

BACKGROUND

- (1) Sage International Group Limited ("**Company**") was incorporated in the Cayman Islands and continued in Bermuda as an exempted company with limited liability. Its shares are listed on the Growth Enterprise Market Board of the Stock Exchange of Hong Kong (stock code: 08082).
- (2) The financial statements of the Company and its subsidiaries ("**Group**") for the year ended 31 March 2011 ("**March 2011 Financial Statements**") and for the period ended 31 December 2011 ("**December 2011 Financial Statements**") were stated to have been prepared in accordance with Hong Kong Financial Reporting Standards ("**HKFRS**") issued by the Hong Kong Institute of Certified Public Accountants¹.
- (3) Parker Randall CF (H.K.) CPA Limited ("**Parker Randall**") was the auditor of the Company until 30 December 2012. Seto was the director who issued the auditor's reports on behalf of Parker Randall for the March 2011 Financial Statements and December 2011 Financial Statements. The auditor's reports stated that the audits for the year/period were conducted in accordance with the Hong Kong Standards on Auditing ("**HKSA**") and expressed an unmodified opinion² on each set of the financial statements.
- (4) The Group's financial statements for the year ended 31 December 2012, which were audited by another auditor, disclosed that there were prior period adjustments to correct accounting errors in the March 2011 Financial Statements and December 2011 Financial Statements³. The accounting errors related to two acquisitions in October 2010 and January 2011 respectively, two convertible bonds issued by the Company in June 2010 and May 2011 respectively, share-based payment transactions, and presentation of certain financial statement items.
- (5) In May 2013, the Financial Reporting Council ("**FRC**") received a complaint on the audits of the March 2011 Financial Statements and December 2011 Financial Statements. By letter dated 24 May 2013 to Parker Randall (addressed for the attention of Seto), FRC requested Parker Randall to explain what audit procedures had been carried out in relation to a number of issues in the above audits, and to provide the relevant audit working papers. Parker Randall/Seto never provided any substantive response to this letter⁴.
- (6) In September 2013, the Council of the FRC directed the Audit Investigation Board ("**AIB**") to investigate possible auditing irregularities in relation to the audits. In October 2013, AIB required Parker Randall/Seto to produce the complete set of audit documentation for the above audits. Parker Randall/Seto disclosed in November 2013 that the entire set of audit documentation was allegedly "unavailable" due to an unspecified "dispute" with the PRC partner company at which (Guangzhou) premises

¹ AIB Report, Annex 1A (page 31) and Annex 1B (page 38)

² AIB Report, Annex 1A (pages 23 and 24) and Annex 1B (pages 30 and 31)

³ AIB Report, Annex 1C (pages 45 to 62)

⁴ Initially, Parker Randall/Seto sought multiple extensions to reply to the letter on the ground that Seto was on sick leave – for a prolonged period from May 2013 to January 2014, based on alleged "depression" for much of that period. However no reply was given even after the sick leave period ended in January 2014.

the documentation was stored. The loss or unavailability of audit documentation for the Sage audits, plus 2 other audits carried out by Parker Randall/Seto, was the subject matter of a separate AIB investigation which concluded that there were breaches of standards concerning system of quality control.

- (7) In carrying out its investigation into the audits, the AIB found that Parker Randall failed to address, inter alia, the following accounting errors that were contained in the March 2011 Financial Statements and/or December 2011 Financial Statements:
- (A) For the acquisition of a 50% equity interest in Era Investment (Holding) Inc ("**EIHI Acquisition**") on 26 October 2010, the intangible assets, i.e. rights to operate cemeteries and funeral services, were not recognized and fair valued under Hong Kong Financial Reporting Standard 3 (Revised) *Business Combinations* ("**HKFRS 3**"); and two convertible bonds issued ("**CB 2.1 and CB 2.2**"), being part of the consideration for the acquisition, were not fair valued upon initial recognition under HKFRS 3.
- (B) For the acquisition of a 100% equity interest in Luck Point Investments Limited ("**LPIL Acquisition**") on 27 January 2011, the intangible assets, i.e. rights to operate the cemetery and funeral services, were not recognized and fair valued under HKFRS 3.
- (C) Two convertible bonds with principal amounts of HK\$20 million ("**CB 1**") and US\$12.5 million ("**CB 3**") issued on 23 June 2010 and 23 May 2011 respectively, which were convertible to the Company's shares at deep discounts if opted by the subscribers, were not accounted for as share-based payment transactions under Hong Kong Financial Reporting Standard 2 *Share-based Payment* ("**HKFRS 2**").
- (D) The assumptions adopted in the valuation of the Company's share options (of HK\$77.8 million) and warrants (of HK\$43.2 million) issued and outstanding as at 31 December 2011, namely, the risk-free rate, the expected life, the expected volatility of share price and the warrants' vesting period, did not comply with HKFRS 2.
- (8) The financial impact of the above accounting errors was significant. A summary of the significance of the prior period adjustments for correcting the accounting errors is highlighted below⁵:

	December 2011 Financial Statements				March 2011 Financial Statements	
	Net assets Increase/(decrease) HK\$'000	% of consolidated net assets before restatements	Loss for the period Increase/(decrease) HK\$'000	% of consolidated loss for the period before restatements	Net assets Increase/(decrease) HK\$'000	% of consolidated net assets before restatements
(A) EIHI Acquisition	111,050	123%	239	0.7%	104,785	173%
(B) LPIL Acquisition	7,411	8%	Nil	Nil	6,926	11%
(C) CB 1	(706)	0.8%	266	0.8%	(439)	0.7%
CB 3	(1,503)	2%	142,727	403%	N/A	N/A

