Proceeding No.: AFRRT-3-2024

IN THE ACCOUNTING AND FINANCIAL REPORTING REVIEW TRIBUNAL

IN THE MATTER OF two decisions made by the Accounting and Financial Reporting Council, both dated 18 June 2024

and

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

BETWEEN

CHIANG SHAM LAM ANTHONY	1st Applicant
ANTHONY S L CHIANG & CO. (a firm)	2nd Applicant

and

ACCOUNTING AND FINANCIAL REPORTING COUNCIL	Respondent

Before: Mr Jonathan Chang SC, Chairman

Date of Hearing: 28 November 2024

Date of Determination: 21 May 2025

D E T E R M I N A T I O N

Introduction

1. Before this Tribunal is an application for review ("**Review Application**") made by the Applicants, Mr Chiang Sham Lam Anthony ("**Mr Chiang**") and Anthony SL Chiang & Co (a firm) ("**Firm**"), of the decisions of the Accounting and Financial Reporting Council ("**AFRC**") against each of them, both dated 18 June 2024 ("**Decisions**"). The Review Application was made by way of a Notice of Review dated 6 August 2024 submitted pursuant to s.37Q of the Accounting and Financial Reporting Council Ordinance (Cap 588) ("**Ordinance**").

2. By the Decisions, and pursuant to s.37CA of the Ordinance, AFRC imposed the following sanctions against Mr Chiang and the Firm respectively:

(1) As against Mr Chiang:

(a) public reprimand;

(b) pecuniary penalty of HK$250,000;

(c) order that his registration be suspended for a period of 3 years;

(d) order that his practising certificate be cancelled;

(e) order that he not be issued with a practising certificate for a period of 3 years; and

(f) order that he pays the costs and expenses of, and incidental to, the investigation, in the sum of HK$33,666.

(2) As against the Firm:

(a) public reprimand;

(b) pecuniary penalty of HK$250,000;

(c) order that the Firm's registration be suspended for a period of 3 years; and

(d) order that the Firm pays the costs and expenses of, and incidental to, the investigation, in the sum of HK$33,666.

3. In the Review Application, the Applicants do not dispute their liability for "CPA misconduct" under s.37AA(1)(a) of the Ordinance, namely that they were guilty of doing an act or making an omission that amounts to professional irregularity within the meaning of s.3B of the Ordinance.[1] Nor do they dispute the sanctions of public reprimand, pecuniary penalty and costs order. They only seek to review the remaining sanctions, namely what they term as the "exclusionary sanctions" in the suspension of registration of Mr Chiang and the Firm for

[1] Section 3B(1) defines "professional irregularity" as including a failure to "observe, maintain or otherwise apply a PAO professional standard" and "professional misconduct". "PAO professional standard" is defined in s.2 of the Ordinance as "any statement of professional ethics, or standard of accounting, auditing or assurance practices, issued or specified, or deemed to have been issued or specified, under section 18A of the [Professional Accountants Ordinance (Cap 50)]".

3 years, and the cancellation and debarring the issuance of a practising certificate to Mr Chiang for 3 years (collectively, "**Suspension Orders**").

4. The Review Application is brought under s.37Q of the Ordinance, which provides that a person aggrieved by a "specified decision" made in relation to the person may, within the "specified period" (namely, 21 days after the decision is issued by the decision authority), apply to this Tribunal for a review of the decision. A "specified decision" is defined in s.2 of the Ordinance as including a decision by AFRC to impose a sanction under s.37CA.

5. It is common ground between the parties that this Tribunal should 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.[2]

6. By the agreement of parties pursuant to s.12(2) of Schedule 4A of the Ordinance, the Review Application was heard by me as the sole member of the Tribunal.

Extension of time for the Review Application

7. The Review Application was brought with an extension of time granted by me on 5 July 2024, extending the time for the Applicants to make the Review Application to 6 August 2024, after hearing from Mr Niall Giblin of Messrs Munros for the Applicants, and Mr Nathan

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[2] *Yip Kai Yin (A23951) & Anor v The Hong Kong Institute of Certified Public Accountants*, AFRRT-1-2022 (10 May 2024) at [23]-[25].

Dentice of Messrs MinterEllison LLP for AFRC. I gave brief oral reasons at the hearing. I now give the detailed reasons.

8. Under s.37Q of the Ordinance, the Applicants must bring the Review Application within 21 days of the Decisions, namely by 9 July 2024. Section 37R of the Ordinance empowers the Tribunal to extend time for a review application, in the following terms:

> "**37R. Extension of time for review application**
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> (1) The Tribunal may, on the written application within the specified period by a person aggrieved by a specified decision made in relation to the person, by order extend the time for making a review application in relation to the decision.
>
> (2) Before deciding whether to grant an extension of time, the Tribunal must give the person who made the application and the decision authority a reasonable opportunity of being heard.
>
> (3) The Tribunal may grant an extension of time if it is satisfied that there is a good cause for doing so."

9. I agree with Mr Dentice that the Tribunal may *only* grant an extension of time if the following 3 conditions are *all* satisfied:

(1) a written application is made within the specified period;

(2) the Tribunal has given both the applicant and the decision authority a reasonable opportunity of being heard; and

(3) the Tribunal is satisfied that there is a "good cause" for granting the extension.

10. Section 37R(3) of the Ordinance is in similar terms to s.217(5)(b) of the Securities and Futures Ordinance (Cap 571) ("**SFO**"), which relates to applications to extend the time limit for applying for a review of a decision of the Securities and Futures Commission ("**SFC**") by the Securities and Futures Appeals Tribunal ("**SFAT**"). Specifically, s.217(5)(b) of the SFO provides:

> "(5) The Tribunal shall not grant an extension of time under subsection (4) unless –
>
> …
>
> (b) it is satisfied that there is a good cause for granting the extension."

11. Mr Dentice drew my attention to decisions of SFAT which took a strict approach to the requirement under s.217(5)(b) of the SFO that there must be a "good cause" for granting the extension. I highlight the following two.

12. In *Mona Wong Wai King v Securities and Futures Commission* (SFAT 4/2003, 16 December 2003), Stone J took the view that the statutory requirement that good cause be shown for an extension of time was indicative of a legislative intention that there be an element of certainty as to when penalties imposed by SFC would take effect, and that the power to extend time was only intended to allow for cases where the delay was excusable ([11]-[12]):

> "In the context of proceedings before this Tribunal, an application for extension of time is not simply subject to the exercise of a wide judicial discretion, often liberally exercised, subject to the usual considerations of prejudice, compensation in costs and so forth.

> To the contrary. The framers of this legislation, and in particular the provisions of section 217(5), Cap. 571, have seen fit to lay down that an extension 'shall not' be granted unless the Tribunal is satisfied that there is 'good cause' for such grant. In the circumstances it seems reasonable to posit that, whilst putting in place a safety net for what are considered to be excusable cases of delay, the legislative intent in laying down the 21 day time limit for making an application for review was to impose an element of certainty in terms of commencement of service of such penalties as are meted out by the SFC *qua* industry regulator. Hence the requirement of 'good cause', however that may be interpreted in the circumstances of any given case."

13. In *Yi Shun Da Capital Limited v Securities and Futures Commission* (SFAT 4/2020, 6 July 2020), the applicant sought an extension of 6 weeks to file an application for review on the basis that he intended to engage senior counsel (who was not previously involved in the matter) to prepare the application for review, and the senior counsel would require time to peruse the voluminous documents. Lunn JA acknowledged that the applicant was entitled to engage the services of leading counsel, but held that he was not entitled to pray in aid his "extraordinarily dilatory approach" in seeking to do so as providing him with a good cause to seek an extension of time for filing the application: [18]. Lunn JA concluded that the applicant had advance no good cause for the extension sought, but, because the Tribunal might have dealt with the application more quickly and thereby given the applicant a short remaining time with which to make his application, granted an extension of time for making the application for review for 1 day only.

14. I appreciate that s.37R(3) of the Ordinance and s.217(5)(b) of the SFO are framed slightly differently: the former provides that the Tribunal *may* grant an extension of time *if* it is satisfied that there is a good cause for doing so, whilst the latter provides that SFAT shall *not*

grant an extension of time *unless* it is satisfied that there is a good cause for granting the extension. The difference is a matter of semantics and emphasis. The spirit of both sections is clear: the existence of a "good cause" is a pre-requisite for this Tribunal (and SFAT) to exercise its discretion to extend time for a review application. It is in the public interest for any review by an applicant to be made and determined by the Tribunal expeditiously, when the sanction against the applicant may (as in the present case) include exclusionary sanctions which are designed to protect the public from regulatees whose conduct has failed to comply with the relevant requirements set out in the Ordinance, and the sanction will only take effect after the conclusion of the review, by virtue of s.37ZD of the Ordinance. I agree with Mr Dentice that I should adopt the same strict approach in the SFAT cases highlighted above. I reject Mr Giblin's argument that I should follow the principles for an extension of time under Order 3 rule 5 of the Rules of the High Court (Cap 4A), which are premised on entirely different empowering provisions and, in turn, legislative considerations.

15. The Applicants' time extension application was made by letter on 24 June 2024. They asked for an extension of time up to 10 October 2024 (i.e. 3 months) to put in the Review Application. The justification for the extension was as follows:

> "The extension of time to enable:
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> (a) our clients to have cognizance of the extensive case law as put forward and relied upon by the AFRC;
>
> (b) our clients to obtain legal advice, including that of Leading Counsel, as to whether or not to pursue a review to the Tribunal;

(c) preparation by Counsel of the application for review, if so instructed; and

(d) having regard to the approaching Summer Vacation."

16. At the hearing on 5 July 2024, Mr Giblin informed the Tribunal that he had only recently obtained a fee quotation from Mr Raymond Leung SC, the leading counsel whom the Applicants were minded to (and eventually did) engage, but Mr Leung SC would be leaving Hong Kong soon and would not be returning to Hong Kong until about mid-September. Mr Giblin stressed that the Applicants had promptly applied themselves to the issue of choice of leading counsel, having approached Mr Leung SC within a week after the Decisions. He also contended that the Review Application may involve complex constitutional arguments, raised for the first time before this Tribunal, on the applicability of Article 10 of the Hong Kong Bill of Rights ("**BOR 10**") in treating the disciplinary regime under the Ordinance as analogous to criminal proceedings. Whilst the Applicants were all along advised and represented by Mr Nicholas Pirie in making representations to AFRC leading up to the Decisions, the Applicants would like leading counsel to advise properly on the Review Application. Incidentally, Mr Pirie would also be away for one month during the summer vacation.

