



HKICPA takes disciplinary action against a certified public accountant and a firm

(HONG KONG, 26 February 2018) — A Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants reprimanded Tam Tak Kuen, Alfred, certified public accountant (membership number F02942) and Alfred T.K. Tam & Co. (firm number 1475) on 16 January 2018. In addition, the Committee ordered the two respondents to pay jointly and severally a penalty of HK\$414,463.40 and costs of the disciplinary proceedings of HK\$32,781.

Tam was the sole proprietor of Alfred T.K. Tam & Co., a firm which is now de-registered. In the period from February 2012 to August 2016, Tam and the firm breached their employer's obligation to make provident fund contributions for employees under the Mandatory Provident Fund Schemes Ordinance on three occasions. The breaches affected a number of employees and, on one occasion, occurred over a period of approximately 28 months. As a result of the breaches, Tam and the firm were ordered by relevant authorities to pay fines totalling HK\$127,000 in addition to contributions in arrears and surcharges.

After considering the information available, the Institute lodged a complaint under section 34(1)(a)(vi) of the Professional Accountants Ordinance (Cap 50).

The Disciplinary Committee found that the respondents were in breach of the fundamental principle of Professional Behavior of the Code of Ethics for Professional Accountants. Having taken into account the circumstances of the case including the respondents' conduct in the proceedings where they showed a lack of remorse, the Disciplinary Committee made the above order under section 35(1) of the ordinance. The committee noted the seriousness of the respondents' failure to meet their statutory obligation on multiple occasions and the possibility of them committing the offence again in future. In the circumstances, the Committee considered a heavy sanction should be imposed to deter the Institute's members from bringing disrepute to the profession and to maintain public confidence in the profession.

About HKICPA Disciplinary Process

The Hong Kong Institute of Certified Public Accounts (HKICPA) enforces the highest professional and ethical standards in the accounting profession. Governed by the Professional Accountants Ordinance (Cap. 50) and the Disciplinary Committee Proceedings Rules, an independent Disciplinary Committee is convened to deal with a complaint referred by Council. If the charges against a member, member practice or registered student are proven, the Committee will make disciplinary orders setting out the sanctions it considers appropriate. Subject to any appeal by the respondent, the order and findings of the Disciplinary Committee will be published.

For more information, please see:

<http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/disciplinary/>

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About the Hong Kong Institute of Certified Public Accountants

The Hong Kong Institute of Certified Public Accountants (HKICPA) is the statutory body established by the Professional Accountants Ordinance responsible for the professional training, development and regulation of certified public accountants in Hong Kong. The Institute has more than 42,000 members and 18,000 registered students.

Our qualification programme assures the quality of entry into the profession, and we promulgate financial reporting, auditing and ethical standards that safeguard Hong Kong's leadership as an international financial centre.

The CPA designation is a top qualification recognised globally. The Institute is a member of and actively contributes to the work of the Global Accounting Alliance and International Federation of Accountants.

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香港會計師公會對一名會計師及一間會計師事務所作出紀律處分

(香港，二零一八年二月二十六日) 香港會計師公會轄下一紀律委員會，於二零一八年一月十六日對譚德權先生(會員編號：F02942)及譚德權會計師事務所(事務所編號：1475)作出譴責。另外，紀律委員會命令兩名答辯人須共同及各別繳付罰款 414,463.40 港元及紀律程序費用 32,781 港元。

譚先生是譚德權會計師事務所的獨資經營者，該事務所現已被撤銷註冊。在二零一二年二月至二零一六年八月期間，譚先生和該事務所三次違反了《強制性公積金計劃條例》中僱主為僱員作出公積金供款的責任。違規事件影響多名僱員，而其中一次歷時長約 28 個月。由於這些違規，譚先生及其事務所被有關當局罰款共 127,000 港元及須繳付所欠的供款及附加徵費。

