

IN THE MATTER OF

A Complaint made under Section 34(1) and 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. Au Yeung Keung Steve
Membership No. F02874

RESPONDENT

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

Members: Mr. Kaung Wai Ming Alexander (Chairman)
Mr. Au Yeung Wai Lun
Ms. Cheng Wei Yan Vena
Mr. Ho Kam Wing Richard
Mr. Shen Ka Yip Timothy

ORDER & REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the “**Institute**” or the “**Complainant**”) against Mr. Au Yeung Keung Steve, a certified public accountant (practising) (the “**Respondent**”).
2. A Notice of Commencement of Proceedings and procedural timetable was issued to the parties on 9 May 2016 and they were requested to make submissions and filings regarding the complaint made by the Complainant dated 4 January 2016 (the “**Complaint Letter**”).
3. By consent between the parties, the Disciplinary Committee has directed that Complaints 1, 2 and 4 set out in the Complaint Letter be consolidated into one complaint (the “**Amended Complaint**”). On this basis, the Complainant agreed not to pursue Complaint 3 further, and the Respondent admitted the Amended Complaint against him. The Respondent has also confirmed that he does not dispute the facts as set out in the letter from the Complainant to the Institute’s Council dated 4 January 2016 (the “**Facts**”).

4. Also, in light of the admission by the Respondent and by consent between the parties, the Disciplinary Committee has 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 cost which should be imposed by the Disciplinary Committee.
5. The Respondent has admitted the Amended Complaint which is as follows:-

“Section 34(1)(a)(x) of the Professional Accountants Ordinance applies to the Respondent in that he was guilty of dishonourable conduct by reason of his conduct set out below:

 - (a) he knowingly made or assisted in making misrepresentations or misleading statements to the Stock Exchange, in letters dated 19 March 2003 and 8 April 2003 issued by Grand Field (as defined below), that the Project (as defined below) was a genuine one when he knew that it was not; and*
 - (b) he participated in the sham disposal of the Project, and thereby failed to conduct himself in a manner consistent with the good reputation of the profession and the Institute.”*
6. For the purposes of deciding on the appropriate sanction against the Respondent, the Disciplinary Committee has considered the Facts. A summary of the Facts which are relevant to the decision of the Disciplinary Committee is set out below.
7. Grand Field Group Holdings Limited ("**Grand Field**", or the "**Group**") was a listed company in Hong Kong.
8. In 2002 to 2003, Grand Field purported to invest in and then subsequently sell off an interest in a gas pipeline business in Chongqing, China (the "**Project**"). The Project was in fact fictitious as the Group had no intention of pursuing the Project beyond entering into the formal agreements "on paper" and establishing the corporate vehicles.
9. At the material time Wayland Tsang Wai-lun ("**Tsang**") was the chairman of Grand Field, while his wife Nancy Kwok Wai-man ("**Kwok**") was the executive director. The Respondent joined Grand Field in April 2002 as the General Manager – Financial and Commercial Affairs. He subsequently also took up the position of Company Secretary.
10. In about mid-March 2002, through introductions by various persons including one Ivan Wong and his partner Li Tai Pang ("**TP Li**"), Tsang was introduced to some potential energy projects in China. Tsang expressed interest in participating in the project "on paper", as such an "investment" could impact favourably on Grand Field's share price.
11. A new company Sino Richest Limited ("**Sino Richest**") was established on 3 May 2002 of which the shareholders were Ivan Wong and 2 other corporate vehicles controlled by Lin Xianguo ("**Lin**") and Zeng Qinqchun ("**Zeng**") respectively. Lin and Zeng were

nominees of Tsang and Kwok. A purported valuation report of the Project giving a valuation of \$106 million was produced.

