

IN THE MATTER OF

A Complaint made under Section 34(1A) of the Professional Accountants Ordinance (Cap.50) ("the PAO") and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong
Institute of Certified Public
Accountants

COMPLAINANT

AND

RESPONDENT

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

Members:

REASONS FOR DECISION ON SANCTIONS AND COSTS

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Institute") as Complainant against the Respondent, a certified public accountants under Section 34(1)(a)(ix) of the Professional Accountants Ordinance, Cap 50.
2. The Complaint as set out in a letter dated 5 July 2012 from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels was as follows:-

The Complaint

The Respondent had breached s.34(1)(a)(ix) of the PAO in that he refused or neglected to comply with a direction lawfully given to him by the Council pursuant to section 18B of the PAO under cover of a letter from the

Institute dated 16 February 2012.

3. In the direction hearing dated 20 February 2013, the Respondent admitted the Complaint against him. He admitted the complaint based on the statement of facts attached to the letter dated 20 February 2013 by the parties. He agreed that the steps set out in paragraphs 26 to 30 of the Disciplinary Committee Proceedings Rules (“the Rules”) be dispensed with.
4. The background and facts of this case as admitted by the Respondent were as follows:

“Background

- 1) On 9 March 2011, the Institute received a complaint from Mr. L, a director of R Limited (“RL”) against the Respondent (“L’s Complaint”).
- 2) It was alleged that [the Respondent] had failed to provide certain information and tax returns of RL to the Inland Revenue Department (“IRD”), which he had promised to do at a tri-parte meeting between RL, the IRD and the Respondent, held on 6 January 2011.
- 3) It was further alleged that the Respondent could not be contacted, that certain accounting documents that had been provided to the Respondent to prepare RL’s financial statements had not been returned, and that the Respondent inserted a wrong cessation date of RL in an application form to the IRD that he prepared for RL applying for a notice of no objection to the company’s de-registration.
- 4) At all material times, the Respondent was a member of the Institute and based upon the membership records held with the Institute, the Respondent’s preferred contact information was as follows:

- 4.1) Registered Address: xx;
- 4.2) Registered email: xx;
- 4.3) Registered Mobile: xx

The Complaint

- 5) The Respondent had breached s.34(1)(a)(ix) of the PAO in that he had refused or neglected to comply with a direction lawfully given to him by the Council under section 18B of the PAO under cover of a letter from the Institute dated 16 February 2012.

Relevant section of the Professional Accountants Ordinance

- 6) Section 34(1)(a)(ix) of the PAO states:

“34(1) A complaint that (a) a certified public accountant (ix) refused or

neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the Council; shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels.”

- 7) Section 34(1A) of the PAO states:

“Where the Registrar has reason to believe that subsection (1)(a) or (b), or subsection (1)(a) as applied by subsection (1AA), applies to a certified public accountant or a corporate practice, he shall submit the facts to the Council which may, in its discretion, refer the complaint to the Disciplinary Panels.”

- 8) Section 18B of the PAO states:

“(1) The Council may, in connection with the discharge of any of its functions or duties or the exercise of any of its powers, give directions either generally to certified public accountants or to any one or more certified public accountants-...

(c) requiring a certified public accountant to give to the Institute an explanation of any act or omission of the certified public accountant which appears to the Council to be conduct unbecoming of a certified public accountant, or conduct which may affect the reputation, integrity and status of the Institute or of the accountancy.

Facts and circumstances in support of the Complaint

- 9) Upon receipt of L's Complaint, the Institute made various enquiries of the Respondent. In the course of those enquiries, the institute received two representations from the Respondent dated 31 May 2011 and 27 October 2011, respectively. All communications from the Institute to the Respondent had been sent to him to his registered residential or email address.
- 10) On 28 October 2011, the Institute wrote to the Respondent advising him that, based upon its observations, it did not appear that he had complied with his obligations set out in the Code of Ethics for Professional Accountants. The Respondent's representations were sought so that the matter could be considered by the Institute's Professional Conduct Committee, in accordance with the Institute's complaint handling process. The letter was sent to the Respondent by post to his registered residential address and by email to his registered email address.
- 11) Despite various attempts by the Institute to contact the Respondent on the new mobile phone number provided by him and the mobile phone number in his membership records, no response to its letter

dated 28 October 2011 was received.

