



MEMBERS' HANDBOOK

Update No. 34

(Issued October 2006)

<u>Document Reference and Title</u>	<u>Instructions</u>	<u>Explanations</u>
<u>VOLUME I</u>		
Contents of Volume I	Insert revised pages (i) and (ii) and discard the replaced pages (i) and (ii)	Revised contents pages
PROFESSIONAL ACCOUNTANTS ORDINANCE, BY-LAWS, RULES		
Statement 1.101 <i>Disciplinary Committee Proceedings Rules</i>	Insert revised Statement 1.101 and discard the previous version	Revised Rules - Note 1
PROFESSIONAL ETHICS		
Code of Ethics for Professional Accountants Section 290 (Revised) <i>Independence – Assurance Engagements</i>	Insert these pages after COE	Revised Section - Note 2
Professional Ethics Statements	Discard all existing Professional Ethics Statements (Statements 1.200, 1.201, 1.203A, 1.203, 1.203 (Supp.), 1.204A, 1.204B, 1.205, 1.207, 1.207A, 1.208, 1.209, 1.210, 1.212, 1.213, 1.290C, 1.290D, 1.291 and 1.292)	Statements withdrawn - Note 3
GENERAL GUIDANCE		
Professional Ethics Guidance	Discard Guidance 1.308	Guidance withdrawn - Note 3

Notes:

1. The revised rules reflect a recent Court of Appeal decision that while a Disciplinary Committee must adhere to the legal requirements for standards of fairness and natural justice, it is not itself a court. The “adversarial” procedure inherent under the old rules has been replaced by an “inquisitorial” procedure whereby a Disciplinary Committee inquires into an issue to establish what has occurred and plays a proactive role in controlling the process.
2. The revised Section 290 introduces the concept of a network and revises the definition of a network firm.
3. All Professional Ethics Statements and Professional Ethics Guidance 1.308 *Independence for Assurance Engagements* have been superseded by the Code of Ethics for Professional Accountants with effect from 30 June 2006.

October 2006



MEMBERS' HANDBOOK CONTENTS OF VOLUME I

(Updated to October 2006)

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DISCIPLINARY COMMITTEE PROCEEDINGS RULES*

(Issued September 1986; revised September 2004 (name changed); further revised September 2006)

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- * These rules were made by the Council of the Hong Kong Institute of Certified Public Accountants (formerly known as the Hong Kong Society of Accountants) on 16th September 1986 pursuant to section 33A of the Professional Accountants Ordinance Cap. 50 and came into operation on 16th September 1986. These rules were amended in September 2004 and again in September 2006 pursuant to section 51(f) of the Professional Accountants Ordinance Cap. 50.

PART I

CITATION AND INTERPRETATION

1. These rules may be cited as the Disciplinary Committee Proceedings Rules. Citation

2. In these rules, unless the context otherwise requires: Interpretation
 - (a) "By-laws" means the Professional Accountants By-laws;
"Chairman" means the chairman of the Disciplinary Committee;
"Clerk" means the Clerk to the Disciplinary Committee, appointed in accordance with rule 41;
"Complainant" means the person making or, where the context so requires, presenting the complaint (and includes the Registrar where the complaint is made or presented by the Registrar);
"Ordinance" means the Professional Accountants Ordinance;
"Respondent" means any certified public accountant, firm or corporate practice, or registered student against whom a complaint is made;
"parties" means the Complainant and the Respondent(s).
 - (b) Words and expressions used in these rules shall have the same meaning as in the Ordinance.

PART II

MAKING COMPLAINTS

3. A complaint under section 34(1)(a) or (b) of the Ordinance, section 34(1)(a) as applied by sections 34(1AA) and 41A of the Ordinance, or by-law 34(1) of the By-laws, shall be in writing and signed by the Complainant, shall set out the grounds of the complaint, and shall be made to the Registrar who shall submit the complaint to the Council. Making and receipt of complaints

4. Where the Registrar has reason to believe that section 34(1)(a) or (b) of the Ordinance, or section 34(1)(a) as applied by sections 34(1AA) and 41A of the Ordinance, applies to a certified public accountant or a corporate practice, or that by-law 34(1) of the By-laws applies to a registered student, he shall submit the facts to the Council which may, in its discretion, refer the complaint to the Disciplinary Panels. Referral by Registrar

5. The Council, before deciding whether or not to refer a complaint to the Disciplinary Panels:
- (a) may require the Complainant or the Registrar to supply such further information and documents in his possession custody or power relating to the complaint as it thinks fit;
- (b) shall invite the Respondent to submit to the Council in writing any explanation of his conduct or of any other matter alleged in the complaint which he may have to offer.
6. The Council shall, if it refers a complaint to the Disciplinary Panels, transmit to the Clerk all documents received by the Council pursuant to rules 3 to 5.
7. The Clerk shall send to the parties a Notice in the form set out in Schedule 1 informing them that proceedings have commenced, and shall supply the parties with the procedural timetable for the proceedings, a copy of these rules and all documents transmitted by the Council to the Clerk pursuant to rule 6.

