Proceedings No.: D-15-1033F/1065F/1081F

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

Mr. Seto Man Fai (Membership no. A08347) — RESPONDENT

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

Members: Mr. Kaung Wai Ming Alexander (Chairman)
Mr. Fenn David
Ms. Cheng Wei Yan Vena
Mr. Pogson Timothy Keith
Mr. Lees John Robert

ORDER & REASONS FOR DECISION

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1. These are complaints made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the "**Institute**" or the "**Complainant**") against Mr. Seto Man Fai, a certified public accountant (the "**Respondent**").

2. The complaints arise in relation to the audits of three listed companies, Grand TG Gold Holdings Limited (stock code: 8299) ("**Grand Gold**"), Global Green Tech Group Limited (stock code: 274) ("**Global Green**") and Sage International Group Limited (stock code: 8082) ("**Sage**").

3. The complaints concern (i) various alleged deficiencies in the audits conducted on the financial statements of Grand Gold and Global Green, (ii) the Respondent's alleged failure to maintain confidentiality, safe custody, integrity, accessibility and retrievability of the engagement documentation for the audits for Grand Gold, Global Green and Sage, and (iii) the Respondent's conduct when furnishing statements to the Audit Investigation Board ("**AIB**") of the Financial Reporting Council ("**FRC**") in the course of its investigation whereby it is alleged that the Respondent failed to be straightforward and honest.

4. The relevant audits were the audits of Grand Gold for the year ended 31 March 2010, the audit of Global Green for the year ended 31 December 2010, and the audits of Sage for the year ended 31 March 2011 and the period from 1 April 2011 to 31 December 2011 (collectively the "**Relevant Audits**").

5. Parker Randall CF (H.K.) CPA Limited (corporate practice no.: M208) ("**Parker**") was the auditor of the Relevant Audits and the Respondent was the engagement director of the Relevant Audits and had been the managing director of Parker since May 2010.

6. These disciplinary proceedings were commenced against Parker and the Respondent on 1 February 2017. On 11 May 2017, the Complainant informed the Disciplinary Committee (the "**Committee**") that Parker had been removed from the register of corporate practices as of 9 May 2017 due to a failure to renew its corporate practice's registration, and as a result the Complainant would no longer pursue the complaints against Parker. Thereafter, the Respondent became the sole respondent in these proceedings.

7. On 6 December 2017, a joint application was filed by the Complainant and the Respondent for the amendment of the Complaint, on the basis that if the amendment of the Complaint was approved by the Committee, the Respondent admitted the Complaint as amended (the "**Amended Complaint**"). The application for the amendment of the Complaint involved amendments which only went to the wording rather than the substance of the Complaint, and was approved by the Committee.

8. The Respondent has signed a confirmation (the "**Confirmation**") admitting the complaints set out in the Amended Complaint.

9. In light of the admission by the Respondent and by consent between the parties, the Committee directed that the steps set out in Rules 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with, and that the parties make written submissions as to sanctions and costs which should be imposed by the Committee.

10. There were a total of 11 complaints set out in the Amended Complaint against the Respondent and against Parker. What was originally complaint 2 was made against Parker only and thus falls away. This leaves a total of 10 complaints against the Respondent. As both parties have continued to refer to the complaints against the Respondent by their original numbering in their respective written submissions, the Committee will likewise adopt the original numbering of the complaints. This means that the complaints against the Respondent are complaint 1, complaint 3, complaints 4 to 7 (which relate to Grand Gold), complaints 8 to 10 (which relate to Global Green) and complaint 11. As the complaints differ in nature, each of the complaints will be dealt with separately below. In relation to each of the complaints which have been advanced against the Respondent, the Complainant alleges that Respondent failed or neglected to observe, maintain or otherwise apply a professional standard in breach of section 34(1)(a)(vi) of the Professional Accountants Ordinance (Cap 50) (the "**Relevant Provision**").

Complaint 1

11. It is alleged that the Respondent was in breach of the Relevant Provision in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Sections 100.5(a) and 110.1 and/or 110.2(b) of the Code of Ethics for Professional Accountants issued by the Institute, by not being straightforward and honest during the AIB's investigation, and/or furnishing statements recklessly to the AIB during the said investigation.

12. The relevant provisions of the Code of Ethics (revised February 2012) state:-

> "*100.5 A professional accountant shall comply with the following fundamental principles: (a) Integrity – to be straightforward and honest in all professional and business relationships.*"

> "*110.1 The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.*"

> "*110.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information: ... (b) contains statements or information furnished recklessly ...*"

13. The AIB's investigation in relation to the Relevant Audits took place during 2013 and 2014. The Respondent has admitted that during the investigation, he gave inconsistent explanations on various occasions either in correspondence or during interviews with the AIB, mainly as to the "arrangement" which was said to have existed in relation to the storage in the PRC of Parker's audit documentation, but also as to other matters.

