



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

Dear Assignment / News / Business Section Editor

## **Hong Kong Institute of Certified Public Accountants takes disciplinary action against a certified public accountant (practising)**

(HONG KONG, 12 October 2017) — A Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants reprimanded Tse Lap Fu, Lawrence, certified public accountant (practising) (membership number F03636) on 5 September 2017. In addition, the Committee ordered the practising certificate issued to Tse be cancelled on 15 October 2017 and a practising certificate shall not be issued to him for six months. The Committee further ordered Tse to pay a penalty of HK\$50,000 and costs of the disciplinary proceedings of HK\$123,108.

Tse was the sole proprietor of a CPA firm. The Institute enquired into a complaint about improper audits carried out by the firm and found deficiencies in its audits of the financial statements of five private companies. The deficiencies related to the performance and documentation of audit procedures carried out on related party transactions, deferred tax, inventory and evaluation of whether the financial statements were prepared in accordance with the applicable financial reporting framework. In addition, Tse's firm acted as auditor of one of the companies when it had a close business relationship with that company.

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

Tse admitted the complaints against him. The Disciplinary Committee found that Tse was in breach of Hong Kong Standard on Auditing ("HKSA") 230, HKSA 500, HKSA 501, HKSA 550, HKSA 700 and the Fundamental Principle of *Independence* in the Code of Ethics for Professional Accountants. The Committee further found that, in view of Tse's multiple breaches of professional standards, he was guilty of professional misconduct.

Having taken into account the circumstances of the case, the Disciplinary Committee made the above order against Tse under section 35(1) of the ordinance.

Under the ordinance, if the respondent is aggrieved by the order, he may give notice of an appeal to the Court of Appeal within 30 days after he is served the order.

The order and findings of the Disciplinary Committee are available at the Institute's website under the "Compliance" section at <http://www.hkicpa.org.hk>.

Disciplinary proceedings of the Institute are conducted in accordance with Part V of the Professional Accountants Ordinance by a five-member Disciplinary Committee. Three members of each committee, including a chairman, are non-accountants chosen from a panel appointed by the Chief Executive of the HKSAR, and the other remaining two members are CPAs.

Disciplinary hearings are held in public unless the Disciplinary Committee directs otherwise in the interest of justice. A hearing schedule is available at the Institute's website. A CPA who feels aggrieved by an order made by a Disciplinary Committee may appeal to the Court of Appeal, which may confirm, vary or reverse the order.

Disciplinary Committees have the power to sanction members, member practices and registered students. Sanctions include temporary or permanent removal from membership or cancellation of a practicing certificate with (where appropriate) an order that a practice certificate shall not be issued either permanently or temporarily, a reprimand, a penalty of up to \$500,000, and payment of costs and expenses of the proceedings.

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### **About the Hong Kong Institute of Certified Public Accountants**

The Hong Kong Institute of CPAs is the only body authorized by law to register and grant practising certificates to certified public accountants in Hong Kong. The Institute has more than 41,000 members and 18,000 registered students. Members of the Institute are entitled to the description *certified public accountant* and to the designation CPA.

The Hong Kong Institute of CPAs evolved from the Hong Kong Society of Accountants, which was established on 1 January 1973.

The Institute operates under the Professional Accountants Ordinance and works in the public interest. The Institute has wide-ranging responsibilities, including assuring the quality of entry into the profession through its postgraduate qualification programme and promulgating financial reporting, auditing and ethical standards in Hong Kong. The Institute has responsibility for regulating and promoting efficient accounting practices in Hong Kong to safeguard its leadership as an international financial centre.

The Hong Kong Institute of CPAs is a member of the Global Accounting Alliance – an alliance of the world's leading professional accountancy bodies, which was formed in 2005. The GAA promotes quality services, collaborates on important international issues and works with national regulators, governments and stakeholders.

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

致：編採主任／新聞／財經版編輯

## 香港會計師公會對一名執業會計師作出紀律處分

(香港，二零一七年十月十二日) — 香港會計師公會轄下一紀律委員會，於二零一七年九月五日對執業會計師謝立富(會員編號：F03636)作出譴責。另外，委員會命令由二零一七年十月十五日起吊銷謝先生的執業證書，並在六個月內不給他另發執業證書。委員會又指令謝先生須繳付罰款港幣五萬元及紀律程序的費用港幣十二萬三千一百零八元。