⁵ AIB Report, page ii

	December 2011 Financial Statements				March 2011 Financial Statements	
(D) Share-based payment transactions	Nil	Nil	4,332	12%	N/A	N/A

- (9) AIB interviewed Seto on 16 July 2014 at which he was asked to explain the above accounting errors. He was unable to give any specific response as to how those issues were dealt with during the audits as he claimed to be unable to recall specific events given that the audit documentation was not available⁶. Subsequently, AIB carried out the investigation and sent its draft investigation report to Seto for comments in 2015. Seto gave his response to the draft report in his letter dated 16 November 2015⁷. This was the *first* occasion in which he gave any substantive response to the above accounting issues.
- (10) AIB did not accept that Seto's responses in his letter of 16 November 2015 represented contemporaneous or genuine audit procedures carried out at the time of the audits. Seto never gave any substantive reply to the FRC inquiry in 2013 (letter of 24 May 2013) and he claimed to be unable to recall specific events in the interview in July 2014. And yet, in November 2015, nearly 4 years after the 2 audits were carried out, Seto was suddenly able to recall details of the discussion with the "old" management and audit procedures that had allegedly been performed.
- (11) In February 2016, the FRC referred a report of the AIB dated 6 January 2016 ("**AIB Report**") to the Institute pursuant to section 9(f) of the Financial Reporting Council Ordinance, Cap. 588.

THE COMPLAINTS

First Complaint

- (12) Section 34(1)(a)(vi) of the Professional Accountants Ordinance ("**PAO**") applies to Seto in that, in the audits of the March 2011 Financial Statements and December 2011 Financial Statements, he failed or neglected to observe, maintain or otherwise apply one or more of the following professional standards:
- (a) Paragraph 6 of HKSA 500 (Clarified) *Audit Evidence* ("**HKSA 500**"); and/or
 - (b) Paragraph 18 of HKSA 540 (Clarified) *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures* ("**HKSA 540**"); and/or
 - (c) Paragraphs 10 to 13 of HKSA 700 (Clarified) *Forming an Opinion and Reporting on Financial Statements* ("**HKSA 700**").

Second Complaint

- (13) Section 34(1)(a)(vi) of the PAO applies to Seto in that, non-compliances with professional standards in the audits mentioned in the First Complaint indicate that he failed to conduct the audits with professional competence and due care in accordance with section 100.5(c) as elaborated in section 130.1 of the Code of Ethics for Professional Accountants ("**COE**").

⁶ AIB Report §§3.1.3.2, 4.1.2.2, 5.1.2.2, 6.1.2.2, and 8.1.2.2.

⁷ AIB Report, Annex 5L

Third Complaint

- (14) Section 34(1)(a)(viii) of the PAO applies to Seto in that he was guilty of professional misconduct as a result of multiple breaches of professional standards in the audits as set out in the First and Second Complaints.

Facts and circumstances in respect of the First Complaint

- (15) There were a number of accounting errors contained in the March 2011 Financial Statements and December 2011 Financial Statements. Seto did not obtain sufficient appropriate audit evidence to support the unmodified audit opinion on the March 2011 Financial Statements and December 2011 Financial Statements.
- (16) According to paragraph 6 of HKSA 500, the auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence⁸. Paragraph 18 of HKSA 540 requires that the auditor shall evaluate, based on the audit evidence obtained, whether the accounting estimates in the financial statements are either reasonable in the context of the applicable financial reporting framework, or are misstated⁸.
- (17) Paragraphs 10 to 13 of HKSA 700 set out requirements with which the auditor should comply in forming an opinion on whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework⁸.

(A) EIHI Acquisition

- (18) EIHI carried on the business of construction, management, and operation of a cemetery in Jiangsu Province, the People's Republic of China.
- (19) On 26 October 2010, the Group acquired a 50% equity interest in EIHI for a consideration of HK\$40 million in cash and issuance of convertible bonds CB 2.1 and CB 2.2 in aggregate principal amounts of HK\$67.7 million. The conversion price of CB 2.1 and CB 2.2 was HK\$0.123 and the closing market price of the Company's share was HK\$0.156 at the acquisition date.
- (20) The identifiable assets and liabilities of EIHI group were not fair valued at the acquisition date according to paragraph 18 of HKFRS 3⁹. The goodwill arising from the acquisition was HK\$117.7 million, being the total consideration of HK\$107.7 million paid for the acquisition minus 50% share of the *negative* net assets of EIHI group of HK\$(20 million) as of 26 October 2010. The intangible assets of EIHI group, i.e. rights to operate the cemeteries and funeral services, were not separately recognized upon initial recognition according to paragraphs 10, 24 and B31 of HKFRS 3¹⁰.