14. Given the Respondent's admission, it is not necessary to set out the factual details in full. However, it should be noted that for the purposes of considering the appropriate sanction, the Committee has taken into account the following matters in relation to Complaint 1.

15. Firstly, the Committee notes that after a lengthy period of enquiry, the Respondent was not able to provide any audit documentation or working papers for any of the Relevant Audits, for which the following explanations appear to have been given:-

    (i) In relation to Grand Gold, the Respondent's explanation was that all the audit documentation and working papers relating to Grand Gold's March 2010 audit had been lost in Shenzhen whilst being transferred to Hong Kong.

    (ii) In relation to Global Green and Sage, the Respondent's explanation was that the audit documentation for Sage's March 2011 audit and Sage's December 2011 audit could not be produced due to a dispute with a PRC company (the "**PRC Partner**") with which Parker had an arrangement for storing the audit documentation in the PRC.

16. Secondly, there were also lengthy delays involved in the Respondent providing substantive responses to the enquiries and requirements issued by the FRC and AIB, which hindered the investigation by the AIB.

17. Thirdly, the gravamen of the complaint is that the Respondent gave numerous inconsistent explanations at various stages of the investigation, that he was not being straightforward and honest, and that his responses to the FRC and AIB were at the very least made recklessly, including that:-

    (i) The Respondent gave various inconsistent explanations over time as to the nature of the "arrangement" between Parker and the PRC Partner, and the Respondent has given 3 different accounts of the "arrangement".

    (ii) The explanation given by the Respondent as to the alleged "dispute" with the PRC Partner resulting in his inability to gain access to audit documentation was unconvincing and incredible.

    (iii) The Respondent's explanation that the Grand Gold audit documentation had been lost in Shenzhen was filled with incredible features and inconsistencies.

18. The foregoing paints a highly unsatisfactory picture and undoubtedly hindered and unnecessarily prolonged the investigation by the AIB.

Complaint 3

19. It is alleged that the Respondent was in breach of the Relevant Provision in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Paragraph 18 of Hong Kong Standard on Quality Control 1 ("**HKSQC 1**"), by his failure to establish policies and procedures to ensure a system of quality control relating to engagement documentation of listed companies at the time of the Relevant Audits and/or thereafter.

20. Paragraph 18 of HKSQC1 (issued June 2009) states:-

    "*The firm shall establish policies and procedures designed to promote an internal culture recognizing that quality is essential in performing engagements. Such policies and procedures shall require the firm's chief executive officer (or equivalent) or, if appropriate, the firm's managing board of partners (or equivalent) to assume ultimate responsibility for the firm's system of quality control.*"

21. Given the Respondent's admission, it is not necessary to set out the factual details in full. However, it should be noted that for the purposes of considering the appropriate sanction, the Committee has taken into account the following matters in relation to Complaint 3.

22. Firstly, as stated above, the Respondent was not able to provide any audit documentation or working papers for any of the Relevant Audits, and was not able to

produce any written agreement setting out the terms of the "arrangement" between Parker and the PRC Partner.

23. Secondly, there was a clear failure by the Respondent to maintain policies and procedures on engagement documentation of listed audits in breach of HKSQC 1. This failure is evidenced by the following:-

(i) No written agreement was entered into with the PRC Partner. It is noted that it was accepted in a PRC legal opinion dated 3 April 2015 produced by the Respondent that on the basis that the agreement had only been made verbally between Parker and the PRC Partner, Parker would not be able to enforce the terms of the agreement or seek legal recourse against the PRC Partner through the PRC courts due to Parker's inability to prove that there was an agreement. If the Respondent wanted to enter into an arrangement with the PRC Partner for engagement documentation to be stored in the PRC, it was incumbent on the Respondent to take steps to ensure the confidentiality, safe custody, accessibility and retrievability of the engagement documentation.

(ii) Parker and the Respondent were not able to produce soft copies or back-up copies of the engagement documentation. The Respondent's explanation was that soft copies of the audit documentation were stored on his laptop computer but that the laptop computer was also stored at the PRC Partner's premises. When asked during an interview about the back-up copy of that computer data, the Respondent said that the back-up copy was also stored at the PRC Partner's premises. This constituted a failure to design and implement controls to avoid the loss of documentation.

(iii) The Respondent was unable to produce Parker's policy on quality control, despite accepting that he was responsible for updating Parker's quality control policies and procedures relating to audits of listed companies. Again, the Respondent gave the explanation that the policies were in the possession of the PRC Partner and not accessible to him. It suffices to say that the Respondent was unable to show what quality control policies existed.

