

STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. Pursuant to section 37CA of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (**AFRCO**), the Accounting and Financial Reporting Council (**AFRC**) has imposed the following sanctions against Mr Chan Steven Kwok Keung (**Chan**) and Sino Corp CPA Limited (**Sino Corp**):
 - 1.1. public reprimand;
 - 1.2. pecuniary penalties of **HK\$50,000 each**; and
 - 1.3. order that Chan and Sino Corp **each** pay the costs and expenses of, and incidental to, the AFRC's investigation, in the sum of **HK\$27,353**.
2. The disciplinary action was taken in relation to the professional irregularity committed by Chan and Sino Corp in preparing and issuing the accountant's report dated 27 September 2021 (**Accountant's Report**) for a solicitor's firm (**Law Firm**)¹ for the year ended 31 March 2021 (**Accounting Period**).

Summary of Facts

3. Chan is a current member of the Hong Kong Institute of Certified Public Accountants (**HKICPA**)² and current practising certificate holder.³ He was first registered as a member of the HKICPA in 1995 and first issued with a practising certificate in 1998.
4. Sino Corp has been registered as a corporate practice in Hong Kong since 2010.⁴ Chan was at all material times, and is currently, the sole practising director of Sino Corp.
5. As stated in paragraph 4 of Practice Note 840 (Revised) *Reporting on Solicitors' Accounts under the Solicitors' Accounts Rules and the Accountant's Report Rules* (version: August 2016) (**PN 840**), the Solicitors' Accounts Rules (Cap. 159F) (**SAR**) and Accountant's Report Rules (Cap. 159A) (**ARR**) are designed to prevent a solicitor's firm from improperly handling client's money entrusted to the firm. Broadly speaking, this is achieved by requiring client's money to be kept separate from the solicitor's firm's own money. In addition, transactions are required to be arranged in such a way that money belonging to one client may not be used for the benefit of another.
6. Rule 4 of the ARR requires an accountant to, among other things, undertake a general test examination of a solicitor's firm's books of account to determine compliance with the SAR and include in the accountant's report details of any

¹ The practice of the Law Firm was intervened by The Law Society of Hong Kong (**Law Society**).

² Membership number: F02965.

³ Practising certificate number: P03251.

⁴ Corporate practice registration number: S0384.

contravention. Rule 8 of the ARR requires a solicitor's firm to once in each practice year (a period of 12 months ending on 31 October each year) deliver to the Council of the Law Society an accountant's report containing the information prescribed by the ARR.

7. Paragraph 8 of PN 840 states that Appendix 1 to PN 840 includes a list of key questions based on the SAR, and if the response to any of these questions is "No", that would normally suggest that the solicitor's firm has not complied with the SAR.
8. Paragraph 34 of PN 840 states that in order to meet the requirements of Rule 4 of the ARR, the Engagement Programme in Appendix 2 to PN 840 should be followed.
9. According to the engagement letter dated 2 April 2021, Sino Corp was engaged by the Law Firm to issue the Accountant's Report for the Accounting Period in accordance with the ARR with reference to PN 840.
10. On 27 September 2021, Chan, as the engagement director, issued the Accountant's Report under the letterhead of Sino Corp, stating that he was:
 - 10.1. satisfied that the Law Firm had complied with the provisions of the SAR with no exceptions during the Accounting Period; and
 - 10.2. not aware of any matter which appeared to affect adversely any client account or any trust money held by the Law Firm to a material extent.

Summary of Findings

11. The AFRC found that Chan and Sino Corp are guilty of CPA misconduct pursuant to section 37AA(1)(a) of the AFRCO, in that they have failed to act diligently in accordance with Rule 4 of the ARR and PN 840 when preparing and issuing the Accountant's Report.
 - A. Failure to conduct proper procedures in determining the Law Firm's compliance with Rule 7 of the SAR in relation to the withdrawal of client's money from a client account
12. Rule 7 of the SAR provides that the money drawn from a client account shall not exceed the total of the money held for the time being in such account on account of that client.
13. Chan and Sino Corp claimed that they had scrutinised a schedule in the working papers entitled "Client listing and sampling" (**Client Listing and Sampling Schedule**) to ensure that there was no debit balance on the schedule. However, the AFRC found that the Client Listing and Sampling Schedule merely showed a list of client matters with their respective ending balances on the three sampled dates, without providing any information about the relevant specific bank account from which the client's money was drawn and the movements of client's money as a result of each withdrawal / transaction.

