



Hong Kong Institute of  
Certified Public Accountants  
香港會計師公會

## **Hong Kong Institute of Certified Public Accountants takes disciplinary action against a firm and two certified public accountants (practising)**

(HONG KONG, 16 May 2018) A Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants reprimanded HLB Hodgson Impey Cheng (firm number 0495), Cheng Chung Ching, Raymond, certified public accountant (practising) (membership number F04820) and Lai Tak Shing, Jonathan, certified public accountant (practising) (membership number F05358) on 6 April 2018. The Committee further ordered HLB, Cheng and Lai to pay penalties of HK\$400,000, HK\$300,000 and HK\$300,000 respectively. Further, the respondents were ordered to pay jointly and severally HK\$3,000,000 towards costs of the disciplinary proceedings.

HLB was the auditor of Tiffit Securities (Hong Kong) Limited (now in liquidation), a corporation engaged in securities dealing under the Securities and Futures Ordinance (Cap. 571) and the preceding Securities Ordinance (Cap. 333). HLB issued compliance reports on Tiffit for the years ended 31 March 2003, 2004 and 2005 pursuant to the requirements of those ordinances. Cheng was the engagement partner for the 2003 reporting engagement. Lai was the engagement partner for the 2004 and 2005 reporting engagements.

In 2006, the Securities and Futures Commission discovered that Tiffit had misappropriated client assets. As a result of this finding, the Commission referred the matter to the Institute, which set up an Investigation Committee under the Professional Accountants Ordinance (Cap. 50) (PAO) to investigate the respondents' compliance-reporting on Tiffit for the three years. In November 2009, the Investigation Committee submitted its report to the Council of the Institute, noting that the respondents would have a case to answer.

The Investigation Committee's findings and conclusions suggested that HLB's underlying policies, internal controls and procedures were either inadequate in the circumstances or were inadequately enforced. In light of the above and findings set out in the report of the Investigation Committee, 12 complaints were submitted and lodged against the respondents under section 42C(1) of the PAO.

In 2010, the respondents sought to challenge the Institute's decision rejecting the respondents' complaints about the conduct of the Investigation Committee, including objections to the membership of the Investigation Committee and the Institute's decision refusing to reconstitute a different Investigation Committee (HCAL 5/2010) by way of judicial review. After failing before the Court of First Instance and the Court of Appeal (CACV 192/2010), the respondents applied to the Court of Final Appeal. On 26 July 2013, the Court of Final Appeal handed down its judgment in favour of the Institute (FACV 8/2012).

Subsequently, HLB issued a writ (HCA 2107/2015, the Writ Action) against the Investigation Committee members personally, alleging that the Investigation Committee members were in breach of their duty to the respondents by "*knowingly and/or maliciously submitting a false and/or inaccurate and/or negligently prepared Report*". The writ was never served on the Investigation Committee members but was sent by HLB's solicitors to the Council. The Writ Action was subsequently discontinued.

Following a contested hearing, the Disciplinary Committee found that all 12 complaints were established against the respective respondents, in that the respondents failed to:

- (a) obtain sufficient knowledge and understanding of the factors, and plan and conduct adequate test work, in relation to anomalies in certain client accounts of Tiffit, and document matters which were important in providing evidence to support their opinion;
- (b) obtain sufficient appropriate evidence on which to base their opinion regarding Tiffit's compliance with relevant statutory requirements pertaining to the handling of client money and securities, and document matters which were significant in providing evidence to support the unqualified opinions; and
- (c) obtain sufficient appropriate evidence on which to base their conclusion that adequate records in respect of securities held on behalf of clients were maintained by Tiffit under statutory requirements and document matters which were significant in providing evidence to support their conclusion.

As a result, the Committee found that:

- (1) HLB and Cheng failed or neglected to observe, maintain or otherwise apply professional standards under section 34(1)(a)(vi) of the PAO, namely Standard on Assurance Engagements 200 "*High Level Assurance Engagements*" (SAE 200), in relation to the compliance reporting work for the year ended 31 March 2003; and
- (2) HLB and Lai failed or neglected to observe, maintain or otherwise apply professional standards under section 34(1)(a)(vi) of the PAO, namely SAE 200 and Hong Kong Standard on Assurance Engagements 3000 "*Assurance Engagements Other Than Audits or Reviews of Historical Financial Information*", in relation to the compliance reporting work for the years ended 31 March 2004 and 2005.

The Committee was of the view that the respondents had failed to appreciate where and how they failed in meeting the professional standards in their work conducted for Tiffit and the negative implications on the profession as a whole.

In arriving at its decisions, the Committee noted the Institute's submissions regarding the respondents' conduct in the course of the investigation including the late introduction of additional documents despite more than sufficient opportunity for the respondents to rely on them for years during the investigation period, and their highly obstructive behaviour in the course of the investigation. More specifically, they noted steps taken by the respondents included the issue of the Writ Action. These acts of the respondents were in the view of the Committee unreasonable and disrespectful to the Council's decisions on

the investigation proceedings and unwarranted. Notwithstanding the above, the Committee did not take these into account in deciding sanctions but took the respondents' conduct into account in its decision on costs.

#### About HKICPA Disciplinary Process

The Hong Kong Institute of Certified Public Accounts (HKICPA) enforces the highest professional and ethical standards in the accounting profession. Governed by the Professional Accountants Ordinance (Cap. 50) and the Disciplinary Committee Proceedings Rules, an independent Disciplinary Committee is convened to deal with a complaint referred by Council. If the charges against a member, member practice or registered student are proven, the Committee will make disciplinary orders setting out the sanctions it considers appropriate. Subject to any appeal by the respondent, the order and findings of the Disciplinary Committee will be published.

For more information, please see:

<http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/disciplinary/>

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#### **About HKICPA**

The Hong Kong Institute of Certified Public Accountants (HKICPA) is the statutory body established by the Professional Accountants Ordinance responsible for the professional training, development and regulation of certified public accountants in Hong Kong. The Institute has more than 42,000 members and 18,000 registered students.

Our qualification programme assures the quality of entry into the profession, and we promulgate financial reporting, auditing and ethical standards that safeguard Hong Kong's leadership as an international financial centre.

The CPA designation is a top qualification recognised globally. The Institute is a member of and actively contributes to the work of the Global Accounting Alliance and International Federation of Accountants.

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## 香港會計師公會對一間事務所及兩名執業會計師作出紀律處分

(香港，二零一八年五月十六日) 香港會計師公會轄下紀律委員會，於二零一八年四月六日對國衛會計師事務所(事務所編號：0495)、執業會計師鄭中正先生(會員編號：F04820)及執業會計師黎德誠先生(會員編號：F05358)(統稱為「答辯人」)作出譴責。此外，紀律委員會命令國衛、鄭先生及黎先生分別須繳付罰款 400,000 港元、300,000 港元及 300,000 港元。三名答辯人另須共同及各別繳付紀律程序的部份費用 3,000,000 港元。

國衛曾是目前正在進行清盤程序的大發証券(香港)有限公司的核數師。大發曾根據香港法例第 571 章《證券及期貨條例》及先前的香港法例第 333 章《證券條例》經營證券交易業務。國衛根據上述法例的要求就大發截至二零零三年、二零零四年及二零零五年三月三十一日止各年度發出合規報告。在二零零三年度的合規報告項目中，鄭先生為項目合夥人。在二零零四年度及二零零五年度的合規報告項目中，黎先生為項目合夥人。

於二零零六年，證券及期貨事務監察委員會(「證監會」)發現大發挪用客戶的資產。鑑於有關發現，證監會轉介個案予公會。公會根據香港法例第 50 章《專業會計師條例》(「PAO」)成立一個調查委員會，調查答辯人在上述三個年度對大發的合規報告工作。調查委員會於二零零九年十一月向公會理事會提交報告，指出答辯人須作出答辯。

調查委員會的發現和結論顯示國衛本身的政策、內部監控及程序在個案中均有不足或未有充份執行。基於以上原因及調查委員會報告所列發現，調查委員會根據 PAO 第 42C(1)條對答辯人作出 12 項投訴。

於二零一零年，就公會駁回答辯人對調查委員會運作的投訴，包括答辯人反對調查委員會的成員組成及公會拒絕重組調查委員會的決定，答辯人提出司法覆核(HCAL 5/2010)。答辯人在原訟法庭及上訴法庭敗訴後(CACV 192/2010)，上訴至終審法院。終審法院於二零一三年七月二十六日裁定公會勝訴(FACV 8/2012)。

及後，國衛向調查委員會成員發出個人令狀(HCA 2107/2015)，指稱調查委員會成員因「明知及/或惡意地提交虛假及/或不準確及/或疏忽編備的報告」而違反了他們對答辯人的責任。該令狀從未被送達調查委員會任何成員，但國衛的代表律師將令狀送交公會理事會。國衛其後終止有關該令狀的法律行動。

經答辯人在聆訊中抗辯後，紀律委員會裁定對各有關答辯人的 12 項投訴全部成立，即答辯人：

- (a) 未就大發的一些客戶賬戶出現的異常情況取得充份認識及了解其原因、計劃及進行充份測試工作，以及未就提供足以支持答辯人意見的重要事項備存工作記錄；

- (b) 未獲取足夠適當的憑證，以支持答辯人就大發有否在處理客戶款項及證券方面符合有關法例作出的意見，及未就提供足以支持答辯人無保留意見的重要事項備存工作記錄；以及
- (c) 未獲取足夠適當的憑證，以支持答辯人作出大發已根據有關法例規定保存託管客戶證券的充足記錄的結論，及未就提供足以支持答辯人結論的重要事項備存工作記錄。

