

IN THE MATTER OF

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

Members:

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Institute”) as Complainant against the Respondent, who is a certified public accountant. Section 34(1)(a)(vi) of the PAO applied to the Respondent.
2. Section 34(1)(a)(vi) of the PAO provides that a complaint against a certified public accountant who failed or neglected to observe, maintain or otherwise apply a professional standard shall be made to the Registrar of the Institute who shall submit the complaint to the Council of the Institute which may refer the complaint to the Disciplinary Panels.
3. The particulars of the Complaint as set out in a letter dated 2 May 2013 (“the Complaint”) from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint, for referral to the Disciplinary Panels, are as follows:-
 - (1) On 3 August 2012, the Institute received a complaint from the Office of the Commissioner of Insurance (“OCI”) against [the Firm] (“the Firm”) regarding an unqualified auditors’ compliance report (“Report”) the

Firm had issued to [Company A] (“[Company A]”) for the period from 1 April 2010 to 31 March 2011.

- (2) [Company A] is a member of the Professional Insurance Brokers Association (“PIBA”), one of two approved bodies of insurance brokers in Hong Kong.
- (3) The OCI was concerned that the Report was unqualified when it appeared that [Company A] had failed to maintain adequate professional insurance indemnity cover (“PII”) in accordance with the Minimum Requirements for Insurance Brokers specified by the Insurance Authority (“Minimum Requirements”), as required under section 70(2) of the Insurance Companies Ordinance (Cap. 40) (“ICO”). In addition, the Firm had stated in the Report that they had carried out their audit procedures pursuant to section 73(1) of the ICO rather than the Membership Regulations of the PIBA.
- (4) As the sole proprietor of the Firm, the Respondent was at all material times a member of the Institute holding a practising certificate and had signed the Report.
- (5) Paragraph 100.5 of the Code of Ethics for Professional Accountants (Effective from 1 January 2011) (“the Code”) states:

“100.5 A professional accountant shall comply with the following fundamental principles:

...

(c) Professional Competence and Due Care – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.”

- (6) Paragraph 130 of the Code states:

“130.1 The principle of professional competence and due care imposes the following obligations on all professional accountants:

(a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and

(b) To act diligently in accordance with applicable technical and professional standards when providing professional services.

...

130.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.”

- (7) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard namely paragraph 100.5 “*Introduction and Fundamental Principles*” of the Code as elaborated in the aforesaid paragraphs 130.1 and 130.4 of the Code in respect of the Report issued to [Company A] regarding its compliance with the Minimum Requirements for the year ended 31 March 2011.
- (8) Practice Note 810.1 (“PN810.1”) was issued by the Institute to provide guidance to auditors preparing a report on an insurance broker’s compliance with the Minimum Requirements.
- (9) When reporting on an insurance broker’s compliance with its PII Minimum Requirements, paragraph 14 of PN810.1 (reflecting section C of Part III of the Minimum Requirements) states:

Professional Indemnity Insurance

An insurance broker is required to maintain a professional indemnity insurance policy with a minimum limit of indemnity for any one claim and in any one insurance period of 12 months. The minimum limit of indemnity shall be-

- (i) *a sum equal to –*
 - *two times the aggregate insurance brokerage income relating to 12 months immediately preceding the date of commencement of the professional indemnity insurance cover (applicable to insurance broker who has been in business for more than one year);*
 - *two times the projected insurance brokerage income for 12 months for the period of the professional indemnity insurance cover (applicable to insurance broker who has been in business for less than one year); or*
- (ii) *a sum of HK\$3,000,000*

whichever sum shall be greater, up to a maximum of HK\$75,000,000. Cover in excess of this prescribed amount may, of course, be arranged to meet the requirements of individual broker. If as a result of a claim(s), the indemnity available shall fall below the amount determined in (i) above, the broker shall effect a reinstatement of cover up to not less than such minimum determined amount. Where the limit of indemnity has

been determined in accordance with (ii) above, the policy shall include provision for one automatic reinstatement to a limit of indemnity of not less than HK\$3,000,000.

- (10) Appendix 5 of PN810.1 sets out a draft format of an unqualified auditors' compliance report for an incorporated insurance broker's compliance with the Minimum Requirements, where that insurance broker is a member of an approved body of insurance brokers.
- (11) In preparing the Report, the Respondent had adopted the procedures set out in PN810.1:
 - (a) the Report signed by the Respondent stated that *"We have completed procedures on the books of account and the professional indemnity policy of the company for the period from 1st April 2010 to 31st March 2011 ... [t]hese procedures were conducted in accordance with the Practice Note 810.1 issued by the Hong Kong Institute of Certified Public Accountants ..."*;
 - (b) the Respondent confirmed, in his representation to the Institute dated 28 September 2012 that *"[t]he audit report issued was based on the working as suggested by the Institute Note 810.1"*; and
 - (c) the Respondent confirmed that the procedures set out by PN810.1 were used to report on [Company A]'s compliance with the Minimum Requirements.
- (12) The Report had incorrectly adopted the format as set out in Appendix 3 of PN810.1 as [Company A] was not an authorized incorporated insurance broker but a member of PIBA, an approved body of insurance brokers. The Firm should have used the format set out in Appendix 5 of PN810.1 when issuing a compliance report for [Company A].
- (13) In his representation to the Institute dated 28 September 2012, the Respondent admitted that the format for the Report was not appropriate and explained that *"this might have been caused by adopting the wrong form for unincorporated broker. I have double checked and rectified the form and would make sure the similar matter would not happen again."*
- (14) As referred to in Paragraph 3(9) above, in assessing the adequacy of [Company A]'s PII cover against the Minimum Requirements, an auditor was required to check that the level of insurance cover was no less than *"two times the aggregate insurance brokerage income relating to 12 months immediately preceding the date of commencement of the professional indemnity cover"*.
- (15) The limit of liability of the PII policy of [Company A] was HK\$4,500,000 for the year ended 31 March 2011.

