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 certified public accountant and a certified public accountant (practising)

(HONG KONG, 3 September 2019) A Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants ("the Institute") reprimanded Mr. Chan Bing Chung, certified public accountant (A17643) and Miss Chan Wai Ling, certified public accountant (practising) (A03188) on 25 July 2019 for their failure or neglect to observe, maintain or otherwise apply professional standards issued by the Institute. The Committee ordered that a practising certificate shall not be issued to Mr. Chan for two years with effect from 5 January 2019, backdated to follow a previous disciplinary order restricting his ability to hold a certificate. The Committee also ordered that Miss Chan pay a penalty of HK$50,000. Further, the Committee ordered Mr. Chan and Miss Chan to pay costs of the Institute of HK$80,568.50 and HK$25,648.50 respectively, and they equally share the costs of the Financial Reporting Council ("FRC") of HK$20,095.60.

Mr. Chan was the sole proprietor of a firm, JP Union & Co., which is now de-registered. The firm audited the consolidated financial statements of South Sea Petroleum Holdings Limited, a Hong Kong listed company, and its subsidiaries (collectively "Group") for the year ended 31 December 2013 and expressed an unmodified auditor's opinion. Miss Chan was the engagement quality control reviewer ("EQCR") of the audit.

The Institute received a referral from the FRC about audit irregularities. The Group entered into a transaction to sell graphite ore which allowed the buyer to settle the payment by interest-free instalments over a period of 10 years. Such a deferred payment arrangement constituted a financing transaction under Hong Kong Accounting Standard 18 *Revenue*. Notwithstanding this, the Group recognized the revenue and trade receivable of the transaction at invoiced amount without taking into account the discounting effect of the transaction.

In their audit, the respondents failed to identify non-compliance with the relevant accounting standard resulting from the Group's treatment of the transaction. Mr. Chan failed to communicate to the audit committee his views on the qualitative aspects of the transaction, which involved significant judgement and estimation. Furthermore, Miss Chan performed certain audit work and reported her work to Mr. Chan. This impacted her independence as the EQCR.

After considering the information available, the Institute lodged a complaint under section 34(1)(a)(vi) of the Professional Accountants Ordinance (Cap 50).

Miss Chan admitted the complaint against her while Mr. Chan denied the complaint. The Disciplinary Committee found as follows:

(i) Mr. Chan failed or neglected to observe, maintain or otherwise apply the following professional standards:

- Hong Kong Standard on Auditing ("HKSA") 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Hong Kong Standards on Auditing*;
- HKSA 260 *Communication with Those Charged with Governance*;
- HKSA 540 *Auditing Accounting Estimates Including Fair Value Accounting Estimates, and Related Disclosures*; and
- HKSA 700 *Forming an Opinion and Reporting on Financial Statements*.

(ii) Both Mr. Chan and Miss Chan failed or neglected to observe, maintain or otherwise apply HKSA 220 *Quality Control for an Audit of Financial Statements*, and the fundamental principle of Professional Competence and Due Care in sections 100.5(c) and 130.1 of the Code of Ethics for Professional Accountants in conducting their duties as engagement partner and EQCR respectively.

Having taken into account the circumstances of the case, the Disciplinary Committee made the above order against the respondents under section 35(1) of the ordinance. The Committee noted Mr. Chan's submissions pertaining to this case showed his clear lack of understanding of the relevant accounting requirements and the role of an EQCR. The Committee further considered the fact that Mr. Chan had a past disciplinary record in relation to a listed company's audit was an indication of his continuing lack of professional competence.

About HKICPA Disciplinary Process

The Hong Kong Institute of Certified Public Accountants ("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/

- End -

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 44,000 members and 17,100 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.

Hong Kong Institute of CPAs' contact information:

Ms Gemma Ho
Public Relations Manager
Phone: 2287-7002
Email: gemmaho@hkicpa.org.hk

Ms Rachel So
Head of Corporate Communications and Member Services
Phone: 2287-7085
Email: rachelso@hkicpa.org.hk

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

香港會計師公會對一名會計師及一名執業會計師作出紀律處分

（香港，二零一九年九月三日）香港會計師公會轄下一紀律委員會，於二零一九年七月二十五日就會計師陳秉中先生（會員編號：A17643）及執業會計師陳惠玲小姐（會員編號：A03188）沒有或忽略遵守、維持或以其他方式應用公會頒佈的專業準則，對他們作出譴責。紀律委員會命令由二零一九年一月五日起兩年內不向陳先生發出執業證書（追溯至先前另一項不獲發執業證書命令的期限）。紀律委員會亦命令陳小姐須繳付罰款 50,000 港元。此外，紀律委員會命令陳先生及陳小姐須分別繳付公會的費用 80,568.50 港元及 25,648.50 港元，以及共同繳付財務匯報局（「財匯局」）的費用 20,095.60 港元。

陳先生曾是中順聯合會計師事務所（現已撤銷註冊）的獨資經營者。該事務所曾審計香港上市公司南海石油控股有限公司及其附屬公司（統稱為「該集團」）截至二零一三年十二月三十一日止年度的綜合財務報表，並發表了無保留的核數師意見。陳小姐是該審計項目的質量控制覆核人。

公會收到財匯局的轉介，指該審計項目有違規情況。該集團曾訂立一項銷售石墨礦的交易，該交易容許買家免息分期在十年內付清貨款。此延期付款安排構成 Hong Kong Accounting Standard 第 18 號「Revenue」所述的融資交易。惟該集團沒有考慮到該交易的貼現影響，將該交易按發票金額入賬為收入及應收賬款。

答辯人在進行審計時，未有發現該集團在處理該交易時違反了相關會計準則。陳先生沒有向審核委員會表達他對該交易所屬性質的意見，當中涉及重大判斷及估計。此外，陳小姐曾進行部分審計工作並向陳先生報告。此做法會影響陳小姐作為質量控制覆核人的獨立性。

公會考慮所得資料後，根據香港法例第 50 章《專業會計師條例》第 34(1)(a)(vi)條作出投訴。

陳小姐承認投訴屬實，而陳先生則否認投訴。紀律委員會裁定：

(i) 陳先生沒有或忽略遵守、維持或以其他方式應用以下的專業準則：

- Hong Kong Standard on Auditing（「HKSA」）200「Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Hong Kong Standards on Auditing」；
- HKSA 260「Communication with Those Charged with Governance」；
- HKSA 540「Auditing Accounting Estimates Including Fair Value Accounting Estimates, and Related Disclosures」；及

- HKSA 700 「Forming an Opinion and Reporting on Financial Statements」。

(ii) 陳先生及陳小姐分別在履行審計項目合夥人及質量控制覆核人的職責時，沒有或忽略遵守、維持或以其他方式應用 HKSA 220「Quality Control for an Audit of Financial Statements」及 Code of Ethics for Professional Accountants 內第 100.5(c)及 130.1 條有關「Professional Competence and Due Care」的基本原則。

