



Dear Assignment / News / Business Section Editor

Hong Kong Institute of Certified Public Accountants takes disciplinary action against a certified public accountant (practising) and a corporate practice

(HONG KONG, 7 October 2014) — A Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants reprimanded Choi Man On (membership number F05588) and BDO Limited (corporate practice number M200) (collectively "respondents") on 26 September 2014 for their failure or neglect to observe, maintain or otherwise apply a professional standard issued by the Institute, and ordered them to pay a penalty of HK\$30,000 to the Institute. In addition, the respondents were ordered to pay costs of the disciplinary proceedings of HK\$25,080.

Choi is a practising director of BDO Limited which issued an unqualified opinion on the unaudited pro forma financial information of a group of companies ("**Unaudited PFI**") contained in a circular issued by **a listed company in Hong Kong** for the purpose of a substantial acquisition.

The Institute received information from The Stock Exchange of Hong Kong Limited about the respondents' failure to recognise a deferred tax liability arising from an acquisition of a group of companies in the Unaudited PFI. After considering the information available, the Institute lodged a complaint against the respondents under section 34(1)(a)(vi) of the Professional Accountants Ordinance.

The respondents admitted the complaint against them. The Disciplinary Committee found that the respondents failed or neglected to observe, maintain or otherwise apply Hong Kong Standard on Investment Circular Reporting Engagements 300 – "*Accountants' Reports on Pro Forma Financial Information in Investment Circulars*" in expressing an unqualified opinion in their report on the Unaudited PFI as a result of having failed to identify that the company had not applied its deferred taxation accounting policy consistently in the pro forma adjustments in the Unaudited PFI.

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

Under the ordinance, if the respondents are aggrieved by the order, they may give notice of an appeal to the Court of Appeal within 30 days after they are 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 practising certificates to certified public accountants in Hong Kong. The Institute has more than 37,000 members and more than 18,000 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執業會計師及一執業法團作出紀律處分

(香港，二零一四年十月七日) — 香港會計師公會轄下一紀律委員會於二零一四年九月二十六日就蔡文安先生(會員編號：F05588)及香港立信德豪會計師事務所有限公司(執業法團編號: M200) (「答辯人」) 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，對他們作出譴責，並命令他們須繳付罰款三萬港元予公會。此外，答辯人須支付紀律程序的費用共二萬五千零八十港元。

蔡先生是香港立信德豪會計師事務所有限公司的執業董事之一。他代表該法團為一間香港上市公司因進行一項重大收購而發出的通函內的一份集團公司之未經審核備考財務資料作出無保留意見的報告。

公會收到香港聯合交易所有限公司的資料，指答辯人沒有於該未經審核備考財務資料內確認因收購一集團公司而產生的遞延稅項負債。公會經考慮所得資料，根據《專業會計師條例》第34(1)(a)(vi)條對答辯人作出投訴。

答辯人承認投訴中的指控屬實。紀律委員會裁定答辯人沒有或忽略遵守、維持或以其他方式應用公會的專業準則Hong Kong Standard on Investment Circular Reporting Engagement 300 - "*Accountants' Reports on Pro Forma Financial Information in Investment Circulars*"，因為答辯人未能發現在該未經審核備考財務資料內的備考調整中，該公司沒有採用一致的遞延稅項會計政策，並且發出無保留意見的報告。

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)條向答辯人作出上述的命令。

根據《專業會計師條例》，如答辯人不服紀律委員會對他們作出的命令，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，註冊學生人數逾一萬八千。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. CHOI Man On FIRST
Membership No. F05588 RESPONDENT

BDO Limited SECOND
(Corporate Practice No. M200) RESPONDENT

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

Members: Ms. Chan Ka Wai Betty (Chairman)
Mr. Ching Tak Keung Wilbert
Ms. Lam Kit Chun Joanna
Mr. Paul F. Winkelmann
Mr. Roger Best

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. CHOI Man On, a certified public accountant (practising) and BDO Limited, a corporate practice as the Respondents. Section 34(1)(a)(vi) of the PAO applied to the Respondents.
2. The particulars of the Amended Complaint agreed by the parties on 23 April 2014 (the “**Amended Complaint**”), are as follows:-

