

IN THE MATTER OF

The Complaints made under section 34(1A) of the Professional Accountants Ordinance (Cap. 50) ("PAO") and referred to the Disciplinary Committee under section 33(3) of the PAO

BETWEEN

Registrar of the HKICPA

COMPLAINANT

And

Lo Shung Chi (A24966)

1<sup>st</sup> RESPONDENT

Ngai Wai Chung (F04192)

2<sup>nd</sup> RESPONDENT

Jonten Hopkins CPA Ltd (M186)

3<sup>rd</sup> RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants ("the Institute").

Members: Mr. Shum Sze Man Erik Ignatius (Chairman)  
Mr. Chin Vincent  
Mr. Chow Tak Sing Peter  
Mr. Liu Che Ning  
Mr. Liu Yun Bonn

**REASONS FOR DECISION ON SANCTION**

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Institute") as the Complainant against Mr. Lo Shung Chi, a certified public accountant (practising) (Membership no: A24966), the 1<sup>st</sup> Respondent; Mr. Ngai Wai Chung, a certified public accountant (practising) (Membership no: F04192), the 2<sup>nd</sup> Respondent; and Jonten Hopkins CPA Ltd, a corporate practice (CP no: M186), the 3<sup>rd</sup> Respondent; pursuant to section 34(1)(a)(vi), (viii) and section 34(1AA) of the Professional Accounts Ordinance (Cap. 50)("PAO").
2. The particulars of the complaint as set out in a letter from the Complainant to the Council of the Institute dated 27th May 2015 are as follows:

### **BACKGROUND**

3. The following facts and matters in support of the Complaints presented by the Complainant are not disputed by the Respondents. In May 2012, the Financial Reporting Council ("**FRC**") received a complaint relating to the consolidated financial statements of Ming Fung Jewellery Group Limited (the "**Company**") and its subsidiaries (the "**Group**") for the year ended 30<sup>th</sup> September 2010 ("**Financial Statements**"). The Financial Statements was audited by the 3<sup>rd</sup> Respondent, of which the 1<sup>st</sup> Respondent was the engagement director who signed the relevant audit report. The 2<sup>nd</sup> Respondent was the engagement quality control reviewer ("**EQCR**") of the relevant audit. The 3<sup>rd</sup> Respondent expressed an unmodified opinion on the Financial Statements.
4. The Company is listed on the main board of The Stock Exchange of Hong Kong Limited, and is principally engaged in processing, distribution, retailing and trading of jewellery products, gold mining and exploration.
5. On 12<sup>th</sup> February 2010, the Group acquired 80% interest in Super Charm Holdings Limited ("**Super Charm**"), a company which indirectly held the rights to the exploration licences of 2 gold mines located in Chi Zhou City of Anhui Province,

PRC ("**Exploration Rights**"). Consideration for the acquisition was the allotting and issuing of 100 million new ordinary shares of the Company to the vendor ("**Super Charm Consideration Shares**").

6. On 22<sup>nd</sup> March 2010, the Group acquired 100% interest in Gold Fortune Company Ltd. ("**Gold Fortune**"), a company which indirectly held the rights to the mining license of a gold mine located in Chi Feng City of Inner Mongolia Autonomous Region, PRC ("**Mining Rights**"). Consideration for the acquisition was the issuing of convertible notes of the Company with the principal amount of \$190 million to the vendor ("**Convertible Notes**").
7. The Company measured the Super Charm Consideration Shares and the Convertible Notes (collectively, the "**Purchase Considerations**") at their issue price and principal amount respectively in the Financial Statements. The Company had engaged an expert valuer Roma Appraisals Limited (the "**Valuer**") to assess the fair value of the Mining Rights and Exploration Rights as at their acquisition dates (22<sup>nd</sup> March 2000 and 12<sup>th</sup> February 2000 respectively) and as at 30<sup>th</sup> September 2010 for impairment review.
8. The complaint received by the FRC concerns the measurement of the Purchase Considerations and the valuation of the Mining Rights and Exploration Rights. The Audit Investigation Board ("**AIB**") conducted an investigation into the audit irregularities. The draft investigation report was sent to the Respondents and the Company for their comments, which were included in the investigation report. The AIB's report was adopted by the FRC on 13<sup>th</sup> March 2014 (the "**Report**"). The Report found that the Respondents were in breach of a number of professional standards. The matter was then referred by the FRC to the Institute.

