

**IN THE MATTER OF**

A Complaint made under Section 34(1A) 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**

Yip Hing Lam Peter, certified public accountant (Practising)  
(Membership no.: A01360)

Leung Ka Fai, certified public accountant (Practising)  
(Membership no. A21521)

Yip Leung & Co., a CPA Firm (Firm no.: 2091)

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

Members: Mr. Conrad Chan (Chairman)  
Mr. Chan Fung Cheung Wilson  
Mr. Lee Tsung Wah Jonathan  
Ms. Li Yin Fan Fanny  
Mr. Paul Anthony Phenix

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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 Yip Hing Lam Peter, certified public accountant (practising) (Membership no.: A01361), Leung Ka Fai, certified public accountant (practising) (Membership no.: A21521) and Yip Leung & Co., a CPA Firm (Firm no.: 0291) (collectively the "**Respondents**").

**THE COMPLAINT**

2. The relevant details of the complaint are set out in a letter dated 30 October 2018 from the Registrar to the Council of the Institute (the "**Complaint Letter**") are as follows:

## **Background**

- (1) Yip, Leung & Co. (the "**Firm**") was appointed as the auditor of Wah Loong Metals & Building Materials Limited ("**Company**") from 2009 to 2016. Yip Hing Lam, Peter ("**Yip**") is the managing partner and Leung Ka Fai ("**Leung**") is a partner of the Firm at all material times.
- (2) The Company is owned by Yip's family since its incorporation in 1982. Yip's father, brothers and his son were shareholders of the Company at all material times before 2014. In December 2014, Yip inherited 6,000 shares from his father which represented a 5.88% shareholding in the Company. After the inheritance, the Company was owned by Yip, his brothers and his son.
- (3) Yip's father and his brothers were also the directors of the Company at all material times before 2014. Since December 2014, only Yip's brothers continued to act as the Company's directors.
- (4) Yip was the engagement partner for the Company's audits from 2009 to 2013. After Yip has become a shareholder of the Company, Leung has replaced Yip as the engagement partner for the 2014 to 2016 audits and Yip acted as the engagement quality control reviewer ("**EQCR**") to evaluate the significant judgments made and conclusions reached by the audit team in formulating the relevant auditor's reports.
- (5) In view of Yip's close relationships with the Company's shareholders and directors, a reasonable and informed third party would be likely to conclude that the 2009 to 2016 audits were not carried out by an independent audit team, contrary to the independence requirements under the Code of Ethics for Professional Accountants ("**Code**").
- (6) The recurring nature of the above-mentioned ethical violation shows that the Firm's system of quality control did not provide reasonable assurance that the Firm and its personnel comply with professional standards, in breach of Hong Kong Standard on Quality Control 1 "Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements" ("**HKSQC 1**").

## **The Complaints**

### *First Complaint*

- (7) Section 34(1)(a)(vi) of the Professional Accountants Ordinance ("**PAO**") applies to Yip in that, as the engagement partner for the 2009 to 2013 audits, he failed or neglected to observe, maintain or otherwise apply professional standard(s) to ensure that the audit team was independent of the Company.

### *Second Complaint*

- (8) Section 34(1)(a)(vi) of the PAO applies to Leung in that, as the engagement partner for the 2014 to 2016 audits, he failed or neglected to observe, maintain or otherwise apply professional standard(s) to ensure that the audit team was independent of the Company.

*Third Complaint*

- (9) Section 34(1)(a)(vi) of the PAO applies to the Firm for having failed or neglected to observe, maintain or otherwise apply professional standard(s) in that it failed to establish and maintain an effective quality control system to provide it with reasonable assurance that the Firm and its personnel comply with professional standards.

