Hong Kong Institute of
Certified Public Accountants
香港會計師公會

# Compliance

## Operations Report 2014

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**Abbreviations used:**

| | |
|---|---|
| COE | Code of Ethics for Professional Accountants |
| CPA | Certified public accountants |
| HKICPA / Institute | Hong Kong Institute of Certified Public Accountants |
| HKSA | Hong Kong Standard on Auditing |
| HKSIR | Hong Kong Standard on Investment Circular Reporting Engagements |
| HKSQC | Hong Kong Standard on Quality Control |
| Members | CPA, CPA firms, corporate practices and registered students |
| PAO | Professional Accountants Ordinance |
| PCC | Professional Conduct Committee |
| RAB | Regulatory Accountability Board |
| RBA | Resolution by Agreement |

# Introduction

### *Regulating CPAs*

The Hong Kong Institute of Certified Public Accountants is the licensing body for professional accountants in Hong Kong and is responsible for regulating the conduct of certified public accountants. As part of its regulatory function, the Institute addresses complaints concerning ethical and professional conduct of its members, member practices and registered students.

Compliance with the Institute's professional standards is a requirement of membership. Complaint and disciplinary processes are key mechanisms by which the Institute regulates the conduct of its members with sanctions being imposed for serious breaches.

### *Compliance department*

The compliance department carries out the Institute's function of regulating the ethical and professional conduct of CPAs. Integrated within are systems for continuous monitoring supported by independent process review. The core activities of the department are:

| Enforcement | Promote Professional Conduct |
|---|---|
| ■ Case assessment and investigation<br>■ Disciplinary action<br>■ Reporting section 42 offences | ■ Promote good practice<br>■ Raise awareness on current issues |

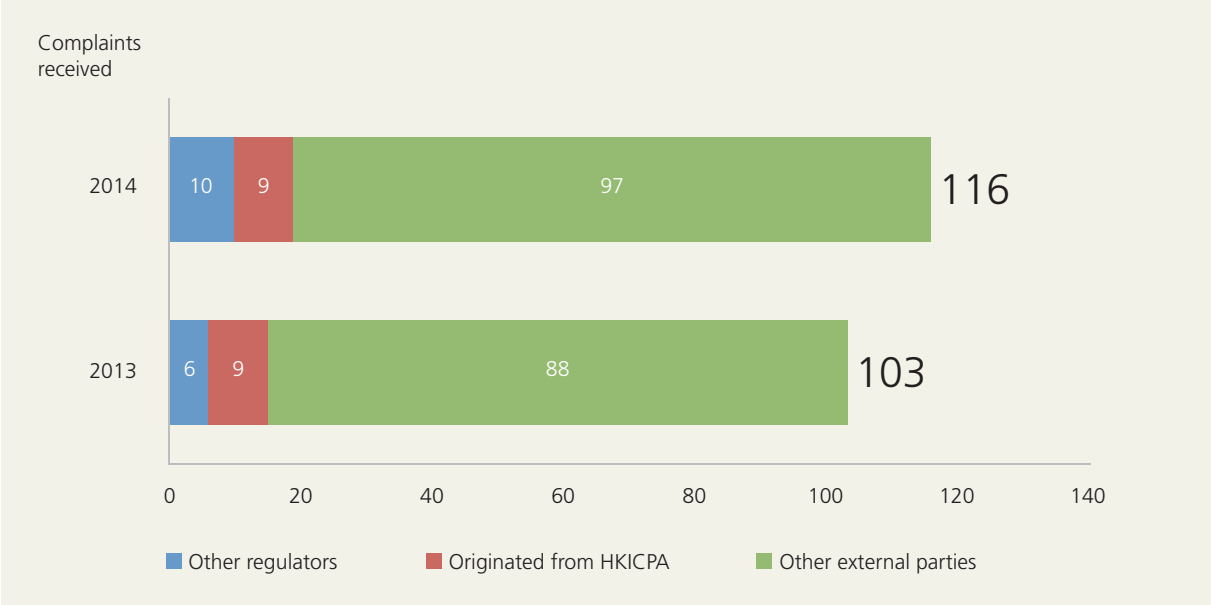
This report sets the compliance department's key activities and associated operations, and related statistics for 2014.