⁸ AIB Report §3.2.10

⁹ AIB Report §3.2.16

¹⁰ AIB Report §§3.2.14 and 3.2.18

- (21) The convertible bonds CB 2.1 and CB 2.2 were not fair valued upon initial recognition according to paragraph 37 of HKFRS 3¹¹. An embedded call option of CB 2.2, being an option granting the Company a right to early redeem all or part of the outstanding principal amounts of CB 2.2, was also not identified and separately recognized upon initial recognition according to paragraph 11 of Hong Kong Accounting Standard 39 *Financial Instruments: Recognition and Measurement* ("HKAS 39")¹².
- (22) The relevant prior period adjustments in the 2012 financial statements¹³ to correct the accounting errors were as follows:
- (a) increase in intangible assets acquired of HK\$275.8 million, namely the rights to use and manage a cemetery, to account for intangible assets that were not identified and recognised upon initial recognition in accordance with HKFRS 3;
 - (b) increase in deferred income tax liabilities of HK\$69.5 million and deferred income tax assets of HK\$5.1 million corresponding to item (a);
 - (c) increase in non-controlling interest of HK\$53.4 million corresponding to item (a);
 - (d) increase in the value of total consideration of HK\$46.8 million to account for the convertible bonds CB 2.1 and CB 2.2 at fair value upon initial recognition as required by HKFRS 3; the equity and liability components of the bonds were adjusted accordingly based on a professional valuation; and a separate derivative asset of HK\$2.8 million was recognized;
 - (e) decrease in goodwill of HK\$111.3 million as a result of items (a), (b), (c) and (d) above; and
 - (f) increase in amortisation charges of HK\$1.8 million on the intangible assets recognised in item (a) above and the corresponding increase in income tax credit of HK\$0.5 million in the December 2011 Financial Statements.
- (23) In response to the AIB's findings, Seto did not agree with the prior period adjustments¹⁴. Regarding the intangible assets, fair value of the convertible bonds and embedded derivative, he considered that:
- (a) The intangible assets should not be measured at fair value because:
 - (i) the usage right of the cemetery could not be separated from EIHI;
 - (ii) it was not probable for the economic benefit to flow to EIHI without the resources of the Company; and
 - (iii) the value of usage right stemmed from the synergies and other benefits from the acquisition which was accounted for as part of the goodwill.

¹¹ AIB Report §3.2.3

¹² AIB Report §3.2.7

¹³ AIB Report §§3.1.1.6 and 3.1.1.7

¹⁴ AIB Report §§3.3.1 to 3.3.6, citing his response in the letter of 16 November 2015.

- (b) The convertible bonds were issued to settle the "residual" unsettled balance of the "fair value" consideration agreed. Hence they would not vary the fair value of the consideration, the amount of which was determined based on a willing buyer and willing seller and represented the fair value.
 - (c) The AIB failed to provide the basis for its conclusion that the early redemption option embedded in CB 2.2 should be measured separately from the host contract, and failed to critically consider the rationale of the then management.
- (24) AIB accepted the prior period adjustments and rejected Seto's reasoning based on the following:
- (a) AIB did not accept that Seto's response represented contemporaneous audit procedures carried out for the reasons stated in §10 above¹⁵.

*Operating Rights*¹⁶

- (b) The right to operate the cemetery business was identifiable and met the contractual-legal criterion in Hong Kong Accounting Standard 38 *Intangible Assets* ("HKAS 38").
- (c) Paragraph 33 of HKAS 38 states that "...the probability recognition criterion [i.e. probability that the expected future economic benefits embodied in the asset will flow to the entity] ... is always considered to be satisfied for intangible assets acquired in business combinations..." and that the financial ability of the acquiree was not relevant.
- (d) Paragraph 13 of HKFRS 3 states that "*The acquirer's application of the recognition principle and conditions may result in recognising some assets or liabilities that the acquiree had not previously recognised as assets and liabilities in its financial statements.*"

*Convertible bonds CB 2.1 and CB 2.2*¹⁷

- (e) Paragraph 37 of HKFRS 3 states very clearly that the consideration is the sum of acquisition-date-fair values of assets transferred by the acquirer to the former owners of the acquiree and the equity interest issued by the acquirer. Therefore, the fair value of the consideration is not an amount pre-determined by the seller and buyer.

*Embedded call option*¹⁸

- (f) The embedded call option should be separated from the host contract and accounted for separately as a stand-alone derivative given that all of the conditions set out in paragraph 11 of HKAS 39 were met. The Company's

¹⁵ AIB Report §3.4.1.

¹⁶ AIB Report §§3.4.15, 3.4.16, 3.4.18 and 3.4.19.

¹⁷ AIB Report §3.4.3

¹⁸ AIB Report §§3.4.4 to 3.4.8

intention to exercise or not exercise the embedded call option is not a relevant criterion under paragraph 11 of HKAS 39.

- (25) A professional valuation was prepared in April 2013 to determine the fair value of the cemetery operating right and the convertible bonds as at 26 October 2010, the EIHI Acquisition completion date. In the valuation, the operating right was considered an identifiable intangible asset under HKFRS 3¹⁹. The valuation supports the AIB's view that:
- (a) the operating right was identifiable, which would meet the requirement of paragraph 10 of HKFRS 3 and capable of generating economic benefit to EIHI;
 - (b) the fair value of the convertible bonds as at the EIHI Acquisition completion date (i.e. 26 October 2010) was not the same as the face value of the bonds as at the sales and purchase agreement date (i.e. 3 September 2010); and
 - (c) the embedded call option was capable of being separated from the host contract and fair valued.
- (26) Seto's response to the AIB demonstrates that he failed to properly understand the relevant requirements in HKFRS 3 and HKAS 38 in considering whether there were separately identifiable intangible assets. He failed to properly understand the relevant requirements in HKFRS 3 for fair valuing the convertible bonds issued as part of the consideration for the acquisition. He also failed to identify the need to assess whether the embedded call option should be separately recognized and accounted for as a derivative in accordance with HKAS 39.
- (27) EIHI was operating an on-going funeral business, which required specific licenses and approval. The consideration of over HK\$100 million for acquiring net liabilities of HK\$10 million should have alerted Seto the possibility that (1) the acquired assets would have acquisition-date fair value higher than their carrying amounts, and (2) there were other identifiable assets that had not been recognised by the acquiree.
- (28) The EIHI Acquisition was a material transaction to the Group. The purchase consideration was mainly satisfied by issuance of CB2.1 and CB2.2 and their fair values were not available at the date of acquisition. Seto should have reviewed the terms of the convertible bonds, perform adequate procedures, including engaging valuation expert, and obtaining sufficient appropriate evidence to ensure that the convertible bonds were properly recognised, measured and disclosed in the March 2011 Financial Statements, which would also have material consequential financial impact on the December 2011 Financial Statements.

