

**IN THE ACCOUNTING AND FINANCIAL
REPORTING REVIEW TRIBUNAL**

IN THE MATTER OF a decision
made by the Hong Kong Institute of
Certified Public Accountants dated
26 September 2022

and

IN THE MATTER OF a review
brought pursuant to section 37Q of
the Accounting and Financial
Reporting Council Ordinance (Cap
588)

BETWEEN

YIP KAI YIN (A23951)

1st Applicant

ELITE PARTNERS CPA LIMITED (M0269)

2nd Applicant

and

THE HONG KONG INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS

Respondent

Before: Mr Jonathan Chang SC, Chairman

Date of Hearing: 13 October 2023

Date of Determination: 10 May 2024

DETERMINATION

Introduction

1. This is an application by the Applicants (“**Mr Yip**” and “**Elite Partners**”) pursuant to s.37Q of the Accounting and Financial Reporting Council Ordinance (Cap 588) (“**Ordinance**”)¹ for review of the decision of the Registration and Practising Committee (“**Committee**”) of the Respondent (“**HKICPA**”) dated 26 September 2022 (“**Decision**”) imposing a condition (“**Condition**”) on Elite Partners in relation to its registration as a public interest entity (“**PIE**”) auditor.

2. It will be useful to first set out some of the defined terms under the Ordinance and the statutory regulatory regime to give context to this review.

3. “PIE” and “public interest entity” mean a listed corporation (equity) or a listed collective investment scheme². A corporation is listed if any securities issued by the corporation are listed on a recognized stock market³. A collective investment scheme is listed if any interests in the scheme are listed on a recognized stock market. A listed corporation (equity) means a listed corporation the listed securities of which comprise at least shares or stocks.

4. “PIE engagements” mean⁴:

¹ Amended and renamed from the former Financial Reporting Council Ordinance (Cap 588) (“**Old Ordinance**”).

² S.3 of the Ordinance.

³ “Recognized stock market” means a stock market operated by a recognized exchange company, namely, a company recognized as an exchange company under s.19(2) of the Securities and Futures Ordinance (Cap 571): see s.2 of the Ordinance.

⁴ S.3 and Part 1 of Schedule 1A of the Ordinance.

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(1) if the PIE is a corporation:

(a) the preparation of (i) the auditor's reports in relation to the financial statements required under the Companies Ordinance (Cap 622) or (ii) the annual accounts required to be prepared under the Listing Rules⁵;

(b) the preparation of the specified reports required to be included in listing documents for listing of shares or stocks; or

(c) the preparation of the accountant's reports required to be included in circulars for the purpose of reverse takeovers or very substantial acquisitions within the meaning of the Listing Rules;

(2) if the PIE is a collective investment scheme:

(a) the preparation of the auditor's reports in relation to annual accounts required under the relevant code or Listing Rules;

⁵ Namely: (a) the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited; or (b) the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited, approved by the Securities and Futures Commission under s.24 of the Securities and Futures Ordinance (Cap 571), and as in force at the material time: see s.2 of the Ordinance.

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(b) the preparation of the specified reports required to be included in listing documents of a collective investment scheme; or

(c) the preparation of the accountant’s reports required to be included in a circular for the purpose of reverse takeovers or very substantial acquisitions within the meaning of the Listing Rules.

5. A person (apart from overseas auditors) must not undertake or carry out any PIE engagement unless the person is a registered PIE auditor⁶.

6. A practice unit⁷ may apply to the Accounting and Financial Reporting Council (“AFRC”) ⁸ to be registered as a PIE auditor (“Registration Application”)⁹.

7. The AFRC must not grant a Registration Application unless it is satisfied that¹⁰:

- (1) the applicant is a practice unit;

⁶ S.20B of the Ordinance.

⁷ Defined in s.2 of the Ordinance to mean: (a) a certified public accountant (“CPA”) holding a practising certificate who practices accountancy on the accountant’s own account under the accountant’s own name as registered under s.22(2) of the Professional Accountants Ordinance (Cap 50) (“PAO”); (b) a CPA firm; or (c) a corporate practice.

⁸ Previously the Financial Reporting Council under the Old Ordinance. Its functions and powers are set out in Part 2 of the Ordinance.

⁹ S.20G of the Ordinance.

¹⁰ S.20H of the Ordinance.

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(2) if the applicant is a corporate practice, each director of the applicant is a fit and proper person to be a CPA;

(3) the quality control system responsible person of the applicant is the chief executive officer (in the case of a corporate practice) of the applicant or a member of the managing board of partners of the applicant; and

(4) each responsible person of the applicant specified in the application is a fit and proper person to be a CPA.

8. In determining whether a person is a fit and proper person to be a CPA for the purpose of s.20H of the Ordinance, the AFRC must have regard to the following matters¹¹:

(1) the person's professional qualification, knowledge, skills and experience;

(2) the person's reputation, character, reliability and integrity;

(3) the person's financial status and solvency;

(4) whether any disciplinary action has been taken against the person under the Ordinance or the PAO; and

(5) whether the person has been convicted of any offence in Hong Kong or elsewhere.

