



Dear Assignment / News / Business Section Editor

Hong Kong Institute of Certified Public Accountants takes disciplinary action against a certified public accountant

(HONG KONG, 17 November 2014) — A Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants reprimanded Chiu Ka Wing (membership number F05688) on 3 November 2014 for his failure or neglect to observe, maintain or otherwise apply professional standards issued by the Institute, and ordered him to pay a penalty of HK\$5,000 to the Institute. In addition, Chiu was ordered to pay costs of the disciplinary proceedings of HK\$18,765.

Chiu is a non-practising member of the Institute. The Institute received information concerning unsolicited emails which were sent by a company not registered as a CPA firm with the Institute nor the Inland Revenue Department Business Registration Office. The unsolicited promotional email contained a leaflet stating that the company held itself out as providing audit services. The contact details of the company were identical to those of Chiu. After considering the information available, the Institute lodged a complaint against Chiu under section 34(1)(a)(vi) of the Professional Accountants Ordinance.

Chiu admitted the complaint against him. The Disciplinary Committee found that Chiu failed or neglected to observe, maintain or otherwise apply section 150 "*Professional Behavior*" and section 450 "*Practice Promotion*" of the Code of Ethics for Professional Accountants by allowing an unregistered company sending out unsolicited promotional email and holding itself out as providing audit services.

Having taken into account the circumstances of the case, the Disciplinary Committee made the above order against Chiu under section 35(1) of the ordinance.

Under the ordinance, if Chiu is aggrieved by the order, he may give notice of an appeal to the Court of Appeal within 30 days after he is served the order.

The order and findings of the Disciplinary Committee are available at the Institute's website under the "Compliance" section at www.hkicpa.org.hk.

Disciplinary proceedings of the Institute are conducted in accordance with Part V of the ordinance by a five-member Disciplinary Committee. The majority (three members) of each committee, including the chairman, are non-accountants chosen from a panel appointed by the Chief Executive of the HKSAR, and the other two members are CPAs.

Disciplinary hearings are held in public unless the Disciplinary Committee directs otherwise in the interests of justice. A hearing schedule is available at the Institute's website. A CPA who feels aggrieved by an order made by a Disciplinary Committee may appeal to the Court of Appeal, which may confirm, vary or reverse the order.

The Disciplinary Committees have the power to sanction members, member practices and registered students. Sanctions include temporary or permanent removal from membership or cancellation of a practising certificate, a reprimand, a penalty of up to \$500,000, and payment of costs and expenses of the proceedings.

– End –

About the Hong Kong Institute of Certified Public Accountants

The Hong Kong Institute of CPAs is the only body authorized by law to register and grant practicing certificates to certified public accountants in Hong Kong. The Institute has more than 37,000 members and more than 17,000 registered students. Members of the Institute are entitled to the description *certified public accountant* and to the designation CPA.

The Hong Kong Institute of CPAs evolved from the Hong Kong Society of Accountants, which was established on 1 January 1973.

The Institute operates under the Professional Accountants Ordinance and works in the public interest. The Institute has wide-ranging responsibilities, including assuring the quality of entry into the profession through its postgraduate qualification programme and promulgating financial reporting, auditing and ethical standards in Hong Kong. The Institute has responsibility for regulating and promoting efficient accounting practices in Hong Kong to safeguard its leadership as an international financial centre.

The Hong Kong Institute of CPAs is a member of the Global Accounting Alliance –an alliance of the world’s leading professional accountancy bodies, which was formed in 2005. The GAA promotes quality services, collaborates on important international issues and works with national regulators, governments and stakeholders.

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致：編採主任／新聞／財經版編輯

香港會計師公會對一名會計師作出紀律處分

(香港，二零一四年十一月十七日) — 香港會計師公會轄下一紀律委員會於二零一四年十一月三日就趙家榮先生(會員編號：F05688)沒有或忽略遵守、維持或以其他方式應用公會頒布的專業準則，對趙先生作出譴責，並命令他須繳付罰款五千港元予公會。此外，趙先生須支付紀律程序的費用共一萬八千七百六十五港元。

趙先生為公會的**非執業會員**。公會早前接獲關於一間公司發出未獲邀約的宣傳電子郵件的資料，當中附上的一張傳單顯示該公司可提供核數服務，但該公司並非公會的註冊會計師事務所會員，亦未有在稅務局的商業登記署登記，而趙先生的聯絡資料跟該公司是相同的。公會經考慮所得資料，根據《專業會計師條例》第34(1)(a)(vi)條對趙先生作出投訴。