Supply of additional information concerning complaint

Transmission of documents to Clerk

Procedural timetable

PART III

PROCEDURAL MATTERS

8. The Clerk shall be responsible for circulating all documents filed in the proceedings amongst the parties.
9. (1) All enquiries on procedural matters, other than those arising during the course of a hearing, shall be directed to the Clerk.
- (2) Written communications with the Clerk may be by way of letter.
- (3) Where any enquiry on a procedural matter calls for a decision, the Clerk shall refer the matter to the Chairman for determination.
10. The Chairman shall be at liberty to decide all enquiries on procedural matters or to refer such matters to the Disciplinary Committee for decision in his discretion.

Circulation of documents

Enquiries on procedural matters

Chairman to decide procedural matters

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| 11. | The Chairman or the Disciplinary Committee may, in their discretion and at any stage of the proceedings, on request of the parties or on their own motion, dispense with or vary any of the requirements of these rules (including the procedural timetable) or make such directions for the conduct of the proceedings as they consider appropriate (including adjourning a hearing on specified terms as to costs). | Variation of procedures and making of directions |
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PART IV

BURDEN OF PROOF AND FUNCTION OF COMMITTEE

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| 12. | The function of the Disciplinary Committee is to decide whether a complaint has been proved in light of the facts before it and, if so, to determine the sanction which ought to be imposed. | Function of Committee |
| 13. | The initial burden of proof is upon the Complainant. | Burden of proof |
| 14. | The strict rules of evidence do not apply; the Disciplinary Committee may receive any material, and attach such weight to that material, as it considers appropriate. | Rules of evidence |
| 15. | If any party fails or refuses to make submissions or answer questions on any matter or issue, the Disciplinary Committee shall be entitled to draw an adverse inference against that party. | Drawing of adverse inferences |
| 16. | <p>(1) If, prior to the hearing conducted under Part VII, the Chairman or the Disciplinary Committee considers the evidence presented or to be presented is insufficient to determine the issues raised in the parties submissions to be filed under Part V but the required evidence may be available, the Chairman or the Disciplinary Committee may in their discretion indicate what additional evidence is required to determine the issues raised in the parties submissions and make appropriate directions to allow such evidence to be obtained and presented.</p> <p>(2) If the Complainant or Respondent files additional evidence pursuant to directions made under paragraph (1), the Chairman or the Committee shall ensure that the opposing party is given an opportunity to respond to such evidence.</p> | Insufficient evidence |

PART V
WRITTEN SUBMISSIONS

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| 17. | The parties shall submit written Cases setting out their respective submissions on all material matters and annexing all documentary evidence on which they rely. | Written submissions |
| 18. | The Complainant's Case shall be in the form set out in Schedule 2 and shall be submitted to the Clerk in accordance with the procedural timetable. | Complainant's Case |
| 19. | The Respondent's Case shall be in the form set out in Schedule 3 and shall be submitted to the Clerk in accordance with the procedural timetable. | Respondent's Case |
| 20. | (1) The Complainant may submit a Reply in accordance with the provisions of the procedural timetable.

(2) The Complainant's Reply shall be limited to matters arising as a consequence of the Respondent's Case and shall annex any further documentary evidence on which the Complainant relies. | Complainant's Reply |
| 21. | (1) The Respondent may submit a Reply in accordance with the provisions of the procedural timetable.

(2) The Respondent's Reply shall be limited to matters arising as a consequence of the Complainant's Reply and shall annex any further documentary evidence on which the Respondent relies. | Respondent's Reply |
| 22. | Unless the Chairman or the Committee orders otherwise, the parties' Cases and Replies (including annexed documentary evidence) shall constitute submissions of the parties in the proceedings and evidence in the proceedings. | Status of Cases and Replies |
| 23. | Following the filing of the parties' Cases and Replies, no further written submissions or documentary evidence shall be admitted without the leave of the Chairman or the Committee. | No further written material without leave |

PART VI
DIRECTIONS

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| 24. | The parties shall submit a checklist in the form set out in Schedule 4 in accordance with the procedural timetable. | Checklist procedure |
| 25. | (1) Following the filing of the parties' checklists, the Chairman shall make such directions for the conduct of the proceedings as he considers appropriate. | Directions |

- (2) For the purposes of making such directions, the Chairman may, if he considers it expedient, convene a directions hearing to be conducted in whatever manner he considers appropriate (including telephone conference).