¹¹ S.20Q of the Ordinance.

9. The registration of a PIE auditor must be renewed annually¹², by application to the AFRC (“**Renewal Application**”)¹³.

10. The AFRC must not grant a Renewal Application unless it is satisfied that the requirements under s.20H of the Ordinance continue to be satisfied, and that, if the applicant was a corporate practice when first registered, the applicant continues to be a corporate practice¹⁴.

11. The AFRC may impose any condition in relation to the registration of a PIE auditor that the AFRC considers appropriate at the time when it grants the Registration Application or Renewal Application, or at any other time when the registration is valid¹⁵.

12. A registered PIE auditor must ensure that it has, at all times, at least¹⁶: (1) one registered engagement partner¹⁷; (2) one registered engagement quality control reviewer¹⁸; and (3) one registered quality control system responsible person¹⁹.

¹² S.20J(3) of the Ordinance.

¹³ S.20K of the Ordinance.

¹⁴ S.20L of the Ordinance.

¹⁵ S.20S of the Ordinance.

¹⁶ S.20U of the Ordinance.

¹⁷ Defined in s.2 of the Ordinance to mean a partner or other person authorized by a practice unit or registered PIE auditor to be responsible for the PIE engagements carried out by the unit or auditor.

¹⁸ Defined in s.2 of the Ordinance to mean a person authorized by a practice unit or registered PIE auditor to oversee the engagement quality control reviews carried out in relation to the PIE engagements carried out by the unit or auditor. “Engagement quality control review” is in turn defined in the same section to mean a process designed by the unit or auditor to provide an objective evaluation of any significant judgment made and conclusion reached in formulating the reports of the PIE engagements carried out by the unit or auditor.

¹⁹ Defined in s.2 of the Ordinance to mean a person authorized by a practice unit or registered PIE auditor to be responsible for the quality control system of the unit or auditor. “Quality control system” is in turn defined in the same section to mean the policies and procedures established and maintained by the unit or auditor to ensure that a PIE engagement carried out by the unit or auditor complies with the applicable professional standards and legal and regulatory requirements.

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13. In the present case, the Committee’s imposition of the Condition was premised on the fact that Mr Yip, being one of the responsible persons of Elite Partners’ practice, had been issued with a disciplinary order made by a Disciplinary Committee of the HKICPA (Proceeding No. D-20-1588-F) in May 2022 for deficiencies in an audit of a listed company as an engagement quality control reviewer. The Committee further noted that Mr Yip had 5 disciplinary/regulatory orders (including the order in May 2022) being issued against him since August 2017 (“**Five Cases**”). Having considered the facts and circumstances in relation to the Five Cases, in particular the repeated audit deficiencies within the past 5 years, the Committee had serious concerns as to whether Mr Yip is fit and proper to be registered as a responsible person. The Committee therefore considered it is necessary to impose the Condition to determine the quality of PIE engagements carried out by Mr Yip as an engagement partner and engagement quality control reviewer.

14. The Condition is in the following terms:

“Elite Partners CPA Limited (M0269) shall perform an independent monitoring review of the selected audit engagements performed by Yip Kai Yin (“Yip”), a Responsible Person of the Practice (“Engagement Performance Review”). The Engagement Performance Review should follow the requirements under the “Hong Kong Standard on Quality Control 1: Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements” (“HKSQC 1”). The Engagement Performance Review should comprise a review of two completed Public Interest Entities (“PIE”) engagements of Yip, with the respective audit reports dated after 1 January 2022; one of which Yip had acted as the Engagement Partner and the other as the Engagement Quality Control Reviewer.

The reviewer to conduct the Engagement Performance Review (“Reviewer”) must be independent to the Practice, and have sufficient appropriate experience and been given the full

authority to carry out the Engagement Performance Review. The Reviewer should also have experience in the audit of PIE engagements as an engagement partner. To ensure that the Reviewer is considered appropriate for the Engagement Performance Review, the Practice is required to submit the following information (“Review Information”) to the HKICPA or AFRC (“decision authority”) for approval, before commencing the Engagement Performance Review:

- (a) Details of the Reviewer, such as his/her qualifications, credentials and brief description of his/her experience in PIE engagements; and
- (b) An outline of the proposed scope of Engagement Performance Review, including the names of the audit engagements to be selected, explanation as to how the selected engagements would be appropriate for this purpose, and a proposed work plan.

Upon completion of the Engagement Performance Review, the Practice is required to submit the monitoring review report (“Review Report”) to the decision authority by 26 January 2023.

The details of the conditions are set out in the Attachment to this letter.

During the period of the Engagement Performance Review, Yip may not undertake (i.e. accept an appointment to carry out) any PIE engagement as Responsible Person of Elite before fulfilling the above condition to the satisfaction of the decision authority.”

