



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

Dear Assignment/News/Business Section Editor

## **Hong Kong Institute of Certified Public Accountants takes disciplinary action against one certified public accountant (practising)**

(HONG KONG, 12 August 2016) – A Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants ordered cancellation of the practising certificate of Lam Kin Kun, Arthur (membership number F05360) beginning 6 September 2016 with no issuance of a practising certificate to him for twelve months. In addition, Lam was ordered to pay costs of the disciplinary proceedings totaling HK\$37,648.

Lam practiced in his own name on a part-time basis and was subject to a practice review. As a result of Lam's failure to confirm a date for the site visit, the Practice Review Committee ("PRC") issued a direction requiring Lam to cooperate with the reviewer for the purpose of the practice review. Despite repeated reminders, Lam continued to fail to provide relevant working papers which were necessary for a practice review to be carried out. On the basis of this failure to cooperate, the Institute lodged a complaint against Lam under section 34(1)(a)(v) of the Professional Accountants Ordinance ("Ordinance").

The Disciplinary Committee found that Lam without reasonable excuse, failed or neglected to comply with a direction issued by the PRC under section 32F(2)(b) of the Ordinance.

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

Under the Ordinance, if Lam 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](http://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. Three members of each committee, including a chairman, are non-accountants chosen from a panel appointed by the Chief Executive of the HKSAR, and the other two are CPAs.

Disciplinary hearings are held in public unless the Disciplinary Committee directs otherwise in the interest 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.

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 practicing certificate, a reprimand, a penalty of up to \$500,000, and payment of costs and expenses of the proceedings.

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## **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 40,000 members and 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執業會計師作出紀律處分

(香港，二零一六年八月十二日) — 香港會計師公會(「公會」)轄下一紀律委員會，命令由二零一六年九月六日起吊銷林健根先生(會員編號：F05360)的執業證書，並在十二個月內不給他另發執業證書。此外，林先生須支付紀律程序費用三萬七千六百四十八港元。

林先生以個人名義兼職執業，並獲公會通知須進行執業審核。由於林先生沒有向公會確認執業審核的日期，所以執業審核委員會向他發出指示，要求他與審核人員合作以便完成執業審核。然而，在公會多次催促下，林先生仍沒有提供執業審核所需的工作底稿。由於林先生不合作，所以公會根據《專業會計師條例》第34(1)(a)(v)條對他作出投訴。

紀律委員會裁定林先生在沒有合理辯解下，沒有或忽略遵從執業審核委員會根據《專業會計師條例》中第32F(2)(b)條作出的指示。

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)條向林生作出上述的命令。

根據《專業會計師條例》，如林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 部分查閱，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，是從業外人士組成的紀律小組中選派，該紀律小組的成員是由香港特別行政區行政長官委任的；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。

## 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，會員人數超過四萬，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) of the Professional Accountants Ordinance (Cap. 50)

BETWEEN

The Practice Review Committee of the  
Hong Kong Institute of  
Certified Public Accountants

COMPLAINANT

AND

Mr. Lam Kin Kun Arthur  
Membership No. F05360

RESPONDENT

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**ORDER & REASONING**

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

Members: Ms. Queenie Fiona Lau (Chairman)  
Mr. Kan Siu Lun  
Mr. Ng Chi Keung Victor  
Mr. Tsang Tin For

Date of Hearing: 8 June 2016

Date of Order and Reasoning:

1. This is a complaint made by the Practice Review Committee (the “**PRC**”) of the the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against Mr. Lam Kin Kun Arthur (the “**Respondent**”), a practising certified public accountant, pursuant to section 34(1)(a)(v) of the Professional Accountants Ordinance (Cap. 50) (the “**PAO**”). The PRC complains that the Respondent, without reasonable excuse, failed or neglected to comply with a direction issued by the PRC under section 32F(2)(b) of the PAO.
2. The PRC brought the complaint against the Respondent by a letter to the Council of the Institute dated 24 August 2015.