因此，紀律委員會裁定：

- (1) 根據 PAO 第 34(1)(a)(vi)條，國衛及鄭先生在截至二零零三年三月三十一日止年度的合規報告項目中沒有或忽略遵守、維持或以其他方式應用專業準則 **Standard on Assurance Engagements 200 "High Level Assurance Engagements"** (「SAE 200」)；及
- (2) 根據 PAO 第 34(1)(a)(vi)條，國衛及黎先生在截至二零零四及二零零五年三月三十一日止兩個年度的合規報告項目中沒有或忽略遵守、維持或以其他方式應用專業準則 **SAE 200 及 Hong Kong Standard on Assurance Engagements 3000 "Assurance Engagements Other Than Audits or Reviews of Historical Financial Information"**。

紀律委員會認為答辯人未有明白其在執行大發的工作上不符合專業準則之處及對整體會計行業的負面影響。

在裁決的過程中，紀律委員會考慮到公會就答辯人在調查過程中的行為所提交的資料，包括在調查的數年期間未把握機會提供足夠資料，以至過後才遲遲提交額外文件，及在調查過程中的嚴重妨礙行為。紀律委員會特別注意到答辯人作出包括對調查委員會成員發出令狀的種種行動，紀律委員會認為答辯人的此等行動不合理、對理事會就調查程序作出的決定不尊重及無根據的。然而，在考慮罰則時紀律委員會並未將答辯人的上述行為列為考慮因素，但在決定應付紀律程序費用時則把有關行為考慮在內。

#### 香港會計師公會的紀律處分程序

香港會計師公會致力維持會計界的最高專業和道德標準。公會根據香港法例第 50 章《專業會計師條例》及紀律委員會訴訟程序規則，成立獨立的紀律委員會，處理理事會轉介的投訴個案。委員會一旦證明對公會會員、執業會計師事務所會員或註冊學生的檢控屬實，將會作出適當懲處。若答辯人未有提出上訴，紀律委員會的裁判將會向外公佈。

詳情請參閱：

<http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/disciplinary/>

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## 關於香港會計師公會

香港會計師公會是根據《專業會計師條例》成立的法定機構，負責培訓、發展和監管本港的會計專業。公會會員超過 42,000 名，學生人數逾 18,000。

公會開辦專業資格課程，確保會計師的人職質素，同時頒佈財務報告、審計及專業操守的準則，以鞏固香港作為國際金融中心的領導地位。

CPA 會計師是一個獲國際認可的頂尖專業資格。公會是全球會計聯盟及國際會計師聯合會的成員之一，積極推動國際專業發展。

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IN THE MATTER OF

Complaints made under section 42C(1) of the Professional Accountants Ordinance (Cap. 50)

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BETWEEN

An Investigation Committee of HKICPA                      Complainant

AND

HLB Hodgson Impey Cheng (#0495)                      1<sup>st</sup> Respondent

Mr. Cheng Chung Ching, Raymond (F04820)                      2<sup>nd</sup> Respondent

Mr. Lai Tak Shing, Jonathan (F05358)                      3<sup>rd</sup> Respondent

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Disciplinary Committee:

Mr. Shum, Sze Man, Erik Ignatius (Chairman)

Mr. Fung, Wei Lung, Brian

Ms. Yu, Ho Wun, Grace

Mr. Chan, Wai Tong, Christopher

Dr. Kam, Pok Man

Date of Hearing: 24 and 26 April 2017, 24 July 2017

Date of Decision: 19 January 2018

**DECISION**

1. The Complaints against the three Respondents relate to alleged breaches of the standards of assurance practices and sufficiency of documentation in the work undertaken by the Respondents for a securities firm, namely Tiffit Securities (Hong Kong) Limited (“Tiffit”), for the three relevant fiscal years ended on 31 March of 2003, 2004 and 2005.

## Background and Undisputed facts

2. The Complainant is an Investigation Committee constituted under Section 42C(2) of the Professional Accountants Ordinance, Cap. 50 (“PAO”) who investigated into the work undertaken by the 1<sup>st</sup> Respondent, namely HLB Hodgson Impey Cheng (“HLB”) in respect of Tiffit while the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were the individual certified public accountants responsible for such work for the respective fiscal years.
3. HLB is a firm of certified public accountants registered with the Hong Kong Institute of Certified Public Accountants (“Institute”). HLB was engaged by Tiffit to undertake financial audit engagement and separate compliance reporting engagement for each of said three years.
4. The 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent were certified public accountants and partners of HLB.
5. Tiffit was a corporation licensed under the Securities and Futures Ordinance (Cap. 571) (“SFO”) and its predecessor, i.e. the Securities Ordinance (Cap. 333) (“SO”) to principally carry on businesses of dealing in securities for cash clients only, as well as advising clients on securities and corporate finance.
6. For the year ended 31 March 2003, HLB issued an audit and compliance report under the statutory requirements of Section 88 of the SO and Rule 4 of the Securities (Accounts and Audit) Rules, Cap 333B (“Old Accounts and Audit Rules”), in respect of Tiffit’s compliance with sections 81, 83 and 84 of the SO. In its report, HLB only reported certain exceptions during the year which were stated to have been rectified by Tiffit subsequently, which were of no significance for the purpose of the Complaints. Those exceptions primarily included failures in recording a bank overdraft in the books and in maintaining client money in a separate account.
7. For the years ended 31 March 2004 and 31 March 2005, HLB issued unqualified compliance reports under the requirements of section 156 of the SFO and Rule 4(e) and (f) of the Securities and Futures (Accounts and Audit) Rules, Cap. 571P (“Accounts and Audit Rules”) in respect of Tiffit’s compliance with the Securities and Futures (Client Securities) Rules, Cap. 571H (“Client Securities



Rules”) and the Securities and Futures (Client Money) Rules, Cap. 571I (“Client Money Rules”) and in respect of the adequacy of the systems of control of Tiffit to ensure compliance with those rules.

8. In respect of the said report for the year ended 31 March 2003, Mr. Cheng was the engagement partner signing the (combined) financial audit and compliance report on behalf of HLB, with Mr. Lai as the concurring partner who had performed a concurrent review of the compliance reporting work.
9. In respect of the reports for the years ended 31 March 2004 and 31 March 2005, Mr. Lai was the engagement partner signing the compliance reports on behalf of HLB whilst Mr. Cheng was the concurring partner who had performed a concurrent review of the compliance reporting work.
10. The aforementioned compliance reporting work for the years ended 31 March 2003, 31 March 2004 and 31 March 2005 shall hereinafter be referred to as “the 2003 Reporting”, “the 2004 Reporting” and “the 2005 Reporting”. The corresponding compliance reports issued by the Respondents will be referred to as “the 2003 Report”, “the 2004 Report” and “the 2005 Report” respectively.
11. In addition to the compliance reporting work mentioned above, the Respondents were also engaged by Tiffit to conduct the following:-
  - a. Internal Control Review in December 2001;
  - b. Follow-up Internal Control Review in April 2002;
  - c. SFC Circularisation Exercise in November 2002; and
  - d. Audit of the financial statements of Tiffit for each of the years ended 31 March 2003, 2004 and 2005.
12. The Investigation Committee issued its report on 16 November 2009, finding that the Respondents had failed to perform their procedures with sufficient professional skepticism in relation to assessing anomalies in certain client accounts and that they had failed to obtain sufficient appropriate evidence in support of HLB’s unqualified opinions on Tiffit’s compliance with the Client Money Rules and the Client Securities Rules for the years ended 31 March 2004 and 2005

and sections 81, 83 and 84 of the SO for the year ended 31 March 2003, or alternatively, that they had failed to sufficiently document evidence obtained. The Investigation Committee further found that there were deficiencies in the client circularisation procedures performed by the Respondents for the purpose of their compliance reporting on Tiffit.

13. The Investigation Committee's findings and conclusions suggested that HLB's underlying policies, internal controls and procedures were either inadequate in the circumstances or were inadequately enforced.
14. In light of the above and findings set out in the report of the Investigation Committee, the following 12 complaints were submitted and lodged against the Respondents under Section 42C(1) of the PAO which are set out in the following paragraphs.

#### The Complaints

15. There are altogether 12 complaints. The 1<sup>st</sup> to 6<sup>th</sup> Complaints are against HLB and the 2<sup>nd</sup> Respondent, Mr. Cheng jointly relating to the compliance report issued and signed by the latter for the year ended 31 March 2003. The 7<sup>th</sup> to 12<sup>th</sup> Complaints are against HLB and the 3<sup>rd</sup> Respondent, Mr. Lai jointly relating to the compliance reports issued and signed by the latter for the two years ended 31 March 2004 and 31 March 2005.
16. It is not disputed that if any one charge is substantiated, HLB and the individual personal Respondent will be convicted together and vice versa. It is on this basis that each charge will be considered and analysed. The Committee considers each charge separately and distinctly on the evidence relevant to that charge only. The Committee adopts the civil standard of proof of balance of probabilities with the burden of proving each charge on the Complainant.
17. Although Mr. Cheng and Mr. Lai each is subject to separate sets of complaints, the nature of complaints towards each one of them is similar so the term "the Respondents" shall be used to refer to either "HLB and Mr. Lai" or "HLB and Mr. Cheng" under the relevant complaints discussed below unless otherwise stated.