公會經考慮所得的資料後，根據香港法例第 50 章《專業會計師條例》第 34(1)(a)(vi)條作出投訴。

紀律委員會裁定答辯人違反了 Code of Ethics for Professional Accountants 內有關「Professional Behavior」的基本原則。經考慮有關情況，包括訴訟程序中答辯人並無表現悔意，紀律委員會根據《專業會計師條例》第 35(1)條作出上述命令。基於答辯人多次未有履行其法定責任，性質嚴重而且日後有可能重犯，故紀律委員會認為應作出嚴厲的懲處，以阻嚇公會會員作出有損會計專業聲譽的行為，並保持會計專業的公信力。

香港會計師公會的紀律處分程序

香港會計師公會致力維持會計界的最高專業和道德標準。公會根據香港法例第 50 章《專業會計師條例》及紀律委員會訴訟程序規則，成立獨立的紀律委員會，處理理事會轉介的投訴個案。委員會一旦證明對公會會員、執業會計師事務所會員或註冊學生的檢控屬實，將會作出適當懲處。若答辯人未有提出上訴，紀律委員會的裁判將會向外公佈。

詳情請參閱：

<http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/disciplinary/>

關於香港會計師公會

香港會計師公會是根據《專業會計師條例》成立的法定機構，負責培訓、發展和監管香港的會計專業。公會會員超過 42,000 名，學生人數逾 18,000。

公會開辦專業資格課程，確保會計師的入職質素，同時頒佈財務報告、審計及專業操守的準則，以鞏固香港作為國際金融中心的領導地位。

CPA 會計師是一個獲國際認可的頂尖專業資格。公會是全球會計聯盟及國際會計師聯合會的成員之一，積極推動國際專業發展。

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IN THE MATTER OF

A Complaint made under Section 34(1) 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. Tam Tak Kuen Alfred
(Membership no.: F02942)

FIRST RESPONDENT

Alfred T.K. Tam & Co.
(Firm no. 1475)

SECOND RESPONDENT

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

Members: Mr. Kwong Chi Ho Cecil (Chairman)
Mr. Hong Wing Kwong Wallace
Ms. Law Wing Yee Wendy
Mr. Chan Kin Man Eddie
Mr. Shen Ka Yip Timothy

ORDER & REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against Tam Tak Kuen Alfred (the “**First Respondent**”) and Alfred T.K. Tam & Co. (the “**Second Respondent**”, together with the First Respondent, the Respondents).

2. The Complaint as set out in a letter dated 8 November 2016 from the Registrar to the Council of the Institute (the “**Complaint**”) are as follows:-

THE COMPLAINT

- (1) The Institute’s attention was drawn to three occasions on which the Respondents breached their statutory obligations as an employer under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“**MPFSO**”). The three occasions are as follows:
- (a) In February 2012, the First Respondent trading as the Firm was fined for breaching sections 7(1) and 7AA(7) of the MPFSO after he pleaded guilty to 30 counts of failing to enroll one employee in an MPF scheme and make MPF contributions to the Mandatory Provident Fund Schemes Authority (“**MPFA**”) for the employee over an extended period. (the “**First Breach**”)
 - (b) In March 2016, the Small Claims Tribunal ordered the Second Respondent to pay mandatory contributions in arrears and surcharges payable for 10 employees. (the “**Second Breach**”)
 - (c) In August 2016, the Small Claims Tribunal ordered the Second Respondent to pay mandatory contributions in arrears and surcharges payable for 6 employees, plus a financial penalty for the breach. (the “**Third Breach**”)
- (2) The First Respondent is the sole proprietor of the Second Respondent.

Professional Standard

- (3) The Fundamental Principle Professional Behaviour set out in section 100.4(e) of the Code of Ethics for Professional Accountants (Effective on 30 June 2006) (the “**Code**”) and elaborated in section 150 of the Code, provides the following:

Section 100.4(e) – “Professional Behaviour

A professional accountant should comply with relevant laws and regulations and should avoid any action that discredits the profession.”

Section 150.1 – “The principle of professional behaviour imposes an obligation on professional accountants to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.”

- (4) The Fundamental Principle Professional Behavior set out in section 100.5(e) of the revised Code (Effective on 1 January 2011) and elaborated in section 150 of the revised Code provides as follows:-

Section 100.5(e) – “Professional Behavior – to comply with relevant laws and regulations and avoid any action that discredits the profession.”

