



Dear Assignment/News/Business Section Editor

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

(HONG KONG, 27 April 2016) - On 8 March 2016, a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants reprimanded Chan Ying Kit (membership number F04219) for his failure or neglect to observe, maintain or otherwise apply professional standards issued by the Institute. The Committee further ordered Chan to pay a penalty of HK\$50,000 and the costs of the disciplinary proceedings of HK\$96,158.60.

Chan audited the financial statements of two Hong Kong private companies for the period ended 31 December 2010. In one of the audits, Chan failed to obtain sufficient evidence for a material expenditure. In the other audit, he failed to assess the adequacy of financial statement disclosure and obtain sufficient evidence to conclude the financial statements were free of material misstatements, regarding investments in two subsidiaries. The complaint was made under section 34 (1AAA) of the Professional Accountants Ordinance.

The Disciplinary Committee found that Chan was in breach of Hong Kong Standard of Auditing ("HKSA") 500 *Audit Evidence* and HKSA 700 *Forming an Opinion and Reporting on Financial Statements*.

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

Under the Ordinance, if Chan 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 www.hkicpa.org.hk.

Disciplinary proceedings of the Institute are conducted in accordance with Part V of the 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.

- End -

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 39,000 members and 19,000 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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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，二零一六年四月二十七日) — 香港會計師公會轄下一紀律委員會於二零一六年三月八日就陳英傑先生(會員編號：F04219)沒有或忽略遵守、維持或以其他方式應用公會頒布的專業準則，對他作出譴責。委員會又命令陳先生繳付罰款港幣五萬元及紀律程序的費用港幣九萬六千一百五十八元六角。

陳先生審核兩間香港私人公司截至2010年12月31日的財務報表。在其中一項審核中，陳先生沒有就一筆重要的開支搜集足夠的憑證。在另一項審核中，他沒有評估該財務報表是否已充份地披露對兩間附屬公司的投資，以及沒有搜集足夠的憑證支持他作出財務報表沒有重大誤報的結論。是次投訴是根據《專業會計師條例》第34(1AAA)條對而作出的。

紀律委員會裁定陳先生違犯了 Hong Kong Standard of Auditing ("HKSA") 第 500 號 *Audit Evidence* 及 HKSA 第 700 號 *Forming an Opinion and reporting on Financial Statements*.

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)條向陳先生作出上述的命令。

根據《專業會計師條例》，如陳先生不服紀律委員會對他作出的命令，可於命令文本送達後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，網頁為 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，是從業外人士組成的紀律小組中選派，該紀律小組的成員是由香港特別行政區行政長官委任的；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、執業會計師事務所會員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註冊紀錄冊中除名或吊銷其執業證書及在適當情況下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

罰款不多於五十萬港元，以及支付紀律程序的費用。

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，會員人數超過三萬九千，註冊學生人數逾一萬九千。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**)以確保會計師的入職質素，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)(a) and section 34(1AAA) of the Professional Accountants Ordinance, Cap 50

BETWEEN

Worldwide Executive Limited COMPLAINANT

AND

Chan Ying Kit (Membership No. F04219) RESPONDENT

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

Members: Ms. TSUI, Pui Man, Winnie (Chairman)
Ms. HUI, Ming Ming, Cindi
Mr. FUNG, Wei Lung, Brian
Mr. WONG, Hak Kun, Kan
Mr. WONG, Hong Yuen, Peter

Date of Hearing: 10 December 2015

Date of Decision: 8 March 2016

REASONS FOR DECISION & ORDER

BACKGROUND

For the purpose of the substantive hearing, there is an Agreed Statement of Facts between the Complainant and the Respondent and it helps to set out the background of the case. The Agreed Statement of Facts is as follows:

“AGREED STATEMENT OF FACTS

1. The Complainant is and was at all material times a shareholder of China NTG Investment Limited (“**CNTG Investment**”) and China NTG Gas Group Limited (“**CNTG Gas Group**”) (collectively the “**Companies**”).