18. The 12 Complaints are listed below:

- a. 1<sup>st</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Cheng in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely Standard on Assurance Engagements 200 “High Level Assurance Engagements” (“SAE 200”), in conducting the test work supporting their compliance reporting relating to Tiffit for the year ended 31 March 2003 under section 88 of the SO and Rule 4 of the Old Accounts and Audit Rules as a result of their failure to obtain sufficient knowledge and understanding of the factors relating to anomalies in certain client accounts.
- b. 2<sup>nd</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Cheng in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely SAE 200 in documenting matters which were important in providing evidence to support their opinion regarding their compliance reporting relating to Tiffit for the year ended 31 March 2003 under section 88 of the SO and Rule 4 of the Old Accounts and Audit Rules.
- c. 3<sup>rd</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Cheng in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely SAE 200, in their compliance reporting relating to Tiffit for the year ended 31 March 2003 under section 88 of the SO and Rule 4 of the Old Accounts and Audit Rules as a result of their failure to obtain sufficient appropriate evidence on which to base their opinion regarding Tiffit’s compliance with sections 81, 83 and 84 of the SO.
- d. 4<sup>th</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Cheng in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely SAE 200, in their compliance reporting relating to Tiffit for the year ended 31 March 2003 under section 88 of the SO and Rule 4 of the Old Accounts and Audit Rules as a result of their failure to document matters which were significant in providing evidence to support the unqualified opinions

regarding Tiffit's compliance with sections 81, 83 and 84 of the SO.

- e. 5<sup>th</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Cheng in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely SAE 200, in the compliance reporting relating to Tiffit for the year ended 31 March 2003 as a result of their failure to obtain sufficient appropriate evidence on which to base their conclusion that adequate records in respect of securities held on behalf of clients were maintained by Tiffit under the SO.
- f. 6<sup>th</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Cheng in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely SAE 200, in the compliance reporting relating to Tiffit for the year ended 31 March 2003 as a result of their failure to document matters which were significant in providing evidence to support their conclusion that adequate records of securities held on behalf of clients were maintained by Tiffit under the SO.
- g. 7<sup>th</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Lai in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely:
  - (a) SAE 200 as regards the compliance reporting relating to Tiffit for the year ended 31 March 2004 under Section 156(1) of the SFO and Rule 4 of the Accounts and Audit Rules; and
  - (b) Hong Kong Standard on Assurance Engagements 3000 "Assurance Engagements Other Than Audits or Reviews of Historical Financial Information" ("HKSAE 3000") as regards the compliance reporting relating to Tiffit for the year ended 31 March 2005 under section 156(1) of the SFO and Rule 4 of the Accounts and Audit Rules,

as a result of the failure of HLB and Mr. Lai to plan and conduct adequate test work in relation to anomalies in certain

client accounts which may have revealed breaches of Sections 81 and 83 of the SO or of the Client Securities Rules by Tiffit.

h. 8<sup>th</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Lai in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely:

(a) SAE 200 as regards their compliance reporting relating to Tiffit for the year ended 31 March 2004 under Section 156(1) of the SFO and Rule 4 of the Accounts and Audit Rules; and

(b) HKSAE 3000 as regards their compliance reporting relating to Tiffit for the year ended 31 March 2005 under Section 156(1) of the SFO and Rule 4 of the Accounts and Audit Rules,

as a result of the failure of HLB and Mr. Lai to document matters which were important in providing evidence to support the opinions regarding compliance contained in the compliance reports submitted by HLB in respect of Tiffit.

i. 9<sup>th</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Lai in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely:

(a) SAE 200 as regards their compliance reporting relating to Tiffit for the year ended 31 March 2004 under Section 156(1) of the SFO and Rule 4 of the Accounts and Audit Rules; and

(b) HKSAE 3000 as regards their compliance reporting relating to Tiffit for the year ended 31 March 2005 under Section 156(1) of the SFO and Rule 4 of the Accounts and Audit Rules,

as a result of their failure to obtain sufficient appropriate evidence on which to base their opinions regarding Tiffit's compliance with Rule 4 of the Client Money Rules and Rules 4(4), 5, 10(1) and 12 of the Client Securities Rules.

j. 10<sup>th</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Lai in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely:

(a) SAE 200 as regards their compliance reporting relating to Tiffit for the year ended 31 March 2004 under Section 156(1) of the SFO and Rule 4 of the Accounts and Audit Rules; and

(b) HKSAE 3000 as regards their compliance reporting relating to Tiffit for the year ended 31 March 2005 under Section 156(1) of the SFO and Rule 4 of the Accounts and Audit Rules,

as a result of their failure to document matters which were significant in providing evidence to support the unqualified opinions regarding Tiffit's compliance with Rule 4 of the Client Money Rules and Rules 4(4), 5, 10(1) and 12 of the Client Securities Rules.

k. 11<sup>th</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Lai in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely:

(a) SAE 200 as regards the compliance reporting relating to Tiffit for the year ended 31 March 2004; and

(b) HKSAE 3000 as regards the compliance reporting relating to Tiffit for the year ended 31 March 2005,

as a result of their failure to obtain sufficient appropriate evidence on which to base their conclusion that adequate records in respect of securities held on behalf of clients were maintained by Tiffit under the Securities and Futures (Keeping of Records) Rules, Cap. 571O ("Keeping of Records Rules").

l. 12<sup>th</sup> Complaint: Section 34(1)(a)(vi) of the PAO applies to HLB and Mr. Lai in that they had failed or neglected to observe, maintain or otherwise apply a professional standard, namely:

- (a) SAE 200 as regards the compliance reporting relating to Tiffit for the year ended 31 March 2004; and
- (b) HKSAE 3000 as regards the compliance reporting relating to Tiffit for the year ended 31 March 2005,

as a result of their failure to document matters which were significant in providing evidence to support their conclusion that adequate records of securities held on behalf of clients were maintained by Tiffit under the Keeping of Records Rules.

19. Since the nature of some of the complaints against the Respondents are identical or similar, it is the consensus of the parties, which the Committee agrees, that in the course of the trial and the present Decision, the Complaints are categorised into three main groups:
- a. Group 1 (Complaints 1, 2, 7, 8)
  - b. Group 2 (Complaints 3, 4, 9, 10)
  - c. Group 3 (Complaints 5, 6, 11, 12)

#### Law and Principles

20. The complaints were made under section 34(1)(vi) of the PAO alleging that the Respondents have failed or neglected to observe, maintain or otherwise apply the relevant and applicable professional standards.
21. The complaints refer to various statutory requirements and applicable professional standards. The relevant laws and principles will be referred to in the course of the following reasons in relation to each group; but the major ones are set out at this outset hereinbelow.

#### Statutory Provisions

22. SO relates to the complaints made to the 2003 Reporting referred to in the 1<sup>st</sup> to 6<sup>th</sup> Complaints and the SO's successor, the SFO relates to the 2004 and 2005 Reporting referred to in the 7<sup>th</sup> to 12<sup>th</sup> Complaints.

23. Similarly, the Old Accounts and Audit Rules relate to the complaints made to the 2003 Reporting and the Accounts and Audit Rules for the 2004 and 2005 Reporting.
24. The Client Securities Rules and the Client Money Rules also relate to the 2004 and 2005 Reporting.
25. Section 81 of the SO restricts the dealer on the disposition of securities where the securities are not the property of the dealer and the dealer is accountable.
26. Section 83 of the SO stipulates that the dealer shall keep the accounting and other records that will sufficiently explain transactions and reflect the financial position and accounts of the business with sufficient detail.
27. Section 84 of the SO require a securities dealer to hold all client money in designated trust accounts (“Trust Bank Account”) and the money shall remain there until paid to the client (or in accordance with his directions).

#### Professional Standards

28. One of the main professional standards is SAE 200 and this applies to the reporting years ended 31 March 2003 and 2004. For the reporting year ended 31 March 2005, HKSAE 3000 applies instead of the SAE 200.
29. In particular, SAE 200.14 requires that “The auditors should obtain sufficient appropriate evidence on which to base the conclusion.” Similarly, paragraph 33 of HKSAE 3000 requires the practitioner to obtain sufficient appropriate evidence on which to base its conclusion.
30. In relation to documentation as evidence to support opinion and conclusion, SAE 200.15 requires that “The auditors should document matters that are important in providing evidence to support the conclusion expressed in the report issued by the auditors, and in providing evidence that the assurance engagement was performed in accordance with this SAE.” And similarly, paragraph 42 of HKSAE 3000 requires the practitioner to document matters that are significant in providing evidence to support the assurance report.



31. Other relevant professional standards and guidelines include:
- a. The Practice Note PN 820 is related to both the 2004 and 2005 Reporting.
  - b. Statement of Auditing Standards 300, Statement of Auditing Standards 402 and Statement of Auditing Standards 430 are all relevant to all three reporting years.
  - c. Industry Auditing Guideline 3.404 in relation to the 2003 Reporting.

Group 1 (Complaints 1, 2, 7, 8)

32. Group 1 complaints concern the test work conducted by the Respondents and documentation of matters which were important in providing evidence to support the Respondents' opinion in light of the anomalies identified in certain client accounts.
33. Under SAE 200.10, the auditors should plan and conduct an assurance engagement with an attitude of professional skepticism. Further, pursuant to SAE 200.11, the auditors should have or obtain knowledge of the engagement circumstances sufficient to identify and understand the events, transactions and practices that may have a significant effect on the subject matter and engagement.
34. Complaints also are laid for the lack of documentation contravening SAE 200.15 and HKSAE 3000.
35. The term "anomalies" is not a legal term and has no legal definition; the Committee agrees that it refers to the account balances that are exceptional, inconsistent, unusual or out of line. In the present case the anomalies that the Complainant pointed at are the differences between the high receivable balances and the low market value of stocks held by Tiffit for some of its clients at the year end of 31 March 2003, 2004 and 2005.
36. In considering whether the Group 1 Complaints are substantiated, the first question is whether there were anomalies at all. It is not disputed by the parties that there were indeed differences between the high receivable balances and low market value of stocks for the

material clients at the material time. Neither is it disputed that Tiffit provided no margin-financing to its clients.

