Proceedings No. D-12-0734-C

IN THE MATTER OF

A Complaint made under section 34(1A) of the Professional Accountants Ordinance, Cap. 50

BETWEEN

Registrar of the Hong Kong Institute of
Certified Public Accountants COMPLAINANT

AND

Mr. Law Fei Shing (A15863) RESPONDENT

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

Members: Ms. POON, Suk Ying, Debora (Chairperson)
Mr. CHAN, Stephen
Ms. LAM, Po Ling, Pearl
Mr. KAN, Siu Lun, Philip
Ms. LAW, Elizabeth

Dates of Hearing: 25 and 26 January 2021 and 1 February 2021
Date of Decision: 3 August 2021
Date of Order: 3 December 2021

ORDER

Section A – INTRODUCTION

1. The complaints against Mr. LAW Fei Shing ("**the Respondent**") in this case related to, inter alia, breaches of professional standards in the audits of the 2010 and 2011 financial statements of a Hong Kong company known as Chong Luen Hing Garments Limited ("**CLH**").

2. The Respondent is the sole proprietor of F. S. Law & Co. ("**the Firm**") which was the auditor of CLH for the financial years ended 31 March 2009, 31 March 2010 and 31 March 2011.

3. At all material times, CLH had three shareholders, namely, Ms. WU Wing Che Deven ("**Ms. Wu**"), Mr. Lee Kwong On ("**Mr. Lee**") and Mr. Johnny Alan Vorzimer. They held 60%, 20% and 20% shares of CLH respectively. Ms. Wu and Mr. Lee were the only directors of CLH.

4. CLH held 100% ownership interest in a Mainland company known as Foshan Shunde Mao Nian Garments Limited (佛山市順德區茂年製衣有限公司) ("**the Factory**") which was established in the People's Republic of China.

5. On 13 November 2009, 22 November 2010 and 10 January 2012, the Firm issued auditor's reports signed by the Respondent on CLH's financial statements for the years ended 31 March 2009, 31 March 2010 and 31 March 2011 ("**the 2009 Financial Statements**", "**the 2010 Financial Statements**" and "**the 2011 Financial Statements**") respectively. The complaints in these proceedings only concerned with the 2010 and 2011 Financial Statements.

6. There were 7 complaints against the Respondent. In essence:-

   (1) The 1st and 2nd Complaints relate to the Respondent's concurrence with CLH's adoption of Section 141D of the Companies Ordinance (Cap. 32) ("**the Ordinance**") and the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard ("**SME-FRF**") for preparing the 2010 and 2011 Financial Statements when CLH was not qualified to do so. The 1st and 2nd Complaints are in the alternative, in that:-

(a) the 1st Complaint relates to the Respondent's failure to obtain sufficient audit evidence to substantiate CLH's adoption of Section 141D and the SME-FRF, in breach of HKSA 250.19 (for the audit of the 2010 Financial Statements) and HKSA 250.13 (for the audit of the 2011 Financial Statements); and

(b) the 2nd Complaint relates to the Respondent's failure to prepare sufficient and appropriate audit documentation for his concurrence with CLH's adoption of Section 141D and the SME-FRF, in breach of HKSA 230.2 (for the audit of the 2010 Financial Statements) and HKSA 230.7 (for the audit of the 2011 Financial Statements).

(2) The 3rd Complaint relates to the Respondent's failure to qualify his opinion on the 2010 and 2011 Financial Statements concerning a scope limitation in verifying the accumulated provision for impairment loss in respect of the investment in the Factory in the sum of HK$10,875,000 ("**the Impairment Provision**"), in breach of HKSA 701.18.

(3) The 4th and 5th Complaints relate to the Respondent's concurrence with the non-disclosure in the 2011 Financial Statements of securities given by CLH for banking facilities granted to CLH Group (HK) Limited ("**CGHK**"), a company in which Ms. Wu held a controlling interest. The 4th and 5th Complaints are in the alternative:-

(a) the 4th Complaint relates to the Respondent's failure to obtain sufficient appropriate audit evidence to substantiate CLH's non-compliance with disclosure requirements under Section 161B of the Ordinance, in breach of HKSA 250.13; and

(b) the 5th Complaint relates to the Respondent's failure to prepare sufficient and appropriate audit documentation for his concurrence with CLH's non-disclosure, in breach of HKSA 230.7.

(4) The 6th Complaint relates to the Respondent's failure to segregate monies received from Ms. Wu on 13 January 2012 and to make appropriate inquiries on the source of funds to ensure compliance with relevant laws and regulations, in breach of Section 270 of the Code of Ethics for Professional Accountants ("**the Code**"); and

(5) The 7th Complaint relates to the Respondent's failure to maintain professional knowledge and skill at the level required to ensure that CLH received competent professional service based on current developments in practice, legislation and techniques, in breach of Section 100.4(e) (for the audit of the 2010 Financial Statements) and 100.5(c) (for the audit of the 2011 Financial Statements) of the Code.

7. Following the substantive hearing and having considered all the submissions and evidence presented by the parties, the Disciplinary Committee ("**the Committee**") found the 1st, 3rd, 4th, 6th and 7th Complaints proved as against the Respondent and the alternative complaints, namely, the 2nd and 5th Complaints shall remain on file.

8. The Committee's findings of fact and reasons are set out in the Decision dated 3 August 2021 ("**the Decision**"). This decision on sanctions and costs should be read together with the Decision.

9. Pursuant to the Committee's directions, the Registrar of the Hong Kong Institute of Certified Public Accountants ("**the Complainant**") provided their written submissions on sanctions and costs on 17 August 2021 and 2nd written submissions on 14 September 2021 whereas the Respondent provided his written submissions on 3 September 2021 and 2nd written submissions on 24 September 2021 respectively.