經考慮有關情況後，紀律委員會根據《專業會計師條例》第 35(1)條向答辯人作出上述命令。委員會從陳先生就個案所作的陳述，注意到他對相關會計規定及質量控制覆核人的角色明顯缺乏認識。委員會亦注意到陳先生過往曾因一間上市公司的審計項目被紀律處分，顯示他仍缺乏專業能力。

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/

– 完 –

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 44,000 名，學生人數逾 17,100。

公會開辦專業資格課程，確保會計師的入職質素，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。

香港會計師公會聯絡資料：

何玉渟女士
公共關係經理
直線電話：2287-7002
電子郵箱：gemmaho@hkicpa.org.hk

蘇煥娟女士
企業傳訊及會員事務主管
直線電話：2287-7085
電子郵箱：rachelso@hkicpa.org.hk

IN THE MATTER OF

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

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants	COMPLAINANT

AND

Chan Bing Chung Membership No. A17643 Chan Wai Ling Membership No. A03188	RESPONDENTS

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

Members: Ms. Lam Ding Wan Catrina (Chairman)
Ms. Chan Lai Yee
Ms. Chang See Mun Lily
Mr. Ip Chiu Yin Eddie
Mr. Li Po Ting Peter

Date of Hearing: 6 December 2018

REASONS FOR DECISION

Section A - INTRODUCTION

1. The complaints against the Respondents relate to alleged breaches of financial reporting standards and auditing irregularities in the consolidated financial statements of South Sea Petroleum Holdings Limited ("**Company**") and its subsidiaries (collectively, "**Group**") for the year ended 31 December 2013 ("**2013 Financial Statements**") in respect of a sale transaction in which the Company's wholly owned subsidiary, Global Select Limited ("**GSL**"), sold 33.45 million metric tons of graphite ore to a customer ("**PML**") at US$7.90 per metric ton, totalling US$264,255,000 ("**Transaction**").

2. The Company was incorporated in Hong Kong and its shares are listed on the Main Board of The Stock Exchange of Hong Kong Limited (stock code: 00076).

3. Mr Chan Bing Chung ("**Mr Chan**") was at all material times the sole proprietor of JP Union & Co ("**JP Union**"). JP Union was the auditor of the Company for the 2013 Financial Statements. Ms Chan Wai Ling ("**Ms Chan**") was appointed as an external engagement quality control reviewer ("**EQCR**") for the audit.

4. Mr Chan issued the audit report on behalf of JP Union for the 2013 Financial Statements. The audit report stated that the audit for the year was conducted in accordance with the Hong Kong Standards on Auditing ("**HKSAs**") and expressed an unmodified opinion on the 2013 Financial Statements.[1]

5. Following the receipt of a complaint from another regulator in Hong Kong alleging possible non-compliance with accounting requirements and auditing irregularities in the 2013 Financial Statements concerning, among other things, the Transaction, the Council of the Financial Reporting Council ("**FRC**") directed the Audit Investigation Board ("**AIB**") in September 2016 to conduct an investigation into the complaint.

6. The AIB issued its report on 9 March 2017 ("**AIB Report**"). The FRC referred the AIB Report to the Hong Kong Institute of Certified Public Accountants ("**Institute**") in June 2017, following which 4 complaints were submitted and lodged against the Respondents pursuant to section 34(1A) of the Professional Accountants Ordinance Cap 50 ("**PAO**").

Section B - COMPLAINTS

7. The particulars of the complaints against the Respondents are set out in a letter dated 8 January 2018 ("**Complaint**") from the Registrar of the Hong Kong Institute of Certified Public Accountants ("**Complainant**") to the Council of the Institute.

8. The complaints are set out below:

   (1) First Complaint

   Section 34(1)(a)(vi) of the Professional Accountants Ordinance ("**PAO**") applies to Mr Chan and JP Union in that, in the audit of the 2013 Financial Statements, they failed or neglected to observe, maintain or otherwise apply one or more of the following professional standards in the manner as set out in paragraph 39 of the Complaint:

   (a) Paragraph 15 of HKSA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Hong Kong Standards on Auditing* ("**HKSA 200**"); and/or

   (b) Paragraph 18 of the HKSA 540 *Auditing Accounting Estimates Including Fair Value Accounting Estimates, and Related Disclosures* ("**HKSA 540**"); and/or

[1] AIB Report, Annex 1A.

(c) Paragraphs 16 and 21 of the HKSA 260 *Communication with Those Charged with Governance* ("**HKSA 260**"); and/or

(d) Paragraphs 11 to 13 of HKSA 700 *Forming an Opinion and Reporting on Financial Statements* ("**HKSA 700**").

(2) Second Complaint

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

(3) Third Complaint

Section 34(1)(a)(iv) of the PAO applies to Mr Chan in that, in issuing the auditor's report for the 2013 Financial Statements as the sole proprietor responsible for the audit, he failed or neglected to observe, maintain or otherwise apply paragraphs 7 and/or 19 of HKSA 220 Quality Control for an Audit of Financial Statements ("**HKSA 220**") because he had failed to ensure that the EQCR appointed was independent of the audit team and, further, he had failed to discuss significant matters with the EQCR.

(4) Fourth Complaint

Section 34(1)(a)(vi) of the PAO applies to Ms Chan in that she failed or neglected to observe, maintain or otherwise apply professional standards, namely (i) paragraph 20 of HKSA 220; and/or (ii) section 100.5(c) as elaborated in section 130.1 of the COE for her failure to act competently and diligently in accordance with professional standards when carrying out the work, as an engagement quality control reviewer, in the audit of the 2013 Financial Statements.

Section C – SUBSTANTIVE HEARING

9. Mr Chan failed to appear at the substantive hearing of the disciplinary proceedings that took place before the Disciplinary Committee ("**Committee**") on 6 December 2018, despite having submitted his written case and reply in accordance with the procedural timetable.

10. The Committee is satisfied that Mr Chan had been given proper notice of the substantive hearing through the following:

(1) Letter dated 31 May 2018 sent by post to Mr Chan enclosing a Notice of Commencement of Proceedings and a Procedural Timetable setting out (a) the timetable for the submission of Mr Chan's written case and reply; and (b) the date and time for the substantive oral hearing. It is of significance to note that Mr Chan had submitted his written case in accordance with the Procedural Timetable

and therefore must be taken to have had notice of the date and time for the substantive hearing as stated in the Procedural Timetable.

(2) Letter dated 12 October 2018 from the Clerk to the parties sent by post and email to Mr Chan informing him once again that the substantive hearing will be held on 6 December 2018 at 10:00 a.m.

(3) Letter dated 19 November 2018 from the Complainant sent by post and email to Mr Chan referring to the substantive hearing to be held on 6 December 2018 and enclosing a copy of the hearing bundle.

(4) Email dated 5 December 2018 from the Clerk reminding Mr Chan that the substantive hearing of the proceedings will be held at 10:00 a.m. the following day.

(5) The Clerk to the Committee had also tried to contact Mr Chan on 5 December 2018 at the telephone number provided by him to the Institute by leaving a message and again at the commencement of the hearing on 6 December 2018.