謝先生是一間會計師事務所的獨資經營者。公會就一宗有關該事務所不妥當的審計工作的投訴作出查詢，發現事務所對五間私人公司的財務報表進行的審計犯有缺失。這些缺失乃關於就關聯交易、遞延稅項、存貨及評估財務報表是否根據適用的財務匯報框架編制方面進行的審計程序及記錄。另外，謝先生的事務所與其擔任核數師的其中一間公司有密切的業務關係。

公會經考慮所得的資料，根據《專業會計師條例》(第 50 章) 第 34(1)(a)(vi)條及第 34(1)(a)(viii)條作出投訴。

謝先生承認投訴中的指控屬實。紀律委員會裁定謝先生違反了 Hong Kong Standard on Auditing(「HKSA」) 230、HKSA 500、HKSA 501、HKSA 550、HKSA 700 以及 Code of Ethics for Professional Accountants 內的 Fundamental Principle – *Independence*。由於謝先生違反多項專業準則，委員會進一步裁定他犯有專業上的失當行為。

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)條向謝先生作出上述的裁決。

根據《專業會計師條例》，如答辯人不服紀律委員會對他作出的裁決，可於裁決文本送達後 30 天內向上訴法庭提出上訴。

紀律委員會的書面判決可於公會網頁內"Compliance"部分查閱，網址為 <http://www.hkicpa.org.hk>。

公會的紀律程序是根據《專業會計師條例》第 V 部份，由五位成員組成的紀律委員會執行。每個紀律委員會的大多數成員，即包括主席在內的三名成員，是選自從業外人士組成的紀律小組，該紀律小組的成員是由香港特別行政區行政長官委任；另外兩名成員由專業會計師出任。

除非負責的紀律委員會因公平理由認為不恰當，否則紀律聆訊一般以公開形式進行。紀律聆訊的時間表可於公會網頁查閱。如當事人不服紀律委員會的裁判，可向上訴法庭提出上訴，上訴法庭可確定、修改或推翻紀律委員會的裁判。

紀律委員會有權向公會會員、執業會計師事務所及註冊學生作出處分。紀律處分範圍包括永久或有限期地將違規者從會計師名冊中除名或吊銷其執業證書及(如適當)命令永久或有限期地不向其發出執業證書、對其作出譴責、下令罰款不多於港幣五十萬元，以及支付紀律程序的費用。

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## 關於香港會計師公會

香港會計師公會是香港唯一獲法例授權負責專業會計師註冊兼頒授執業證書的組織，會員人數超過 41,000，註冊學生人數逾 18,000。公會會員可採用「會計師」稱銜 (英文為 **certified public accountant**，簡稱 **CPA**)。

公會(**Hong Kong Institute of Certified Public Accountants**)於一九七三年一月一日成立，當時的英文名稱為 **Hong Kong Society of Accountants**。

公會根據《專業會計師條例》履行職責，以公眾利益為依歸。其職能廣泛，包括開辦專業資格課程(**Qualification Programme**)以確保會計師的人職質素，以及頒布香港的財務報告、審計及專業操守準則。此外，公會亦負責在香港監管和推動優良而有效的會計實務，以鞏固香港作為國際金融中心的領導地位。

香港會計師公會是全球會計聯盟 (**Global Accounting Alliance**，**GAA**) 的成員之一。全球會計聯盟於二零零五年成立，聯合了全球頂尖的專業會計團體，推動優質服務，並積極與各地監管機構、政府及關連人士就國際重要議題共同合作。

## 香港會計師公會聯絡資料

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IN THE MATTER OF

A Complaint made under section 34(1) of the Professional Accountants Ordinance, Cap 50

BETWEEN

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

AND

Mr. Tse Lap Fu Lawrence      RESPONDENT  
(Membership No. F03636)

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

Members:      Mr. Kwong Chi Ho Cecil (Chairman)  
                    Mr. Chan Kam Hon  
                    Mr. Cheung Yat Ming Brian  
                    Mr. Lee Kwo Hang Felix  
                    Mr. Lee Tsung Wah Jonathan

### ORDER & REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants as Complainant (“**Complainant**”) against Mr Tse Lap Fu Lawrence (“**Respondent**”). Section 34(1)(a)(vi) and Section 34(1)(a)(viii) of the Professional Accountants Ordinance (Cap. 50) (“**PAO**”) applied to the Respondent.
2. The particulars of the complaint is set out in a letter dated 31 March 2016 (“**Complaints**”) from the Registrar of the Institute to the Council of the Institute for consideration of the Complaints for referral to the Disciplinary Committee (“**Committee**”).
3. On 4 May 2016, the Respondent signed a confirmation (“**Confirmation**”) whereby he admitted the Complaints against him, and the Respondent did not dispute the facts as set out in the Complaints. The parties jointly applied that the steps set out in Rules 17 to 30 of the Disciplinary Committee Proceedings Rules (“**Rules**”) be dispensed with.