¹⁹ AIB Report, Annex 7I. It was also disclosed in the circular for the EIHI Acquisition that its subsidiary was granted license to provide burial services (AIB Report §3.2.13)

(B) LPIL Acquisition

- (29) LPIL group's principal asset and business was the interest in a contractual joint venture engaged in construction, management, and operation of funeral facilities and related services in the People's Republic of China.
- (30) On 27 January 2011, the Group acquired 100% equity interest in LPIL for a cash consideration of HK\$17.8 million. The net assets acquired was HK\$8.7 million, while goodwill arising from the acquisition was HK\$9.1 million.
- (31) The identifiable assets and liabilities of LPIL group were not fair valued at the acquisition date according to paragraph 18 of HKFRS 3. The intangible assets of LPIL group, i.e. rights to operate the cemetery by LPIL, were not separately recognised upon initial recognition according to paragraphs 10, 24 and B31 of HKFRS 3.
- (32) The relevant prior period adjustments in the 2012 financial statements²⁰ were as follows:
- (a) increase in intangible assets acquired of HK\$20.7 million, namely the cemetery asset use rights and operating right to manage a cemetery and to provide crematory services, to account for intangible assets that were not identified and recognised upon initial recognition in accordance with HKFRS 3;
 - (b) increase in deferred income tax liabilities of HK\$5.2 million and deferred income tax assets of HK\$0.4 million corresponding to item (a);
 - (c) increase in non-controlling interest of HK\$5.2 million corresponding to item (a); and
 - (d) decrease in goodwill of HK\$10.7 million as a result of items (a), (b) and (c) above.
- (33) Seto did not agree with the prior period adjustments for the reasons stated in paragraph 23(a) above²¹.
- (34) AIB accepted the prior period adjustments and rejected Seto's reasoning based similar reasoning set out in paragraph 24(a)-(d) above²².
- (35) A professional valuation was prepared in April 2013 to determine the fair value of the cemetery operating right as at acquisition date of 27 January 2011. In the valuation, the operating right was considered an identifiable intangible asset under HKFRS 3²³. The valuation supports the AIB's view that the operating right was identifiable which would meet the requirement of paragraph 10 of HKFRS 3 and capable of generating economic benefit to LPIL.

²⁰ AIB Report §§4.1.1.3 and 4.1.1.4

²¹ AIB Report §§4.3.1 and 4.3.2, citing his response in the letter of 16 November 2015.

²² AIB Report §§4.4.1, and 4.4.2.

²³ AIB Report, Annex 7I.

- (36) Seto's response to the AIB demonstrates that he failed to properly understand the relevant requirements in HKFRS 3 and HKAS 38 in considering whether there were separately identifiable intangible assets.
- (37) LPIL was operating an on-going funeral business, which required specific licenses and approval. The consideration of over HK\$17.8 million for acquiring net assets of HK\$8.7 million should have alerted Seto to the possibility that (1) the acquired assets would have acquisition-date fair value higher than their carrying amounts, and (2) there were other identifiable assets that had not been recognised by the acquiree.

(C) CB 1 and CB 3

- (38) The Company issued CB 1 to provide additional financing to improve its working capital and financial positions²⁴. The Company issued CB 3 to raise capital at no interest to fund the development of its business. The subscriber of CB 3 would become a long-term strategic partner of the Company²⁵. Key terms of the convertible bonds are as follows:

Key terms	CB 1	CB 3
Issue date	23 June 2010	23 May 2011
Maturity date	31 March 2015	22 May 2016
Nominal value	HK\$20,000,000	US\$12,500,000 (HK\$97,175,000)
Subscriber	A company owned by the Chairman, who was also an executive director and a shareholder of the Company	An independent 3 rd party
Interest	1.5% p.a.	Nil
Option - Convertible into conversion shares	Convert at initial conversion price of HK\$0.04 per share. (42.86% discount on the Company's share price of HK\$0.07 at CB 1's issue date.)	Convert at initial conversion price of HK\$0.787 per share. (59.64% discount on the Company's share price of HK\$1.95 at CB 3's issue date.)

