

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

AND

Ms. Yu Oi Kee
Membership No. A21156

RESPONDENT

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

Members: Mr. Ng Wai Yan (Chairman)
Mr. Au Yeung Wai Lun, Kelvin
Ms. Doe Julianne Pearl
Mr. Tsai Wing Chung, Philip
Mr. Man Mo Leung

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the "Institute") against Ms. Yu Oi Kee, certified public accountant (the "Respondent"). Section 34(1)(a)(ii) of the Professional Accountants Ordinance, Cap.50, Laws of Hong Kong ("PAO") applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 22 March 2017 (the "Complaint") are as follows:-

Background

- (1) On 5 August 2014, the Respondent was convicted in the District Court of Hong Kong (Case No. DCCC 851/2013) of one count of conspiring as an agent to use a document with intent to deceive her principal (contrary to section 9(3) and 12(1) of the Prevention of Bribery Ordinance, Cap 201 and sections 159A and

159C of the Crimes Ordinance, Cap 200) and one count of accepting an advantage as an agent (contrary to section 9(1)(a) of the Prevention of Bribery Ordinance, Cap 201).

- (2) The Respondent was sentenced to 15 months' imprisonment concurrently for both charges.
- (3) Pursuant to section 168E of the Companies Ordinance, Cap 32, the Respondent was disqualified for a period of 5 years from:-
 - (a) being a director of a company;
 - (b) being a liquidator of a company;
 - (c) being a receiver or manager of a company's property; or
 - (d) in any way, whether directly or indirectly, being connected or taking part in the promotion, formation or management of a company.
- (4) On 23 September 2014, the Respondent was also ordered to pay HK\$100,000 to the government and restitution in the sum of HK\$233,000 to the victim company.
- (5) The Respondent appealed the conviction. The appeal was dismissed by the Court of Appeal on 16 November 2015 (CACV 283/2014) and by the Court of Final Appeal on 8 December 2016 (FACC Nos. 6, 7 and 8 of 2016).
- (6) The Respondent and Luk Kin Peter Joseph ("Luk") (first defendant in the criminal case) were directors of Biogrowth Assets Limited ("BAL"), a wholly-owned subsidiary of China Mining Resources Group Limited ("CMRG") which was a company listed in Hong Kong. BAL undertook a disposal ("Disposal") of a company it was holding, Cell Therapy Technologies Centre Limited ("CTTC"), to United Easy Investments Limited, a BVI incorporated company ("United Easy").
- (7) Both the Respondent and Luk were interested in the Disposal which was, accordingly, a connected transaction under the Listing Rules. The Respondent and Luk conspired together to use the minutes of a meeting of the board of directors of BAL which they knew contained a material false statement, namely that Luk and the Respondent were not interested in the Disposal that was being contemplated. The Respondent and Luk used the directors' minutes with intent to deceive shareholders of BAL and/or CMRG and to evade relevant disclosure requirements under the Listing Rules.
- (8) The Respondent, being an agent and director of BAL, acted without lawful authority or reasonable excuse to accept 1.5 million shares of CMRG given to her by Luk as an inducement or reward for her involvement in processing the Disposal.

First Complaint

- (9) Section 34(1)(a)(ii) of the PAO applies to the Respondent in that she was convicted of an offence of dishonesty in Hong Kong, namely that she conspired to use a document with intent to deceive BAL and/or CMRG, contrary to

sections 9(3) and 12(1) of the Prevention of Bribery Ordinance, Cap 201 and sections 159A and 159C of the Crime Ordinance, Cap 200.

Second Complaint

- (10) Section 34(1)(a)(ii) of the PAO applies to the Respondent in that she was convicted of an offence of dishonesty in Hong Kong, namely that, as an agent of BAL and/or CMRG, she accepted an advantage, contrary to section 9(1)(a) of the Prevention of Bribery Ordinance, Cap 201.

Third Complaint (alternative to the First and Second Complaint)

- (11) Section 34(1)(a)(x) of the PAO applies to the Respondent in that she was guilty of dishonourable conduct by her participation in a conspiracy to deceive BAL and/or CRMG and her acceptance of an advantage.