37. The Complainant contended that the amount of account receivables and value of securities held by Tiffit for those clients should have been similar but the great difference between the high account receivable balances and low market value of stocks suggested that a substantial portion of the related securities were not reflected in the stock accounts of the respective clients concerned.
38. The Respondents argued that these were not anomalies because HLB was aware of them at the time and the discrepancies could be explained. In the course of developing their case, the Respondents offered a few explanations in an attempt to justify that they were not anomalies despite the clear and big differences.
39. On the other hand, the Complainant objected generally to the Respondents' newly suggested explanations which were not to be seen from the working papers and documentation and further submitted that the anomalies should have raised red flags such that the Respondents should have investigated further in any event.

#### Loose Application of T+2 Rule

40. The first explanation suggested by the Respondents is that a securities broker such as Tiffit might have allowed some of its clients to settle their purchase costs outside of the usual two-business day time frame so that an amount receivable in a client's account might appear long outstanding (hereinafter referred to as "Loose Application of T+2 Rule"). This means that the increase of receivables from clients might have arisen from unsettled purchase costs with no underlying securities held, which in turn implies that Tiffit had in effect granted unsecured loans to those clients. The Respondents also suggested that Loose Application of the T+2 Rule was common and the SFC was aware of the same.
41. As a result of the Respondents' said understanding of the suggested Tiffit's said mode of business relating to Loose Application of the T+2 Rule, the Respondents focused their audit procedures in assessing the credit risk of Tiffit. The Respondents suggested that HLB's analysis of the 2003, 2004 and 2005 Reporting showed that there were corresponding sale transactions for the same quantity of

securities on the same or next business days for each transaction that gave rise to the amounts receivables for those clients. Therefore it was apparent to HLB that there was no anomaly at all.

42. The Respondents also asserted that Tiffit might have a practice of allowing cash clients to settle on a rolling balance basis or that Tiffit was in effect granting an unsecured loan to clients. Such explanations are in substance similar to the explanation of Loose Application of T+2 Rule and will be discussed together below.

#### Day Trading

43. The second explanation suggested by the Respondents is that some of Tiffit's clients were engaged in day trading whereby a client may purchase certain securities without settling the purchase costs and would later sell the same securities within the same day. This could result in the amount receivable from that client with no actual securities held ("Day Trading").
44. In the course of the proceeding and shortly before trial the Respondents sought to adduce additional 5 pages of working paper ("Additional Documents") to support their said explanations concerning Day Trading. The Complainant objected to the admissibility of this Additional Documents. The Committee reserved the question of admissibility and admit the same on de bene esse basis and heard oral evidence on that issue.

#### The Five Pages additional document ("Additional Documents")

45. The Additional Documents titled "Breakdown of accounts receivables for confirmation" consist of five pages, involve an analysis of the securities transactions undertaken by selected clients of Tiffit in the few days leading up to the year-end dates of 31 March 2003, 2004 and 2005.
46. The Additional Documents, if accepted, would provide some kind of a record to support the Respondents' explanations in relation to Day Trading.
47. The key issue for the Committee's decision in this context is whether on balance of probabilities the Additional Documents were contemporaneously made and kept when the relevant compliance

reporting work was done. If it is accepted that they were prepared and kept contemporaneously they should be accepted and due weight should be given to them. Otherwise, if the Committee is not satisfied with the above contemporaneity there being no other explanation proffered by the Respondents there will be no basis for the Additional Documents to be admitted.

48. The Respondents contended that the Additional Documents are part of the contemporaneous working papers prepared during HLB's engagements of the 2003, 2004 and 2005 Reporting and the information contained in the Additional Document was extracted from Tiffit's Monthly Client Statements.
49. The Complainant contended that the Additional Documents should not be admitted because the circumstantial evidence completely failed to demonstrate that they were contemporaneously made and kept at the material time of HLB's compliance reporting engagements. The Complainant pointed out that there was no reference within the four corners of the Additional Documents or anywhere else to show and thus it is unknown as to who made the Additional Documents, as well as how and when they were prepared. There are also no markings or cross references or notes on the Additional Documents, which in light of references of similar kind appearing in the other working papers in this case, the Additional Documents are odd one out.
50. Further, the Complainant submitted that the oral evidence given by Mr. Lai failed to provide any useful or concrete information as to the purpose of the Additional Documents and the above questions of who, how and when they were made. Mr. Lai's evidence was speculations only rather than actual knowledge derived from his involvement in the 2004 and 2005 Reporting.
51. The Complainant also complained about the late disclosure of the Additional Documents which cast doubts on whether they were indeed contemporaneously made and were part of the working papers. The Respondents had ample opportunities and time to locate and disclose the Additional Documents between 2007 and 2015, particularly after the investigation had begun and the Respondents were asked to explain. However, it was not until May 2016 that the Respondents suddenly disclosed the Additional Documents.

52. The Respondents asserted that the relevant staff member(s) who prepared the Additional Documents could no longer be identified but the Respondents submitted that the papers were prepared by HLB's staff.

### Day Trading

53. The Respondents later submitted their case would still be good even if the Additional Documents were not admitted. The Respondents sought to rely on the circularisation exercise in which the Respondents sent monthly statements to Tiffit's clients who confirmed and agreed the cash balance at the year-end dates. The Respondents submitted that the clients' confirmations and agreements indicated that the sale proceeds had been paid over to the clients and would reveal how and why the low stock balances had arisen. Together with other relevant documents, it is submitted that Tiffit's clients had in effect carried out Day Trading where the sale proceeds were paid to the clients on or before the year-end date but leaving the purchase costs of the securities outstanding beyond the year-end date. The Complainant disagreed and submitted that the clients' confirmations did not explain the discrepancies.
54. The Respondents further attempted to justify the Day Trading explanations and Loose Application of T+2 Rule by referring to the commercial motive of Tiffit in building up and maintaining the client relationship.

### The Circularisation Summary and Schedule G100

55. It is the Respondents' case that by looking at the available documents and also particularly Schedule G100<sup>1</sup>, inference can be drawn to support the explanations the Respondents provided, including the Loose Application of T+2 Rule and Day Trading.
56. The Circularisation Summary done in 2002 also comprised confirmation requests as well as monthly statements.
57. The relevant circularised clients agreed with the securities balance as at the year-end date. The circularised clients also agreed with the cash balance as at the year-end date indicating that the sales proceeds had been paid over to the clients.

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<sup>1</sup> B1/585 - 589

58. The Complainant submitted that the confirmations of securities and receivable balances did not explain the reasons for the substantial discrepancies in stock balances.

Internal Control Review

59. The Respondents also referred to the internal control review reports<sup>2</sup> where the Respondents were engaged by Tiffit to conduct the internal control review in December 2001 and a follow-up internal control review in April 2002 with their corresponding reports issued to Tiffit in December 2001 and April 2002.
60. The Respondents repeatedly submitted with emphasis that the internal control review reports served as background information only in support of their understanding of the operation of Tiffit, but not as part of the documentation of their compliance reporting work in the present case.

Discussion and Decision of Group 1

61. The discrepancies between the amount of account receivables and the market value of the stock holdings of Tiffit's clients are not insignificant and are unusual to put it at the least, crying out loud for an explanation. The Committee finds that there exist the anomalies which the Complainant asserts that the Respondents need to address at the time of the compliance reporting work. The sort of explanations now given by the Respondents could not be seen anywhere in any of the documentation in or accompanying the reports in the working papers.
62. Before discussing the plausibility of the explanations provided, it is important to note that the Committee is of the view that it is important to distinguish the explanations provided by the Respondents at the time of the compliance reporting work as documented, if any, from explanations provided by the Respondents only at the hearing by submissions. The latter only serves as hindsight that could only be taken into account if it is supported by contemporaneous documents or inferences from all the circumstances and established practice with commercial sense. In

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<sup>2</sup> B3/1804 - 1965

the absence of any contemporaneous documentation concerning the explanations for the anomalies the evidential burden for the Respondents to explain along the line above mentioned would be very difficult to discharge.

63. The Committee has examined all the documents and evidence provided by the parties. The Respondents have primarily focused on Schedule G100. Upon examination of G100 and other documents, the Committee agrees with and accepts the Complainant's submissions concerning G100. The Committee fails to find any reference in G100 relating to any of the explanations now submitted by the Respondents, including Day Trading or Loose Application of the T+2 Rule. From an objective reading of G100 it is simply a circularisation summary whereby the contents of the stock balances and account receivables were circularised to clients who confirmed the status of affairs at year end; but did not provide any explanations in terms of the Loose Application of T+2 Rule or Day Trading. These explanations are not reflected at all in G100.
64. The Committee bears in mind and agrees that the Respondents should conduct the assurance engagement with an attitude of professional skepticism in accordance with SAE 200.10. Such skepticism should have alerted the Respondents in light of the significant differences between the amount of account receivables and the market value of the stock holding which should [have drawn the Respondents' attention]. In any event there is no reference to or evidence in G100 in the context of identifying the anomalies [and making enquiries about the nature and seeking explanations for such items] in the documentation and working papers.
65. Furthermore, even if the Committee accepts that Tiffit was indeed operating on a Loose Application of T+2 Rule (which there is no evidence to that effect), the Committee considers that it does not adequately explain the anomalies since the discrepancies are too large. Even if the clients were allowed to settle later than 2 days, the stock prices need to have huge fluctuation at the time around the corresponding year-end date, namely 31 March, to result in such big discrepancies. Furthermore, such unusual happenings would have to take place in all the three years ended 31 March 2003, 2004 and 2005. The above is simply unreal, particularly when there is no evidence in support.