17. As I indicated at the hearing, whilst I respect client's choice of counsel, the unavailability of the Applicants' preferred counsel is generally not in itself a good cause for extending time, particularly when a large part of the submissions and representations (with the assistance of counsel) have been made to AFRC leading up to the Decisions. That said, because AFRC in correspondence had agreed to a 4-week extension (and I commend AFRC for being reasonable), this suggests that there was no

pressing need for the Tribunal to determine the Review Application. I also accept that there may be a constitutional argument involved for the first time in the context of the Ordinance, and the Tribunal will benefit from the assistance of leading counsel. Taking into account the overall circumstances of the case, I granted an extension of time to the Applicants up to 6 August 2024 on an exceptional basis. Given the Applicants sought indulgence from the Tribunal and the extension of time was only granted on an exceptional basis, I ordered the Applicants to bear the costs of the application, which I summarily assessed at HK$45,320 to be paid by the Applicants to AFRC within 7 days.

18. I stress that generally speaking, it requires an exceptional case for the unavailability of counsel as a good cause for extending time. An applicant is expected to provide a detailed explanation of the steps taken to engage counsel, the reason for engaging the particular counsel (including the expertise of the counsel involved), and why more time is needed. An application to extend time should also be made in good time ahead of the statutory deadline so that the Tribunal and the decision-maker can have a fair opportunity to consider it.

Salient facts

19. The parties have put in a Statement of Agreed Facts which is appended to this Determination as Annex 1. I will summarise in the following paragraphs what I consider to be the key facts relevant to my Determination.

20. Mr Chiang was first registered as a member of the Hong Kong Institute of Certified Public Accountants ("**HKICPA**") on 16 April 1996. The Firm has been registered as a CPA firm in Hong Kong since 24 June 1997. At the material times, Mr Chiang was the sole proprietor of the Firm.

21. Mr Chiang and the Firm audited the financial statements of 5 private companies ("**Companies**") between 1996 and 2021. They are:

(1) Easegood Investment Limited ("**Easegood**"), between 9 July 2003 and 31 December 2019:

(2) Lancaster Capital Limited ("**Lancaster Capital**"), between 9 January 1999 and 31 March 2020;

(3) Grand Regency Limited ("**Grand Regency**"), between 2 July 1996 and 31 December 2019;

(4) Honey Nominees Limited ("**Honey Nominees**"), between 2001 and 2021; and

(5) Adeyfield Company Limited ("**Adeyfield**"), between 2001 and 2019.

22. It is not in dispute that between 1999 and 2021, Mr Chiang and his family (namely his wife and his mother) owned shares and/or held directorships in the Companies. See Table at Agreed Facts para 11.

23. It was the fact that Mr Chiang had audited the financial statements of the Companies of which he or his family members were interested that prompted HKICPA to make enquiries and subsequently commence investigations.

24. On 13 May 2022, HKICPA made an enquiry in relation to the audits of the financial statements of Easegood, Lancaster Capital and Grand Regency performed by Mr Chiang and the Firm.

25. In a reply dated 26 May 2022, Mr Chiang wrote to HKICPA ("**Representations to HKICPA**") and admitted that:

(1) Mr Chiang and the Firm audited the financial statements of Easegood, Lancaster Capital and Grand Regency for various financial years when Mr Chiang was their director.

(2) Mr Chiang was aware of the relevant independence requirements under the Code of Ethics for Professional Accountants ("**COE**") and had "inadvertently" failed to comply with those requirements.

26. On 3 August 2022, Mr Chiang and the Firm were informed by HKICPA that the matter would be transferred to AFRC for continued processing pursuant to the transitional provisions of the Financial Reporting Council (Amendment) Ordinance 2021 which came into operation on 1 October 2022.

27. On 28 November 2022, AFRC informed Mr Chiang and the Firm of an investigation under s.20ZZH of the Ordinance in relation to the audits of the financial statements of the Companies, and enquired, among other things, whether Mr Chiang and the Firm would adopt the Representations to HKICPA.

28. On 12 December 2022, Mr Chiang confirmed that he and the Firm adopted the Representations to HKICPA for the purposes of AFRC's investigation and explained, among others, that:

> "The Firm is only a small firm with 4 qualified audit staff, our practice's policies and procedures mostly identified by our knowing our clients on a job-to-job basis."

29. On 1 February 2023, AFRC sent a draft investigation report to Mr Chiang and the Firm for comments. However, Mr Chiang, in his reply on 24 February 2023:

(1) argued that his acts did not constitute breaches of the relevant independence requirements (on the ground, among others, that Lancaster Capital was a dormant company, that his holding in the Companies was only for "passive investment", that the figures and content of the audit opinions were accurate and correct, and that the audit reports were said to be "solely issued to the shareholders only and nobody else");

(2) disagreed that the breaches constituted "reckless disregard" of the relevant independence requirements; and

(3) indicated his willingness to "put everything into the right order and rectify any breaches".

30. On 4 August 2023, AFRC sent a revised draft investigation report to Mr Chiang and the Firm, based on further information and documents provided by Mr Chiang and the Firm.

31. On 27 September 2023, Mr Chiang and the Firm, through their solicitors Messrs Munros, rendered a written representation to AFRC. Among others, it was argued that:

> "As a matter of principle all these companies are SME's and have had long relationships with Mr. Chiang and the Firm and do not require the kind of monitoring that a publicly listed company would need, or a special company such as Citibus (which is subject to a Scheme of Control) or Ocean Park?
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> …
>
> So in essence we are dealing here with technical breaches of both Sections which Mr. Chiang and the Firm ought to have become aware of, when dealing with their client portfolio of SMEs.
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> …
>
> Mr. Chiang and the Firm are just a small firm of accountants with 4 or 5 staff servicing SMEs and should not be ascribed with the same knowledge and depth of accountancy law as it applies to their practices, as say PWC or Deloittes. Any period of suspension will have a devastating effect as he is the sole practitioner …"

32. On 19 December 2023, AFRC issued Notices of Proposed Disciplinary Action ("**NPDA**") to Mr Chiang and the Firm.

33. On 25 January 2024, Messrs Munros submitted written representations to AFRC on behalf of Mr Chiang and the Firm. The representations did not challenge any of the allegations, facts, evidence or preliminary views in the NPDA as to the breaches and/or non-compliance of the professional standards identified, pertinent to the independence of an auditor. However, those representations sought to argue that the proper assessment of the seriousness of the breaches and/or non-compliance and the correct approach towards sanction should be by reference to the "Guideline to Disciplinary Committee for Determining Disciplinary Order" published by HKICPA in October 2017 ("**2017 HKICPA Guideline**").

34. On 18 June 2024, AFRC issued the Decisions and concluded Mr Chiang and the Firm had committed professional irregularities pursuant to s.3B(1)(c) and (h) of the Ordinance, and were guilty of CPA misconduct pursuant to s.37AA(1)(a) of the Ordinance.

Applicable professional standards

35. Based on the Agreed Facts, AFRC contended, and the Applicants accepted, that Mr Chiang and the Firm have failed to observe, maintain, or otherwise apply the following professional standards constituting professional irregularities under s.3B(1)(c) of the Ordinance:

(1) paragraph 2 of the Statement section and paragraphs 3, 12, 13 and 15 of the Guidelines section of Statement 1.203 – Professional Ethics – Integrity, Objectivity and

Independence of the Members' Handbook of the Hong Kong Society of Accountants (now HKICPA);

(2) paragraph 4 of Statement 1.203A – Independence for Assurance Engagements of the Members' Handbook of HKICPA;

(3) paragraph 3 of Statement 1.303 – General Guidance – Restrictions on Appointments as Secretaries and Directors of Audit Clients of the Members' Handbook of HKICPA;

(4) the following paragraphs of the COE applicable at the relevant times:

(a) paragraphs 290.106, 290.108, 290.136, 290.138, 290.147 and 290.151 of the COE issued in December 2005 and effective since 30 June 2006;

(b) paragraphs 290.104, 290.105, 290.128, 290.130, 290.146 and 290.148 of the COE revised in June 2010 and effective since 1 January 2011; and

(c) paragraphs R510.4, 510.10 A5 to 510.10 A8, R521.5, 521.6 A1 to 521.6 A4, R523.3 and R523.4, Chapter A of the COE issued in November 2018, effective since 15 June 2019 and revised in July 2020;

(5) (in respect of Mr Chiang only) the following paragraphs of the Hong Kong Standard on Auditing 220 – Quality Control for Audits of Historical Financial Information ("**2005 HKSA 220**") and the Hong Kong Standard on Auditing 220 – Quality Control for an Audit of Financial Statements ("**2009 HKSA 220**") applicable at the relevant times:

(a) paragraphs 12 and 13 of the 2005 HKSA 220; and

(b) paragraphs 9 to 11 of the 2009 HKSA 220; and

(6) the following paragraphs of 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**"):

(a) paragraphs 9, 18 to 20 and 23 of the 2005 HKSQC 1; and

(b) paragraphs 13, 18, 21 to 24 of the 2009 HKSQC 1.

36. Ms Sara Tong SC for AFRC[3] had helpfully set out the text of the above professional standards in Annex I to her submissions, which is reproduced as Annex 2 to this Determination.

[3] Appearing with Mr Jonathan Fung.

37. Suffice it to say that despite the numerous provisions cited, the gravamen of AFRC's disciplinary charge is directed towards Mr Chiang and the Firm's breach of the independence requirements by reason of Mr Chiang (through the Firm) auditing the financial statements of the Companies in which Mr Chiang and/or his family members have a shareholding interest or hold directorships, and the failure of Mr Chiang and the Firm to devise appropriate internal control procedures to prevent the aforesaid breaches from happening.

Applicants' contentions

38. Mr Raymond Leung SC,[4] for the Applicants, had helpfully summarised the causes of grievances of the Applicants as follows:

> (1) The Suspension Orders are be wrong in principle, in that AFRC: (a) had failed to recognise that its exercise of disciplinary power in meting out sanctions is quasi-criminal in nature, (b) erred in regarding itself as not being obliged to follow principles derived from sentencing in criminal cases, including the principle that the applicable sanction should be those prevailing at the time of the relevant breaches; and (c) failed to apply the 2017 HKICPA Guideline and/or give effect to the legitimate expectation reasonably held by the Applicants that the 2017 HKICPA Guideline would be applied (Ground 1);

[4] Appearing with Mr Nicholas Pirie.

(2) There was a lack of clear and cogent reasons given by AFRC in its Decisions, which is said to be illustrative of AFRC having acted in an unprincipled and/or arbitrary manner in imposing the Suspension Orders (Ground 2).

(3) The Suspension Orders are unduly harsh and manifestly excessive (Ground 3).

(4) The Suspension Orders are disproportionate and were arrived at without following established rules of procedural and substantive fairness (Ground 4).

39. I will deal with each of these Grounds in turn. It seems to me that the main contention on law is in respect of Ground 1. Once Ground 1 is disposed of, it would naturally provide the answer and analytical framework to assessing the appropriate sanction to be imposed, including whether the Suspension Orders can be justified.

