

IN THE MATTER OF a complaint against Mr.  
Tsang Yiu Kai, a professional accountant, made  
under *section 34(1)(a) of the Professional  
Accountants Ordinance, Cap. 50*

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BETWEEN

THE REGISTRAR OF THE HONG KONG INSTITUTE  
OF CERTIFIED PUBLIC ACCOUNTANTS

Complainant

AND

TSANG YIU KAI

Respondent

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**REASONS FOR DECISION**

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1. A formal complaint was lodged by the Complainant in writing to the Council of the Hong Kong Institute of Certified Public Accountants by way of letter dated 9 July 2007 ("**the Complaint Letter**"). A single charge was laid in relation to the Respondent's insider dealing of 1,600,000 shares in a publicly listed company in Hong Kong, namely, Easyknit International Holdings Limited on 31 January 2000, in breach of sections 9(1)(a) and 9(1)(c) of the Securities (Insider Dealing) Ordinance, Cap. 395 (which has since been repealed but was in force at the relevant time).
2. The complaint against the Respondent alleges that section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply paragraph 4 of the Fundamental Principles set out in the then applicable Statement 1.200 "Professional Ethics –

Explanatory Foreword", which provided that *"a member should follow the ethical guidance of the Society and in circumstances not provided for by that guidance should conduct himself in a manner consistent with the good reputation of the profession and the Society."* Particulars of the complaint are set out in the Complaint Letter and the same will not be repeated here.

3. By a letter dated 23 December 2008 from the Respondent, the Respondent admitted formally to the complaint and stated that he did not dispute the facts as set out in the Complaint Letter, to which the Insider Dealing Tribunal's Report dated 19 January 2006 ("**the Report**") had been annexed.
4. At pages 171-172 of the Report, the Insider Dealing Tribunal explained the Respondent (Alan Tsang)'s involvement as follows:-

"Alan TSANG possessed the relevant information as a result of his attendance at the 28<sup>th</sup> January 2000 meeting with Pollon Group. As a result of what was said at that meeting he knew that a mainland group with a telecommunications background was seriously contemplating acquiring Easy Concepts and negotiations had started in that regard.

He then took steps to enter into a joint enterprise with his wife Helena SUM and his sister Christina TSANG to purchase Easy Concepts shares on the basis of that information, or failing that to purchase Easyknit shares. For the purposes of their partnership he shared the information with them. Neither of Helena SUM or Christina TSANG would have participated financially to the extent they did without at least knowing the fundamental elements of the relevant information, and given that they were all members of the same family there was every reason for Alan TSANG to tell them. We are satisfied that Alan TSANG, as part of his role within the joint enterprise, procured, either directly or indirectly through his wife, his sister Christina TSANG to purchase the shares of Easy Concepts, or failing their availability, the shares of Easyknit. We are also separately satisfied that he disclosed the relevant information to his wife knowing that in turn she would counsel and procure Christina TSANG to deal in those shares, or directly to his sister on the same basis."

Further insight was provided at page 197 of the Report as to the Respondent's conduct:

"Alan TSANG was vice chairman of both listed companies Easyknit and Easy Concepts. His abuse of those positions in his insider dealings in Easyknit shares as well as the use of a company associated with his firm of accountants was considerable, though in our view not so culpable as that of KOON. Nevertheless Alan TSANG's cynical use of his position to enrich himself and his family occasions considerable concern."

The Insider Dealing Tribunal assessed that the Respondent had made a personal profit of HK\$442,127 from his insider dealing (page 198 of the Report).

5. The Disciplinary Committee invited the parties to make written submissions in respect of the appropriate sanctions to be imposed on the Respondent. The Complainant and the Respondent made written representations to the Committee on 6 March 2009 and 9 March 2009 respectively. In the Complainant's written submissions, it was submitted that the Complainant had no objection to any regard which the Committee might have to the fact that the Respondent had admitted the complaint, thereby avoiding the necessity of a formal hearing. The Complainant also submitted that the Respondent should pay the costs and expenses of and incidental to the disciplinary proceedings and in that connection a Statement of Costs was attached to the Complainant's written submissions. The total costs incurred by the Complainant is HK\$57,252 whereas the costs of the clerk to the Disciplinary Committee up to 12 February 2009 is HK\$30,480. The total costs incurred including other disbursements in relation to the proceedings are HK\$89,096.
6. The Respondent's written representations appeared in his letter to the Committee dated 9 March 2009. In summary, the Respondent expressed his remorse and

invited the Committee to consider his cooperation with the investigation and admission of the complaint at an early stage. [Details of private information omitted.]

7. Upon the Respondent's own admission, and the clear evidence submitted by the Complainant in support of the complaint, the Committee is satisfied that the complaint against the Respondent has been proved.

8. In considering the appropriate orders to be made, the Committee takes into account the mischief and dishonesty intrinsic to insider dealing. Such elements are relevant to the ethical standards expected of a professional accountant. In breach of such standards, the Respondent did not conduct himself in a manner consistent with the good reputation of the profession and the Institute. In this regard, it is important to note the remarks made by the Court of Final Appeal in *Koon Wing Yee v Insider Dealing Tribunal* [2008] 3 HKLRD 372 at paragraphs 45 and 46:

"Insider dealing is an "insidious mischief" which threatens the integrity of financial markets and public and investor confidence in the markets."

"That insider dealing amounts to very serious misconduct admits of no doubt. It is a species of dishonest misconduct."

9. The Committee accepts that the Respondent did not come into possession of the relevant information in question in his capacity as a professional accountant, which would have been a very serious aggravating factor. In the absence of such an aggravating feature, the Committee considers that a formal reprimand and a substantial financial penalty would be the appropriate sanctions. Taking into account the mitigation advanced by the Respondent, the Committee considers that

the penalty should be in the sum of HK\$150,000.

10. Further, the Committee is of the view that the Respondent should be ordered to pay a reasonable contribution toward the costs and expenses of and incidental to these proceedings. Taking into account the attitude of the Respondent and his early admission to the complaint, such costs and expenses will not be ordered on an indemnity basis. In all the circumstances, the Committee finds it appropriate to impose against the Respondent a costs order of HK\$45,000, which is approximately half of the total costs incurred.

Dated this 3rd day of December, 2009.