**Facts and Circumstances in support of the Complaints**

- (10) The facts and circumstances in support of the Complaints are as follows:

*First Complaint*

- (11) It is a fundamental principle that a professional accountant in public practice must be independent of his audit clients. Independence of mind and in appearance is necessary to enable the auditor to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest, or undue influence of others.
- (12) It is not disputed that Yip had been the engagement partner responsible for the conclusions expressed in the auditor's reports for the 2009 to 2013 audits, during the period in which his close family members (i.e. his father, brothers and son) were shareholders and/or directors of the Company.
- (13) The close relationships between Yip and the Company's shareholders and directors would have created threats to compliance with the Institute's independence requirement:
- (a) A self-interest threat is created when a member of the audit team has a close family member who the audit team member knows has a direct financial interest or a material indirect financial interest in the audit client.
  - (b) Threats to independence such as self-interest, familiarity or intimidation threats are created when a close family member of a member of the audit team is a director of the audit client.
- (14) The existence of these threats to independence would cause a reasonable and informed third party to question if the audit team's objectivity and professional skepticism with which to carry out the 2009 to 2013 audits had been compromised and to question whether the audit opinions issued by Yip in the respective auditor's reports were free from bias.
- (15) As the engagement partner, Yip was required by the Code to identify and evaluate the significance of the threats to independence and apply safeguards to eliminate the threats or reduce them to an acceptable level.
- (16) In spite of the above circumstances, there was no evidence of any appropriate safeguards applied by the audit team which could effectively eliminate and/or reduce the threats to an acceptable level in the 2009 to 2013 audits.
- (17) On the above basis, Yip failed to comply with paragraphs 290.4, 290.105 and 290.130 of the Code.

- (18) As the Code is a professional standard referred to in the PAO, section 34(1)(a)(vi) applies to Yip in this respect.

*Second Complaint*

- (19) It is not disputed that Leung was the engagement partner responsible for the 2014 to 2016 audits while Yip acted as the EQCR. During this period, Yip and his brothers and son were shareholders and Yip's brothers were the directors of the Company.
- (20) In response to the Institute's enquiries, the Respondents considered that Yip's 5.88% shareholding in the Company is not material. However, the fact remains that threats to independence are created when Yip's brothers are directors of the Company.
- (21) Both Leung and Yip claimed that Yip had dissociated himself from the Company's audits by relinquishing his role as engagement partner after he had inherited the shareholding. However, by assuming the role of EQCR, Yip was still part of the audit team and therefore, could not have been completely dissociated from the 2014 to 2016 audits.
- (22) According to Yip, his role as EQCR was to carry out an objective evaluation of the significant judgments made and the conclusions reached by the audit team in formulating the relevant auditor's reports.
- (23) Given the close relationship between Yip and the directors of the Company, a reasonable and informed third party would question if Yip's role as the EQCR was or could have been compromised, thereby raising questions over the conclusions reached in the auditor's report.
- (24) As engagement partner for the 2014 to 2016 audits, Leung was required under the Code to identify and evaluate the significance of the threats to independence and apply safeguards to eliminate the threats or reduce them to an acceptable level.
- (25) In spite of the above circumstances, there was no evidence of any appropriate safeguards applied by the audit team which could effectively eliminate and/or reduce the threats to an acceptable level in the 2014 to 2016 audits.
- (26) On the above basis, Leung failed to comply with paragraphs 290.4 and 290.129 of the Code.
- (27) As the Code is a professional standard referred to in the PAO, section 34(1)(a)(vi) applies to Leung in this respect.

*Third Complaint*

- (28) Paragraphs 21 and 26 of HKSQC 1 require a firm to establish policies and procedures designed to provide it with reasonable assurance that the firm and its personnel (a) maintain independence where required by relevant ethical requirements; and (b) will only accept or continue client relationships and engagements where the firm can comply with relevant ethical requirements.

- (29) The repeated breaches of ethical requirements by Yip and Leung for multiple years as mentioned above indicated that the Firm did not establish adequate policies and procedures to ensure the independence of its staff in carrying out audits and that it would only undertake engagements when the Firm can comply with the independence requirements.
- (30) Paragraph 40 of HKSQC 1 further states that a firm shall establish policies and procedures designed to maintain the objectivity of the engagement quality control reviewer.
- (31) The appointment of Yip as the EQCR in the 2014 to 2016 audits also indicated that the Firm failed to establish effective policies and procedures to ensure appointment of an independent EQCR.
- (32) Based on the above, the Firm failed to comply with paragraphs 21, 26 and 40 of HKSQC 1.
- (33) As HKSQC 1 is a professional standard referred to in the PAO, section 34(1)(a)(vi) applies to the Firm in this respect.