- (39) CB 1 and CB 3 were initially measured at values equal to their principal amounts. They were not accounted for as share-based payment transactions in the March 2011 Financial Statements / December 2011 Financial Statements according to paragraphs 2, 10, 13A and 30 of HKFRS 2²⁶. In particular, the fair values of the unidentifiable goods and services, being the differences between the identifiable considerations received and the fair values of the convertible bonds, were not recognized as expenses in accordance with paragraph 13A of HKFRS 2.
- (40) The relevant prior period adjustments in the 2012 financial statements²⁷ were as follows:

²⁴ AIB Report §5.1.1.3

²⁵ AIB Report §6.1.1.4

²⁶ AIB Report §§5.2.3, 5.2.5, 5.2.6 and 6.2.6

²⁷ AIB Report §§5.1.1.4 to 5.1.1.8

- (a) increase in the total value of CB 1 of HK\$17.2 million and CB 3 of HK\$147.8 million to account for their fair value as required by HKFRS 2; the equity and liability components of the bonds were adjusted accordingly based on professional valuation; and
 - (b) increase in share-based payment expenses of HK\$17.2 million²⁸ for CB 1 and HK\$147.8 million²⁹ for CB 3 corresponding to item (a) above.
- (41) Seto did not agree with the AIB's findings³⁰. In essence, he contended that HKFRS 2 was not applicable to CB 1 and CB 3 and therefore they should not be fair valued for the following key reasons:
- (a) CB 1 – the discounted share conversion price was due to the Company's undesirable financial performance but not any unidentifiable goods and services from the subscriber³¹.
 - (b) CB 3 – there was no service provided by the subscriber of CB 3 who was an employee of the Company; and the financial advisor of the Company rendered the opinion that CB 3 did not contain any service element³².
- (42) Paragraph 2 of HKFRS 2 provides that an entity is not required to identify specifically some or all of the goods or services received. An equity-settled share-based payment transaction is defined³³ in HKFRS 2 as "*A transaction in which the entity:*
- (a) receives goods or services from the supplier of those goods or services (including an employee) in a share-based payment arrangement, or*
 - (b) incurs an obligation to settle the transaction with the supplier in a share-based payment arrangement when another group entity receives those goods or services."*
- (43) AIB accepted the prior period adjustments and rejected Seto's reasoning³⁴. AIB does not accept that Seto's response represented contemporaneous audit procedures carried out for the reasons stated in §10 above³⁵. Simple calculation of the convertible bonds' intrinsic values indicated that their fair values were much greater than their nominal values. This suggested that the Company would have received unidentifiable goods or services³⁶.

²⁸ Note 3(c) to the 2012 financial statements said that it was offset with other prior period adjustments related to this transaction. The impact of net loss for the December 2011 Financial Statements was HK\$266,000 as disclosed in Note 3(k) to the 2012 financial statements. There was no information on the impact of net loss for the March 2011 Financial Statements.

²⁹ AIB Report §§6.1.1.5 to 6.1.1.9

³⁰ AIB Report §§5.3, and 6.3, citing his response in the letter of 16 November 2015.

³¹ AIB Report section 5.3

³² AIB Report section 6.3

³³ AIB Report §5.2.3

³⁴ AIB Report §§5.4.2 and 6.4.2

³⁵ AIB Report §§5.4.1, and 6.4.1.

³⁶ AIB Report §§5.2.4, 5.2.5, 6.2.5 and 6.2.6

- (a) CB 1 – the significant discount on the conversion price might have caused the fair value be higher than the cash consideration (i.e. the nominal value) received by the Company.
- (b) CB 3 – the Company's circular³⁷ clearly communicated that the conversion price had taken into account the synergy expected to be brought by the subscriber, who was not an employee of the Company; and the Company's circular did not mention that the financial advisor had rendered the opinion that CB 3 did not contain any service component.
- (44) The significant increase in the fair values (based on the professional valuation) of CB 1 and CB 3 over their nominal values was attributed to the significant understatement of their equity components reflected in the March 2011 Financial Statements and December 2011 Financial Statements. AIB was satisfied that the equity components of CB 1 and CB 3 met the definition of equity-settled share-based payment transactions and the liability components met that of cash-settled share-based payment transaction under paragraph 2 of HKFRS 2³⁸.
- (45) The Company confirmed to the AIB that CB 1 and CB 3 should be accounted for under HKFRS 2 because the conversion options provided a benefit to the subscribers to convert the shares at potentially substantial discounts in return for long-term financing or future benefits / new business opportunities³⁹. The accounting policies for the convertible bonds set out in the March / December 2011 Financial Statements clearly did not observe HKFRS 2⁴⁰.
- (46) Seto's response demonstrates that he failed to properly understand the relevant requirements in HKFRS 2 in considering whether CB 1 and CB 3 should be accounted for as share-based payment transactions. He did not even comprehend the basic background information, such as mistaking the subscriber of CB3 to be an employee of the Company when in fact the subscriber was an independent third party⁴¹.
- (47) There is no evidence that Seto considered, during the audit, the appropriateness of the accounting treatment of CB 1 and CB 3 and obtained any corroborative evidence, such as independent valuation, to support that the fair values of CB 1 and CB 3 were equal to the cash considerations received by the Company.

(D) Share-based payment transactions

- (48) During the period ended 31 December 2011, share options and warrants were granted by the Company to its directors, the Group's employees, consultants and an agent. According to the Group's accounting policies, the cost of these equity-settled

³⁷ AIB Report §6.1.1.4 and Annex 2F

³⁸ AIB Report §§5.2.2 and 6.2.2

³⁹ AIB Report, Annex 7A – pages 10 and 12 of the letter dated 5 July 2013

⁴⁰ AIB Report §§3.1.1.5 and 6.1.1.2. There were also no accounting policies for "issue of convertible bonds as share-based payment transactions" in the March / December 2011 Financial Statements. Accounting policies for "issue of convertible bonds as share-based payment transactions" in the 2012 financial statements, AIB Report §§5.1.1.5 and 6.1.1.6

⁴¹ AIB Report §6.4.2.

transactions was recognised as expenses over the period in which the performance and service conditions were fulfilled, with a corresponding increase in equity. The cost was measured by reference to the fair value, at the date at which they are granted, determined by an external valuer using a Black-Scholes option pricing model.

