

Alert

Updates on financial reporting, auditing and ethics



Issue 41 (February 2022)

Dear practising members,

Referral fees for introduction of clients and maintenance of a registered office

The Practice Review Committee (Committee) is a statutory committee responsible for exercising the powers and duties given to the Institute as the regulator of auditors in Hong Kong under the Professional Accountants Ordinance. From time to time the Committee becomes aware of matters arising from the practice review programme carried out by the Quality Assurance Department that warrant further communication with the members of the Institute. This Alert aims to draw practitioners' attention to the requirements concerning (1) payments of referral fees for introduction of clients; and (2) maintenance of a registered office as breaching those requirements can have serious consequences, including regulatory actions being taken.

(i) Referral fees for introduction of clients

The *Code of Ethics for Professional Accountants* revised in January 2022 (Code) sets out authoritative guidance concerning payments of referral fees in two chapters. Section 330.5 of Chapter A of the Code (which is adopted from IESBA the International Code of Ethics for Professional Accountants) recognizes that a self-interest threat to compliance with the principles of objectivity and professional competence and due care is created if a professional accountant pays a referral fee relating to a client in general. Such payment is allowable if necessary safeguards are applied. Examples of safeguards include obtaining an advance agreement from the relevant client and disclosing to the client about the referral arrangement. Section 900.13 of Chapter C of the Code (which is additional requirement primarily derived from local legal or regulatory requirements) specifically states that practising members should not give any commissions, fee or reward to a third party, **unless he or she is either their employee or another professional accountant**, in return for the introduction of a client. Section 900.13 does not provide for the "threats and safeguards" approach.

Our practice review programme has seen cases where practice units were found to have paid referral fees to parties other than their employee or other professional accountants for introduction of clients. Practice units typically take immediate action to terminate the referral fee arrangements after such arrangements are identified. However there was still non-compliance with the Code in the first place.

How the Committee deals with such matters will depend on the facts and circumstances of each case, including regulatory action in serious cases. In any case, even if the matter is a genuine oversight or lack of understanding there is no excuse for a professional accountant not knowing his or her obligations under the Code.

(ii) Maintenance of a registered office

Under Section 31 of the Professional Accountants Ordinance, every practice unit must have a registered office in Hong Kong to which all communications and notices may be addressed. Any change in such address should be notified to the Registrar of the Institute within 14 days thereof. A breach of the above section results in the practice unit being guilty of an offence and liable to a fine. Upon registration or any changes in the registered office address, a practice unit is required to provide, inter alia, a confirmation that a signboard has been duly erected at the entrance to their registered office as evidence of commencement or continuance of business.

Our practice review programme has discovered cases where practice units were not contactable for practice review matters, resulting in practice reviews not being able to proceed as planned. These instances indicated that the relevant practice units had not been cooperative in the practice review process, giving rise to disputes needed to be brought to the attention of the Committee for determination of action. In those situations, the Committee typically issue directions to the relevant practitioners to contact and provide relevant information to the practice reviewers. The directions of the Committee are sent to the registered office addresses of the practice units by registered post. If no responses are received, the Committee would consider raising a complaint against each responsible practitioner for failure to follow its directions. This is even so if the directions sent by registered post were not able to be delivered to or were not collected by the relevant practice units. Section 31 of the Professional Accountants Ordinance provides a ground to support such complaints.

Practising members should be mindful of the above requirements to avoid regulatory actions being taken against them. The Quality Assurance Department will continue to monitor the application of professional standards through its practice review programme and will regularly bring to members' attention issues identified to help improve audit practices in Hong Kong.

If you have any questions, please contact QA by email qualityassurance@hkicpa.org.hk.

Sincere regards,

Chris Joy
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