Complaint 4

24. Complaints 4 through 6 relate to Grand Gold's March 2010 audit.

25. In relation to complaint 4, it is alleged that the Respondent was in breach of the Relevant Provision in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Paragraphs 11 and 13 of HKSA 700 The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements (issued October 2006) ("**HKSA 700**"), by his failure to properly evaluate whether Grand Gold's March 2010 financial statements were presented in accordance with the applicable financial reporting framework, namely HKFRS 3.

26. The relevant provisions in HKSA 700 state:-

"*11. The auditor should evaluate the conclusions drawn from the audit evidence obtained as the basis for forming an opinion on the financial statements.*

13. Forming an opinion as to whether the financial statements give a true and fair view or are presented fairly, in all material respects, in accordance with the applicable financial reporting framework involved evaluating whether the financial statements have been prepared and presented in accordance with the specific requirements of the applicable financial reporting framework for particular classes of transactions, account balances and disclosures. This evaluation includes considering whether, in the context of the applicable financial reporting framework:

(a) The accounting policies selected and applied are consistent with the financial reporting framework and are appropriate in the circumstances;

(b) The accounting estimates made by management are reasonable in the circumstances;

(c) The information presented in the financial statements, including accounting policies, is relevant, reliable, comparable and understandable; and

(d) *The financial statements provide sufficient disclosures to enable users to understand the effect of material transactions and events on the information conveyed in the financial statements, for example, in the case of financial statements prepared in accordance with Hong Kong Financial Reporting Standards (HKFRSs), the entity's financial position, financial performance and cash flows.*"

27. The Committee has also been referred to the following provisions of HKFRS 3 Business Combination (March 2008):-

"*36. The acquirer shall, at the acquisition date, allocate the cost of a business combination by recognising the acquiree's identifiable assets, liabilities and contingent liabilities that satisfy the recognition criteria in paragraph 37 at their fair values at that date, except for non-current assets (or disposal groups) that are classified as held for sale in accordance with HKFRS 5 Non-current Assets Held for Sale and Discontinued Operations, which shall be recognised at fair value less costs to sell. Any difference between the cost of the business combination and the acquirer's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities so recognised shall be accounted for in accordance with paragraphs 51-57.*

37. The acquirer shall recognise separately the acquiree's identifiable assets, liabilities and contingent liabilities at the acquisition date only if they satisfy the following criteria at that date:

(a) In the case of an asset other than an intangible asset, it is probable that any associated future economic benefits will flow to the acquirer, and its fair value can be measured reliably;

(b) *In the case of a liability other than a contingent liability, it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation, and its fair value can be measured reliably;*

(c) *In the case of an intangible asset or a contingent liability, its fair value can be measured reliably.*"

28. The Complainant says that the foregoing provisions require an acquirer to allocate the cost of a business combination by recognising the acquiree's identifiable assets, liabilities and contingent liabilities at their fair values, and in the case of an intangible asset of which the fair value can be measured reliably, the acquirer is required to recognise the asset separately.

29. The Committee has also been referred to Paragraph 35 of HKAS 38, which states:-

"*The fair value of intangible assets acquired in business combinations can normally be measured with sufficient reliability to be recognised separately from goodwill. When, for the estimates used to measure an intangible asset's fair value, there is a range of possible outcomes with different probabilities, that uncertainty enters into the measurement of the asset's fair value, rather than demonstrates an inability to measure fair value reliably. If an intangible asset acquired in a business combination has a finite useful life, there is a rebuttable presumption that its fair value can be measured reliably.*"

30. Grand Gold was a company listed on the Growth Enterprise Market with its principal activities prior to the Acquisition (as defined below) being the design, manufacture and distribution of computer components.

31. In early 2008, Grand Gold acquired a group of companies which owned 4 mining licences and 5 exploration permits (the "**Acquisition**"). The Acquisition was completed on 30 April 2008 and was the subject of a Circular issued by Grand Gold on 28 March 2008 (the "**Circular**"). Following the Acquisition, the company changed its name from Espco Technology Holdings Limited to Grand Gold.

32. At issue is the fact that the mining exploration rights were not separately recognised as identifiable assets at fair value in Grand Gold's March 2010 financial statements, which the Complainant says was not in compliance with the foregoing provisions under HKFRS 3 and HKAS 38.

33. The Complainant also pointed to the fact that Grand Gold had once recognised fair value adjustment in its 2009 interim financial statements, which was subsequently reversed in Grand Gold's March 2009 financial statements, and that the Respondent was the Engagement Quality Control Reviewer ("**EQCR**") for the March 2009 audit.