12. On 25 May 2002 a joint venture agreement ("**JV Agreement**") was signed between Sino Richest and the purported PRC partner, Chongqing Wansheng Coal Carbonization Gas Company Limited ("**Wansheng Coal**"). Under the JV Agreement a joint venture vehicle, Chongqing Sino Richest Wansheng Gas Company Limited ("**Sino Richest Wansheng**"), was set up with a registered capital of \$30 million, of which 80% was to be contributed by Sino Richest and 20% by Wansheng Coal.
13. On 30 May 2002 a share transfer agreement was entered into under which a wholly-owned subsidiary of Grand Field acquired a 75% share of Sino Richest for \$63 million payable by the issue of 315 million shares at \$0.20 per share to Sino Richest's 3 shareholders.
14. On 4 June 2002 Grand Field issued a public announcement which stated that the acquisition of the Project represented an excellent opportunity for the Group to diversify its business "into natural gas business in PRC...". The valuation of \$106 million was stated to have been prepared by "an independent firm of professional valuers". Completion of the JV Agreement was conditional upon obtaining the necessary approvals and licenses from governmental authorities. Eventually a Business License and an Approval Certificate were obtained. In September 2002, the new shares issued by Grand Field for the acquisition started to be traded on the Stock Exchange of Hong Kong ("**Stock Exchange**").
15. As the capital injection envisaged under the JV Agreement did not take place as scheduled, the Stock Exchange began to make enquiries from late October 2002. In the ensuing correspondence, Grand Field was unable to give any satisfactory explanation as to why the Project had not advanced forward.
16. A plan was devised by Grand Field to "sell-off" the Project to get rid of the continuing inquiries. Upbest Group Limited ("**Upbest**"), another listed company, was brought in as financial consultant to advise on the purported sale and the enquiries from the Stock Exchange. Li Kwok Cheung George ("**George Li**") and Charles Cheng Kai-ming ("**Cheng**") were executive directors of Upbest Group. In addition, advice was also obtained from David Wong, who ran a tax advisory company.
17. The "sale" went ahead at the end of July 2003. Using a sum made available by Upbest and based on advice from George Li and David Wong, Grand Field purported to sell its interest in Sino Richest back to one of the 3 original shareholders for the sum of \$32 million, and the proceeds was passed from the purported buyer to Grand Field, and then to Tsang, and eventually returned to Upbest.

18. In 2007, the ICAC laid criminal charges in connection with the above fraud. Tsang and Kwok were charged with, inter alia, conspiring with the Respondent to defraud Grand Field's shareholders and the Stock Exchange by dishonestly concealing that there had been no genuine acquisition of the Project in Chongqing, and falsely representing that there was a genuine disposal of the Project. The Respondent testified under immunity and was not charged with any offence.
19. Both Tsang and Kwok were found guilty after a trial in the District Court. Their appeals against the conviction were dismissed by the Court of Appeal.
20. The gravamen of the Complainant's case is that the Respondent played a key role in concealing from the Stock Exchange the non-existence of the Project and also in the subsequent sham disposal.
21. The Complainant's case is that in so doing, the Respondent has failed or neglected to observe the following professional standards:-
- (1) Ethics Statement 1.291 (January 1998) which provides:-
- "5. An employed member, including one working outside the areas normally associated with accountancy, must maintain a high standard of conduct. In conforming with this standard, an employed member should not knowingly mislead or misrepresent facts to others and should use due care to avoid doing so unintentionally. At all times, an employed member should be conscious that integrity must be an overriding principle."*
- (2) Ethics Statement 1.200 (revised April 1999) which provides:-
- "The following are the Fundamental Principles on which the ethical guidance of the Hong Kong Society of Accountants is based:-*
.....
- 4. A member should follow the ethical guidance of the Society and in circumstances not provided for by that guidance should conduct himself in a manner consistent with the good reputation of the profession and the Society."*
22. The Respondent accepts that he was responsible for drafting or formulating the replies given by Grand Field to the Stock Exchange from late October 2002 onwards, and that those replies contained false information.
23. In particular, Grand Field issued letters to the Stock Exchange dated 19 March 2003 and 8 April 2003 which continued to assert the existence of the Project, even though by that stage the Respondent already knew that it was not true.
24. The letter of 19 March 2003 contained, inter alia, the following false statements:-

- (i) a continuation of the assertion that the Project existed;
 - (ii) that progress had been "*sluggish*", and "*...Sino Richest has been liaising with the China Party and the relevant local PRC government officials to go on the development of the [Project]*";
 - (iii) that Grand Field "*...is in the course of assessing the implication that [i.e. the sluggish progress] may have on the lapse of the [Business License] and [Approval Certificate] of the Chongqing JV.*"
25. The letter to the Stock Exchange dated 8 April 2003 contained, inter alia, the following false statements:-
- (i) A continuation of the assertion that the Project existed;
 - (ii) The Business License and the Approval Certificate could be either renewed or extended.
26. On 11 August 2003, Grand Field made a public announcement that it had disposed of its interest in the Project. The Respondent also accepts that certain facts stated in the announcement were not true.
27. The Respondent also accepts that he participated in the sham disposal by Grand Field by inter alia doing the following:-
- (i) In relation to the "sale" to Logistic China Enterprises Ltd. ("**Logistic China**"), a company controlled by Zeng, the Respondent met with George Li and Cheng and was advised that a sum would be made available from Upbest to enable Logistic China to "buy" the Project from Grand Field, but the sum would eventually be returned to Upbest;
 - (ii) The Respondent received documents such as assignments or agreements prepared by David Wong, and filled in the relevant details before passing them on to Tsang and/or Kwok for their signature or for them to pass on to Logistic China;
 - (iii) When George Li asked the Respondent if there was any way in which the money could be paid "legitimately" to Tsang after Grand Field had received the sale proceeds, the Respondent told him that the "amount due to director" item in the balance sheet could be utilized;
 - (iv) The Respondent instructed his subordinate Astor Wong to open an account at Wing Hang Bank for Logistic China for the fund transfers;