15. In effect, the Condition required Elite Partners to undertake an independent monitoring review of two completed PIE engagements of Mr Yip to the satisfaction of the HKICPA or AFRC (“**Reviewing Condition**”); and before that, Mr Yip may not undertake any PIE engagement as a responsible person of Elite Partners (“**Prohibition Condition**”).

16. At the hearing, Mr John Hui appearing for the Applicants confirmed that they do not challenge the propriety of the Reviewing

Condition. Their objection is only in respect of the Prohibition Condition, which they contend to be a disproportionate measure.

Jurisdiction of this Tribunal

17. The Tribunal has jurisdiction, in accordance with Division 3 of Part 3C and Schedule 4A of the Ordinance: (1) to review any specified decision; and (2) to hear and determine a question or issue arising out of, or in connection with, a review of a specified decision²⁰.

18. A “specified decision” is defined in s.2 of the Ordinance to include a decision by the HKICPA Council before the commencement date of the Ordinance (1 October 2022) to impose or amend a condition in relation to the registration of a PIE auditor under s.20S as in force immediately before that date.

19. Under s.20S of the Old Ordinance (which was in force when the Decision was made), it was provided that:

“20S. HKICPA Council may impose or amend conditions

- (1) The HKICPA Council may impose any condition in relation to the registration of a PIE auditor that the Council considers appropriate –
 - (a) at the time when it grants the registration application or renewal application (registration); or
 - (b) at any other time when the registration is valid.

²⁰ S.37O of the Ordinance.

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- (2) The HKICPA Council may, at any time when the registration is valid, amend an existing condition by varying or revoking the condition.
- (3) If the HKICPA Council decides to impose or amend a condition in relation to the registration of a PIE auditor, the Council must –
 - (a) inform the auditor of its decision by written notice; and
 - (b) issue a copy of the notice to each registered responsible person of the auditor.
- (4) The notice must include a statement of the reasons for the decision.”

20. The current version of s.20S of the Ordinance is materially identical to what is quoted above, save that the power under s.20S is to be exercised by the AFRC as the decision authority in place of the HKICPA Council. As Mr Joshua Chan for the Respondent submitted, the present review application ought to be conducted on the basis of the existing version of the Ordinance (rather than the Old Ordinance). This is clear from the definition of the phrase “specified decision” in s.2 of the Ordinance, and the fact that the jurisdiction of this Tribunal stems from and is conferred by s.37Q of the Ordinance. It logically follows that it is the provisions of this Ordinance (and not that of the Old Ordinance) which this Tribunal must apply in disposing of this review application.

21. This review application is brought under s.37Q of the Ordinance, which provides as follows:

“37Q. Application for review of specified decision

- (1) Subject to section 37R, a person who is aggrieved by a specified decision made in relation to the person may,

at any time within the specified period, apply to the Tribunal for a review of the decision.

(2) The application –

(a) must be in writing; and

(b) must state the grounds for the application.

(3) The Tribunal must, as soon as practicable after reviewing the application, send a copy of the application to –

(a) the decision authority; and

(b) if the decision authority is the HKICPA Council, the AFRC.”

22. Any sitting of the Tribunal for the determination of a review shall be presided by a chairperson together with two ordinary members appointed by the Secretary for Financial Services and the Treasury²¹. The chairperson may determine a review as the sole member on the agreement of the parties to the review²² (as in the present application).

Standard of review

23. It is common ground between the parties that this Tribunal shall determine the review application *de novo* in conducting a full merits review, as if the matter had come before it for the first time and that it is the original decision maker.

24. I am satisfied that the parties’ common position is correct in law and accords with the legislative intent under the Ordinance:

²¹ S.9(3) of Schedule 4A of the Ordinance.

²² S.12(2) of Schedule 4A of the Ordinance.

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- (1) For the purpose of a review, the Tribunal may, on its own initiative or on application by a party to the review (amongst other things): (a) receive and consider any material by way of oral evidence, written statements or documents; (b) determine the way in which any of the above materials may be received; (c) by written notice require a person to attend before it to give evidence and to produce any article, record or document in the person's possession or control relating to the subject matter of the review; (d) administer oaths; and (e) examine a person attending before it on oath or otherwise²³.
- (2) The Tribunal may determine a review in relation to a specified decision by: (a) confirming, varying or setting aside the decision; or (b) remitting the matter in question to the decision authority with any direction it considers appropriate²⁴.
- (3) In reviewing a specified decision, the Tribunal must give the parties to the review a reasonable opportunity of being heard²⁵.
- (4) The standard of proof required to determine any question or issue before the Tribunal is the standard of proof applicable to civil proceedings in a court of law²⁶.

²³ S.37U of the Ordinance.
²⁴ S.37T(1) of the Ordinance.
²⁵ S.37T(4) of the Ordinance.
²⁶ S.37T(5) of the Ordinance.

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B (5) Upon setting aside any decision, the Tribunal may make
C another decision it considers appropriate, which may be
D more or less onerous than the original specified decision,
E subject to the decision being one which the decision
F authority had power to make²⁷.

