

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

Respondent      RESPONDENT

Members:

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**REASONS FOR DECISION**

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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, who is a certified public accountant. Section 34(1)(a)(vi) of the PAO applied to the Respondent.
2. The particulars of the Complaint are set out in a letter dated 11 September 2013 (“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.
3. The Respondent admitted the Complaint against him. He did not dispute the facts as set out in the Respondent's Admitted Facts attached with his admission. He agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
4. By a letter dated 22 April 2014 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.

5.
  - a) In this case, the Respondent, in contravention of sections 170(1) and 170(4) of the Securities and Futures Ordinance (Cap 571) ("SFO") unlawfully short sold shares in Company A on three occasions and was convicted of a Level 6 crime, fined HK\$30,000 and ordered to pay costs of HK\$3,502 on 26 April 2012 in Eastern Magistrate's Court.
  - b) The offence committed by the Respondent clearly constitutes a behaviour which breaches section 100.4(e) of the Code of Ethics for Professional Accountants ("Code") which provides that a professional accountant is required to comply with the fundamental principle that he/she shall comply with relevant laws and regulations and avoid any action that discredits the profession. As a result, section 34(1)(a)(vi) applies to the Respondent.
  - c) Section 150.1 of the Code further elaborates the professional behaviour expected of a professional accountant, namely, actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession.
  - d) It is clear that the Respondent has committed a criminal offence under the SFO in the instant case, and thus, he has failed to comply with relevant laws and regulations in breach of section 100.4(e) of the Code. It is submitted by the Respondent that the offence does not involve elements of dishonesty. This definitely would be a mitigating factor taken into account by the DC when considering sanctions but this would not exonerate the Respondent from liability. "Short selling" is definitely a behaviour not tolerated in Hong Kong, a reputable international finance centre. The Respondent in committing such an offence would inevitably bring disrepute to his profession as well as to Hong Kong as a whole.
6. In considering meting out the sanction of a reprimand (and not removal of his name from the register of CPAs) to the Respondent, the DC has taken into account the fact that the Respondent voluntarily reported his conviction to the Institute when he renewed his membership with the Institute for 2013, there is no apparent dishonesty element in the present complaint, and he has no previous disciplinary records. However, the DC does consider this a serious case and therefore fines similar to those imposed by the Eastern Magistrate's Court should be ordered.
7. The DC therefore orders that:-
  - a) the Respondent be reprimanded under section 35(1)(b) of the PAO;

- b) the Respondent pay a penalty of HK\$30,000 under section 35(1)(c) of the PAO; and
- c) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$25,834 under section 35(1)(iii) of the PAO.

Dated the 21 day of July 2014

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

Respondent      RESPONDENT

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

Members:

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**ORDER**

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Upon reading the complaint against the Respondent, being a certified public accountant, as set out in a letter from the Registrar of the Institute ("the Complainant") dated 11 September 2013, the Respondent's Admitted Facts, the written representations of the Respondent dated 19 December 2013, the written submission of the Complainant dated 28 April 2014, the written submission of the Respondent dated 12 May 2014, 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. Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards, as provided in section 100.4(e) of the Code, as a result of his unlawful short selling of 5,511,800 shares of the Company on 7 May 2010 that resulted in his subsequent conviction in a Magistrate's court on 26 April 2012.
2. Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he failed or neglected to observe, maintain or otherwise

apply professional standards, as provided in section 100.4(e) of the Code, as a result of his unlawful short selling of 2,048,600 shares of the Company on 7 May 2010 that resulted in his subsequent conviction in a Magistrate's court on 26 April 2012.

3. Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards, as provided in section 100.4(e) of the Code, as a result of his unlawful short selling of 9,295,200 shares of the Company on 11 May 2010 that resulted in his subsequent conviction in a Magistrate's court on 26 April 2012.

IT IS ORDERED that:-

1. the Respondent be reprimanded under section 35(1)(b) of the PAO;
2. the Respondent pay a penalty of HK\$30,000 under section 35(1)(c) of the PAO;  
and
3. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$25,834 under section 35(1)(iii) of the PAO.

Dated the 21 day of July 2014