PART VII

HEARING

26. (1) The Clerk shall inform the parties of the date of the hearing in writing. Oral hearing
 - (2) The hearing shall be held in public unless the Disciplinary Committee determines (on its own motion or on application) that in the interests of justice a hearing or part thereof shall be held in private.
 - (3) Notwithstanding anything in rules 9 and 10, any application for the hearing or any part thereof to be held in private shall be made in writing (stating the grounds for the application) prior to the hearing and shall be submitted to the Clerk who shall refer the application to the Disciplinary Committee for determination.
27. The principal purpose of the hearing shall be to allow the Disciplinary Committee to ask questions of the parties and clarify matters. Purpose of hearing
28. The parties may present oral submissions if they consider it necessary to do so, however such oral submissions should be succinct and should not unnecessarily repeat the written submissions. Oral submissions
29. (1) The parties shall be permitted by way of the checklist procedure to express their views as to whether witnesses should attend the hearing and give evidence and whether particular parties should be subject to cross-examination by other parties, however witnesses shall only attend and give evidence at the hearing and parties shall only be subject to cross-examination by other parties if the Chairman or the Disciplinary Committee so direct. Witnesses
 - (2) In the event the Chairman or the Disciplinary Committee considers expert evidence may be appropriate, the Chairman or the Disciplinary Committee may make such directions and take such steps as they consider appropriate in their discretion to obtain such evidence, including directing that the parties be permitted to adduce expert evidence or appointing an expert witness to assist the Committee.

30. At the hearing, the following order of procedure shall be observed: Order of procedure
- (a) the Chairman shall introduce the proceedings and the Disciplinary Committee shall deal with any procedural matters arising;
 - (b) at any stage during the hearing, the Disciplinary Committee may put such questions to the parties and the witnesses as the Disciplinary Committee thinks expedient;
 - (c) the Complainant may (but is not obliged to) present an oral opening submission;
 - (d) the Respondent may (but is not obliged to) present an oral opening submission;
 - (e) if the Chairman or the Committee has so directed, witnesses and/or the parties shall be examined and cross-examined;
 - (f) the Complainant and then the Respondent may present an oral closing submission.
31. The Disciplinary Committee shall invite the parties to make submissions as to the sanction (if any) which should be imposed at such time as the Disciplinary Committee considers appropriate (including after adjournment). Submissions as to sanctions
32. The decision of the Disciplinary Committee shall be set out in writing and shall specify the terms of any orders made. Decision of Committee
33. The Clerk shall file any order made by the Disciplinary Committee under sections 35(1) or 35B of the Ordinance, or by-law 35(1) of the By-laws, with the Registrar, who shall cause a copy of the order to be served forthwith on the Respondent either personally or by post addressed to his registered address and to be published in accordance with the provisions of the Ordinance and the prevailing policy of the Hong Kong Institute of Certified Public Accountants. Filing of orders

PART VIII

DISMISSAL OF PROCEEDINGS AND CONSENT ORDER PROCEDURE

34. If at any stage in the proceedings, the Disciplinary Committee is of the opinion that no prima facie case is shown for any disciplinary action, the Disciplinary Committee may dismiss the complaint without requiring the Respondent to answer the allegations and without hearing the Complainant or the Registrar. Dismissal of complaint without hearing

35. (1) In relation to any complaint that section 34(1)(a)(vi), (viii), (ix) or (x) of the Ordinance applies to a certified public accountant, if at any stage of the proceedings the Disciplinary Committee is of the view that the complaint is of such a nature that, if the complaint is proved, the appropriate order or orders to be made should fall within one or more of the types of order provided for in section 35B of the Ordinance, the Disciplinary Committee may in its discretion give notice to the parties in accordance with section 35B of the Ordinance inviting the parties to consent to the proposed order or orders.
- Consent order
procedure
- (2) If either the Complainant or the Respondent informs the Disciplinary Committee that they do not consent to the proposed order or orders, or if the Disciplinary Committee does not receive a positive reply from the Complainant and the Respondent within the time prescribed in the notice (not being less than 14 days), the Disciplinary Committee shall inform the Council, the Disciplinary Committee shall be dissolved and the Council shall constitute a new Disciplinary Committee to deal with the complaint in accordance with these rules.

PART IX

FAILURE TO COMPLY WITH RULES

36. If the Chairman or the Disciplinary Committee is of the opinion that a party has failed to appear at the hearing or has failed to comply with a requirement of these rules (including the procedural timetable) or of any direction or order, the Chairman or the Disciplinary Committee may take such steps as they consider appropriate including dismissing the complaint without requiring the Respondent to answer the allegations, hearing and determining the complaint without hearing from the Complainant or the Registrar, or making such orders as to costs as they think fit.
- Failure to comply
with rules
37. Where any question arises as to whether a written Case or Reply complies with the requirements of these rules, the Chairman and the Disciplinary Committee shall only order that the Case or Reply be rejected, revised or supplemented if, in the opinion of the Chairman or the Committee, the defects in the Case or Reply are such as to prejudice the ability of other parties to the proceeding to obtain a fair hearing.
- Defects in Cases and
Replies