2. CNTG Investment was incorporated on 12 November 2009 and CNTG Gas Group was incorporated on 22 December 2009.
3. CNTG Gas Group is part of a group of companies ultimately headed by China NTG Investments Limited, which was incorporated in the BVI ("**CNTG Group**").
4. On 29 December 2009, 5 March 2010 and 15 April 2010, the Complainant deposited an aggregate sum of RMB130 million with CNTG Investment.
5. The Respondent was engaged by the Companies to be the auditor of CNTG Investment for the period from 12 November 2009 to 31 December 2010 and CNTG Gas Group for the period from 22 December 2009 to 31 December 2010.
6. The Companies assigned Ms. Annie Chan, the then chief financial officer of the Companies, to provide ledgers, balance sheets and documents for the audit.
7. The Audit Reports of the Companies prepared by the Respondent were both unqualified.
8. On 5 March 2013 and 19 March 2013, the Companies sent enquiries to the Respondent to clarify certain transactions stated in the Financial Statements but no response was received from the Respondent.
9. On 31 July 2013, the Applicant lodged a formal complaint against the Respondent to the Council of the Hong Kong Institute of Certified Public Accountants.
10. On 6 October 2014, the Council resolved to take regulatory actions against the Respondent in lieu of formal disciplinary proceedings.
11. On 16 December 2014, the Complainant confirmed to request the complaint to the Disciplinary Panels for further investigation under section 34(1AAA) of the Professional Accountants Ordinance."

The formal complaint referred to in 9. above was contained in two letters both dated 31 July 2013 (collectively "**the 2013 Complaint Letters**") sent by the Complainant to the Registrar of Hong Kong Institute of Certified Public Accountants ("**HKICPA**"). Surprisingly, the Agreed Statement of Facts did not mention or include the complaints in the final form (substantially less than those complaints set out in the 2013 Complaint Letters) which was the entire subject matter of the substantive hearing on 10 December 2015. The final complaints and their particulars were set out in a letter dated 20 January 2015 ("**the 2015 Complaint Letter**") lodged by the Complainant to the Council of HKICPA pursuant to section 34(1AAA) of the Professional Accountants Ordinance ("**PAO**"). The Disciplinary Committee was empowered to deal with only the complaints contained in the 2015 Complaint Letter.

THE COMPLAINTS

Complaints as at 20 January 2015

By the 2015 Complaint Letter, the Complainant made the following complaints against the Respondent:

- (1) In respect of the Financial Statements for the period ended 31st December 2010 of China NTG Investment Limited (the “**CNTG Investment Audit**”), “[t]he Respondent failed or neglected to observe, maintain or otherwise apply paragraph 2 of HKSA 500 *Audit Evidence* (issued November 2004) in that the Respondent did not obtain sufficient appropriate audit evidence for the “Project costs & facilitation fee” in order to be able to draw reasonable conclusion on which to base the audit opinion.” (“**Complaint 1**”)
- (2) In respect of the Financial Statements for the period ended 31st December 2010 of China NTG Gas Group Limited (the “**CNTG Gas Audit**”), “[t]he Respondent failed or neglected to observe, maintain or otherwise apply paragraph 11, 13 and/or 17 of Hong Kong Standard on Auditing 700 *Forming an Opinion and Reporting on Financial Statements* (October 2010). The failure arose in the circumstances that in respect of the balance of investment in subsidiaries and non-consolidation of subsidiaries’ accounts, the Respondent had not appropriately assessed the adequacy of disclosures and had not obtained sufficient evidence to conclude that the financial statements were free of material misstatements.”

Complaint as amended on 10 December 2015

At the beginning of the substantive hearing, Mr. Tony Chow, Counsel for the Complainant informed the Disciplinary Committee that the Complainant dropped its complaint relating to “non-consolidation of subsidiaries’ accounts” in the CNTG Gas Audit.

It follows that this complaint as amended should be as follows:

“In respect of the CNTG Gas Financial Statements, “[t]he Respondent failed or neglected to observe, maintain or otherwise apply paragraph 11, 13 and/or 17 of Hong Kong Standard on Auditing (“HKSA”) 700 *Forming an Opinion and Reporting on Financial Statements* (October 2010). The failure arose in the circumstances that in respect of the balance of investment in subsidiaries, the Respondent had not appropriately assessed the adequacy of disclosures and had not obtained sufficient evidence to conclude that the financial statements were free of material misstatements.” (“**Complaint 2**”)

Mr. Tony Chow also confirmed that the complaints are confined only to negligence as there was no indication of dishonesty on the part of the Respondent.

BURDEN AND STANDARD OF PROOF

Mr. Tony Chow referred the Committee to the Guidelines for the Chairman and the Committee on Administering the Disciplinary Committee Procedural Rules which set out the burden of proof.

Paragraph 14 states: “The initial burden of proving a complaint rests with the Complainant.”