Section B – SANCTIONS

10. The Committee has a wide discretion in determining sanctions under Section 35 of the PAO. According to Section 4 of the Guideline to Disciplinary Committee for Determining Disciplinary Orders ("**the Guideline**"), the Committee is

recommended to take the following 3-step approach in determining a disciplinary order:-

(1) Determine the seriousness of the offence (See Section 5);

(2) Determine the appropriate sanctions based on case severity **before** considering other factors (See Section 6); and

(3) Consider impact of other factors on sanctions (i.e. past similar cases, aggravating and/or mitigating factors) in determining a disciplinary order (See Section 7).

I. Seriousness of Offences involved

11. Pursuant to Section 5 of the Guideline, the Committee should consider the full circumstances of each case before determining what sanctions should be imposed. A list of considerations is set out under Section 5.2 (1) and (2) to assist the Committee in reviewing the circumstances of the case and determining seriousness of the breach. It is further stipulated under Section 5.3 that the seriousness of disciplinary offences could be increased by some features set out thereunder.

12. It is the Complainant's submissions that the Respondent's case falls within the "very serious" category. The Complainant's submissions are three-folded:-

(1) First, the offences in the present case should be considered "very serious" in the light of the nature of each of the failures and/or offences and the relative significance of the standards or regulations breached. In this connection, the Complainant highlighted in their written submissions the relevant circumstances of the case and submitted that:-

(a) the Respondent had demonstrated a serious lack of understanding of his professional duties as an auditor as set out in the professional standards and even the fundamental and basic legal requirements relating to the preparation and presentation of financial statements required under the

Ordinance, with which any competent auditor ought to be familiar;

(b) the Respondent's lack of professional competence is fortified by the various evolving defences which he has raised in the proceedings and those defences were found by the Committee as plainly untenable;

(c) the proven breaches by the Respondent in the 1st, 3rd and 4th Complaints accumulated in the 7th Complaint against the Respondent, namely, that he had failed to maintain professional knowledge and skill at the level required to ensure that CLH received competent professional service based on current development and practice, legislation and techniques, in breach of Section 100.4(e) (for the audit of the 2010 Financial Statements) and 100.5(c) (for the audit of the 2011 Financial Statements) of the Code. Professional competence is a Fundamental Principle under the Code. The Respondent's breach in this respect is in any view very serious;

(d) the Respondent also failed to comply with his ethical duties in respect of the receipt of client monies in breach of Section 270 of the Code (6th Complaint). It is self-evidently important for certified public accountants to segregate client monies from their personal assets and to make appropriate inquiries into the source of funds; and

(e) as such, the sanctions to be imposed should reflect the fact that there were **multiple breaches of basic and fundamental technical professional standards** across various audit areas, which could have a **material impact on the accuracy and reliability of the 2010 and 2011 Financial Statements**, and also breaches of **fundamental ethical principles** that all certified public accountants are required to comply with.

(2) Second, the sanctions should also reflect the fact that the complaints involved non-compliance of multiple professional standards over two audits, meaning that they were not isolated events but were recurring (Guideline Sections 5.2(1)(j) and 5.3(a)).

(3) Third, the Respondent's lack of professional competence and failure to comply with the Code in respect of client monies could undermine public confidence in the standards of the profession and have a detrimental effect of the reputation of the profession (Guideline Sections 5.2(1)(g), (i) and 5.3(f)). It is paramount that the sanction imposed adequately reflects that breaches of professional standards will not be condoned, and the sanctions imposed should provide a deterrence against the deficiencies in order to maintain and promote public confidence in the profession.

13. In his Written Submissions, the Respondent submitted that the breaches should not be considered "very serious". In this connection, the following points should be highlighted:-

(1) The 1st, 3rd and 4th Complaints were concerned with non-compliance with technical standards imposed by the Companies Ordinance and/or accounting standards. They are regarded as technical breaches.

(2) The reasons leading to the breaches were primarily caused by differences in understanding the relevant legal and/or accounting standards. The fact that the Respondent's interpretation not being accepted is not by itself elevated as "a serious lack of understanding of his professional duties (or competence)".

(3) None of the Complaints were concerned with breach of trust or confidence by the Respondent.

(4) The Respondent has not received any benefits, pecuniary or otherwise, from the breaches.

(5) The Respondent disagrees with the Complainant that there have been ethical issues involved in the breaches. For the 6th Complaint, though it was found to have made out, the salient features are that it did not involve any abuse of trust and confidence. Instead, Ms. Wu was willing to give evidence to support the Respondent's case.

(6) There is no evidence that the Company or its shareholders had suffered loss as a result of the breaches. Mr. Lee, being the original complainant, knew full well of the true state of affairs of the Company and the Factory; and the other two shareholders did not consider their own interest being affected by the Respondent's services. The saga was caused by the shareholders' dispute which had nothing to do with the Respondent's carrying out of the statutory audits.

(7) With respect to the breaches found to have been made out, a great extent of culpability was attributed to Mr. Lee (the original complainant) who had been in control of the Factory and yet obstructing in providing the Factory's financials, resulting in no consolidated accounts having been prepared.

(8) The level of public interest involved was minimal. The Company concerned was not a public company, and there is no evidence that members of the general or investing public have suffered loss as a result of the breaches.

(9) Since the level of public interest involved was minimal, the breaches realistically would not cause damage to the reputation of the profession or undermine the public confidence in the profession.

(10) The Respondent disagrees with the Complainant's superficial submissions that the breaches had been recurring. Those breaches were isolated in nature.

14. Accordingly, the Respondent submits that the breaches concerned fall somewhere between "moderately serious" and "serious" categories, but not the "very serious" one.