Ground 1: whether criminal sentencing principles and the 2017 HKICPA Guideline applicable

40. Mr Leung SC argues that AFRC was wrong to treat disciplinary proceedings under the Ordinance as being a purely civil matter. He submits that principles analogous to those derived from criminal proceedings are applicable as a matter of fairness as enshrined in BOR 10. On that premise, Mr Leung SC contends that the criminal sentencing principle that an offender should be sentenced according to the practice prevailing at the time of the commission of the offence would be

generally applicable, and that 2017 HKICPA Guideline which was in force at the time of the breaches should be applied. Alternatively, Mr Leung SC suggests that there is a legitimate expectation on the part of the Applicants that the 2017 HKICPA Guideline would be applied.

41. I am unable to accept those submissions.

42. The present proceedings do not involve the determination of a "criminal charge" within the meaning of BOR 10. In *Koon Wing Yee v Insider Dealing Tribunal* (2008) 11 HKCFAR 170 at [31], the Court of Final Appeal recognised that the concept of "criminal charge" has an autonomous meaning, and that in determining whether there is a "criminal charge" within the meaning of BOR 10, the Court will have regard to: (a) the classification of the offence under domestic law; (b) the nature of the offence; and (c) the nature and severity of the potential sanction. Sir Anthony Mason NPJ pertinently observed at [37]:

> "It follows that proceedings which may result in the imposition of a penalty for wrongful conduct will involve the determination of a criminal charge unless they have a character which is neither criminal nor penal. **Disciplinary proceedings, which do not concern the public at large, usually have such a non-criminal, non-penal character**. Proceedings under regulatory legislation whose purpose is essentially protective rather than punitive and deterrent may also have such a character, a matter to be discussed at greater length later in these reasons (see paras.59 and 60). So also with proceedings that have a preventative rather than a punitive or deterrent purpose. Likewise, proceedings for a penalty which is compensatory in nature have a non-criminal and non-penal character." (**emphasis** added)

43. In the present case:

(1) There is no basis to say that the legislature had intended a disciplinary charge under the Ordinance to be criminal in nature. On the contrary, s.37T(5) of the Ordinance expressly provides that the standard of proof applicable to a review application before the Tribunal is that of the civil standard.

(2) The nature of the charge with which the Applicants are facing is disciplinary in nature. This is also accepted by Mr Leung SC when he described AFRC as exercising a "disciplinary power" in imposing the Suspension Orders on the Applicants. As noted in *Koon Wing Yee*, *prima facie*, disciplinary proceedings involve a non-criminal, non-penal character.

(3) In terms of potential penalty that may be imposed, imprisonment is not an option open to either AFRC or this Tribunal. While it is possible to impose a pecuniary penalty (as AFRC did in the present case), the established principle is that proceedings do not involve the determination of a criminal charge unless they are capable of resulting in the imposition of a penalty "by way of punishment" (*Koon Wing Yee* [53]). In the instant case, the purpose of these disciplinary proceedings and the imposition of any sanctions (including pecuniary penalties) is primarily preventive in nature, in order to: (a) uphold proper standards of conduct amongst regulatees; (b) maintain and promote public confidence in the

> accountancy profession; (c) protect the public from regulatees whose conduct has failed to comply with relevant requirements; and (d) deter regulatees from committing similar misconduct: AFRC's "Discipline Policy Statement for Professional Persons" at [6]-[7]; *Bolton v Law Society* [1994] 1 WLR 512 at 518F-519B.

44. I agree with Ms Tong SC that the following 3 cases relied upon by the Applicants do not support the proposition that a disciplinary body or tribunal has approached the imposition of regulatory sanctions as if the respondent were being sentenced in the criminal courts.

45. In *Lam Siu Po v Commissioner of Police* (2009) 12 HKCFAR 237, Bokhary PJ said at [24]:

> "Having regard to their context, the words 'determination of … rights and obligations in a suit at law' call for a generous interpretation. The fundamental question is whether our constitution permits legislation that brings about fairness at disciplinary proceedings. In my view, disciplinary proceedings – whether in respect of professions, disciplined services or occupations – are determinations of rights and obligations in suits at law within the meaning of art.10. So art.10 applies to disciplinary proceedings."

46. I agree with Ms Tong SC that what *Lam Siu Po* decided was that a police disciplinary hearing was a "determination of civil rights and obligations in a suit of law" thereby engaging the requirements of BOR 10. It did not purport to decide that such proceedings amounted to the determination of a "criminal charge" within BOR 10. In any case, the issue in that case concerns entitlement to legal representation, and does not lay down any general principle that criminal sentencing principles apply to disciplinary proceedings.

47. In *Aaron v Law Society* [2003] EWHC 2271 (Admin), Auld LJ said the following by way of postscript (at [84]):

> "… where there are significant intervals of time between the subject matters of various allegations and/or in the making of allegations, the regulatory bodies and the [Solicitors' Disciplinary] Tribunal should not wait to gather them together for one hearing in the interests of administrative and judicial efficiency and convenience, without also keeping an eye on their Article 6 obligation to bring each individual allegation to determination within a reasonable time. Disciplinary proceedings before the Solicitors' Disciplinary Tribunal are analogous to criminal proceedings. The uncertainty that springs from and festers with unnecessary and unreasonable delay can, in itself, cause great injustice to practising solicitors, whose livelihood and professional reputations are at stake. Nor does such delay serve the solicitors' profession as a whole. It is in their interest and that of the member of public whom they serve that their regulatory body and the Tribunal should be prompt, as well as otherwise effective, in the enforcement of the high standards of their profession."

48. Ms Tong SC must be right that the reference to criminal proceedings was to make the point that unnecessary and unreasonable delay should not be countenanced in disciplinary proceedings any more than in criminal proceedings. It is not authority for the proposition that principles of criminal sentencing should apply to disciplinary proceedings.

49. In *Musonza v Nursery and Midwifery Council* [2012] EWHC 1440 (Admin), HHJ Anthony Thornton QC observed at [67]:

> "Furthermore, as in criminal sentencing in the crown courts, previous appellate decisions concerned with sentence or sanction are or should be used as indicators of the appropriate level or severity of sentence or sanction, in other words as guidelines to the appropriate sentence or sanction being appealed."

50. Again, I agree with Ms Tong SC that the reference to criminal sentencing above was to make the point that sanctions imposed in previous cases are indicators of the appropriate sanction in a given case, not any suggestion that there should be a wholesale importation of sentencing principles developed by the criminal courts in disciplinary proceedings.

51. Once it is appreciated that these proceedings do not involve the determination of a criminal charge, I see no basis for the importation of criminal sentencing principles: *Li Kwok Keung v SFC* [2011] 1 HKC 565 at [53]-[64]. In particular, I do not see why the imposition of a sanction must necessarily follow the adoption of a "starting point" followed by consideration of aggravating or mitigation factors (as in a criminal sentencing exercise), or that guidelines applicable at the time of the commission of the professional misconduct must govern the sanctions process even though such guidelines no longer remain current at the time of this hearing. I agree with Ms Tong SC's submission that as a matter of principle, there is nothing inherently objectionable in a person being disciplined in accordance with the guidelines in force at the time of the sanctions. This is because disciplinary sanctions are primarily preventive and protective (and not punitive) in nature, such that the appropriate sanction must be determined by reference to what is necessary to uphold the standards of the profession in light of the particular state of the profession at the time: Foster, *Disciplinary and Regulatory Proceedings* (10th ed.) at para 10.34.

52. In any event, I do not see how the invocation of the concept of "legitimate expectation" (as a public law concept) would assist the

Applicants. There has never been any unequivocal representation by either HKICPA or AFRC that a person who committed professional conduct would only be sanctioned according to the sanctions policy current at the time of the commission of the wrongdoing. Indeed, it seems to me to be a startling position that AFRC, which has its own Sanctions Policy for Professional Persons as well as Discipline Policy Statement, would be compelled to apply guidelines devised by and for a different body, HKICPA.

53. I have also not lost sight of Ms Tong SC's point that the 2017 HKICPA Guideline which the Applicants rely on only came into effect in October 2017, which means that they were in fact not in force during the bulk of the period of the Applicants' misconduct, which spanned the years 1999 to 2021. I agree that there is no logical basis for the Applicants to single out the 2017 HKICPA Guideline as the guidelines which ought to have been applied. To put the matter slightly differently, this reinforces my conclusion that the applicable sanctions guideline must be the one applicable at the time of the sanctions hearing (and not the commission of the wrongdoing), for otherwise logic would dictate that this Tribunal apply different guidelines for wrongdoing committed in different periods of time. That outcome cannot be right.

54. For completeness, I have considered the substance of the 2017 HKICPA Guideline. With respect, I do not see how it can be said that its application would mean that the imposition of the Suspension Orders becomes unjustified.

55. The relevant part of the 2017 HKICPA Guideline is its para 6.1, which reads as follows:

> "**6. Starting points for sanctions**
>
> 6.1 The suggested starting points for sanctions based on the seriousness of offence are listed below. Sanctions could be adjusted upwards or downwards based on the other factors discussed in section 7.

Seriousness	Suggested Sanctions
Moderately serious	• Reprimand; and/or • Financial penalty; and/or • Payment of costs and incidentals
Serious	• Reprimand; and/or • Financial penalty; and/or • Cancellation of [practising certificate] and not reissued for up to 1 year; and/or • Temporary removal from the register; and/or • Payment of costs and incidentals
Very serious	• Reprimand; and/or • Financial penalty; and/or • Cancellation of [practising certificate] and not reissued for at least.1 year; and/or • Temporary / Permanent removal from the register; and/or • Payment of costs and incidentals

56. Two points are of note.

57. First, para 6.1 of the 2017 HKICPA Guideline only provides for the "suggested starting point" for the imposition of sanctions. Para 1.2 made clear that it is not binding on the HKICPA Disciplinary

Committee. A deviation from the suggested sanction can be justified on the facts of a particular case, and in any event the starting point can obviously be adjusted upwards or downwards in view of the specific factual circumstances at hand.

58. Second, Mr Leung SC's contention rests on the premise that the Applicants' conduct falls within the "moderately serious" category as provided in para 6.1 of the 2017 HKICPA Guideline. For the reasons outlined under Grounds 3 and 4 below, I do not accept that is a correct categorisation. In any event, I need not arrive at a definite view given my conclusion that the 2017 HKICPA Guideline is of no application here.

Ground 2: Whether failure to give reasons on the part of AFRC

59. As explained above, since I am to approach the question of sanctions *de novo* as if I were the original decision maker, I do not find it helpful (or necessary) to dwell on the question as to whether AFRC had failed to give adequate reasons for imposing the Suspension Orders.

60. Suffice it to say that I tend to agree with Ms Tong SC that AFRC had already set out in detail its assessment of the gravity, extent and impact of the Applicants' conduct and the relevant aggravating and mitigating factors present in the case, before arriving at its conclusion that the breaches were "persistent, flagrant and egregious" since it impacted on the "fundamental ethical principle of independence", and that given such "very serious" conduct, a "strong deterrent message" was considered necessary notwithstanding the mitigating factors advanced by the Applicants.