F (6) Any party dissatisfied with a determination of a review
G made by the Tribunal may appeal to the Court of Appeal
H (with leave granted by the Court of Appeal) against the
I determination on: (a) a question of law; (b) a question of
J fact; or (c) a question of mixed law and fact²⁸.

J (7) In light of the above statutory framework, it is plain that
K the legislative intent is for the Tribunal to act as if it were
L the original decision maker when conducting a review of
M any decision that comes before it.

M 25. Mr Hui drew my attention to *Ko Siu Luen v Appeal Tribunal*
N (*Buildings*) [2012] 1 HKLRD 149 on the role of a tribunal in a *de novo*
O hearing conducting a full merits review at [53]-[54], which I agree apply
P to the determination of a review by the Tribunal under the Ordinance:

Q (1) The Tribunal has a wide and unfettered discretion to
R decide on the merits. It should exercise such discretion
S afresh and independently on the merits, in light of all the
T evidence (including new evidence) and submissions made
U before it in the review.

²⁷ S.37T(2)-(3) of the Ordinance.

²⁸ S.37ZF of the Ordinance.

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- (2) The Tribunal is not hearing the review as if it were a judicial review application. It is hearing the review *de novo* on the merits. It is therefore wrong to import any conventional judicial review grounds to restrict and limit its own exercise of the discretion on a review.
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Salient facts

26. As outlined in the Statement of Agreed Facts prepared by the parties (which is appended to this Determination):

- (1) Mr Yip has over 20 years of experience in the accounting industry. He joined Elite Partners in 2007.
- (2) Mr Yip is a registered responsible person of Elite Partners and has been acting as the engagement partner responsible for the PIE engagements carried out by Elite Partners. He also acted as the engagement quality control review of Elite Partners to oversee the engagement quality control reviews carried out in relation to the PIE engagements.
- (3) Between 2011 to 2017, Mr Yip participated in and/or handled the Five Cases which were later concerned by the HKICPA. The details of the Five Cases are referred to in [4] of the Statement of Facts (appended). In short, all of the Five Cases resulted in a public reprimand issued to and administrative penalty and costs order imposed

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against Mr Yip, and save for one case, also on Elite Partners.

(4) All penalties and costs orders imposed against Mr Yip and Elite Partners have been fully satisfied.

(5) As part of the sanctions for one particular case (Case 2), Mr Yip's practising certificate as a CPA was once cancelled on 2 June 2020. On 17 May 2021, after the expiry of the 9-month sanction period, Mr Yip applied for the re-issuance of a practising certificate. After Mr Yip attended an interview with the Committee, on 29 December 2021, the HKICPA approved Mr Yip's application. A practising certificate was issued to Mr Yip effective from 1 January 2022.

(6) In November 2021, the HKICPA imposed a condition against Elite Partners requiring them to conduct an independent monitoring review in light of Elite Partners' past disciplinary/regulatory records. In compliance with this condition, Elite Partners submitted a monitoring review report to the HKICPA. In this connection, I take note that in the monitoring review report compiled by Moore Stephens CPA Limited, it was found (amongst other things) that: (a) the system of quality control by Elite Partners has limited weaknesses in one or more elements which could give rise to non-compliance with HKSQC 1 and failure to fulfill its objectives; (b) there is

a low likelihood that the weaknesses identified could have a material effect on audit quality; (c) no significant findings were identified during the review of the selected two engagement files; (d) there is however still room for improvement; and (e) Elite Partners provided its response to advise the proposed actions to address the findings and observations identified in the review, and it was considered that the remedial actions taken are appropriate and adequately address the deficiencies identified.

(7) On 8 August 2022, the HKICPA issued a letter to Mr Yip referring to the Five Cases, and required him to provide a written representation on the questions for the fit and proper assessment performed by the Committee.

(8) On 26 September 2022, the HKICPA issued the Decision and stated that it imposed the Condition in relation to Elite Partner's registration as a PIE auditor in order to protect the public interest and promote public confidence in the profession.

(9) Aggrieved by the Decision, on 17 October 2022, the Applicants through their solicitors applied to the Tribunal for a review of the Decision. At the time, the review application was based on the grounds that: (a) inaccurate factual premises were considered and/or adopted by the HKICPA in making the Decision; and (b) the Decision may constitute double jeopardy and is disproportionate.

The Applicants' contentions

27. At the hearing, the Applicants confined their challenge to the disproportionate effect of the Prohibition Condition. In Mr Yip's written statement and through counsel's submissions, the following matters were raised in support of the review:

- (1) First, it was contended that duplicative sanctions are involved. Reference is made to the concept of double jeopardy, in that the Prohibition Condition is a *de facto* suspension of Mr Yip's practice for deficiencies relating to the Five Cases, when all of those matters have already been concluded and sanctions imposed and carried out.
- (2) Second, it was pointed out that since there is no concrete timeframe for the completion of the engagement performance review, this may in effect be an indeterminate length of suspension imposed.
- (3) Third, reference was also made to Mr Yip's "right to livelihood/work", given the prejudicial effect an indeterminate length of suspension would have upon him.
- (4) Fourth, the Applicants also prayed in aid the subsequent remedial steps undertaken by Elite Partners and Mr Yip, as confirmed in the monitoring review report compiled by Moore Stephens CPA Limited.