PART X
MISCELLANEOUS

38. (1) Save as provided in rule 33, any notice or document required to be sent under these rules may be: Methods by which documents may be sent
- (a) delivered to the recipient by hand;
- (b) sent to the recipient by post addressed, in the case of a certified public accountant, to the registered address and, in every other case, to the last known place of business or abode of the recipient;
- (c) sent to the recipient's representative by hand, post or facsimile.
- (2) Any notice or document sent to a recipient by post shall be deemed to be received at the time when the letter would be delivered in the ordinary course of post.
- (3) Save as provided in rule 33, the Chairman or the Disciplinary Committee may make such order for substituted service of notices and documents as in the circumstances of the case may appear just and reasonable.
39. Any summons to witnesses shall be in the forms set out in Schedules 5 and 6 and shall be signed by the Chairman. Form of summons
40. In any proceedings where the Registrar is not the Complainant, the Chairman or the Disciplinary Committee may permit the Registrar to intervene and be heard in respect of the complaint on such terms as they may direct. Intervention by Registrar
41. (1) The Clerk shall be appointed by the Council. Appointment of Clerk
- (2) The Council may also appoint one or more alternates of the Clerk, who may act in place of the Clerk in the event the Clerk is precluded for any reason whatsoever from performing his functions.
42. The Chairman and/or the Disciplinary Committee may appoint professional advisers, expert witnesses and/or such other persons as the Chairman or the Disciplinary Committee may in their discretion consider appropriate to assist the Disciplinary Committee in any particular proceeding. Appointment of professional and other advisers
43. Irrespective of anything in Rules 6, 7 and 42, the Chairman and Disciplinary Committee shall only incur expenditure in accordance with procedures approved by the Council. Expenditure

SCHEDULE 1

FORM OF NOTICE OF COMMENCEMENT OF PROCEEDINGS

Proceedings No: _____

IN THE MATTER OF

[A complaint made under section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) / A complaint made under by-law 34 of the Professional Accountants By-laws]*

**[Delete as appropriate]*

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

NOTICE OF COMMENCEMENT OF PROCEEDINGS

TAKE NOTICE THAT disciplinary proceedings have been commenced in respect of a complaint by the abovenamed Complainant against the abovenamed Respondent.

Enclosed for your information is a copy of the Disciplinary Committee Proceedings Rules, the procedural timetable for the proceedings and all documents which have been referred to the Disciplinary Committee in connection with the complaint.

OVERVIEW OF PROCEDURES

Written Submissions

The Disciplinary Committee Proceedings Rules place an emphasis on written submissions. The written submissions are required to fully set out the parties' respective positions on all relevant matters and to annex all relevant evidence upon which the parties rely. This gives all parties fair notice of the issues in dispute and ensures that the hearing can be conducted efficiently.

The first step is for the Complainant to file the Complainant's Case in accordance with the procedural timetable. The Complainant's Case must be in the form set out in

Schedule 2 of the Disciplinary Committee Proceedings Rules, must set out the Complainant's submissions on all relevant matters and must annex all documentary evidence on which the Complainant relies (including, if the Complainant wishes to rely on such materials, witness statements). The Complainant bears the burden of proving the complaint.

The Respondent must then file the Respondent's Case in accordance with the procedural timetable. The Respondent's Case must be in the form set out in Schedule 3 of the Disciplinary Committee Proceedings Rules, must set out the Respondent's submissions on all relevant matters and must annex all documentary evidence on which the Respondent relies (unless already annexed to the Complainant's Case).

The Complainant may file a Reply addressing matters arising from the Respondent's Case. Following this, the Respondent may file a Reply addressing matters arising from the Complainant's Reply.

Once the parties have submitted their Cases and Replies, no further written submissions or documentary evidence may be filed without the leave of the Chairman or the Disciplinary Committee.

Checklist procedure

After the filing of written submissions, the parties are required to file a checklist in the form set out in Schedule 4. The Chairman will then issue directions for the future conduct of the proceeding.

In certain circumstances, the Committee may invite the parties to consent to a proposed sanction. If the parties so consent, the oral hearing will be dispensed with and the agreed sanction imposed. If either or both of the parties refuse or fail to consent, the proceedings will be dissolved and the matter dealt with afresh by a new Disciplinary Committee. You will be given an opportunity to indicate whether you would be agreeable to the consent order procedure (if offered) by way of the checklist procedure.

Oral hearing

The Disciplinary Committee will conduct an oral hearing of the complaint, which shall be in public unless otherwise determined by the Committee. The principal purpose of the oral hearing is to allow the Committee to question the parties and clarify matters. Whilst the procedures allow for oral submissions to be made by the parties, all relevant matters should have been fully addressed in the written submissions and it is therefore anticipated that oral submissions (to the extent they are necessary at all) will be brief.

The parties will be permitted to express their views as to whether witnesses should attend and give evidence at the hearing by way of the checklist procedure. However, it will be up to the Committee to direct whether witnesses are to give evidence and, if so, in respect of which particular issues. The Committee will only generally direct witnesses to attend and give evidence when their evidence is necessary to resolve disputed issues of fact or the Committee requires expert evidence on a particular point.