- (49) Inappropriate inputs were used in the option pricing model in determining the fair values of share options and warrants as at 31 December 2011, for which the requirements of paragraphs 17, B25, B26 and B37 of HKFRS 2 were not complied with. Further, the share-based payment expenses for the warrants were not amortized over the vesting period in accordance with paragraph 15 of HKFRS 2.
- (50) The following relevant prior period adjustments were made in the 2012 financial statements⁴²:
- (a) increase in the share-based payment expenses by HK\$4,332,000 to correct (i) the inconsistent assumptions adopted in the valuation of the share options and warrants and (ii) the incorrect amortisation of the share-based payment expenses for the warrants in the December 2011 Financial Statements; and
- (b) increase in equity corresponding to item (a).
- (51) As disclosed in Note 31 of the December 2011 Financial Statements and Note 34 of the 2012 financial statements⁴³, the assumptions adopted in the Black-Scholes option pricing model to measure the fair value (estimated at the date of issue) of the share options granted and warrants issued during the period ended 31 December 2011 were as follows:

Assumptions	2012 financial statements	December 2011 Financial Statements
Expected life - share options - warrants	4.5 to 5 years 2 to 4 years	1 to 2 years 2 to 3.5 years
Expected volatility of share price - share options - warrants	3.5 years of historical volatility of closing prices of the shares of the companies within the same industry.	52 weeks of historical volatility of closing prices of the Company's shares.
Risk free interest rate - share options - warrants	The yields of maturity of Hong Kong Exchange Fund Note as at valuation date with terms to maturity matching with the expected life of the shares options / warrants.	The yields of 10-year Hong Kong Exchange Fund Note The yields of maturity of Hong Kong Exchange Fund Note as at valuation date with terms to maturity matching with the expected life of the warrants.
Dividend yield	Nil	Nil

⁴² AIB Report §§8.1.1.4 and 8.1.1.5

⁴³ AIB Report, Annex 1C (pages 125, 127 and 128)

Assumptions	2012 financial statements	December 2011 Financial Statements
Other feature incorporated in the measurement of fair values	No	No

(52) Seto did not agree with the AIB's findings and the above assumptions used in the 2012 financial statements⁴⁴. He considered that:

- (a) expected life – the share option holders were expected to early exercise the options within one to two years in contemplation of the Group's improving financial performance;
- (b) expected volatility of share price – there was no strict rule in the determination of historical volatility; the period of historical volatility of 52 weeks was consistent with the term of the share options of one to two years and a volatility period of over 52 weeks was not appropriate as the Company had changed its business model;
- (c) expected risk-free rate – the 10-year HK Exchange Fund yield was used as the exercise period of the share options was 10 years and HKFRS 2 did not require the risk-free rate term be equivalent to the expected life of the options; and
- (d) the warrants' vesting period – the warrants were granted as consideration for past services, not future services.

(53) The AIB accepted the prior period adjustments and considered that the above arguments of Seto were not valid⁴⁵ because:

- (a) AIB did not accept that Seto's response represented contemporaneous audit procedures carried out for the reasons stated in §10 above;
- (b) expected life -- Seto had not considered the factors set out in paragraph B18 of HKFRS 2, such as the price of the underlying shares and historical experience when estimating any expected early exercise of the options. Also, the average length of time of similar options that remain outstanding was more than two years. Hence, the one to two years expected life previously adopted was not reasonable;
- (c) expected volatility of share price – the factors, such as the expected term of the option and the length of time an entity's shares have been publicly traded, should be considered when estimating expected volatility according to paragraphs B25 and B26 of HKFRS 2. In particular, the Company only started the cemetery business in October 2010, the use of 52 weeks historical volatility might not be reliable;
- (d) expected risk-free rate – the option's remaining contractual life and expected early exercise trend should be taken into account in selecting an appropriate risk free rate according to paragraph B37 of HKFRS 2; and

⁴⁴ AIB Report section 8.3, citing his response in the letter of 16 November 2015.

⁴⁵ AIB Report section 8.4

- (e) the warrants' vesting period – the warrants were vested and exercisable in stages from 14 July 2011 to 13 July 2016, according to Note 31(b) to the December 2011 Financial Statements.
- (54) It was clearly communicated in the 2012 financial statements that the prior period adjustments were due to errors⁴⁶. There is no indication in the available information that the errors were due to any new circumstances arose after the finalization of the December 2011 Financial Statements.
- (55) Seto's response demonstrates that he failed to properly understand the relevant requirements in HKFRS 2 in considering that the reasonableness of the assumptions adopted in the valuation of the share options and warrants.
- (56) The principal issues are explained in the AIB Report, which should be referred to for details. The issues and evidence may be further addressed in the Complainant's Case to be filed pursuant to the Disciplinary Committee Proceedings Rules.
- (57) Based on the above, Seto has breached:
- (a) paragraphs 10 to 13 of HKSA 700 by failing to evaluate whether the March 2011 Financial Statements and December 2011 Financial Statements were presented in accordance with the applicable financial reporting framework, i.e. HKFRS; and/or
 - (b) paragraph 6 of HKSA 500 by their failure to obtain sufficient appropriate audit evidence to support the unmodified audit opinion on the March 2011 Financial Statements and December 2011 Financial Statements; and/or
 - (c) paragraph 18 of HKSA 540 by failing to evaluate whether accounting estimates pertaining to the above audit areas were reasonable in the context of the applicable financial reporting framework.