61. While the Applicants may not agree with the conclusion reached by AFRC, it is not right to say that AFRC had not given adequate reasons for the Decisions.

Grounds 3 and 4: Whether Suspension Orders justified

62. As I see it, the crux of the matter is whether, on the facts of this case, it was correct for the Suspension Orders to be imposed. Since I am dealing with the matter *de novo*, I do not find it helpful to analyse the matter by reference to the thresholds of "undue harshness", "manifest excessiveness", or "disproportionality" (as if this was an appeal against sentencing in the criminal context, or a judicial review application), which seem to put the matter too high for the Applicants. I will accordingly consider Grounds 3 and 4 together.

63. For the reasons stated below, I take the view that the imposition of the Suspension Orders was both correct in principle and justified on the facts of this case:

(1) The requirement of independence of an auditor is of fundamental importance and lies at the very heart of every audit, which is intended to ensure that the financial information of a company relied on by shareholders and other users gives (and is *seen* to give) a true and fair view of the company's affairs.

(2) The integrity of Hong Kong's financial markets and its position as an international financial centre is a matter of

prime public importance, and it is important to maintain public confidence that the independence requirements of auditors are strictly upheld within the profession, and that audited financial statements are reliable and *seen* to be reliable.

(3) It is correct for Ms Tong SC to submit that the function of auditors of providing independence and objective assurance as regards the reliability of the financial statements would be compromised if the auditor (or that of his immediate family members) holds a material interest in the company audited, in circumstances where the professional standards make express and absolute prohibitions against a person acting as auditor for companies for which he/she or his/her family member is a shareholder or acts as director or company secretary.

(4) I accordingly agree with Ms Tong SC that the Applicants' breaches were grave in nature, since they were contrary to the very nature of the role of an auditor and defeated the very purpose of the statutory audit requirements. Ms Tong SC must also be right in her submission that the Applicants displayed a fundamental disregard of their professional duties and the need for independence – being the core and indeed elementary requirement expected of a practising accountant. This is self-evident from their characterization of their breaches as "inadvertent" (see [25] above) and "technical" (see [31]

above). Even in their Notice of Review, they maintain that their misconduct amounted to "relatively minor professional irregularities".

(5) That said, I am not prepared to hold, as Ms Tong SC had invited me to do, that the Applicants' breaches were deliberate and in blatant disregard of the professional standards and ethical requirements. The Applicants' conduct may also be consistent with ignorance or negligence. I also do not attach too much weight to the admission of the Applicants in the Representations to HKICPA that they were "aware" of the independence requirements, since on a fair reading of such letter, their admitted awareness of the independence requirements is not linked to any particular period in time.

(6) I accept Ms Tong SC's point that an added element is the Applicants' failure to establish and maintain a system of quality control and policies and procedures to ensure compliance with the independence requirements.

(7) I note Mr Leung SC suggests that upon a survey of relevant disciplinary decisions across Commonwealth jurisdictions, there is only a handful of examples where independence requirements were breached. I do not see how this point assists the Applicants. Little (if any) weight can be placed on sentencing precedents from foreign jurisdictions, when the circumstances prevailing

> in those jurisdictions in respect of professional matters may be different from *Hong Kong: Peter PF Chan v Hong Kong Society of Accountants* [2001] 1 HKLRD 687 at 694A-C. In any event, it may be that since the need to uphold independence is so elementary that members of the profession take extreme care in avoiding any such contravention. But this does not mean that such a contravention, when it does happen, is not serious in nature. Indeed, on the facts of this case, the breaches were extensive in scope, covering the Companies spanning a long period of 22 years, which was almost the entirety of Mr Chiang's practice as an accountant.

64. I have considered the mitigating factors advanced by Mr Leung SC on behalf of the Applicants. I agree that this case does not involve any allegation of fraud, dishonesty or financial loss. Indeed, as mentioned above, I am not prepared to find that the Applicants' breaches were a deliberate disregard of the professional standards. I accept that there is no evidence that the financial statements concerned were inaccurate. I also note that the Companies operated on a relatively small scale mainly as holding vehicles for Mr Chiang and his family. I further acknowledge that the Applicants have an otherwise unblemished record and length of practice, that the Applicants have thereafter taken remedial steps to rectify the situation, and that the imposition of the Suspension Orders would have an adverse impact both on the Applicants' practice, as well as their clients and employees.

65. However, these points all assume subsidiary importance once it is recognised that:

(1) The breaches in question are properly characterised as serious in nature, directly impugning the public's confidence in the independence of auditors in Hong Kong;

(2) What is important is that not only should auditors be independent, they should be seen as independent and the public retains confidence of that being the case;

(3) Even for "small" (or family) companies which act purely as property holding vehicles, there will be occasions where third parties may rely on the audited financial statements in their dealings with the companies or those behind them (for example where the controlling shareholders sell their interest in the companies together with the underlying asset to third party purchasers);

(4) The purpose of sanctions in the present context is preventive and deterrent (and not punitive) in nature; and

(5) It can never be an objection to an order of suspension in an appropriate case that the person suspended may be unable to re-establish his practice when the period of suspension is past. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many

benefits, but that is part of the price: *Bolton v Law Society* (*supra*) at 519E.

66. On the length of the suspension period, I do not think it helpful to refer to other cases which were decided on their facts. I accept Ms Tong SC's submission, in reliance on *Law Society v Emeana* [2013] EWHC 2130 (Admin) at [24]-[26] and *Chan Yui Hang v Registrar of the HKICPA* [2022] HKCA 805 at [65], that sentences imposed by disciplinary bodies are not designed as precedents, and there is only limited weight that can be attached to the outcome of any particular disciplinary sanction meted out to a different respondent on a different set of facts. This is echoed by AFRC's Sanctions Policy at para 5(d) which provides that past decisions are not binding and each case should be decided based on its own facts and circumstances.

67. I have, in the instant case, considered *The Registrar of the Hong Kong Institute of Certified Public Accountants v Ernst & Young (a firm)*, Proceedings D-03-IC16H (Decision on Sanctions and Costs), where one Mr Wu, who was found guilty of breaches relating to the appearance of independence being compromised, was removed from the register for a period of 2 years. I accept AFRC's position in para 21 of the Decisions that there are differing features between that case and the present case, in that while Mr Wu was the engagement partner for the relevant audits at the material times, he (unlike Mr Chiang) did not undertake the actual audit engagement himself. In a way, the breaches of Mr Chiang are more serious than that of Mr Wu.

68. In summary, in order to maintain the fundamental principle of independence which underlies the accountancy profession, a firm message needs to be sent out both to the practitioners and the general public that compromises of independence will not be tolerated and will be visited with serious sanctions, and that accordingly, a suspension period of 3 years against each of the Applicants is appropriate.

Disposition

69. For the above reasons, I confirm the Decisions.

Costs

70. Costs should follow the event. The Applicants being the unsuccessful parties in this Review Application should bear the costs of AFRC on a joint and several basis. The Tribunal may 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 review: see s.37Y(1) of the Ordinance. Order 62 of the Rules of the High Court (Cap 4A) applies, including the power to summarily assess costs in lieu of taxation under Order 62 rule 9(4)(b): see s.37Y(3) of the Ordinance.

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

72. Having considered AFRC's statement of costs and the Applicants' list of objections, on a broad brush basis, I summarily assess the costs payable by the Applicants to be HK$890,070.[5]

73. It remains for me to thank all counsel and those instructing them for their assistance rendered to the Tribunal.

Jonathan Chang SC
(Chairman)

Mr Raymond Leung SC and Mr Nicholas Pirie, instructed by Munros, for the Applicants

Ms Sara Tong SC and Mr Jonathan Fung, instructed by MinterEllison LLP, for the Respondent

[5] HK$549,000 as counsel's fees (allowed in full), HK$163,200 under section B: communications (allowed in full), and HK$177,870 under section C: professional work (30% discount for the sum claimed as the number of hours spent on preparation appears excessive, taking into account two counsel were instructed for AFRC). For reference purpose, the total amount of fees claimed by the Applicants as per their statement of costs is HK$2,477,922.

Proceeding No.: AFRRT-3-2024

IN THE ACCOUNTING AND FINANCIAL REPORTING REVIEW TRIBUNAL

IN THE MATTER OF

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

BETWEEN

CHIANG SHAM LAM ANTHONY	1st Applicant
ANTHONY S L CHIANG & CO. (a firm)	2nd Applicant

and

THE ACCOUNTING AND FINANCIAL REPORTING COUNCIL	Respondent

STATEMENT OF AGREED FACTS

A. Introduction

1. The facts as set out in this Statement of Agreed Facts ("**SOAF**") are agreed by the parties for the purpose of these proceedings.

2. By Decision Notices issued respectively to the 1st Applicant, Mr. Chiang Sham Lam Anthony ("**Mr. Chiang**"), and the 2nd Applicant, Anthony S. L. Chiang & Co. ("**ASLC & Co.**"), on 18 June 2024[1] ("**Decision Notices**"), the Accounting and Financial Reporting Council ("**AFRC**") concluded that Mr. Chiang and ASLC & Co. committed professional irregularities pursuant to sections 3B(1)(c) and (h) of the Accounting and Financial Reporting Council Ordinance (Cap. 588) ("**AFRCO**"), and were accordingly guilty of CPA misconduct pursuant to section 37AA(1)(a) of the AFRCO.

3. By way of the Decision Notices, the AFRC imposed the following sanctions against Mr. Chiang and ASLC & Co. respectively pursuant to section 37CA of the AFRCO:

[1] Decision Notices: **[SOAFs/4/106-125; 5/126-145]**.

3.1. Against Mr. Chiang:

(a) Public reprimand;

(b) Pecuniary penalty of HK$250,000;

(c) Order that Mr. Chiang's registration be suspended for a period of three (3) years;

(d) Order that Mr. Chiang's current practising certificate be cancelled;

(e) Order that Mr. Chiang not be issued with a practising certificate for a period of three (3) years; and

(f) Order that Mr. Chiang pay the costs and expenses of, and incidental to, the investigation, in the sum of HK$33,666.

3.2. Against ASLC & Co.:

(a) Public reprimand;

(b) Pecuniary penalty of HK$250,000;

(c) Order that ASLC & Co.'s registration be suspended for a period of three (3) years; and

(d) Order that ASLC & Co. pay the costs and expenses of, and incidental to, the investigation, in the sum of HK$33,666.

4. On 6 August 2024, Mr. Chiang and ASLC & Co. jointly lodged a Notice of Review pursuant to section 37Q of the AFRCO.[2] Both Mr. Chiang and ASLC & Co. did not dispute their liability under section 37AA(1)(a) of the AFRCO and each of them accepted the sanctions of public reprimand, pecuniary penalty of HK$250,000, and costs and expenses of, and incidental to, the investigation in the sum of HK$33,666. Mr. Chiang and ASLC & Co. only seek to review the remaining sanctions i.e. those in paragraphs 3.1(c), (d), (e) and 3.2(c) above.