If the Committee considers that the complaint is or may be proved, the Committee will invite the parties to make submissions as to the sanction (if any) which should be imposed. Parties should be prepared to address the question of sanctions at the initial hearing.

General matters

The strict rules of evidence do not apply. The Committee may receive any material and attach such weight to that material as the Committee considers appropriate. If any party fails or refuses to make submissions or answer questions on any matter or issue, the Disciplinary Committee shall be entitled to draw an adverse inference against that party.

The Clerk shall be the point of contact for all parties and shall be responsible for circulating documents received by the Committee amongst the parties. Written communications with the Clerk should be by way of letter. The contact details of the Clerk are:

[Here insert current contact details of the Clerk]

Any request for an extension of time for compliance with the procedural timetable shall be in writing and accompanied by reasons.

For the purposes of these proceedings, you are entitled to be represented by a solicitor or counsel.

PLEASE NOTE

THESE PROCEEDINGS ARE OF A SERIOUS NATURE. IF THE DISCIPLINARY COMMITTEE IS SATISFIED THAT A COMPLAINT IS PROVEN, THE COMMITTEE MAY IMPOSE SANCTIONS AS SET OUT IN SECTION 35 OF THE PROFESSIONAL ACCOUNTANTS ORDINANCE AND BY-LAW 35 OF THE PROFESSIONAL ACCOUNTANTS BY-LAWS. THE COMMITTEE ALSO HAS A WIDE DISCRETION TO MAKE ORDERS AS TO COSTS. IF YOU HAVE NOT ALREADY DONE SO, IT IS RECOMMENDED YOU SEEK LEGAL ADVICE.

Dated

Clerk to the
Disciplinary Committee

SCHEDULE 2
FORM FOR COMPLAINANT'S CASE

Proceedings No: _____

IN THE MATTER OF

[A complaint made under section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) / A complaint made under by-law 34 of the Professional Accountants By-laws]*
*[Delete as appropriate]

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

COMPLAINANT'S CASE

Executive Summary

[This section is only necessary if the Complainant's Case exceeds six pages in length. If so, here provide an executive summary of relevant aspects of the Case. The executive summary should not exceed two pages in length.]

Complaint

[Here identify the specific allegation or allegations which the Complainant makes against the Respondent by reference to the provision of section 34(1) of the Professional Accountants Ordinance or by-law 34(1) of the Professional Accountants By-laws to which the complaint relates.]

Facts and evidence

[Here set out the facts which the Complainant asserts give rise to the allegations and identify the evidence upon which the Complainant relies to prove those facts, by reference to annexed documentary evidence where appropriate. The relevant evidence to prove particular facts may be identified by whatever method the Complainant considers appropriate, including the use of footnotes.]

Analysis

[Here set out the Complainant's analysis explaining why the facts as asserted by the Complainant substantiate the Complainant's allegation or allegations.]

Further matters

[Here address any further matters and set out any additional submissions which the Complainant considers the Disciplinary Committee should take into account when considering the complaint.]

NOTE: Where a complaint arises following a practice review by a Practice Review Committee or an investigation by an Investigation Committee, the Complainant may address some or all matters above by annexing the report of the relevant Committee and directing the Disciplinary Committee's attention to relevant passages.

ANNEXURES:

The Complainant shall annex to the Case all documentary evidence on which the Complainant relies (including, if the Complainant chooses to rely on such materials, any statements obtained from witnesses). Such documentary evidence shall be arranged in a logical order and indexed.

**SCHEDULE 3
FORM FOR RESPONDENT'S CASE**

Proceedings No: _____

IN THE MATTER OF

[A complaint made under section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) / A complaint made under by-law 34 of the Professional Accountants By-laws]*

**[Delete as appropriate]*

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

RESPONDENT'S CASE

Executive Summary

[This section is only necessary if the Respondent's Case exceeds six pages in length. If so, here provide an executive summary of relevant aspects of the Case. The executive summary should not exceed two pages in length.]

Response as to Complaint

[Here state whether the Respondent admits or denies the complaint.]

Facts and evidence

[This section comprises the Respondent's submissions as to the relevant facts. To the extent the Respondent disputes the facts asserted by the Complainant, the Respondent shall here identify the facts in dispute, state what the Respondent considers to be the true position, and identify the evidence upon which the Respondent relies to prove such assertions, by reference to the documentary evidence where appropriate.]

To the extent the Respondent considers additional matters not addressed in the Complainant's Case are relevant, the Respondent shall set out the relevant facts and identify the evidence upon which the Respondent relies to prove such facts, by reference to the documentary evidence where appropriate.

Evidence relied upon to prove particular facts may be identified by whatever method the Complainant considers appropriate, including the use of footnotes.]

Analysis

[Here set out the Respondent's analysis explaining why, on the basis of the facts as asserted, the Respondent considers that the allegations are unsubstantiated.]

Further matters

[Here address any further matters and set out any additional submissions which the Respondent considers the Disciplinary Committee should take into account when considering the complaint.]

