

IN THE MATTER OF

A Complaint made under Section 34(1A) and 34(1AA) of the Professional Accountants Ordinance, Cap.50, Laws of Hong Kong ("**PAO**") and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong Institute of Public Accountants

AND

Chan Chant Fai, a certified public accountant (practising)  
(Membership no.: A00567)

Fairyield CPA Limited, a corporate practice (CP no.: M0388)

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

Members: Ms. So Man Wah Miranda (Chairman)  
Ms. Julia Frances Charlton  
Ms. Choy Hok Man Constance  
Mr. Chow Chi In Dennis  
Mr. Chan Siu Lun Stephen

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**ORDER & REASONS FOR DECISION**

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1. This is a complaint made by the Registrar of the Hong Kong Certified Public Accountants (the "**Institute**") against Chan Chant Fai, a certified public accountant (practising) (Membership no.: A00567) and Fairyield CPA Limited, a corporate practice (CP no.: M0388) (collectively the "**Respondents**").

THE COMPLAINT

2. The relevant details of the complaint are set out in a letter dated 15 May 2018 from the Registrar to the Council of the Institute (the "**Complaint Letter**") are as follows:

Background

- (1) Fairyield was the auditor of a private company, TCL Hong Kong Limited ("**Company**") since its incorporation on 12 March 2004. Fairyield audited the

Company's financial statements for the period / years ended 31 March from 2005 to 2012 ("**Financial Statements**").

- (2) The audit work in relation to the Financial Statements commenced in August 2012.
- (3) Chan was the engagement director signing the auditor's reports for the Financial Statements on 8 November 2012.
- (4) Chan's wife ("**B. Chan**") and her sisters were the directors of the Company.
- (5) B. Chan was one of two directors who signed the Financial Statements.
- (6) In the above circumstances, the Respondents conducted the audits under a significant threat to independence caused by B. Chan, an immediate family member, being a director of the Company.

#### The Complaint

- (7) Section 34(1)(a)(vi) of the PAO applies to Chan and Fairyield in that they failed to observe, maintain or otherwise apply a professional standard, namely section 290.128 of the Code of Ethics for Professional Accountants ("**Code**"), for their failure to properly maintain independence when carrying out the audits of the Financial Statements.

#### Facts and Circumstances in Support of the Complaint

- (8) Section 290.128 of the Code states:

*When an immediate family member of a member of the audit team is:*

- (a) A director or officer of the audit client; or*
- (b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion,*

*or was in such a position during any period covered by the engagement or the financial statements, the threats to independence can only be reduced to an acceptable level by removing the individual from the audit team. The closeness of the relationship is such that no other safeguards could reduce the threat to an acceptable level. Accordingly, no individual who has such a relationship shall be a member of the audit team.*

- (9) B. Chan signed the Financial Statements as one of the directors of the Company, and Chan signed the attached auditor's reports which were issued in the name of Fairyield. In addition, a Fairyield (Nominees) Limited ("**FNL**"), of which Chan and B. Chan were directors, had provided book-keeping services to the Company for the period / years ended 31 March 2005 to 2012.

- (10) On the Institute's inquiry as to whether threats to independence had been considered and evaluated in accordance with the Code, the Respondents replied in the affirmative. However, they stated that all audit working papers and correspondence with the Company had been discarded in late 2017. They further stated that the threat to independence had been "resolved" by Chan resigning as a director of FNL on 31 March 2011, and for him to have no further involvement in the daily administration of FNL.
- (11) The Respondents also stated that the relevant audits were completed by the staff of Fairyield and those services were rendered free of charge.
- (12) According to section 290.128 of the Code, when an immediate family member of a member of the audit team is a director of the audit client, no other safeguards could reduce the threat to an acceptable level. Therefore, the individual who has such a relationship should be removed from the audit team.
- (13) There is no doubt Chan as the engagement director was part of the audit team. He signed Fairyield's auditor's reports on the Financial Statements for the years in question.
- (14) There is also no dispute that Chan's wife, an immediate family member, was a director of the Company, as evidenced by her signing the Financial Statements as director.
- (15) As such, the Respondents' confirmation that they had evaluated and "resolved" the threats to independence is incorrect, as Chan's resignation from the directorship of FNL did not address in any way the threat to independence posed by his wife being a director of the Company. The assertion appears to show the Respondents' ignorance of the requirement of the Code. Therefore, the Respondents failed to comply with section 290.128 of the Code.

#### THE PROCEEDINGS

3. By letter signed by the parties dated 26 June 2018, the Respondents admitted the Complaint against them, and the parties requested that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules ("DCPR") be dispensed with.
4. The Disciplinary Committee agreed with the parties' request to dispense with the steps set out in Rules 17 to 30 of the DCPR in light of the admission made by the Respondents, and directed the parties to make written submissions on sanctions and costs.
5. On 29 October 2018, the Complainant filed its submission on sanctions and costs. The Complainant proposed the Disciplinary Committee may consider cancellation of the Respondents' Practising Certificate for an appropriate period sufficient to reflect the seriousness of the breach of independence, and to maintain the public's confidence in the

ethics of the profession. In addition, the Complainant proposed the Respondents should pay for costs and expenses of and incidental to the proceedings.

6. On 1 November 2018, the Respondents requested a time extension for filing their submissions on sanctions and costs, which was granted. The Respondents filed their submissions on sanctions and costs on 8 November 2018.
7. In their submissions, Respondent Chan was apologetic of the error he committed. He supplied the history of how the Respondents became auditors of the Company as mitigating factors. Notably, the Respondents said the Company was set up by 5 sisters (including his wife B. Chan) to look after and jointly handle the cash funds for the benefits of their parents, and the unanimous consent of all directors (being the 5 sisters) was required to deal with any single one decision made in connection with the business of the Company. The Respondents also stated that they did not make any financial gain from this client, as the audit service was pro bono. In light of the presence of mitigating factors, the Respondents asked the Disciplinary Committee to consider a more lenient penalty. The Respondents agreed to pay for the costs and expenses of and incidental to the proceedings.
8. On 20 November 2018, in response to a request from the Disciplinary Committee, the Respondents provided further supplemental information on certain matters stated in their submissions.

#### ORDER OF THE DISCIPLINARY COMMITTEE; SANCTIONS AND COSTS

9. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters. Independence is a fundamental principle of the profession, and the sanctions imposed must appropriately reflect the seriousness of the breach, as well as sufficient to maintain the public's confidence in the ethics of the profession. At the same time, consideration should be given to the particular situation of this matter, where the Company was set up by 5 sisters for the sole purpose of looking after and jointly handling the cash funds for the benefits of their parents, the Company has no outside creditors or debtors, and the Respondents do not stand to make any financial gain.
10. In view of the foregoing, the Disciplinary Committee ordered that:
  - (a) the Respondents be reprimanded under Section 35(1)(b) of the PAO;
  - (b) the Respondents pay a penalty of HK\$200,000 under Section 35(1)(c) of the PAO, such penalty be payable jointly and severally by the Respondents;
  - (c) the Respondents do pay the costs and expenses of and incidental to the proceedings of the Complaint in the sum of HK\$35,134 under Section 35(1)(iii) of the PAO, such costs and expenses to be borne jointly and severally by the Respondents.

Dated: 12 February 2019

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So Man Wah Miranda  
Chairman  
Disciplinary Panel A

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Julia Frances Charlton  
Member  
Disciplinary Panel A

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Chow Chi In Dennis  
Member  
Disciplinary Panel B

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Choy Hok Man Constance  
Member  
Disciplinary Panel A

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Chan Siu Lun Stephen  
Member  
Disciplinary Panel B