### **Complaint 1**

- (1) Section 34(1)(a)(vi) of the PAO applies to the 3<sup>rd</sup> Respondent in that the practice failed or neglected to observe, maintain or otherwise apply professional standards as provided in Hong Kong Standard on Auditing ("HKSA") 500 and/or HKSA 545, as a result of their failure to obtain sufficient appropriate audit evidence on the measurement of the Purchase Considerations.

### **Complaint 2**

- (2) Section 34(1)(a)(vi) of the PAO applies to the 3<sup>rd</sup> Respondent in that the practice failed or neglected to observe, maintain or otherwise apply professional standards as provided in HKSA 230, as a result of their failure to prepare any or any adequate audit documentation regarding the measurement of the Purchase Considerations.

### **Complaint 3**

- (3) Section 34(1)(a)(vi) of the PAO applies to the 3<sup>rd</sup> Respondent in that the practice failed or neglected to observe, maintain or otherwise apply professional standards as provided in HKSA 500 and/or HKSA 545, as a result of their failure to obtain sufficient appropriate audit evidence on the deferred tax liabilities in relation to the acquisition of Super Charm and Gold Fortune.

### **Complaint 4**

- (4) Section 34(1)(a)(vi) of the PAO applies to the 3<sup>rd</sup> Respondent in that the practice failed or neglected to observe, maintain or otherwise apply professional standards as provided in HKSA 230, as a result of their failure to prepare any or any adequate audit documentation regarding the deferred tax liabilities in relation to the acquisition of Super Charm and Gold Fortune.

### **Complaint 5**

- (5) Section 34(1)(a)(vi) of the PAO applies to the 3<sup>rd</sup> Respondent in that the practice failed or neglected to observe, maintain or otherwise apply professional standards as provided in HKSA 700, as a result of their failure to evaluate whether the Financial Statements were prepared in accordance with the applicable financial reporting framework, and/or their failure to evaluate whether there was sufficient appropriate audit evidence to support their unmodified audit opinion.

### **Complaint 6**

- (6) Section 34(1)(a)(vi) of the PAO applies to the 3<sup>rd</sup> Respondent in that the practice failed or neglected to observe, maintain or otherwise apply professional standards as provided in HKSA 315, and/or HKSA 300, and/or HKSA 200, as a result of their failure to identify and assess the risk of material misstatement arising from the acquisition of Super Charm and Gold Fortune, and/or their failure to prepare an audit plan to include the nature, timing and extent of audit procedures to be performed on the acquisitions, and/or their failure to plan the audit of the acquisitions with an attitude of professional skepticism.

### **Complaint 7**

- (7) Section 34(1)(a)(vi) of the PAO applies to the 3<sup>rd</sup> Respondent in that the practice failed or neglected to observe, maintain or otherwise apply professional standards as provided in HKSA 620, and/or HKSA 540, and/or HKSA 200, as a result of their failure to evaluate whether it was appropriate to rely on the Valuer's work as audit evidence for the valuation of the Exploration Rights and the Mining Rights, and/or their failure to obtain sufficient appropriate audit evidence regarding the accounting estimates for impairment assessment of the aforesaid rights, and/or their failure to exercise professional skepticism in reviewing the reasonableness of key assumptions used in the valuations of the aforesaid rights.

### **Complaint 8**

- (8) Section 34(1)(a)(vi) of the PAO applies to the 3<sup>rd</sup> Respondent in that the practice failed or neglected to observe, maintain or otherwise apply professional standards as provided in HKSA 230, as a result of their failure to prepare any or any adequate audit documentation regarding the valuation of the Exploration Rights and the Mining Rights.

### **Complaint 9**

- (9) Section 34(1)(a)(vi) of the PAO applies to the 3<sup>rd</sup> Respondent and the 1<sup>st</sup> Respondent in that they failed or neglected to observe, maintain or otherwise apply professional standards as provided in paragraphs 100.4(c) and 130.1 of the COE (for the period before 1<sup>st</sup> January 2011) and paragraphs 100.5(c) and 130.1 of the COE (for the period on or after 1<sup>st</sup> January 2011), as a result of their failure to comply with the fundamental principle of maintaining professional knowledge or skill and/or failing to act diligently in the audit of the Company and the Group for the year ended 30<sup>th</sup> September 2010.