趙先生承認投訴中的指控屬實。紀律委員會裁定趙先生沒有或忽略遵守、維持或以其他方式應用公會的專業準則 - **Code of Ethics for Professional Accountants**中section 150的"*Professional Behavior*"及section 450的"*Practice Promotion*"，因為趙先生允許一間未經註冊的公司發出未獲邀約的宣傳電子郵件，而當中包括顯示該公司可提供核數服務的資料。

經考慮有關情況後，紀律委員會根據《專業會計師條例》第35(1)條向趙先生作出上述的命令。

根據《專業會計師條例》，如趙先生不服紀律委員會對他作出的命令，可於命令文本送達後**30**天內向上訴法庭提出上訴。

紀律委員會的書面判決可於公會網頁內**Compliance**部份查閱，網頁為 <http://www.hkicpa.org.hk>。

公會的紀律程序是根據《專業會計師條例》第V部份，由五位成員組成的紀律委員會執行。每個紀律委員會的大多數成員，即包括主席在內的三名成員，是由香港特別行政區行政長官從業外人士組成的紀律小組中選派委任，另外兩名成員由專業會計師出任。

除非負責的紀律委員會因公平理由認為不恰當，否則紀律聆訊一般以公開形式進行。紀律聆訊的時間表可於公會網頁查閱。如當事人不服紀律委員會的裁判，可向上訴法庭提出上訴，上訴法庭可確定、修改或推翻紀律委員會的裁判。

紀律委員會有權向公會會員、執業會計師事務所會員及註冊學生作出處分。紀律處分範圍包括永久或有限期地將違規者從會計師註冊紀錄冊中除名或吊銷其執業證書、對其作出譴責、下令罰款不多於五十萬港元，以及支付紀律程序的費用。

— 完 —

關於香港會計師公會

香港會計師公會是香港唯一獲法例授權負責專業會計師註冊兼頒授執業證書的組織，會員人數超過三萬七千，註冊學生人數逾一萬七千。公會會員可採用「會計師」稱銜（英文為 **certified public accountant**，簡稱 **CPA**）。

公會(**Hong Kong Institute of Certified Public Accountants**)於一九七三年一月一日成立，當時的英文名稱為 **Hong Kong Society of Accountants**。

公會根據《專業會計師條例》履行職責，以公眾利益為依歸。其職能廣泛，包括開辦專業資格課程(**Qualification Programme**)以確保會計師的入職質素，以及頒布香港的財務報告、審計及專業操守準則。此外，公會亦負責在香港監管和推動優良而有效的會計實務，以鞏固香港作為國際金融中心的領導地位。

香港會計師公會是全球會計聯盟（**Global Accounting Alliance, GAA**）的成員之一。全球會計聯盟於二零零五年成立，聯合了全球頂尖的專業會計團體，推動優質服務，並積極與各地監管機構、政府及關連人士就國際重要議題共同合作。

香港會計師公會聯絡資料

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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

Mr. CHIU Ka Wing
Membership No. F05688 RESPONDENT

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

Members: Ms. Chow Man Ling (Chairman)
Mr. Ching Tang Foon Stephen
Mr. Law Japhet Sebastian
Mr. Lau Chi Pong Howard
Mr. Chu Yau Wing Jason

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against Mr. CHIU Ka Wing 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 "Leung, Chiu & Partners Ltd" ("**Leung & Chiu**") 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) Leung & Chiu is not a member practice registered with the Institute. There is also no record of Leung & Chiu 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 Leung & Chiu 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 Leung & Chiu, 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 Leung & Chiu 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 Leung & Chiu 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 Leung & Chiu could provide audit services. However, Leung & Chiu 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. Leung & Chiu holds itself out as providing audit services, which could amount to a breach of section 42(1)(ha) of the PAO, a criminal offence.

Leung & Chiu 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) Leung & Chiu was not registered under BRO. However, in the 1st Reply, the Respondent stated that Leung & Chiu had commenced business for several months since 16 April 2013.

(19) The Respondent, by allowing Leung & Chiu 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 Leung & Chiu 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

Mr. CHIU Ka Wing RESPONDENT
Membership No. F05688

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

Members: Ms. Chow Man Ling Irene (Chairman)
Mr. Ching Tang Foon Stephen
Mr. Law Japhet Sebastian
Mr. Lau Chi Pong Howard
Mr. Chu Yau Wing Jason

ORDER

Upon reading the complaints against MR. CHIU KA WING, 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 Leung & Chiu, 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 Leung & Chiu 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 Leung, Chiu & Partners Limited 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