11. In the circumstances, the Committee proceeded to hear the Complaint in his absence pursuant to rule 36 of the Disciplinary Committee Proceedings Rules.

12. At the outset, the Complainant confirmed to the Committee that (a) the First Complaint is no longer pursued as against JP Union as it has been removed from the register of firms and (b) Ms Chan has admitted the complaint made against her, i.e. the Fourth Complaint. As such, it was only necessary for the Committee to deal with the complaints made against Mr Chan, i.e. the First to Third Complaints, at the substantive hearing.

13. Mr Chan has denied each of the First to Third Complaints.

Section D – BURDEN AND STANDARD OF PROOF

14. The initial burden of proving a complaint rests with the Complainant. The standard of proof applied by the Committee in the present case was the civil standard – proof on a preponderance of probability: *Solicitor (24/07) v Law Society of Hong Kong* [2008] 11 HKCFAR 117; *Registrar of Hong Kong Institute of Certified Public Accountants v Chan Kin Hang Danvil* [2014] 2 HKLRD 723.

Section E – FIRST COMPLAINT

15. On 2 August 2013, GSL entered into a contract with PML pursuant to which GSL sold 24 million metric tons of graphite ore to PML at US$7.90 per metric ton ("**Contract A**").

16. Contract A was superceded by a contract dated 18 December 2013 (as supplemented by a supplemental contract dated 31 December 2013) (collectively, "**Contract B**"). The relevant terms for the purposes of these proceedings are as follows:

(1) "乙方愿意購買、甲方愿意出售甲方現有儲存的叁仟叁佰肆拾伍萬(33,450,000) 噸的礦石。甲乙雙方同意購買價格固定為每噸 7.9 美元(US$7.90)，總價為貳億陸仟肆佰貳拾伍萬伍仟美元(US$264,255,000)。無論在未來拾(10)年中市場價格有任何下跌或上漲，雙方都不能對此合約提出任何異議" (Clause 1)

(2) "乙方将以分期付款的方式支付礦石款，从 2014 年起，每年的 12 月 31 日之前乙方在當年向甲方支付礦石貨款總數不得少于 26,425,500 美元，直至全數付清" (Clause 3)

(3) "乙方、丙方同意在每年從上述礦石中出售、動用的礦石總量超过 334.5 萬噸時必須事先通知甲方，並支付額外的相應貨款" (Clause 3)

(4) "如果乙方在任何一年的當年發貨量超過 3,345,000 噸時，乙方將在發貨給任何客戶後三十(30)日內支付貨款，且此款不計算在每年最低付款數字 USD26,425,500 之內" (Supplemental Contract)

17. Contract B was further superceded by another contract entered in 2015, pursuant to which PML agreed to settle the remaining balance of US$257,870,000 within one year with a discount of US$6,255,000 ("**Contract C**").

18. The Group recognised the revenue at its invoiced amount of US$264,255,000 and trade receivable totalling about US$262,930,000 (invoiced amount minus deposit received) in the 2013 Financial Statements. A trade receivable balance of US$237,830,000 was presented under non-current assets in the statement of financial position as at 31 December 2013 under "long term portion of trade receivable".

19. In particular, note 20 to the 2013 Financial Statements stated:

> *"The long term portion of trade receivable* [US$237,830,000] *and the current portion receivable* [US$25,143,000] *from the sales of graphite ore (the "Purchaser") totalling approximately USD262,973,000 represent a trade receivable balance arising in the normal course of business. <u>The balance is secured over the unsold graphite ore acquired by the Purchaser, non-interest bearing and repayable within 10 years</u>. The Purchaser have to repay at least USD26,425,500 each year until fully settled. Should the Purchaser sold the goods of cost more than this minimum payment in a year, they have to settle the excess balance with credit term of 30 days."* (emphasis added)

20. Paragraphs 9 of the Hong Kong Accounting Standard 18 *Revenue* ("**HKAS 18**") states that *"Revenue shall be measured at the fair value of the consideration received or receivable"*.

21. Paragraph 11 of HKAS 18 further provides that *"...when the inflow of cash or cash equivalents is deferred, the fair value of the consideration may be less than the nominal amount of cash received or receivable. For example, an entity may provide interest-free credit to the buyer or accept a note receivable bearing a below-market interest rate*

from the buyer as consideration for the sale of goods. When the arrangement effectively constitutes a financing transaction, the fair value of the consideration is determined by discounting all future receipts using an imputed rate of interest... "

22. The Complainant's case is that the payment arrangement under Contract B effectively constituted a financing transaction under paragraphs 9 and 11 of HKAS 18 because, under the terms of Contract B, PML was allowed to settle the total payment of US$264,255,000 by instalments over 10 years with a minimum annual payment of one-tenth of the contract price i.e. US$26,425,500. The Group had ignored the discounting effect of the Transaction under HKAS 18, to which JP Union and Mr Chan concurred.

23. Mr Chan denied that the payment arrangement under Contract B constituted a financing transaction. The central arguments advanced in the various written submissions made by Mr Chan is essentially that the trade receivable totalling US$262,973,000 (net of a US$1.28 million deposit received) was a current asset and therefore the discount of time value under HKAS 18 was not applicable for the following reasons:

    (1) The Complainant had misinterpreted Contract B. PML was not required under the terms of Contract B to settle the contract sum by 10 equal instalments over a period of 10 years, but could settle more than the minimum payment of US$26,45,000 per year or indeed the entire outstanding contract sum at any time before the expiry of the 10-year period.

    (2) As such, the "normal operating cycle" cannot be clearly identifiable. Paragraph 67 of HKAS 1 states that the *"operating cycle of an entity is the time between the acquisition of assets for processing and their realisation in cash or cash equivalents. When the entity's normal operating cycle is not clearly identifiable, it is assumed to be twelve months".*

    (3) Paragraph 66 of HKAS 1 defines current assets as follows:

        "An entity shall classify an asset as current when: (a) it expects to realise the asset, or intends to sell or consume it, in its normal operating cycle; (b) it holds the asset primarily for the purpose of trading; (c) it expects to realise the asset within twelve months after the reporting period; or (d) the asset is cash or a cash equivalent (as defined in HKAS 7) unless the asset is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting period. An entity shall classify all other assets as non-current."

    (4) The Group's management was required to "estimate" the settlement pattern of PML to decide whether the time value for delayed settlement should be taken into account. It was reasonable to "estimate" that PML would settle within a short period (i.e. within the assumed "normal operating cycle" of twelve months), given that:

        (a) Under the terms of Contract B *"Once the inventory of PML is sold, the credit term of the settlement to GSL is 30 days instead of within ten years.* ***This contract term prevails the rest of other contract terms***" [sic].

(b) The purpose of the revision from Contract A to Contract B was to speed up the collection of money and to reduce inventory risk.

(c) Contract C verified the management's representation that they expected PML to settle within a short period. Ultimately, the entire remaining balance due from PML was settled during the year ended 31 December 2016 without any discount.