Key particulars in support of the First Complaint

- (12) Luk and the Respondent were directors of BAL at the material time.
- (13) CMRG (known as INNOMAXX Biotechnology Group Limited before 5 February 2007) is a company incorporated in Bermuda with limited liability. It has been listed on the main board on the Stock Exchange of Hong Kong Limited ("SEHK") since March 1997 (stock code: 340).
- (14) CMRG was engaged in the business of cord blood storage by its wholly owned subsidiary, CTTC.
- (15) CMRG held the interest in CTTC through its corporate arms BAL and New Legend International Group Limited ("**New Legend**") acting as a nominee of BAL. BAL and New Legend held 19,999,999 shares and 1 share of CTTC respectively.
- (16) Between June and July 2007, Luk and the Respondent, who was the Financial Controller-cum-Company Secretary of CMRG at the time, stepped down from the management of CMRG but they continued to be directors of CTTC and BAL, looking after the cord blood storage business.
- (17) At around that time, there were discussions that CTTC would be disposed of to Luk. The Respondent was told by a financial adviser that Luk's role in the disposal would constitute a connected transaction under the Listing Rules, and independent approval and advice from an independent financial adviser on the disposal were required. The planned disposal did not go ahead.
- (18) Ms. Leung Lai Ming ("**Leung**"), who was appointed Company Secretary of CMRG later, gave evidence that on 10 October 2008, the intended disposal of CTTC to Luk was revived and she asked a solicitor to draft a disposal and purchase agreement in that regard.
- (19) On 7 November 2008, Leung received an email from her immediate superior stating that United Easy would be the purchaser without any further explanation.
- (20) At the time, Ho Pui Fan ("**Ho**"), who was the aunt of Luk's spouse, was the sole shareholder of United Easy. United Easy was purchased in the name of Ho on

20 April 2007, but the invoice was sent to an address occupied by a company which was co-owned by Luk and his spouse. Ho was also the administrative assistant of a company owned by Luk and his spouse.

- (21) The Respondent was the contact person in respect of United Easy.
- (22) Leung further gave evidence that she arranged for a Board of Directors meeting of CMRG on 21 November 2008, and prepared the necessary resolution and draft announcement, for approving the Disposal at a consideration of HK\$15 million. At CMRG's board of directors meeting on 21 November 2008 approving the Disposal, Luk's interest in the Disposal was not reported to the CMRG Board.
- (23) On the same day, the Respondent and Luk signed the board minutes of BAL recording the passing of a board resolution approving the Disposal. Those board minutes contained the following statements:
- *"it is NOTED that none of the Directors was interested in the transaction herein contemplated."*
 - *"it is further noted that consideration of the Sale Shares has been determined by the parties after arm's length negotiations, on a willing buyer and willing seller basis."*
- (24) In addition, the Respondent and Luk signed the board minutes of CTTC approving the Disposal. The CTTC board minutes contained the following statement:
- *'It is NOTED that none of the Directors was interested in the transactions herein contemplated'.*
- (25) Subsequently, CMRG published an announcement regarding the Disposal stating that United Easy was an independent third party.
- (26) On the basis of what appeared to be the unsubstantial and unconnected nature of the Disposal, the requirements of the Listing Rules were not complied with and approval from the SEHK was not obtained.
- (27) Company registration documents showed that on 1 December 2010 the sole share of United Easy was transferred at a consideration of US\$1 from Ho to a BVI company set up by the Respondent and solely owned by Luk.
- (28) The Court found that the Respondent was well aware of the significance of the BAL board minutes in this transaction, as shown in the Respondent's email to CMRG's executive director, Richard Yeung (copied to Luk) which stated: *"Since the transaction involves a Lisco [CMRG], We need Lisco and vendor [BAL]'s board approval on such transaction as well"*.
- (29) On the totality of evidence, the Court found that since the proposed disposal of CTTC to Luk first came up in 2007, the Respondent had assumed the role of assisting Luk in handling the documentation and the fund transfers in relation to the setting up of United Easy and the Disposal. The Court considered that both Luk and the Respondent knew that Luk was the de facto buyer of CTTC,

that Luk was therefore interested in the Disposal, and that the BAL board minutes would mislead BAL and/or CMRG into believing that United Easy was an independent party.