### **Complaint 10**

- (10) Section 34(1)(a)(vi) of the PAO applies to the 2<sup>nd</sup> Respondent 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 COE (for the period before 1<sup>st</sup> January 2011) and paragraphs 100.5(c) and 130.1 of the COE (for the period on or after 1<sup>st</sup> January 2011), as a result of his failure to comply with the fundamental principle of maintaining professional knowledge or skill and/or failing to act diligently when acting as EQCR in the audit of the Company and the Group for the year ended 30<sup>th</sup> September 2010.

### **Complaint 11**

- (11) Section 34(1)(a)(viii) of the PAO applies to the 3<sup>rd</sup> Respondent and the 1<sup>st</sup> Respondent in that they were guilty of professional misconduct, as a result of their multiple breaches of professional standards and/or failure to act diligently in the audit of the Company and the Group for the year ended 30<sup>th</sup> September 2010.
9. The Purchase Considerations were not measured at their acquisition-date fair values as required by paragraph 37 of HKFRS 3. Deferred tax liabilities were not recognized on the taxable temporary differences arising from the fair value adjustment on the Exploration Rights and the Mining Rights, in breach of paragraphs 19 and 66 of HKAS 12.
10. In the Consolidated Financial Statements of the Group for the year ended 30<sup>th</sup> September 2012, it was stated (in note 42) that "certain errors" were discovered in the Financial Statements relating to the accounting treatments of the 2 acquisitions of Super Charm and Gold Fortune. The "errors" were the issues concerning Purchase Considerations and deferred taxation referred to above. Had the deferred tax been accounted for, and the Purchase Considerations been measured at fair values at the dates of acquisition, the goodwill and deferred tax liability would be increased by approximately \$46 million and \$102 million respectively.
11. The Company retrospectively restated the Super Charm Considerations Shares and the Convertible Notes to \$73 million and \$175.2 million respectively, based on the closing prices of the Company's shares according to paragraphs 48A and AG71 of HKAS 39. The deferred tax liabilities arising from the fair value adjustment on the Exploration Rights and on the Mining Rights was restated to approximately \$23 million and \$79 million respectively. These restatements were reflected in the financial statements for the year ended 30<sup>th</sup> September 2012.

12. There was no evidence in the audit working papers and no other documentation has been provided by the 3rd Respondent to show that they had considered the fair values of the Purchase Considerations. In the circumstances, the 3rd Respondent failed to obtain sufficient appropriate audit evidence, and also failed to prepare adequate audit documentation, on the measurement of the Purchase Considerations and the deferred tax liabilities in relation to the acquisitions of Super Charm and Gold Fortune, in breach of paragraph 2 of HKSA 500, and/or paragraphs 3 and/or 63 of HKSA 545, and paragraph 2 of HKSA 230.
13. Note 3 of the Financial Statements stated that the statements were prepared in accordance with HKFRS.
14. The measurement of the Purchase Considerations and the deferred tax liabilities failed to comply with the requirements of paragraph 37 of HKFRS 3 and paragraph 19 and 66 of HKAS 12. The 3rd Respondent's audit opinion fails to reflect that the Financial Statements were not prepared in accordance with the requirements of the applicable financial reporting framework - HKFRS, in breach of paragraph 13 of HKSA 700.
15. In the circumstances, the 3rd Respondent failed to evaluate whether there was sufficient appropriate audit evidence to support their unmodified audit opinion on the Financial Statements, in breach of paragraph 11 of HKSA 700.
16. The acquisitions of Super Charm and Gold Fortune were material to the Financial Statements. However, the assertion level risk for "Financial Instruments" was left blank in the "Performance Materiality" document in the audit working papers, and there was no analysis on the risk level. Therefore the 3rd Respondent did not identify and assess the risk of material misstatement of the acquisitions, in breach of paragraph 100 of HKSA 315.