4. On 15 July 2016, the Committee agreed to the parties' joint application to dispense with the steps set out in Rules 17 to 30 of the Rules in light of the admission made by the Respondent and directed the parties to make written submissions on sanctions and costs, and the Committee invited the Parties to make written submissions to the Committee as to sanctions and costs which should be imposed in respect of the Complaints. Neither of the parties requested for a hearing on sanctions and costs.

## **BACKGROUND**

5. The Respondent is the sole proprietor of Lawrence Tse & Co. ("**LTC**").
6. In May 2014, the Institute received an anonymous complaint alleging improprieties in the audits of the financial statements of a number of private companies conducted by LTC.
7. The Institute enquired into the complaint in accordance with the complaint handling process and found breaches of professional standards by the Respondent.
8. The audits concerned five companies, namely Tai Da Trading Company Limited ("**Tai Da**"), Hung Cheung Industrial Limited ("**Hung Cheung**"), Hostnice Investment Limited ("**Hostnice**"), Cenwood Telecom Company Limited ("**Cenwood**"), and Markland Secretarial Services Limited ("**Markland**") (collective the "**Five Companies**").

## **THE COMPLAINTS**

### **First Complaint**

Section 34(1)(a)(vi) of the PAO applied to the Respondent in that he failed or neglected to observe, maintain or otherwise apply Hong Kong Standard on Auditing ("**HKSA**") 700 *Forming an Opinion and Reporting on Financial Statements* as a result of his failure to properly evaluate whether the financial statements of Tai Da for the year ended 31 March 2012 and those of Hung Cheung for the year ended 30 September 2013 were prepared and presented in accordance with the applicable financial reporting framework.

### **Second Complaint**

Section 34(1)(a)(vi) of the PAO applied to the Respondent in that he failed or neglected to observe, maintain or otherwise apply HKSA 500 *Related Parties* as a result of his failure to properly evaluate whether identified related party relationships and transactions were properly disclosed in accordance with the applicable financial reporting framework in the financial statements of Hostnice for each of years ended 31 December 2010 to 2013.

### **Third Complaint**

Section 34(1)(a)(vi) of the PAO applied to the Respondent in that he failed or neglected to observe, maintain or otherwise apply HKSA 500 *Audit Evidence* as a result of his failure to obtain sufficient appropriate evidence to support his audit opinion that deferred tax liabilities relating to revalued investment properties need not be accounted for in the financial statements of Hostnice for each of the years ended 31 December 2010 to 2013.

### **Fourth Complaint**

Section 34(1)(a)(vi) of the PAO applied to the Respondent in that he failed or neglected to observe, maintain or otherwise apply HKSA 230 *Documentation* as a result of his failure to prepare sufficient documentation of significant professional judgments underlying his conclusions on deferred tax implications of revalued investment properties in the financial statements of Hostnice for each of the years ended 31 December 2010 to 2013.

### **Fifth Complaint**

Section 34(1)(a)(vi) of the PAO applied to the Respondent in that he failed or neglected to observe, maintain or otherwise apply HKSA 501 *Audit Evidence – Specific Considerations for Selected Items* as a result of his failure to obtain sufficient appropriate evidence to support his audit opinion regarding the existence and condition of inventory in the financial statements of Cenwood for each of the years ended 31 December 2012 and 2013.

### **Sixth Complaint**

Section 34(1)(a)(vi) of the PAO applied to the Respondent in that he failed or neglected to observe, maintain or otherwise apply sections 290.4, 290.124 and 290.126 of the Code of Ethics for Professional Accountants (Revised June 2010, effective 1 January 2011) (“COE”) as a result of his accepting appointment as auditor of Markland, which had a close business relationship with his firm, for the year ended 30 April 2010.

### **Seventh Complaint**

Section 34(1)(a)(viii) of the PAO applied to the Respondent in that he has been guilty of professional misconduct, by reason of his conduct under First to Sixth Complaints.