3. On or about 26 January 2016, the PRC filed its Case.

### **Relevant provisions**

4. Section 34(1)(a)(v) of the Ordinance provides for complaints where a certificated public accountant, *“without reasonable excuse, failed or neglected to comply with any direction issued under section 32F(2) and with which he was required by the Practice Review Committee to comply”*.
5. Pursuant to section 32F(2)(b) of the PAO, the PRC *“may issue directions relating to the matter in dispute to such practice unit or the reviewer concerned and require such unit or reviewer to comply with them”*.

### **Background**

6. Under Part IVA of the PAO, the Institute is empowered to carry out practice reviews in respect of practice units.
7. The PRC is a statutory committee set up under section 32A of the PAO, and is responsible for exercising the statutory powers and duties in relation to practice reviews.
8. The practice reviewers, being staff members of the Quality Assurance Department of the Institute, assist and report to the PRC in carrying out those statutory powers and duties.
9. The Respondent was the sole proprietor of Arthur Lam & Co. By a letter dated 24 January 2014, Arthur Lam & Co. was notified that it was selected for a practice review. The letter explained the process and requirements of a practice review.
10. According to the Institute's records, the firm Arthur Lam & Co. was deregistered on 24 February 2014 and the Respondent practises in his own name on a part-time basis. As such, the Respondent was notified that a practice review was to be performed on his own name practice (the **“Practice”**).
11. The practice review was initially scheduled to take place in April 2014, but was subsequently postponed to 3 June 2014 as the Respondent explained that he needed to undergo surgery.

However, the review did not take place on 3 June 2014 either as the Respondent was absent from his office due to sickness.

12. Despite numerous requests during the period from June to September 2014, the Respondent did not provide the reviewer with a confirmed date for the review visit. Consequently, on 30 September 2014, the PRC issued a direction to the Respondent under section 32F(2)(b) of the PAO that the Respondent shall:

(1) co-operate with the Quality Assurance Department; and

(2) make himself available for a practice review visit to be carried out from 21 to 23 October 2014.

(the “**Direction**”)

13. The Respondent confirmed that he was available for the practice review on 21 to 23 October 2014.

14. The reviewer visited the Respondent’s registered office as scheduled, but was informed by the Respondent that the audit working papers were not kept in the office. The Respondent agreed that the working papers would be delivered to the reviewer at a later date, but did not provide a reasonable excuse to explain why those documents could not be made available at the time of the visit, especially when he had been reminded of the review requirements.

15. Despite repeated reminders from October 2014 to March 2015, the Respondent continued to fail to provide the working papers which were necessary for a review to be carried out on the Practice.

16. The matter was reported back to the PRC which considered that the Respondent had failed to comply with its direction to co-operate with the reviewer to enable a practice review to be carried out.

17. The PRC complains in these proceedings that the Respondent, without reasonable excuse, failed or neglected to comply with the Direction, which was issued by the PRC under section 32F(2)(b) of the PAO.

### **Facts and circumstances in support of the Complaint**

18. The PRC issued the Direction lawfully under section 32F(2)(b) of the PAO, and failure or neglect to comply with such a direction without reasonable excuse is a disciplinable offence under section 34(1)(a)(v) of the PAO.
19. As stated above, in response to the Direction, the Respondent had confirmed that he was available for the practice review on 21 to 23 October 2014.
20. However, although the Respondent was present at the practice review on 21 October 2014, he did not enable the reviewer to carry out a practice review in accordance with Statement 1.401 *“Practice Review Review Procedures and Conduct of Members”*. He failed to make his working papers available for the review. In particular, according to paragraph 13 of Statement 1.401, a practice review entails an examination or a review of a practice unit’s system of quality control which includes a review of working papers of audit, assurance and related services engagements to determine whether professional standards are being or have been observed, maintained or applied by the practice unit. Further, the powers of the reviewer(s) are set out in section 32E of the PAO.
21. Further, despite numerous reminders from October 2014 to March 2015, the Respondent continued to ignore the reviewer’s request and failed to provide the relevant working papers which were necessary for a review to be carried out on the Practice.
22. The matter was reported back to the PRC which considered that the Respondent failed to comply with the Direction by failing to co-operate with the reviewer for the purpose of the practice review.