17. Apart from mentioning the acquisitions of Super Charm and Gold Fortune in the "Planning Memorandum", the 3<sup>rd</sup> Respondent failed to prepare an audit plan to include the nature, timing and extent of audit procedures to be performed on the acquisitions and document the same, in breach of paragraphs 13, 14 and 22 of HKSA 300.
18. As a result of the above, the 3<sup>rd</sup> Respondent failed to plan the audit of the Purchase Considerations and deferred tax liability with an attitude of professional skepticism, in breach of paragraph 15 of HKSA 200.
19. The Company engaged the Valuer to carry out valuations on the fair values of the Exploration Rights and Mining Rights as at their respective acquisition dates for initial measurement and as at 30<sup>th</sup> September 2010 for impairment assessment. Notes 16 and 17 in the Financial Statements stated that there is no impairment loss for the Mining Rights and Exploration Rights.
20. The 3<sup>rd</sup> Respondent's audit procedures on the valuations of the Exploration Rights and the Mining Rights were limited to agreeing certain information to the amounts stated in the valuation reports and re-calculating certain data on the worksheet. They failed to perform the necessary audit procedures on the valuations of the rights in accordance with HKSA 620 and/or HKSA 540 and/or HKSA 200.
21. For the Mining Rights, the 3<sup>rd</sup> Respondent had not evaluated the appropriateness of the valuation methodology of the discounted cash flow projections. They did not test or test sufficiently the source data and assumptions used in the valuations.
22. For the Exploration Rights, the 3<sup>rd</sup> Respondent had not evaluated the appropriateness of the valuation methodology of the market-based approach. They did not test or test sufficiently the source data and assumptions used in the valuations.

23. The 3rd Respondent failed to prepare audit documentation relating to the evaluation of the appropriateness and reasonableness of the assumptions and data used by the Valuer. The audit documentation did not provide a sufficient and appropriate record of the basis for the audit opinion regarding the valuations.
24. The breach and non-compliance with auditing and accounting standards regarding the measurement of the Purchase Considerations, the deferred tax liabilities, and the valuation of the Mining Rights and Exploration Rights, demonstrate a lack of understanding and professional knowledge and skill on the part of the 1<sup>st</sup> Respondent regarding the kind of audit work that was necessary and required in relation to such auditing issues. The inadequacy of the audit work performed also showed a lack of diligence on the part of the 1<sup>st</sup> Respondent and the 3<sup>rd</sup> Respondent.
25. Moreover, the extent of the missing or inadequate audit documentation by itself demonstrated a further lack of diligence as required under HKSA 230, such that the above failures amounted to a breach of the fundamental principle of maintaining professional competence and due care under the COE.
26. In addition, the errors concerning the Purchase Considerations and the deferred tax liabilities, which concerned the 2010 audit (year ended 30<sup>th</sup> September 2010), were not promptly followed-up. The errors were identified during a 2011 follow-up visit of the 3rd Respondent by a practice reviewer of the Institute. However despite the issues being identified and the 3<sup>rd</sup> Respondent/ the 1st Respondent acknowledging (to the reviewer) that the accounting treatments were not appropriate, there is no evidence that the 3rd Respondent/ the 1st Respondent had followed up the matters with the client or corrected the errors in the 2011 audit of the Group. The errors were not corrected until the interim and annual financial statements for the 6-month period ended 31<sup>st</sup> March 2012 and the year ended 30<sup>th</sup> September 2012 respectively.

27. In the 2012 follow-up visit of the 3rd Respondent, Practice Review identified certain errors in their audit of the Company and the Group for the year ended 30<sup>th</sup> September 2011, of which the 1<sup>st</sup> Respondent was again the engagement director. The errors concerned valuation of mining rights and goodwill impairment assessment. The errors involved, inter alia, a lack of professional skepticism in questioning the appropriateness of assumptions and data used in the valuation exercise, a trait similar to the lack of questioning and skepticism over the valuation of the Exploration Rights and Mining Rights.
28. The 2<sup>nd</sup> Respondent was the EQCR for the audit. He indicated on the Engagement Quality Control Review Worksheet that he was satisfied with the audit evidence obtained and the procedures performed by the audit team, and that the Financial Statements were prepared according to the relevant auditing and HKFRS standards.
29. As the Purchase Considerations for the acquisitions of Super Charm in the sum of \$73 million and of Gold Fortune in the sum of \$175.2 million were material (compared to the audit materiality of \$7.3 million), it is reasonable to expect the EQCR would select the relevant audit documentation in respect of the acquisitions to perform the quality control review. If the 2<sup>nd</sup> Respondent had properly performed the review, he should have identified the non-compliance with the HKFRS standards and auditing standards. The 2<sup>nd</sup> Respondent did not properly perform the engagement quality control review, in breach of HKSA 220.
30. The Mining Rights and the Exploration Rights were valued at \$328 million and \$100 million as at 30<sup>th</sup> September 2010 respectively, and were material compared to the audit materiality of \$7.3 million. Their measurements were inherently imprecise and based on estimates and assumptions. It is reasonable to expect that the EQCR would select the relevant audit documentation concerning the Mining Rights and the Exploration Rights to perform quality control review. If the 2<sup>nd</sup> Respondent had properly performed the review, he should have identified the non-compliance with the

auditing standards mentioned above. The 2<sup>nd</sup> Respondent did not properly perform the engagement quality control review, in breach of HKSA 220.