# Complaints

### *What is a complaint?*

Complaints must be in writing, supported by adequate evidence indicating that a member has failed to follow professional standards issued by the Institute or committed other improper acts.

### *Sources of complaints*




### *Compliance department's role*


- Conduct enquiries
- Obtain evidence

- Assess evidence
- Determine if prima facie cases exist

- Submit analysis reports to PCC
- Recommend appropriate action

Complaints are objectively analyzed by the compliance department to determine if there is reasonable suspicion that a prima facie case exists. Before conducting enquiries of our members, the department will ensure that the subject matter is:

- within the jurisdiction of the Institute; and
- supported by sufficient evidence.

If representations on the matter are needed, the respondent will be notified by the compliance department.

### *Professional Conduct Committee*

The PCC comprises both CPAs and lay persons. The PCC evaluates each complaint independently, based on the information supplied by the complainant and the respondent.

When deliberating cases, the PCC:

- Considers each case in light of the circumstances and expected conduct of the member under the relevant professional standards; and
- Is mindful of the Institute's commitment to uphold the quality of professional standards and the positive public perception of the profession in Hong Kong.

Types of actions under PCC's terms of reference

| | |
|---|---|
| Dismissal | • Instances where there is insufficient evidence to show prima facie case against a CPA<br>• Subjects outside HKICPA's jurisdiction<br>• Advisory letter may be issued for less than exemplary conduct |
| Adjudicate minor complaints | • Disapproval letter issued for minor prima facie cases<br>• Direct other course of action as appropriate |
| Recommend actions for serious complaints | • Recommend Resolution by agreement (RBA) for potential disciplinary cases of moderate severity<br>• Recommend referral of serious prima facie cases to the Disciplinary Panels |

For details on complaint process, visit: http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/complaints/.

### *Resolution by Agreement (RBA)*

In February 2014, the Institute launched the RBA mechanism to conclude potential disciplinary cases of moderate severity in lieu of disciplinary proceedings. This allows an effective alternative method to resolve potential disciplinary cases which meet pre-determined criteria in a timely manner.

Criteria:

- Complaints under sub-paragraphs (vi), (viii), (ix) and (x) of section 34(1)(a) of the PAO;
- Cases not contested by the respondents; and
- Cases not involving complaints of dishonesty.

Other factors:

- Nature and seriousness of a complaint.
- Any relevant precedent cases.
- Any past disciplinary records of the respondent.
- Any aggravating or mitigating circumstances.

Applicable terms:

- Mandatory public censure including publication of the RBA terms and relevant facts.
- Optional administrative penalty not exceeding HK$50,000.
- Other actions, such as payment of costs, and additional conditions and restrictions, as deemed necessary by Council.

The terms within the RBA are non-negotiable. If it is not accepted by all stakeholders, the complaint will automatically be referred to the Disciplinary Panels.

In 2014, five RBAs were successfully completed to conclude the following types of cases:

| **S.34(1)(a)(vi) of PAO: Failure or neglect to observe, maintain or otherwise apply a professional standard.** | | |
|---|---|---|
| **Breach of relevant profession standards** | | **Penalty** |
| 1 | S.100.5, 150 of COE | Reprimand; Penalty of $10,000 |
| 2 | S.100.5, 130 of COE | Reprimand; Penalty of $10,000 |
| 3 | HKSIR 300 | Reprimand; Penalty of $30,000 |
| 4 | HKSA 250, HKSA 700 | Reprimand; Penalty of $10,000 |
| 5 | S. 450 of COE | Reprimand; Penalty of $10,000 |

Note:
Costs of $10,000 were ordered to be paid by the respondents under the RBA scheme.
For details, visit: http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/resolution-agreement/.