Facts and circumstances in respect of the Second Complaint

- (58) In light of the audit deficiencies identified in the First Complaint, there is a case against Seto for his failure to conduct the audits of the March 2011 Financial Statements and December 2011 Financial Statements with professional competence and due care. As a result, he was in breach of section 100.5(c) as elaborated in section 130.1 of the COE.

Facts and circumstances in respect of the Third Complaint

- (59) The areas of non-compliance as set out above in relation to the First and Second Complaints were serious and fundamental. They showed a prevalent lack of understanding, professional competence and skill on the part of Seto regarding the accounting standard requirements applicable to the audit areas in question, and regarding audit work that was necessary and required in relation to those requirements. In the premises, Seto was guilty of professional misconduct.

⁴⁶ AIB Report, Annex 1A (page 45)

THE PROCEEDINGS

3. The Notice of Commencement of Proceedings and procedural timetable were issued on 29 August 2017.
4. The Complainant submitted the Complainant's Case on 27 September 2017.
5. The Respondent applied for an extension of time to file the Respondent's Case by 22 November 2017. On 4 December 2017, the Respondent admitted the complaints against him. He did not dispute the facts in the Complaints.
6. On 6 December 2017, the parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules ("DCPR") be dispensed with.
7. The Disciplinary Committee agreed to the parties' joint application to dispense with the steps set out in Rule 17 to 30 of the DCPR in light of the admission made by the Respondent and directed the parties to make written submissions on sanctions and costs on or before 2 January 2018.
8. The parties provided their submissions on sanctions and costs on 2 January 2018. The complaint was found proven on the basis of the admission by the Respondent.
9. On 20 March 2018, the Complainant provided additional submission regarding when the sanctions of the present disciplinary case should take effect. The Respondent provided his reply to the Complainant's additional submission on 29 March 2018.

SANCTIONS AND COSTS

10. The Disciplinary Committee notes that it has a wide discretion on the sanctions it might impose and is not bound by the decision of a previous committee. Each case is fact specific.
11. Nevertheless, to assist the Disciplinary Committee in exercising its discretion, the Complainant has referred to two past decisions with similar features to the present case, namely, Proceedings No. D-13-0825F (15 October 2015) and D-14-0911F (19 November 2015). These decisions concerned audits of listed entities involving issues similar to the present case such as acquisitions, convertible bonds and valuations. The breaches were considered serious and the financial impact of the deficiencies was significant. As such, both cases involved professional misconduct charges. In D-13-0825F, the engagement director and the engagement quality control reviewer were reprimanded and had their practising certificates cancelled for 24 months. The engagement director in D-14-0911F was reprimanded and had his practising certificate cancelled for 12 months, and was ordered to pay a penalty of HK\$100,000.
12. The Complainant submitted that a cancellation of the Respondent's practising certificate, for such period as the Committee deemed fit, would be appropriate in the circumstances of this case. As to costs, the Complainant submitted that the

Respondent should pay the costs and expenses of and incidental to the proceedings, including the costs and expenses of the Disciplinary Committee, as it was the Respondent's own conduct that brought on the disciplinary proceedings.

13. The Respondent did not object to a cancellation of his practising certificate and was prepared to accept any costs order to be made for any sums reasonably and necessarily incurred. However, the Respondent submitted that a reprimand or a short period of suspension from practising (less than 3 months) should be imposed, together with a fine of no more than HK\$50,000.
14. In support of his submissions, the Respondent highlighted a number of factors for the Disciplinary Committee's consideration, including:-
 - (a) He admitted to the complaints at an early stage, demonstrating his remorse and cooperation;
 - (b) His early admission saved time and costs, and avoided the need for a full hearing;
 - (c) The Group's financial statements for the year ended 31 December 2012, which were audited by another auditor, disclosed that there were prior period adjustments to correct accounting errors in the March 2011 Financial Statements and December 2011 Financial Statements. The Company is still being traded on the Stock Exchange of Hong Kong. Although the Complaints concerned a publicly listed company, there is no allegation that anyone had suffered any actual loss;
 - (d) Although the explanations given by the Respondent for the various accounting treatments relating to the First Complaint were not accepted, the explanations show that the Respondent had genuinely exerted his best effort in the interpretation and application of the accounting and auditing standards, rather than a gross ignorance of the relevance of these standards, and that the Complaints involved technical errors in the exercise of accounting judgment;
 - (e) No allegation of dishonesty or fraud was made against the Respondent;
 - (f) Any suspension of the Respondent's practice will affect his income and cause hardship as he is the sole breadwinner of his family and is financially responsible for the living and medical expenses of his elderly mother, who is recovering from a surgical operation for cancer.
15. The Respondent further submitted that his position is similar to that of the engagement director in D-14-0911F but contended that the present case is far less serious as there was only one complaint in relation to the breach of accounting standards, whereas D-14-0911F involved 8 such complaints.
16. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaints, the Respondent's personal circumstances, and the conduct of the

Respondent throughout the proceedings. The Disciplinary Committee considered, in particular, the following facts and matters specific to this case:-