15. Having considered the submissions of both parties and all the circumstances of the case, the Committee is of the view that the Respondent's breaches fall within the "very serious" category. In reaching our conclusion, we have considered all the relevant matters including the following:-

(1) We consider that the Respondent had demonstrated a serious lack of

understanding of (a) the professional standards required of him as an auditor, (b) the Code required of him as a certified public accountant, and (c) the fundamental and basic legal requirements relating to the preparation and presentation of financial statements in accordance with the Ordinance. These are matters, in our view, which any competent auditor and certified public accountant should be familiar with. In this connection, it would be useful to revisit the nature and seriousness of the subject matter of the Complaints which were proved against the Respondent:-

1st Complaint

(a) So far as the 1st Complaint is concerned, the Respondent had failed to obtain sufficient appropriate audit evidence to support his concurrence with CLH's adoption of Section 141D of the Ordinance and the SME-FRF in preparing the 2010 and 2011 Financial Statements, in breach of HKSA 250.19 (for the audit of the 2010 Financial Statements) and HKSA 250.13 (for the audit of the 2011 Financial Statements).

(b) As supported by the available evidence before the Committee, CLH held 100% ownership in the Factory at the material times and the Factory was deemed to be a subsidiary of CLH by virtue of the clear wordings of Section 2(4)(a) of the Ordinance. As such, CLH was not qualified to rely on Section 141D to adopt the SME-FRF in preparing the 2010 and 2011 Financial Statements but the Respondent had concurred with CLH's adoption of Section 141D and the SME-FRF in preparing its financial statements. The Respondent has thus failed or neglected to observe, maintain or otherwise apply the professional standard HKSA 250 in his audits of both the 2010 and 2011 Financial Statements. In other words, the Respondent's such failure or neglect was not an isolated incident. It did spread for two consecutive audit years.

(c) The Respondent then sought to rely on HKAS 27 and argued that the Factory was not a subsidiary of CLH by reason that CLH had no control over the Factory. As detailed in our Decision, we rejected the Respondent's argument as the definition of "subsidiary" in any accounting

standards cannot override the statutory definition of "subsidiary" under Section 2(4) of the Ordinance; and the concept of "control" under HKAS 27 is irrelevant in determining whether a company is a "subsidiary" under Section 141D and whether the SME-FRF is applicable. As such, the Respondent's evidence from Ms. Wu and Mr. Chen concerning the alleged loss of control by CLH over the Factory as well as the report compiled by Mr. Chen are irrelevant. For the sake of completeness, we have nevertheless dealt with the evidence of Ms. Wu and Mr. Chen. We considered the Respondent's claim of loss of control by CLH over the Factory is both unmeritorious and unsubstantiated by sufficient evidence.

(d) More importantly, the Respondent's claim of loss of control by CLH over the Factory by reason of HKAS 27 is squarely contradicted by the information contained in the 2010 and 2011 Financial Statements where he expressly acknowledged that the Factory was a subsidiary (See paragraph 41 of the Decision).

(e) We have also dealt with the various ex post facto arguments raised by the Respondent in answer to the 1st Complaint (See paragraphs 42 – 46 of the Decision). We rejected those defences as they were untenable and in any event not recorded or supported by any contemporaneous audit documentation. Further, those defences which evolved over time actually displayed a lack of professional competence and proper understanding of the professional standards required of him as an auditor.

(f) We have no hesitation to reject the Respondent's submissions that the 1st Complaint merely concerned technical breach and that the breach was primarily caused by differences in understanding the relevant legal and/or accounting standards. As mentioned hereinabove, CLH was clearly not qualified to rely on Section 141D of the Ordinance to adopt the SME-FRF in preparing the 2010 and 2011 Financial Statements. The statutory requirements under Section 141D and the professional standard laid down in HKSA 250 are clear and not open to interpretation by individual auditors. The Respondent's failure to obtain sufficient appropriate audit evidence to

support his concurrence with CLH's adoption of Section 141D and the SME-FRF in the two said Financial Statements is by no means technical. It reflected the Respondent's serious lack of competence and understanding of professional standards required of him as an auditor.

3rd Complaint

(a) The 3rd Complaint concerns the Respondent's failure in both the 2010 and 2011 Financial Statements to express a qualified opinion relating to the scope limitation in assessing the Impairment Provision, in breach of HKSA 701.18. In essence, the Respondent was engaged as the auditor of CLH since 2009. In the 2009 Auditor's Report, the Respondent gave his qualified opinion regarding the underlying value of investment as follows: "... in absence of audited accounts of the subsidiary, we are unable to ascertain the underlying value of the Investment although an aggregate impairment loss of the investment amount to HK$10,875,000 have been provided". The term "impairment loss" or "impairment provision" was introduced by the Respondent in 2009 and not by the previous auditor. Whilst the sum of HK$10,875,000 being the aggregate amortization cost of investment carried forward from 2008 was newly labelled by the Respondent as "accumulated provision for impairment loss" 2009, no explanation as to such change of accounting treatment was proffered. It was only stated that there was reclassification of certain comparative figures (at paragraph 25 of the Notes to the 2009 Financial Statements).