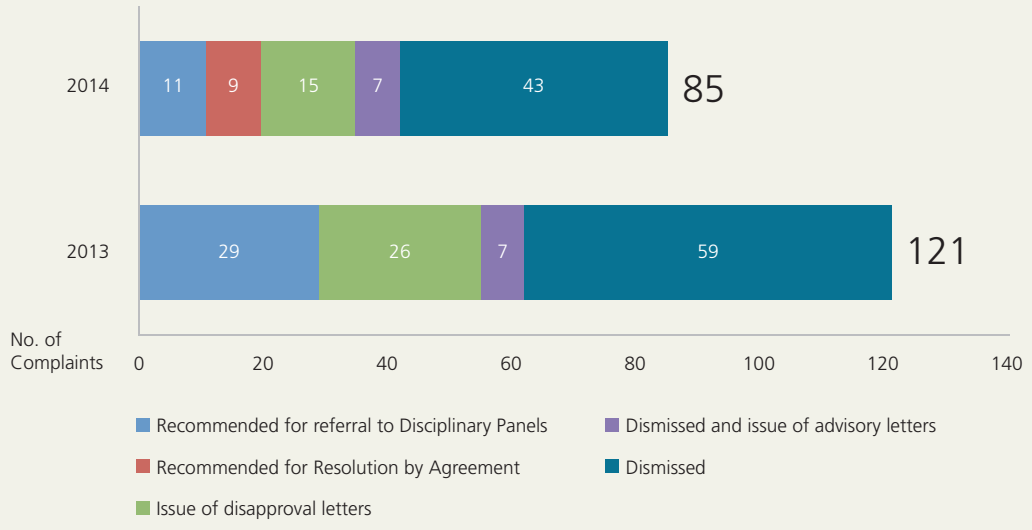
## *Statistics*

### Complaints resolved

| | 2014 | 2013 |
|---|---|---|
| ■ Resolved by PCC | 85 | 121 |
| ■ Cases not reported to PCC | | |
| - Section 42 offence | 16 | 8 |
| - Outside jurisdiction | 10 | 4 |

Note:
Cases not reported to PCC generally involve section 42 offences, other allegations relating to non-members and matters requiring referral to another regulator for investigation.

### Complaints resolved by PCC:




### Nature of prima facie cases:

# Disciplinary proceedings

### *What is a disciplinary proceeding?*

When Council concludes that a complaint is sufficiently serious to warrant the referral to the Disciplinary Panels, a Disciplinary Committee will be constituted to adjudicate the complaint by undergoing the following process:

| | |
|---|---|
| Referral | • Council considers PCC recommendation and other relevant information and concludes that a complaint is serious enough to warrant the referral of the matter to Disciplinary Panels. |
| Constitution | • Disciplinary Committee Convenor appoints Disciplinary Committee members. |
| Proceedings | • Disciplinary Committee considers parties' submissions in accordance with Disciplinary Committee Proceedings Rules. |
| Decision | • Disciplinary Committee determines if complaint is found proved. |
| Order | • Disciplinary Committee issues sanctions: removal; cancellation of practising certififcate; reprimand; financial penalty; payment of costs. |

For details on disciplinary process, visit: http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/disciplinary/