31. The breach and non-compliance with auditing and accounting standards demonstrate a lack of understanding and professional knowledge and skill, and the lack of diligence, on the part of the 2<sup>nd</sup> Respondent regarding the kind of audit work that was necessary and required in relation to such auditing issues. The 2<sup>nd</sup> Respondent was in breach of the fundamental principle of maintaining professional competence and due care under the COE.
32. In the event that the 3<sup>rd</sup> Respondent and the 1<sup>st</sup> Respondent are found liable for breaches of multiple professional standards under the aforesaid Complaints 1-9 (or any one of them in case they are not liable for breach of all 9 Complaints), they are also guilty of serious professional misconduct. The professional standards being breached were serious and fundamental, including the fundamental principle of maintaining professional competence and due care under the COE. The recurring nature of certain breaches and belated correction, despite an earlier Practice Review finding, gives rise to serious doubts concerning the quality of audit or other assurance work carried out by the 3<sup>rd</sup> Respondent and the 1<sup>st</sup> Respondent.

#### **RELEVANT PROFESSIONAL STANDARDS**

33. HKSA 500 *Audit Evidence* provides, inter alia:  
*"2. The auditor should obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion."*
34. HKSA 545 *Auditing Fair Value Measurements and Disclosures* provides, inter alia:  
*"3. The auditor should obtain sufficient appropriate audit evidence that fair value measurements and disclosures are in accordance with the entity's applicable financial reporting framework."*

*"63. The auditor should obtain written representations from management regarding the reasonableness of significant assumptions, including whether they reasonably reflect management's intent and ability to carry out specific courses of action on behalf of the entity where relevant to the fair value measurements or disclosures."*

35. HKSA 230 *Audit Documentation* provides, inter alia:

*"2. The auditor should prepare, on a timely basis, audit documentation that provides:*

- (a) a sufficient or appropriate record of the basis for the auditor's report; and*
- (b) evidence that the audit was performed in accordance with HKSAs and applicable legal and regulatory requirements."*

36. Hong Kong Financial Reporting Standard ("HKFRS") 3 (Revised) *Business Combinations* provides, inter alia:

*"37. The consideration transferred in a business combination shall be measured at fair value, which shall be calculated as the sum of the acquisition-date fair values of the assets transferred by the acquirer, the liabilities incurred by the acquirer to former owners of the acquiree and the equity interests issued by the acquirer....."*

37. Hong Kong Accounting Standard ("HKAS") 12 *Income Taxes* provides, inter alia:

*"19. The cost of a business combination is allocated by recognizing the identifiable assets acquired and liabilities assumed at their fair values at the acquisition date. Temporary differences arise when the tax bases of the identifiable assets acquired and liabilities assumed are not affected by the business combination or are affected differently.....The resulting deferred tax liability affects goodwill....."*

66. *As explained in paragraphs 19 and 26(c), temporary differences may arise in a business combination. In accordance with HKFRS 3 Business Combinations, an entity recognizes any resulting deferred tax assets .....or deferred tax liabilities as identifiable assets and liabilities at the acquisition date."*

38. *HKAS 39 Financial Instruments: Recognition and Measurement provides, inter alia: "48A. The best evidence of fair value is quoted prices in an active market. If the market for a financial instrument is not active, an entity establishes fair value by using a valuation technique. ...."*

*AG71. A financial instrument is regarded as quoted in an active market if quoted prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service or regulatory agency, and those prices represent actual and regularly occurring market transactions on an arm's length basis.....The existence of published price quotations in an active market is the best evidence of fair value and when they exist they are used to measure the financial asset or financial liability."*

39. *HKSA 700 The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements provides, inter alia: "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 involves 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....."*

