

IN THE MATTER OF

A Complaint made under section 34(1)(a) and section 34(1A) of the Professional Accountants Ordinance (Cap. 50) (“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

The Respondent

RESPONDENT

Members:

REASONS FOR DECISION

1. This is a compliant made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Institute”) as Complainant against the Respondent, who is a certified public accountant (practising). Section 34(1)(a)(vi) of the PAO applied to the Respondent.
2. The particulars of the Complaints as set out in a letter dated 6 December 2012 (collectively “the Complaint”) from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary

Panels were as follows:-

- (1) The Institute received a letter dated 18 June 2012 from the Professional Insurance Brokers Association (“**PIBA**”) lodging a complaint against the Respondent, alleging that he failed to discharge his duty diligently when he provided a certification to PIBA in October 2008 that a limited company (“**Company A**”) had fulfilled the minimum requirements for paid up capital and net asset value of HK\$100,000 for the purpose of PIBA processing Company A’s membership application.
- (2) PIBA subsequently discovered that the paid up capital of Company A was only HK\$10,000 instead of HK\$100,000 as certified by the Respondent. PIBA considered that the Respondent had failed to discharge his duty diligently in that he wrongly certified that paid up capital and net asset value of Company A fulfilled the minimum requirements when in fact they did not.
- (3) The relevant provisions of sections 100 (*Introduction and Fundamental Principles*), 110 (*Integrity*) and 130 (*Professional Competence and Due Care*) of the Code of Ethics of Professional Accountants (“**Code**”) provide:

Paragraph 100.4(a) “Integrity

A professional accountant should be straightforward and honest in all professional and business relationships”

Paragraph 100.4(c) “Professional Competence and Due Care

A professional accountant has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. A professional accountant should act diligently and in accordance with applicable technical and professional standards when providing professional services.”

Paragraph 110.2

“A professional accountant should not be associated with reports, returns, communications or other information where they believe that the information:

(a) Contains a materially false or misleading statement;

- (b) Contains statements or information furnished recklessly; or
- (c) Omits or obscures information required to be included where such omission or obscurity would be misleading.”

Paragraph 130.1 “The principle of professional competence and due care imposes the following obligations on professional accountants:

...

- (b) To act diligently in accordance with applicable technical and professional standards when providing professional services”

Paragraph 130.2 “Competent professional service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service...”

(4) Preface to Hong Kong Standards on Quality Control Auditing, Assurance and Related Services provides:

Paragraph 8: Hong Kong Standards on Assurance Engagements are to be applied in assurance engagements dealing with subject matters other than historical financial information.”

Paragraph 9: Hong Kong Standards on Related Services are to be applied to compilation engagements, engagements to apply agreed-upon procedures to information and other related services engagements as specified by the AASC”

Paragraph 16: Apparent failures by members to comply with Hong Kong Standards on Quality Control, Auditing, Assurance and Related Services are liable to be enquired into by the appropriate committee established under the authority of the HKICPA, and disciplinary

action may result.

(5) Section 34(1)(a)(vi) of the PAO provides for a disciplinary offence for any CPA who has:

“failed or neglected to observe, maintain or otherwise apply a professional standard”.

The First Complaint

3. Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards, namely, paragraphs 100.4(a), 100.4(c), 110.2, 130.1 and 130.2 of the Code when issuing a letter certifying that the paid up capital and net asset value of Company A has fulfilled the minimum requirements of HK\$100,000.

4. In a letter dated 23 October 2008 addressed to the Membership Sub-Committee Chairman of the PIAB, the Respondent certified that:

“... the paid up capital and net asset value of [Company A] as at 17 October, 2008 has fulfilled the minimum requirements of HK\$100,000.00”.

5. However, the public records of the Companies Registry indicate that:

(i) Company A’s annual return filed with the Companies Registry dated 27 April 2009 shows that the share capital of Company A as on that date was only HK\$10,000, and there was no movement of shares during the year.

(ii) Another form *SC4 Notification of Increase in Nominal Share Capital* filed with the Companies Registry on 23 July 2009 shows that paid up share capital was increased from HK\$10,000 to HK\$100,000 on the same date.

6. The Respondent explained in his letter dated 15 August 2012 that in October 2008, he requested for the financial information of Company A and performed independent search of Company A’s filings with the Companies Registry.

7. He noticed that the share capital of Company A according to the company search was only HK\$10,000. He explained to the client that Company A’s share capital needed to be increased to HK\$100,000 to fulfil the minimum requirement for

PIBA membership application.

8. On 23 October 2008, he reviewed the draft SC1 form (return of allotments form) and minutes dated 17 October 2008 that Company A confirmed to him had been passed to Company A's directors for signature. He also believed in the client's representation to him that the procedures for increasing Company A's paid up capital to HK\$100,000 was being handled by a legal consultant and would be completed.
9. The Respondent "strongly believed" that Company A would complete the issuance of paid up capital to HK\$100,000 before submitting application for PIBA membership. He claimed that he did inspect the "relevant financial information" of Company A and noted that the net asset value after the increase of paid up capital to HK\$100,000 would fulfil the minimum capital requirement. He however did not inspect the latest audited financial statements of Company A at that time. The financial information of Company A purportedly inspected by him did not show Company A's net asset value was HK\$100,000 or more as at 17 October 2008.
10. The Respondent admitted that he had not fulfilled his responsibility to exercise due care in the issuance of the certification letter to PIBA and admitted the complaint made by PIBA and the Institute's findings in its letter to him dated 27 August 2012.