## **RELEVANT PROFESSIONAL STANDARDS**

9. The facts as admitted by the Respondent revealed multiple breaches of the following professional standards, namely:

- (1) Paragraphs 10, 12 and 13(b) of HKSA 700 *Forming an Opinion and Reporting on Financial Statements* (issued September 2009);
- (2) Paragraphs 3.2 and 3.10 of the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard (“SME-FRS”) (issued August 2005);
- (3) Paragraphs 9 and 18 of Hong Kong Accounting Standard (“HKAS”) 24 *Related Party Disclosures* (issued November 2009);
- (4) Paragraph 25 of HKSA 550 *Related Parties* (issued July 2009);
- (5) IN 8, Paragraphs 5, 7, 20(a) and (b), 51, 51A and 51C of HKAS 12 *Income Tax* (issued April 2010, effective 2005);
- (6) Paragraphs 4 and 6 of HKSA 500 *Auditing Evidence*;
- (7) Paragraph 8 of HKSA 230 *Documentation*;
- (8) Paragraphs 4, 5, 6 and 7 of HKSA 501 *Audit Evidence – Specific Considerations for Selected Items* (issued July 2009); and
- (9) Sections 290.4, 290.124 and 290.126 of the COE (Revised June 2010, effective 1 January 2011).

10. The relevant extracts of the aforementioned professional standards are annexed hereto.

#### **FACTS AND CIRCUMSTANCES IN SUPPORT OF THE FIRST COMPLAINT**

11. The Respondent was responsible for the audit of Tai Da’s Financial Statements for the financial year ended 31 March 2012, which they were expressed to be prepared using SME-FRS with an unmodified audit opinion being given. The Respondent was also responsible for the audit of Hung Cheung’s Financial Statements for the year ended 30 September 2013, which they were expressed to be prepared using SME-FRS with an unmodified audit opinion being given.
12. Paragraphs 3.2 and 3.10 of the SME-FRS requires an item of property, plant and equipment should be measured subsequently at its cost less accumulated depreciation and any accumulated impairment loss.
13. The accounting policy was stated in Tai Da’s audited financial statements (“AFS”) for the year ended 31 March 2012: “*Investment properties: “Investment properties are stated in the statement of financial position at fair value.”*” The accounting policy was also stated in Hung Cheung’s AFS for the year ended 31 March 2013: “*Investment properties: “Investment properties are stated in the statement of financial position at the market value.”*”
14. Note 9 to the 2012 AFS of Tai Da stated that “*the investment properties were revalued on 31 March 2012 by the sole director to reflect the current market value of the properties without professional valuation. The fair value gain amounting to HK\$2,073,800 was credited to the statement of comprehensive income under gain on revaluation*”.



15. Note 9 to the 2013 AFS of Hung Cheung shows a schedule of fixed assets and disclosed that:
- (a) A shop in the New Territories “... was revalued on 25 September 2013 by the directors to reflect the current market value of the property without professional valuation. ...the market value of the Investment property remains at HK\$38,000,000.”
  - (b) A residential unit in the New Territories “... was revalued on 25 September 2013 by the directors to reflect the current market value of the property without professional valuation. ...the market value of the Land and Building remains at HK\$4,143,382.”
16. The Respondent represented that, for Tai Da, the shareholders and management would not care about the method of treatment or regulations and rules on valuation of assets, and considered that compliance with SME-FRS would distort the actual state of affairs of the company, and therefore he considered that there was “...no reason not to concur with the opinion of the management of the Company despite the departure from Standards of HKICPA... .”
17. The Respondent represented that, for Hung Cheung, the difference between the fair market value and historic cost of acquisition is over twenty five times of its historic cost, which is significant and material. Therefore, he concurred with “... the opinion of the management of the Company concerned despite the departure from Accounting Standards of HKICPA... .”
18. By issuing an unmodified audit opinion on the financial statements of Tai Da and Hung Cheung in question, the Respondent did not properly evaluate the fact that accounting policies selected and applied for a material respect, being properties, were inconsistent with the applicable financial reporting framework, i.e. SME-FRS. The Respondent should have properly evaluated whether the management’s recognition and measurement of the properties in the financial statements of Tai Da and Hung Cheung in question complied with SME-FRS.