(b) In the 2010 Auditor's Report, though the "accumulated provision for impairment loss" still remained, the Respondent did not issue any qualified opinion in respect of the underlying value of the investment as he did in the 2009 Auditor's Report. The impairment provision of HK$10,875,000 remained the same for the financial years 2009, 2010 and 2011 but the Respondent did not qualify his opinion regarding the Impairment Provision after 2009. In the Audit Working Papers, the Respondent expressly noted that there was a scope limitation regarding his audit work in assessing the appropriateness of the Impairment Provision: In the Audit Working Papers for the 2010 Financial Statements, it was

stated that the Respondent could not obtain any accounts, management accounts and other relevant information of the Factory. Due to the absence of information, the Respondent could not do any valuation test of the investment of the Factory and the recoverable amount of the investment cannot be determined. Yet, the Respondent considered that as the Factory kept supplying goods to CLH continuously, he accepted the directors' view to maintain the amount of Impairment Provision made by the former auditor. In the Audit Working Papers for the 2011 Financial Statements, similar remarks were made. We considered that the lack of financial information and accounts of the Factory has clearly presented a scope limitation in the Respondent's audit work for assessing the Impairment Provision. Such limitation in audit scope relating to a significant amount in the 2010 and 2011 Financial Statements should have been duly reflected in the relevant auditor's reports as a qualification. The Respondent's failure to express a qualified opinion concerning the said limitation of scope is a clear breach of HKSA 701.18. It is also noted that the Respondent's such failure was not an isolated mistake as it involved two consecutive audit years.

(c) The Respondent's other defences raised in answer to the 3rd Complaint are also without merit. In particular, the Respondent's contention that there was a potential sale of the Factory at about HK$4 million which might prove the Factory's fair value less cost to sell was not evidenced by any contemporaneous documents or recorded anywhere in the Audit Working Papers. His explanation that no prejudice was actually caused to any shareholder is no answer to the question as to whether he has breached any professional standards. Further, the Respondent had all along recognized the need to ascertain the recoverable amount for the purpose of making a proper assessment of the Impairment Provision. It was thus only bizarre for him to raise a new defence saying that there was no need to assess the recoverable amount.

(d) Again, we have no hesitation in rejecting the Respondent's submission that the 3rd Complaint concerned only with technical breach and the reasons

leading to the breach was mainly due to differences in understanding the relevant legal and/or accounting standards. As mentioned hereinabove, the lack of financial information and accounts of the Factory has clearly presented a scope limitation in the Respondent's audit work for assessing the Impairment Provision. The Respondent should have expressed a qualified opinion (as he did in 2009) on the 2010 and 2011 Financial Statements. The failure to do so demonstrated a lack of competence on the part of the Respondent as an auditor and a lack of understanding as to the professional standards which the Respondent has to duly comply with, maintain and observe. It cannot be said that the breach was merely technical. The requirements laid down in HKSA 701.18 are drafted in clear terms and are not open to interpretation and application by individual auditors to suit their own convenience.

4th Complaint

(a) The 4th Complaint concerns the Respondent's failure in respect of the 2011 Financial Statements to substantiate CLH's compliance with Section 161B of the Ordinance and his concurrence with CLH's non-disclosure of securities given by CLH for banking facilities granted to CGHK (a company in which Ms. Wu held a controlling interest), in breach of HKSA 250.13. The failure to disclose the Charges in question was in direct contravention to Section 161B of the Ordinance. Suffice to say, there was nothing in the Audit Working Papers to show that the Respondent had obtained sufficient appropriate audit evidence to prove that CLH had duly complied with Section 161B.

(b) Again, we reject the Respondent's submission that his breach under the 4th Complaint was merely a technical breach and that the reasons leading to the breach was primarily caused by difference in understanding or interpretation of the relevant legal and/or accounting standards. The Respondent's breach of HKSA 250.13 clearly demonstrated his lack of professional competence and understanding of the professional standards required of him as an auditor. We do not accept the Respondent's submission that his breach was merely caused by a different understanding

of the relevant professional standards.

6th Complaint

(a) Regarding the 6th Complaint, we found that the Respondent had failed to segregate the RMB 2.2 million received from Ms. Wu on 13 January 2012 and to make appropriate inquiries on the source of the funds, thereby in breach of Section 270 of the Code. We take the view that the Respondent's such breach of his ethical duties under Section 270 of the Code again demonstrated a lack of professional competence and proper understanding of the professional standards required of him as a certified public accountant. The Respondent's breach under the 6th Complaint would undermine public confidence in the standards of the profession and have a detrimental effect on the reputation of the profession (See Guideline Sections 5.2(1)(g) and (i), 5.3(d) and (f)). Whilst the Respondent had not received any benefits, pecuniary or otherwise, out of his dealing with Ms. Wu, this does not avail the Respondent because the fact remained that the Respondent had breached professional ethics by failing to segregate client's monies from his own monies and to make proper inquiries as to the source of funds in question. In fact, we have already stated in the Decision that the dealing between the Respondent and Ms. Wu was questionable. We found the breach serious and have asked the Institute to see if the case should be referred to other relevant authorities for follow-up actions.

7th Complaint

(a) By reason of the Respondent's non-compliance with the professional standards relevant to the 1st, 3rd and 4th Complaints, we considered that the 7th Complaint is proved. In essence, the Respondent's work demonstrated his incompetence and failure to advise CLH properly and he had failed to maintain professional knowledge and skill at the level required to ensure that CLH received competent professional services based on current developments in practice, legislation and techniques, in breach of the Fundamental Principle of Professional Competence and Due Care under Sections 100(e) and 100.5(c) of the Code.

(2) We have carefully considered all the Respondent's other submissions on the seriousness of the breaches including that (a) there was no breach of trust or confidence by the Respondent; (b) there was no actual loss suffered by the shareholders or CLH and (c) the level of public interest involved was minimal. However, taking into account of all the circumstances of the case and the submissions from both parties, we are of the view that the breaches involved in the present case are "very serious" in nature.

II. Appropriate Sanctions

16. Having decided that the breaches in the present case are "very serious", we turn to Section 6 of the Guideline which provides that the starting points for sanctions includes:-
    (1) Reprimand; and/or
    (2) Financial penalty; and/or
    (3) Cancellation of practising certificate and not re-issued for at least 1 year; and/or
    (4) Temporary or permanent removal from the register; and/or
    (5) Payment of costs and incidentals.