### **The proceedings**

23. After the PRC filed its Case dated 26 January 2016, the Respondent did not file any Case in response to the complaint against him.
24. There is however a letter dated 19 August 2015 from the Respondent to the Institute, which is the Respondent’s letter upon being invited to make submissions under Rule 5 of the Disciplinary Committee Proceedings Rules. In that letter, the Respondent put forward his explanation for his difficulties in responding to the PRC and enclosed some medical receipts and medical documents. In that letter, the Respondent claimed that he had medical difficulties, and in particular:



- (1) In early May 2014, he had “surgery for cutting the gallstone”.
- (2) During the first quarter of 2015, he saw a doctor for mental depression.
25. The Respondent also asserted in his letter dated 19 August 2015 that since 2014 to date, he has been transferring clients to others. He stated that he knows it is unacceptable not to cooperate with the PRC, and asked for a chance to cooperate with the PRC.
26. On the morning that the hearing of these proceedings that was due to take place, namely 8 June 2016, by an email of the same date sent at 8:17am, the Respondent wrote to the PRC apologising for informing the PRC so late, and stating that he could not attend the hearing that day. He requested that the PRC forward the message to the Disciplinary Committee.
27. Having considered the Respondent’s email dated 8 June 2016, by a letter of the same date, the Disciplinary Committee stated that it considered that the Respondent had been adequately notified of the date of the substantive hearing, and noted that the Respondent had not provided any reasons for not attending the hearing and offering his representations on the complaint before the Committee. The Disciplinary Committee therefore directed that the proceedings would continue as scheduled.
28. The hearing of these proceedings was held on 8 June 2016 at 2:30pm.

**Conflict of interest**

29. By a letter dated 24 May 2016, the PRC had written to the Disciplinary Committee, copied to the Respondent, stating that they had learnt that two Disciplinary Committee members, Mr. Fung Wei Lung, Brian (“**Mr. Fung**”) and Mr. Tsang Tin For (“**Mr. Tsang**”), are involved in another set of ongoing disciplinary proceedings (i.e. Case no. D-13-801F). In those proceedings, Mr. Tsang is acting as the Panel B member of the Disciplinary Committee in which Mr. Fung is acting as the Respondents’ expert witness who gave evidence at the substantive hearing held in May 2016. As at the date of the PRC’s letter, a decision was still pending by that Disciplinary Committee. The PRC emphasised that it had absolute trust and confidence in the integrity of both panel members, but that there remained a perceived conflict of interest that would affect both the present proceedings and the other set of proceedings, which concerns the PRC. The PRC invited both panel members to consider whether they would be minded to step down as Disciplinary

Committee members in this set of proceedings so as to avoid any potential future criticisms, and proposed that the substantive hearing scheduled for 8 June 2016 be postponed to a later date until replacement members have been appointed.

30. As stated in the Disciplinary Committee's letter of the same date, the Disciplinary Committee considers that the perceived conflict of interest would only arise if both Mr. Fung and Mr. Tsang are on the Disciplinary Committee in the present case. Mr. Fung had kindly offered to step down, and although the Disciplinary Committee had no concern about Mr. Fung and Mr. Tsang's ability to act impartially, solely in order to avoid any perceived conflict of interest, the Disciplinary Committee agreed that Mr. Brian Fung would step down. There was no reason why Mr. Tsang could not continue as a Committee member and for the hearing to proceed on 8 June 2016 as scheduled.
31. The Disciplinary Committee would take this opportunity to emphasise that in its view, it is not desirable to have to postpone any hearings, especially not substantive hearings. Thus, best efforts and practical approaches should be taken to enable hearings to proceed as scheduled as far as possible.