## **FACTS AND CIRCUMSTANCES IN SUPPORT OF THE SECOND COMPLAINT**

19. The Respondent was responsible for the audit of Hostnice’s financial statements for the financial years ended 31 December 2010 to 2013, which they were expressed to be prepared using Hong Kong Financial Reporting Standards (“**HKFRS**”) with an unmodified audit opinion being given.
20. Paragraphs 9 and 18 of the HKAS 24 Related Parties requires that if an entity has had related party transactions during the relevant periods, it shall disclose the nature of the related party relationship as well as information about those transactions. Related parties include “a person or a close member of that person’s family who (i) has significant control or joint control over the reporting entity, (ii) has significant influence over the reporting entity, or (iii) is a member

*of the key management personnel of the reporting entity or of a parent of the reporting entity... .”*

21. The audit working papers for 2010 to 2013 documented that the balances of “*Accounts Payable*” for the relevant financial years ended were due to the persons who were related parties under HKAS 24, including directors and shareholders, namely, (i) Leung Kwai Nam, (ii) Leung Ki Nam, and (iii) Leung Tai Nam, and a shareholder, namely (i) Leung Mei Sze. Audit confirmations were sent and received from the aforementioned individuals confirming the balances.
22. However, the AFS of Hostnice for the relevant financial years ended did not contain the information required to be disclosed under paragraph 18 of HKAS 24.
23. The Respondent stated that disclosure of related parties was not made because the “*original sources*” of the funds injected into company had not been positively identified and stated that Leung Mei Sze was the administrator of her late husband (the original shareholder) and was not taken as a related party.
24. By issuing an unmodified audit opinion on the financial statements of Hostnice for the financial years ended 31 December 2010 to 2013, the Respondent failed to evaluate the non-compliance with HKAS 24, which he should have done so in accordance with paragraph 25 of HKSA 550.

#### **FACTS AND CIRCUMSTANCES IN SUPPORT OF THE THIRD AND FOURTH COMPLAINT**

25. The Respondent was responsible for the audit of Hostnice’s financial statements for the financial years ended 31 December 2010 to 2013, which they were expressed to be prepared using Hong Kong Financial Reporting Standards (“**HKFRS**”) with an unmodified audit opinion being given.
26. The narrative to the notes to accounts for “*Investment properties*” of Hostnice’s 2013 AFS states that:

*“The investment properties were revalued on 15 March 2010 by the directors of the company to reflect the current market value of the property without professional valuation. Fair market value of the investment properties was HK\$20,000,000.- as at 31 December 2010. Gain on revaluation during the year amounting to HK\$12,551,000.- was credited to the statement of comprehensive income.*

*The investment properties were revalued on 14 February 2012 by the directors of the company to reflect the current market value of the property without professional valuation. Fair market value of the investment properties was HK\$22,000,000.- as at 31 December 2012. Gain on revaluation during the year amounting to HK\$2,000,000.- was credited to the statement of comprehensive income.*

*The investment properties were revalued on 31 October 2013 by the directors of the company to reflect the current market value of the property without professional valuation. Fair market value of the investment properties was HK\$26,000,000.- as at 31 December 2013. Gain on revaluation during the year amounting to HK\$4,000,000.- was credited to the statement of comprehensive income.”*

27. Note 7 of Hostnice’s 2013 AFS states “*Taxation – Hong Kong Profits Tax has been provided in the financial statements at the rate of 16.5% on the assessable profits for the year (2012: 16.5%).*”
28. There was no accounting policy or note to the accounts concerning deferred taxation in the AFS. Deferred taxation in relation to the revalued properties have not been accounted for, in breach of HKAS 12. Thus, there was a failure by the Respondent to obtain sufficient appropriate evidence to support his audit opinion that deferred tax liabilities relating to the revalued investment properties need not be accounted for, in breach of HKSA 500.
29. The Respondent agreed that HKAS 12 should be observed and complied with, but he stated that it was not necessary since “*the difference between the revalued valuation and the allowable cost on deferred tax liability in connection with the revaluation will never arise even if the said property is being disposed as it will not give rise to H.K. taxation because H.K. has no taxation on capital gain*”.
30. However, such rationale is inadequate because he did not obtain any evidence to confirm whether the company was to recover the carrying amount of the investment property entirely through sale or, alternatively, through use that would generate taxable income exceeding depreciation allowable for tax purposes in future periods. These two different scenarios would have different deferred tax implications. It was not documented in the audit working papers, nor was there any other audit documentation showing the Respondent had carried out its procedure to obtain audit evidence or assessed the application of the requirements under HKAS 12. Accordingly, there was a breach of HKSA 230.

## **FACTS AND CIRCUMSTANCES IN SUPPORT OF THE FIFTH COMPLAINT**

31. The Respondent was responsible for the audit of Cenwood’s financial statements for the financial years ended 31 December 2012 and 2013 with an unmodified audit opinion being given. No stock-take was performed for either year.
32. The audit procedure for the financial year ended 31 December 2012 was that there was no stock-take performed and no alternative work done. The audit procedure for the financial year ended 31 December 2013 was that there was no stock-take performed but stock-trade certificate was obtained, NRV test and compliance test were carried out by checking inventory to purchase notice.