34. According to the Circular, Grand Gold had net assets of HK$84,726,000 prior to the Acquisition (based on the unaudited financial statements of Grand Gold as at 30 September 2007). The aggregate consideration for the Acquisition was HK$1,212,000,000 to be satisfied by, inter alia, the issuance of new shares, the issuance of convertible bonds and the issuance of promissory notes. This was clearly a very

significant acquisition for Grand Gold and the assets being acquired constituted a very large proportion of the group post-acquisition.

35. The Respondent has admitted that he has failed to properly evaluate whether Grand Gold's March 2010 financial statements were presented in accordance with the applicable financial reporting framework, by failing to observe the professional standards in Paragraphs 11 and 13 of HKSA 700. However, it should be noted that for the purposes of considering the appropriate sanction, the Committee has taken into account in relation to Complaint 4 that it was said by the Complainant that it was highly probable that the non-compliance had a significant impact on Grand Gold's March 2010 financial statements, given that:-

(i) the value of the mining rights appeared to be the major assets of the group and should be material to the group;

(ii) fair value adjustments and deferred tax liabilities arising from fair value adjustments were not recognized; and

(iii) goodwill of HK$1,408 million, which resulted from inappropriate inclusion of intangible assets acquired, represented over 78% of the total assets of the group as of 31 March 2010.

Complaint 5

36. Complaint 5 also relates to Grand Gold's March 2010 audit.

37. It is alleged that the Respondent was in breach of the Relevant Provision in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Paragraph 2 of HKSA 500 Audit Evidence (issued November 2004) ("**HKSA 500**") by not obtaining sufficient appropriate audit evidence to support the unmodified audit opinion expressed in the audit report.

38. Paragraph 2 of HKSA 500 states:-

"*The auditor should obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.*"

39. The facts and circumstances giving rise to complaint 5 are the same as those which gave rise to complaint 4, which have already been referred to above, and the Respondent has admitted that he failed to obtain sufficient appropriate audit evidence to support the unmodified audit opinion expressed in the audit report.

Complaint 6

40. Complaint 6 also relates to Grand Gold's March 2010 audit.

41. It is alleged that the Respondent was in breach of the Relevant Provision in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Paragraphs 100.4(c) and 130.1 of the Code of Ethics (issued December 2005; revised June 2010) by his failure to perform additional audit procedures to correct the non-compliance with HKFRS 3, which showed his failure to maintain professional knowledge or skill.

42. Paragraphs 100.4(c) and 130.1 of the Code of Ethics state:-

"100.4 A professional accountant is required to comply with the following fundamental principles:

...(c) Professional Competence and Due Care

A professional accountant has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. A professional accountant should act diligently and in accordance with applicable technical and professional standards when providing professional services."

"130.1 The principle of professional competence and due care imposes the following obligations on professional accountants:

(a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and

(b) *To act diligently in accordance with applicable technical and professional standards when providing professional services."*

43. The Complainant submitted that if an auditor becomes aware of a possible material misstatement in the prior year, he should perform additional audit procedures as are appropriate and that either the Respondent was not aware of the non-compliance with HKFRS 3, or he failed to perform any additional procedures despite being aware of the non-compliance. Either way, the Respondent would have failed to maintain professional knowledge or skill in breach of the relevant provisions of the Code of Ethics.

44. The facts and circumstances giving rise to complaint 6 are the same as those which gave rise to complaint 4, which have already been referred to above, and the Respondent has admitted that he failed to perform additional audit procedures to correct the non-compliance with HKFRS 3, and thus failed to maintain professional knowledge or skill.

Complaint 7

45. Complaint 7 also relates to Grand Gold's March 2010 audit.

46. It is alleged that the Respondent was in breach of the Relevant Provision in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Paragraph 36 of Hong Kong Standard on Auditing 220 Quality Control for

Audits of Historical Financial Information (issued October 2004) ("**HKSA 220**"), by his failure to appoint an Engagement Quality Control Reviewer ("**EQCR**") for Grand Gold's March 2010 audit.

47. Paragraph 36 of HKSA 220 states:-

"For audits of financial statements of listed entities, the engagement partner should:

(a) Determine that an engagement quality control reviewer has been appointed;

(b) Discuss significant matters arising during the audit engagement, including those identified during the engagement, quality control review, with the engagement quality control reviewer; and

(c) Not issue the auditor's report until the completion of the engagement quality control review."

48. The Respondent has admitted his failure to appoint an EQCR for Grand Gold's March 2010 audit. However, it should be noted that for the purposes of considering the appropriate sanction, the Committee has taken into account the following matters:-

(i) The failure was not admitted by the Respondent previously. As stated above, the Respondent was not able to provide any audit documentation or working papers for Grand Gold's March 2010 audit, and gave the explanation that the documentation was lost in Shenzhen whilst being transferred to Hong Kong.