ANNEXURES:

The Respondent shall annex to the Respondent's Case all documentary evidence on which the Respondent relies (including, if the Respondent chooses to rely on such materials, any statements from witnesses), other than evidence already annexed to the Complainant's Case. Such documentary evidence shall be arranged in a logical order and indexed.

SCHEDULE 4

FORM FOR CHECKLIST

Proceedings No: _____

IN THE MATTER OF

[A complaint made under section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) / A complaint made under by-law 34 of the Professional Accountants By-laws]*
**[Delete as appropriate]*

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

**CHECKLIST OF THE
[COMPLAINANT/RESPONDENT]***

**[Delete as appropriate]*

1. Are there any material matters of fact in dispute? If so, identify those facts in dispute: Y/N

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.....
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.....

2. Are there any questions in respect of which you consider the Committee requires expert evidence? If so, identify those questions: Y/N

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.....

3. Do you consider it is necessary for witnesses to appear and give evidence at the hearing? Y/N

If so, include the following information in respect of each witness you consider should attend and give evidence by way of attached schedule:

- (a) Name of the witness
- (b) Address of the witness
- (c) The specific issue or issues in respect of which you consider the witness should give evidence
- (d) The reasons why you consider the witness's evidence is necessary
- (e) Whether you are in a position to produce a witness statement for the witness prior to the hearing
- (f) Whether you consider it necessary for a summons to be issued to compel the witness's attendance at the hearing

Note: The Chairman will only generally direct a witness to attend and give evidence when the witness's evidence is necessary to resolve a material dispute of fact or the Committee requires expert evidence on a particular matter.

4. Do you consider it necessary for any party to be cross-examined by another party to the proceeding? Y/N

If so, include the following information in respect of each party should consider should be cross-examined by way of attached schedule:

- (a) Name of the party
- (b) The specific issue or issues in respect of which you consider the party should be cross-examined
- (c) The reasons why you consider such cross-examination is necessary
- (d) Who will conduct the cross-examination

Note: The Chairman will only generally direct that one party may cross-examine another party to the proceeding when cross-examination is necessary to resolve a material dispute of fact.

5. Do you intend to be legally represented at the hearing? If so, identify the name of your legal representative: Y/N

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.....

6. Are there any dates over the next 6 months during which you will be unavailable to attend a hearing? If so, list such dates: Y/N

.....
.....

7. Do these proceedings concern complaints relating **only** to one or more of the following matters: Y/N

- (a) that the Respondent has failed or neglected to observe, maintain or otherwise apply a professional standard within the meaning of section 34(vi) of the Professional Accountants Ordinance;
- (b) that the Respondent has been guilty of professional misconduct within the meaning of section 34(viii) of the Professional Accountants Ordinance;
- (c) that the Respondent has refused or failed to comply with the provisions of any bylaw or rule made or any direction given by the Council, within the meaning of section 34(ix) of the Professional Accountants Ordinance;
- (d) that the Respondent was guilty of dishonourable conduct within the meaning of section 34(x) of the Professional Accountants Ordinance?

8. If the answer to 7 above is "Yes", in the event the Disciplinary Committee is minded to impose a sanction falling within one or more of the following orders: Y/N

- (a) an order that the Respondent be reprimanded;
- (b) an order that the Respondent pay a penalty not exceeding \$50,000 to the Hong Kong Institute of Certified Public Accountants;
- (c) an order that the Respondent pay the costs and expenses of and incidental to the proceedings, whether of the Hong Kong Institute of Certified Public Accountants (including the costs and expenses of the Disciplinary Committee) or of the complainant;

would you be prepared to consent to the proposed sanction and dispense with the need for an oral hearing?

9. Are there any other matters you wish to bring to the attention of the Chairman prior to the Chairman making directions for the future conduct of the proceeding? If so, state such matters: Y/N

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SCHEDULE 5

FORM OF SUMMONS AD TESTIFICANDUM

Proceedings No: _____

IN THE MATTER OF

[A complaint made under section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) / A complaint made under by-law 34 of the Professional Accountants By-laws]*
**[Delete as appropriate]*

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

SUMMONS

TO:

I,, Chairman of the Disciplinary Committee constituted under section 33 of the Professional Accountants Ordinance, command you pursuant to section 36 of the Professional Accountants Ordinance to attend before the Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants at on day, the day of at the hour of in the noon, and so from day to day until the above matter is heard, to give evidence.

Dated this day of2006

Chairman of Disciplinary Committee

SCHEDULE 6

FORM OF SUMMONS DUCES TECUM

Proceedings No: _____

IN THE MATTER OF

[A complaint made under section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) / A complaint made under by-law 34 of the Professional Accountants By-laws]*
**[Delete as appropriate]*

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

SUMMONS

TO:

I,, Chairman of the Disciplinary Committee constituted under section 33 of the Professional Accountants Ordinance, command you pursuant to section 36 of the Professional Accountants Ordinance to attend before the Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants at on day, the day of at the hour of in the noon, and so from day to day until the above matter is heard, to give evidence and also to bring with you and produce at the time and place aforesaid (specify documents to be produced).