Section 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. This 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.”

The Complaint

- (5) Section 34(1)(a)(vi) of the Professional Accountants Ordinance (“PAO”) applies to the Respondents in that they had failed or neglected to observe, maintain or otherwise apply section 100.4(e) of the Code (Effective on 30 June 2006) and section 100.5(e) of the revised Code (Effective on 1 January 2011), as elaborated in section 150 thereof, because of their failure as an employer to comply with sections 7(1), 7AA(7) and 7A(8) of the MPFSO which resulted in criminal convictions and civil proceedings, which the Respondents knew or should have known may discredit the profession.

Facts and Circumstances in Support of the Complaint

Relevant Background

- (6) In February 2012, the First Respondent was fined a total of **HK\$122,000** for breaching sections 7(1) and 7AA(7) of MPFSO. He pleaded guilty to 30 counts of failing to enroll one employee in an MPF scheme as required by the MPFSO and failing to make MPF contributions to MPFA for the employee (who was not a member of a registered scheme) within the prescribed time during the period from February 2009 to June 2011.
- (7) In March 2016, the Small Claims Tribunal ordered the Second Respondent to pay to MPFA a sum of **HK\$39,332.23**, being mandatory contributions in arrears and surcharges payable for 10 employees. A failure to make such employer's contributions was a breach of section 7A(8) of the MPFSO.
- (8) In August 2016, the Small Claims Tribunal ordered the Second Respondent to pay **HK\$40,899.47** to the MPFA. The sum represented mandatory contributions in arrears and surcharges payable for 6 employees for the months of April, June, July, and September to December 2015. A failure

to make such employer's contributions was a breach of section 7A(8) of the MPFSO. The Second Respondent was also ordered to pay a financial penalty of **HK\$5,000** to the MPFA.

- (9) The MPFA website states: "Defaulting on contributions is a criminal offence and the defaulter is liable to a maximum penalty of a \$450,000 fine and imprisonment for four years. The MPFA can also impose a financial penalty of \$5,000 or 10% of the default amount, whichever is greater, on the defaulting employer."
- (10) The First Respondent explained that the non-compliance was mainly due to "shortage of manpower to handle administrative matters and cash flow problem during off-peak seasons".
- (11) In the circumstances, the Respondents' acts were in breach of the relevant laws and a reasonable and informed third party, weighing all the facts and circumstances available at the time, would be likely to conclude that those acts adversely affects the good reputation of the profession. The Respondents knew, or should have known, about the adverse effect on the profession. On this basis, the Respondents were in breach of sections 100.4(e) / 100.5(e) and 150.1 of the Code.

THE PROCEEDINGS

3. The Notice of Commencement of Proceedings and Procedural Timetable was issued to the parties on 19 April 2017.
4. The Complainant filed his case on 10 May 2017.
5. The Respondents did not file their case according to the procedural timetable. The First Respondent orally informed the Clerk in late May 2017 that he would not file any Respondent's Case. On 2 June 2017, the Respondent indicated by phone to the Clerk that he would admit the Complaint. On 7 June 2017, the Clerk reminded the First Respondent by phone that he should sign the relevant admission documents sent to him earlier on 13 December 2016 by the Institute if he intended to admit the Complaint. On 14 June 2016, the Chairman directed that the proceedings would continue unless the Respondents provide any written submissions by 28 June 2017. No replies were received.
6. The Chairman directed the parties to file checklists by 12 July 2017.
7. On 5 July 2017, the First Respondent signed a letter to the Clerk which states that he admitted the Complaint as set out in an attached confirmation ("**Confirmation**"). However, the Respondents did not attach any confirmation in the aforementioned letter to the Clerk.