66. In relation to the Day Trading explanation, the Committee after thorough consideration of the testimony of Mr. Lai and all the relevant circumstances decides that it refuses to admit the Additional Documents sought to be adduced by the Respondents.
67. The late production of the Additional Documents, despite all the years lapsed and opportunities to produce them earlier than 2016, already throws doubts on the contemporaneity of the Additional Documents which the Respondents and Mr. Lai need to explain satisfactorily. The Committee finds the explanation of such late discovery of the Additional Documents which according to Mr. Lai should always been in the same working file of this engagement, unacceptable and hence rejects it. If the Respondents' case on explanations were really the thinking at the time of the compliance reporting work, the importance now attached by the Respondents to the Additional Documents would definitely have alerted the Respondents and they would have easily been discovered and relied on by the Respondents long before 2016 in the course of the investigation. The Additional Documents were allegedly kept in the working file which was not voluminous. The Committee finds the excuse of failing to discover them untrue and unacceptable.
68. Furthermore, Mr. Lai could neither assist nor be able to suggest in any concrete manner who made the Additional Documents, when they were made and how they got into the working file. As submitted by the Complainant to which the Committee agrees, it is surprising to note that there was a total absence of reference or note on the Additional Documents on any of the above. There is no cross reference to other working papers. The above features on their own are very unusual. The absence of such references or notes is compounded by the fact that in other working papers in the same engagement there were notes and cross references which are the usual way in such documentation in compliance reporting work and documentation. In conclusion on this point the Committee finds that the Respondents failed very badly to show that the Additional Documents are, on the balance of probabilities, contemporaneously made and kept. That being the case, the Committee is left with no evidence on how the Additional Documents came about. Hence, they are ruled inadmissible and rejected as evidence.
69. The Respondents submitted in the course of trial that even without the Additional Documents, other available documents would be



sufficient evidence to support the Respondents' explanations. The Committee however, finds that without the Additional Documents there is no concrete evidence to support the explanation of Day Trading.

70. There is no evidence of a practice of Day Trading by Tiffit to such a large scale as reflected in the anomalies at all. There is also simply no evidence from the documentation of the engagement and the working papers to support such scale of Day Trading. In the absence of such evidence the Respondents are purely conjecturing that there was such a practice. Furthermore, even if Day Trading can explain why the stock were not put into the accounts hence the low value of stock holding found; that does not explain why the accounts receivables have significantly increased and remain in the accounts and hence the significant anomalies.
71. Enquiry into and review of balance is part of the substantive compliance reporting work. The Respondents should have made enquiries and sought explanations from Tiffit and reported such work in the working papers in order to fulfil their responsibilities under the SAE 200.10.
72. In conclusion and by reason of the above analysis the Committee finds that the explanations now given by the Respondents at the trial are not supported by any evidence and are rejected. Furthermore, by failing to record any explanation with proper documentations the Respondents also failed to document matters to support their purported opinions and conclusions.
73. By reason of the above, the Committee concludes that Group 1 Complaints are established and the Respondents have acted in breach of the professional standards as charged.

#### Group 2 (Complaints 3, 4, 9, 10)

74. Group 2 complaints primarily concern whether the Respondents had obtained sufficient appropriate evidence and documented matters that were significant in providing evidence to support their conclusion that Tiffit complied with the relevant statutory requirements in relation to handling clients' money and securities.

75. There are two limbs in the charges of Group 2 complaints. The first limb concerns the lack of compliance test work on clients' trust accounts whereas the second limb concerns the deficiency of the test work relating to withdrawals of securities and the lack of evidence of sufficient tests performed by the Respondents to ensure that there were effective internal controls over the preparation of monthly statements.
76. Section 84 of the SO requires a securities dealer to hold all clients' money in designated accounts and the same shall remain there until being paid to clients. Similarly, Rule 4 of the Client Money Rules imposes similar requirements on securities dealer. It is alleged that the Respondents should have conducted appropriate and sufficient tests to ensure compliance of the SO or Client Money Rules by Tiffit and kept and included the corresponding evidence.
77. The most essential issue for these charges is whether the examinations conducted by the Respondents as reflected in the working papers were sufficient.

#### Limb 1

78. The first limb can be further analysed in two parts. The first concerns the lack of compliance test work for the 2003 Reporting and the second part concerns similar deficiency for the 2004 Reporting and 2005 Reporting.
79. In relation to the 2003 Reporting, there are complaints in three aspects in relation to the alleged lack of test work conducted:
  - a. The deposits of client monies into Trust Bank Account other than monies received from clients and The Central Clearing and Settlement System ("CCASS") in relation to the trading of securities,
  - b. Payments of monies out of Trust Bank Account; and
  - c. Prohibition of deposits of non-client monies into the Trust Bank Account.

#### The 2003 Reporting

80. The essence of the complaint is that the test work done by the Respondents in relation to the Trust Bank Account did not address

the core and important issue of whether there had been clients' monies not being paid to the Trust Bank Account.

81. The Respondents' case is basically that the audit procedures did cover the timely deposit of dividends received by Tiffit from CCASS into the Trust Bank Account.
82. The Respondents documented that tests had been performed to check money received from clients by tracing and checking for compliance with the selected samples from bank statements. It was also documented that the tests were conducted for money received from CCASS<sup>3</sup> where samples were selected from each month to trace the deposit of dividends received by Tiffit from CCASS into the Trust Bank Account. Also relying on the SFC Circularisation Exercise and the Year End Circularisation Exercise, the Respondents concluded that there were no irregularities in the Trust Bank Account.
83. The Respondents in the course of presenting the above explanations referred to Audit Test no. 3 and that the working paper refers to TB-3 which is not found in the HLB's composite files. However, the Respondents claimed that it could be inferred that TB-3 had in fact been prepared and existed because TB-1<sup>4</sup> and TB-2<sup>5</sup> which were the available documents relating to the Audit Test no. 3 on "12 bank receipts (monthly)" and "12 amounts payable (monthly)" were available in the working papers for the 2004 Reporting and 2005 Reporting.
84. The Respondents further claimed that TB-3 would show that the Respondents checked 12 dividend receipts (monthly). This included selecting one sample from each month on a judgmental basis, tracing the deposit of dividends received by Tiffit from CCASS into the Trust Bank Account and then to the related payments out of the Trust Bank Account to the respective clients.
85. As to the test work conducted for payments of monies out of Trust Bank Account, and Prohibition of deposits of non-client monies into the Trust Bank Account, the Respondents submitted that the TB-1 and TB-2 were done to check and confirm compliance with section 84 of the SO and the 4-day rule under which monies needed not be

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<sup>3</sup> Complainant's Bundle, Exhibit 1 Annex 1 page 225

<sup>4</sup> [B1/649]

<sup>5</sup> [B1/650]

deposited into the Trust Bank Account if the monies received from clients were used within 4 days of receipt.

86. The Complainant submitted that the samples of receipts of monies selected in TB-1 and TB-2 only checked whether the 4-day rule had been complied with and only involved Tiffit's account rather than the Trust Bank Account. Therefore the work done by the Respondents could neither test the payments of monies out of the Trust Bank Account nor whether non-client monies have been deposited into Trust Bank Account.

*The 2004 Reporting and 2005 Reporting*

87. In relation to the 2004 Reporting and 2005 Reporting, the essence of the complaints can be summarised into four aspects in relation to the allegation of lack of sufficient test work:
- a. Timely deposits of client monies other than dividends into the Trust Bank Account;
  - b. Prohibition of deposit of non-client monies into Trust Bank Account;
  - c. Client Authorisation and propriety of payments of monies out of Trust Bank Account; and
  - d. Proper record keeping of payments into and out of Trust Bank Account.
88. The Respondents relied on working paper T-30<sup>6</sup> for both the 2004 Reporting and 2005 Reporting. The Respondents submitted that working paper T-30 recorded that the Respondents have scrutinized the trust ledger account and Trust Bank Account, and found no non-client money was included.
89. The Complainant claimed that working paper T30 did not record the tests and procedures that were performed to ensure that the payments out of the Trust Bank Account were duly authorized by clients and for proper purposes.
90. Further, the Respondents argued that the working paper T-B<sup>7</sup> for the 2004 Reporting and the 2005 Reporting confirmed that the Client Money Rules were complied. The Complainant contended that

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<sup>6</sup> B2/973, 1348

<sup>7</sup> B2/977, 1352

working paper T-B was only able to show test work in respect of dividends having been received by Tiffit from CCASS only.

91. The Complainant also contested the Respondents' claim that the payments out of the Trust Bank Account were infrequent. The Complainant referred to working papers H18 for the 2004 Reporting<sup>8</sup> and H18 for the 2005 Reporting<sup>9</sup> to show that there were in fact 4 cheques made out on a day in 2004 and 19 cheques made out within a span of 5 days in 2005.