### *Disciplinary Committee*

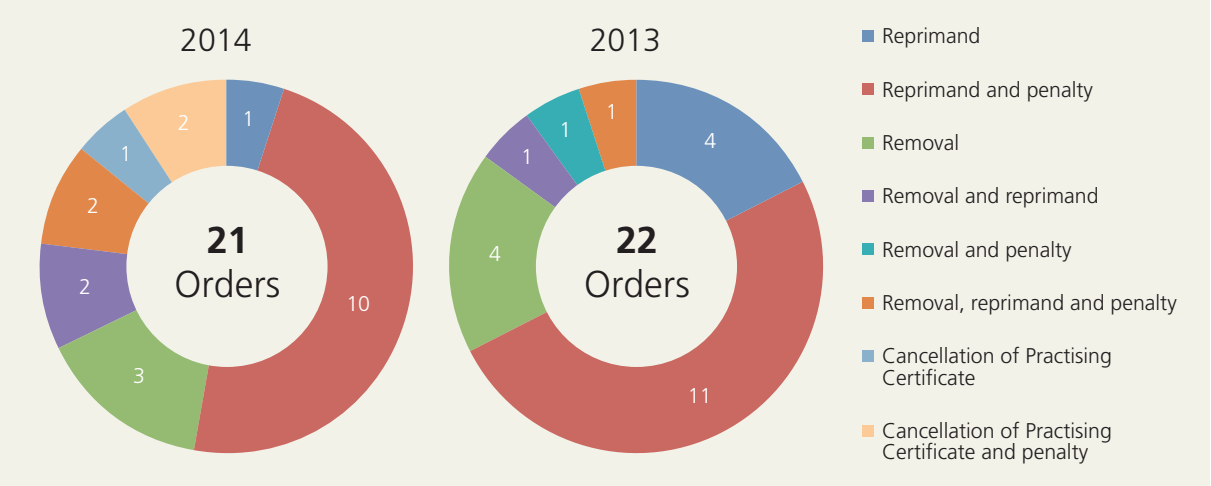
| | |
|---|---|
| Disciplinary Committee | A Disciplinary Committee deals with complaints under section 34 of the PAO. |
| 3 Panel A members | Panel A consists of lay members appointed by the HKSAR government. Chairman of Disciplinary Committee is selected from Panel A. |
| 2 Panel B members | Panel B consists of CPAs. |

### *Compliance department's role*

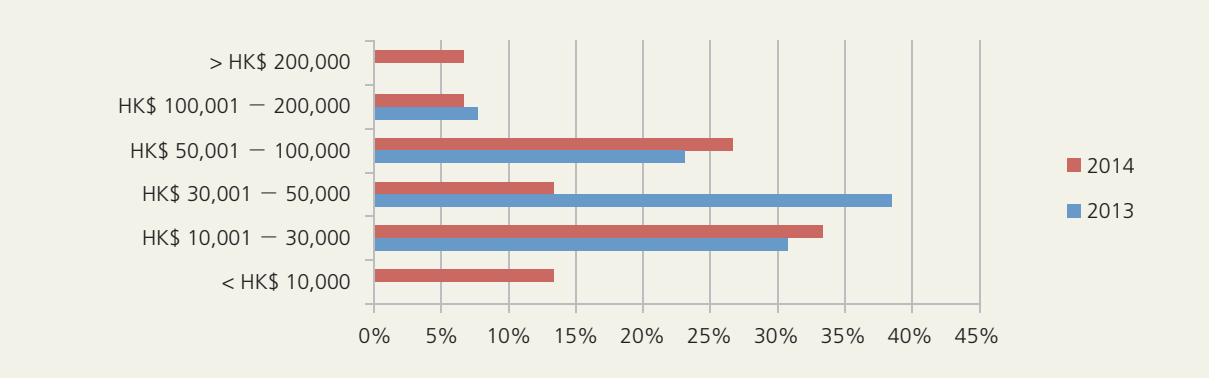
- Compliance team supports the legal team which acts as the Representative of the Complainant in disciplinary proceedings.
- A member of compliance staff, independent of the Complainant, acts as clerk in providing administrative support to the Disciplinary Committee. In complex cases or upon request of the respondent, an external clerk may be engaged.

