

# How to avoid practice promotion pitfalls

**C**an CPAs be in breach of laws and regulations when promoting their professional services? The answer is “yes.” By learning from others’ mistakes, members may avoid improper promotional activities which would result in regulatory actions against them.

Restrictions on promotion and advertising activities by members of the Institute have been relaxed in recent years. While members receive the benefits of such activities, they should always observe the relevant requirements set out in the *Code of Ethics for Professional Accountants* and should consistently adhere to the Professional Accountants Ordinance.

As early as 1999, the Institute’s Council alerted members that any breach of the ethical standards (now contained in the code of ethics) would be dealt with severely by the Institute.

The following table captures the outcome of cases involving improper promotional activities since 2011:

Year of complaint	Disciplinary order issued	Regulatory actions taken*
2011	3	2
2012	1	5
2013	-	4
2014 (to 31 May)	-	1

*\*Regulatory actions*

- Letter of disapproval – *The Council has empowered the Professional Conduct Committee to adjudicate minor complaints by issuing a formal letter of disapproval to members and their firms. The letter may require corrective actions, if deemed necessary.*
- Resolution by agreement – *This non-negotiable regulatory action represents a just and proper resolution for complaints*

*which, meet pre-determined criteria under the guidelines approved by the Council. The guidelines are available at the Institute’s website at [www.hkicpa.org.hk](http://www.hkicpa.org.hk).*

### Case one

In order to promote his consulting company, a CPA sent out multiple copies of promotional leaflets. The company’s website also stated that audit services could be provided.

At the relevant time, the CPA did not hold a practising certificate. He was disciplined for breach of sections 150 and 450 of the code of ethics.

### Lessons learned

Members should not:

- Mail, deliver or send, directly or indirectly, materials promoting their services without an unsolicited request from the recipients, as set out in section 450.22-23 of the code of ethics;
- Include references to fees for professional and other services in their advertising or promotional materials, as explained in section 450.16 of the code; or
- Allow any unlicensed practice under their control to provide, or hold itself out as providing audit services, as provided in section 42 of the ordinance.

In addition, members should refrain from:

- Comparing their fees and the fees of others in promotional materials (section 450.16 of the code);
- Making cold calls for the purpose of obtaining professional work (section 450.24 of the code); or
- Distributing leaflets, promotional gifts or other items promoting their names or services in public places, except at locations of “sponsored events” (section 450.25 of the code).

### Case two

A service company controlled by two practising members dispatched 9,000 copies of unsolicited promotional leaflets, including fee quotes and offering various professional services, including audit services. The pro-

motional leaflets also carried a cash coupon.

The members explained that the marketing manager of their CPA firm updated the promotional leaflet and they failed to examine the revised leaflet before it was dispatched. Regulatory actions were taken against the two CPAs for their failure to comply with sections 150 and 450 of the code.

### Lessons learned

- Members will be held responsible for the form and content of any promotional material, whether undertaken personally or by another party on behalf of the member or his practice. Any promotional activity relating to a member or his practice will be presumed to have been issued with his approval. Members are not permitted to authorize others to participate in activities from which they are prohibited under section 450.5-6 of the code.
- The inclusion of a cash coupon in the promotional leaflet projects an image inconsistent with that of a member held to high ethical and technical standards under section 450.10 of the code.

In addition, some activities are expressly prohibited under section 450.12 of the code, such as making unjustified claims to be an expert or specialist in a particular field.

### Case three

A CPA firm erroneously provided fee information on their home page. The sole proprietor, a practising CPA, explained that it was a careless mistake. He submitted that the design and maintenance of his firm’s website had been outsourced to third party companies.

The member was disciplined for his repeated breach of section 450 of the code since regulatory actions were taken against him for a similar breach of section 450 of the code.

### Lessons learned

- The home page of a website is considered analogous to a newspaper advertisement and it should not contain

any references to scale charges or fee amounts, according to section 450.17 of the code.

- The member should have had regard for the previous regulatory action against him for improper practice promotion activities.

### Protection of the public, the profession and you

As the statutory licensing body of the accounting profession in Hong Kong, the Institute not only regulates the conduct of CPAs but it also protects the interests of the profession. When members of the general public violate section 42 of the Professional Accountants Ordinance, law enforcement authorities are notified.

The following actions are taken by the Institute's Compliance Department:

- Reporting violations by non-members to the police for investigation;
- Requesting unlicensed practices to remove misleading information from their websites;
- Liaising with the Registrar of Companies to direct companies to change their English and/or Chinese names if they inappropriately include the description "certified public accountant" or characters "會計師";
- Issuing letters to unlicensed practices requesting change of names; and
- Identifying members who might have connections with the unlicensed practices and reporting their improper

conduct to the Institute's Professional Conduct Committee for consideration of appropriate actions.

From 2011 until May 2014, there have been eight successful criminal prosecutions, with fines imposed ranging from HK\$2,500 to HK\$10,000.

The Institute encourages its members and members of the public to forward evidence of suspected section 42 violations. The Institute also encourages informants to be cooperative towards police investigations so that evidence can be gathered against unlicensed persons or practices swiftly. Prosecution must be concluded within six months from the improper acts.

### Understanding section 42 of the PAO

Only practising CPAs and licensed CPA practices may render statutory audit services in Hong Kong. Deviations from this requirement may result in violations of section 42. Where an offence under section 42 has been committed and it is proven that the act or omission was that of a director or other officer concerned in the management of the company, the director or other officer shall be guilty of the like offence.

The penalties imposed under section 42 of the PAO upon conviction of an offence can be a fine of up to HK\$25,000 and imprisonment for 12 months for an individual and a fine of up to HK\$25,000 for a company.

### Reminders to practising CPAs

- Never sign off audits referred by unlicensed persons or practices without performing sufficient audit work.
- Never perform audits without meeting and understanding your clients.
- Never pay a commission or contingency fee, for a client referral, unless it is from your employee or another CPA, as noted in section 450.13 of the Code of Ethics.

### HKICPA resources

#### The Code of Ethics (Volume I of Members' Handbook)

- Section 450 Practice Promotion
- Section 250 Marketing Professional Services
- Section 150 Professional Behaviour

#### The Professional Accountants Ordinance (Volume I of Members' Handbook)

- Section 42 Offences and Penalties

#### Past disciplinary cases

- Extracts of reasons and orders issued by Disciplinary Committees are available at the Institutes website at: [www.hkicpa.org.hk](http://www.hkicpa.org.hk).

Members who wish to conduct practice promotion activities are reminded that they should familiarize themselves with the code and the ordinance. Members still in doubt about their position, in regard to a particular practice promotion activity, after having referred to the code and the ordinance, should consult the Institute or seek legal advice.

### Cases since 2011 concerning unlicensed persons or practices

Year of complaint	For referral to police	Corrective action taken by unlicensed practice or person	Registrar of Companies to direct change name
2011	13	55	1
2012	6	28	-
2013	7	16	6
2014 (to 31 May)	6	2	-



This article is contributed by **Carla Tu**, Associate Director with the Institute's Compliance Department.