

IN THE MATTER OF

A Complaint made under Section 34(1)(a) and 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

The Respondent

RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants

Members:

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against the Respondent as the Respondent, a certified public accountant. Section 34(1)(a)(vi) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 31 March 2014 (the “**Complaint**”) from the Registrar to the Council of the Institute for consideration of referring the Complaint to the Disciplinary Panels, are as follows:

BACKGROUND

- (1) On 2 August 2013, the Institute received a complaint enclosing an unsolicited email (the "**Email**") with a leaflet of "Company A" in an attachment ("**Leaflet**") which stated:

"會計、核數、報稅...服務...
只收取貴公司去年所付費用的 7 折...
• 年結核數及法團審計...
由資深執業會計師處理公司及個人稅務申報和策劃..."

(English Translation:

Services of...Accounting, Auditing, Filing of Tax Return...

A discount of 30% of the fees paid by your company last year will be offered...

• Year end audit and corporation audit...

Company and individual tax filing and planning will be handled by fellow CPA (Practising...)" (Underline added)

- (2) The Email also stated:

"如溫馨提示對貴司引起不便,本公司謹此致歉
此電郵發送,
50,000 個 只需 HK\$2,000
100,000 個只需 HK\$3,700
查詢熱線: 2770 8712
www.advshop.com.hk ...

(English Translation:

As a gentle reminder, our company apologizes for any inconvenience that may cause to you

Sending by email,

HK\$2,000 for 50,000 emails

HK\$3,700 for 100,000 emails

For Enquiry: 2770 8712

www.advshop.com.hk...) (Underline added)

- (3) The Email was sent out on an unsolicited basis by an advertising agency, advshop.
- (4) Company A is not a member practice registered with the Institute. There is also no record of Company A from the Inland Revenue Department Business Registration Office and the Companies Registry.
- (5) The mobile number, business telephone number and the email address of the Company A shown in the Leaflet were identical to those of the Respondent.
- (6) The Institute sent a letter of enquiry to the Respondent on 20 August 2013 requesting for his representations on the matter and the Respondent replied on 2 September 2013 ("**1st Reply**").

- (7) On 19 September 2013, the Institute sent further letter to the Respondent and the Respondent replied on 26 September 2013 ("**2nd Reply**").

STATUTORY PROVISIONS

- (8) Section 34(1)(a)(vi) of the Professional Accountants Ordinance (Cap 50) provides that a disciplinary complaint may be made against any certified public accountant for having failed or neglected to observe, maintain or otherwise apply a professional standard.

PROFESSIONAL STANDARDS

- (9) Section 150 "Professional Behavior" of the Code of Ethics for Professional Accountants ("**Code**") states:

"150.1 The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. The includes 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" (Underline added)

- (10) Section 450 of the Code "Practice Promotion" provides:

"450.22 Except as permitted by paragraph 450.23 below, members should not mail, deliver or send directly or indirectly (whether by mail, fax, electronic mail or other means) material promoting their services.

450.23 The general exceptions to the above prohibition on direct mailing are:

- (a) direct mailing of material to clients, close associates and other practising members or upon receipt of an unsolicited request from the recipient;*
- (b) direct mailing of material in relation to seminars, provided that it is strictly relevant to the seminar in question and should not be capable of being construed as an advertisement for the general professional services of the member;*
- (c) a member may send a letter introducing his practice and its*

range of services to another professional adviser, such as a solicitor or banker, provided that it is made clear that this is not done with the aim of procuring the professional adviser itself as a client."

The Complaints

The First Complaint

- (11) Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard namely paragraph 150 of the Code by allowing Company A, an unregistered firm, to hold itself out as providing audit services.

The Second Complaint

- (12) Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard namely paragraph 150 of the Code in that he failed to register Company A in accordance with section 5 of the Business Registration Ordinance (cap 310) ("**BRO**").

The Third Complaint

- (13) Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard namely section 450 "Practice Promotion" of the Code by permitting the unsolicited direct mailing of promotion materials in respect of the professional and other services Company A would provide.