## *Statistics*

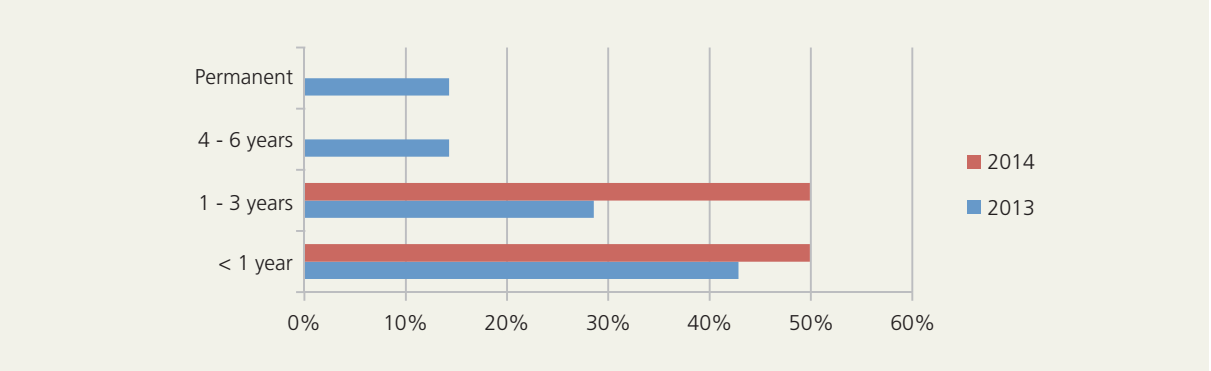
### Sanctions imposed by Disciplinary Committees:




### Level of financial penalties ordered by Disciplinary Committees:




### Period of removal and cancellation of practising certificates ordered by Disciplinary Committees:




A summary of disciplinary orders issued in 2014 is at **APPENDIX 1**.

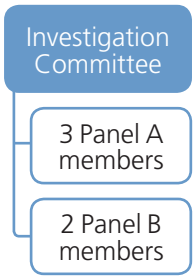
# Investigations

### *What is a an investigation?*

Council may constitute an Investigation Committee when:

- it becomes aware of a matter which gives a reasonable suspicion or belief that a Member has not followed professional standards issued by the Institute or has committed other improper acts; and
- the powers of an Investigation Committee are needed to assist the Council in determining if a case should be referred to the Disciplinary Panels.

### *Investigation Committee*




An Investigation Committee investigates and reports to Council whether, in its opinion, a prima facie case exists and there is a case to answer.

Panel A consists of lay members appointed by the HKSAR government. Chairman of Investigation Committee is selected from Panel A.

Panel B consists of CPAs.

### *Compliance department's role*

- Provide support to the Investigation Committee in gathering evidence in accordance with the Committee's instructions.
- Following the commencement of operations by the Financial Reporting Council (FRC) in July 2007, the responsibility for investigation of matters involving listed entities has been assumed by the FRC. Accordingly, the Institute is only responsible for investigations of non-listed entities and those involving listed entities which commenced before July 2007.
- There has been no new Investigation Committee constituted in 2014.

# Section 42 offence

### *What is a section 42 offence?*

A common type of complaint concerning non-members involves apparent violations of section 42 of the PAO. This type of offence generally involves individuals or companies that:

- fraudulently represent themselves to be qualified and registered to practise as a CPA (practising); or
- are not CPAs but knowingly permit the use of "certified public accountant" or "CPA" in their name or in connection with their business.

### *Compliance department's role*

Complaints against non-members are not reported to the PCC. In order to uphold the integrity of the profession, the compliance department undertakes the following procedures to deal with section 42 offences:

| | |
|---|---|
| Identify | • Determine if offending parties include CPAs. Cases involving CPAs are dealt with under the complaint process.<br>• Review promotional materials to identify section 42 offence |
| Caution | • Issue warning letter to unlicensed practise requesting corrective action |
| Report | • Report matter to police for investigation and regular follow up on case status and outcome |
| Monitor | • Monitor corrective actions by offenders to ensure no repeat of offence |

# Responding to a complaint

### *What should a CPA do when threatened with a complaint?*

- Provide all relevant assistance to the interested party with the objective of minimizing the risks associated with a complaint.
- Handle the matter in accordance with the complaint handling policies and procedures of the firm. See HKSQC 1 for further guidance.