The Second Complaint

11. Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely, paragraph 100.4(c)" and section 130 of the Code in that the Respondent failed to comply with the professional standards within the framework of the Hong Kong Standards on Quality Control Auditing, Assurance and Related Services in conducting his work for issuing the letter mentioned in the First Complaint.
12. The contents of the Respondent's letter dated 23 October 2008 reporting to PIBA whether Company A met the minimum requirements about paid up capital and net asset value did not comply with the contents of a report within the framework of Hong Kong Standards on Quality Control Auditing, Assurance and Related Services, which requires compliance with relevant Hong Kong Engagement

Standards:

- (a) Hong Kong Auditing Standards (HKASs)
- (b) Hong Kong Standards on Review Engagements (HKSREs);
- (c) Hong Kong Standards on Assurance Engagements (HKSAEs);
- (d) Hong Kong Standards on Investment Circular Reporting Engagements (HKSIRs); and
- (e) Hong Kong Standards on Related Services (HKSRSs).

13. The Respondent should have identified the relevant reporting framework in relation to the work that he did and prepared a report that would comply with the requirements of the relevant standards.
14. As the reporting in the present engagement does not relate to audit or review of historical financial information nor investment circular reporting, either HKSAE or HKSRS would be applicable, and the Respondent should have identified which of HKSAE 3000 or HKSRS 4400 would apply, but he failed to do so and report according to either paragraph 49 of HKSAE 3000 (*Assurance Engagements Other Than Audits or Reviews of Historical Financial Information*) or paragraph 18 of HKSRS 4400 (*Engagements to Perform Agreed-Upon Procedures Regarding Financial Information*).
15. The Respondent admitted the Complaint against him. He did not dispute the facts as set out in the Complaint. He agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
16. By a letter dated 15 July 2013 addressed to the Complainant and the Respondent, the Clerk to the Disciplinary Committee (“DC”), under the direction of the DC, informed the parties that they should make written submissions to the DC as to the sanctions and costs and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
17. Written submissions to the DC as to the sanctions and costs were made by the Complainant and the Respondent on 30 July 2013 and 29 July 2013 respectively. Having considered the facts admitted by the Respondent as set out in the Complaint, the past disciplinary orders of similar nature in other cases, the Respondent’s clear record and early admissions to the Complaint, the DC is of the view that a reprimand and payment of penalty plus costs would be appropriate in

the circumstances of this case.

18. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the particulars in support of the Complaint.

19. The DC orders that:-

- 1) the Respondent be reprimanded under section 35(1)(b) of the PAO;
- 2) the Respondent do pay a penalty of HK\$60,000 under section 35(1)(c) of the PAO;
- 3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$21,532 under section 35(1)(iii) of the PAO; and
- 4) the said penalty and the costs and expenses in the total sum of HK\$81,532 shall be paid by the Respondent within 35 days from the date of this Order.

Dated the 3rd day of October 2013.

Proceedings No.: D-12-07000

IN THE MATTER OF

A Complaint made under section 34(1)(a) and section 34(1A) of the Professional Accountants Ordinance (Cap. 50) (“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

The Respondent

RESPONDENT

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

Members:

ORDER

Upon reading the complaint against [the Respondent], being a certified public accountant (practising), as set out in a letter from the Registrar of the Institute (“the Complainant”) dated 6 December 2012, the written submission of the Respondent dated 29 July 2013, the written submission of the Complainant dated 30 July 2013, and other relevant documents, the Disciplinary Committee is satisfied by the

admission of the Respondent and the evidence adduced before it that the following complaints are proved:

1. The Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards, namely, paragraphs 100.4(a), 100.4(c), 110.2, 130.1 and 130.2 of the Code of Ethics for Professional Accountants (“**Code**”) when issuing a letter certifying that the paid up capital and net asset value of a limited company has fulfilled the minimum requirements of HK\$100,000 (“First Complaint”).
2. Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely, paragraph 100.4(c) and section 130 of the Code in that the Respondent failed to comply with the professional standards within the framework of the Hong Kong Standards on Quality Control Auditing, Assurance and Related Services in conducting his work for issuing the letter mentioned in the First Complaint.

IT IS ORDERED that:-

- 1) the Respondent be reprimanded under section 35(1)(b) of the PAO;
- 2) the Respondent do pay a penalty of HK\$60,000 under section 35(1)(c) of the PAO;
- 3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$21,532 under section 35(1)(iii) of the PAO; and
- 4) the said penalty and the costs and expenses in the total sum of HK\$81,532 shall be paid by the Respondent within 35 days from the date of this Order.

Dated the 3rd day of October 2013.