(5) The trade receivable was therefore a current asset and no discount of time value was required.

24. The Committee does not accept Mr Chan's arguments.

25. First, the suggestion that the entire trade receivable totalling US$262,973,000 was a current asset is directly contradicted by the Company's own accounting treatment of this sum in the 2013 Financial Statements. In the 2013 Financial Statements, only the first instalment of US$25,143,000 (described as the "current portion receivable" in Note 20) was classified as a current asset, whereas the remaining balance of US$237,830,000 (described as the "long term portion of trade receivable" in Note 20) was characterised as a non-current asset. As stated above, Mr Chan had expressed an unmodified opinion on the 2013 Financial Statements and therefore must be taken as having effectively endorsed the treatment of the long term portion of trade receivable as a non-current asset.

26. Second, it is clear from the terms of Contract B that the contract sum was to be paid by instalments, with an annual minimum payment of one-tenth of the total contract price i.e. US$26,425,000 until the full contract sum is paid. There was thus a significant time lag between the receipt of goods and the receipt of consideration in accordance with paragraphs 9 and 11 of HKAS 18, such that the Transaction amounted to a financing transaction.

27. Third, the fact that the terms of Contract B did not prohibit PML from making payments more than the annual minimum amount, or even making the full payment all at once, did not make the payment arrangement any less of a financing transaction. The triggering of the significant time lag and financing feature is reinforced by Note 20 to the 2013 Financial Statements, which stated that: *"The balance is secured over the unsold graphite ore acquired by the Purchaser, non-interest bearing and repayable within 10 years. The Purchaser have to repay at least USD26,425,500 each year until fully settled."*

28. Fourth, Mr Chan's suggestion that the trade receivable was a current asset and therefore the "discount of time value is not applicable" demonstrates his lack of understanding of the requirements of the relevant accounting standards.

29. Finally, even if the Group's management had to "estimate" the settlement pattern of PML to decide whether the time value for delayed settlement should be taken into account (which is not accepted by the Committee, as the Company had clearly classified the long term portion of the trade receivable as a non-current asset in the 2013 Financial Statements), we reject the contention that it would have been reasonable to "estimate" that PML would settle within a short period for the following reasons:

(1) Mr Chan relied heavily on his own interpretation of the terms of Contract B, namely, that PML must pay for the goods within 30 days of any sale and that this term prevailed over the other terms of Contract B. This reliance is misplaced as his interpretation is plainly wrong. It is clear from the relevant provision in the supplemental contract as set out in paragraph 16(4) above that the 30-day payment term only applied to any release of goods exceeding 3,345,000 metric tons. For quantities below 3,345,000 metric tons, Contract B provided only for a minimum payment of one-tenth of the total contract price every year, thus effectively allowing any such goods to be paid over 10 years. This interpretation is reflected by, and is consistent with, the explanation in Note 20 of the 2013 Financial Statements set out above.

(2) The reference to Contracts A and C is also irrelevant because:

(a) Contract A has been superceded by Contract B. The fact that PML was required to settle the purchase amount each time under Contract A therefore cannot be evidence for a reasonable expectation that payment under Contract B would be settled within a short period of time. The terms of Contract A can have no relevance to an understanding of Contract B, the terms of which are clear. As there is nothing unclear in the relevant terms of Contract B, it is not necessary to consider Contract A as part of its context. It follows the reasons why Contract A was superceded by Contract B are also irrelevant.

(b) As to Contract C, it did not even exist at the time of the relevant audit. The subsequently revised terms and whether or not Contract C reinforced the alleged expectation that PML would settle within a short period of time are therefore totally irrelevant to the 2013 Financial Statements. In any event, PML did not, as a matter of fact, settle the remaining balance until during the year ended 31 December 2016, i.e. more than two years after Contract B (as supplemented by the supplemental contract dated 31 December 2013) was entered into.

(3) No evidence has been advanced to suggest that there was or could be any reasonable expectation that the entire trade receivable would be fully paid within twelve months after the reporting period or within its assumed "normal operating cycle" of 12 months.

30. In the circumstances, we accept the Complainant's case that the payment arrangement of the Transaction effectively constituted a financing transaction under paragraphs 9 and 11 of HKAS 18.

31. Mr Chan's procedures on the measurement of the revenue and receivable arising from the Transaction were limited to verification of the amount of US$264,255,000 with the relevant contract and invoice without considering the appropriateness of the accounting treatment of the payment terms which effectively constituted a financing transaction.[2] There was no evidence in the audit working papers that suggests Mr Chan had

[2] AIB Report §3.2.8.

considered the fair value measurement of the revenue and receivable arising from the Transaction in accordance with paragraphs 9 and 11 of HKAS 18. Mr Chan's explanation on the measurement of revenue and receivable from the Transaction, which was documented in a separate note accompanying his reply letter of 10 March 2016 to the FRC, was not part of the audit working papers submitted to the FRC.[3]

32. Paragraph 15 of HKAS 200 requires an auditor to plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial statements to be materially misstated. Professional skepticism is an attitude that includes *"a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence"*.

33. Paragraph 18 of HKSA 540 requires an auditor to evaluate, based on the audit evidence, *"whether the accounting estimates in the financial statements are either reasonable in the context of the applicable financial reporting framework, or are misstated"*.

34. In view of the size of the Transaction and its payment terms, Mr Chan should have identified the Transaction with additional risks of material misstatement and performed a corresponding assessment and/or testing. In an audit documentation titled "Group Audit Highlights"[4], it was stated under *"Long term trade receivable"* that *"The Group sold the graphite ore near the year end. All supporting documents have been obtained including sales contract, debtor confirmation, sales invoices and delivery notes. As the debtors has* [sic] *not been settled up to the date of the audit. The recoverability of the debtor depends on the client's assessment of the debtor's financial position and credibility. The purchaser's unsold stocks are pledged to the subsidiary"*.

35. As can be seen, there was no evidence in the "Group Audit Highlights" nor has Mr Chan provided any audit working papers to suggest that he had attempted to evaluate the possible effect on the fair value measurement of the revenue and receivable as a result of the possible deferral in the payments of the Transaction as provided in Contract B.

36. Paragraphs 11 to 13 of HKSA 700 set out the requirements with which an auditor should comply in forming an opinion on whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework.

37. Accordingly, Mr Chan failed to challenge the appropriateness of recognising the revenue and trade receivable arising from the Transaction at the invoiced amount and did not identify that the accounting treatment was not compliant with HKAS 18. Mr Chan failed to perform adequate audit procedures on the measurement of the revenue and receivable arising from the Transaction to support his unmodified opinion on the 2013 Financial Statements.

[3] AIB Report §3.1.2.6 and Annex 3B [153].
[4] Annex 2P [144].