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(5) Fifth, the Applicants also mentioned the fact that Mr Yip and Elite Partners have been fully co-operative with the regulators.

(6) Sixth, insofar as Mr Yip's competence is concerned, reliance was placed on the fact that the HKICPA itself saw fit to grant a fresh practising certificate to Mr Yip in December 2021 (effective from January 2022).

28. At the hearing, Mr Yip gave oral evidence to supplement his written statement. In summary:

(1) About 95% of Elite Partners' clients are PIE clients.

(2) Over 99% of Mr Yip's clients are PIE clients.

(3) If Mr Yip cannot carry out PIE engagements, this would seriously affect both himself and Elite Partners, when he contributed about HK\$30 million to the annual operating cost of Elite Partners in the tune of HK\$70 million. He could not survive only on non-PIE clients, each of which contribute a few thousand to tens of thousands dollars per year to the firm's revenue.

(4) Mr Yip explained that PIE clients are more sizable clients operating from different sites and jurisdictions, and more resources and manpower would be required to carry out

PIE audits. The professional fee charged for such audits is therefore at least 50% higher than non-PIE clients.

- (5) If he cannot carry out PIE engagement, his existing PIE clients will go to another firm, and he would not be able to find new clients because the economic environment is not very good at the moment.

The Respondent's contentions

29. The Respondent pointed out that the HKICPA Council (prior to the legislative amendments) or the AFRC (after the legislative amendments) may impose any condition in relation to the registration of a PIE auditor that it considers appropriate, at any time when the registration is valid, pursuant to s.20S of the Ordinance.

30. The Respondent also referred to the fact that the public rely heavily on PIE auditors to carry out their PIE engagements with care, diligence and integrity, so as to ensure that they can obtain a true and fair view of a listed entity's finances, businesses and affairs, and that it is of utmost importance, both to the private interests of the investing public and the public interest in maintaining Hong Kong's reputation as a leading international finance centre, that the AFRC (and previously the HKICPA Council) are able to uphold the quality of the services provided by registered PIE auditors.

31. Viewed thus, the Prohibition Condition necessarily follows from the decision to require Elite Partners to engage in the engagement

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B performance review (which review is accepted by the Applicants as
C proper and necessary), as it would be contrary to the HKICPA’s statutory
D duties and the public interest to permit Mr Yip to act as the engagement
E partner or the engagement quality control reviewer in a PIE engagement
F when the HKICPA is not yet satisfied that he is fit and proper to be
G registered as a responsible person for Elite Partners’ practice.

32. The Respondent also submitted that while the imposition of
G the Prohibition Condition might have a negative impact on Mr Yip and
H Elite Partners, Elite Partners may still be able to undertake and carry on
I PIE engagements, so long as responsible persons other than Mr Yip act as
J the engagement partner or engagement quality control reviewer. Mr Yip
K would also be able to take part in such PIE engagements in a supporting
L role. Furthermore, Elite Partners and Mr Yip would also be able to
M undertake and carry on engagements other than PIE engagements without
N any restriction.

Discussion

O 33. In my view, in circumstances where the Applicants do not
P challenge the propriety of the engagement performance review itself, it
Q necessarily and logically follows that the Prohibition Condition must be
R proper, justified, and proportionate.

34. The starting point is that in requiring the engagement
S performance review to be undertaken, the HKICPA was not yet satisfied
T that Mr Yip was a fit and proper person to undertake PIE engagements as
U an engagement partner or engagement quality control reviewer. The
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A whole purpose of such a review is to allow the HKICPA to better assess
B the suitability of Mr Yip in acting in those roles. It would be inimical to
C the objective of such review for Mr Yip to be able to undertake such work
D in the meantime, when one possible outcome (and I put it no higher than
E that) is that the monitoring review report may suggest Mr Yip to be unfit
F to act in such a role. The possibility of allowing an unfit person to act as
G an engagement partner or engagement quality control reviewer runs
H counter to and defeats the registration requirements of a PIE auditor
I under Part 3 of the Ordinance and ultimately the public interest.

I 35. As submitted by Mr Chan, if the AFRC or the HKICPA
J adopts a wait-and-see approach, that would be prejudicial to the public
K interest because it may mean that they are, in effect, turning a blind eye or
L sanctioning an unfit and improper person to act as the engagement partner
M or engagement quality control reviewer in an audit of a listed corporation,
N which could have potential disastrous consequences for the investing
O public. In this regard, Mr Hui had no real answer as to what could be
P done to remedy the problem if the independent monitoring review
Q concluded that Mr Yip was not a fit and proper person to conduct PIE
R engagements. Such a finding would no doubt have a profound impact
S that may be irreversible on the investing public and the PIEs concerned,
T and may invalidate all the work done by Mr Yip in the period. I can thus
U see the force in Mr Chan's argument that it would serve the legislative
V regulatory purpose to err on the side of caution, and take Mr Yip off the
market until and unless the AFRC or the HKICPA is satisfied that he is a
fit and proper person to carry out PIE engagements.