[2] Notice of Review: **[SOAFs/6/146-153]**.

B. Background

5. Mr. Chiang was first registered as a member of the Hong Kong Institute of Certified Public Accountants ("**HKICPA**") on 16 April 1996, and is currently and was at all material times a member of the HKICPA.

6. Mr. Chiang was first issued with a practising certificate on 24 June 1997, and is currently and was at all material times a practising certificate holder.

7. Mr. Chiang has been registered as a fellow member of the HKICPA since 11 December 2003.

8. ASLC & Co. has been registered as a CPA firm in Hong Kong since 24 June 1997.

9. At all material times, Mr. Chiang was the sole proprietor of ASLC & Co..

10. Mr. Chiang and ASLC & Co. audited the financial statements of the following five private companies (collectively, "**Companies**") for the following periods:

    10.1. Easegood Investment Limited ("**Easegood**") between 9 July 2003 and 31 December 2019[3];

    10.2. Lancaster Capital Limited ("**Lancaster Capital**") between 9 January 1999 and 31 March 2020[4];

    10.3. Grand Regency Limited ("**Grand Regency**") between 2 July 1996 and 31 December 2019[5];

    10.4. Honey Nominees Limited ("**Honey Nominees**") between 2001 and 2021[6]; and

    10.5. Adeyfield Company Limited ("**Adeyfield**") between 2001 and 2019[7].

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[3] Letter from Mr. Chiang & ASLC & Co. to HKICPA dated 26 May 2022 **[SOAFs/68/2461-2721]** in response to the HKICPA's letter dated 13 May 2022: **[SOAFs/67/2252-2460]** and letter from Mr. Chiang & ASLC & Co. to the AFRC dated 20 June 2023: **[SOAFs/78/4417-4424]** in response to the AFRC's requirement dated 23 May 2023: **[SOAFs/74/4399-4411]**.

[4] Letter from Mr. Chiang & ASLC & Co. to the AFRC dated 12 December 2022: **[SOAFs/71/2749-3232]** in response to the AFRC's requirement dated 28 November 2022: **[SOAFs/70/2723-2748]**.

[5] Same as n.3 above.

[6] Same as n.4 above.

[7] Same as n.4 above.

11. Mr. Chiang and/or his wife (Christiane Biere-Chiang)[8] and/or his mother (Chu Yuk Chun[9]) were a director and/or company secretary of and/or had a direct financial interest in the Companies as follows:

[8] Letter from Mr. Chiang and ASLC & Co. to the HKICPA dated 26 May 2022: **[SOAFs/68/2461-2721]** in response to the HKICPA's letter dated 13 May 2022: **[SOAFs/67/2252-2460]**.

[9] Letter from Mr. Chiang and ASLC & Co. to the AFRC dated 20 June 2023: **[SOAFs/78/4417-4424]** in response to the AFRC's requirement dated 23 May 2023: **[SOAFs/74/4399-4411]**. Madam Chu died in February 2021, see Letter of Munros to the AFRC dated 8 November 2023: **[SOAFs/106/6092-6122]**.

Name of company	Period in which Mr. Chiang and ASLC & Co. acted as auditors	Director (D) or company secretary (CS)	Period of directorship or office	Shareholder (% of shareholding)	Period of shareholding
Easegood[10]	9 July 2003 – 31 December 2019	Mr. Chiang (D) Mr. Chiang's wife (D)	2003 – 2019 2003 – 2019[11]	Mr. Chiang (50%) Mr. Chiang's wife (50%)	2003 – 2019 2003 – 2019[12]
Lancaster Capital[13]	9 January 1999 – 31 March 2020	Mr. Chiang (D) Honey Nominees (D)	1993 – 2021 1995 – 2021[14]	Mr. Chiang (50%) Honey Nominees (50%)	1993 – 2021 1995 – 2021[15]
Grand Regency[16]	2 July 1996 – 31 December 2019	Honey Nominees (D) Adeyfield (D) Mr. Chiang (D)	2003 – 2019 2003 – 2019 2014 – 2019[17]	Honey Nominees (75%) Adeyfield (25%)	2001 – 2019 2001 – 2019[18]
Honey Nominees[19]	2001 – 2021	Mr. Chiang (D and CS) Mr. Chiang's mother	2000 – 2022 2000 – 2015[20]	Mr. Chiang (25%) Mr. Chiang's mother (75%)	2000 – 2022 2000 – 2015[21]
Adeyfield[22]	2001 – 2019	Mr. Chiang (D) Mr. Chiang's mother (D)	1995 – 2022 1995 – 2004[23]	Mr. Chiang (99.99%) Mr. Chiang's mother (0.01%)	1995 – 2022 1995 – 2015[24]

[10] **[SOAFs/7-12/154-246]**.
[11] Notice of First Secretary and Directors dated 5 November 2003; Annual Returns from 2004 to 2019: **[SOAFs/13-16/247-380]**.
[12] Annual Returns from 2004 to 2019: **[SOAFs/14-16/253-380]**.
[13] **[SOAFs/17-21/381-459]**.
[14] Return of First Directors and Secretary and Annual Returns from 1993 to 2021, Special Resolution dated 3 August 2022 and company search records: **[SOAFs/22-25/460-628]**.
[15] Return of First Directors and Secretary and Annual Returns from 1993 to 2021, Special Resolution dated 3 August 2022 and company search records: **[SOAFs/22-25/460-628]**.
[16] **[SOAFs/26-32/629-715]**.
[17] Annual Returns from 2002 to 2019: **[SOAFs/33/716-727; 34/728-821; 35/822-843]**.
[18] Annual Returns from 2002 to 2019: **[[SOAFs/33/716-727; 34/728-821; 35/822-843]**.
[19] **[SOAFs /36-41/846-938]**.
[20] Annual returns from 2000 to 2022: **[SOAFs/42/939-1013; 43/1014-1068]**.
[21] Annual returns from 2000 to 2022: **[SOAFs/42/939-1013; 43/1014-1068]**.
[22] **[SOAFs/45-47/1073-1120]**.
[23] Notice of Change of Company Secretary and Director (Appointment/Cessation) and Consent to Act as Director or Alternate Director dated 5 November 2004; Annual Returns; Notice of Change of Company Secretary and Director (Appointment/Cessation) dated 4 August 2022: **[SOAFs/44/1069-1072; 48-50/1121-1292]**.
[24] Notice of Change of Company Secretary and Director (Appointment/Cessation) and Consent to Act as Director or Alternate Director dated 5 November 2004; Annual Returns; Notice of Change of Company Secretary and Director (Appointment/Cessation) dated 4 August 2022: **[SOAFs/44/1069-1072; 48-50/1121-1292]**.

12. As provided in the relevant professional standards summarized in paragraph 31 below, a professional accountant in public practice must be independent of his audit clients. Further, a practice must establish and maintain a system of quality control and adequate policies and procedures to ensure compliance with independence requirements.

C. The investigation and disciplinary action

13. On 13 May 2022, the HKICPA made an enquiry in relation to the audits of the financial statements of Easegood (years ending on 31 December 2008 to 2016), Lancaster Capital (year ending on 31 March 2016) and Grand Regency (years ending on 31 December 2003 to 2016) performed by Mr. Chiang and ASLC & Co.[25].

14. In a reply dated 26 May 2022, Mr. Chiang wrote to the HKICPA for and on behalf of himself and ASLC & Co.[26] ("**Representations to the HKICPA**") and admitted that:

    14.1. Mr. Chiang and ASLC & Co. audited the financial statements of Easegood, Lancaster Capital and Grand Regency for various financial years when Mr. Chiang was their director though ASLC & Co. would "*only keep the audited financial statements within 7 years*"; and

    14.2. Mr. Chiang was aware of the relevant independence requirements under the Code of Ethics for Professional Accountants ("**COE**") and had "*inadvertently*" failed to comply with those requirements.

15. Thereafter, there was no further communication from the HKICPA until 3 August 2022 when Mr. Chiang and ASLC & Co. were informed by the HKICPA[27] that the matter would be transferred to the AFRC for continued processing pursuant to the transitional provisions of the Financial Reporting Council (Amendment) Ordinance 2021 which came into operation on 1 October 2022 (i.e. Section 65 of the Accounting and Financial Reporting Council (Transitional and Saving Provisions and Consequential Amendments) Regulation (Cap. 588B)).

16. Accordingly, on or about 1 October 2022, the AFRC took over the investigation from

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[25] Email from the HKICPA to Mr. Chiang and ASLC & Co. dated 13 May 2022: **[SOAFs/67/2252-2460]**.
[26] Letter from Mr. Chiang to the HKICPA dated 26 May 2022: **[SOAFs/68/2461-2721]**.
[27] Email from the HKICPA to Mr. Chiang and ASLC & Co. dated 3 August 2022: **[SOAFs/69/2722]**.

the HKICPA. In the meantime, there was no further communication between the HKICPA (or AFRC) and Mr. Chiang (and ASLC & Co.) during the period from 3 August 2022 to 28 November 2022.

17. By a letter dated 28 November 2022, the AFRC informed Mr. Chiang and ASLC & Co. of an investigation under section 20ZZH of the AFRCO in relation to the audits of the financial statements of the Companies and enquired, amongst other things, whether Mr. Chiang and ASLC & Co. would adopt the Representations to the HKICPA[28].

18. In reply thereto, on 12 December 2022, Mr. Chiang confirmed that he and ASLC & Co. adopted the Representations to the HKICPA for purposes of the AFRC's investigation[29] and explained, *inter alia*, that:

"*(8) The Firm is only a small firm with 4 qualified staff, our practice's policies and procedures mostly identified by our knowing our clients on a job-to-job basis. Enclosed please find the procedures for your reference.*"

19. On 1 February 2023, the AFRC sent the draft investigation report ("**Draft Investigation Report**") to Mr. Chiang and ASLC & Co. respectively for comments[30]. Apart from identifying provisions in the various versions of the Code of Ethics for Professional Accountants promulgated by the HKICPA ("**COE**" effective on 30 June 2006, 1 January 2011 and 15 June 2019 respectively) pertinent to the requirement of and safeguards for independence of an auditor, references were made to the provisions disqualifying officers, servants or employees of a company from acting as an auditor of the company in section 140(2) of the (now repealed) Companies Ordinance (Cap.32) and section 393(2) of the Companies Ordinance (Cap.622).