17. In this connection, a reprimand is the minimum sanction that should be handed down (§3.2(3) of the Guideline). As regards the quantum of any financial penalty, it should normally reflect the seriousness of the misconduct which is a matter for the Committee. Under Section 35(1)(c) of the PAO, the maximum penalty which can be imposed for each complaint under a complaint letter is HK$500,000. As for cancellation of practising certificate and removal from register, the Institute would normally recommend a cancellation of a practising certificate or removal from register where the Institute considers that a respondent's conduct calls into question his/her professional competence or integrity; and such an order is necessary for protection of the public.

18. Having regard to the seriousness of the breaches herein and all the relevant circumstances of the case, we are of the view that the Respondent should be reprimanded and ordered to pay financial penalty in the range of HK$100,000 to

HK$200,000 to sufficiently reflect the severity of the breaches herein. Further, the Respondent's practising certificate should be cancelled and not be re-issued for a period in the range of 12 to 24 months. Since costs should follow the event, we consider that there is no reason why the Respondent should not bear the Complainant's costs and expenses of and incidental to the proceedings (which included the costs and expenses of the Committee).

III. Other matters to be taken into account

Mitigating Factors

19. The Committee should consider if there are mitigating and/or aggravating factors.

20. The Respondent, aged 62, has a clear disciplinary record. The Respondent asked the Committee to consider various mitigating factors which included:-

(1) The breaches were spent as they took place back in early 2010s and have never recurred;

(2) The Respondent has taken remedial actions after the breaches to improve his professional knowledge and competence in discharging his duties as a member of the accountancy profession: He consistently brings himself up-to-date with respect to knowledge of the professional standards, and he regularly attends seminars and workshops and always complies with the CPD requirement;

(3) In the most recent practice review, the Quality Assurance Department of the HKICPA opined that the action plan of the Respondent's firm demonstrated the Practice's commitment to improve work quality and comply with professional standards;

(4) The prosecution of the present disciplinary proceedings was brought about by the highly unusual background e.g. complaints filed by Mr. Lee who knew full well the financial affairs of the Company out of grudge against Ms. Wu, and the Respondent being left to deal with the aftermath on his own when the disputing parties had settled their disputes;

(5) The Respondent had been practising as a sole proprietor for a long time and his firm admitted another partner in about 2017. The firm is of a small scale and its clients were predominantly consisted of small companies with no investing public involved;

(6) The Respondent is suffering from age-related health conditions (but no specific information or details were given);

(7) The Respondent was under immense pressure due to the present proceedings and is now exposed to serious sanction against his professional life and reputation; and substantial financial exposure due to the Complainant's claim for costs; and

(8) Various mitigating letters were submitted on behalf of the Respondent to show that the Respondent is a person of integrity and willing to contribute to the community.

21. We have duly considered the mitigating factors and the letters submitted on behalf of the Respondent. There can be no dispute that the Respondent is of clear disciplinary record and has never been subjected to disciplinary proceedings in his practice for no less than 21 years. The breaches herein are dated in the 2010s and there are no new breaches committed by the Respondent. As supported by the mitigating letters, he is of previous good character.

Aggravating Factors

22. There are, however, as the Complainant submits, various aggravating factors which the Committee should take into account:-

(1) The Respondent did not show any remorse. As of today, the Respondent is still trying to shift the blame to Mr. Lee. This demonstrated the Respondent's lack of remorse and responsibility on the matter.

(2) The Respondent had deliberately adopted delaying tactics which resulted in substantial delay to the proceedings. In particular:-

(a) By a letter dated 5 September 2012, Mr. Lee complained to the Institute regarding the Respondent's audits of the 2009 – 2011 Financial Statements and he claimed to be misled as to the financial position of CLH and the Factory. After the Institute's year-long investigation, the proceedings were commenced in September 2014. During the investigation, the Respondent confirmed through his legal representatives that the audit working papers he provided were complete. The Respondent also made comments and representations in response to Mr. Lee's complaints.

(b) The present proceedings had been significantly delayed by the Respondent's conduct and various unmeritorious applications. As a result, it has taken more than 6 years for the matter to be heard before the Committee. In particular, the present proceedings were delayed for almost 5 years as a result of the Respondent's two unsuccessful applications for leave to commence judicial review:-

(i) The Respondent applied for leave to commence judicial review against the decision made by the Council of the Institute ("the Council") to refer Mr. Lee's complaint to the Committee (HCAL 132/2014, 2 February 2015). Such application was refused by the Court of First Instance and the Respondent's subsequent application for leave to appeal all the way to the Court of Final Appeal was also refused (HCMP 748/2015, 21 April 2016 and 20 October 2016 and FAMV 50 of 2016 by way of paper disposal dated 29 June 2017).

(ii) When the proceedings resumed over two years later in June 2017, the Respondent filed his Respondent's Case but shortly afterwards he applied for leave to commence a second judicial review on 27 April 2018. Such second application was again refused by the Court of First Instance (HCAL 750 of 2018, 26 November 2018 and [2018] HKCFI 2592) and the Respondent's subsequent appeal to the Court of Appeal was dismissed on 13 June 2019 ([2019] 4

HKLRD 225). In the Court of Appeal's judgment, it was stated that "the **significant and unnecessary delay is predominantly caused by [the Respondent's] two consecutive unsuccessful leave applications to apply for judicial review** regarding various intermediate and procedural decisions made by the institute and the Disciplinary Committee. This is clearly unsatisfactory as further demonstrated by the fact that the applicant took out the present application not long after the first unsuccessful leave application, thereby further interrupted the progress of the disciplinary proceedings again after already a long delay." (§§39 – 42 of the Judgment, emphasis added).