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B 36. The above point aside, there appears to be some force in the
C Applicants' contention that there seems to be some inconsistency in the
D stance taken by the Respondent when it decided to issue a practicing
E certificate to Mr Yip in December 2021. Under s.20AAL(1)(h) of the
F Ordinance, before a CPA may be issued a practicing certificate or have
G his/her practising certificate renewed, one of the criteria to be fulfilled is
H that the applicant satisfies the fit and proper requirement to be a CPA.
I This is in fact the same test for granting a registration application as a PIE
auditor under s.20H of the Ordinance, namely that in the case of a
practice unit (such as Elite Partners), each of the responsible persons is a
fit and proper person to be a CPA.

J 37. There is hence some scope for arguing (and I put it no higher
K than that) that since the HKICPA was already (implicitly, if not expressly)
L satisfied that Mr Yip was a fit and proper person to be a CPA by
M renewing his practising certificate in December 2021, there is no
N justification for the same question to be re-visited in the absence of any
O change in circumstances, when the Five Cases all concerned matters that
occurred before the re-issuance of the practising certificate to him.

P 38. I have not heard full argument on the proper test for granting
Q a registration application of a PIE auditor, namely whether what is stated
R in s.20H(2) and (3) of the Ordinance constitute *the* test to be applied, or
S whether they only represent the *minimum* requirements that must be
T satisfied before a registration application is to be acceded to, and that the
U HKICPA or the AFRC may take into account further considerations, such
V as whether Mr Yip is fit and proper to act specifically as a responsible
person in PIE engagements as opposed to other work as a CPA in a non-

PIE context. A possible answer to the question raised in the preceding paragraph is that even if Mr Yip was regarded as a fit and proper person to act as a CPA generally (and in a non-PIE context), this does not automatically translate to his suitability to act as a responsible person of a registered PIE auditor.

39. I do not find it necessary to resolve this question on this occasion. This is because in the instant case, the Applicants have confirmed unequivocally that they do not object to the Reviewing Condition, and the propriety of carrying out an engagement performance review is not questioned or challenged before me. Accordingly, for the reasons stated in [34] and [35] above, in order not to defeat the whole premise of such review, it is eminently sensible and proper for the Prohibition Condition to be imposed pending the conclusion of the engagement performance review.

40. Once this conclusion is reached, the other points raised by the Applicants (such as the substantial hardship caused to Mr Yip and Elite Partners) fall away. It must be emphasized that the imposition of the Prohibition Condition is not a sanction imposed against Mr Yip or Elite Partners²⁹; rather it is for the protection of the investing and general public and to maintain public confidence in Hong Kong as a leading international financial centre. The hardship caused to Mr Yip or Elite Partners, whilst not irrelevant, must come secondary in the overall assessment. In any event, any such hardship is mitigated by the fact that: (1) Elite Partners may employ other qualified individuals to act as the

²⁹ As submitted by Mr Chan, the doctrine of double jeopardy (which is a doctrine normally deployed in criminal proceedings) has no application to regulatory decisions which involve wholly different considerations: *Peter Ziderman v General Dental Council* [1976] 1 WLR 330 at 333H-334F.

responsible person; (2) Mr Yip may still act in a supporting role in PIE assignments; and (3) there is in any event no restriction on Mr Yip or Elite Partners working in a non-PIE context.

Disposition

41. For the above reasons, I confirm the Decision.

Costs

42. The Tribunal may, in relation to a review, by order award to a party to the review a sum it considers appropriate in respect of the costs reasonably incurred by the party in relation to the review³⁰. Order 62 of the Rules of the High Court (Cap 4A) applies to the award of costs and to the taxation of any costs awarded by the Tribunal³¹.

43. At the end of the hearing, I indicated (with the agreement of the parties) that I shall assess costs summarily in lieu of taxation³², and gave directions for the parties to lodge their respective statement of costs and list of objections.

44. There is no reason why costs should not follow the event, namely the Applicants as the unsuccessful parties to the review should, on a joint and several basis, pay the costs of the Respondent.

³⁰ S.37Y(1) of the Ordinance.

³¹ S.37Y(3) of the Ordinance.

³² See Order 62, rule 9(4)(b) of the Rules of the High Court.

45. Having considered the Respondent's statement of costs and the Applicants' list of objections, on a broad brush basis, I assess the costs payable by the Applicants to be HK\$320,000³³.

46. It remains for me to thank both counsel and those instructing them for their helpful assistance in this first ever review application that comes before this Tribunal.