14. There is no evidence that Chan and/or Sino Corp had performed proper work to ensure that the money drawn from a client's bank account did not exceed the total of the money held in that bank account for a particular client at the time of withdrawal in accordance with Rule 7 of the SAR.
 15. Based on paragraphs 13 and 14 above, the AFRC found that Chan and Sino Corp have failed to conduct proper procedures to determine the Law Firm's compliance with Rule 7 of the SAR, and were therefore in breach of Rule 4 of the ARR.
- B. Failure to report the Law Firm's breach of Rule 1A(c) (read in conjunction with Rule 2) of the SAR regarding its omission of the word "client" in the title of a client account
16. Rule 2 of the SAR defines "client account" as "*subject to [R]ule 15, a current or deposit account at a bank located and licensed in Hong Kong in the name of the solicitor in the title of which the word 'client' appears*".
 17. Rule 1A(c) of the SAR states the principle that a solicitor must "*except when [the SAR] specifically [provides] otherwise, keep other people's money in a bank account identifiable as a client account which must include the words 'client account' in its title, bank statements and cheques*".
 18. Question 1 of Appendix 1 to PN 840 is "*[i]s a separate client account(s) in the name of the firm maintained at a bank located and licensed in Hong Kong, unless exempted by Rule 15, in the title of which the word 'client' appears? (Rule 2)*". The answer to this question in the working papers was "Yes" and referred to the section of the working papers which related to bank reconciliation of client accounts.
 19. However, the word "client" did not appear in the title of a client account (**Account**). The AFRC found that the omission of the word "client" from the Account constituted a breach of Rule 1A(c) (read in conjunction with Rule 2) of the SAR by the Law Firm. Chan's and Sino Corp's failure to report the breach of Rule 1A(c) (read in conjunction with Rule 2) of the SAR by the Law Firm in the Accountant's Report in turn constituted a breach of Rule 4(2) of the ARR by Chan and Sino Corp.
- C. Failure to prepare sufficient documentation in relation to the asserted procedures taken in determining the Law Firm's compliance with Rule 10 of the SAR regarding timely recording of dealings with clients' money
20. Rules 10(1) and 10(2) of the SAR require a solicitor to properly record all dealings with clients' money in the clients' cash book and ledger within three working days after the date of the dealings.
 21. Steps 1 to 5 of Appendix 2 to PN 840 provide guidance on the testing of receipts and payments of clients' money, including test checking of receipts and payments of clients' money to cash book and bank statements for ensuring that the receipts and payments of clients' money are recorded without delay.
 22. Chan and Sino Corp claimed that Rules 10(1) and 10(2) of the SAR had been

complied with based on the result of their sampling test set out in a schedule in the working papers entitled “Test on Rule 7: Withdrawal test” (**Withdrawal Test Schedule**).

23. Paragraph 43 of PN 840 requires an accountant to prepare on a timely basis engagement documentation that provides a record of the basis for the accountant’s report that is sufficient and appropriate to enable an experienced practitioner, having no previous connection with the engagement, to understand the nature, timing, extent and results of the procedures performed, and the evidence obtained.
24. For the following reasons, the AFRC found that the Withdrawal Test Schedule contained insufficient documentation of the asserted procedures taken by Chan and Sino Corp to support their conclusion that the Law Firm had recorded the payment transactions in a timely manner in accordance with Rule 10(2) of the SAR:
 - 24.1. The objective of the withdrawal test was to ensure that books and records were prepared in compliance with Rule 7 of the SAR. The withdrawal test was not designed to test compliance with Rule 10 of the SAR.
 - 24.2. The Withdrawal Test Schedule showed that payments of clients’ money were test-checked to cash book and client ledger. However, there was no information about the payment dates in the working papers. This raises doubts as to whether Chan and Sino Corp had performed adequate work to determine whether the tested transactions were recorded within three working days after the date of the transactions.
 - 24.3. The checking of the date of the payment records was not among the work done specified in the Withdrawal Test Schedule.
25. Accordingly, the AFRC found that Chan and Sino Corp have failed to prepare sufficient documentation in relation to the Law Firm’s compliance with Rule 10(2) of the SAR, in accordance with paragraph 43 of PN 840.

Lack of professional competence and due care

26. The fundamental principle of professional competence and due care under paragraphs 110.1 A1(c) and R113.1 of Part 1 of Chapter A of the Code of Ethics for Professional Accountants (version: June 2021) (**COE**) requires a professional accountant to, among other things:
 - 26.1. attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation; and
 - 26.2. act diligently and in accordance with applicable technical and professional standards, where diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly

and on a timely basis.⁵

27. Based on the findings set out above, Chan and Sino Corp have failed to observe, maintain or otherwise apply the fundamental principle of professional competence and due care under paragraphs 110.1 A1(c) and R113.1 of Part 1 of Chapter A of the COE.

Conclusion

28. Having considered all relevant circumstances, the AFRC is of the view that, by failing to observe, maintain or otherwise apply the PAO professional standards (as defined under section 2 of the AFRCO) in paragraph 27 above, Chan and Sino Corp have committed a professional irregularity under section 3B(1)(c) of the AFRCO, and are therefore guilty of CPA misconduct pursuant to section 37AA(1)(a) of the AFRCO.
29. In deciding the sanctions set out in paragraph 1 above, the AFRC has had regard to its Sanctions Policy for Professional Persons and Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons, and has taken into account all relevant circumstances, including:
- 29.1. an accountant's work to undertake a general test examination of a solicitor's firm's books of account to determine compliance with the SAR is important, as those are rules designed to prevent a solicitor's firm from improperly handling client's money entrusted to the firm. Chan's and Sino Corp's failure to design proper procedures to test compliance with the SAR increases the risk of any potential misuse of client's money being undetected;
 - 29.2. there is no evidence of intentional, dishonest, deliberate or reckless misconduct;
 - 29.3. there is no evidence that client's money of the Law Firm has been lost or misappropriated, or that Chan and/or Sino Corp have caused any loss to third parties, as a result of the misconduct; and
 - 29.4. the following mitigating factor: Chan's and Sino Corp's clean disciplinary record with the HKICPA and AFRC.

⁵ Paragraph 113.1 A3 of Part 1 of Chapter A of the COE.