33. The Respondent did not attend the stock-take for the year ended 31 December 2012 because he was first engaged as auditor for the year on 2 July 2013. The Respondent was required by paragraphs 4, 6 and 7 of HKSA 501 to attend the stock-take on an alternative date and perform audit procedures on the intervening transactions, or if this was impracticable, to perform alternative audit procedures to obtain sufficient appropriate audit evidence regarding the existence and condition of inventory. If this was not possible, the Respondent should have modified his audit opinion.
34. Although the engagement letter for the 2013 audit was signed on 30 July 2014, the Respondent could have requested to attend the stock-take of the Company on 31 December 2013. Alternatively, he should have attended the stock-take at an alternative date after 30 July 2014 and performed audit procedures to verify the intervening stock transactions. The Respondent did not adopt these procedures.
35. The Respondent stated that alternative audit procedures on year-end inventory had been carried out for both 2012 and 2013, although the only working papers provided were those for 2013. The Complainant did not accept that any alternative audit procedures have been carried out for 2012, as supporting documentation is wholly lacking. This was accepted by the Respondent by virtue of his Confirmation.
36. The alternative audit procedures carried out for 2013 were inadequate and/or insufficient to support the existence and condition of the year-ended stock, because compliance test and NRV test cannot ascertain the existence and status of inventory at balance sheet date. Stock certificate from the director was management representation which lacked independent verification. Thus, the Respondent was in breach of HKSA 501.

#### **FACTS AND CIRCUMSTANCES IN SUPPORT OF THE SIXTH COMPLAINT**

37. The Respondent was responsible for the audit of Markland's financial statements for the financial years ended 30 April 2010, signed on 30 January 2012.
38. Markland was a secretarial company with a close business relationship with LTC. LTC used to provide auditing, taxation and secretarial services in the same office. The Respondent admitted that Markland was used as a special purpose vehicle in 2010 to take over the secretarial services of LTC and to provide manpower to LTC with a profit-sharing arrangement with LTC which gets 1/3 and the remaining 2/3 goes to Markland.
39. The working papers showed an item stating "*consultancy fee – LTC*", which was explained further that "*[Markland] provides the manpower to [LTC] to complete its job. In return, [LTC] will paid 2/3 of fee amount as consultancy income to [Markland].*"

40. The Respondent also stated that "*LTC had ceased to be the auditor of Markland after the financial year ended 30 April 2010 and will never be the auditor of [Markland] from then onward as the acting as such will bring conflict of interest and a breach of rule under professional ethic*". This, as the Complainant submitted, was a tacit admission that the threat to independence was so serious as not to allow LTC to be the auditor of Markland.
41. Given the close business relationship, their sharing of revenue, and the provision of manpower by Markland to LTC, the threat to auditor's independence created would be so significant that no safeguards could reduce the threat to an acceptable level. A reasonable and informed third party would be likely to conclude that the Respondent's integrity, objectivity or professional scepticism as the auditor have been compromised. This was acknowledged by the Respondent and by virtue of his Confirmation.

#### **FACTS AND CIRCUMSTANCES IN SUPPORT OF THE SEVENTH COMPLAINT**

42. These multiple breaches by the Respondent in respect of the Five Companies over consecutive years revealed that he had blatantly and persistently failed to undertake adequate procedures to ensure a professional manner expected of a competent practising certified public accountant. Further, the Respondent also acknowledged it would bring about a conflict of interest and breach of professional ethics. Thus, section 34(1)(a)(viii) of the PAO applies to the Respondent for having been guilty of professional misconduct.

#### **THE SANCTIONS**

43. In light of the admission by virtue of the Confirmation, the only outstanding matter is the question of sanctions which ought to be imposed upon the Respondent.
44. The Complainant and the Respondent provided their written submissions on sanctions and costs on 5 August 2016 and 29 September 2016 respectively. Both parties provided a number of previous Disciplinary Committee decisions.
45. The Complainant has submitted and analysed past cases decided by the Disciplinary Committees which the Complainant emphasised the seriousness for breaches of independence reflected in the penalties imposed and that cases concerning multiple breaches of standards and professional misconduct have attracted heavier penalty. In summary, the Complainant submitted that only a cancellation of the practising certificate – for a period of not less than 12 months – can reflect the seriousness of the multiple breaches and the breach as to independence in particular.
46. The Respondent maintained in his written submission that, regarding the First, Second, Third, and Fourth Complaints, the errors "*was inadvertently made by [the Respondent]*" and "*was an error arose from [the Respondent's] exercise of*