### **Decision**

32. There can be no dispute that the Respondent failed or neglected to comply with the Direction that was issued by the PRC under section 32F(2)(b) of the PAO. In particular, not only did the Respondent fail to have the appropriate documents available at the practice review scheduled for 21 October 2014, since then he has continued to fail to cooperate and/or to provide the relevant documents.
33. The only question that arises is whether the Respondent had any reasonable excuse in failing to comply with the Direction.
34. The Disciplinary Committee notes the Respondent's letter dated 19 August 2015 and the enclosures thereto. However, even taking the matters stated therein at their highest, the Disciplinary Committee does not accept that they provide any reasonable excuse for the Respondent's failure to comply with the Direction.
  - (1) The surgery in May 2014 took place several months before the issuance of the Direction dated 30 September 2014, and whilst the surgery may have been relevant to the first postponement

of the practice review from April 2014 to 3 June 2014, the Respondent has not sought to explain how it is relevant to the present complaint or the Direction.

- (2) The Respondent's explanations in his letter dated 19 August 2015 do not cover the entire period that he failed to comply with the Direction.
- (3) The documents adduced by the Respondent do not show that the severity of the Respondent's medical condition was such that he could not gather documents and/or procure anyone to assist him in gathering the relevant documents for the practice review, or that he could not otherwise comply with the practice review. For example, the receipts showing that the Respondent attended medical consultations at the MIND PRO Psychological Medicine Centre on 24 January 2015 and 31 January 2015 only refer to the fact of the consultations, and do not show either the diagnosis or the severity of the Respondent's condition.

35. In the premises, the Disciplinary Committee finds that the complaint against the Respondent has been proved.

36. The PRC correctly acknowledged that the Disciplinary Committee has discretion in respect of the question of sanctions and that the Disciplinary Committee is not bound by past decisions. At the same time, the PRC has drawn the Committee's attention to four previous cases:

- (1) D-13-0818P, with the Disciplinary Committee order being dated 11 September 2015;
- (2) D-11-0541C, with the Disciplinary Committee order being dated 12 August 2013;
- (3) D-09-0373C, with the Disciplinary Committee order being dated 30 August 2010; and
- (4) D-08-0336C, with the Disciplinary Committee order being dated 30 November 2009 and the decision dated 18 December 2009.

37. In D-13-0818P, the respondent was found to have, without reasonable excuse, failed or neglected to comply with a direction issued by the PRC under section 32F(2) of the PAO. He was ordered to cooperate with the Institute to complete a practice review on his practice within 4 months from the date of the order, and if he failed to meet that condition, his name would be removed from the register of certified public accountants ("CPAs") for six months. He was also ordered to pay a

penalty of HK\$60,000.00 and costs in the sum of HK\$223,468.00. The Respondent complied with the practice review and his name was therefore not removed from the register of CPAs.

- (1) The facts of D-13-0818P were special. Although the respondent refused to accommodate the practice review, he explained his reasons as recorded at paragraph 7 of that decision. In particular, the respondent was very concerned about whether the Institute had made known to its members its stance in its submissions to the Court of Appeal in a case where the respondent's appeal against a Disciplinary Committee's decision and order in 2009 was dismissed (the "**Concern**"). See paragraph 7(b) of the decision.
- (2) As recorded in paragraph 11 of that decision, the respondent had written to the Council (after being invited to make submissions under Rule 5 of the Disciplinary Committee Proceedings Rules) stating that if his Concern was addressed, he would comply with the practice review.
- (3) The PRC submitted that the facts of D-13-0818P are very different to the present one in light of that respondent being essentially concerned about a matter of principle, namely the Concern, and because that respondent had made clear that he would comply with the practice review once that matter of principle had been resolved. Unlike the Respondent, the respondent in D-13-0818P actively participated in the proceedings and also attended the hearing.
- (4) Further, even though there was an order for a conditional removal from the register of CPAs in D-13-0818P, the PRC has submitted that in the present case, a similar order would not be appropriate as the Respondent has already asked for time extensions for the practice review twice before yet failed to comply, and there is therefore considerable doubt as to whether he would comply even now.