### *What should a CPA do when a complaint has been filed with the Institute?*

1. Understand the issue of the complaint and try to resolve the matter, if possible.
2. Read the complaint handling procedures on the Institute's website.
3. Provide relevant documents and explanations in writing and in a timely manner.
4. Provide explanations carefully and thoroughly.
5. In case of uncertainty, contact a representative of the Compliance Department at 2287-7026 or compliance@hkicpa.org.hk.

# Regulatory oversight

### *Regulatory Accountability Board*

The Regulatory Accountability Board was set up to ensure that the regulatory function of the Institute is carried out in accordance with strategies and policies determined by Council, and in the public interest.

The RAB consists of CPAs, representatives of Hong Kong regulators and lay members. To carry out its responsibilities, the RAB undertakes the following functions:

| | |
|---|---|
| Oversee | • Oversees the performance and operations of the compliance department. |
| Advise | • Offers views and advice on policies, priorities and resource allocation in respect of the regulatory function. |

As part of its oversight functions, the RAB conducted a process review of the operations of the compliance department in 2014 for the purpose of:

- assessing whether the compliance department adheres to established internal procedures;
- evaluating the quality of procedures and time taken to deal with cases; and
- identifying areas that require improvements and making recommendations thereon.

The results of the process review indicated that:

- ✓ Cases were dealt with in accordance with established internal procedures.
- ✓ No criticisms of the quality of case handling.

Recommendations were made to improve case processing time and file documentation.

A report on the process review issued by the RAB in 2015 is published on the Institute's website. Visit: http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/publications-reference/.

## APPENDIX 1

### *Disciplinary orders*

21 disciplinary orders were issued in 2014 (2013: 22 orders). These orders are summarized below:

| Nature of complaint | Sanction |
|---|---|
| Guilty of dishonourable conduct. The Respondent was convicted in the Magistrate's Court of one count of indecent assault and one count of loitering causing concern. | ■ Removal for 6 months |
| Guilty of dishonourable conduct. The Respondent was convicted in the Magistrate's Court of one charge of an attempted indecent assault and one charge of indecent assault. | ■ Removal for 6 months |
| Refusal or neglect to comply with rule 7 of the Corporate Practices (Registration) Rules by allowing audit reports issued by the corporate practice to be signed by persons who were not directors of the corporate practice and practising members. | ■ Reprimand for 1st Respondent<br>■ Removal of 30 months for 2nd Respondent |
| Failure or neglect to observe, maintain or otherwise apply the then applicable Statement 1.200 "Professional Ethics – Explanatory Forward", Statement 1.290C "Professional Ethics – Unlawful Acts or Defaults By or On Behalf of a Member's Employer" and Statement 1.291 "Professional Ethics – The Ethical Responsibilities of Members in Business". The Respondent was an accounting manager of a listed company in Hong Kong. She failed to report her employer's unlawful acts to an appropriate level of management or to the relevant third party authorities. She was also aware that the information provided to the auditors of a listed company was either misrepresented or false and she did not do anything to rectify the situation. | ■ Removal for 24 months |