8. The Clerk telephoned the First Respondent on 6 July 2017 to follow up the matter. The First Respondent represented that he would send the signed Confirmation. However, there was no further response from the Respondents.
9. The Complainant filed the checklist on 12 July 2017.
10. The Chairman directed on 18 July 2017 that the proceedings would continue unless any party raised any objection before 1 August 2017. None of the parties made any objection.
11. The Respondents have not disputed the Complaint throughout the proceedings. On 25 August 2017, the Disciplinary Committee found the Complaint proven. The Chairman directed that no oral hearing was necessary and parties would make written submissions sanctions and costs.

SANCTIONS AND COSTS

12. The Complainant made submissions on 8 September 2017 and 4 October 2017. There was no response from the Respondents despite reminders sent by the Institute.
13. In considering the proper order to be made in this case, the Disciplinary Committee had considered all the aforesaid matters, including the particulars in support of the Complaints, and the conduct of the Respondents throughout the proceedings.
14. The Disciplinary Committee noted that, while the First Respondent has made an initial verbal admission of the Complaint, none of the Respondents have responded to further correspondence of the proceedings. It appears to the Disciplinary Committee that the Respondents chose to ignore the proceedings against them, and did not attempt to mitigate sanctions by way of submission. Accordingly, the Disciplinary Committee is of the view the Respondents were not remorseful of their wrongdoings.
15. Further, the Respondents have not demonstrated that they may not repeat same or similar offence in the future. In fact, the Complaint was in connection of multiple failures to pay statutory contributions under the MPFSO.
16. The First Respondent's explanation of "shortage of manpower to handle administrative matters and cash flow problem during off-peak seasons" is unconvincing. After the First Breach in 2009 to 2011, the Respondents ought to have known to comply with its statutory requirement and the need to handle statutory contribution seriously, either through allocating sufficient resources or by the First Respondent directly as the sole proprietor of the Second Respondent. In addition, the explanation by the First Respondent imply the practice does not encounter cash flow problem during peak seasons. There has been no attempt to rectify the missed contributions during peak seasons – for the Second Breach and the Third Breach, the contributions were overdue until the Small Claims Tribunal

ordered the Second Respondent to pay contributions in arrears in the year following.

17. In the eyes of the society, compliance with making statutory contributions is a fundamental obligation to an employer. Professionals are expected by the society to adhere to their basic statutory obligations. In the present Complaint, the Respondents have failed to do so repeatedly. The Disciplinary Committee is of the view that the Respondents may commit same or similar offence in the future, and potentially bring the profession into disrepute. The Complaint is therefore of a serious nature that the extent of sanctions should not be light nor inadequate.
18. The Disciplinary Committee is of the view that sanctions imposed by the MPFA and the Small Claims Tribunal, including fines, contribution in arrears, surcharges, financial penalties (collectively, the “MPF Sanctions”) shall be the base starting point of the penalty imposed by the Institute against complaints of failure to make social contributions by members of the profession. In the present Complaint, the Respondents have repeatedly failed to make social contributions for a long period of time (February 2009 to June 2011, April to December 2015) involving multiple employees. Accordingly, the Disciplinary Committee is of the view that a penalty doubling the MPF Sanctions against the Respondents set out in paragraphs 2(6), 2(7) and 2(8) above is appropriate in the circumstances.
19. As a general note, the Disciplinary Committee is of the view that heavy sanctions (including cancellation of practicing certificate) should be imposed against members of the profession who repeatedly and knowingly fail to make statutory contributions or fail to meet their statutory obligation, to deter members bringing the profession into disrepute, and to maintain the public’s confidence in the profession.

ORDER

20. The Disciplinary Committee orders that:-
 - (a) that the Respondents be reprimanded under section 35(1)(b) of the PAO;
 - (b) that the Respondents, on a joint and several basis, do pay a penalty of **HK\$414,463.40** under section 35(1)(c) of the PAO, which would represent a sum doubling the MPF Sanctions against the Respondents in connection with the First Breach, the Second Breach and the Third Breach; and
 - (c) the Respondents, on a joint and several basis, do pay the costs and expenses of and incidental to the proceedings of the Complainant of **HK\$32,781** under Section 35(1)(iii) of the PAO.

The above shall take effect on the 40th day from the date of this order.

Dated the 16th of January 2018