Paragraph 17 states: "The Hong Kong Courts have confirmed that the standard of proof applicable in disciplinary proceedings is the civil standard (proof on a balance of probabilities) suitably adjusted so that the more serious an allegation the more compelling must be the evidence."

ANALYSIS

In both reports of CNTG Investment Audit and CNTG Gas Audit, the Respondent stated in the "Opinion" paragraph that:

"In our opinion, the financial statements give a true and fair view of the state of the Company's affairs as at 31 December 2010, and of its results and cash flows for the period from [*the date of incorporation*] to 31 December 2010 in accordance with the Hong Kong Financial Reporting Standard for Private Entities and have been properly prepared in accordance with the Hong Kong Companies Ordinance."

In the "Fundamental Uncertainty" paragraph, the Respondent stated:

"In forming our opinion, we have considered the adequacy of disclosures made in the financial statements concerning the Company's capital deficiency of [*amount*] approximately at the balance sheet date. The financial statements have been prepared on a going concern basis, the validity of which depends upon future profitable operations and/or continued financial support from shareholders. The financial statements do not include any adjustments that would result from a failure to obtain such financial support. Details of the circumstances relating to the fundamental uncertainty are described in note 3.12 to the financial statements. We consider that appropriate disclosures have been made and our opinion is not qualified in this respect."

Complaint 1:

Complainant's Allegations & the Supporting Evidence

The Complainant alleged that the Respondent did not obtain sufficient appropriate audit evidence for the Project costs and facilitation fees of HK\$5,318,008.32 which were expenses in the Income Statement. The focus of this complaint is on the sum of HK\$4,045,159 (later increased to HK\$4,547,864) originally booked in the ledger current account with Eleanor Chan (also known as Chan Sze Wan) ("**CSW**"), a director and shareholder of CNTG Investment in 2010. By a later journal entry (reference J-12-06) made on 31 December 2010, the ledger current account of CSW was credited for HK\$4,587,864 and the corresponding debit went to Project costs and facilitation fees. That released CSW's original liability towards CNTG Investment under the ledger current account.

The Complainant alleged that there was no audit work paper or audit schedule on the expense item "Project costs and facilitation fees". In particular, the Respondent

should be more careful in checking the release of the liability of CSW under the ledger current account, especially as CSW was a director and shareholder of CNTG Investment.

Respondent's explanation

The Respondent explained that he had calculated the materiality ratio for the Project costs and facilitation fees. Since project costs are capital in nature or are regarded as assets, the Respondent used the total assets value of the group for calculating the materiality ratio. He concluded that the materiality ratio of Project costs and facilitation fees was only 4% and therefore did not require substantive testing.

The Respondent also replied that he had checked and evaluated the internal control. He said that the projects costs were well known by the directors of CNTG Investment as the Project costs and facilitation fees was clearly recorded in the trial balance, ledger and books of CNTG Investment and had been reviewed and approved by the directors. All or most of the directors should have been controlling the Project costs for all the times and all the transactions should have been properly approved by CNTG Investment.

Relevant Professional Standards

Hong Kong Standard on Auditing 500 Audit Evidence (issued November 2004):

"2. The auditor should obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion."

Conclusion of the Committee

At the substantive hearing, the Respondent was unable to produce any audit record or working paper to show that he did the materiality calculation which he alleged was 4% by comparing the amount of the Project costs and facilitation fees to the amount of the total assets of the group. The Committee takes the view that the Respondent as the auditor should determine materiality ratio for expenses items in the financial statements based also on other significant accounting data as well. Since the amount of the Project costs and facilitation fees in the sum of HK\$5,318,008.32 represents 21.6% and 28.9% respectively of the total expenses and the net loss of the group, the Respondent should have applied the substantive testing and further audit work should have been carried out.

The Respondent repeated many times that all directors of CNTG Investment agreed that the nature of the expenses were project costs and therefore the Respondent could only accept the company policy. The Committee does not agree to this view. Instead it should be the duty of the Respondent as an auditor to evaluate the company accounting policy. The Respondent also emphasized that since the directors were well qualified, he was happy that the internal control and procedures were sufficient. Yet the Committee does not accept this as a substitute for actual testing of controls in place or an excuse for doing no work.

The Respondent was also unable to give any particulars about “the type of projects” and “the nature of services or the type of facilitation” that comprised the Project costs and facilitation fees. The Committee is not convinced when the Respondent said he, in performing the audit work, had checked almost 90% of the vouchers and relevant documents. Thus the Committee finds the materiality calculation based on total assets value of the group (actually the Committee doubts whether the Respondent did actually carried out the calculation) and the internal control for the Project costs and facilitation fees by the Respondent were insufficient for him to draw the conclusion. Had the Respondent made the appropriate checking and/or evaluation, he should have taken further actions and applied substantive testing for the “Project costs and facilitation fees”.

Based on the above, the Committee finds Complaint 1 is established. The Respondent failed or neglected to observe, maintain or otherwise apply paragraph 2 of HKSA 500 *Audit Evidence* (issued November 2004) in that the Respondent did not obtain sufficient appropriate audit evidence for the “Project costs & facilitation fees” in order to be able to draw reasonable conclusion on which to base the audit opinion.

Complaint 2:

Complainant's Allegations & the Supporting Evidence

In January 2011, CNTG Gas Group made investments into its two subsidiaries, namely 三門峽中騰清潔能源開發有限公司 and 邯鄲中騰清潔能源開發有限公司 respectively of HK\$25,000,000.00 each. On 3 March 2011, CNTG Gas Group received a refund of HK\$17,269,945 from 三門峽中騰清潔能源開發有限公司, resulting in a remittance short-fall of HK\$7,730,000.00. On 17 March 2011, CNTG Gas Group received a refund of HK\$8,939,865.00 from 邯鄲中騰清潔能源開發有限公司, this time resulting a remittance short-fall of HK\$16,060,120.00. These two subsidiaries were subsequently disposed of in June 2011.

The Complainant alleged that since the refunds were received before the sign-off date of the CNTG Gas Audit (i.e. 30 September 2011), the Respondent should have disclosed the subsequent disposals of the subsidiaries as “Events after Reporting Date”. Further, the Respondent should have made reference to the remittance short-falls as he should have considered disclosing the losses on disposal. At least, the Respondent should have made a qualification in the CNTG Gas Audit. Therefore, the Respondent fails to comply with paragraph 32.10 of Section 32 “Events after the end of the reporting period” of Hong Kong Financial Reporting Standard for Private Entities.

Respondent's explanation

In both the RESPONDENT'S CASE (paragraph 25) and the RESPONDENT'S REPLY TO THE COMPLAINANT'S REPLY (paragraph 19), the Respondent stated that the two subsidiaries were not yet disposed of or the disposals were not finalised or completed on or before the sign-off date of CNTG Gas Audit. That was a fundamental mistake of fact on the part of the Respondent.

At the substantive hearing, the Respondent acknowledged his mistake of fact and agreed that the subsidiaries had been disposed of before the sign-off date of the CNTG Gas Audit. In his answers to the Committee, the Respondent said he had performed Subsequent Event Review by sending out representation letter to CNTG Gas Group before he signed off the CNTG Gas Audit. The representation letter had been signed by a director and sent back to him before he signed off, but the letter did not mention about the refunds from subsidiaries. The Respondent also informed the Committee that he had reviewed bank statements and noted various remittances of funds to and from the subsidiaries, but he did not notice anything unusual.

Relevant Professional Standards

Hong Kong Standard on Auditing 700 Forming an Opinion and Reporting on Financial Statements (October 2010):

"11. In order to form that Opinion, the auditor shall conclude as to whether the auditor has obtained reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error. That conclusion shall take into account:

- (a) The auditor's conclusion, in accordance with HKSA 330, whether sufficient appropriate audit evidence has been obtained;*
- (b) The auditor's conclusion, in accordance with HKSA 450, whether uncorrected misstatements are material, individually or in aggregate; and*
- (c) The evaluation required by paragraphs 12-15."*

"13. In particular, the auditor shall evaluate whether, in view of the requirements of the applicable financial reporting framework:

- (a) The financial statements adequately disclose the significant accounting policies selected and applied;*
- (b) The accounting policies selected and applied are consistent with the applicable financial reporting framework and are appropriate;*
- (c) The accounting estimates made by the management are reasonable;*
- (d) The information presented in the financial statements is relevant, reliable, comparable, and understandable;*
- (e) The financial statements provided adequate disclosures to enable the intended users to understand the effect of material transactions and events on the information conveyed in the financial statements; and*
- (f) The terminology used in the financial statements, including the title of each financial statement, is appropriate."*

"17. If the auditor:

- (a) concludes that, based on the audit evidence obtained, the financial statements as a whole are not free from material misstatement; or*
- (b) is unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement,*

the auditor shall modify the opinion in the auditor's report in accordance with HKSA 705."