## APPENDIX 1

| Nature of complaint | Sanction |
|---|---|
| Failure or neglect to observe, maintain or otherwise apply Statement 1.203 "Professional Ethics – Integrity, Objectivity and Independence". Guilty of professional misconduct as a result of the Respondent's failure to observe, maintain or otherwise apply the independence requirements of the Institute, namely Statements of Professional Ethics 1.200 "Professional Ethics – Explanatory Foreword" and Statement 1.203 "Professional Ethics – Integrity, Objectivity and Independence". | ■ Reprimand for 1st and 2nd Respondents<br>■ Removal for 2 years for 3rd Respondent<br>■ Penalty of: HK$150,000 for 1st Respondent; HK$100,000 for 2nd Respondent; and HK$250,000 for 3rd Respondent |
| Failure or neglect to observe, maintain or otherwise apply section 110 "Integrity" and section 120 "Objectivity" of the COE and HKSA 550 "Related Parties". Respondent wrongfully acceded to client's request to issue an unmodified audit opinion on financial statements known to contain a material error, and failed to evaluate whether certain related-party transactions were appropriately disclosed in the financial statements. | ■ Removal for 10 months<br>■ Reprimand<br>■ Penalty of HK$18,000 |
| Failure or neglect to observe, maintain or otherwise apply the Fundamental Principles of "Professional Competence and Due Care" set out in sections 100.5 and 130 of the COE, and "Professional Behavior" set out in sections 100.5 and 150 of the Code. The Respondents failed to comply with certain provisions of the Companies Ordinance and the Companies (Winding-up) Rules in conducting liquidation and were removed by the Court as liquidators. | ■ Cancellation of practising certificate for 12 months<br>■ Penalty of HK$50,000 for each Respondent |
| Failure or neglect to observe, maintain or otherwise apply HKSQC 1, HKSA 230, and HKSAE 3000. The Respondent's practice was selected for practice review. Subsequent follow up practice review visits indicated that the Practice continued to fail to take appropriate actions in response to the quality control deficiencies identified during practice reviews which include the failure to implement an adequate monitoring function. In addition, the practice review also identified a number of deficiencies in the Practice's audits and assurance engagements of two clients. | ■ Cancellation of practising certificate for 12 months<br>■ Penalty of HK$20,000 |

## APPENDIX 1

| Nature of complaint | Sanction |
|---|---|
| Failure or neglect to observe, maintain or otherwise apply sections 100.5 and 130 "Professional Competence and Due Care" of the COE and guilty of professional misconduct. The Respondent's practice was selected for practice review. Subsequent follow up practice review visit identified deficiencies in the Respondent's audits of two clients. | ■ Cancellation of practising certificate for 10 months |
| Failure or neglect to observe, maintain or otherwise apply HKSA 700 "Forming an Opinion and Reporting on Financial Statements" for failure to express a modified auditor's opinion in respect of a listed company's non-compliance with HKAS 16 "Property, Plant and Equipment" for two years. | ■ Reprimand<br>■ Penalty of HK$70,000 |
| Failure or neglect to observe, maintain or otherwise apply section 130 "Professional Competence and Due Care" of COE for the Respondents' failure to act diligently in accordance with HKAS 16 "Property, Plant and Equipment" in the audit of the financial statements of a listed company. | ■ Reprimand<br>■ Penalty of HK$50,000 |

## APPENDIX 1

| Nature of complaint | Sanction |
|---|---|
| 1st Respondent: Failure or neglect to observe, maintain or otherwise apply the Fundamental Principles set out in the then applicable paragraph 100.4(c) and as elaborated in paragraph 130.1 "Professional Competence and Due Care" of the COE for failure to act diligently in accordance with professional standards when carrying out the work, as an engagement director, 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 and the audit of the financial statements of the listed company for the year ended 30 June 2010 ("2010 Financial Statements").<br><br>2nd Respondent: Failure or neglect to observe, maintain or otherwise apply (i) HKSA 220 "Quality Control for an Audit of Financial Statements"; and (ii) the Fundamental Principles set out in the then applicable paragraph 100.4(c) and as elaborated in paragraph 130.1 of the COE for failure to act diligently and in accordance with professional standards when carrying out the work, as an engagement quality control reviewer, in the 2010 Financial Statements.<br><br>3rd Respondent: Failure or neglect to observe, maintain or otherwise apply any one or all of the following professional standards when carrying out the work on the Unaudited PFI and 2010 Financial Statements:<br>(i) HKSIR 300 "Accountants' Reports on Pro Forma Financial Information in Investment Circulars";<br>(ii) HKSA 200 "Objectives and General Principles Governing an Audit of Financial Statements";<br>(iii) HKSA 230 "Audit Documentation";<br>(iv) HKSA 500 "Audit Evidence";<br>(v) HKSA 545 "Auditing Fair Value Measurements and Disclosures";<br>(vi) HKSA 620 "Using the Work of an Expert"; and/or<br>(vii) HKSA 700 "The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements". | ■ Reprimand.<br>■ Penalty: HK$50,000 each for the 1st and 3rd Respondents;<br>■ HK$35,000 for the 2nd Respondent |