Background

- (1) Birmingham International Holdings Limited (the “**Company**”) is incorporated in the Cayman Islands and its shares are listed on the Main Board (Stock Code 2309) of the Stock Exchange of Hong Kong (the “**Stock Exchange**”).
- (2) The Company held a 29.9% equity interest in Birmingham City Plc (“**BCFC**”), a company domiciled in the United Kingdom and whose shares were listed on the Alternative Investment Market of the London Stock Exchange.
- (3) On 11 September 2009, the Company issued a circular dated 14 September 2009 (the “**Circular**”) to report its conditional offer to acquire a further 64.1% issued capital of BCFC (the “**Acquisition**”). The Acquisition was completed on 12 October 2009.
- (4) On 26 February 2010, the Company published a supplemental circular (the “**Supplemental Circular**”) to provide information required pursuant to Rule 14.69 of the Listing Rules which had not been included in the Circular.
- (5) The Supplemental Circular contained a report on the unaudited pro forma financial information (“**UPFI**”) issued by BDO Limited (“**BDO**”) for the enlarged group of the Company and its subsidiaries (the “**Group**”) and the acquired company, BCFC, and its subsidiaries (“**BCFC Group**”). Choi Man On (“**Choi**”) a practising director of BDO was responsible for the engagement.
- (6) The UPFI was prepared for illustrative purposes only. It was stated in the report on the UPFI that due to its hypothetical nature, the UPFI did not provide any assurance or indication that any event would take place in the future and might not be indicative of the financial position, financial results and cash flows of the enlarged group had the Acquisition actually occurred .
- (7) It was stated in the report on the UPFI that BDO's work did not involve independent examination of any of the underlying financial information but consisted primarily of comparing the unadjusted financial information with source documents, considering the evidence supporting the adjustments and discussing the UPFI with the directors of the Company.
- (8) Based on the above work, BDO stated in the report on the UPFI that:

“In our opinion:

- a. the Unaudited Pro Forma Financial Information has been properly compiled by the directors of the Company on the basis stated;*
- b. such basis is consistent with the accounting policies of the Group; and*

c. the adjustments are appropriate for the purposes of the Unaudited Pro Forma Financial Information as disclosed pursuant to paragraph 4.29(1) of the Listing Rules. "

- (9) The Company's audited financial statements for the 15 months ended 30 June 2010 (the "2010 Audited Financial Statements") (the auditors' report was signed off on 26 October 2010), recognised a deferred tax liability in the amount of HK\$238.7 million.
- (10) On 22 June 2012, the Stock Exchange referred a complaint to the Institute pursuant to section 23(8) of the Securities and Futures Ordinance (Cap 571). The Stock Exchange was concerned that no deferred tax liability arising from the Acquisition had been recognised in the UPFI.
- (11) The Stock Exchange considered that the Respondents might not have observed Hong Kong Standard on Investment Circular Reporting Engagements 300 "Accountants Reports on Pro Forma Financial Information in Investment Circulars" with reference to Accounting Guideline 7, given the lack of recognition of deferred tax liability arising from the Acquisition in the UPFI and the Respondents' failure to raise any concern in this regard in the report on the UPFI.

The Relevant Professional Standards

- (12) Hong Kong Standard on Investment Circular Reporting Engagements 300 "Accountants' Reports on Pro Forma Financial Information in Investment Circulars" ("HKSIR 300") states:

"...

4. Reporting accountants plan and perform their work so as to obtain sufficient evidence to provide reasonable assurance that:

...

d. the pro forma financial information has been properly compiled by the directors of the issuer on the basis stated;

e. such basis is consistent with the accounting policies of the issuer,

f. the adjustments are appropriate for the purposes of the pro forma financial information as disclosed pursuant to Listing Rule 4.29(1) /GEM Rule 7.31(1).

...

6. Listing Rule 4.29(1)/GEM Rule 7.31(1) requires that the pro forma financial information presented must not be misleading. In the event that the reporting accountants have reasons to believe that the pro forma financial information is misleading... they are unable to give the opinion as required in paragraph 58 below until they have resolved the matter. AG 7 provides guidance on judging whether pro forma financial information is misleading.