(ii) The AIB had also asked the Respondent to identify the EQCR for all 3 Relevant Audits (ie. including Global Green's 2010 audit and Sage's 2011 audit), and the Respondent responded had said that he was unable to confirm the relevant persons' identity due to the fact that the audit documentation was not in his possession and were in the possession of the PRC Partner.

Complaint 8

49. Complaints 8 through 10 relate to Global Green's March 2010 audit.

50. In relation to complaint 8, it is alleged that the Respondent was in breach of the Relevant Provision in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Paragraphs 6 and 12 of HKSA 570 (Clarified) (issued July 2009; revised July 2010) ("**HKSA 570**"), by his failure to obtain sufficient appropriate audit evidence to evaluate the appropriateness of the management's use of the going concern assumption in preparing the 2010 financial statements.

51. The relevant provisions in HKSA 570 state:-

"6. The auditor's responsibility is to obtain sufficient appropriate audit evidence about the appropriateness of management's use of the going concern assumption in the preparation of the financial statements and to conclude whether there is a material uncertainty about the entity's ability to continue as a going concern."

"12. The auditor shall evaluate management's assessment of the entity's ability to continue as a going concern."

52. Global Green was listed in the main board of the Hong Kong Stock Exchange. Complaint 8 concerns the unmodified audit opinion issued by Parker on 31 March 2011 in respect of Global Green's 2010 financial statements. At the time that audit opinion was issued, Global Green had two major shareholders, identified as Shareholders A and B in the AIB Report.

53. Note 2(b) of Global Green's 2010 financial statements stated as follows:-

"... *the Group incurred a loss for the year attributable to equity shareholders of the Company of approximately HK$1,367,871,000 and its current assets exceed its current liabilities by HK$7,595,000 as at 31 December 2010. These conditions indicate the existence of a material uncertainty which may cast significant doubt about the Group's ability to continue as a going concern.*

The consolidated financial statements have been prepared on a going concern basis, the validity of which depends upon the financial supports from the substantial shareholders to cover the Group's operating costs and meet its financial commitments. The substantial shareholders have confirmed their intention and ability to provide continuing financial support to the Group so as to enable it to meets its liabilities as and when they fall due and to carry on its business for the foreseeable future.

In light of the measures described above, the directors are confident that the Group will have sufficient working capital to meet its financial obligation as and when they fall due. Accordingly, the directors are of the opinion that it is appropriate to prepare these consolidated financial statements on a going concern basis ..."

54. At the heart of complaint 8 is the appropriateness of management's use of the going concern basis, which was based on the confirmations of financial support from Shareholders A and B. The factual circumstances can be summarised as follows:-

(i) At the material time, Global Green was facing demands for repayment in relation to two loans, the first being a HK$60 million which it had obtained in April 2010 from Sino Measure Limited ("**Sino Measure**"), and the second being an RMB 50 million loan which its subsidiary had obtained from a financial institution (in respect of which Sino Measure was acting in the capacity of a security agent).

(ii) On 19 January 2011, Sino Measure issued a letter to Global Green declaring an event of default under the first loan, and demanding immediate repayment of the first loan.

(iii) On 6 May 2011, the lender bank of the second loan issued a letter demanding repayment of the second loan.

(iv) On 9 May 2011, Sino Measure's solicitors issued a letter demanding repayment of the then outstanding amount of the first loan.

(v) On 10 June 2011, Sino Measure's solicitors informed Global Green of the exercise of the share charges which had been provided as security for the first and second loans.

(vi) Evidence of the intention and ability of Shareholders A and B to provide financial support, which the directors of Global Green relied upon in justifying the use of the going concern basis, was not in place at the time when Parker issued its audit opinion.

(vii) The letters of financial support from Shareholders A and B were dated 20 June 2011 and 31 March 2011 respectively.

(viii) In a fax in Chinese from Parker to Global Green on 1 June 2011, Parker was chasing management of Global Green for evidence of intention and ability of Shareholders A and B to provide financial support.

(ix) In the same fax, Parker said that it had amended its audit opinion to state that it had been provided with limited evidence and was unable to obtain sufficient evidence to be satisfied as to the financial resources of the substantial shareholders and as to their ability to provide financial support to Global Green. This was followed by further letters dated 7 June 2011 and 27 June 2011 from Parker's solicitors asking Global Green, inter alia, to distribute the amended audit report to its shareholders.

(x) However, on 29 June 2011 and abruptly, Parker changed its position and indicated that having received the letters of financial support from Global Green's major shareholders it would withdraw its amended audit opinion.

55. The contemporaneous correspondence is telling and confirms that at the time of its audit opinion, Parker did not have sufficient and appropriate evidence as to the intention and ability of Shareholders A and B to provide financial support. Tthe Respondent also admits that he had failed to obtain sufficient appropriate audit evidence to evaluate the appropriateness of the management's use of the going concern assumption in preparing the 2010 financial statements.