20. On 24 February 2023, Mr. Chiang wrote to the AFRC and stated that he and ASLC & Co. accepted the facts set out in the Draft Investigation Report[31] ("**24 February 2023 Letter**"). However, Mr. Chiang:

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[28] Letter from the AFRC to Mr. Chiang and ASLC & Co. dated 28 November 2022: **[SOAFs/70/2723-2748]** referring to letter from Mr. Chiang and ASLC & Co. to HKICPA dated 26 May 2022: **[SOAFs/68/2461-2721]**.
[29] Letter from Mr. Chiang to the AFRC dated 12 December 2022 enclosing, *inter alia,* a (1-page) Checklist: **[SOAFs/71/2749-3232]**.
[30] Letter from the AFRC to Mr. Chiang and ASLC & Co. enclosing Draft Investigation Report dated 1 February 2023: **[SOAFs/72/3233-4396]**.
[31] Letter from Mr. Chiang and ASLC & Co. to the AFRC dated 24 February 2023: **[SOAFs/73/4397-4398]**.

20.1. argued that his acts did not constitute breaches of the relevant independence requirements on the basis of (1) the nature of the Companies (Lancaster Capital being a dormant company; Mr Chiang holding 25% of Honey Nominees; and other companies were only for "passive investment"), (2) the accuracy / correctness of the figures and content of the audit opinions on the Companies' financial statements, and (3) the fact that the audit reports were "*solely issued to the shareholders only and nobody else*";

20.2. disagreed that the breaches are "*reckless disregard*" of the relevant independence requirements; and

20.3. indicated his willingness to "*put everything into the right order and rectify any breaches*".

21. Based on the further information and documents provided by Mr. Chiang and ASLC & Co.[32] in response to the AFRC's letters of requirement dated 23 May 2023[33] and 29 June 2023[34] respectively, the AFRC revised the Draft Investigation Report. On 4 August 2023, the AFRC sent the revised draft investigation report ("**Revised Draft Investigation Report**") to Mr. Chiang and ASLC & Co. respectively for comments.[35]

22. Mr. Chiang and ASLC & Co. did not provide any comments on the Revised Draft Investigation Report on or before 14 August 2023 as stipulated by AFRC. Instead, Mr. Chiang made a request on 14 August 2023 for extension of time until 16 October 2023 on the basis that (1) he had suffered an accident and had been attending hospital and was taking medication (as evidenced in a medical certificate) and (2) he also needed time to seek legal advice and his lawyer was travelling overseas and would only return to Hong Kong in the next week.[36]

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[32] Letters between Mr. Chiang and ASLC & Co. and the AFRC from 2 June 2023 to 18 July 2023: **[SOAFs/75-81/4412-4432; 83-86/4440-4446]**.
[33] Letter from the AFRC to Mr. Chiang and ASLC & Co. enclosing section 20ZZJ Requirement dated 23 May 2023: **[SOAFs/74/4399-4411]**.
[34] Letter from the AFRC to Mr. Chiang and ASLC & Co. enclosing section 20ZZJ Requirement dated 29 June 2023: **[SOAFs/82/4433-4439]**.
[35] Letter from the AFRC to Mr. Chiang and ASLC & Co. enclosing Revised Draft Investigation Report dated 4 August 2023: **[SOAFs/87/4447-6043]**.
[36] Letter from Mr. Chiang to the AFRC dated 14 August 2023 attaching a medical certificate: **[SOAFs/88/6044-6045]**.

23. An extension of time was only granted to 25 August 2023[37] but not any further for the reasons set out in the letter from the AFRC dated 7 September 2023 despite representations made on behalf of Mr. Chiang and ASLC & Co. by Mr. Nicholas Pirie of Counsel (between 24 August 2023 and 31 August 2023) and Messrs. Munros ("**Munros**") on 25 September 2023.[38]

24. That notwithstanding, on 27 September 2023, Mr. Chiang and ASLC & Co. through Munros, in response to the Draft Investigation Report (instead of the Revised Draft Investigation Report), rendered a written representation to AFRC[39] accepting (at paragraph 1.03) that Mr. Chiang and ASLC & Co. should have complied with Statement 1.303 but explained that these were "*technical breaches*" (paragraph 2.02).

25. Further submissions were made by Mr. Chiang and ASLC & Co. on 8 November 2023 in response to a further requirement issued by the AFRC on 11 October 2023[40].

26. On 19 December 2023, the AFRC issued Notices of Proposed Disciplinary Action ("**NPDAs**") to Mr. Chiang and ASLC & Co. respectively[41].

27. On 25 January 2024, Munros submitted written representations to the AFRC on behalf of Mr. Chiang and ASLC & Co.[42]. The representations did not challenge any of the allegations, facts, evidence or preliminary views in the NPDAs as to the breaches and/or non-compliance of the professional standards identified therein (and now set out in paragraph 31 below) pertinent to the independence of an auditor.

28. However, the representations sought to address the issues as to the proper assessment of the seriousness of the breaches and/or non-compliance and the correct approach towards sanctions with reference to the "*Guideline to Disciplinary Committee for Determining Disciplinary Order*" published by the HKICPA in October 2017 (**"2017**

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[37] AFRC's letter dated 16 August 2023: **[SOAFs/89/6046]**.
[38] Letter from Mr. Nicholas Pirie to the AFRC dated 24 August 2023, AFRC's reply dated 31 August 2023, Mr. Pirie's email dated 31 August 2023 and AFRC's reply dated 7 September 2023: **[SOAFs/90/6047, 93-95/6051-6057];** letter from Mr. Chiang to AFRC dated 25 August 2023: **[SOAFs/91/6048]**; Letter from AFRC; and letter from Munros to the AFRC dated 25 September 2023 requesting extension to 29 September 2023: **[SOAFs/96/6058]**
[39] Letter from Munros to the AFRC dated 27 September 2023: **[SOAFs/97/6059-6066]**
[40] Letters between Mr. Chiang and ASLC & Co. and the AFRC from 27 September 2023 to 8 November 2023: **[SOAFs/97-106/6059-6122].**
[41] NPDAs to Mr. Chiang and ASLC & Co. respectively dated 19 December 2023: **[SOAFs/1/1-38; 2/39-75].**
[42] Letter from Munros dated 25 January 2024: **[SOAFs/3/76-105].**

HKICPA Guideline") and in light of the relevant precedents and applicable laws and mitigating factors and circumstances therein canvassed.

29. On 18 June 2024, the AFRC issued the Decision Notices to Mr. Chiang and ASLC & Co. respectively[43] and concluded that Mr. Chiang and ASLC & Co. had committed professional irregularities pursuant to sections 3B(1)(c) and (h) of the AFRCO, and accordingly were guilty of CPA misconduct pursuant to section 37AA(1)(a) of the AFRCO.

D. Mr. Chiang and ASLC & Co.'s failure to observe, maintain or otherwise apply PAO professional standards

30. The AFRC found, and Mr. Chiang and ASLC & Co. accept the facts and evidence set out in the "Grounds for Concerns" under Sections (A) to (E) of the NPDA (as against Mr. Chiang) and Sections (A) to (D) of the NPDA (as against ASLC & Co.).

31. The AFRC found, and Mr. Chiang and ASLC & Co. accept, that they have failed to observe, maintain or otherwise apply the following PAO professional standards (as defined under section 2 of the AFRCO and as set out in the respective NPDAs) constituting professional irregularities under section 3B(1)(c) of the AFRCO:

    31.1. Paragraph 2 of the Statement section and paragraphs 3, 12, 13 and 15 of the Guidelines section of Statement 1.203 – Professional Ethics – Integrity, Objectivity and Independence of the Members' Handbook of the Hong Kong Society of Accountants (now the HKICPA)[44] ("**Statement 1.203**");

    31.2. Paragraph 4 of Statement 1.203A – Independence for Assurance Engagements of the Members' Handbook of the HKICPA[45] ("**Statement 1.203A**");

    31.3. Paragraph 3 of Statement 1.303 – General Guidance – Restrictions on Appointments as Secretaries and Directors of Audit Clients of the Members'

[43] Two Decision Notices against Mr. Chiang and ASLC & Co. respectively dated 18 June 2023: **[SOAFs/4/106-125; 5/126-145]**.
[44] Statement 1.203 – Professional Ethics – Integrity, Objectivity and Independence, issued in 1993: **[SOAFs/51/1293-1305**.
[45] Statement 1.203A – Independence for Assurance Engagements, issued in November 2003; effective for audits of financial statements for accounting period beginning on or after 1 January 2004 until 30 June 2006: **[SOAFs/52/1306-1320]**.

Handbook of the HKICPA[46] ("**Statement 1.303**");

31.4. the following paragraphs of the COE applicable at the relevant times:

(a) paragraphs 290.106, 290.108, 290.136, 290.138, 290.147 and 290.151 of the COE issued in December 2005 and effective since 30 June 2006[47] ("**2006 COE**");

(b) paragraphs 290.104, 290.105, 290.128, 290.130, 290.146 and 290.148 of the COE revised in June 2010 and effective since 1 January 2011[48] ("**2011 COE**");

(c) paragraphs R510.4, 510.10 A5 to 510.10 A8, R521.5, 521.6 A1 to 521.6 A4, R523.3 and R523.4, Chapter A of the COE issued in November 2018, effective since 15 June 2019 and revised in July 2020[49] ("**2019 COE**");

31.5. (in respect of Mr. Chiang only) the following paragraphs of the Hong Kong Standard on Auditing 220 – Quality Control for Audits of Historical Financial Information[50] ("**2005 HKSA 220**") and the Hong Kong Standard on Auditing 220 – Quality Control for an Audit of Financial Statements[51] ("**2009 HKSA 220**") applicable at the relevant times:

(a) paragraphs 12 and 13 of the 2005 HKSA 220; and

(b) paragraphs 9 to 11 of the 2009 HKSA 220; and

31.6. the following paragraphs of 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

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[46] Statement 1.303 – General Guidance – Restrictions on Appointments as Secretaries and Directors of Audit Clients, issued in August 1999; revised in September 2004 and May 2015: **[SOAFs/53/1321]**.
[47] **[SOAFs/55/1362-1535]**.
[48] **[SOAFs/56/1536-1728]**.
[49] **[SOAFs/57/1729-2103]**.
[50] Issued in October 2004; effective for audits of historical financial information for periods beginning on or after 15 June 2005: **[SOAFs/58/2104-2125].**
[51] Issued in June 2009; effective for audits of historical financial information for periods beginning on or after 15 December 2009: **[SOAFs/59/2126-2157]**.

("**HKSQC 1**"):

(a) paragraphs 9, 18 to 20 and 23 of the 2005 HKSQC 1[52]; and

(b) paragraphs 13, 18, 21 to 24 of the 2009 HKSQC 1[53].

E. Professional misconduct

32. By reasons of the matters described in section D above and the analysis set out in the NPDAs, the AFRC found that Mr. Chiang and ASLC & Co. are guilty of professional misconduct, and hence have committed a professional irregularity, under section 3B(1)(h) of the AFRCO.

33. Mr. Chiang and ASLC & Co. do not dispute the facts and evidence set out in the respective NPDAs or their liability. However, they dispute the proper assessment of the seriousness of the breaches and/or non-compliance and correct approach towards the sanctions to be applied as set out in the grounds set out in the Notice of Review.