(30) The Court found that the Respondent had conspired as an agent to use a document with intent to deceive her principal, contrary to sections 9(3) and 12(1) of the Prevention of Bribery Ordinance, Cap 201; and sections 159A and 159C of the Crimes Ordinance, Cap 200.

(31) On the above basis, section 34(1)(a)(ii) of PAO applies to the Respondent.

Key particulars in support of the Second Complaint

(32) On or about 3 November 2008, stamp duty was paid for the transfer of 1.5 million CMRG shares (with a market value of about HK\$364,500) to the Respondent's name. The shares were given by Luk to the Respondent ("Advantage").

(33) Shortly after the shares were transferred to the Respondent's name, she started working on the Disposal. She forwarded the buyer's corporate information to Richard Yeung on 7 November 2008.

(34) The Respondent sold the shares in the market in January 2009 and received HK\$317,316.18.

(35) Employees of CMRG were not permitted to accept advantages in relation to the company's business unless permission of the principal was obtained and granted.

(36) In ICAC's video recorded interviews submitted at trial, the Respondent admitted that Luk gave her the 1.5 million CMRG shares as a "private bonus" for handling the Disposal, about two weeks before the date of the Disposal.

(37) The court accepted that the Respondent made the above admission knowingly. The court found at the time the Respondent received the Advantage, she had reached an agreement with Luk to assist in the Disposal and conceal from BAL and/or CMRG the relationship between Luk and United Easy. The court further found that there was no evidence showing that CMRG's permission had been sought and given for the giving of the Advantage to the Respondent

(38) The Court found that the Respondent had, as an agent, accepted an advantage contrary to section 9(1)(a) of the Prevention of Bribery Ordinance, Cap 201.

Key particulars in support of the Third Complaint (in the alternative to the First and Second Complaints)

(39) Based on the above, 34(1)(a)(x) of PAO applies to the Respondent.

3. By a letter dated 19 May 2017, the Respondent admitted all complaints against her, namely the First Complaint, Second Complaint and Third Complaint (collectively known as the "Complaints"). She did not dispute the facts as set out in the Complaints. The Parties agreed that the steps set out in paragraphs

17 to 30 of the Disciplinary Committee Proceedings Rules ("DCPR") be dispensed with.

4. By letter from the Respondent to the Council of the Institute ("Council") dated 21 February 2017, the Respondent supplied additional information about her conduct in the Complaint pursuant to paragraph 5 of the DCPR. The Respondent had no explanation for the alleged conduct in the Complaint, but submitted, *inter alia*, that she was not dishonest but only over-reliant on the professionalism of her colleagues to handle the transaction.
5. By letter from the Clerk to the Disciplinary Committee (under the direction of the Disciplinary Committee ("DC")) to the parties dated 19 September 2017, the parties were informed that the DC had approved their joint application to dispense with the steps set out in Rule 17 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 31 October 2017. By letter from the Clerk to the DC dated 5 December 2017, the Parties were notified that a hearing scheduled at 9.30am 3 January 2018 to give the Parties an opportunity to be heard.
6. The Respondent did not provide any written submissions on sanctions and costs to the DC. The Respondent indicated to the Clerk of the DC that she would not attend the hearing on 3 January 2018 and she was absent at the said hearing and did not appoint any representative to appear on her behalf. At the hearing on 3 January 2018, Mr Donald Leo appeared on behalf of the Complainant. The Complainant provided his submissions on sanctions and costs on 31 October 2017, including the following:-
 - (a) The Complainant submitted that the Respondent could not be found guilty of all three Complaints. For case management, the Complainant proposed that the Respondent be formally found guilty of the First and Second Complaint. The Third Complaint, which was in the alternative, should remain on the Institute's file and not to be proceeded with unless the Respondent withdraws her admission or an order is issued by the High Court to do so.
 - (b) The Complainant submitted that the sanction for the Respondent should include removal from the register of certified public accountants, the only question being whether the removal is temporary or permanent.
 - (c) The Complainant submitted that the rationale for such a strict approach is because honesty and integrity is one of the fundamental requirements of a professional accountant under the Code of Ethics, and where there is a lapse the governing principles are very clear - any lapse in integrity involving dishonesty would almost invariably result in the most severe sanctions being