Complaint 9

56. Complaint 9 also relates to Global Green's March 2010 audit.

57. It is alleged that the Respondent was in breach of the Relevant Provision in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Paragraph 16 of HKSA 570 (Clarified), by his failure to obtain written representations from the management of Global Green in respect of the going concern basis in preparing Global Green's 2010 financial statements.

58. The relevant provision in HKSA 570 states:-

"16. If events or conditions have been identified that may cast significant doubt on the entity's ability to continue as a going concern, the auditor shall obtain sufficient

appropriate audit evidence to determine whether or nor a material uncertainty exists through performing additional audit procedures, including consideration of mitigating factors. These procedures shall include ... (e) Requesting written representations from management and, where appropriate, those charged with governance, regarding their plans for future action and the feasibility of these plans."

59. In addition to the facts and circumstances referred to above relating to Global Green's March 2010 audit, the management representation letter from Global Green dated 31 March 2011 did not mention the grounds for adopting the going concern basis (when the company had already defaulted in repaying one loan), the company's plans for future actions in maintaining itself as a going concern and the feasibility of those plans.

60. The Respondent admits that he failed to obtain written representations from the management of Global Green in respect of the going concern basis in preparing the 2010 financial statements.

Complaint 10

61. Complaint 10 also relates to Global Green's March 2010 audit.

62. It is alleged that the Respondent was in breach of the Relevant Provision in that he failed or neglected to observe, maintain or otherwise apply professional standards as provided in Paragraph 19 of HKSA 570 (Clarified), as a result of his failure to include an emphasis of matter paragraph in the auditor's report on Global Green's 2010 financial statements.

63. The relevant provision in HKSA 570 states:-

"*If adequate disclosure is made in the financial statements, the auditor shall express an unmodified opinion and include an Emphasis of Matter paragraph in the auditor's report to:*

(a) Highlight the existence of a material uncertainty relating to the event or condition that may cast significant doubt on the entity's ability to continue as a going concern; and

(b) *Draw attention to the note in the financial statements that disclose the matters set out in paragraph 18.5.*"

64. The Respondent admits that he failed to include an emphasis of matter paragraph in the auditor's report on Global Green's 2010 financial statements. However, it should be noted that for the purposes of considering the appropriate sanction, the Committee has taken into account the fact that in Parker's fax to Global Green on 1 June 2011, Parker said that in an earlier audit committee meeting, it had requested an emphasis of matter paragraph to be included in the auditor's report relating to the going concern basis, but that as a result of various objections on the part of the directors of Global Green, it ultimately agreed that the emphasis of matter paragraph could be excluded.

65. It goes without saying that it is important for an auditor to be sufficiently robust, and not to capitulate easily in the face of the client's displeasure, so that the integrity of the audit process is maintained.

Complaint 11

66. Complaint 11 is based on the Respondent's multiple breaches of auditing and accounting standards, as found in the foregoing complaints.

67. It is alleged that the Respondent was in breach of the Relevant Provision in that he was guilty of professional misconduct, as a result of multiple breaches of professional standards and/or failure to act diligently in the Relevant Audits and/or thereafter, by reasons of the acts or omissions as set out in complaints 1 to 10, or any one or more of them.

68. Whilst the Respondent admits this breach, and thus no more need be said as to liability, the Committee has already had regard to the Respondent's breaches as set out in complaints 1 to 10 (with the exception of complaint 2 which has fallen away) collectively in arriving at its decision on sanctions and costs (as to which see below). The Committee considers that it would be duplicative for the Committee to increase the sanctions to be imposed on the Respondent by reason of complaint 11, and has not done so.

Decision on Sanctions and Costs

69. The Respondent submits that the appropriate sanction against him would be:-

(i) A reprimand;

(ii) An order to cancel his practicing certificate for not more than 2 years;

(iii) A penalty of no more than HK$100,000.

70. The Respondent refers to the following mitigating factors:-

(i) He is cooperative and has shown remorse by admitting the complaints.

(ii) These are the first disciplinary proceedings against him and he has no previous disciplinary record.

(iii) Although the complaints concern publicly listed companies, it is not alleged that anyone has suffered any actual loss as a result of non-compliance with professional standards in the audits prepared by the Respondent.

(iv) There is no allegation of fraud having been committed by the Respondent.

(v) The Respondent shoulders the financial burden of his family and is the sole breadwinner. The Respondent is also financially responsible for his mother who requires medical treatment.

71. The Respondent has referred the Committee to Disciplinary Proceedings No. D-14-0979P. In that case, the respondent admitted a total of 15 breaches of the Relevant Provision, and was reprimanded and ordered to pay a penalty of HK$50,000 and costs.