(c) The proceedings were then further delayed when the Respondent through adducing expert evidence on accounting and auditing standards referred for the first time to copies of some audit planning memos and audit issue memos ("**the Memos**") which were not part of the Audit Working Papers provided by the Respondent to the Institute and were never referred to in the Respondent's Case and Reply. The Memos were only provided to the Complainant on 16 October 2019, that is, 5 years after the commencement of the proceedings.

(d) Thereafter, upon the Respondent's application on 13 January 2020, the Committee granted leave to the Respondent to rely on the Memos and directed, inter alia, that the Respondent should file a witness statement to address the provenance and authenticity of the Memos. The Respondent then sought to defer the filing of the said witness statement on 21 February 2020 and 4 March 2020 but ultimately he withdrew his application to adduce the Memos on 11 March 2020. Though the Committee exceptionally granted additional time to the Respondent to file such witness statement, no witness statement was filed. Hence, the Memos were expunged from evidence.

(e) On 15 January 2021, the Respondent applied for an adjournment of the hearing which was due to commence on 18 January 2021 for medical

reasons. At the hearing on 18 January 2021, counsel for the Respondent informed the Committee that the Respondent's legal team were only instructed to apply for an adjournment and that if the application for adjournment was refused, they would not attend the substantive hearing. Eventually, the Respondent's application was granted and the hearing was adjourned to 25 January 2021.

(3) The Respondent's defences changed and evolved over time and this demonstrated a lack of candour on the part of the Respondent in responding to his professional governing body. As evidenced by his manner in defending these proceedings, there was an obvious lack of understanding on the part of the Respondent as to the standards required of him as an auditor.

23. In response to the Complainant's above submissions, the Respondent submitted, inter alia, that:-

(1) The Respondent should not be penalized for invoking his constitutional right to take the matter to judicial review. In any event, the Complainant has been properly compensated by costs following the outcome of the judicial review proceedings and as such the Respondent should not be doubly jeopardized by a more serious sanction;

(2) The Respondent explained that his application to adduce the Memos was withdrawn because his intended engagement of a replacement accounting expert in place of the deceased expert was strongly opposed by the Complainant and that the replacement expert was unable to finish his report within a short time frame. Though the Committee subsequently granted extra time for the Respondent to produce a new report, the replacement expert was already released by the Respondent and the release was irreversible.

(3) The Respondent denied having played delaying tactic in adjourning the hearing on 18 January 2021. He submitted that his application for adjournment was supported by medical evidence which was not challenged by the Complainant.

(4) Lastly, the Respondent contended that the defences he advanced were mainly offering different interpretations and analyses on the legal and/or accounting standards. Those defences were raised on the same set of facts and evidence and did not cause additional time and costs to be incurred.

24. Having considered the parties' submissions, we are of the view that there are aggravating factors in the present case which we should take into account in deciding what orders of sanction should be imposed.

25. First of all, the Respondent's submissions that he is the scapegoat out of the grudges between Mr. Lee and Ms. Wu and that some of the breaches were merely technical showed clearly that the Respondent had limited remorse. Afterall, the 1st, 3rd, 4th, 6th and 7th Complaints were found proved against the Respondent out of his own deeds. He must therefore bear the consequences instead of attributing the blame to Mr. Lee. Further, so far as the 6th Complaint is concerned, we have already stated clearly in the Decision that the Respondent had breached professional ethics by failing to segregate a client's monies with his own monies and to make inquiries as to the source of funds. We consider that the breach is serious and have asked, in the Decision, the HKICPA to see if the case should be referred to other authorities for further follow up actions.

26. Second, the present proceedings were delayed for almost 5 years as a result of the Respondent's two unmeritorious applications for leave to commence judicial review. As pointed out by the Court of Appeal, the significant and unnecessary delay was predominantly caused by the Respondent's two consecutive unsuccessful leave applications to apply for judicial review regarding various intermediate and procedural decisions made by the Institute and the Committee (See [2019] 4 HKLRD 225 at §§39 – 42). Whilst the Respondent was perfectly entitled to exercise his constitutional right to apply for judicial review, we cannot lose sight of the fact that the present proceedings were indeed delayed for almost 5 years as a result and that the Respondent's conduct in pursuing unmeritorious and vexatious applications for leave to apply for judicial review and appeal all the way to the Court of Final Appeal are matters which we are fully entitled to take

into account.

27. Likewise, the Respondent's conduct in attempting to adduce the Memos 5 years after commencement of the proceedings thereby causing further delay to the proceedings is also far from satisfactory. Suffice to say, the Committee has endeavoured to balance the interests of all parties and to accommodate the Respondent's need to file a replacement expert report within reasonable time. Extra time was granted to the Respondent for filing such report and it was the Respondent who decided to withdraw his application to adduce the Memos as evidence.

28. Further, the Respondent's urgent application on 15 January 2021 to adjourn the hearing scheduled to be heard three days afterwards on 18 and 19 January 2021 was another instance whereby the proceedings were further delayed. The application was, according to the Respondent, necessitated by medical reasons. On the first day of the scheduled hearing on 18 January 2021, the Respondent did not attend the hearing and was only represented by his counsel and solicitors. The legal team of the Respondent informed the Committee that they only had instructions to apply for the adjournment on behalf of the Respondent and that they would not attend the hearing any further if the application for adjournment was refused. According to the medical evidence provided to the Committee, the Respondent would be admitted to the hospital urgently for an operation to be performed on 18 January 2021. As such, he would be unable to attend the hearing on 18 and 19 January 2021. The medical proof submitted to us included a letter issued by the Respondent's doctor and an admission form of the hospital indicating that the Respondent was admitted thereto at 18:10 hours on 17 January 2021. Needless to say, it would be highly undesirable in the eyes of justice and fairness if the substantive hearing were to proceed in the absence of not only the Respondent but also his legal representatives. With great reluctance, the Committee adjourned the hearing to 25 January 2021 and directed the Respondent to, inter alia, serve a medical report from his treating doctor and an affirmation setting out matters including a chronology setting out the Respondent's medical conditions and the timing of him giving instructions to his solicitors and counsel regarding the application for adjournment.