38. Paragraph 16 of HKSA 260 states that: *"The auditor shall communicate with those charged with governance: ...(a) The auditor's views about significant qualitative aspects of the entity's accounting practices, including accounting policies, accounting estimates and financial statement disclosures. When applicable, the auditor shall explain to those charged with governance why the auditor considers a significant accounting practice, that is acceptable under the applicable financial reporting framework, not to be most appropriate to the particular circumstances of the entity; ..."*

39. Paragraph 21 of HKSA 260 states that: *"The auditor shall communicate with those charged with governance on a timely basis..."*

40. The Transaction was significant to the 2013 Financial Statements. The only documentary evidence of any communication between Mr Chan and the Company's Audit Committee was the minutes of the meeting of the Company's Audit Committee held on 31 March 2014. The minutes show that Mr Chan attended this meeting but there was no record of any discussion regarding the measurement of the revenue and trade receivable arising from the Transaction.[5]

41. Based on the above, the Committee finds that Mr Chan has breached:

    (1) Paragraph 15 of HKSA 200 and paragraph 18 of HKSA 540 by failing to challenge the appropriateness of the accounting treatment of the Transaction with a sceptical mind, and to evaluate whether accounting estimates pertaining to the revenue and trade receivable arising from the Transaction were reasonable in the context of the applicable financial reporting framework; and/or

    (2) Paragraphs 11 to 13 of HKSA 700 by failing to perform adequate audit procedures on the measurement of the revenue and trade receivable arising from the Transaction and evaluate whether the 2013 Financial Statements were presented in accordance with the applicable financial reporting framework, i.e. HKFRS; and/or

    (3) Paragraphs 16 and 21 of the HKSA 260 by failing to communicate with the Audit Committee on a timely basis, the auditor's views on the qualitative aspects of the Transaction which involved significant judgment and estimation.

42. In the premises, the Committee concludes that the First Complaint has been substantiated as against Mr Chan.

Section F – SECOND COMPLAINT

43. In light of the audit deficiencies identified in the First Complaint, the Committee finds that Mr Chan has failed to conduct the audit of the 2013 Financial Statements with professional competence and due care. As a result, Mr Chan was in breach of section 100.5(c) as elaborated in section 130.1 of the COE.

[5] AIB Report §3.1.3.3 and Annex 1C [125].

Section G – THIRD COMPLAINT

44. There are two issues arising under this complaint, namely:

    (1) Whether the discounting effect issue under HKAS 18 was properly discussed or addressed during the quality control review; and

    (2) Whether the EQCR, Ms Chan, was independent from the audit team.

First Issue – whether the discounting effect issue under HKAS 18 was properly discussed or addressed during the quality control review

45. Paragraph 19 of HKAS 220 requires the engagement partner for audits of listed companies to ensure appointment of an EQCR, discuss significant audit matters with the EQCR, and date the auditor's report after the completion of the engagement quality control review.

46. The complaint here is that Mr Chan had failed to discuss significant matters of the audit with the EQCR, Ms Chan.

47. Mr Chan relied on two documents, the "Group Audit Highlights" and the "Engagement Quality Control Review Worksheet", which were said to show that the EQCR had been consulted in significant or major issues during the planning and conduct of the audit.[6] However, it is clear from the documents that they neither contained any documentation of any evaluation nor discussion carried out on the implications of the deferred receipt of the sales proceeds and its effect on the fair value measurement. In particular:

    (1) The "Group Audit Highlights" did not touch upon or contain documentation on fair value measurement of the revenue and receivable rising from the Transaction.

    (2) There was no cross reference from the "Engagement Quality Control Review Worksheet" to any audit working papers documenting the "significant financial statement areas" and "significant management estimates" that were reviewed by the EQCR.

48. There is simply no evidence that Mr Chan had discussed significant matters of the audit, in particular, the discounting effect of the Transaction, with Ms Chan at all.

49. In the premises, the Committee finds that Mr Chan was in breach of paragraph 19 of HKSA 220 by failing to discuss significant matters of the audit, including the Transaction, with the EQCR.

Issue 2: whether the EQCR, Ms Chan, was independent from the audit team

50. Paragraph 7 of HKAS 220 requires that an EQCR shall be an individual (or a team of individuals), who is not part of the engagement team, with sufficient and appropriate experience and authority to objectively evaluate the significant judgments the

[6] Appendix 2 [196].

engagement team made and the conclusions it reached in formulating the auditor's report.

51. There is no dispute that:[7]

(1) Mr Chan did require Ms Chan to complete the review questionnaires concerning two UK subsidiaries of the Company, Axiom Manufacturing Services Limited and Axiom MS Limited ("**UK Subsidiaries**");

(2) Note 17 of the 2013 Financial Statements provided that the UK Subsidiaries principally affected the results of the year or formed a substantial portion of the net assets of the Group;

(3) Ms Chan duly completed the task as required and reported her findings to Mr Chan.

52. The complaint here is that (a) Ms Chan lost her independence by completing the review questionnaires concerning the UK Subsidiaries and (b) Mr Chan has thereby failed to ensure that the EQCR was independent of the audit engagement team, in breach of the requirement under paragraph 7 of HKSA 220.

53. Mr Chan contends that the work Ms Chan had completed at his request in relation to the UK Subsidiaries was part of her work as EQCR rather than as part of the audit engagement team.[8] Mr Chan further asserts that her independence can be assured as the UK Subsidiaries had been audited by a "big four" accountancy firm.

54. The Committee rejects Mr Chan's contentions for the following reasons:

(1) Under paragraphs 44 and 45 of HKSA 600, an auditor has an obligation to evaluate whether sufficient appropriate audit evidence has been obtained from the audit procedures performed by a component auditor on a subsidiary. Thus, it is irrelevant whether the UK Subsidiaries had been audited by another accountancy firm.

(2) The duty of an auditor is separate and distinct from the duty of an EQCR to evaluate significant judgments made by the engagement team under paragraph 20 of HKSA 220. The scope of the work to be performed by a group engagement team is more extensive than that required of an EQCR.[9]

(3) After a group engagement auditor has finished the work required under HKSA 600 regarding a subsidiary, the significant judgments made therein must be further reviewed by an EQCR under HKSA 220. It is obvious that Mr Chan has confused the two separate and distinct processes. The suggestion in Mr Chan's written case dated 2 August 2018 that the *"review of audit working paper of secondary auditor is an additional work done which can be skipped"* demonstrates his lack of understanding of the relevant requirements. If Ms Chan

[7] Appendix 2 [179]; Appendix 3 [209-210]; Appendix 3 [225-231]
[8] Appendix 2 [179]; Mr Chan's written case dated 2 August 2018 [316].
[9] Paragraphs 26-29 of HKSA 600 and paragraph 20 of HKSA 220.

was indeed performing the work of an EQCR in relation to the UK Subsidiaries, as Mr Chan alleges, then the audit engagement team would have failed to properly perform the work required under HKSA 600.

(4) Ms Chan's work in relation to the UK Subsidiaries was recorded in an "Audit Standards Review Questionnaire"[10] and a summary in table form.[11] It is plain from these documents that the work performed by Ms Chan was an integral part of the audit procedures to be carried out by an audit engagement team in an audit of group financial statements, and was far more extensive than an evaluation required to be carried out by an EQCR.