Dated this day of2006

Chairman of Disciplinary Committee

Effective on or after 31 December 2008

Code of Ethics for Professional Accountants
Section 290 (Revised)

Independence

– Assurance Engagements



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Section 290

Independence – Assurance Engagements

[Paragraphs 290.1 – 290.13 of extant Section 290 remain unchanged. Paragraphs 290.14 – 290.34 remain unchanged but are renumbered paragraphs 290.27 – 290.47]

- 290.1 In the case of an assurance engagement it is in the public interest and, therefore, required by this Code of Ethics, that members of **assurance teams**,^{*} firms and, when applicable, **network firms**^{*} be independent of assurance clients.
- 290.2 Assurance engagements are designed to enhance intended users' degree of confidence about the outcome of the evaluation or measurement of a subject matter against criteria. The Hong Kong Framework for Assurance Engagements (the Assurance Framework) issued by the Hong Kong Institute of Certified Public Accountants describes the elements and objectives of an assurance engagement, and identifies engagements to which Hong Kong Standards on Auditing (HKSAAs), Hong Kong Standards on Review Engagements (HKSRs) and Hong Kong Standards on Assurance Engagements (HKSAEs) apply. For a description of the elements and objectives of an assurance engagement reference should be made to the Assurance Framework.
- 290.3 As further explained in the Assurance Framework, in an assurance engagement the professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.
- 290.4 The outcome of the evaluation or measurement of a subject matter is the information that results from applying the criteria to the subject matter. The term "subject matter information" is used to mean the outcome of the evaluation or measurement of subject matter. For example:
- The recognition, measurement, presentation and disclosure represented in the **financial statements**^{*} (subject matter information) result from applying a financial reporting framework for recognition, measurement, presentation and disclosure, such as Hong Kong Financial Reporting Standards, (criteria) to an entity's financial position, financial performance and cash flows (subject matter).
 - An assertion about the effectiveness of internal control (subject matter information) results from applying a framework for evaluating the effectiveness of internal control, such as COSO or CoCo, (criteria) to internal control, a process (subject matter).
- 290.5 Assurance engagements may be assertion-based or direct reporting. In either case they involve three separate parties: a public accountant in public practice, a responsible party and intended users.
- 290.6 In an assertion-based assurance engagement, which includes a **financial statement audit engagement**,^{*} the evaluation or measurement of the subject matter is performed by the responsible party, and the subject matter information is in the form of an assertion by the responsible party that is made available to the intended users.

* See Definitions.

- 290.7 In a direct reporting assurance engagement the professional accountant in public practice either directly performs the evaluation or measurement of the subject matter, or obtains a representation from the responsible party that has performed the evaluation or measurement that is not available to the intended users. The subject matter information is provided to the intended users in the assurance report.
- 290.8 Independence requires:
- Independence of Mind*
- The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism.
- Independence in Appearance*
- The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism had been compromised.
- 290.9 The use of the word "independence" on its own may create misunderstandings. Standing alone, the word may lead observers to suppose that a person exercising professional judgment ought to be free from all economic, financial and other relationships. This is impossible, as every member of society has relationships with others. Therefore, the significance of economic, financial and other relationships should also be evaluated in the light of what a reasonable and informed third party having knowledge of all relevant information would reasonably conclude to be unacceptable.
- 290.10 Many different circumstances, or combination of circumstances, may be relevant and accordingly it is impossible to define every situation that creates threats to independence and specify the appropriate mitigating action that should be taken. In addition, the nature of assurance engagements may differ and consequently different threats may exist, requiring the application of different safeguards. A conceptual framework that requires firms and members of assurance teams to identify, evaluate and address threats to independence, rather than merely comply with a set of specific rules which may be arbitrary, is, therefore, in the public interest.

A Conceptual Approach to Independence

- 290.11 Members of assurance teams, firms and network firms are required to apply the conceptual framework contained in Section 100 to the particular circumstances under consideration. In addition to identifying relationships between the firm, network firms, members of the assurance team and the assurance client, consideration should be given to whether relationships between individuals outside of the assurance team and the assurance client create threats to independence.
- 290.12 The examples presented in this section are intended to illustrate the application of the conceptual framework and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances that may create threats to independence. Consequently, it is not sufficient for a member of an assurance team, a firm or a network firm merely to comply with the examples presented, rather they should apply the framework to the particular circumstances they face.
- 290.13 The nature of the threats to independence and the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level differ depending on the characteristics of the individual assurance engagement: whether it is a financial statement audit engagement or another type of assurance engagement; and in the

latter case, the purpose, subject matter information and intended users of the report. A firm should, therefore, evaluate the relevant circumstances, the nature of the assurance engagement and the threats to independence in deciding whether it is appropriate to accept or continue an engagement, as well as the nature of the safeguards required and whether a particular individual should be a member of the assurance team.