- 12) On 16 February 2012, the Institute issued a s.18B PAO Direction (the "Direction") to the Respondent requiring him to provide an explanation within 21 days of the date of the Direction, with supporting documentation, of the matters set out in the Institute's letter dated 28 October 2011.
 - 13) The Direction was sent to the Respondent by post and registered post to his registered residential address and by email to his registered email address. Records obtained from Hong Kong Post indicate that the Direction sent by registered post was delivered on 24 February 2012.
 - 14) As at the date of the complaint made by the Registrar on 5 July 2012, the Institute has received no response to the Direction."
5. Further to the direction hearing, by a letter dated 6 Mar 2013 by post and E-mail addressed to the Complainant and the Respondent, the Clerk to the Disciplinary Committee, under the direction of the Disciplinary Committee, informed the parties to make written submissions by 20 Mar 2013 to the Disciplinary Committee as to the sanctions and costs which should be imposed by the Disciplinary Committee pursuant to Rule 31 of the Rules, in light of the admission of the Complaint by the Respondent, and that the Disciplinary Committee would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
 6. The Disciplinary Committee received the Complainant's written submission dated 19 March 2013 but has received no written submission from the Respondent by 20 March 2013.
 7. The Clerk to the Disciplinary Committee had on 25 March 2013 tried to contact the Respondent by his mobile phone but in vain and voice messages were left with the Respondent to remind him that the submission on sanction and costs was due on 20 March and the Respondent was asked to call back. No return call from the Respondent was received.
 8. In the morning of 27 March 2013 the Clerk to the Disciplinary Committee made a further attempt to contact the Respondent by his mobile phone but in vain and voice message was left with the Respondent to remind him that the submission on sanction and costs was due on 20 March and the Respondent was asked to call back. No return call from the Respondent was received.
 9. In the afternoon of 27 March 2013, the Disciplinary Committee received a letter delivered by hand from the Respondent stating that he agreed to discuss further with the Committee and the Institute regarding sanction and costs.

10. Upon receipt of the said letter, the Clerk to the Disciplinary Committee made a further attempt to contact the Respondent by his mobile phone but in vain and voice message was left with the Respondent to inform him that his letter did not contain any written submission on sanction and costs.
11. The Clerk to the Disciplinary Committee, under the direction of the Disciplinary Committee, by a letter dated 2 May 2013, informed the Respondent that if he wished to (i) make a written request for a further hearing for his oral submission on sanction and costs, or (ii) make written submission on sanction and costs, he should do so by 9 May 2013.
12. Up to date the Disciplinary Committee has not received any written request for a further hearing or written submission on sanction and costs from the Respondent.
13. The Complainant apparently had considerable difficulty in trying to locate and contact the Respondent. The Respondent was not forthwith in cooperating with the Complainant. In this regard, even the Clerk to the Disciplinary Committee had experienced difficulty in getting the Respondent to respond.
14. The Disciplinary Committee has carefully considered the facts of this case and the Complainant's submission and agrees that this is a serious case of failure to comply with a direction of the Council requiring a member to explain matters in relation to his professional conduct and standard of work.
15. The Disciplinary Committee has nevertheless taken into account the fact that there is no evidence of previous misconduct against the Respondent and a formal hearing was dispensed with upon the Respondent's admission to the complaint which saved time and costs.
16. The Disciplinary Committee orders that:-

1. The Respondent be reprimanded under Section 35(1)(b) of the Professional Accountants Ordinance conditional upon the Respondent providing the outstanding information as set out in the Appendix within a period of 30 days from the date of this Order, failing which the order of reprimand be substituted with an order of removal for a period of six months.
2. The Respondent shall pay a penalty of HK\$80,000 under Section 35(1)(c) of the Professional Accountants Ordinance within 42 days of this Order.
3. The Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant and of the Institute in the sum of HK\$78,116 under Section 35(1)(iii) of the Professional Accountants

Ordinance within 42 days of this Order.

Dated this 12th day of August 2013

IN THE MATTER OF

A Complaint made under Section 34(1A) of the Professional Accountants Ordinance (Cap.50) ("the PAO") and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong
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COMPLAINANT

AND

RESPONDENT

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

Members:

ORDER

[The Respondent], a certified public accountant is faced with the following complaint:

The Complaint

S.34(1)(a)(ix) of the Professional Accountants Ordinance, Cap 50 ("PAO") applies to the Respondent as he refused or neglected to comply with a direction lawfully given to him by the Council pursuant to S.18B of the PAO.

Upon reading the complaint against the Respondent, as set out in a letter from the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Complainant") dated 5 July 2012, the undated written submission of the Respondent received on 17 December 2012, the written submission of the

Complainant dated 19 March 2013, and the relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and evidence adduced before it that the complaint is proved.

IT IS ORDERED that:-

1. The Respondent be reprimanded under Section 35(1)(b) of the Professional Accountants Ordinance conditional upon the Respondent providing the outstanding information set out in the Appendix within a period of 30 days from the date of this Order, failing which the order of reprimand be substituted with an order of removal for a period of six months.
2. The Respondent shall pay a penalty of HK\$80,000 under Section 35(1)(c) of the Professional Accountants Ordinance within 42 days of this Order.
3. The Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant and of the Institute in the sum of HK\$78,116 under Section 35(1)(iii) of the Professional Accountants Ordinance within 42 days of this Order.

Dated this 12th day of August 2013

Appendix

Outstanding information

Independent confirmation/documents in support the Respondent's assertion that:

- (a) Company A ("**Company A**") was formally appointed as the tax representative of RL at the material time.
- (b) The accounting records of RL were kept and maintained by Company A; and
- (c) As a result of office removals of Company A, some of the accounting records referred to in (b) cannot now be located by Company A for submission to the Inland Revenue Department.