Jonathan Chang SC
(Chairman)

Mr John Hui, instructed by So, Lung & Associates, for the Applicants

Mr Joshua Chan, instructed by MinterEllison LLP, for the Respondent

³³ HK\$200,000 as solicitors' fees, and HK\$120,000 as counsel's fees (which I allow in full).

IN THE MATTER OF

A Review made under section 37Q of the Accounting and Financial Reporting Council Ordinance (Cap. 588)

BETWEEN

YIP KAI YIN (A23951) 1st Applicant

ELITE PARTNERS CPA LIMITED (M0269) 2nd Applicant

and

THE HONG KONG INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS Respondent

STATEMENT OF AGREED FACTS

1. The 1st Applicant, Mr. Yip Kai Yin (“**Mr. Yip**”), has over 20 years of experience in the accounting industry. He joined the 2nd Applicant, Messrs. Elite Partners CPA Limited (“**Elite Partners**”) at about the end of 2007.
2. Mr. Yip is a registered responsible person of Elite Partners and has been acting as the engagement partner to be responsible for the public interest entity (“**PIE**”) engagements carried out by Elite Partners, and acting as the engagement quality control reviewer (“**EQCR**”) to oversee the engagement quality control reviews carried out in relation to the PIE engagements.
3. During the period from 2011 to 2017, Mr. Yip participated in and/or handled 5 cases (“**Five Cases**”), namely, C-16-1227-F (“**Case 1**”), D-16-1182-F (“**Case 2**”), C-19-1546-F (“**Case 3**”), D-19-1534-P (“**Case 4**”), and D-20-1588-F (“**Case 5**”) which were later concerned by the Respondent, the Hong Kong Institute of Public Certified Accountants (“**HKICPA**”), in its decision (“**Decision**”) contained in a letter from the HKICPA to Elite Partners dated 26 September 2022 (“**HKICPA Letter**”). Mr. Yip was the engagement director in Case 1 and Case 2, and the EQCR

in Case 3 to Case 5.

4. A summary of the key information of the Five Cases is as follows:

Case Number	Concerned Period of Time	Nature of the Order	Date of Order / Agreement	Results related to Mr. Yip	Results related to Elite Partners
C-16-1227-F (Case 1)	June 2011 to 2015	Resolution by Agreement	10 August 2017	<ol style="list-style-type: none"> 1. Public reprimand dated 15 August 2017 2. Administrative penalty: HK\$50,000 3. HKICPA's costs: HK\$10,000¹ 	<ol style="list-style-type: none"> 1. Public reprimand dated 15 August 2017 2. Administrative penalty: HK\$50,000 3. HKICPA's costs: HK\$10,000¹
D-16-1182-F (Case 2)	June 2012	Disciplinary Order	9 December 2019	<ol style="list-style-type: none"> 1. Public reprimand dated 22 June 2020 2. Penalty: HK\$50,000 3. HKICPA's costs: HK\$248,300¹ 4. FRC's costs: HK\$76,777.10¹ 5. Cancellation of Mr. Yip's practising certificate 	<ol style="list-style-type: none"> 1. Public reprimand dated 22 June 2020 2. Penalty: HK\$100,000 3. HKICPA's costs: HK\$248,300¹ 4. FRC's costs: HK\$76,777.10¹
C-19-1546-F (Case 3)	March 2014	Resolution by Agreement	12 May 2021	<ol style="list-style-type: none"> 1. Public reprimand dated 20 May 2021 2. Administrative penalty: HK\$50,000 3. HKICPA's costs: HK\$15,000¹ 4. FRC's costs: HK\$274,594.80² 	<ol style="list-style-type: none"> 1. Public reprimand dated 20 May 2021 2. Administrative penalty: HK\$50,000 3. HKICPA's costs: HK\$15,000¹

¹ Payable by Mr. Yip, Elite Partners and another respondent jointly.

² Payable by Mr. Yip, Elite Partners and another respondent jointly.

Case Number	Concerned Period of Time	Nature of the Order	Date of Order / Agreement	Results related to Mr. Yip	Results related to Elite Partners
					4. FRC's costs: HK\$274,594.80 ²
D-19-1534-P (Case 4)	June 2017	Settlement	21 June 2021	<ol style="list-style-type: none"> 1. Public reprimand dated 24 June 2021 against Mr. Yip 2. Administrative penalty: HK\$300,000³ 3. HKICPA's costs: HK\$200,000³ 	N/A
D-20-1588-F (Case 5)	March 2017	Disciplinary Order made adopting the <i>Carecraft</i> Procedure	10 May 2022	<ol style="list-style-type: none"> 1. Public reprimand dated 15 June 2022 2. Penalty: HK\$500,000² 3. HKICPA's and FRC's costs: HK\$258,871.65² 	<ol style="list-style-type: none"> 1. Public reprimand dated 15 June 2022 2. Penalty: HK\$500,000² 3. HKICPA's and FRC's costs: HK\$258,871.65²

³ Payable by Mr. Yip and another respondent jointly.