29. Lastly, we have already found that various defences raised by the Respondent changed and evolved over time. It demonstrated the lack of candour on the part of the Respondent in responding to his professional governing body. It does not make any sense for the Respondent to say that the various defences were mainly advanced to offer different interpretations and analyses on the legal and/or accounting standards. As mentioned hereinabove, the professional standards required of the Respondent as an auditor and a certified public accountant were laid down in clear terms and not open for individual auditors or certified public accountants to cherry pick different interpretations to suit their convenience. It also defies common sense and logic for the Respondent to introduce defences just to offer different interpretations or analyses on the legal or accounting standards when such defences were without merit or that they actually contradicted the Respondent's stated case and evidence.

30. We do not agree with the Respondent's submission that the various defences were raised on the same set of facts and evidence and thus it did not cause additional time and costs to be incurred. As noted in our Decision, some of the Respondent's defences were no longer actively pursued in his Written Closing Submissions. However, the Respondent's counsel verbally informed the Committee that he had no instruction to abandon any of the points or defences raised before. In the circumstances, the Committee had no choice but to deal with each and every point or defence raised by the Respondent though it appeared clearly that the Respondent was no longer relying on some of the points in his Closing Submissions. The Respondent's conduct in defending the Complaints in this way would also be taken into account by the Committee.

Past Cases

31. The Committee notes that it is not bound by the decisions reached by a previous committee. Each case turns on its own facts. It is for the Committee to determine the appropriate penalty in the light of the specific facts and circumstances of each case. That said, the Complainant has referred to three past decisions with similar features to the present case, namely, (1) D-19-1460P, (2) D-17-1278F and (3) D-17-1232F:-

(1) D-19-1460P is a case where the four complaints against the respondent were all found proven on the basis of his own admission. The case related to the respondent's breaches of multiple professional standards in respect of two audit engagements, his failure to maintain an adequate quality control system in his practice and to comply with the fundamental principle of professional competence and due care under the Code. The Disciplinary Committee ordered that (1) the respondent be reprimanded, (2) a practising certificate shall not be issued to him for 18 months; and (3) the respondent do pay a penalty of HK$50,000.

According to the Respondent, however, this case should not be relied upon because the Committee therein did not articulate the basis upon which the sanctions were arrived and it only stated that all relevant factors have been considered.

(2) D-17-1278F is a case where the 1st respondent denied all three complaints against him but he chose not to appear at the substantive hearing. He was found to have breached multiple professional standards in his audit of a listed company, failed to comply with the fundamental principle of professional competence under the Code, failed to ensure that the engagement quality control reviewer appointed was independent of the audit team; and failed to discuss significant matters with the said reviewer. The Disciplinary Committee in the case noted (at §29(2)(a)), amongst other things, that the auditing irregularity in question was not a particularly serious mistake on its own but the manner in which the respondent had chosen to defend that mistake demonstrated an obvious lack of understanding of the requirements of the relevant accounting standards. This was not the first time the respondent was found to have fallen below professional standards in a listed company audit. The Disciplinary Committee ordered that (1) the respondent be reprimanded; (2) a practising certificate shall not be issued to the respondent for a period of 2 years; and (3) the respondent do pay a penalty of HK$50,000.

The Respondent argued that this case is distinguishable as various factors were

highlighted to justify a more severe penalty, namely: (1) the respondent had previous conviction records; (2) the company was a listed company which affected the interest of the investing public; (3) the reputation of the profession was at stake; and (4) there was a continuing lack of professional competence on the part of the respondent. The Respondent submitted that none of these factors are present in his case.

(3) D-17-1232F is a case where the respondents admitted all the complaints against them and did not dispute the facts. In particular, the 1st respondent was found to have breached multiple professional standards in respect of the audit of a listed company over two consecutive financial years and had failed to comply with the fundamental principle of professional competence under the Code. The Disciplinary Committee ordered that (1) the 1st respondent be reprimanded; (2) a practising certificate shall not be issued to the 1st respondent for a period of 36 months; and (3) the 1st respondent do pay a penalty in the sum of HK$150,000.

The Respondent argued that this case is also distinguishable as the company was a listed company and thus it was important to maintain public confidence in the profession.

32. The Respondent submitted that the following cases showed that only cases with exceptionally serious aggravating features warrant a severe suspension of practising certificate for a long period of time:-

(1) D-16-1182F is a case where the respondents have committed multiple breaches in auditing a listed company. They were suspended from practice for 6 – 9 months.

(2) D-16-1208P is a case where the respondent had committed multiple breaches and he was only suspended from practice for 6 months because (a) he had taken remedial actions after the breaches, (b) the scale of operation of his practice was small and (c) his clients were companies of tiny size.

(3) D-14-0935C is a case where the respondent had committed multiple breaches in auditing 5 companies. There had been serious and flagrant breaches of the core principle of independence or apparent independence of auditors. Yet, in the light of the respondent's age, health and pressure in dealing with the disciplinary proceedings, he was only suspended from practice for 6 months.

(4) D-15-1102P is a case where the respondent had committed multiple breaches and he had knowingly submitted materially false or misleading statements. He was suspended from practice for one year.

(5) D-15-1100H is a case where the respondent had committed multiple breaches in four consecutive years. The respondent paid minimal regard to the then pending civil and criminal investigation against the company's controller. The respondent was suspended from practice for one year.

(6) D-16-1139F is a case where the respondent committed multiple breaches in auditing a listed company. The respondent had previous convictions and one of which resulted in an order of removal. The case proved against him involved dishonesty or fraud. He was suspended from practice for one year.