Limb 2

92. The complaint in limb 2 is basically that the test work conducted on withdrawals of securities was deficient. There is no evidence of tests performed by the Respondents to ensure effective internal controls over preparation and printings of the monthly statements issued by Tiffit to its clients.
93. The issue here is on the integrity and adequacy of the information, documents and materials that the Respondents used to support the conclusion and results of its tests.
94. The Complainant claimed there is a breach of SAE 200.14 and SAE 200.15 for the 2003 Reporting and the 2004 Reporting and paragraphs 33 and 42 of HKSAE 3000 for the 2005 Reporting. The relevant law here is section 81(4) and (5) of SO for 2003 which requires Tiffit not to deal with client securities held in its custody except with the authority of the client.
95. Further, it is the Complainant's case that the Respondents did not sufficiently ensure the completeness and accuracy of the population from which samples for the security withdrawal test was selected. As such, the tests carried out could not provide sufficient evidence of compliance with the control requirements on security withdrawals under section 81(4) of the SO for 2003 and section 10 of the Client Securities Rules for 2004 and 2005.
96. The Respondents submitted in defence that Tiffit's monthly statements which they selected and the relevant samples were reliable because the samples were checked against the CCASS

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<sup>8</sup> B2/954

<sup>9</sup> B2/1335

withdrawal records. The monthly statements were generated and printed from Tiffit's computer system with various security measures like lock and passwords as mentioned in the audit notes<sup>10</sup> and proved by the year-end Circularisation Exercise. The Respondents submitted that from the Internal Control Reviews it was shown that the Review was extensive and hence the Respondents were properly satisfied with Tiffit's system of internal controls. It was noted that the Respondents repeatedly submitted with emphasis that the internal control review reports served as background information only.

97. The Complainant in answer contended that checking a sample of security withdrawals selected from the statements to the CCASS withdrawal records did not provide sufficient evidence of the compliance aspects of Tiffit's security withdrawals.
98. Further, the Complainant submitted that the SFC circularisation exercise and the circularisation exercises for 2003, 2004 and 2005 only focused on testing client balances at a particular point in time and could not in any way provide evidence of compliance with statutory requirements during the whole of the reporting period.

#### Discussion and Decision of Group 2 Complaints

99. Proper keeping of trust money in compliance with the relevant rules and regulations is one of the most important considerations in the management and internal controls of the businesses of a security firm like Tiffit and it is essential to ensure that the trust money is well protected according to pertinent law and rules. The essence of the issue in limb 1 is whether the examinations conducted by the Respondents were sufficient.
100. The Committee shall deal with the complaints regarding the test work on the deposits of money into the Trust Bank Account for the 2003 Reporting.
101. The Respondents asked the Committee to consider the existence of TB-3 which proves that the relevant proper tests had been conducted. However, the Committee considers that it is far fetch to suggest that TB-3 did in fact exist when there is no evidence shown in the working papers itself and only inference is to be drawn from the

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<sup>10</sup> B1/265, 270 - 271

papers relating to 2004 Reporting and 2005 Reporting. One cannot simply make that inference which amounts to mere speculation, which it is not proper and the Committee refuses to do. Even if for the sake of complete analysis one assumes that TB-3 does exist for the 2003 Reporting, it would only have shown tests on the incomings and outgoings of dividends over the 12 months in the year ended 31 March 2003. The available documents and evidence do not show tests having been carried out in relation to balances and account movements unrelated to dividends in the Trust Bank Account.

102. Furthermore, there are other areas in relation to the segregation of clients' monies and non-client monies that the Respondents should have taken account in the course of the work. The essence of the relevant rules and regulations is that all clients' monies should be dealt with and accounted for in the Trust Bank Account. The Respondents by simply focussing on and looking at the outgoings and incomings of the Trust Bank Account would not be able to see whether the clients' money has been paid into other different accounts, i.e. non-trust account.
103. The importance of proper segregation of clients' monies and non-clients' monies in Tiffit's business cannot be overstated. The tests purportedly conducted by the Respondents were flawed in that they could not result in any credible and relevant evidence as to whether clients' money had gone into some other accounts.
104. In relation to the test work done in respect of payments of monies out of the Trust Bank Account and deposit of non-client monies into the Trust Bank Account, the Respondents relied heavily on TB-1 and TB-2. After examining the available documents and evidence carefully, the Committee agrees with the Complainant's submission that TB-1 and TB-2 focussed on testing the compliance of the 4-day rule and they relate neither to payments out of nor deposits into the Trust Bank Accounts. In the premises TB-1 and TB-2 do not support the Respondents' contention in the context of the issue.
105. In the premises, we find that the tests conducted by the Respondents were not sufficient to entitle the Respondents to opine Tiffit's compliance of the SO or Client Money Rules in handling client money and securities and the Respondents' conclusion in the reports.

106. As to the limb 2 issue, the essence of the issue is whether the documents can be reconciled, compared and matched with any third party independent documents. In other words, the integrity of the documents has to be established based on the work done by the Respondents for compliance reporting purposes. In order to assess integrity, one need to examine whether the documents can be reconciled, compared and matched with third party independent documents. In this regard, the Respondents relied on checking Tiffit's monthly statements against the CCASS withdrawal records which the Respondents assert were third party independent documents.
107. However, the Committee finds that there is a fundamental flaw in the said Respondents' argument. The Committee agrees with the Complainant's submission that by looking at the CCASS record<sup>11</sup>, though they are from a third party, it only showed the total figure of each stock held by Tiffit but not the stock held at the time by individual clients. By such exercise the Respondents could not compare the figures in the accounts of individual clients. In order to properly discharge their duties further and alternative tests had to be done such that the above purpose was accomplished before any conclusion could be drawn on the integrity of Tiffit's system in the context.
108. The Respondents relied on the circularisation exercise where clients were to confirm their shareholdings, outstanding account balances and cash held in trust on their behalf by Tiffit at the year-end dates. The Committee needs to consider whether confirmation from clients in this regard would support the integrity of the system. However, the working papers do now show what was indeed circularised to the clients. The shareholdings and account balances of individual clients were generated from Tiffit's computer systems and not reconciled to independent sources of information. There was insufficient evidence of authentication by the Respondents on the clients' signature and addresses on the circularised account balances.
109. The Respondents also asserted that the Complainant was basing their arguments on hypothetical fraud situation, which was not the proper way to test the matter. The Committee does not agree with the said submission. As submitted by the Complainant, to which the Committee agrees, the whole point of the exercise on compliance of

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<sup>11</sup> B1/562-584



the rules and regulations is to test and then present in the reports on whether there is sufficient evidence upon the testing that there were adequate systems and internal controls operated by Tiffit to ensure the compliance. The above objective would necessarily entail a notion of preventing fraud being perpetrated by persons within or outside of Tiffit. It is from the above proper perspective that the compliance reporting work is to be done and the charges are to be enquired. Logically speaking even if proper compliance reporting work is conducted that will not completely rule out any possibility of fraud. On the other hand if adequate tests are conducted during work on compliance reporting, it will enhance the confidence of the public and clients of the security dealer that the chances of fraud are low. From the above analysis, the arguments relating eliminating fraud and looking at the matter from “hypothetical fraud situation” are misconceived. All that matters in the present context is whether sufficiently proper tests had been conducted by the Respondents. The Committee therefore dismisses the submissions of the Respondents in relation to reference to “fraud”, which is of no assistance at all to the proper resolution of the substantiation of the charges.

110. For the above reasons, the Committee finds that relying principally on circularisation exercises is not sufficient because the tests only dealt with the balances at the year end. Further, the Committee finds that the purported checking samples of security withdrawals selected from the statements to the CCASS withdrawal records did not provide sufficient evidence of the compliance aspects of Tiffit’s security withdrawals. The other arguments and defence of the Respondents are also dismissed. In the premises, the Committee agrees with the Complainant’s contentions and concludes that the Respondents have failed to discharge their duties and relevant standards before giving their unqualified opinion in the compliance reports and failed to document sufficiently in the course of their work and hence all the Group 2 Complaints are proved.

#### Group 3 (Complaints 5, 6, 11, 12)

111. Group 3 complaints concern whether the Respondents obtained sufficient and appropriate evidence and documented matters which were significant in providing evidence to support their conclusion

that Tiffit had complied with statutory requirements on keeping adequate records of securities held on behalf of clients.

112. The Respondents carried out the Year-End circularisation exercise where samples were selected for an external confirmation exercise in testing for the compliance reporting of Tiffit for the years ended 31 March 2003, 2004 and 2005.
113. The essence of the Complainant's complaints is that the circularisation exercise performed by the Respondents failed to provide sufficient evidence to support the conclusion that the Tiffit had kept proper records of client security balances in compliance with section 83(3) of the SO for the 2003 Reporting and section 3 of the Keeping of Records Rules for the 2004 Reporting and 2005 Reporting.
114. The Complainant submitted that the sample size for external client confirmation was far too low. The samples chosen were not representative of Tiffit's clients in that the clients chosen had relatively no or low stock holdings.
115. The Respondents in defence of this group of charges argued that the size of the samples is a matter for the professional judgment of the Respondents and there is no specific guidance on the size of the samples. The Respondents submitted that a sample of 10% of the total value of securities held by Tiffit was sufficient. Further, the Respondents submitted that the circularisation exercises conducted were sufficient and the Respondents had maintained independence in the confirmation process.
116. There are also complaints about the inadequacy of follow-up work in respect of the non-replied confirmations given which were of significant high percentages for the relevant years ended 31 March 2003, 2004 and 2005 (For 2003: 22 non replies out of 63 confirmations requests sent<sup>12</sup>; for 2004<sup>13</sup>: 22 non replies out of 43 confirmations; for 2005: 7 out of 22 confirmations requests sent<sup>14</sup>). The Complainant also pointed out that there were discrepancies in a number of accounts where the balances in the clients' confirmations

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<sup>12</sup> B1/585 - 589

<sup>13</sup> B2/926 - 931

<sup>14</sup> B2/1303 - 1307

were different from Tiffit's records and follow-up actions should have been taken by the Respondents.