imposed, namely removal as a member or being struck off (*Bolton v Law Society* [1994] WLR 512). In that case, the Court of Appeal held that any solicitor who is proved to be dishonest must be removed from the Roll of Solicitors no matter how strong the mitigation advanced for him.

- (d) The Complainant submitted that above principle has been held by the Hong Kong Court of Appeal to apply to the accountancy profession as well (*Chan Cheuk Chi v Registrar of HKICPA* CACV 38/2012, 8 February 2013).
- (e) The Complainant submitted, among other things, that the level of dishonesty in the present case was very serious:-
 - (i) The Respondent was fully aware that any sale of CTTC to Luk would be a connected transaction under the Listing Rules. Nevertheless, she actively participated in a conspiracy to disguise Luk's identity as the purchaser of CTTC by using a company (United Easy) and falsely representing to BAL and CTTC that Luk had no interest in the sale.
 - (ii) The price for the Respondent's assistance was 1.5 million shares in CMRG from Luk, which she then subsequently sold for HK\$317,316.18 in January 2009.
- (f) The Complainant referred the DC to 5 disciplinary cases that dealt with dishonesty, namely, D-07-0257-C, D-08-0342-H, D-08-0343-H, D-08-0344-H and D10-0492-C. In all of these cases, the respondent was removed from the register. These decisions may be taken into account but are not binding on the DC.
- (g) The Complainant provided guidelines for determining disciplinary orders, which are merely guidelines and may be taken into account but are not binding on the DC.
- (h) The Complainant submitted a removal order of no less than 5 years, which was in line with the disqualification order by the District Court, although the Complainant submitted that a permanent removal would be appropriate given the Respondent's level of involvement in and profiteering from the deception.
- (i) The Complainant submitted that the Respondent should pay the costs and expenses of and incidental to the proceedings of the Institute, including the costs and expenses of the DC.
- (j) The Complainant had submitted a table of past DC cases from about 2011 to 2017 of the Institute, showing that costs were awarded to the Institute for all complaints proved.

7. Notwithstanding that the Respondent was absent and did not contest the DC proceedings, the Complaint has to discharge the burden of proof in each of the Complaints, The standard of proof is effectively that of civil proceedings, but the more serious the nature of complaint the higher the standard to discharge that burden. In this case, the Respondent was convicted in the District Court and her conviction was upheld by the Court of Appeal and Court of Final Appeal in those criminal proceedings where the standard of proof was beyond reasonable doubt. The DC took into account the findings of the respective Courts.
8. After considering the evidence, the admission by the Respondent and taking, submissions of the Parties, the conviction against the Respondent which was upheld on appeal to the Court of Appeal and Court of Final Appeal and the Respondent not contesting these DC proceedings the DC found that First Complaint and Second Complaint were proved.
9. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the particulars in support of the Complaint, the Respondent's personal circumstances, and the conduct of the Respondent throughout the proceedings.
10. The DC considered, inter alia, but not limited to the following matters:-
 - (a) The offences which the Respondent committed were serious.
 - (b) The Respondent was in breach of trust in her position as an agent of BAL and/or CMRG at all material times of the offences.
 - (c) The amount of the Advantage that the Respondent received (i.e. 1.5 million CMRG shares which were sold for HK\$317,316.18) was a substantial sum.
 - (d) The dishonourable nature of the offences is such that they must have brought in disrepute upon the integrity of the Institution and the accounting profession.
 - (e) The Respondent served her prison sentence for her offences and she was ordered to pay restitution in the sum of HK\$233,000 to the victim company.
 - (f) The District Court accepted that the Respondent's level of culpability was lower than her co-accused, whom the Respondent worked under for a number of years and acted in accordance with his instructions.
 - (g) Counsel for the Respondent in the District Court submitted that the professional consequences of conviction were very serious for the Respondent, and she accepted that she would no longer be allowed to practise as an accountant.