72. There may seem to be some superficial similarities between that case and the present one, as that case also involved some allegations that the respondent had made materially false or misleading, or alternatively reckless statements during a review conducted by the Quality Assurance Department of the Institute (the "**Review**").

73. However, each case is to be decided based on its own facts and circumstances, and it is clear that in Disciplinary Proceedings No. D-14-0979P, the Disciplinary Committee took into account the following factors in arriving at a lenient decision:-

(i) All the complaints arose from the Review, which was conducted in June 2014. The complaints against the respondent were issued on 2 February 2015 and the respondent admitted the complaints against him on 27 February 2015. The Disciplinary Committee considered it a mitigating factor that the respondent had made an early admission at the outset of the disciplinary proceedings.

(ii) All the complaints related to the audit of one company, Company E, for the year ended 30 April 2012 only.

(iii) The Disciplinary Committee also accepted as a mitigating factor that the respondent had acted under stress and under a temporary lapse of judgment, rather than a deliberate intention to mislead, and hence considered the case to be at the less serious end of the spectrum.

74. The facts and circumstances the present case, and the conduct of the Respondent, are different and can easily be distinguished:-

(i) The investigation of the AIB spanned a period of 2 years and the Respondent's conduct during the investigation caused lengthy delays and hindered the investigation by the AIB.

(ii) The Respondent gave numerous inconsistent explanations at various stages of the investigation which undoubtedly hindered and unnecessarily prolonged the investigation by the AIB.

(iii) These disciplinary proceedings were commenced by the Complainant on 1 February 2017. The admission by the Respondent came not at the outset of the disciplinary proceedings but at a very late stage after directions had already been given for the substantive hearing to take place in January 2018 and just prior to the substantive hearing taking place.

75. The Respondent has also referred the Committee to Disciplinary Proceedings No. D-15-1117P. In that case, a total of 3 complaints were made against the respondent, including the complaint that he had knowingly submitted false or misleading statements and/or furnished information recklessly in an electronic Practice Review Self-Assessment Questionnaire ("**EQS**") in breach of paragraphs 100.5(a) and 110.2 of the Code of Ethics. The Respondent seeks to draw parallels between the complaint

made in Disciplinary Proceedings No. D-15-1117P and Complaint 1 made against him herein.

76. In Disciplinary Proceedings No. D-15-1117P, the Disciplinary Committee reprimanded the respondent and ordered the cancellation of his practising certificate with no issuance of a practising certificate to him for 2 years, as well as a penalty of HK$50,000 and costs.

77. The Respondent submits that as the complaint in Disciplinary Proceedings No. D-15-1117P involved the knowing submission of false or misleading information, whereas in his case, the complaint against him was only that he had furnished statements recklessly, his conduct ought to be considered less serious.

78. The Committee does not consider that the decision in Disciplinary Proceedings No. D-15-1117P assists the Respondent.

79. Firstly, it is clear from a reading of the Disciplinary Committee's Reasons for Decision in Disciplinary Proceedings No. D-15-1117P (at paragraph 5.33) that the Disciplinary Committee's finding against the respondent in that case was that he had provided answers in the EQS recklessly.

80. Secondly, in the present case, the conduct of the Respondent was not confined to one instance of answers provided in a questionnaire. The complaint is that the Respondent furnished statements recklessly on numerous occasions both in written responses to the AIB's enquiries and in face-to-face interviews conducted by the AIB, which both hindered and prolonged an investigation which spanned a period of 2 years.

81. The Complainant says that this is a serious case of professional misconduct, as shown by:-

(i) The unavailability of all the audit documentation in all 3 cases (Grand Gold, Global Green, Safe);

(ii) The lack of integrity shown by the Respondent in not being honest and straightforward during the investigation by the AIB;

(iii) The failure to appoint an EQCR in the Grand Gold audit;

(iv) The inability of the Respondent to provide a copy of the quality control policy of Parker, back-up copies of any of the audit documentation or even show the existence of any custody contract with the PRC Partner;

(v) The audit deficiencies in the Grand Gold audit and the Global Green audit, and the magnitude of the misstatements in the Grand Gold audit.

The Committee agrees with this submission.

82. The Complainant also submits that as the complaints relate to the audit of listed companies, the public interest is clearly involved. The Committee also agrees with this submission.

83. The Complainant has referred the Committee to various past cases which it suggests have reference value. The Committee notes as follows:-

(i) D-14-0987H and D-15-1053C concerned disciplinary actions brought following the criminal conviction of the respondent on charges of fraud, and do not appear to be directly relevant.

(ii) D-13-0825F and D-14-0911F concerned audits of listed companies in which there were multiple deficiencies, and in those cases, the engagement directors had their practicing certificates cancelled for periods of 24 months and 12 months respectively.