117. The Respondents submitted that the non-replied clients were either having nil cash and nil securities balance or had held securities with value where the Respondents tested and cross checked with Tiffit's Stock Distribution Report. The Respondents also claimed to have done a telephone follow-up for the reply although the same was not documented.
118. The parties identified some specific discrepancies. For the 2003 Reporting, clients #4<sup>15</sup> and #50<sup>16</sup> confirmed a "Nil balance" though they actually were holding securities. The Complainant submitted that this was not immaterial given the value of the stock holdings was around HK\$60,000. The Respondents explained that the discrepancies were not apparent or material because the total quantities of stocks as per Tiffit's Stock Distribution Report actually reconciled with total quantities of stocks as per CCASS Stock Balance Report. The Clients' securities as shown in the monthly statement also were cross checked to Tiffit's Stock Distribution Report.
119. For the 2004 Reporting, some clients also confirmed nil balance of securities but Tiffit's records show that Tiffit was actually holding securities for them. The Respondents submitted that the stock holdings had zero value. The Complainant submitted that there was no independent evidence showing the value of these stock holdings as at 31 March 2014 when the CCASS Stock Balance Report<sup>17</sup> only showed the quantity of stocks held but not the actual value of such stock holdings.

### Discussion and Decision of Group 3

120. This group of charges is relatively simpler. While on the face of the documents there are clearly unresolved discrepancies which support the charges, the Respondents' defence mainly rests on the confirmation exercises conducted from the circularisation for the three years.

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<sup>15</sup> B1/592

<sup>16</sup> B1/624

<sup>17</sup> B2/831, B3/842

121. The issue therefore is whether the said exercises conducted by the Respondents, in light of the discrepancies and non-replies, can serve as adequate evidence to support conclusion of the Respondents that Tiffit had duly complied with the rules concerning SO/SFO regarding keeping of proper and adequate records of client securities.
122. The Committee is aware that there is a certain level of discretion given to the professional judgment of the auditor for selecting the size of the samples, as could be seen in the Guideline 3.404 §9(e) which states that “the sample size for circularization should be determined by the auditor”. However, having considered all the evidence and circumstances the Committee finds that the Respondents’ choice of samples are far from satisfactory and proper, particularly when there is no document to show that there is any other tests carried out to address the accuracy of client securities balances for the purpose of reporting on proper keeping of records.
123. More importantly, the Committee finds that the circularisation exercise undertaken and the samples selected for the confirmation exercise only examined the account receivables at the year end only. They did not take into account the likely event that the relevant clients could well have had large volume trading during the rest of the time of the whole year but only had low levels at year end (as to which there is simply no evidence that could be seen from the working papers). Even if the Respondents did check with the independent sources like the CCASS Stock Balance Report, it still only confirmed the balance at the year end. The above defect was a very serious one in the sampling process of the Respondents.
124. Furthermore, there is quite a high percentage of discrepancies and non-replies for the said three years. The three discrepancies found in the 2004 Reporting where the stock value was zero but Tiffit was in fact holding securities for them which the Respondents should carry out further work to investigate the relevant discrepancies and document the work done and results.
125. For the above reasons it is quite apparent that there is not enough evidence to support the Respondents’ conclusion that Tiffit had good compliance concerning the keeping of records. The Respondents should, with professional scepticism, have investigated and did further tests to obtain further evidence to support Tiffit’s compliance

with the statutory requirements and had adequately documented the evidence. In the premises, the Committee concludes that the Group 3 Complaints are substantiated.

#### Further Comments

126. In light of the numerous written and oral submissions made by both parties both before and during the trial it is impossible for the Committee to exhaustively set out every point raised and all evidence referred to. The essential arguments and submissions have been set out in this Decision which the Committee considers sufficient for the Charges to be resolved. In the circumstances the Committee does not recite all the points of submissions made by the parties in the present Decision. However, the Committee would make clear that it has considered all of the said submissions and all relevant evidence presented in the present case before making the Decision herein.
127. Furthermore, in the course of the trial, points were taken as to the scope of the Complaints. After due consideration we find that the allegations made by the Complainant and evidence presented in proof thereof fall within the ambit of the Complaints and there is nothing which would have taken the Respondents or their legal team by surprise. The Respondents were able to and have thoroughly dealt with the said allegations in defence. There is in any event no prejudice to the Respondents.

#### Conclusion

128. In light of the reasons above, the Committee concludes that all 12 complaints are established against the respective Respondents.

#### Orders and Directions

129. The Committee makes the following orders and directions,
- (1) All the 12 Complaints are proved against the respective Respondents;

- (2) The Complainant shall file and serve a written submission on sanctions and application for costs together with a statement of costs, if any, within 7 days of the service of this Decision;
- (3) The Respondents shall file and serve a written submission on sanctions and why costs should not be ordered against the Respondents and on the Complainant's statement of costs within 7 days of service of the Complainant's said written submission under paragraph (2); and
- (4) The parties are at liberty to apply for any further directions in writing to the Committee.

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Mr. Shum, Sze Man, Erik Ignatius  
Chairman

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Mr. Fung, Wei Lung, Brian  
Member

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Mr. Chan, Wai Tong, Christopher  
Member

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Ms. Yu, Ho Wun, Grace  
Member

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Dr. Kam, Pok Man  
Member

Ms. Sara Tong, Counsel instructed by solicitors Messrs. Reed Smith Richards Butler, for the Complainant

Mr. Johnny Ma, Counsel instructed by solicitors Messrs. Smyth & Co, for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

IN THE MATTER OF

Complaints made under section 42C(1) of the  
Professional Accountants Ordinance (Cap. 50)

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BETWEEN

An Investigation Committee of HKICPA      Complainant

AND

HLB Hodgson Impey Cheng (#0495)      1<sup>st</sup> Respondent

Mr. Cheng Chung Ching, Raymond (F04820) 2<sup>nd</sup> Respondent

Mr. Lai Tak Shing, Jonathan (F05358)      3<sup>rd</sup> Respondent

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Disciplinary Committee:

Mr. Shum, Sze Man, Erik Ignatius (Chairman)

Mr. Fung, Wei Lung, Brian

Ms. Yu, Ho Wun, Grace

Mr. Chan, Wai Tong, Christopher

Dr. Kam, Pok Man

Date of Decision on Sanctions and Costs:    6 April      2018



## DECISION ON SANCTIONS AND COSTS

### Introduction

1. The Committee delivered its Decision as to liability on 19 January 2018. In the last part of the Decision after finding that all 12 Complaints were proved against the respective Respondents, the parties were directed to file their written submissions on sanctions and costs. The Complainant filed its written submissions and statement of costs dated 30 January 2018 whereas the Respondents filed their written submissions dated 23 February 2018.
  
2. The following is the unanimous decision of the Committee on sanctions and costs.

### Sanctions

3. The Committee has considered all the submissions made by the parties and does not propose to set out herein all the submissions made. It suffices to state that generally the parties do not dispute the proper approach of the Committee in deciding the appropriate sanctions as set out in paragraphs 2 to 10 of the Complainant's written submissions. The Complainant submitted that the present case falls within either the "serious" or "very serious" categories while the Respondents submitted that the case should fall within the "moderately serious" category. As against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents the Complainant suggested that the sanction should be "cancellation of their practising certificates and/or temporary removal from the Register" whereas the sanction against each of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents should be a financial penalty. The

Respondents submitted that the appropriate sanctions should be firstly, an order of reprimand against all Respondents and secondly, a global fine of \$400,000 to be distributed as follows: \$200,000 against the 1<sup>st</sup> Respondent; \$75,000 against the 2<sup>nd</sup> Respondent and \$125,000 against the 3<sup>rd</sup> Respondent.

4. The Committee acknowledges that every case of professional misconduct is different on facts and circumstances such that the previous decisions as to sanctions imposed are of reference value only. The Committee agrees with the Complainant's submission that the Committee has a wide discretion in deciding on appropriate sanctions and the Respondents' submission as reflected in the Court's decision in Registrar of the Hong Kong Institute of Certified Public Accountants v Leung Kam Man Victor (CACV 37/2016, unreported judgment on 17 January 2017) that the Committee has a margin of discretion in deciding the appropriate sanction to maintain the standards of the profession.
5. In deciding the appropriate sanctions to be imposed the Committee agrees that although there were 12 disciplinary charges established in which they could be classified into three broad categories as stated in the Decision on liability, some of the charges can be viewed as connected to one another. Charges 1 and 2 are connected; charges 3 and 4 are connected; charges 5 and 6 are connected; charges 7 and 8 are connected; charges 9 and 10 are connected; charges 11 and 12 are connected. In each of the above pairs of charges the former charges are substantive in nature in that they relate to the Respondents' failure to meet or breaching the

professional standards or rules whereas the latter charges in each pair relate to the corresponding failure to properly document matters in providing evidence in the working papers in respect of the same matter of the former charges. The Committee considers that it is not appropriate to increase the gravity of each pair of charges in any significant way due to the presence of the latter charges. Further, the total number of charges though on record is 12 (against different Respondents for different charges except the 1<sup>st</sup> corporate Respondent who faces all 12 charges), the essence of the charges against each Respondent for the purpose of sanction may be considered to be not much different from one half of the recorded charges, i.e. six pairs of charges against the 1<sup>st</sup> Respondent; three pairs of charges against the 2<sup>nd</sup> Respondent (for one year of work in the 2003 report); three pairs of charges against the 3<sup>rd</sup> Respondent (for two years of work in the 2004 and 2005 reports).