Networks and Network Firms

- 290.14 An entity that belongs to a network might be a firm, which is defined in this Code as a sole practitioner, partnership or corporation of professional accountants and an entity that controls or is controlled by such parties, or the entity might be another type of entity, such as a consulting practice or a professional law practice. The independence requirements in this section that apply to a network firm apply to any entity that meets the definition of a network firm irrespective of whether the entity itself meets the definition of a firm.
- 290.15 If a firm is considered to be a network firm, the firm is required to be independent of the financial statement audit clients of the other firms within the network. In addition, for assurance clients that are not financial statement audit clients, consideration should be given to any threats the firm has reason to believe may be created by financial interests in the client held by other entities in the network or by relationships between the client and other entities in the network.
- 290.16 To enhance their ability to provide professional services, firms frequently form larger structures with other firms and entities. Whether these larger structures create a network depends upon the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct. For example, a larger structure may be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is considered to be a network.
- 290.17 The judgment as to whether the larger structure is a network should be made in light of whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the entities are associated in such a way that a network exists. This judgment should be applied consistently throughout the network.
- 290.18 Where the larger structure is aimed at co-operation and it is clearly aimed at profit or cost sharing among the entities within the structure, it is considered to be a network. However, the sharing of immaterial costs would not in itself create a network. In addition, if the sharing of costs is limited only to those costs related to the development of audit methodologies, manuals, or training courses, this would not in itself create a network. Further, an association between a firm and an otherwise unrelated entity to jointly provide a service or develop a product would not in itself create a network.
- 290.19 Where the larger structure is aimed at cooperation and the entities within the structure share common ownership, control or management, it is considered to be a network. This could be achieved by contract or other means.
- 290.20 Where the larger structure is aimed at co-operation and the entities within the structure share common quality control policies and procedures, it is considered to be a network. For this purpose common quality control policies and procedures would be those designed, implemented and monitored across the larger structure.
- 290.21 Where the larger structure is aimed at co-operation and the entities within the structure share a common business strategy, it is considered to be a network.

Sharing a common business strategy involves an agreement by the entities to achieve common strategic objectives. An entity is not considered to be a network firm merely because it co-operates with another entity solely to respond jointly to a request for a proposal for the provision of a professional service.

290.22 Where the larger structure is aimed at co-operation and the entities within the structure share the use of a common brand name, it is considered to be a network. A common brand name includes common initials or a common name. A firm is considered to be using a common brand name if it includes, for example, the common brand name as part of, or along with, its firm name, when a partner of the firm signs an assurance report.

290.23 Even though a firm does not belong to a network and does not use a common brand name as part of its firm name, it may give the appearance that it belongs to a network if it makes reference in its stationery or promotional materials to being a member of an association of firms. Accordingly, a firm should carefully consider how it describes any such memberships in order to avoid the perception that it belongs to a network.

290.24 If a firm sells a component of its practice, the sales agreement sometimes provides that, for a limited period of time, the component may continue to use the name of the firm, or an element of the name, even though it is no longer connected to the firm. In such circumstances, while the two entities may be practicing under a common name, the facts are such that they do not belong to a larger structure aimed at co-operation and are, therefore, not network firms. Those entities should carefully consider how to disclose that they are not network firms when presenting themselves to outside parties.

290.25 Where the larger structure is aimed at co-operation and the entities within the structure share a significant part of professional resources, it is considered to be a network. Professional resources include:

- Common systems that enable firms to exchange information such as client data, billing and time records;
- Partners and staff;
- Technical departments to consult on technical or industry specific issues, transactions or events for assurance engagements;
- Audit methodology or audit manuals; and
- Training courses and facilities.

290.26 The determination of whether the professional resources shared are significant, and therefore the firms are network firms, should be made based on the relevant facts and circumstances. Where the shared resources are limited to common audit methodology or audit manuals, with no exchange of personnel or client or market information, it is unlikely that the shared resources would be considered to be significant. The same applies to a common training endeavor. Where, however, the shared resources involve the exchange of people or information, such as where staff are drawn from a shared pool, or a common technical department is created within the larger structure to provide participating firms with technical advice that the firms are required to follow, a reasonable and informed third party is more likely to conclude that the shared resources are significant.

Effective Date:

For reports dated on or after 31 December 2008.

Definitions

In this Code of Ethics for Professional Accountants the following expressions have the following meanings assigned to them:

- Firm
- (a) A sole practitioner, partnership or corporation of professional accountants;
 - (b) An entity that controls such parties through ownership, management or other means; and
 - (c) An entity controlled by such parties through ownership, management or other means.

Network firm ~~An entity under common control, ownership or management with the firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm nationally or internationally. A firm or entity that belongs to a network.~~

Network¹ A larger structure:

- (a) That is aimed at co-operation, and
- (b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources.

¹ This definition is to be read in the context of the guidance provided in paragraphs 290.14-26