(5) It is of significance that Ms Chan herself stated that she was acting as a component auditor and she became part of the audit engagement team in carrying out the review of the UK Subsidiaries. Further, Ms Chan stated in her letter to the Institute dated 18 July 2017 that the work she performed on the UK Subsidiaries "nullified" her engagement as EQCR.[12]

55. In the circumstances, the Committee finds that Mr Chan was in breach of paragraph 7 of HKSA 220 in that he failed to ensure that the EQCR appointed by him was independent of the audit engagement team.

Section H – FOURTH COMPLAINT

56. On 14 March 2018, Ms Chan signed a confirmation whereby she admitted to the Fourth Complaint made against her and confirmed that she did not dispute the facts as set out in the Complaint, in so far as they related to the Fourth Complaint.

57. By a letter dated 14 March 2018, Ms Chan and the Complainant jointly proposed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with. The Committee acceded to this proposal and directed that Ms Chan shall make written submissions on sanctions and costs after the Committee has decided on the complaints against Mr Chan.

58. The Committee finds the Fourth Complaint against Ms Chan substantiated. In light of the audit deficiencies identified in the First Complaint, Ms Chan has clearly failed to act competently and diligently as the EQCR for the audit. As a result, she was in breach of the Fundamental Principle of Due Care in section 100.5(c) as elaborated in section 130.1 of the COE.

Section I – CONCLUSION

59. For the reasons set out above, the Committee concludes that the First to Third Complaints have been established as against Mr Chan and that the Fourth Complaint has been established as against Ms Chan. In reaching its conclusion, the Committee has considered all the submissions and evidence presented by the parties.

---

[10] [324-331],
[11] [332-337].
[12] [339-340]

Section J – ORDERS AND DIRECTIONS

60. The Committee makes the following orders and directions:

    (1) The First to Third Complaints are proved against Mr Chan;

    (2) The Fourth Complaint is proved against Ms Chan;

    (3) The Complainant shall file and serve written submission on sanctions and costs, including a statement of costs, within 21 days from the date of this Decision;

    (4) Mr Chan and Ms Chan shall file and serve written submissions on sanctions and costs, including submissions on the Complainant's statement of costs and/or why costs should not be ordered against them, if any, within 21 days from the date of the Complainant's written submissions;

    (5) The parties are at liberty to apply for further directions in writing to the Committee.

Dated 18 January 2019

Ms. Lam Ding Wan Catrina
Chairman
Disciplinary Panel A

Ms. Chan Lai Yee
Member
Disciplinary Panel A

Mr. Ip Chiu Yin Eddie
Member
Disciplinary Panel B

Ms. Chang See Mun Lily
Member
Disciplinary Panel A

Mr. Li Po Ting Peter
Member
Disciplinary Panel B

Proceedings No. D-17-1278F

IN THE MATTER OF

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

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants	COMPLAINANT

AND

Chan Bing Chung Membership No. A17643	1st RESPONDENT
Chan Wai Ling Membership No. A03188	2nd RESPONDENT

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

Members: Ms. Lam Ding Wan Catrina (Chairman)
Ms. Chan Lai Yee
Ms. Chang See Mun Lily
Mr. Ip Chiu Yin Eddie
Mr. Li Po Ting Peter

Date of Hearing: 6 December 2018
Date of Reasons for Decision: 18 January 2019
Date of Order: 25 July 2019

ORDER

Section A – INTRODUCTION

1. The complaints against the 1st Respondent, Mr Chan Bing Chung ("**Mr Chan**") and the 2nd Respondent, Ms Chan Wai Ling ("**Ms Chan**") in this case related to breaches of financial reporting standards and auditing irregularities in the consolidated financial statements of a listed company, South Sea Petroleum Holdings Limited ("**Company**"), and its subsidiaries (collectively, "**Group**") for the year ended 31 December 2013 ("**2013 Financial Statements**") in respect of a sale transaction in which the Company's wholly owned subsidiary, Global Select Limited ("**GSL**"), sold 33.45 million metric

tons of graphite ore to a customer ("**PML**") at US$7.90 per metric ton, totalling US$264,255,000 ("**Transaction**").

2. Mr Chan was at all material times the sole proprietor of JP Union & Co ("**JP Union**"). JP Union was the auditor of the Company for the 2013 Financial Statements. Ms Chan was appointed as an external engagement quality control reviewer ("**EQCR**") for the audit.

3. The complaints against the Respondents ("**Complaints**") are set out below:

   (1) First Complaint

   Section 34(1)(a)(vi) of the Professional Accountants Ordinance ("**PAO**") applies to Mr Chan and JP Union in that, in the audit of the 2013 Financial Statements, they failed or neglected to observe, maintain or otherwise apply one or more of the following professional standards in the manner as set out in paragraph 39 of the Complaint:

   (a) Paragraph 15 of HKSA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Hong Kong Standards on Auditing* ("**HKSA 200**"); and/or

   (b) Paragraph 18 of the HKSA 540 *Auditing Accounting Estimates Including Fair Value Accounting Estimates, and Related Disclosures* ("**HKSA 540**"); and/or

   (c) Paragraphs 16 and 21 of the HKSA 260 *Communication with Those Charged with Governance* ("**HKSA 260**"); and/or

   (d) Paragraphs 11 to 13 of HKSA 700 *Forming an Opinion and Reporting on Financial Statements* ("**HKSA 700**").

   (2) Second Complaint

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

   (3) Third Complaint

   Section 34(1)(a)(iv) of the PAO applies to Mr Chan in that, in issuing the auditor's report for the 2013 Financial Statements as the sole proprietor responsible for the audit, he failed or neglected to observe, maintain or otherwise apply paragraphs 7 and/or 19 of HKSA 220 Quality Control for an Audit of Financial Statements ("**HKSA 220**") because he had failed to ensure that the EQCR appointed was independent of the audit team and, further, he had failed to discuss significant matters with the EQCR.

(4) Fourth Complaint

Section 34(1)(a)(vi) of the PAO applies to Ms Chan in that she failed or neglected to observe, maintain or otherwise apply professional standards, namely (i) paragraph 20 of HKSA 220; and/or (ii) section 100.5(c) as elaborated in section 130.1 of the COE for her failure to act competently and diligently in accordance with professional standards when carrying out the work, as an engagement quality control reviewer, in the audit of the 2013 Financial Statements.

4. Mr Chan denied each of the First to Third Complaints. However, he did not appear at the substantive hearing of the disciplinary proceedings that took place before the Disciplinary Committee ("**Committee**") on 6 December 2018. Having been satisfied that Mr Chan had been given proper notice of the substantive hearing, the Committee proceeded to hear the Complaints in his absence.

5. Ms Chan admitted to the Fourth Complaint by a written confirmation dated 14 March 2018.

6. Following the substantive hearing, and having considered all the submissions and evidence presented by the parties, the Committee found the First to Third Complaints proved as against Mr Chan and the Fourth Complaint proved as against Ms Chan.