6. The Committee also notes that the charges spread over three years of work relating to Tiffit in 2003, 2004 and 2005 of the Respondents. The 1<sup>st</sup> corporate Respondent was responsible for all three years whereas the 2<sup>nd</sup> Respondent was responsible for work for the report of 2003 and the 3<sup>rd</sup> Respondent was responsible for work for the reports in 2004 and 2005. In that above sense the culpability of the 3<sup>rd</sup> Respondent is more than that of the 2<sup>nd</sup> Respondent.
7. By reason of the fact that with two different partners conducting and signing the compliance report of one client in respect of which

compliance assurance work not meeting the then applicable professional standards was identified, it suggests a likely lack of proper supervision and control over work quality within the 1<sup>st</sup> Respondent which is evidently not a one-off lapse in work quality control. However, on the other hand the case concerns only one client of the 1<sup>st</sup> Respondent and nothing had come to the attention of the Committee based on various submissions received which suggest that the defects in the 1<sup>st</sup> Respondent practice in the present case pertain to a more wide spread issue in 1<sup>st</sup> Respondent's practice.

8. It is also true, as suggested by the Respondents, that the submissions and related documents have not highlighted any instances of financial loss suffered by any clients of Tiffit as a direct result of the sub-standard work of the Respondents. In the absence of any evidence to the above effect the Committee members focused their deliberation on the Complainant's submission that the work of the Respondents has undermined the integrity and reputation of the accounting profession, as well as public and stakeholders and investors' confidence in professional accountants' work which is one of the cornerstones of economic success of Hong Kong's business community, particularly that of the finance sector in Hong Kong. The above underpins the main concerns of the Committee in relation to the established charges.
9. The Committee agrees with the Respondents' submission that there is no evidence of ethical issues, dishonesty or is there any evidence indicating deceit or undue personal gain involved in the present

case. The essence of the nature of the charges has been set out in the earlier Decision of the Committee in the Decision on liability. The conduct of the Respondents, which can primarily be attributable to a lack of competence to perform the compliance-reporting work in accordance with the applicable professional standards, is also summarized in paragraph 12 of the Complainant's written submissions on sanction, to which the Committee agrees. The above, which represents the sting of the conduct of rendering sub-standard work in the Respondents' capacity as professional accounting firm and accountants, is quite different from conduct which implicates integrity, lack of good faith and dishonesty.

10. Whether the professional charges in the total amount of \$140,120 for the three years of work which can be viewed as modest and might constitute a factor attributable to the lower work quality, the Committee does not consider that it would in any event vindicate the related charges. The above fee revenue received by the Respondents is, however, a factor to be taken into account by the Committee on sanctions in that it was not excessive.
11. The Complainant refers to a number of factors pertaining to the Respondents' and their legal representatives' conduct in the course of the investigation conducted by the Institute over the years for the Committee's consideration. They include the late introduction of the Additional Documents despite more than sufficient opportunity for the Respondents to rely on them for years during the investigation period when the Respondents were asked to

explain (paragraph 13 of the Complainant's written submissions); the Respondents' failure to make any admissions of the charges during the investigation and at trial (paragraph 22 of the Complainant's written submissions); the Respondents were highly obstructive in the course of the investigation. More specifically, steps taken by the Respondents included the issue of a writ by the 1<sup>st</sup> corporate Respondent against members of the Investigation Committee on 11 September 2015 in HCA 2107 of 2015 alleging breach of duty owed by the defendants to the 1<sup>st</sup> Respondent though such writ was never served on members of the Investigation Committee but was sent by the 1<sup>st</sup> Respondent's solicitors to the Council on 14 September 2015. Finally the writ was discontinued. Such conduct of the 1<sup>st</sup> Respondent was said by the Complainant to be an attempt to intimidate the Investigation Committee to withdraw its findings and conclusion on the eve of the Council's deliberation of the case (paragraph 23 of the Complainant's written submissions). These acts of the Respondents are in the view of the Committee unreasonable and unrespectful to the Council's decisions on the investigation proceedings and unwarranted.

12. The Committee agrees that the above conduct of the Respondents shows that the Respondents had no insight of their sub-standard professional work, refused to make any admission and persisted in unmeritorious defence and conducted their defence relying on very lately introduced Additional Documents which were suspicious. However, the Committee considers that the Respondents do have the right not to admit to the disciplinary charges both in the course

of investigation and at the disciplinary proceeding. The sanctions to be imposed should be based on the charges themselves and their nature and consequences, but not on the conduct of the Respondents after the commission of the disciplinary charges back in 2003 to 2005. The said conduct, however, would be taken into account when the Committee considers the costs order.

13. Further, the conduct of the 1<sup>st</sup> Respondent as to the issue of the Writ and how it made use of it against members of the Investigation Committee is particularly deplorable in the view of the Committee. Again, however, the Committee will similarly not take that incident into account in deciding sanctions but will take that conduct into account when it comes to imposing any costs order against the 1<sup>st</sup> Respondent.
14. The Committee takes into account the fact that none of the Respondents have any previous disciplinary record, and voluntary services the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents rendered to society and the profession, and that they are breadwinners of their respective families, in considering mitigation factors.
15. Lastly, the Committee takes into account also the totality principle having regard to individual charges established against each Respondent, the gravity of individual charge and cumulative effect of them and the ultimate sanction to be imposed on each of the Respondents.

16. Having considered and balanced all the above matters and the submissions of parties the Committee finds that the case against the Respondents falls within the category of “serious” and towards its lower end. It is set out in details in the disciplinary proceedings papers of the Institute that the sanctions to be imposed under this category are (a) reprimand, and/or (b) financial penalty up to the maximum of \$500,000 for each Respondent; and/or cancellation of practising certificate; and/or (c) temporary removal from the Register, and this is not a point in dispute between the parties.
17. The Committee, having considered all the previous disciplinary decisions referred to by the parties and the reasons given hereinabove, concludes that the appropriate sanctions to be imposed on the Respondents are as follows,

Against the 1<sup>st</sup> Respondent,

“Reprimand and a financial penalty of \$400,000”.

Against the 2<sup>nd</sup> Respondent,

“Reprimand and a financial penalty of \$300,000”.

Against the 3<sup>rd</sup> Respondent,

“Reprimand and a financial penalty of \$300,000”.

#### Costs

18. The Committee finds that there is no reason not to impose an order for the Respondents to pay costs to the Complainant and for the investigation and the present disciplinary proceedings according to



the usual rule of costs to follow the event. The Respondents do not submit otherwise but dispute various items in the Statement of Costs submitted by the Complainant and the overall total costs.

19. The Committee in principle agrees with paragraphs 50.4 and 50.5 of the Respondents' written submissions. For the costs relating to the witness statement which is not used (and the witness did not give evidence at trial) should be deducted from the Complainant's costs though the amount would not be much in the context of the total costs in the Statement of Costs. The legal proceeding of the said Writ issued by the 1<sup>st</sup> Respondent was withdrawn by consent of the parties and no demand or application was made by the Complainant there and then to the Court as to costs. Such costs, if desired by the Complainant to be recovered from the 1<sup>st</sup> Respondent, should have been made to the Court in the legal action and should not be made subsequently in the present disciplinary proceeding or any other proceeding. Therefore, the amount of \$141,088.50 (item D in the Statement of Costs) is deducted from the total costs of \$4,003,360.91 making a balance of \$3,862,272.41.
  
20. The Committee disagrees with the submissions of the Respondents made in paragraphs 50.1, 50.2 and 50.3 of the Respondents' written submissions. In this regard the Committee refers to paragraphs 11 to 13 hereinabove and finds that the Respondents' conduct in the course of the investigation and disciplinary proceeding has resulted in the incurrence of costs of the Complainant and necessitated the engagement of huge amount of manpower and work including in-house and legal professional

personnel and Counsel, which is necessary in light of the uncooperative attitude of the Respondents and the maintenance of unmeritorious defence throughout. The introduction of the Additional Documents before trial and the pertaining evidence given by the 3<sup>rd</sup> Respondent which were rejected by the Committee and the Writ issued by the 1<sup>st</sup> Respondent not only failed to assist the Respondents' defence, they only go to show that the Respondents failed to appreciate where and how they failed in meeting the professional standards in their work conducted for their client nor the negative implications for the profession as a whole. The attitude and conduct of the Respondents gave rise to various issues which resulted in the processes of investigation and disciplinary proceeding taking years to be completed, and hence huge costs incurred on both sides.

21. The Committee finds that there is no serious duplication of work required from the Complainant as a result of unreasonableness in the items complained of by the Respondents in the above paragraphs.
  
22. Upon reviewing the whole of the Statement of Costs and taking a broad brush approach without going into detail of the items of expenses, the Committee members have unanimously agreed upon making a discount of 20% out of the said reduced sum of \$3,862,272.41 resulting in the sum of \$3,089,818, rounded to \$3,000,000.00, which is the total costs which the Respondents should pay jointly and severally as costs.

23. In the premises, the Committee makes an order in terms of paragraphs 17 and 22 hereinabove.
  
24. It remains for the Committee to thank Counsel for the Complainant and Counsel for the Respondents for their assistance in the proceedings.

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Mr. Shum, Sze Man, Erik Ignatius  
Chairman

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Mr. Fung, Wei Lung, Brian  
Member

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Mr. Chan, Wai Tong, Christopher  
Member

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Ms. Yu, Ho Wun, Grace  
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Ms. Sara Tong, Counsel instructed by solicitors Messrs. Reed Smith  
Richards Butler, for the Complainant

Mr. Johnny Ma, Counsel instructed by solicitors Messrs. Smyth & Co,  
for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents