

IN THE MATTER OF

Complaints made under section 34(1)(a) of the Professional Accountants Ordinance (Cap. 50) (“PAO”)

BETWEEN

An Investigation Committee  
of the Hong Kong Institute of  
Certified Public Accountants                      COMPLAINANT

AND

Yuen Wai Kin, Tony                                      RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants (“the Institute”).

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**ORDER**

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Upon reading the complaints against Mr. Yuen Wai Kin, Tony (“the Respondent”), being a certified public accountant (practising), as set out in a letter from an Investigation Committee of the Institute (“the Complainant”) to the Registrar of the Institute dated 7 December 2009, and the letter from the Representative of the Complainant and the Respondent to the Disciplinary Committee dated 1 March 2010 in which the Respondent admitted the complaints against him, the Disciplinary Committee is satisfied by the evidence adduced before it that the following complaints are proved:

1. Section 34(1)(a)(vi) of PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely Hong Kong Standard on Assurance Engagements 3000 “Assurance engagements other than audits or reviews of historical financial information” (“HKSAE 3000”), as a result of his failure, in the compliance-reporting in

respect of his firm's client company Wing Yip Company Limited ("Wing Yip") for the year ended 31 March 2006 under Section 156(1) of the Securities and Futures Ordinance, Cap.571 ("SFO") and Section 4 of the Securities and Futures (Accounts and Audit) Rules, Cap.571P ("Accounts and Audit Rules"), to maintain an attitude of professional skepticism in not recognising the possibility that there could be breaches of the Securities and Futures (Client Securities) Rule, Cap.571H ("Client Securities Rules") by Wing Yip when there were circumstances indicating that there might have been such breaches caused by fraud or error.

2. Section 34(1)(a)(vi) of PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely HKSAE 3000, as a result of his failure to obtain sufficient appropriate evidence on which to base his unqualified opinion regarding Wing Yip's compliance with the Sections 5 and 10(1) of the Client Securities Rules, as contained in the Compliance Report submitted by his firm Yuen & Tam in respect of Wing Yip for the year ended 31 March 2006 under Section 156(1) of the SFO and Section 4 of the Accounts and Audit Rules.
3. Section 34(1)(a)(vi) of PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely HKSAE 3000, as a result of his failure, in conducting the compliance-reporting of Wing Yip under Section 156 of the SFO and Section 4 of the Accounts and Audit Rules for the year ended 31 March 2006, to obtain sufficient appropriate evidence, by means of external confirmation or other procedures, to verify the correctness of balances of securities held by Wing Yip, on which Yuen & Tam could base their opinion in the Compliance Report that Wing Yip had kept adequate records of client securities under the Securities and Futures (Keeping of Records) Rules, Cap.571O.

IT IS ORDERED that:-

- (1) The Respondent be reprimanded under Section 35(1)(b) of the Professional Accountants Ordinance.
- (2) The Respondent shall pay a penalty of HK\$100,000 under Section 35(1)(c) of the Professional Accountants Ordinance.
- (3) The Respondent do pay the costs and expenses of and incidental to the proceedings in the sum of HK\$73,251 under Section 35(1)(iii) of the Professional Accountants Ordinance.

Dated the 6<sup>th</sup> day of August 2010

IN THE MATTER OF

Complaints made under section 34(1)(a) of  
the Professional Accountants Ordinance  
(Cap.50) (“PAO”)

BETWEEN

An Investigation  
Committee of the Hong  
Kong Institute of  
Certified Public Accountants                      COMPLAINANT

AND

Yuen Wai Kin, Tony                      RESPONDENT

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**REASONS FOR DECISION**

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1. These are complaints made by an Investigation Committee of the Hong Kong Institute of Certified Public Accountants (“the Institute”) as Complainant against the Respondent, who is a certified public accountant (practising). Section 34(1)(a)(vi) of the PAO applied to the Respondent.
2. The particulars of the complaints as set out in a letter dated 7 December 2009 (the “Complaints”) from an Investigation Committee of the Institute to the Registrar of the Institute for consideration of the Complaints for referral to the Disciplinary Panels were as follows :-

**1<sup>st</sup> Complaint**

3. Section 34(1)(a)(vi) of PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard,

namely Hong Kong Standard on Assurance Engagements 3000 “Assurance engagements other than audits or reviews of historical financial information” (“HKSAE 3000”), as a result of his failure, in the compliance-reporting in respect of his firm’s client company Wing Yip Company Limited (“Wing Yip”) for the year ended 31 March 2006 under Section 156(1) of the Securities and Futures Ordinance, Cap.571 (“SFO”) and Section 4 of the Securities and Futures (Accounts and Audit) Rules, Cap.571P (“Accounts and Audit Rules”), to maintain an attitude of professional skepticism in not recognising the possibility that there could be breaches of the Securities and Futures (Client Securities) Rules, Cap.571H (“Client Securities Rules”) by Wing Yip when there were circumstances indicating that there might have been such breaches caused by fraud or error.

### **2<sup>nd</sup> Complaint (alternative to the 1<sup>st</sup> Complaint)**

4. Section 34(1)(a)(vi) of PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely HKSAE 3000, as a result of his failure, in the compliance-reporting in respect of Wing Yip for the year ended 31 March 2006 under Section 156(1) of the SFO and Section 4 of the Accounts and Audit Rules, to document matters which were significant in providing evidence that supports the opinions regarding compliance contained in the Compliance Report dated 28 July 2006 in respect of Wing Yip .