F. Sanctions

34. **[Proposed by Mr. Chiang and ASLC & Co. but not agreed by the AFRC]**

The admissions of primary facts and evidence made by Mr. Chiang and ASLC & Co. during the investigation, and the fact that both of them have not challenged any allegation of the facts and evidence set out in the respective NPDAs, are relevant factors for the Tribunal's consideration of mitigation and proper sanctions to be applied[54].

35. The sanctions imposed by the AFRC against Mr. Chiang and ASLC & Co. respectively are set out in paragraph 3 above.

36. Without prejudice to the contentions of Mr. Chiang and ASLC & Co. as particularised in the Notice of Review, it is agreed that the sanctions imposed by the AFRC against Mr. Chiang and ASLC & Co. respectively are less severe than those proposed in the

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[52] Issued in 2004; effective since June 2005: **[SOAFs/60/2158-2179]**.
[53] Issued in June 2009; effective since December 2009, revised in June 2009, July 2010, May 2013, February 2015 and January 2019: **[SOAFs/61/2180-2211]**.
[54] Paragraph 41 of the respective Decision Notices (as against Mr. Chiang & ASLC & Co.) **[SOAFs/4/106-125; 5/126-145]**; *c.f.* Guidance Note on Cooperation with the AFRC (at paragraphs 22 and 23).

NPDAs in that (i) the order that Mr. Chiang's and ASLC & Co.'s registration be suspended is for a period of three (3) years (*as opposed to four (4) years as proposed in the NPDAs*); and (ii) the order that Mr. Chiang not be issued with a practising certificate is for a period of three (3) years (*as opposed to four (4) years as proposed in the NPDA to Mr. Chiang*).

37. The parties disagree as to the relevance and/or weight to be attached to the various mitigating / aggravating factors (as summarised in the Decision Notices) which have since been particularised in the Notice of Review.

G. Evidence

38. The parties agree that the NPDAs (including all enclosures enumerated therein) and the Decision Notices are admissible as evidence before the Tribunal.

Dated this 30th day of September 2024.

Messrs. Munros Solicitors for the 1st and 2nd Applicants	**MinterEllison LLP** Solicitors for the Respondent

List of Professional Standards breached by the Applicants

A. Members' Handbooks of the Hong Kong Society of Accountants ("HKSA")[1] / HKICPA

1. Statement 1.203 – Professional Ethics – Integrity, Objectivity and Independence of the Members' Handbook of the HKSA (issued 1993) **[B2/51/427-430]**:

> Statement
>
> 2. A member in public practice should be, and be seen to be, free in each professional assignment he undertakes of any interest which might detract from objectivity. The fact that this is self-evident in the exercise of the reporting function must not obscure its relevance in respect of other reporting work.
>
> Review Procedures
>
> 3. Because of the need to guard against loss of independence a practice should establish adequate review machinery, including an annual review, in order to satisfy itself that each engagement may properly be accepted or be continued having regard to the guidance given in this Statement, and to identify situations where independence may be at risk and where the appropriate safeguards should be applied.
>
> Guidelines - Personal Relationships
>
> 12. Close personal or business relationships can affect objectivity. There is a particular need, therefore, for a practice to ensure that its objective approach to any assignment is not endangered as a consequence of any such relationship. By way of example, problems may arise where ... anyone in the practice has a … relationship by blood or marriage with an officer or employee of a client …

[1] i.e. the predecessor of the HKICPA

13. A member should not personally take part in the conduct of the audit of a company if he has, during the period upon which the report is to be made, or at any time in the two years prior to the first day thereof been an officer (other than auditor) … of that company.

15. A practice should ensure that it does not have as an audit client a company in which a partner in the practice, or anyone closely connected with a partner, has a direct or indirect beneficial interest …

2. Statement 1.203A – Independence for Assurance Engagements of the Members' Handbook of the HKICPA (issued in November 2003, with effect for audits with accounting periods beginning on or after 1 January 2004) **[B2/52/445]**:

Independence for Assurance Engagements

4. It is in the public interest and, therefore, required by this Statement, that members of assurance teams, firms and, when applicable, network firms be independent of assurance clients.

3. Statement 1.303 – General Guidance – Restrictions on Appointments as Secretaries and Directors of Audit Clients of the Members' Handbook of the HKICPA (issued in 1999, revised September 2004 and May 2015) **[B2/54/455]**:

3. A director has a duty of care and a direct control over the administration of a company. Hence, the professional independence of a member may be impaired if he is acting both as a director and an auditor of a company.

Accordingly, no partner or employee of a firm of certified public accountants (practicing) or director or employee of any of its controlled or affiliated companies can be a director of a company which is audited by that firm. Neither can a limited liability company controlled by or affiliated in any way with a firm of certified public accountants (practicing) serve as a director in any way of a company which is audited by the firm.

B. Code of Ethics for Professional Accountants issued by the HKICPA

4. Code of Ethics for Professional Accountants (issued in December 2005, effective since 30 June 2006) **[B2/55/496-499]**:

Provisions Applicable to All Assurance Clients

290.106 If a member of the assurance team, or their immediate family member, has a direct financial interest, or a material indirect financial interest, in the assurance client, the self-interest threat created would be so significant the only safeguards available to eliminate the threat or reduce it to an acceptable level would be to:

(a) Dispose of the direct financial interest prior to the individual becoming a member of the assurance team;

(b) Dispose of the indirect financial interest in total or dispose of a sufficient amount of it so that the remaining interest is no longer material prior to the individual becoming a member of the assurance team; or

(c) Remove the member of the assurance team from the assurance engagement.

290.108 When a member of the assurance team knows that his or her close family member has a direct financial interest or a material indirect financial interest in the assurance client, a self-interest threat may be created. In evaluating the significance of any threat, consideration should be given to the nature of the relationship between the member of the assurance team and the close family member and the materiality of the financial interest. Once the significance of the threat has been evaluated, safeguards should be considered and applied as necessary. Such safeguards might include:

- The close family member disposing of all or a sufficient portion of the financial interest at the earliest practical date;

- Discussing the matter with those charged with governance, such as the audit committee;

- Involving an additional professional accountant who did not take part in the assurance engagement to review the work done by the member of the assurance team with the close family relationship or otherwise advise as necessary; or

- Removing the individual from the assurance engagement.

Family and Personal Relationships

290.136 When an immediate family member of a member of the assurance team is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement, or was in such a position during any period covered by the engagement, the threats to independence can only be reduced to an acceptable level by removing the individual from the assurance team. The closeness of the relationship is such that no other safeguard could reduce the threat to independence to an acceptable level. If application of this safeguard is not used, the only course of action is to withdraw from the assurance engagement. For example, in the case of an audit of financial statements, if the spouse of a member of the assurance team is an employee in a position to exert direct and significant influence over the preparation of the audit client's accounting records or financial statements, the threat to independence could only be reduced to an acceptable level by removing the individual from the assurance team.

290.138 When a close family member of a member of the assurance team is a director, an officer, or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement, threats to independence may be created. The significance of the threats will depend on factors such as:

- The position the close family member holds with the client; and

- The role of the professional on the assurance team.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Removing the individual from the assurance team;

- Where possible, structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the close family member; or

- Policies and procedures to empower staff to communicate to senior levels within the firm any issue of independence and objectivity that concerns them.

Recent Service with Assurance Clients

290.147 If, during the period covered by the assurance report, a member of the assurance team had served as an officer or director of the assurance client, or had

been an employee in a position to exert direct and significant influence over the subject matter information of the assurance engagement, the threat created would be so significant no safeguard could reduce the threat to an acceptable level. Consequently, such individuals should not be assigned to the assurance team.

Serving as an Officer or Director on the Board of Assurance Clients

290.151 If a partner or employee of the firm or a network firm serves as Company Secretary for a financial statement audit client the self-review and advocacy threats created would generally be so significant, no safeguard could reduce the threat to an acceptable level unless the duties and functions undertaken are limited to those of a routine and formal administrative nature such as the preparation of minutes and maintenance of statutory returns, and are permitted by law.

5. Code of Ethics for Professional Accountants (revised in June 2010 and effective since 1 January 2011) **[B2/56/496-502]**:

Financial Interests

290.104 If a member of the audit team, a member of that individual's immediate family, or a firm has a direct financial interest or a material indirect financial interest in the audit client, the selfinterest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, none of the following shall have a direct financial interest or a material indirect financial interest in the client: a member of the audit team; a member of that individual's immediate family; or the firm.

290.105 When a member of the audit team has a close family member who the audit team member knows has a direct financial interest or a material indirect financial interest in the audit client, a self-interest threat is created. The significance of the threat will depend on factors such as:

≠ The nature of the relationship between the member of the audit team and the close family member; and

≠ The materiality of the financial interest to the close family member. The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

Examples of such safeguards include:

≠ The close family member disposing, as soon as practicable, of all of the financial interest or disposing of a sufficient portion of an indirect financial interest so that the remaining interest is no longer material;

≠ Having a professional accountant review the work of the member of the audit team; or

≠ Removing the individual from the audit team.

Family and Personal Relationships

290.128 When an immediate family member of a member of the audit team is:

(a) A director or officer of the audit client; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion, or was in such a position during any period covered by the engagement or the financial statements,

the threats to independence can only be reduced to an acceptable level by removing the individual from the audit team. The closeness of the relationship is such that no other safeguards could reduce the threat to an acceptable level. Accordingly, no individual who has such a relationship shall be a member of the audit team.

290.130 Threats to independence are created when a close family member of a member of the audit team is:

(a) A director or officer of the audit client; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

The significance of the threats will depend on factors such as:

≠ The nature of the relationship between the member of the audit team and the close family member;

≠ The position held by the close family member; and

≠ The role of the professional on the audit team.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

≠ Removing the individual from the audit team; or

≠ Structuring the responsibilities of the audit team so that the professional does not deal with matters that are within the responsibility of the close family member.

Serving as a Director or Officer of an Audit Client

290.146 If a partner or employee of the firm serves as a director or officer of an audit client, the self-review and self-interest threats created would be so significant that no safeguards could reduce the threats to an acceptable level. Accordingly, no partner or employee shall serve as a director or officer of an audit client

290.148 If a partner or employee of the firm or a network firm serves as Company Secretary for a financial statement audit client the self-review and advocacy threats created would generally be so significant that no safeguards could reduce the threat to an acceptable level unless the duties and functions undertaken are limited to those of a routine and formal administrative nature such as the preparation of minutes and maintenance of statutory returns, and are permitted by law.