*judgment or mis-judgment*”. Regarding the Fifth Complaint, the Respondent submitted that he exercised a judgment in deciding that the inventory was immaterial as compared with the turnover of the relevant years. Regarding the Sixth Complaint, the Respondent submitted that (i) such *“appearance of lack of independence or lack of appearance of independence does not concern any party apart from [the Respondent]”*, (ii) *“Markland had been making losses of HK\$396,172 and \$214,304”*, and (iii) such audit report was *“only required for the stamping of the transfer of shares of Shun Cheuk (Hong Kong) Limited being the sole shareholder of Markland”*. As to the last submission, the Committee expressed doubt as to the real intention of the audit, which may potentially be used for the purpose of avoiding Stamp Duty.

47. Further, the Respondent also maintained that he had shown remorse and taken remedial actions. The Respondent also submitted in his mitigation that each Complaint was isolated incident, not repetitive and were unlikely to be repeated in the future. Regarding his health condition, the Respondent submitted that his heart’s problem began *“when he was disciplined for non-compliance with requirements to a Practice Review”*. However, the Respondent, in his further submission dated 27 October 2016, could not provide further medical records to support his claim.
48. In summary, the Respondent submitted that a reprimand and/or penalty plus payment of reasonable amount of the cost and expense of the proceedings be appropriate.
49. On 28 October 2016, the Complainant submitted a further submission in light of new facts and circumstances as revealed in the Respondent’s submission. In summary, the Complainant submitted that (i) the sentencing approach suggested by the Respondent by analogy to the criminal sentencing process is plainly wrong, (ii) the Committee should determine what is the appropriate sanction after considering all the complaints, rather than assigning an individual sanction to each complaint and then aggregate them, (iii) the errors were not as inadvertent or as a misjudgement as the Respondent submitted, (iv) the Respondent was *“the sole ultimate shareholder of Markland”* which is the *“worst kind of breach of independence”*, and (v) the Respondent’s submission that Markland was required to carry out its audit because of share transfer is plainly wrong. In summary, the Complainant sought for, not just the cancellation of practising certificate, but a removal of the membership – for such a period as the Committee sees fit.
50. In light of the further submission by the Complainant, the Respondent submitted his reply on 22 December 2016. In particular, the Respondent replied further to the Sixth Complaint which submitted that Ms Lau Sin held the shares of Markland as nominee of the Respondent which the Respondent earlier accepted that the former director of Markland sold his shares to the Respondent. However, the Respondent sought for support from the Practice Review carried out earlier that no further action was taken against the Respondent, and no harm to any person or party has been caused by this misconduct.

51. The Complainant then further filed his submission on 3 January 2017 and the Respondent followed in reply on 9 January 2017. However, since the Committee has directed that no further submissions can be made after the Respondent's submission dated 22 December 2016, the Committee would not consider the content of these two submissions.
52. On 27 January 2017, the Committee raised further questions as to the Sixth Complaint upon reviewing the Respondent's submission. The Committee enquired as to the details surrounding the acquisition of Markland by the Respondent, the role of the Respondent in the acquisition, and the audit carried out by the Respondent on Markland.
53. On 13 March 2017, the Respondent provided his account. In summary, the Respondent submitted that Mr Alan Lee, the former shareholder, approached and solicited the Respondent on or before 2011 Chinese New Year for taking over Markland as the business of Markland was suffering loss and Markland was providing manpower and office supporting facility to LTC, and the acquisition was finally concluded in May 2012. LTC was first requested to conduct the audit of Markland for the year ended 30 April 2010 sometime in 2011, which was after the Respondent being approached to take over Markland. In light of the Respondent's Submission, the Committee, on 28 March 2017, invited the Complainant to make further submissions on the Sixth Complaint, in particular, as to which particular section(s) of the COE or other professional standard(s) that the Respondent had breached.
54. On 11 April 2017, the Complainant identified the issue as to whether there might be a further breach of independence depends on whether the Respondent held any beneficial interest in Markland during the audit. The Complainant submitted that, (i) contrary to what the Respondent submitted earlier as to his negotiation with Mr Alan Lee, company searches shows that Mr Alan Lee had already resigned as director on 19 October 2011, and Ms Lau Sin was appointed as director on the same day, which the Complainant questioned the true beneficial ownership of Markland during the relevant periods and (ii) even assuming that the Respondent did not hold any beneficial interest during the audit, the Respondent still had breached the independence requirement by auditing a company with an offer from him to purchase the shares under paragraph 290.124 of the COE that he may create self-interest. The Complainant then invited the Committee to impose a heavier sanction than the one they suggested on 5 August 2016.
55. The Committee accordingly directed the Respondent be given the opportunity to respond to the Complainant's submission.
56. On 18 May 2017, the Respondent submitted the following: (i) the alleged fact did not take the charge beyond the original ambit, i.e. paragraph 290.124 of the COE, (ii) the Respondent was not interested in acquiring Markland until after completion of the audit of Markland because Ms Lau Sin later changed her mind and decided not to acquire Markland, which the Respondent did not want Markland to be closed down and asked Ms Lau to become the sole shareholder