### **3<sup>rd</sup> Complaint**

5. Section 34(1)(a)(vi) of PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely HKSAE 3000, as a result of his failure to obtain sufficient appropriate evidence on which to base his unqualified opinion regarding Wing Yip's compliance with Sections 5 and 10(1) of the Client Securities Rules, as contained in the Compliance Report submitted by his firm Yuen & Tam in

respect of Wing Yip for the year ended 31 March 2006 under Section 156(1) of the SFO and Section 4 of the Accounts and Audit Rules.

#### **4<sup>th</sup> Complaint (alternative to the 3<sup>rd</sup> Complaint)**

6. Section 34(1)(a)(vi) of PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely HKSAE 3000, as a result of his failure to document matters which were significant in providing evidence to support the unqualified opinion regarding compliance with Sections 5 and 10(1) of the Client Securities Rules, as contained in the Compliance Report submitted by Yuen & Tam in respect of Wing Yip for the year ended 31 March 2006 under Section 156(1) of the SFO and Section 4 of the Accounts and Audit Rules.

#### **5<sup>th</sup> Complaint**

7. Section 34(1)(a)(vi) of PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely HKSAE 3000, as a result of his failure, in conducting the compliance-reporting of Wing Yip under Section 156 of the SFO and Section 4 of the Accounts and Audit Rules for the year ended 31 March 2006, to obtain sufficient appropriate evidence, by means of external confirmation or other procedures, to verify the correctness of balances of securities held by Wing Yip, on which Yuen & Tam could base their opinion in the Compliance Report that Wing Yip had kept adequate records of client securities under the Securities and Futures (Keeping of Records) Rules, Cap.571O (“Keeping of Records Rules”).

#### **6<sup>th</sup> Complaint (alternative to the 5<sup>th</sup> Complaint)**

8. Section 34(1)(a)(vi) of PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard, namely HKSAE 3000, as a result of his failure, in the compliance-reporting in

respect of Wing Yip under Section 156 of the SFO and Rule 4 of the Accounts and Audit Rules for the year ended 31 March 2006, to document matters which were significant in providing evidence that supports the opinion in the Compliance Report that Wing Yip had kept adequate records of client securities under the Keeping of Records Rules.

9. The Respondent admitted the Complaints against him. He did not dispute the facts set out in the Complaint Letter of 7 December 2009. He agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules (“the Rules”) be dispensed with.
10. Under the direction of the Disciplinary Committee, the parties were directed to make written submissions to the Disciplinary Committee as to the sanctions and costs which should be imposed by the Disciplinary Committee pursuant to Rule 31 of the Rules. Both parties have since submitted written submissions. The Disciplinary Committee have carefully considered their written submissions.
11. The Disciplinary Committee considers that the Respondent’s breach of professional standards in conducting his assurance work in the present case was serious. The amount due from Yip in the sum of HK\$4,554,947.72 accounted for an overwhelming percentage of the total amount of clients receivable of Wing Yip in the sum of HK\$7,031,949.05 as at 31 March 2006. The Respondent failed to display an attitude of professional skepticism or an awareness of the need to do proper verification to identify and assess potential risk. Such failure was inexcusable as Yip was the major shareholder of Wing Yip. Public interest was involved as Wing Yip was a licensed corporation under the Securities and Futures Ordinance, Cap.571 to carry on securities trading.
12. The system of control for the audit work performed by the Respondent was grossly inadequate. The Respondent failed to have a proper regard to the special circumstances surrounding Wing Yip’s clients receivable. The evidence obtained by the Respondent on which to base his conclusion was grossly

insufficient.

13. As a result, the Respondent failed to be aware of, and failed to report in his compliance report that Wing Yip had failed to maintain its liquid capital above the minimum level required under the Securities and Futures (Financial Resources Rules), Cap.571N. The Respondent also failed to detect the possibility of Yip having misappropriated securities and funds belonging to clients of Wing Yip. Wing Yip was subsequently put into administration and ultimately compulsory liquidation.
14. The Disciplinary Committee has nevertheless taken into account the fact that there is no evidence of previous misconduct against the Respondent and that a formal hearing was dispensed with upon the Respondent's admission of the Complaints which saved time and costs. The Respondent has already ceased all his audit work for clients in the regulated activities under Section 5 of the Securities and Futures Ordinance so that occurrence of a similar breach in future is unlikely. More importantly, there is no evidence of dishonesty or fraud against the Respondent.
15. In considering the proper order to make, the Disciplinary Committee has had regard to the fact that the complaints were made in the alternative. The Disciplinary Committee shall make an order on the basis of the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Complaints.
16. The Disciplinary Committee regards that the appropriate disciplinary order is for the Respondent to be reprimanded together with a penalty of HK\$100,000.
17. Further, the Respondent shall be responsible for the costs and expenses of and incidental to the proceedings in the sum of HK\$73,251.



18. The Disciplinary Committee orders that :-

- (4) The Respondent be reprimanded under Section 35(1)(b) of the Professional Accountants Ordinance.
- (5) The Respondent shall pay a penalty of HK\$100,000 under Section 35(1)(c) of the Professional Accountants Ordinance.
- (6) The Respondent do pay the costs and expenses of and incidental to the proceedings in the sum of HK\$73,251 under Section 35(1)(iii) of the Professional Accountants Ordinance.

Dated the 6th day of August 2010