- (v) After the fund transfer was completed, Respondent sent to the Stock Exchange a deposit slip showing that Ka Fong Industrial Limited, a subsidiary of Grand Field, had received the sale proceeds of \$32 million.
28. In sum, the Respondent's conduct was dishonest and he participated in the making of fraudulent misstatements to the general public, shareholders of Grand Field as to the existence of the Project and its purported disposal.
29. The Disciplinary Committee agrees that such conduct constituted breaches of the professional standards referred to above, and that the Respondent was guilty of dishonourable conduct which would tend to bring the reputation of the accountancy profession into disrepute.
30. The Complainant and the Respondent provided their respective written submissions on sanctions and costs on 27 June 2016. Reply submissions were also provided by the Respondent on 30 June 2016. The Complainant elected not to file any reply submissions.
31. The Complainant has referred to two past cases which it is said have parallels to the present case (D-11-IC14QMY-H and Proceedings No.: D-11-117HLO). In one of those cases, the sanction was a permanent removal from the register. In the other case, the sanction was a removal from the register for a period of five years.
32. In deciding on the appropriate sanction, the Disciplinary Committee has a wide discretion under Section 35 of the Professional Accountants Ordinance. What would be an appropriate sanction in any particular case must be considered in the light of all of the circumstances of that particular case.
33. Having said that, the Disciplinary Committee does not agree with the submission which has been made by the Respondent that his conduct is far less serious than the conduct involved in those two past cases. On any measure, the Respondent's dishonesty and participation in the making of fraudulent misstatements was conduct of a serious nature.
34. In his submissions on sanctions, the Respondent has referred to his personal circumstances at the time of the events in question, and submits that he unwittingly obeyed the instructions of his principals due to the then tough economic circumstances and bleak prospects in the job market. However, this does not excuse the Respondent's knowing participation and conduct as described above.
35. It is accepted that the Respondent did not initiate the fraudulent scheme, and that there is no evidence that he derived any personal gain from his conduct.
36. The fact that the Respondent gave evidence under immunity in the criminal prosecution against others does not mitigate the severity of the Respondent's ethical breaches and conduct. However, it is accepted that the matter has been hanging over

the Respondent's head since 2003. It is also accepted that, as the Respondent submits, the stigma attached to the sanction to be imposed against him will inevitably affect any future career prospects which he may have.

37. The Disciplinary Committee also takes into account that the Respondent has admitted the Amended Complaint against him, which has allowed Rules 17 to 30 of the Disciplinary Committee Proceedings Rules to be dispensed with and shortened these proceedings considerably, and has no doubt resulted in the saving of time and costs.
38. However, the Respondent's breaches involved serious lapses of integrity, and his conduct fell seriously below the standard of integrity, probity and trustworthiness that the public can expect from a member of the HKICPA. They clearly warrant a removal of the Respondent from the register (of certified public accountants) for a specified period.
39. As to costs, the Disciplinary Committee has a discretion to determine the extent to which costs should be recoverable. Absent any good reason to do otherwise, costs should follow the event ie. be awarded to the successful party in the proceedings. The Disciplinary Committee orders that the Respondent pay the Complainant's costs and the costs of the Clerk to the Disciplinary Committee.
40. Both parties have already addressed the Disciplinary Committee on costs. The Complainant has produced a Statement of Costs and seeks costs in the total amount of HK\$223,355.20, of which HK\$219,945.20 represents the costs of the Complainant itself for conducting its investigation and preparing the complaint in these proceedings, and HK\$3,410.00 represents the costs of the Clerk to the Disciplinary Committee. The Complainant submits that the costs which it has incurred are eminently reasonable and are much less than what would have been incurred if any external legal advisers had been involved.
41. Adopting a broad brush approach akin to gross sum assessment conducted by the courts, the Disciplinary Committee assesses the Complainant's costs including the costs of the Clerk to the Disciplinary Committee at HK\$200,000.00.
42. For the avoidance of doubt, in considering the appropriate sanctions to be imposed in this case, the Disciplinary Committee has had regard to all the aforesaid matters, including the Amended Complaint and the Facts, and all the submissions made by the Respondent on sanctions and costs.
43. The Disciplinary Committee orders that:-
 - (1) the name of the Respondent be removed from the register of certified public accountants for a period of three years commencing on the 40th day from the date of this order under 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 including the costs of the Clerk to the Disciplinary Committee in the sum of HK\$200,000 under Section 35(1)(iii) of the PAO.

Dated the 9th day of August 2016