

IN THE MATTER OF

A Complaint made under Section 34(1)(a) 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

[The Respondent] RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants (“the Institute”)

Members:

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**REASONS FOR DECISION**

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1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Institute”) as Complainant against the Respondent, a certified public accountant. Section 34(1)(a)(ii) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 7 March 2011 (“the Complaint”) from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels were as follows:-
  - (a) On [Date], the Respondent admitted to and was convicted in the Eastern Magistrates Court of three counts of knowingly providing false and misleading information to the Securities and Futures Commission (“SFC”) contrary to section 56A(1)(a) of the then Securities and Futures Commission Ordinance (Cap.24).

- (b) In admitting guilt, a statement of agreed facts was read out to the Magistrate's Court and, based on those facts, the Respondent was fined HK\$2,000 on each count.
- (c) The convictions of the charges in question, being knowingly providing false or misleading information to the SFC are convictions involving dishonesty for the purposes of section 34(1)(a)(ii) of the PAO.
- (d) The Respondent's conduct giving rise to the convictions took place at a time when he was the financial controller of [Company U], the holding company of [Company S]; [Company Y] and [Company F].
- (e) Both [Company S] and [Company Y] were registered with the SFC under the then Securities and Futures Commission Ordinance (Cap.24) and owed a statutory duty, under the then Financial Resources Rules (Cap.24J) ("FRR"), to provide monthly financial returns to the SFC.
- (f) Under the FRR, [Company S] and [Company Y] were required to maintain a specified amount of liquid capital. The information was to be included in the monthly financial returns that had to be filed with the SFC.
- (g) [Company F] was a licensed money lender but was not registered with the SFC.
- (h) The convictions related to the way in which the Respondent had accounted for a series of intra-group loans from [Company S] and [Company Y] to [Company F] during April 2002 and January 2003.
- (i) In order to reflect in the FRR returns that [Company S] and [Company Y] had complied with the liquid capital provisions required under the FRR, the Respondent:
  - a. delayed the presentation of repayment cheques received from [Company F] pending the receipt of new loans back to [Company F] from [Company S] or [Company Y]; and
  - b. booked the repayment cheques into the bank account books of [Company S] and [Company Y] as if they had already been presented, when they had not.

- (j) In so doing, the Respondent was able to falsely inflate the liquid capital position of [Company S] and [Company Y] in their monthly FRR returns to the SFC and hide the fact that on two occasions, [Company Y] had failed to maintain sufficient liquid capital as required by law.
  - (k) On the basis of the above, section 34(1)(a)(ii) of the PAO applies to the Respondent.
- 3. The Respondent admitted the Complaint against him. He did not dispute the facts as set out in the Complaint. The parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
- 4. By a letter dated 12 July 2011 addressed to the Complainant and the Respondent, the Clerk to the Disciplinary Committee (“DC”), under the direction of the DC, informed the parties that they should make written submissions to the DC as to the sanctions and costs and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
- 5. The DC has received and considered the submission of the Complainant on the issues of sanctions and costs. The DC has not received any submission from the Respondent on the aforesaid issues.
- 6. In its submission, the Complainant pointed out that the substance of the Complaint concerned the Respondent’s conviction for an offence involving dishonesty which conviction could impact gravely on the reputation of the Institute and the accountancy profession. The Complainant further asked the DC to make a costs order against the Respondent.
- 7. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid particulars set out in paragraphs (a) to (k) of paragraph 2 above in support of the Complaint as admitted by the Respondent, the admission of the Complaint by the Respondent, and the conduct of the Complainant and the Respondent throughout the proceedings.

8. The DC orders that:-

- 1) the name of the Respondent be removed from the register of certified public accountants for 2 years on the 45<sup>th</sup> day from the date of this Decision pursuant to Section 35(1)(a) of the PAO; and
- 2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$23,316.00 under Section 35(1)(iii) of the PAO.

Dated the 2<sup>nd</sup> day of December 2011

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**ORDER**

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Upon reading the complaint against [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 7 March 2011, the written submission of the Complainant dated 15 July 2011 and the relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and evidence adduced before it that the following complaint is proved:

That Section 34(1)(a)(ii) of the Professional Accountants Ordinance applies to the Respondent in that he was convicted in Hong Kong of offences of dishonesty.

IT IS ORDERED that:-

1. the name of the Respondent be removed from the register of certified public accountants for 2 years on the 45<sup>th</sup> day from the date of this Order pursuant to Section 35(1)(a) of the PAO; and
2. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$23,316.00 under Section 35(1)(iii) of the PAO.

Dated the 2<sup>nd</sup> day of December 2011