Conclusion of the Committee

The Respondent stated in the RESPONDENT'S CASE dated 31 July 2015 and the RESPONDENT'S REPLY TO THE COMPLAINANT'S REPLY dated 5 October 2015 that the two subsidiaries were not yet disposed of or the disposals were not finalised or completed on or before the sign-off date of CNTG Gas Audit. Such mistake of fact on the part of the Respondent conclusively proves that the Respondent was not aware of the disposals of the two subsidiaries in June 2011 before he signed off the CNTG Gas Audit in September 2011. That necessarily follows that the Respondent had failed his duty as an auditor as he should have made necessary disclosures for the disposals of subsidiaries in the CNTG Gas Audit.

Apart from the representation letter, the Respondent could not produce any audit working paper or indicate to the Committee what audit work he had done for Subsequent Event Review before he signed off the CNTG Gas Audit. The Committee takes the view that if the Respondent had really reviewed bank statements and did proper Subsequent Event Review before he signed off, he should have noticed the substantial amounts of refunds from the subsidiaries in March 2011 and would have known about the disposals in June 2011. Then he ought to have followed up the matter by disclosing the relevant financial information or issuing a qualified audit opinion in the CNTG Gas Audit.

Based on the above, the Committee finds that Complaint 2 is also established. The Respondent failed or neglected to observe, maintain or otherwise apply paragraph 11, 13 and 17 of Hong Kong Standard on Auditing ("HKSA") 700 *Forming an Opinion and Reporting on Financial Statements* (October 2010). The failure arose in the circumstances that in respect of the balance of investment in subsidiaries, the Respondent had not appropriately assessed the adequacy of disclosures and had not obtained sufficient evidence to conclude that the financial statements were free of material misstatements.

DECISION

The Disciplinary Committee finds that Complaint 1 and Complaint 2 are proved on evidence.

Regarding proposed sanctions and costs, the Complainant and the Respondent made submissions dated 15 December 2015 and 17 December 2015 respectively.

Complainant submissions:

The Complainant invited the Committee to consider the following factors when deciding what sanctions to impose against the Respondent:

- a. Although the proceedings are confined to 2 complaints, the alleged deficiencies in the Respondent's practice would naturally cover the quality of the whole of his auditing work in relation to the reports of CNTG Investment and CNTG Gas Group;
- b. The amount of funds flowing in and out of CNTG Investment and CNTG Gas Group are significant sums largely originating from the Complainant's pockets (exceeding HK\$140 million);
- c. The Respondent contested the complaints to the bitter end and does not appear to appreciate the deficiencies in his practice;
- d. There is basis the Committee to infer the Respondent has been withholding the whole truth in these proceedings since the amount of audit work papers and schedules produced by the Respondent is alarmingly scarce and the Respondent appears to be evasive during the substantive hearing even when asked the simplest of questions by the Committee; and
- e. The Respondent has indirectly contributed to the disputes between the Complainant and other shareholders/directors of CNTG Investment and CNTG Gas in subsequent and ongoing litigations by reason of his poor standard of auditing and failure to screen for misstatements/mismanagement in the financial statements.

The only relevant factor that the Committee would take into consideration when deciding the sanctions is that the Respondent did contest the complaints to the bitter end and there is no or little element of remorse or reflection on the part of the Respondent

However, the Committee would not jump to the conclusion that the alleged deficiencies in the Respondent's practice cover the quality of the whole of his auditing work in relation to the reports of CNTG Investment and CNTG Gas Group without sufficient evidence or proof by the Complainant.

Also, merely making reference to the general fund flows in and out of the Companies and the amount of investment made by the Complainant in the Companies is not a relevant factor for our consideration.

The Respondent was unable to produce sufficient satisfactory auditing papers or give satisfactory answer to simple questions at the substantive hearing, but that does not amount to the Respondent intentionally withholding the whole truth in these proceedings.

Furthermore, there is no sufficient evidence proving that the Respondent is the direct or indirect cause contributing to the disputes between the Complainant and other shareholders/directors of CNTG Investment and CNTG Gas Group in subsequent and ongoing litigations.