(iii) D-11-0615C concerned a failure to keep audit documentation for the requisite retention period. As a result of the breach, the documentation was not available for investigation, although the case was different in that no bad faith was alleged against the defendant.

84. The Complainant concludes by saying that the present case is an egregious case of professional misconduct involving serious breaches of integrity and multiple breaches, and that a removal of the Complainant from the register (which would result in the Complainant's practicing certificate being automatically cancelled during the removal period) should be the starting point. The Complainant suggests that the Committee consider a removal period of not less than 5 years.

85. The Complainant also says that there are presently two other disciplinary proceedings ongoing against the Respondent and that the Respondent has admitted the charges in both of those cases. However, since those are not matters presently before this Committee, this Committee can only proceed on the basis that the Respondent has a clean disciplinary record up to this point.

86. As stated at Paragraph 1.4 of the Guideline to Disciplinary Committee for Determining Disciplinary Orders published by the Institute in October 2017, the Committee should impose sanctions which are not only proportionate to the nature of the failure and the harm or potential harm caused by the breach, but also with the aim to:-

(a) Protect public interest;

(b) Deter non-compliance with professional standards;

(c) Maintain and promote public confidence in the profession; and

(d) Declare and uphold proper standards of conduct and performance.

87. Taking into account all the matters referred to above, the Committee considers that the Respondent's conduct is sufficiently serious as to warrant a removal from the register for a specified duration. On this basis, and bearing in mind the substantial costs to be borne by the Respondent (as set out below), the Committee does not consider that it is necessary or meaningful to additionally reprimand the Respondent or to order a financial penalty.

88. The Committee has taken into account the mitigating factors put forward by the Respondent, primarily his personal and family circumstances. The Committee does not place a great deal of weight on the fact that the Respondent has admitted the complaints against him, given that the admission came at the eleventh hour when all of the preparations for the substantive hearing scheduled to begin in January 2018 had already been undertaken, and the complaints themselves involve conduct whereby the Respondent hindered and unnecessarily prolonged the investigation by the AIB. The Committee considers that the appropriate period of removal is a period of 5 years.

89. Insofar as costs is concerned, the Committee has no hesitation in ordering that the Complainant bear the costs and expenses of and incidental to the proceedings. The Complainant has presented a Statement of Costs in the total amount of HK$745,697.20, including the costs of the Clerk to the Committee in the sum of HK$13,932.00. The Complainant has explained that the costs are high due to the extensive and complex "omnibus" nature of the case against the Respondent. The costs claimed can be broken down as follows:-

(i) Costs incurred by the FRC of HK$187,391.20;

(ii) The Complainant's time costs (of the compliance and legal personnel of the Complainant) totalling HK$452,000;

(iii) Other costs and disbursements of HK$92,374;

(iv) Costs of the Clerk to the Disciplinary Committee of HK$13,932.

90. The Respondent has been given the opportunity to make written submissions on the Complainant's Statement of Costs. The Respondent takes no issue with the costs incurred by the FRC of HK$187,391.20, the other costs and disbursements of HK$92,374 or the costs of the Clerk to the Disciplinary Committee of HK$13,932, which amounts total HK$293,697.20.

91. However, the Respondent does object to the costs claimed by the Complainant itself of HK$452,000. First and foremost, the Respondent appears to argue that as the Complainant has failed to provide evidence to show that costs of HK$452,000 were actual costs it had incurred which were "reasonably and necessarily incurred", none of the amount claimed should be recoverable. The Committee does not agree with this argument.

92. In dealing with costs, the Committee adopts a broad brush approach akin to gross sum assessment conducted by the courts. It is neither necessary or desirable for the Committee to review the supporting evidence for and to adjudicate on each and every item of work in respect of which time costs have been claimed by the Complainant. Clearly, the Complainant had done substantial work in these disciplinary proceedings up to December 2017 when the Respondent admitted the Amended Complaint, which was both reasonable and necessary.

93. The Respondent has also complained that the costs of HK$452,000 were excessive, including in terms of the hourly rates claimed. The Complainant has claimed for a total

of 348 hours work performed by various individuals whose hourly rates ranged from HK$500 to HK$2,000.

94. Taking a broad brush approach, the Committee allows an amount of HK$230,000 in respect of the Complainant's time costs. Added to the other costs referred to above at paragraph 90, the total amount of costs which the Respondent is ordered to pay is HK$523,697.20.

95. The Committee orders that:-

(i) the name of the Respondent be removed from the register of certified public accountants for a period of five years commencing on the 50th day from the date of this order under Section 35(1)(a) of the PAO

(ii) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant including the costs of the Clerk to the Disciplinary Committee in the sum of HK$523,697.20 under Section 35(1)(iii) of the PAO.

Dated the 31st day of January 2018