6. Code of Ethics for Professional Accountants (issued in November 2018, effective since 15 June 2019, revised in July 2020) **[B2/57/505-508]**:

Financial Interests – Requirements and Application Material

Financial Interests Held by the Firm, a Network Firm, Audit Team Members and Others

R510.4 Subject to paragraph R510.5, a direct financial interest or a material indirect financial interest in the audit client shall not be held by:

(a) The firm or a network firm;

(b) An audit team member, or any of that individual's immediate family;

(c) Any other partner in the office in which an engagement partner practices in connection with the audit engagement, or any of that other partner's immediate family; or

(d) Any other partner or managerial employee who provides non-audit services to the audit client, except for any whose involvement is minimal, or any of that individual's immediate family.

Close Family

510.10 A5 A self-interest threat might be created if an audit team member knows that a close family member has a direct financial interest or a material indirect financial interest in the audit client

510.10 A6 Factors that are relevant in evaluating the level of such a threat include:

≠ The nature of the relationship between the audit team member and the close family member.

≠ Whether the financial interest is direct or indirect.

≠ The materiality of the financial interest to the close family member.

510.10 A7 Examples of actions that might eliminate such a self-interest threat include:

≠ Having the close family member dispose, as soon as practicable, of all of the financial interest or dispose of enough of an indirect financial interest so that the remaining interest is no longer material.

≠ Removing the individual from the audit team.

510.10 A8 An example of an action that might be a safeguard to address such a self-interest threat is having an appropriate reviewer review the work of the audit team member.

R521.5 An individual shall not participate as an audit team member when any of that individual's immediate family:

(a) Is a director or officer of the audit client; … or

(c) Was in such position during any period covered by the engagement or the financial statements.

<u>Close Family of an Audit Team Member</u>

521.6 A1 A self-interest, familiarity or intimidation threat is created when a close family member of an audit team member is:

(a) A director or officer of the audit client; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

521.6 A2 Factors that are relevant in evaluating the level of such threats include:

≠ The nature of the relationship between the audit team member and the close family member.

≠ The position held by the close family member.

≠ The role of the audit team member.

521.6 A3 An example of an action that might eliminate such a self-interest, familiarity or intimidation threat is removing the individual from the audit team.

521.6 A4 An example of an action that might be a safeguard to address such a self-interest, familiarity or intimidation threat is structuring the responsibilities of the audit team so that the audit team member does not deal with matters that are within the responsibility of the close family member.

Serving as a Director or Officer of an Audit Client – Requirements and Application Material

Service as Director or Officer

R523.3 A partner or employee of the firm or a network firm shall not serve as a director or officer of an audit client of the firm.

Service as Company Secretary

R523.4 A partner or employee of the firm or a network firm shall not serve as Company Secretary for an audit client of the firm, unless:

(a) This practice is specifically permitted under local law, professional rules or practice;

(b) Management makes all relevant decisions; and

(c) The duties and activities performed are limited to those of a routine and administrative nature, such as preparing minutes and maintaining statutory returns.

C. Hong Kong Standard on Auditing ("HKSA") issued by the HKICPA (applicable only to Mr Chiang)

7. HKSA 220 – Quality Control for Audits of Historical Financial Information (issued in October 2004, effective for audits for periods beginning on or after 15 June 2005) **[R#34]**:

Independence

12. The engagement partner should form a conclusion on compliance with independence requirements that apply to the audit engagement. In doing so, the engagement partner should:

(a) Obtain relevant information from the firm and, where applicable, network firms, to identify and evaluate circumstances and relationships that create threats to independence;

(b) Evaluate information on identified breaches, if any, of the firm's independence policies and procedures to determine whether they create a threat to independence for the audit engagement;

(c) Take appropriate action to eliminate such threats or reduce them to an acceptable level by applying safeguards. The engagement partner should promptly report to the firm any failure to resolve the matter for appropriate action; and

(d) Document conclusions on independence and any relevant discussions with the firm that support these conclusions.

13. The engagement partner may identify a threat to independence regarding the audit engagement that safeguards may not be able to eliminate or reduce to an acceptable level. In that case, the engagement partner consults within the firm to determine appropriate action, which may include eliminating the activity or interest that creates the threat, or withdrawing from the audit engagement. Such discussion and conclusions are documented.

8. HKSA 220 – Quality Control for an Audit of Financial Statements (issued in June 2009, effective for audits for periods beginning on or after 15 December 2009) **[R#35]**:

Relevant Ethical Requirements

9. Throughout the audit engagement, the engagement partner shall remain alert, through observation and making inquiries as necessary, for evidence of non-compliance with relevant ethical requirements by members of the engagement team. (Ref: Para. A4-A5)

10. If matters come to the engagement partner's attention through the firm's system of quality control or otherwise that indicate that members of the engagement team have not complied with relevant ethical requirements, the engagement partner, in consultation with others in the firm, shall determine the appropriate action. (Ref: Para. A5)

Independence

11. The engagement partner shall form a conclusion on compliance with independence requirements that apply to the audit engagement. In doing so, the engagement partner shall: (Ref: Para. A5)

(a) Obtain relevant information from the firm and, where applicable, network firms, to identify and evaluate circumstances and relationships that create threats to independence;

(b) Evaluate information on identified breaches, if any, of the firm's independence policies and procedures to determine whether they create a threat to independence for the audit engagement; and

(c) Take appropriate action to eliminate such threats or reduce them to an acceptable level by applying safeguards, or, if considered appropriate, to withdraw from the audit engagement, where withdrawal is possible under applicable law or regulation. The engagement partner shall promptly report to the firm any inability to resolve the matter for appropriate action. (Ref: Para. A6-A7)

D. Hong Kong Standard on Quality Control ("HKSQC") issued by the HKICPA

9. HKSQC 1 – Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements (issued in 2004, effective since June 2005) **[B3/60/567-569]**:

> **Leadership Responsibilities for Quality within the Firm**
>
> 9. The firm should establish policies and procedures designed to promote an internal culture based on the recognition that quality is essential in performing engagements. Such policies and procedures should require the firm's chief executive officer (or equivalent) or, if appropriate, the firm's managing board of partners (or equivalent), to assume ultimate responsibility for the firm's system of quality control.
>
> **Ethical Requirements**
>
> Independence
>
> 18. The firm should establish policies and procedures designed to provide it with reasonable assurance that the firm, its personnel and, where applicable, others subject to independence requirements (including experts contracted by the firm and network firm personnel), maintain independence where required by the Code. Such policies and procedures should enable the firm to:
>
> (a) Communicate its independence requirements to its personnel and, where applicable, others subject to them; and
>
> (b) Identify and evaluate circumstances and relationships that create threats to independence, and to take appropriate action to eliminate those threats or reduce them to an acceptable level by applying safeguards, or, if considered appropriate, to withdraw from the engagement.
>
> 19. Such policies and procedures should require:
>
> (a) Engagement partners to provide the firm with relevant information about client engagements, including the scope of services, to enable the firm to evaluate the overall impact, if any, on independence requirements;

(b) Personnel to promptly notify the firm of circumstances and relationships that create a threat to independence so that appropriate action can be taken; and

(c) The accumulation and communication of relevant information to appropriate personnel so that:

(i) The firm and its personnel can readily determine whether they satisfy independence requirements;

(ii) The firm can maintain and update its records relating to independence; and

(iii) The firm can take appropriate action regarding identified threats to independence.

20. The firm should establish policies and procedures designed to provide it with reasonable assurance that it is notified of breaches of independence requirements, and to enable it to take appropriate actions to resolve such situations. The policies and procedures should include requirements for:

(a) All who are subject to independence requirements to promptly notify the firm of independence breaches of which they become aware;

(b) The firm to promptly communicate identified breaches of these policies and procedures to:

(i) The engagement partner who, with the firm, needs to address the breach; and

(ii) Other relevant personnel in the firm and those subject to the independence requirements who need to take appropriate action; and

(c) Prompt communication to the firm, if necessary, by the engagement partner and the other individuals referred to in subparagraph (b)(ii) of the actions taken to resolve the matter, so that the firm can determine whether it should take further action

23. At least annually, the firm should obtain written confirmation of compliance with its policies and procedures on independence from all firm personnel required to be independent by the Code.

10. HKSQC 1 – Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements (issued in June 2009, effective since December 2009, revised in June 2009, July 2010, May 2013, February 2015 and January 2019) **[B3/61/591-593]**:

Applying, and Complying with, Relevant Requirements

13. Personnel within the firm responsible for establishing and maintaining the firm's system of quality control shall have an understanding of the entire text of this HKSQC, including its application and other explanatory material, to understand its objective and to apply its requirements properly.

Leadership Responsibilities for Quality within the Firm

18. The firm shall establish policies and procedures designed to promote an internal culture recognizing that quality is essential in performing engagements. Such policies and procedures shall require the firm's chief executive officer (or equivalent) or, if appropriate, the firm's managing board of partners (or equivalent) to assume ultimate responsibility for the firm's system of quality control.

Relevant Ethical Requirements

Independence

21. The firm shall establish policies and procedures designed to provide it with reasonable assurance that the firm, its personnel and, where applicable, others subject to independence requirements (including network firm personnel) maintain independence where required by relevant ethical requirements. Such policies and procedures shall enable the firm to: (Ref: Para. A10)

(a) Communicate its independence requirements to its personnel and, where applicable, others subject to them; and

(b) Identify and evaluate circumstances and relationships that create threats to independence, and to take appropriate action to eliminate those threats or

reduce them to an acceptable level by applying safeguards, or, if considered appropriate, to withdraw from the engagement, where withdrawal is possible under applicable law or regulation.

22. Such policies and procedures shall require: (Ref: Para. A10)

(a) Engagement partners to provide the firm with relevant information about client engagements, including the scope of services, to enable the firm to evaluate the overall impact, if any, on independence requirements;

(b) Personnel to promptly notify the firm of circumstances and relationships that create a threat to independence so that appropriate action can be taken; and

(c) The accumulation and communication of relevant information to appropriate personnel so that:

    (i) The firm and its personnel can readily determine whether they satisfy independence requirements;

    (ii) The firm can maintain and update its records relating to independence; and

    (iii) The firm can take appropriate action regarding identified threats to independence that are not at an acceptable level.

23. The firm shall establish policies and procedures designed to provide it with reasonable assurance that it is notified of breaches of independence requirements, and to enable it to take appropriate actions to resolve such situations. The policies and procedures shall include requirements for: (Ref: Para. A10)

(a) Personnel to promptly notify the firm of independence breaches of which they become aware;

(b) The firm to promptly communicate identified breaches of these policies and procedures to:

    (i) The engagement partner who, with the firm, needs to address the breach; and

(ii) Other relevant personnel in the firm and, where appropriate, the network, and those subject to the independence requirements who need to take appropriate action; and

(c) Prompt communication to the firm, if necessary, by the engagement partner and the other individuals referred to in subparagraph 23(b)(ii) of the actions taken to resolve the matter, so that the firm can determine whether it should take further action.

24. At least annually, the firm shall obtain written confirmation of compliance with its policies and procedures on independence from all firm personnel required to be independent by relevant ethical requirements. (Ref: Para. A10-A11)