Respondent submissions:

The Respondent asked for leniency on sanctions and the factors he invited the Committee to consider are as follows:

1. The Complainant only owns a very low percentage of the equity interest in the Companies and other majority shareholders are satisfied with his auditing work.
2. The Complainant (actually it was Mr. Leung Sin Wai who is the sole shareholder and director of the Complainant) was a director of the Companies. The Directors Reports and Balance Sheets of the Audit Reports were signed also by the Complainant (Mr. Leung Sin Wai).
3. The Complainant agreed that the penalty should not exceed \$50,000.
4. The Complainant dropped its complaint relating to "Balance of Investment in Subsidiaries" at the substantive hearing and thus the only remaining complaint is about "Project Cost and Facilitation Fee".
5. He *might* have wrongly calculated the materiality of "Project Cost and Facilitation Fee" and therefore he pleads "*guilty*".
6. At the hearing, the Complainant confirmed this is only a negligence case and there was no dishonesty on the part of the Respondent.

The Respondent also referred the Committee to two similar precedent cases from HKICPA's web.

The only relevant factor that the Committee would take into consideration when deciding the sanctions is that the auditing and accounting deficiencies only amount to negligence and there is no dishonesty on the part of the Respondent.

It is the seriousness of the accounting deficiencies that would affect how heavy a penalty we would impose. It is irrelevant that some directors of the Companies are "satisfied" with the deficiencies or whether the Complainant is a substantial or small shareholder of the Companies.

Also, the Complainant did not drop its complaint relating to "Balance of Investment in Subsidiaries" at the substantive hearing. It only dropped its complaint relating to "non-consolidation of accounts".

It makes no sense that the Respondent pleaded "guilty" in his submission on sanctions. He had "*pleaded innocent*" throughout the proceeding and fought the case till the end of the substantive hearing.

The Respondent referred the Committee to two cases (which should be Proceedings No.D-13-0830C dated 26 August 2015 and Proceedings No.D-13-0864C dated 21 September 2015 respectively). The Committee notes that the respondents in both cases admitted the complaints against them at the beginning of the proceedings respectively.

COSTS

Complainant's costs:

Section 35 of POA provides:

"(1) If a Disciplinary Committee is satisfied that a complaint referred to under section 34 is proved, the Disciplinary Committee may, in its discretion make any one or more of the following orders-

... the Disciplinary Committee may in any case - ...

(iii) make such order as the Disciplinary Committee thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the institute (including the costs and expenses of the Disciplinary Committee) or of any complainant or of the certified public accountant, and any costs and expenses or penalty ordered to be paid may be recovered as a civil debt."

Rules 70 to 75 of Guidelines for the Chairman and the Committee on Administering the Disciplinary Committee Proceeding Rules ("the DCP Rules") relate to costs order to be made by the Committee.

Rule 71 states:

*"It is evident from the section [section 35 of PAO] that any costs order made by the Committee may provide for payment both **another party's legal costs** and the **expenses of the Committee.**"*

Rule 72 states:

"With respect to payment of another party's legal costs, the Committee has a discretion to determine the extent to which costs should be recovered.

....

*(2) The starting point in any award of costs should be the **costs** (i.e. indemnity costs) incurred by the successful party, subject to the Committee being satisfied that the costs were reasonably and necessarily incurred. These costs may include those costs and expenses reasonably incurred by the Complainant..., whether in relation to or incidental to any investigation carried out before the proceedings, as the Committee considers appropriate. The Committee may reduce the amount awarded to the extent it considers costs to have been incurred unnecessarily or extravagantly."*

According to the Statement of Costs submitted by the Complainant, the Complainant seeks costs in the sum of \$608,675.00 from the Respondent (comprising four items, namely (1) Costs of the Complainant; (2) Costs of Solicitors; (3) Costs of Counsel; and (4) Disbursements). The Respondent asked for breakdown of the costs and the Complainant provided some further information on work done and working hours, but has been unable to show which parts of the costs relate directly to the two complaints.

(1) Costs of engaging accountants:

The Complainant claims a sum of HK\$237,150.00 being costs for its engagement of accountants. Both Rules 71 and 72 contemplate that so far as another party's costs are concerned, the Committee would order legal costs. The Complainant itself confirmed in the Checklist that the Complainant did not require expert evidence.

Rule 50 of the DCP Rules stipulates that save in exceptional circumstances, expert evidence on accounting matters will be required only for issues which involve knowledge of accounting standards or practices which may be in controversy within the profession. As there is no controversial accounting issue in this case, expert evidence is not required and the Committee finds that the costs of engaging accountants were not reasonably and necessarily incurred by the Complainant. Therefore, no costs for engaging accountants are allowed.