40. HKSA 315 *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement* provides, inter alia:  
*"100. The auditor should identify and assess the risks of material misstatement at the financial statement level, and at the assertion level for classes of transactions, account balances and disclosures....."*
41. HKSA 300 *Planning and Audit of Financial Statements* provides, inter alia:  
*"13. The auditor should develop an audit plan for the audit in order to reduce audit risk to an acceptably low level.*  
  
*14. The audit plan is more detailed than the audit strategy and includes the nature, timing and extent of audit procedures to be performed by engagement team members in order to obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level. Documentation of the audit plan also serves as a record of the proper planning and performance of the audit procedures.....*  
  
*22. The auditors should document the overall audit strategy and the audit plan, including any significant changes made during the audit engagement."*
42. HKSA 200 (revised) *Overall Objectives of the Independent Auditor and the Conduct of an Audit in accordance with Hong Kong Standards on Auditing* provides, inter alia:  
*"15. The auditor shall plan and perform an audit with professional skepticism recognizing that circumstances may exist that cause the financial statements to be materially misstated....."*
43. HKSA 620 *Using the Work of an Expert* provides, inter alia:  
*"12. The auditor should evaluate the appropriateness of the expert's work as audit evidence regarding the assertion being considered. This will involve evaluation of whether the substance of the expert's findings is properly reflected in the financial statements or supports the assertions, and consideration of:*

- *Source data used;*
- *Assumptions and methods used and their consistency with prior periods; and*
- *Results of the expert's work in the light of the auditor's overall knowledge of the business and of the results of other audit procedures.*

*13. When considering whether the expert has used source data which is appropriate in the circumstances, the auditor would consider the following procedures:*

- (a) Making inquiries regarding any procedures undertaken by the expert to establish whether the source data is relevant and reliable.*
- (b) Reviewing or testing the data used by the expert.*

*14. The appropriateness and reasonableness of assumptions and methods used and their application are the responsibility of the expert. The auditor does not have the same expertise and, therefore, cannot always challenge the expert's assumptions and methods. However, the auditor will need to obtain an understanding of the assumptions and methods used and to consider whether they are appropriate and reasonable, based on the auditor's knowledge of the business and the results of other audit procedures.*

*15. If the results of the expert's work do not provide sufficient appropriate audit evidence or if the results are not consistent with other audit evidence, the auditor should resolve the matter. This may involve discussions with the entity and the expert, applying additional audit procedures, including possibly engaging another expert, or modifying the auditor's report."*

44. HKSA 540 *Audit of Accounting Estimates* provides, inter alia:

*"2. The auditor should obtain sufficient appropriate audit evidence regarding accounting estimates."*



45. HKAS 36 *Impairment of Assets* provides, inter alia:

*"44. Future cash flows shall be estimated for the asset in its current condition. Estimates of future cash flows shall not include estimated future cash inflows or outflows that are expected to arise from:*

*(a) a future restructuring to which an entity is not yet committed; or*

*(b) improving or enhancing the asset's performance.*

...

*50. Estimates of future cash flows shall not include:*

*(a) cash inflows or outflows from financing activities; or*

*(b) income tax receipts or payments."*

46. The Code of Ethics for Professional Accountants ("**COE**") (effective on 30th June 2006 until 31<sup>st</sup> December 2010) provides, inter alia, for a fundamental principle of professional competence and due care in paragraph 100.4(c), which is further explained by paragraph 130.1:

*"100.4(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."*

47. The COE (effective on 1st January 2011) provides, under paragraphs 100.5(c) and 130.1, essentially the same provisions on the fundamental principle of professional competence and due care as previously provided for under paragraphs 100.4(c) and 130.1 of the COE which was effective from 2006 to 2010.

48. HKSA 220 *Quality Control for Audits of Historical Financial Information* provides, inter alia:

*"38. An engagement quality control review should include an objective evaluation of:*

*(a) The significant judgements made by the engagement team; and*

*(b) The conclusions reached in formulating the auditor's report.*

*39. An engagement quality control review ordinarily involves..... consideration of whether the auditor's report is appropriate. It also involves a review of selected audit documentation relating to the significant judgements the engagement team made and the conclusions they reached....."*

## **PROCEEDINGS**

49. By letters dated 11<sup>th</sup> July 2015 signed by each of the three Respondents, they confirmed that they would admit the complaints laid against each of them respectively and they do not dispute the facts set out in the complaints which are summarised above. The parties agreed that the steps stated in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules could be dispensed with.