7. The Committee's findings of facts and reasons are set out in the Reasons for Decision dated 18 January 2019 ("**Decision**"). This decision on sanctions and costs should be read together with the Decision.

8. Pursuant to the Committee's directions, the Registrar of the Hong Kong Institute of Certified Public Accountants ("**Complainant**") and Mr Chan provided their submissions on sanctions and costs on 4 February 2019 and 25 February 2019 respectively.

9. By an e-mail dated 26 February 2019, Ms Chan informed the Committee that she has nothing to add by way of submissions and will accept the Committee's final decision.

Section B - SANCTIONS

10. The Committee notes that it is not bound by the decisions of a previous committee. Each case is fact specific. It is for the Committee to determine the appropriate penalty bearing in mind the specific features of each case.

11. Nevertheless, to assist the Committee in exercising its discretion, the Complainant has referred to four past decisions with similar features to the present case, namely, Proceedings Nos. D-14-0974F (3 February 2016), D-16-1134H (12 October 2016), D-15-1095F (17 May 2017) and D-14-0988F (12 September 2016).

12. D-14-0974F is a previous disciplinary case against Mr Chan. In that case, Mr Chan was found to have failed to maintain professional knowledge or skill and/or failed to act

diligently as the EQCR for the audit performed by KM Choi & Auyeung Ltd of the financial statements of a listed company, Sing Lee Software Group Ltd, and its subsidiaries for the year ending 31 December 2009. In particular, Mr Chan had failed to identify that the measurement and recognition of a share option in the audit did not comply with International Financial Reporting Standards 2 ("**IFRS 2**"). The committee stated at paragraphs 32 and 33 of the decision that the arguments raised by Mr Chan throughout the proceedings, the hearing and even after the hearing were *"either irrelevant, speculative or unauthoritative"* and showed *"his lack of understanding of IFRS 2"*.

13. Mr Chan was ordered to pay a penalty of HK$50,000 and his practising certificate was cancelled for 9 months. In arriving at the sanction, the committee took into account, among other matters, Mr Chan's conduct throughout the proceedings, and his lack of understanding of the relevant accounting standards and principles. Mr Chan's appeal on liability and sanctions was dismissed by the Court of Appeal[1] who noted that the committee was *"unimpressed by his responses that evolved over time, which display[ed] a degree of lack of candour in responding to his professional governing body"*, and concluded that there was nothing to warrant intervention with the committee's determination of sanctions.

14. In D-16-1134H, the respondent was the engagement partner for the audit of a listed company. The audit involved non-compliances with accounting standards covering depreciation, fair value measurements and determination of the weighted average number of shares. The respondent admitted he had misinterpreted the accounting standards, failed to advise the engagement team to perform necessary audit procedures, and agreed he should have performed additional audit work. The respondent also admitted to the complaints made against him. The committee reprimanded the respondent and ordered him to pay a penalty of HK$60,000, as well as the cancellation of his practising certificate for about 14 months.

15. D-15-1095F involved various auditing deficiencies in the impairment assessments in a listed audit. The corporate practice and engagement director faced complaints of (a) failing to observe, maintain or apply auditing standards (b) failing to ensure someone with sufficient and appropriate experience and authority to act as EQCR had been appointed in breach of §19(a) of HKSA 220 and (c) failing to conduct their professional work with competence and due care in breach of §§100.5(c) and 130 of COE. The EQCR faced a complaint for failing to perform the engagement quality control review adequately in breach of §20 of HKSA 220. The respondents admitted to the complaints. All three respondents were reprimanded and penalties of HK$80,000, HK$50,000 and HK$60,000 were imposed on the corporate practice, the engagement and the EQCR respectively.

16. D-14-0988F involved the failure in a listed audit to separately account for the embedded call options of two convertible bonds at initial recognition and subsequent measurement at fair values, resulting in an understatement of the reported loss by HK$1.5 million (24%). The EQCR admitted to the complaint that he had failed to evaluate the accounting treatment of the convertible bonds in breach of §§20, 21 and A28 of HKSA 220. The EQCR was reprimanded and ordered to pay a penalty of HK$50,000.

---

[1] CACV 47/2016, 19 March 2018, at §§35.2 and 35.3.

17. The Complainant submitted that a cancellation of Mr Chan's practising certificate for a period of not less than 2 years would be appropriate in the circumstances of this case. As to Ms Chan, the Complainant submitted that her breach is less serious and the appropriate sanction for her would be a reprimand and a financial penalty.

18. Mr Chan has not made any submissions on the previous decisions referred to by the Complainant, save for the previous disciplinary case against him in D-14-0974F, which is dealt with below. However, Mr Chan suggested that there should be no cancellation of his practising certificate for 2 years if he does not take up any listed audits, as he no longer has listed clients in any event.

19. In his written submissions, Mr Chan made numerous, wide-ranging contentions, many of which are speculative and/or do not go to mitigation or the sanctions to be imposed. As such, we do not consider it necessary or indeed helpful to set out each and every argument raised, save to summarise as follows.

20. First, Mr Chan asserted that he did not lack understanding of the requirements of the relevant accounting standards by essentially maintaining that the trade receivable in question was a current asset and therefore the discount of time value under HKAS 18 was not applicable. Further, Mr Chan repeated his arguments as to why he had not failed to ensure the EQCR was independent of the audit engagement team, emphasising that Ms Chan's independence was assured as her review of the audit files was "additional work done only" and could have been "skipped".

21. The Committee has already rejected these arguments for the reasons detailed in the Decision. As stated in §§28 and 54 of the Decision, the Committee takes the view that Mr Chan's arguments demonstrate his lack of understanding of not only the requirements of the relevant accounting standards, but also the role of an EQCR.

22. Second, Mr Chan asserted that the Company's audit files for the year ending 31 December 2013 had been subject to a practice review in June 2014 but no non-compliance of accounting standards was found by the review team. As such, Mr Chan contended that he was competent. Mr Chan further complained that the Financial Reporting Council ("**FRC**") investigated into the matter again after the practice review concluded.

23. Mr Chan's assertion is not correct. According to a letter dated 7 July 2015[2], the Hong Kong Institute of Certified Public Accountants ("**Institute**") had specifically pointed out that the practice review committee had expressed "serious concerns" over shortcomings in the "2013 audit of Client A, a listed entity", being the Company, and informed Mr Chan that it had decided to refer the matter to the FRC pursuant to the memorandum of understanding between the FRC and the Institute. By a further letter dated 21 October 2016[3], the Institute reiterated to Mr Chan that the matter that had been referred to the FRC in relation to the Company was still under review, notwithstanding the completion of the practice review. In other words, the practice review committee did not reach a conclusion that was no non-compliance with auditing standards in

---

[2] Annexed to Mr Chan's submissions as Appendix V.
[3] Annexed to Mr Chan's submissions as Appendix IV.

respect of the 2013 audit of the Company. On the contrary, it had expressed "serious concerns" over the 2013 audit and referred the matter to the FRC for investigation. There was no "double investigation" as suggested by Mr Chan.