#### **THE PROCEEDINGS**

- 3. By letter signed by the parties dated 21 March 2019, 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 17 April 2019, the Complainant filed its submission on sanctions and costs. The Complainant submitted that auditor independence is a serious matter and hence proposed to the Disciplinary Committee that the appropriate sanctions should be a reprimand and a financial penalty of an amount which commensurate with the seriousness of the offence. The Complainant considered that such penalties would be seen as strong deterrent on all other certified public accountants and would uphold the public’s confidence in the ethics of the profession. Further, the Complainant submitted that even though the Respondents had made an early admission of liability, it should not diminish the seriousness of the case. In fact, the admission of liability brought an early conclusion to the case with related cost savings to the Respondents. The Complainant also submits that the Respondents should pay the costs and expenses of and incidental to the proceedings of the Institute (including the costs and expenses of the Committee). Costs incurred by the Institute in disciplinary proceedings are financed by membership subscriptions and registration fees. Since it was the conduct of the Respondents which had brought them within the disciplinary process under the PAO, it is only fair that they should pay the costs and expenses of the proceedings and not have them funded or subsidized by other members of the Institute.
- 6. On 23 April 2019, the Respondents filed their submissions on sanctions and costs. In their submissions, the Respondents submitted that:

- (1) Before 3 December 2014, date when the owner (the "**Deceased**") of the Company passed away, the 1<sup>st</sup> Respondent was not a shareholder of the Company. He had never participated in the management of the Company, held any office/post in the Company, or received any remuneration/benefit, in cash or in kind, from the Company other than the annual audit fee. Apart from being blood-related, he was independent of all the personnel of the Company, both financially and physically.
- (2) The 1<sup>st</sup> Respondent is one of the two executors named in the Will of the Deceased. It would be more efficient and convenient for the 1<sup>st</sup> Respondent in discharging his duty as an executor if the 3<sup>rd</sup> Respondent remained as the auditor of the Company. The 3<sup>rd</sup> Respondent continued to act as the auditor of the Company until 2016. The other executor named in the Will is another son of the Deceased who was a member of the management team of the Company and has been managing the Company's business with total authority ever since.
- (3) Upon inheritance of some shares (5.88% of the issued capital) in the Company, the 1<sup>st</sup> Respondent relinquished his role as the engagement partner to counteract the resultant independence risk. The 2<sup>nd</sup> Respondent, being the only other practising accountant of the 3<sup>rd</sup> Respondent, naturally assumed the role of the engagement partner.
- (4) The Deceased named the 1<sup>st</sup> Respondent as one of the two executors in his Will because he wanted the 1<sup>st</sup> Respondent, through audit procedures, to ensure that the Company would be run fairly for the benefit of all beneficiaries named in his Will. After dissociated himself from the audit of the Company, the 1<sup>st</sup> Respondent opted to take up the role of EQCR in order to ensure that the audit opinion was commensurate with conclusions drawn from results of the audit procedures so that the financial statements presented a true and fair view of the financial position of the Company and its financial performance.

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

7. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters.
8. 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. Yip was the main perpetrator of the breach. He relinquished his role as the auditor and asked Leung to step in. Leung, as a partner of the Firm, should have a duty of care to the Firm and ensure that the firm complies with the independence requirements. The incident happened over a period of 8 years and hence it is a serious breach by the Respondents.
9. In view of the foregoing, the Disciplinary Committee ordered that:
  - (1) all Respondents be reprimanded under Section 35(1)(b) of the PAO;
  - (2) Yip pays a penalty of HK\$120,000 under Section 35(1)(c) of the PAO,

- (3) Leung pays a penalty of HK\$120,000 under Section 35(1)(c) of the PAO
- (4) The Firm pays a penalty of HK\$100,000 under Section 35(1)(c) of the PAO
- (5) the Respondents do pay the costs and expenses of and incidental to the proceedings of the Complaint in the sum of HK\$44,866 under Section 35(1)(iii) of the PAO, such costs and expenses to be borne jointly and severally by the Respondents.

Dated 12 August 2019

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Conrad Chan  
Chairman  
Disciplinary Panel A

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Chan Fung Cheung Wilson  
Member  
Disciplinary Panel A

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Li Yin Fan Fanny  
Member  
Disciplinary Panel B

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Lee Tsung Wah Jonathan  
Member  
Disciplinary Panel A

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Paul Anthony Phenix  
Member  
Disciplinary Panel B