- (h) The Respondent had a clear criminal and disciplinary record in Hong Kong prior to the offences.
 - (i) About 3½ years have lapsed since the Respondent's conviction and disqualification order. The period of disqualification by the District Court and lapse of time since the conviction is taken into account in the consideration of the period of removal of the Complainant from the roll.
 - (j) The Respondent was convicted on 25 August 2014. She appealed against her convictions to both the Court of Appeal and the Court of Final Appeal. Her convictions were upheld by the Court of Appeal on 16 November 2015 and the Court of Final Appeal on 8 December 2016. The DC took into consideration and need not look behind the findings and decisions of the Court of Final Appeal and the Courts below.
 - (k) In the Respondent's letter to the Council dated 21 February 2017, she submitted that notwithstanding her convictions and admission of the Complaint, she maintained that her behavior was not dishonest, she did not accept the advantage for the disposal of the transaction, and she had no intention to deceive the companies. She did not admit her dishonesty and still maintained her innocence.
 - (l) The Respondent admitted the Complaint by a letter dated 19 May 2017 and did not contest the DC proceedings.
 - (m) The Respondent did not hold a practising certificate.
 - (n) Where a certified public accountant is removed from the register, he or she may reapply to the Institute at the end of the removal period. There may be a legitimate expectation of an applicant being reintroduced to the register so long as he or she is evaluated by the Registration and Practising Committee of the Institute as fit and proper.
11. The legal 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 herself within the disciplinary process, the DC is of the view that she should pay the costs and expenses of the proceedings and not have them to be funded or subsidised by other members of the Institute.
12. 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 the volume of documents involved and the necessity for a hearing, the Complainant's costs awarded shall be in the sum of HK\$31,600, and costs of

the Clerk to the DC shall be HK\$4,565. The total costs awarded against the Respondent shall be in the sum of HK\$36,165.

13. The DC therefore orders that:-
- (a) the name of the Respondent be removed from the register of certified public accountants for a period of 4 years on the 45th day from 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\$36,165 (i.e. Complainant's costs of HK\$31,600 and the Clerk to the DC's costs of HK\$4,565) under Section 35(1)(iii) of the PAO.

Dated 7 February 2018 :

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

AND

Ms. Yu Oi Kee
Membership No. A21156

RESPONDENT

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

Members: Mr. Ng Wai Yan (Chairman)
Mr. Au Yeung Wai Lun, Kelvin
Ms. Doe Julianne Pearl
Mr. Tsai Wing Chung, Philip
Mr. Man Mo Leung

ORDER

Upon considering the Complaint against Ms. Yu Oi Kee (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 22 March 2017, letter from the Respondent to the Council of the Institute of Certified Public Accountants dated 21 February 2017, the written submission of the Complainant dated 31 October 2017 and the relevant documents, the submission of the representative of the Complainant (the Respondent being absent) on the sanction and costs hearing on 3 January 2018, the Disciplinary Committee 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)(ii) of the PAO applies to the Respondent in that she was convicted of an offence of dishonesty in Hong

Kong, namely that she conspired to use a document with intent to deceive BAL and/or CMRG, contrary to sections 9(3) and 12(1) of the Prevention of Bribery Ordinance, Cap 201 and sections 159A and 159C of the Crime Ordinance, Cap 200.

Second Complaint: Section 34(1)(a)(ii) of the PAO applies to the Respondent in that she was convicted of an offence of dishonesty in Hong Kong, namely that, as an agent of BAL and/or CMRG, she accepted an advantage, contrary to section 9(1)(a) of the Prevention of Bribery Ordinance, Cap 201.

IT IS ORDERED THAT:-

- (1) the name of the Respondent be removed from the register of certified public accountants for 4 years with effect from the 45th day of the date of this Order pursuant to section 35(1)(a) of the PAO;
- (2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$36,165 under section 35(1)(iii) of the PAO.

Dated 7 February 2018