## APPENDIX 1

| Nature of complaint | Sanction |
|---|---|
| Failure or neglect to observe, maintain or otherwise apply SAS 230 "Documentation" in their audit of a listed company's financial statements. The Respondents did not document the procedures adopted for maintaining control over the external confirmation exercise and for reaching an audit conclusion regarding the existence and valuation of the deferred development cost of a material project. | ■ Reprimand for both respondents<br>■ Penalty of:<br>HK$35,000 for the 1st Respondent;<br>HK$50,000 for the 2nd Respondent |
| Failure or neglect to observe, maintain or otherwise apply section 130.1 of the COE and HKAS 33 "Earnings per Share". The Respondents calculated or concurred with wrong amounts of earnings per share disclosed in the accountants' report and audited financial statements of a listed company. | ■ Reprimand for both respondents.<br>■ Penalty of HK$50,000 for the 1st Respondent |
| Failure or neglect to observe, maintain or otherwise apply the Fundamental Principles of "Professional Competence and Due Care" set out in section 100, section 110 "Integrity" and section 130 "Professional Competence and Due Care" of the COE. Made statements which were material and which he knew to be false or did not believe to be true. Guilty of professional misconduct due to the above non-compliances. | ■ Reprimand.<br>■ Penalty of HK$30,000 |
| Failure or neglect to observe, maintain or otherwise apply HKSIR 300 – "Accountants' Reports on Pro Forma Financial Information in Investment Circulars" in expressing an unqualified opinion in their report on the unaudited pro forma financial information of a group of companies ("Unaudited PFI") as a result of having failed to identify that the listed company had not applied its deferred taxation accounting policy consistently in the pro forma adjustments in the Unaudited PFI. | ■ Reprimand.<br>■ Penalty of HK$30,000 |

## APPENDIX 1

| Nature of complaint | Sanction |
|---|---|
| Failure or neglect to observe, maintain or otherwise apply section 100.4(e) of the COE, as a result of the Respondent's being convicted for unlawful short selling of shares of a listed company contrary to the Securities and Futures Ordinance. | ■ Reprimand.<br>■ Penalty of HK$30,000 |
| Failure or neglect to observe, maintain or otherwise apply paragraphs 100.5(e) and 150.1 "Professional Behavior" of the COE for the Respondent's failure to comply with relevant laws and regulations and avoid any action that discredits the profession when he took and duplicated the apartment keys of a colleague and attempted to gain entry into that apartment. | ■ Reprimand.<br>■ Penalty of HK$20,000 |
| Failure or neglect to observe, maintain or otherwise apply section 150 "Professional Behavior" and section 450 "Practice Promotion" of the COE by allowing an unregistered company sending out unsolicited promotional emails and holding itself out as providing audit services. | ■ Reprimand.<br>■ Penalty of HK$5,000 |
| Failure or neglect to observe, maintain or otherwise apply section 100.4(e) of the COE, as a result of the Respondent's being convicted for unlawful short selling of shares of a listed company contrary to the Securities and Futures Ordinance. | ■ Reprimand.<br>■ Penalty of HK$3,000 |
| Failure or neglect to observe, maintain or otherwise apply HKSA 250 "Consideration of Laws and Regulations in an Audit of Financial Statements" and HKSA 500 "Audit Evidence". | ■ Reprimand. |

Note:
Costs and expenses of and incidental to the proceedings of the Complainant were ordered to be paid by the respondents in all of the above cases. For details on the disciplinary orders, visit: http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/disciplinary/

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