... "

- (13) Accounting Guideline 7 “Preparation of Pro Forma Financial Information for Inclusion in Investment Circulars” (“AG 7”) states:

“ ...
8. Listing Rule 4.29(1)/GEM Rule 7.31(1) requires that the pro forma financial information must provide investors with information about the impact of the transaction ... The pro forma financial information presented must not be misleading, must assist investors in analysing future prospects of the issuer and must include all appropriate adjustments permitted ...
...”

The Complaint

- (14) Section 34(1)(a)(vi) of the PAO applies to the Respondents in that they failed to observe, maintain or apply HKSIR 300 in expressing an unqualified opinion in their report on the UPFI as a result of having failed to identify that the Company had not applied its deferred taxation accounting policy consistently in the pro forma adjustments in the UPFI.

Facts and Circumstances in support of the Complaint

- (15) BDO expressed an unqualified opinion on the UPFI as set out in Appendix III "Report on Unaudited Pro Forma Financial Information on the Enlarged Group" of the Supplemental Circular in the terms reproduced in paragraph 8 above.
- (16) In section (A) of the UPFI, it is stated that the unaudited pro forma consolidated balance sheet, income statement and cash flow statement of the enlarged group were prepared based on the audited consolidated balance sheet, income statement and cash flow statement of the Group as at 31 March 2009 as published in its annual report and that of BCFC Group as at 31 August 2009 as set out in Appendix II "Accountants' Report on BCFC" of the Supplemental Circular', after making pro forma adjustments as set out in notes of the UPFI.
- (17) It is clear that the accounting policy of both the Group and BCFC Group would recognise deferred tax:
- a. Note (3)(q)(ii) of Appendix III "Financial Information on the Group" of the Circular sets out that "... *Deferred tax liabilities are generally recognized for all taxable temporary differences ... Such assets and liabilities are not recognized if the temporary difference arises from goodwill or from the initial recognition (other than in a business combination) of other assets and liabilities in a transaction that affects neither the taxable profit nor the accounting profit... Deferred tax liabilities are recognized for taxable temporary differences arising on investments in subsidiaries...*";

- (18) Note 4(f) of Appendix II "Accountants' Report on BCFC" of the Supplemental Circular sets out that "...Deferred tax is provided on temporary differences between carrying amounts of assets and liabilities for financial reporting purposes..."
- (19) Paragraph 15 of Hong Kong Accounting Standard 12 "Income Taxes" ("**HKAS 12**") requires that "A deferred tax liability shall be recognised for all taxable temporary differences ..." Paragraph 19 of HKAS 12 also provides that "... For example, when the carrying amount of an asset is increased to a fair value but the tax base of the asset remains at cost to the previous owner, a taxable temporary difference arises which results in a deferred tax liability. The resulting deferred tax liability affects goodwill ..."
- (20) However deferred tax liabilities were not included in the UPFI, notwithstanding there were pro forma adjustments that concern fair value adjustments to the assets of BCFC acquired (intangible assets and property, plant and equipment), cash consideration paid and the resulting goodwill. It is noted that deferred tax liabilities in the amount of HK\$238.7 million (arising from the fair value adjustments of the same nature) were recognized in the 2010 Audited Financial Statements.
- (21) In preparing their report on the UPFI, the Respondents were required to observe paragraph 4 of HKSIR 300 and obtain sufficient evidence to provide them with reasonable assurance that inter alia the UPFI had been properly compiled by the directors of the Company on the basis stated, and that such basis was consistent with the accounting policies of the Company.
- (22) In their written response to inquiries from the Institute dated 15 August 2012, the Respondents acknowledged that they had overlooked the issue of whether provision for deferred tax liability arising from the Acquisition should have been made by the directors of the Company in their preparation of the UPFI
- (23) By failing to recognise deferred tax in the UPFI of HK\$238.7 million, goodwill arising from the Acquisition had been significantly understated in the UPFI by about HK\$224.4 million (HK\$238.7 million based upon a 94% shareholding), which was significant to the total assets and net assets of the enlarged group of HK\$952.5 million and HK\$189.4 million, in the UPFI respectively:

	PFI (A)	2010 Financial Statements (B)	Variance (C) = (B)- (A)
	HK\$'000	HK\$'000	HK\$'000
Consideration (V)	668,725	938,391	
Cash	668,725	641,893	
Fair value of equity interest previously held	Nil	296,498	
Fair value of net assets acquired (W)	879,232	527,898	
Carrying value of BCFC Group's net assets	(95,193)	(85,869)	
Fair value adjustments:			
- Intangible and fixed assets	974,425	852,454	
- <i>Deferred taxation</i>	<i>Nil</i>	<i>(238,687)</i>	<i>(238,687)</i>
Fair value shared by the Company (X) = (W)*(Y)	563,588	496,259	
- @64.1% (Y) controlling interest acquired in the Acquisition	563,588		
- @94% (Y) accumulative controlling interest acquired up to the Acquisition		496,259	
Goodwill (Z) = (V) – (X)	105,137	442,132	336,995
Total assets (Sum of non-current and current assets)	952,549	1,243,235	
Net assets	189,370	339,605	

- (24) In the circumstances, the Respondents failed to observe, maintain or apply HKSIR 300 having failed to identify that the Company had not applied its deferred taxation accounting policy consistently in the pro forma adjustments in the UPFI, which failure led to a significant understatement of goodwill such that it rendered the UPFI misleading.

3. On 20 May 2014, the parties made a joint application to the Disciplinary Committee to amend the complaint. They acknowledge that there is no change in the substance of the Amended Complaint as the fact remained similar and the difference is that it is more clearly set out in the facts and circumstances that the relevant work performed by the Respondents was not an audit of financial statements. The parties also agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with. The Respondents admitted the Amended Complaint against them.
4. On 18 June 2014, the Disciplinary Committee requested the parties that they should make written submissions on sanctions and costs. The Committee directed on 7 August 2014 that it accepted the parties' joint application to:
 - (a) amend the complaint; and
 - (b) dispense with the steps set out in Rule 17 to 30 in light of the Respondents' admission of the Amended Complaint.
5. The Committee noted the following submissions from the Complainant and the Respondents:
 - (1) The need to provide for deferred taxation was identified and rectified by the Respondents in the following audit of the Company's financial statements
 - (2) The Respondents have taken steps to avoid future occurrence of the same or similar inadvertence.
 - (3) The Respondents have a clear disciplinary record.
 - (4) There is no evidence of any member of the public suffering from any loss or damage as a result of the understatement of the goodwill of the Company in the UPFI.
6. In considering the proper order to be made in this case, the Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaint, the Respondents' circumstances, and the conduct of the parties throughout the proceedings.

7. The Disciplinary Committee ORDERS that:-

- (1) the First and Second Respondent be reprimanded under Section 35(1)(b) of the PAO;
- (2) the First and Second Respondent pay a penalty of HK\$30,000 under Section 35(1)(c) of the PAO;
- (3) the First and Second Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$25,080 under Section 35(1)(iii) of the PAO.

Dated the 26th day of September 2014

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. CHOI Man On FIRST
Membership No. F05588 RESPONDENT

BDO Limited SECOND
(Corporate Practice No. M200) RESPONDENT

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

Members: Ms. Chan Ka Wai Betty (Chairman)
Mr. Ching Tak Keung Wilbert
Ms. Lam Kit Chun Joanna
Mr. Paul F. Winkelmann
Mr. Roger Best

ORDER

Upon reading the complaint against MR. CHOI MAN ON, a certified public accountant (practising), and BDO Limited, a Corporate Practice, as set out in a the Amended Complaint 23 April 2014 agreed by the parties, the written submissions of the Complainant and Respondents dated 11 and 12 August 2014 respectively and the relevant documents, the Disciplinary Committee is satisfied by the documentary evidence adduced before it that the following Complaint is proved:

Section 34(1)(a)(vi) of the PAO applies to the Respondents in that they failed to observe, maintain or apply HKSIR 300 in expressing an unqualified opinion in their report on the unaudited pro forma financial information as a result of having failed to identify that Birmingham International Holdings Limited had not applied its deferred taxation accounting policy consistently in the pro forma adjustments in the unaudited pro forma financial information.

The Disciplinary Committee ORDERS that:-

1. the First and Second Respondent be reprimanded under Section 35(1)(b) of the PAO;
2. the First and Second Respondent pay a penalty of HK\$30,000 under Section 35(1)(c) of the PAO;
3. the First and Second Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$25,080 under Section 35(1)(iii) of the PAO.

Dated the 26th day of September 2014