

Guidelines for Resolution by Agreement

In order to better serve the interests of the public and the profession, the Institute should ensure complaints are being dealt with in an effective, efficient manner. In accordance with Council powers outlined in the Professional Accountants Ordinance, a Resolution by Agreement may be offered to respondents involved in cases considered to be moderate after taking into account:

- the nature and seriousness of a complaint;
- any relevant precedent cases;
- any past disciplinary records of the Respondent; and
- any aggravating or mitigating circumstances.

Criteria and results

Resolution by Agreement would apply to complaints of the following nature:

1) Complaints under the following sub-paragraphs of section 34(1)(a) of the Ordinance that a certified public accountant

"(vi) failed or neglected to observe, maintain or otherwise apply a professional standard";

"(viii) has been guilty of professional misconduct";

"(ix) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the Council"; and

"(x) was guilty of dishonourable conduct".

2) Cases not contested by the respondents; and

3) Cases not involving complaints of dishonesty.

The Resolution by Agreement includes a mandatory public censure which entails publication of the name of the respondent, facts of the case and areas of non-compliance with professional standards, and the terms of the resolution. An optional administrative penalty not to exceed HK\$50,000, and other actions, such as payment of costs, and additional conditions and restrictions, as deemed necessary by Council may be specified in the terms.

Procedures

The Institute has adopted the following procedures for application of Resolution by Agreement:

- a) Cases deemed to be moderate may be adjudicated via Resolution by Agreement; each case will be considered on its own merits in light of the aforementioned criteria.
- b) Upon Council's approval, a Resolution by Agreement will be offered to the respondent for consideration and acceptance within a specified time.
- c) Upon satisfaction of the terms, the matter will be published following the Institute's normal procedures for publication.

Effect of Resolution by Agreement

The Professional Accountants Ordinance provides that any person is entitled to make a complaint against a certified public accountant.

Under the Ordinance, the Council is charged with reviewing all complaints and deciding whether the complaint should be referred to the Disciplinary Panels. In discharging this function, the Council is performing a statutory duty and maintains independence from the party bringing the complaint, regardless of the source.

The Resolution by Agreement represents a just and proper resolution of the complaint. An aggrieved complainant may request Council to refer his complaint to the Disciplinary Panels and Council shall do so as long as there is a prima facie case and his complaint is neither frivolous nor vexatious. The Council will generally refuse to refer subsequent complaints filed by third parties in request of the same subject matter if it would amount to an abuse of process.

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