5. Mr. Yip and Elite Partners believe Case 5 is resolved by settlement despite the HKICPA's publication of the order under the category of "*Disciplinary Matter*" in its website.
6. As summarised in the table in paragraph 4 above, Mr. Yip and/or Elite Partners were sanctioned by the HKICPA because of the Five Cases. All penalties and costs orders imposed against Mr. Yip and Elite Partners have been duly paid.
7. As part of the sanctions for Case 2, Mr. Yip's practising certificate was once cancelled on 2 June 2020. On 17 May 2021, after the expiry of the 9-month sanction period, Mr. Yip re-applied for the issuance of a practising certificate.
8. On 7 December 2021, Mr. Yip attended an interview with representatives of the Registration and Practising Committee of the HKICPA ("**Committee**") to discuss his said re-application for a practising certificate and to review his past disciplinary records in Cases 2 to 4.
9. On 29 December 2021, Mr. Yip was informed by the HKICPA that after considering all circumstances (including, *inter alia*, the representations made by Mr. Yip during the said interview), the HKICPA was satisfied and approved Mr. Yip's application for the re-issuance of a practicing certificate to him. A practising certificate was issued to Mr. Yip effective from 1 January 2022.
10. In November 2021, the HKICPA imposed a condition against Elite Partners requiring them to conduct an independent monitoring review in light of Elite Partners' past disciplinary / regulatory records (including *inter alia* Cases 1 to 3). In compliance with the condition, Elite Partners conducted an independent monitoring review and on 25 July 2022, Elite Partners submitted a Monitoring Review Report to the HKICPA.
11. On 8 August 2022, the HKICPA issued a letter to Mr. Yip referring to the Five Cases and requiring Mr. Yip to provide a written representation on the questions for the fit and proper assessment performed by the Committee.
12. On 26 September 2022, the HKICPA issued the HKICPA Letter enclosing an attachment ("**Attachment**") to Elite Partners stating that to protect the public interest and promote public confidence in the profession, the Committee imposed a condition (i.e. the Decision) in relation to Elite Partners' registration as a PIE auditor.
13. **[Proposed by the Respondent but not agreed by the Applicants] [The Applicants disagree to include this paragraph since the HKICPA Letter contains subjective opinions of the Respondent which are not agreeable to the**

Applicants] The HKICPA Letter states:

“Past Disciplinary/ Regulatory Records

It has been brought to the attention of the Committee that Mr. YIP Kai Yin (A23951), one of the Responsible Persons of your practice, has been issued with a disciplinary order issued by a Disciplinary Committee in May 2022 (Proceeding No. D-20-1588-F) [i.e. Case 5] for deficiencies in an audit of a listed company as an Engagement Quality Control Reviewer.

The Committee noted that Mr. Yip has 5 disciplinary/ regulatory orders being issued against him since August 2017 [i.e. Cases 1 to 5]. Having considered the facts and circumstances in relation to the disciplinary/ regulatory orders, in particular, the repeated audit deficiencies within the past 5 years, the R&PC had serious concerns as to whether Mr. Yip is fit and proper to be registered as a Responsible Person. As such, the Committee considered it is necessary to impose a condition of performing an independent monitoring review of the selected audit engagements performed by Mr. Yip to determine the quality of PIE engagements carried out by Mr. Yip as an Engagement Partner and Engagement Quality Control Reviewer...”

14. The conditions imposed are, *inter alia*: -

- (1) Under Part A of the Attachment, Elite Partners shall perform an independent monitoring review of at least 2 completed PIE engagements performed by Mr. Yip.
- (2) Under Part B of the Attachment, Elite Partners is required to submit, *inter alia*, the details of its proposed reviewer and an outline of the proposed scope of monitoring review by 26 October 2022.
- (3) Under Part D of the Attachment, by 26 January 2023, Elite Partners is required to submit the completed review report duly signed.
- (4) Under Part E of the Attachment, Mr. Yip may not carry out PIE engagements as engagement partner and/or EQCR during the period of the above condition (“**Prohibition Condition**”).

15. Elite Partners and Mr. Yip are aggrieved by the Prohibition Condition. On 17 October 2022, Elite Partners and Mr. Yip instructed Messrs. So, Lung and Associates, Solicitors to apply to the Accounting and Financial Reporting Review Tribunal for a review of the Decision. In gist, the review is taken out on the grounds that, *inter alia*, (i) inaccurate factual premises were considered and/or adopted by

the HKICPA in making the Decision, and (ii) the Decision may constitute double jeopardy and is disproportionate.

List of Issues

1. Whether inaccurate factual premises were considered and/or adopted by the HKICPA in making the Decision;
2. **[Proposed by the Applicants but not agreed by the Respondent]** Whether the measures hitherto taken by Mr. Yip and/or Elite Partners were sufficient to address the deficiencies in the Five Cases;
3. Whether the Decision constitutes double jeopardy and is disproportionate; and
4. Whether the Prohibition Condition should be withdrawn from the Decision.