33. In the light of the above cases, the Respondent submitted that long suspension is warranted only for cases with exceptionally aggravating features e.g. providing misleading information to the Disciplinary Committee, breaches involving dishonesty, fraud or criminal element; and without such features a suspension of less than one year would generally be regarded as a sufficient and proportionate measure to reflect the gravity of cases even in cases involving multiple breaches and listed companies.

34. In reply, the Complainant submitted that all the cases cited by the Respondent above were admitted cases where the respondents were thus entitled to a significant discount as to sanctions to reflect their remorse and insight into their mistakes.

35. As mentioned above, we are aware that the Committee is not bound by previous

decisions made by previous Committees. Each case is decided on its own facts. It is the duty of the Committee to decide on the order of sanctions having regard to the specific facts and circumstances of the case.

Orders as to Sanctions

36. We have considered the proposed orders as to sanctions made by the Complainant and the Respondent in their respective Written Submissions. Having regard to the matters detailed hereinabove including the very serious nature of the offences herein, the delay caused by the Respondent, his conduct throughout the proceedings, his evolving and inherently inconsistent defences and all the relevant circumstances of the case, we are of the view that the following orders should be made:-

(1) **Reprimand** – The Respondent be reprimanded under Section 35(1)(b) of the Professional Accountants Ordinance, Cap. 50 ("**PAO**");

(2) **Financial penalty** – The Respondent do pay a penalty at **HK$160,000** under Section 35(1)(c) of the PAO; and

(3) **Cancellation of practising certificate** – The practising certificate of the Respondent be cancelled under Section 35(1)(da) of the PAO and it shall take effect on the 42nd day from the date of this Order; and a practising certificate shall not be issued to the Respondent for a period of **15 months** under Section 35(1)(db) of the PAO.

Orders as to Costs

37. Costs will follow the event. The Respondent acknowledged expressly in his Written Submissions that he is obliged to pay costs and expenses incidental to the disciplinary proceedings. The Complainant submits that the Respondent should pay the costs and expenses of and incidental to the proceedings of the Complainant (including costs and expenses of the Committee) under Section 35(1)(iii) of the PAO in the sum of **HK$4,943,123** (for which HK$4,331,237 is the Complainant's costs and HK$611,886 is the Committee's costs). The Respondent submits that he does not object to the quantum with respect to the costs incurred by the

Committee in the sum of HK$611,886 but he objects to the excessive amount claimed by the Complainant and asked for a detailed bill of costs, followed by the Respondent submitting his list of objections.

38. In their submissions, the Complainant submitted that the costs and expenses incurred were reasonably and necessarily incurred. Further, the Committee should impose an enhanced costs order against the Respondent given his obstructive conduct throughout the proceedings, the long delay he caused, substantial wasted costs were incurred as a result of the Complainant's delaying tactic and repeated change of stance; the constant shifting of defences; and the need to instruct external counsel to represent the Complainant in the light of the Respondent's uncooperative and obstructive attitude. In reply, the Respondent argued, inter alia, that any enhanced costs order would not be justified in the circumstances and that the Respondent should only bear costs that are reasonably and necessarily incurred.

39. We have carefully considered the submissions from both the Complainant and the Respondent on the issue of costs as well as all the relevant circumstances of the present case. We agree with the Complainant that an enhanced costs order against the Respondent is appropriate in the light of the Respondent's conduct in the case, the delay involved and the very serious nature of the offences herein. We take the view that the Respondent should bear the Complainant's costs and expenses of and incidental to the proceedings in full.

40. Pursuant to §74 of the Guidelines for the Chairman and the Committee on Administering the Committee Proceedings Rules, "**rather than conducting as in-depth forensic examination of costs incurred as takes place at a court taxation hearing, the preferable approach is for the Committee to require the parties to submit a brief schedule** setting out their costs in respect of the proceedings and then, after hearing **brief submissions** from the parties as to the appropriate quantum of costs, makes a summary assessment of the amount payable. The process is similar to the **"gross sum" assessment** model sometimes used by courts and is intended to **minimise the administrative burden** associated with determining costs. A draft form of schedule to be submitted by the parties is

attached as annex 6." (emphasis added).

41. In our view, the Complainant's Statement of Costs dated 17 August 2021 has already contained more detail than is required under Annex 6 of the said Guidelines. Sufficient details have been included in the Complainant's Statement of Costs for the purposes of assessment. Having reviewed the said Statement of Costs, we are inclined to accept that the Complainant's costs of and incidental to the proceedings were reasonably and necessarily incurred. We do not consider it necessary for the Complainant to provide a detailed breakdown of costs as requested by the Respondent. Accordingly, we order the Respondent to pay the costs and expenses of and incidental to the proceedings of the Complainant including the costs and expenses of the Committee in the sum of **HK$4,943,123**.

Respondent's application to stay the publication of the decisions pending appeal

42. Last but not least, the Respondent sought to apply to stay the publication of the Decision pending appeal. In this connection, the Complainant has already confirmed in their Written Submissions that in the light of the statutory policy underpinning Section 38(2) of the PAO and the case of Registrar of Hong Kong Institute of Certified Public Accountants v X [2017] 3 HKLRD 541, the Decision (including the decision on sanction and costs) will not be published until the expiry of the appeal period or if an appeal is lodged by the Respondent within the appeal period, the final disposal of the appeal. Accordingly, there is no need for the us to make any order for stay as requested by the Respondent.

Ms. POON, Suk Ying, Debora
Chairperson

Ms. LAM, Po Ling, Pearl
Member

Mr. CHAN, Stephen
Member

Mr. KAN, Siu Lun, Philip
Member

Ms. LAW, Elizabeth
Member