- (a) The Complaints concerned the audit of a company whose shares are publicly listed for trading on the Stock Exchange of Hong Kong. The financial impact of the accounting errors was significant. There is a clear need to safeguard public interest, even though the Disciplinary Committee is not aware of anyone having come forward with a claim for damages as a result of the Respondent's transgressions.
 - (b) The Disciplinary Committee agrees with the Complainant's submission that this is a serious case of professional misconduct. The Complaints involved multiple breaches of auditing standards of a serious and fundamental nature. Further, the Disciplinary Committee disagrees with the Respondent's contention that the Complaints concerned merely technical errors in the exercise of accounting judgment. Even if the explanations provided by the Respondent nearly 4 years after the 2 audits represented genuine or contemporaneous audit procedures (which was not accepted by the Complainant), the procedures allegedly performed demonstrated that the Respondent was seriously incompetent in that he lacked a basic understanding of fundamental concepts such as "consideration" and "fair value".
 - (c) The Respondent admitted the Complaints at a relatively early stage, thereby saving time and costs.
17. The Disciplinary Committee notes that the Respondent's contention that there is no allegation of dishonesty or fraud in the present case is not strictly accurate. As stated above, the AIB did not accept that the Respondent's responses in his letter of 16 November 2015 represented contemporaneous or genuine audit procedures carried out at the time of the audits. The Complainant's position is that the Respondent probably did nothing at all for most of the accounting issues and his explanations represented nothing more than a post event attempt to absolve himself.
 18. The Disciplinary Committee's attention was also drawn to the fact that the Respondent faced two other disciplinary proceedings and that the Respondent has admitted the charges in those cases. By the Complainant's letter dated 1 February 2018, the Disciplinary Committee was informed that a decision in Disciplinary Proceedings No. D-15-1033F/1065F/1081F was handed down on 31 January 2018 ("**Decision**") whereby the Respondent was ordered to be removed as a member for 5 years, such removal to take effect from 22 March 2018. The Disciplinary Committee was informed by a further letter from the Complainant dated 15 March 2018 that the Respondent did not lodge an appeal against the Decision.
 19. Two of the complaints in the Decision, namely, Complaints 1 and 3 in D-15-1033F/1065F/1081F, related to (i) the inconsistent explanations given by the Respondent during AIB's investigations as to the "arrangement" which was said to have existed in relation to the storage with a PRC company ("**PRC Partner**") of Parker Randall's audit documentation for, *inter alia*, the Sage audits; and (ii) the alleged "dispute" with the PRC Partner resulting in the Respondent's inability to

gain access to audit documentation which was found to be unconvincing and incredible.

20. In its letter dated 20 March 2018, the Complainant invited the Disciplinary Committee, if it were minded to cancel the Respondent's practising certificate, to order that the period of cancellation, or an appropriate part of any such period of cancellation, to take effect only upon the Respondent's re-admission to the Institute.
21. Pursuant to the Disciplinary Committee's direction that the Respondent is to provide his reply to the Complainant's additional submissions on sanctions, the Respondent submitted by letter dated 29 March 2018 that any sanction to be imposed in the present case should not take effect more than one year from the date the Disciplinary Committee hands down its decision. In support of this contention, the Respondent submitted that:-
 - (a) The Complaints involved a number of allegations relating to the loss or unavailability of the audit documentation for the Sage audits, which are matters that have already been taken into account for the sanction imposed in D-15-1033F/1065F/1081F. Therefore, the sanction to be imposed in the present case should not take into account these allegations.
 - (b) Any sanction to be imposed should be for the purpose of educating the Respondent and upholding the regulatory function of the Institute in monitoring the quality of services provided by its members to the public. The 5-year removal ordered in D-15-1033F/1065F/1081F has been a severe punishment for the Respondent and little value would be served by imposing a "prolonged additional" period of sanction in the present case.
22. In considering the appropriate sanction to be imposed, the Disciplinary Committee bears in mind the objects of the Institute as set out in section 7 of the PAO. As stated in paragraph 1.4 of the Guidelines to Disciplinary Committee for Determining Disciplinary Orders published in October 2017, the Disciplinary 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.
23. Taking into account all the matters referred to above, the Disciplinary Committee considers that the Respondent's conduct in the present case warrants a cancellation of his practising certificate for 12 months and that such period of cancellation should take effect on 21 March 2023, i.e. 5 years from 22 March 2018. Although the loss or unavailability of the audit documentation for the Sage audits formed part of the background to the present case, the Complaints concerned various audit deficiencies

constituting breaches of audit standards that are separate and distinct to the misconduct involved in D-15-1033F/1065F/1081F. Such an order would ensure that the Respondent receives a “separate” penalty relating to the breaches in the present case, whilst also having regard to the totality of the penalties imposed in aggregate. The Disciplinary Committee does not consider that it is necessary or meaningful to additionally reprimand the Respondent or to order a financial penalty.

24. The Disciplinary Committee has no hesitation in ordering the Respondent to bear the costs and expenses of and incidental to the proceedings. The Complainant has presented a Statement of Costs in the total sum of HK\$277,705.60, including the costs of the Clerk to the Committee in the sum of HK\$3,215. The Disciplinary Committee is satisfied that such costs have been reasonably and necessarily incurred.
25. The Disciplinary Committee orders that:-
- (a) a practising certificate shall not be issued to the Respondent for 12 months under section 35(1)(db) of the PAO, such order to take effect on 21 March 2023;
 - (b) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$277,705.60 under Section 35(1)(iii) of the PAO.

Dated 26 June 2018

Ms. Lam Ding Wan Catrina
Chairman

Mr. Kan Siu Lun
Disciplinary Panel A

Mr. Pogson Timothy Keith
Disciplinary Panel B

Mr. Fung Wei Lung Brian
Disciplinary Panel A

Mr. Man Mo Leung
Disciplinary Panel B