50. By a letter dated 12<sup>th</sup> August 2015, the Disciplinary Committee directed the parties to make written submissions in respect of sanctions and costs.

51. By letters dated 14<sup>th</sup> September 2015, the Respondents separately made submissions on sanctions and costs.
52. The Complainant confirmed that the 3<sup>rd</sup> Respondent had been sanctioned by the HKICPA in 2012 for breaching Hong Kong Standard of Auditing 230 "Audit Documentation" and Statement of Auditing Standards 510 "Principal Auditors and Other Auditors" and was ordered to pay a penalty of HK\$35,000.00. Other than the above there is no previous record of misconduct of the other Respondents.
53. Counsel for the Respondents submitted in mitigation, among other matters, that there is procedural impropriety by reason of the late addition of Complaint 11 by letter dated 5<sup>th</sup> February 2015, which concerns professional misconduct which is of a greater gravity. Although the Respondents were hinted by the Complainant that they could withdraw their admission to the 10 complaints when Complaint 11 was subsequently added, the Respondents did not do so and continued to plead guilty to all the charges including Complaint 11. However, the Respondents' grievance is that they were not sure whether their previous admissions would have been used against them in the disciplinary proceedings even if they were to change their pleas.

## **DECISION**

54. The Disciplinary Committee has carefully considered all the matters in this case and the submissions made by Counsel for the Complainant and the Respondents respectively. In particular, the Disciplinary Committee considered the following more relevant matters:
  - (1) The complaints concerned a public listed company of which an element of public interest is involved though it is not alleged that anybody suffered any actual loss as a result of the incompetent work of the Respondents;
  - (2) There were multiple breaches of auditing and accounting standards across a number of different issues, including the measurement of the Purchase

Considerations, the deferred tax liabilities arising from the Acquisition of Super Charm and Gold Fortune, and the valuation of the Mining Rights and Exploration Rights. The material figures and valuation which the Respondents failed to note in their auditing work and review are significant. These amounts to professional misconduct and a lack of professional competence of the part of the Respondents. We are of the view that these are serious breaches, especially the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

- (3) The Committee noted that no allegation of dishonesty or fraud were made against any of the Respondents;
- (4) This Committee has considered the Respondents' allegation of procedural impropriety by reason of the late addition of Complaint 11 but found that there is little merit in that allegation and in any event the addition of Complaint 11 has little effect on the overall seriousness of the Complaints in terms of mitigation especially when the legally represented Respondents continued to plead guilty to all the Complaints they respectively face. As submitted by the Complainant the Respondents were at liberty, if they so desired, to withdraw any of their admissions. This Committee is to consider the present admitted Complaints and the supporting facts as admitted by the Respondents. The hypothetical scenario of the Respondents withdrawing their admissions or disputing any of the Complaints is not relevant at this stage. Moreover, Complaint 11 has little effect, if any, on the overall gravity and the sanctions to be ordered in the present complaints when the supporting facts and matters are the same.
- (5) All three Respondents have admitted the complaints at an early stage, thereby avoiding the need for a full hearing;
- (6) The 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent have never been subjected to any disciplinary sanctions imposed by the HKICPA in the past.
- (7) The 2<sup>nd</sup> Respondent is only facing one Complaint.

55. Having considered all the matters, this Committee made the following orders:
- (1) The 1<sup>st</sup> Respondent's practicing certificate issued or to be issued be cancelled, to take effect from the date of the order for 1 year under section 35(1)(da) of the PAO;
  - (2) The 1st Respondent do pay a penalty of HK\$100,000.00 under section 35(1)(c) of the PAO;
  - (3) The 2<sup>nd</sup> Respondent be reprimanded under section 35(1)(b) of the PAO and pay a penalty of HK\$40,000.00 under section 35(1)(c) of the PAO;
  - (4) The 3rd Respondent be reprimanded under section 35(1)(b) of the PAO and pay a penalty of HK\$80,000.00 under section 35(1)(c) of the PAO;
  - (5) The Respondents jointly and severally do pay the costs and expenses of and incidental to the complaint proceedings in a sum of HK\$32,500.00 under section 35(1)(iii) of the PAO;

Dated the 19th day of November 2015.