(2) Costs of Solicitors:

The costs claimed for Ms. Alice Fan, solicitor is HK\$211,000.00 and the trainee solicitor is HK\$96,525.00 respectively.

The facts and issues are not complicated in this case. All material facts of the case are agreed by the parties except "Whether Mr Chan Kam Fai was a director and/or employee during the reporting period?" Yet this disputed fact is irrelevant since the proceedings are confined to the two complaints set out in the 2015 Complaint Letter. Therefore the Committee takes the view that one solicitor should be sufficient in handling the case and therefore the costs for the trainee solicitor are not allowed.

As noted, the whole case and the subsequent substantive hearing were prepared on the basis of substantially all complaints set out in the 2013 Complaint Letters. Thus many allegations, arguments, replies, explanations and annexes set out in the Complainant's case dated 15 July 2015, the Respondent's case dated 31 July 2015, the Complainant's Reply to the Respondent's case dated 15 September 2015 and the Respondent's Reply to the Complainant's case dated 5 October 2015 were not relevant to the substantive hearing. The Disciplinary Committee believes that a lot of time, effort and costs of the parties were escalated and wasted as a result.

In the 2013 Complaint Letters, the Complainant set out five items of expenses allegedly with improper recording and insufficient or absence of disclosures for the CNTG Investment Financial Statements,:

1. Consultancy fee (HK\$5,314,853.30);
2. Project costs & facilitation fee (HK\$5,318,008.32);
3. Revenue (HK\$6,200,000.00);
4. Receipts of HK\$148,524,985.00 unaccounted for; and
5. Improper off-setting of five bank transactions and leaving a net sum of HK\$39,412,755.00.

And the Complainant set out two main complaints for the CNTG Gas Financial Statements:

1. Suspicious transfer of funds amounting to HK\$69,000,000.00; and

2. Investment in subsidiaries of HK\$50,000,000.00 which the Complainant alleged should be disclosed or presented by way of a consolidated account, or at least the report should be qualified.

Of all the complaints in the 2013 Complaint Letters, only 2 complaints were set out in the 2015 Complaint Letter (the subject matter of the proceedings) and part of the 2 complaints was further dropped at the substantive hearing. As a result of such conduct of the Complainant, the Committee believes that substantial costs were unreasonably and unnecessarily incurred. Therefore, the Committee decides that only one-tenth of the costs for Ms. Alice Fan is allowed and that is HK\$21,100.00.

(3) Costs of Counsel:

The Committee awards Counsel's brief for appearing at the substantive hearing in full and one-third of the preparation costs. The total Counsel costs allowed is \$43,000.00.

(4) Disbursements:

The Committee awards HK\$2,500.00, being half of the disbursements claimed by the Complainant.

HKICPA's costs

The Committee awards the costs and expenses of HKICPA in full at HK\$29,558.60.

ORDER

The Disciplinary Committee is satisfied that both Complaint 1 and Complaint 2 are proved and IT IS ORDERED THAT:

- a. the Respondent be reprimanded under section 35(1)(b) of the PAO;
- b. the Respondent do pay a penalty of HK\$25,000 for Complaint 1 under section 35(1)(c) of the PAO;
- c. the Respondent do pay a penalty of HK\$25,000 for Complaint 2 under section 35(1)(c) of the PAO;
- d. pursuant to section 35(1)(iii) of the PAO:
 - i. the Respondent do pay the costs and expenses of the Complainant at HK\$66,600.00.
 - ii. the Respondent do pay the costs and expenses of HKICPA at HK\$29,558.60.



Proceedings No: D-13-0852C

IN THE MATTER OF

A Complaint made under section 34(1)(a) and 34(1AAA) of the
Professional Accountants Ordinance (Cap. 50)

BETWEEN

Worldwide Executive Limited

COMPLAINANT

AND

Mr. Chan Ying Kit (F04219)

RESPONDENT

CORRIGENDUM

The following is a corrigendum to the Reasons for Decision & Order dated 8 March 2016:

On page 6 concerning the Complainant's Allegations & the Supporting Evidence,

"In January 2011, CNTG Gas Group made investments into its two subsidiaries..."

is amended to

"During the period ended 31 December 2010, CNTG Gas Group made investments into its two subsidiaries..."

Dated: 8 April 2016

Clerk to the Disciplinary Committee