

IN THE MATTER OF

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

BETWEEN

The Registrar of the Hong Kong
Institute of Certified Public
Accountants

COMPLAINANT

AND

Mr. Fung Kwok Leung

RESPONDENT

REASONS FOR DECISION

1. A formal complaint was lodged by the Complainant in writing to the Council of the Hong Kong Institute of Certified Public Accountants ("the Institute") by way of a memorandum dated 9 April 2008 ("the Memorandum"). Four charges were laid in relation to the Respondent's audit of the financial statements of J Limited for the period from 4 June 2001 (date of incorporation) to 31 December 2002.
2. The charges as set out in the Memorandum were as follows:-

First Complaint

Section 34(1)(a)(vi) applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely paragraph 19 of SAS 120 "Consideration of laws and regulations in an audit of financial statements".

Second Complaint

Further or in the alternative to the First Complaint, section 34(1)(a)(vi) applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely paragraph 29 of SAS 600 "Auditors' reports on financial statements".

Third Complaint

Section 34(1)(a)(vi) applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely paragraph 2 of SAS 400 "Audit evidence".

Fourth Complaint

Further or in the alternative to the Third Complaint, section 34(1)(a)(vi) applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely paragraph 2 of SAS 230 "Documentation".

3. By a written confirmation dated 2 September 2008, the Respondent admitted formerly to the Complaint. A Statement of Agreed Facts dated 2 September 2008 signed by the Complainant and Respondent was annexed to the confirmation.
4. The Disciplinary Committee on 18 June 2009 invited the Complainant to clarify whether the Complainant intended to rely on the Second and Fourth Charges as alternative to the First and Third Charges respectively, and that if the First and Third Charges were found proved by the Disciplinary Committee, the Complainant would rely on these two charges only and would not pursue the alternative charges.
5. The Complainant's Representative clarified to the Disciplinary Committee on 24 June 2009 that the Second and Fourth Charges were alternative to the First and Third Charges respectively, and that if the First and Third Charges were found proved by the Disciplinary Committee, the Complainant would rely on these two charges only and would not pursue the alternative charges.
6. The Disciplinary Committee was satisfied that the First and Third Charges were proved on the basis of the admission thereto by the Respondent and the Statement of Agreed Facts dated 2 September 2008. The Disciplinary Committee on 4 September 2009 directed the parties to amend the said Statement of Agreed Facts so as to delete all references therein to the Second and Fourth Charges.

7. On 11 September 2009, the Complainant's Representative submitted to the Disciplinary Committee the Amended Statement of Agreed Facts dated 10 September 2009 signed by both parties.

8. The Disciplinary Committee invited the parties to make written submissions in respect of the appropriate sanctions to be imposed on the Respondent. The Complainant and the Respondent made written submissions to the Disciplinary Committee on 28 September 2009 and 12 October 2009 respectively. In the Complainant's written submissions, it was submitted that the Complainant had no objection to any regard which the Disciplinary Committee might have to the fact that the Respondent had admitted the Complaint, thereby avoiding the necessity of a formal hearing. The Complainant also submitted that the Respondent should pay the costs and expenses of the disciplinary proceedings and in that connection a Statement of Costs was attached to the Complainant's written submissions. The total costs incurred by the Complainant were HK\$38,500 whereas the costs of the former Clerk to the Disciplinary Committee were HK\$29,080. The total costs incurred including other disbursements in relation to the proceedings were HK\$75,045.

9. In the Respondent's written submissions dated 12 October 2009, he put forward further explanations on his failure to obtain all shareholders' consent to prepare the aforementioned financial statements under Section 141D of the Companies Ordinance. He admitted again his failure to obtain all

shareholders' consent and that his audit working papers in respect of the audit were not well documented. He submitted his pleas of mitigation and asked the Disciplinary Committee to impose a light sanction on him.

10. In considering the appropriate orders to be made, the Disciplinary Committee has had regard to the nature of the Complaint, the agreed facts and the mitigating factors set out by the Respondent in his letter of submissions dated 12 October 2009. In considering the seriousness of the Complaint, the Disciplinary Committee has in mind in particular the facts admitted in Paragraph 15 of the Amended Statement of Agreed Facts, namely, that there is no evidence that audit procedures were performed by the Respondent during the audit to match individual purchases recorded in the books to the corresponding sales to ensure completeness of accounting for sales, purchases and inventory. The Disciplinary Committee does not accept the explanation put forward by the Respondent in this regard.

11. The Disciplinary Committee considers that a formal reprimand and further sanctions in the form of financial penalties should be imposed. The Disciplinary Committee is of the view that a higher penalty is appropriate for the Third Charge in that the Respondent's failure to obtain sufficient evidence on verifying the sales and purchases in question was a serious neglect on the part of the Respondent as an auditor. The Disciplinary Committee orders that the Respondent do pay a penalty of HK\$10,000 in respect of the First Charge, and a penalty of HK\$35,000 in respect of the Third Charge.

12. Further, the Disciplinary Committee is of the view that the Respondent should be ordered to pay a reasonable contribution toward the costs and expenses of the disciplinary proceedings. The Disciplinary Committee finds it appropriate to impose against the Respondent a costs order of HK\$30,000, which is approximately 40% of the total costs incurred.

Dated the 18th day of June 2010