- (16) In calculating the minimum level of PII coverage, the Firm used the brokerage income related to the current year (HK\$2,909,886) rather than the preceding 12 months (HK\$2,537,290). The correct short fall of the limit of liability amounted to $\text{HK\$}2,537,290 \times 2 - \text{HK\$}4,500,000 = \text{HK\$}574,580$.
- (17) However, as there had been a casting error in the calculations of the PII requirements the Firm and the Respondent failed to realise that there was a deficiency in the PII insurance cover obtained by [Company A].
- (18) In the circumstances, the Respondent was in breach of section 34(1)(a)(vi) of the PAO as he had failed to comply with the aforesaid paragraphs 100.5, 130.1 and 130.4 of the Code when he issued the Report to [Company A].
4. By a signed Confirmation dated 20 June 2013, the Respondent admitted the Complaint against him. He did not dispute the facts as set out in the Complaint. He agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
 5. By a letter dated 5 September 2013 addressed to the Complainant and the Respondent, the Clerk to the Disciplinary Committee (“DC”), under the direction of the DC, informed the parties that they should make written submissions to the DC as to the sanctions and costs and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
 6. The Complainant made submissions to the DC on sanctions and costs by letter dated 11 September 2013 (“**Complainant’s submissions letter**”). The Respondent made submissions to the DC on sanctions and costs by letter dated 24 September 2013 (“**Respondent’s submissions letter**”). No request for a hearing on sanctions and costs has been made by the parties.
 7. In the Complainant’s submissions letter, copied to the Respondent, the Complainant referred the DC to four previous cases in which the certified public accountants committed similar failures. In those cases, the certified public accountants were reprimanded and ordered to pay a financial penalty ranging from HK\$5,000 to HK\$100,000.
 8. As the Complainant has pointed out, each case is fact sensitive and the DC is not bound by the decisions of previous committees.
 9. The Complainant invited the DC to consider making an order that the Respondent be reprimanded and pay a penalty and the costs of these proceedings.

10. In the Respondent's submissions letter, the Respondent urged the DC to impose a lenient sentence and to take into consideration the Respondent's letter dated 30 April 2013 to the Institute, in which the Respondent stated:

" I would like to inform the Committee the followings:-

1. *I am a sole petitioner since 1995. There was total 4 staff in my firm at the material time (June to July 2011). I personally handle the staffing, marketing and technical matters of my firm.*
2. *At the material time the tax deadline for many clients was approaching.*

...

5. *I have never been complained by any client about my work.*
6. *The report was intended for filing with the Professional Insurance Brokers Association and that did not raise any further queries after our written explanation.*

In light of the hardships I suffered at the material time and my previous good record, I would like to implore the Committee to impose a minimum penalty."

11. The DC has considered the Respondent's submissions letter. The DC takes into account the admission by the Respondent of the Complaint at an early stage of the proceedings and that the Respondent's breach concerned only one auditors' report.
12. Turning to costs, the DC considers that the costs and expenses in the sum of HK\$30,879 submitted by the Complainant in the Statement of Costs (as attached to the Complainant's submissions letter and copied to the Respondent) are reasonable. In the Respondent's submission letter, the Respondent stated that he agrees to bear the reasonable costs incurred for the investigation of this case.
13. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the particulars in support of the Complaint and the conduct of the Complainant and the Respondent throughout the proceedings.
14. The DC orders that:-
- (1) the Respondent be reprimanded under section 35(1)(b) of the PAO;
 - (2) the Respondent pays a penalty of HK\$30,000 under section 35(1)(c) of the PAO; and
 - (3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$30,879 under section 35(1)(iii) of the PAO.

Dated the 22nd day of November 2013

IN THE MATTER OF

A Complaint made under section 34(1)(a) and section 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 (“the Institute”).

Members:

ORDER

Upon reading the complaint against [the Respondent], being a certified public accountant (practising), as set out in a letter from the Registrar of the Institute ("the Complainant") dated 2 May 2013, the written submission of the Complainant dated 11 September 2013, the written submission of the Respondent dated 24 September 2013 , and other relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and the evidence adduced before it that the following complaint is proved:

Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a professional standard namely paragraph 100.5 “*Introduction and Fundamental Principles*” of the Code as elaborated in the aforesaid paragraphs 130.1 and 130.4 of the Code in respect of an unqualified auditors' compliance report issued to [Company A] regarding its compliance with the Minimum Requirements for the year ended 31 March 2011.

IT IS ORDERED that:-

1. the Respondent be reprimanded under section 35(1)(b) of the PAO;
2. the Respondent pays a penalty of HK\$30,000 under section 35(1)(c) of the PAO; and
3. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$30,879 under section 35(1)(iii) of the PAO.

Dated the 22nd day of November 2013