20 were reasonably and necessarily incurred.

54. Accordingly, the Committee makes the following orders-

- (a) Ng be reprimanded under Section 35(1)(b) of the PAO;
- (b) Ng pays a penalty of HK\$100,000 under Section 35(1)(c) of the PAO;
- (c) Ng pays the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$38,110 under Section 35(1)(iii) of the PAO; and the costs and expenses of the FRC of HK\$21,264.20 under Section 35(1)(d)(ii) of the PAO.

Dated 14 August 2019

Ms. Lam Ding Wan Catrina
Chairman
Disciplinary Panel A

Ms. Chan Lai Yee
Member
Disciplinary Panel A

Mr. Ip Chiu Yin Eddie
Member
Disciplinary Panel B

Ms. Chang See Mun Lily
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Mr. Li Po Ting Peter
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