24. As explained in §§5 and 6 of the Decision, the Complaints were lodged against Mr Chan and Ms Chan following a referral by the FRC, who had in turn been referred by the practice review committee. Following the practice review committee's referral, the FRC directed the Audit Investigation Board to conduct an investigation into the matter, who made a number of findings which formed the basis of the Complaints. As such, there is no unfairness arising from the FRC's investigation into the Company's 2013 audit and the Committee is not precluded from finding the Complaints proved on the evidence placed before it, notwithstanding the fact that the Company's audit files for the year ending 31 December 2013 had been subject to a practice review.

25. Third, Mr Chan referred to another previous disciplinary case against him (D-14-892H) which also involved the audit of the Company. The committee in that case eventually dismissed the complaint against Mr Chan. We do not see how the fact that a different complaint against Mr Chan had been dismissed by another committee on a previous occasion serves to mitigate the present Complaints.

26. Fourth, various arguments were advanced as to why the contentions Mr Chan had raised in D-14-0974F were not "irrelevant, speculative or unauthoritative" as had been found by the committee in that case. He also alleged he was "framed" by his former colleague, treated as a "scapegoat" and the sanctions imposed on him were disproportionate. As stated above, Mr Chan's appeal against liability and sanctions in D-14-0974F had been dismissed by the Court of Appeal, who did not disturb any of the findings made by the committee in that case. Mr Chan is therefore bound by those decisions.

27. Finally, Mr Chan made submissions on his personal circumstances, including the fact that the profit he personally gained from the audit in question was relatively low, he suffered mental distress for years as a result of the investigations made against him, he is currently unemployed with no income, and he is a hardworking professional who has helped a lot of unemployed persons by lending them money or providing them with job opportunities. We do not consider these to be compelling mitigating factors and they do not in any event provide an excuse for his failures in this case.

28. In arriving at the proper sanctions to be imposed in this case, the Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaints, Mr Chan's personal circumstances, the parties' submissions, the previous decisions referred to us (although we bear in mind that each case must be decided on its own facts) and the respective conduct of Mr Chan and Ms Chan throughout the proceedings.

29. The Committee considered, in particular, the following facts and matters specific to this case:

    (1) The Company is a listed company and the audit work in the present case affects the investing public. The public is entitled to expect that practising accountants discharge their duties and conduct their work to the highest standards of probity,

independence and competence. If public confidence is shaken, then the price to be paid by the profession as a whole will be very high.

(2) As to Mr Chan:

(a) The auditing irregularity in question is not a particularly serious mistake on its own. However, the manner in which Mr Chan has chosen to defend that mistake demonstrates an obvious lack of understanding of the requirements of the relevant accounting standards. Similarly, the manner in which he has confused the two separate and distinct processes under HKAS 600 and HKSA 220 show a clear lack of understanding of the role of an EQCR. These matters cast serious doubts as to his competence.

(b) As stated above, this is not the first time Mr Chan has been found to have fallen below professional standards in a listed audit. This case does not represent a single fall from grace, but rather a continuing lack of professional competence on the part of Mr Chan.

(c) Mr Chan is not currently holding a practising certificate. His practising certificate was cancelled on 4 April 2018 and would not be issued for 9 months (until 4 January 2019) by reason of his previous disciplinary case D-14-0974F.

(3) As to Ms Chan, her breaches were relatively less serious. She understood and recognised that she could no longer work as an EQCR once she had performed work on the UK Subsidiary. She also admitted to the Fourth Compliant at the earliest opportunity, thereby saving time and costs. She does not have any prior disciplinary record.

30. In the circumstances, we order the following sanctions to be imposed:

(1) An order that the Respondents be reprimanded under section 35(1)(b) of the PAO;

(2) An order that a practising certificate shall not be issued to Mr Chan for a period of 2 years from 5 January 2019 under section 35(1)(db) of the PAO.

(3) An order that Ms Chan pay a penalty of HK$50,000 under section 35(1)(c) of the PAO.

Section C - COSTS

31. The Complainant submitted a Statement of Costs in the total sum of HK$126,312.60. Save for the costs incurred by the FRC in the sum of HK$20,095.60, such costs have been segregated as between Mr Chan and Ms Chan as follows:

		Mr Chan (HK$)	Ms Chan (HK$)
(1)	Actual costs incurred by the Institute's staff for the preparation of complaint documents and correspondence with the Respondents, Disciplinary Committee Convenor and Clerk to the Disciplinary Committee (from 14 June 2017 to present)	68,000.00	24,100.00
(2)	Costs incurred for the substantive hearing on 6 December 2018	5,400.00	
(3)	Clerk to the Disciplinary Committee	3,695.00	1,345.00
(4)	Others	3,473.50	203.50
	Total:	**80,568.50**	**25,648.50**

32. Mr Chan made a number of submissions on costs. In summary, Mr Chan submits:

    (1) He should not be required to bear the costs of the FRC because the referral to the FRC was initiated by the practice review team, who had found no non-compliance with relevant standards.

    (2) As the Complainant itself did not consider the auditing irregularity in question to be a particularly serious mistake on its own, he should not be required to pay the investigation costs of both the FRC and the Committee.

    (3) The Complainant was not justified in criticising the manner in which he defended or explained the auditing irregularity in this case, as he had been "trained" by the Institute to explain accounting treatments in this manner through the practice reviews he had been subjected to for years.

    (4) The costs are excessive because there is no reason why (a) the Complainant and the Committee should incur more costs than the FRC and (b) two lawyers should have been involved.

    (5) The Complainant should not have incurred costs to pursue the Complaints against him as he is not holding a practising certificate.

33. We do not accept Mr Chan's submissions. We are satisfied that both the FRC and the Complainant had acted properly in pursuing the Complaints and referring the matter to the Committee. There is no reason why costs should not follow the event. We are also satisfied that the costs and expenses set out in the Statement of Costs were reasonably and necessarily incurred. In particular, we note that only one counsel (Mr Kenneth Ng) was present during the substantive hearing of this matter.

34. In the circumstances, the Committee orders that:

    (1) Mr Chan and Ms Chan do pay the costs of the Complainant in the sum of HK$80,568.50 and HK$25,648.50 respectively under sections 35(1)(d)(i) and 35(1)(iii) of the PAO;

    (2) The costs of the FRC in the sum of HK$20,095.60 shall be borne by Mr Chan and Ms Chan equally under section 35(1)(d)(ii) of the PAO.

Dated 25 July 2019

Ms. Lam Ding Wan Catrina
Chairman
Disciplinary Panel A

Ms. Chan Lai Yee
Member
Disciplinary Panel A

Mr. Ip Chiu Yin Eddie
Member
Disciplinary Panel B

Ms. Chang See Mun Lily
Member
Disciplinary Panel A

Mr. Li Po Ting Peter
Member
Disciplinary Panel B