38. In D-11-0541C, the respondent was found to have breached section 34(1)(a)(ix) of the PAO in that he refused or neglected to comply with a direction lawfully given to him by the Council pursuant to section 18B of the PAO. The respondent was reprimanded, conditional upon the respondent providing the outstanding information within a period of 30 days from the Disciplinary Committee's order, failing which the order of reprimand be substituted with an order of removal for six months. The respondent was also ordered to pay a penalty of HK\$80,000.00 and costs in the sum of HK\$78,116.00. The respondent failed to comply with the condition and was removed.

- (1) As highlighted by the PRC, the respondent in D-11-0541C admitted his failure to respond to the Institute's enquiries.
  - (2) In fact, a formal hearing was dispensed with upon the respondent's admission to the complaint, which saved time and costs. See paragraph 15 of the decision.
39. In D-09-0373C, the respondent was found to have breached section 34(1)(a)(ix) of the PAO in that he refused or neglected to comply with a direction lawfully given to him by the Council pursuant to section 18B of the PAO. The respondent was reprimanded, and also ordered to pay a penalty of HK\$20,000.00 and costs in the sum of HK\$68,000.00.
- (1) As highlighted by the PRC, the respondent in D-09-0373C admitted his failure to respond to the Institute's enquiries and showed regret.
  - (2) Having said that, the respondent admitted the complaint only at the outset of the hearing, and thus the hearing was not avoided. Nevertheless, the respondent's admission enabled the Disciplinary Committee to dispense with the hearing expeditiously, and was cost-saving as well as indicative of his regret for his misconduct. See paragraphs 18 and 19 of the decision.
40. In D-08-0336C, the respondent was found to have breached section 34(1)(a)(ix) of the PAO in that he refused or neglected to comply with a direction lawfully given to him by the Council pursuant to section 18B of the PAO. He was removed from the register of CPAs for a period of 6 months and ordered to pay costs in the sum of HK\$32,090.00.
- (1) The respondent in D-08-0336C did not attend the hearing.
  - (2) The PRC submitted that D-08-0336C is more serious than the present case because:
    - (a) That case arose from a complaint by a third party.
    - (b) There was evidence that there were errors in some of an audit report which the respondent had prepared, and when the Institute wanted to investigate potential breaches of auditing standards, the respondent essentially stopped responding.
41. The PRC explained to the Disciplinary Committee that removal from the register of CPAs is more draconian than the cancellation of a practising certificate. Removal from the register of CPAs, in

other words cancellation of membership, deprives a member of his or her livelihood. By contrast, even if a member's practising certificate is cancelled, he is not necessarily barred from carrying out accounting work, for example for another certified public accountant.

42. The PRC has proposed that the Respondent's practising certificate be cancelled for a period of longer than 6 months, and that the Respondent bear the costs and expenses of the Institute. The Institute has provided a Statement of Costs dated 8 June 2016 totalling HK\$37,648.00.
43. 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, the previous cases referred to us (although we bear in mind that each case must be decided upon its own particular facts) and the submissions made. In particular, the Disciplinary Committee has borne in mind that the PRC is asking for cancellation of the Respondent's practising certificate, rather than the more serious measure of removing his membership from the register of CPAs.
44. In respect of the Statement of Costs prepared by the PRC, the Disciplinary Committee considers that the sum of HK\$37,648.00 was incurred reasonably and ought to be borne by the Respondent.
45. The Disciplinary Committee orders that:
  - (1) the practising certificate issued to the Respondent in 2016 be cancelled under section 35(1)(da) of the PAO on the 40<sup>th</sup> day from date of this order;
  - (2) a practising certificate shall not be issued to the Respondent for 12 months under section 35(1)(db) of the PAO starting from the 40<sup>th</sup> day from the date of this order;
  - (3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$37,648.00 under section 35(1)(iii) of the PAO.