of Markland as nominee of the Respondent, and (iii) the Respondent did not agree with the allegation that there would be a self-interest in auditing a company because it was not the job of the auditor to produce any set of financial figures upon carrying out the audit. The Respondent reiterated that the Respondent's misconduct was not serious than that of the case of Mr Ng Kay Lam which was sanctioned by way of reprimand and penalty of HK\$50,000.

## **DECISION**

57. In arriving at the proper sanctions to be imposed on the Respondent, the Committee has had regard to all the aforesaid matters advanced in mitigation as well as taken into account the previous decisions of the Disciplinary Committee that we had been referred to. The Committee considered the following facts and matters specific to this case:

- (a) The Committee takes into account that the Respondent has sought to ameliorate his breaches by having an early admission at the outset, which has allowed Rules 17 to 30 of the Rules to be dispensed with and shortened these proceedings, and has resulted in the saving of time and costs.
- (b) The Committee takes into consideration the Respondent's age, his health and his grave concern in the past year in the course of bringing these disciplinary proceedings to a final determination.
- (c) However, the Committee notes that there were multiple breaches of the Accounting and Auditing Standards involved here as well as the fact that the breaches involved more than one company.
- (d) As to the First to Fifth Complaints, the Committee does not consider that it assists the Respondent that he was aware of the applicable professional standards but then decided that it was acceptable not to apply those standards.
- (e) Further, the breaches by the Respondent are considered as a significant sum and a significant percentage.
- (f) Even though the Respondent has admitted the Complaints at the onset, the Respondent, in his written submissions on sanctions, continued to maintain that he was not in serious breach of the independence requirement as to the Sixth Complaint. Further, in light of the further submissions by the Respondent, the Committee finds that the circumstance surrounding the acquisition of Markland and the audit involved were dubious and the Committee expresses our doubt as to the true purpose of the audit by LTC on Markland.
- (g) As submitted by the Complainant and reflected in past decisions, the Committee holds the view that a strong message needs to be sent out to the profession that serious and flagrant breaches of the core



principle of independence or apparent independence as required by the Code will be viewed seriously by the Committee. Such serious breaches will warrant serious consequences in terms of sanctions. It is for this reason that the Committee considers that an order for the cancellation of his practising certificate is necessary.

58. Having considered the above facts and matters and all other factors the Committee deem appropriate, including a Statement of Costs dated 14 June 2017 submitted by the Institute totalling HK\$113,236 and a Revised Statement of Costs of the Clerk dated 31 May 2017 totalling HK\$9,872 which the Committee is satisfied were reasonably and necessarily incurred, we make the following orders:

- (a) The Respondent be reprimanded under section 35(1)(b) of the PAO;
- (b) The Respondent pay a penalty of HK\$50,000 under section 35(1)(c) of the PAO;
- (c) The Respondent pay the costs of and expenses incidental to the proceedings of the Complainant and the Committee in the total sum of HK\$123,108 under section 35(1)(iii) of the PAO;
- (d) The practising certificate issued to the Respondent be cancelled on the 40<sup>th</sup> day from the date of this order under section 35(1)(da) of the PAO; and
- (e) A practising certificate shall not be issued to the Respondent for a period of 6 months from the date that the Respondent's practising certificate is cancelled under sub-paragraph (d) above under section 35(1)(db) of the PAO.

Dated the 5th            day of September 2017.



IN THE MATTER OF

A Complaint made under section 34(1) of the Professional  
Accountants Ordinance

BETWEEN

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

AND

Tse Lap Fu, Lawrence (F03636)    Respondent

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**CORRIGENDUM**

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The following is a corrigendum to the Order and Reasons for Decision dated 5  
September 2017:

On page 2 concerning the Second Complaint,

"...HKSA 500 *Related Parties*..."

is amended to

"...HKSA 550 *Related Parties*..."

Dated: 10 October 2017

Clerk to the Disciplinary Committee