FACT AND CIRCUMSTANCES IN SUPPORT OF THE FIRST AND SECOND COMPLAINTS

Offence under s.42(1)(ha) PAO

- (14) The Leaflet suggested that Company A could provide audit services. However, Company A is not a corporate practice and the Respondent is not a person holding a practising certificate.
- (15) Only firms of CPA (Practising), corporate practices, or certified public accountants (practising) are qualified to provide audit services. Company A holds itself out as providing audit services, which could amount to a breach of section 42(1)(ha) of the PAO, a criminal offence.

Company A was/is not registered under BRO

(16) Section 5 of the BRO provides that:

"(1) Every person carrying on any business not registered under the provisions of the Business Regulation Ordinance 1952 (14 of 1952), or commencing to carry on any business, or carrying on any business to which this Ordinance is made to apply shall make application to the Commissioner in the manner prescribed for the registration of that business....."

"(2) A business registration application shall be made within 1 month of the coming into operation of this Ordinance or of the commencement of such business or of the date on which this Ordinance is made to apply to a business, as the case may be, whichever is the later. Provided that the Commissioner may extend such period if he sees fit."

(17) Section 15 of the BRO provides that:

"Any person who:

...(c) fails to make any application required under section 5 or 6;....."

shall be guilty of an offence, and shall be liable to a fine at level 2 and to imprisonment for 1 year."

(18) Company A was not registered under BRO. However, in the 1st Reply, the Respondent stated that Company A had commenced business for several months since 16 April 2013.

(19) The Respondent, by allowing Company A to carry on business without making business registration application in contravention of s.5 BRO risked committing a criminal offence under s.15 BRO.

(20) In the circumstances, the Respondent failed to observe 150.1 of the Code namely to comply with relevant laws and regulations and avoid any action that a professional accountant knows or should know may discredit the profession and section 34(1)(a)(vi) of the PAO applies.

FACTS AND CIRCUMSTANCES IN SUPPORT OF THE THIRD COMPLAINT

The unsolicited distribution of promotional emails

(21) In the 1st Reply, the Respondent also admitted that 10,000 promotional emails were sent out since 1 August 2013 without recipients' consent. The Respondent approved the wordings of the Leaflet and allowed the Leaflet to be sent out by way of unsolicited email, to advertise, publish or represent the professional services and other service that Company A would provide.

(22) The promotional emails enclosing the Leaflet were distributed by way of unsolicited email which is a direct contravention of section 450.22 of the Code.

3. The Respondent admitted the Complaint against him. He did not dispute the facts as set out in the Complaint. On 15 May 2014, the parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
4. On 1 September 2014, the Disciplinary Committee informed the parties that they should make written submissions to the Disciplinary Committee on sanctions and costs.
5. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaint, the Respondent's personal circumstances, and the conduct of the parties throughout the proceedings.
6. The Disciplinary Committee orders that:-
 - (1) the Respondent be reprimanded under Section 35(1)(b) of the PAO;
 - (2) the Respondent pay a penalty of HK\$5,000 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\$18,765 under Section 35(1)(iii) of the PAO.

Dated the 3rd day of November 2014

IN THE MATTER OF

A Complaint made under Section 34(1)(a) and 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

Members:

ORDER

Upon reading the complaints against the Respondent, a certified public accountant, as set out in a letter from the Complainant dated 31 March 2014, the written submissions of the Complainant dated 15 September 2014 and of the Respondent dated 15 and 17 September 2014, and the relevant documents, the Disciplinary Committee is satisfied by the documentary evidence adduced before it that the following Complaints are proved:

The First Complaint

Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard namely paragraph 150 of the Code by allowing Company A, an unregistered firm, to hold itself out as providing audit services.

The Second Complaint

Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard namely paragraph 150 of the Code in that he failed to register

Company A in accordance with section 5 of the Business Registration Ordinance (cap 310) .

The Third Complaint

Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard namely section 450 "Practice Promotion" of the Code by permitting the unsolicited direct mailing of promotion materials in respect of the professional and other services Company A would provide.

The Disciplinary Committee ORDERS that:-

- (1) the Respondent be reprimanded under Section 35(1)(b) of the PAO;
- (2) the Respondent pay a penalty of HK\$5,000 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\$18,765 under Section 35(1)(iii) of the PAO.

Dated the 3rd day of November 2014