



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

## **Hong Kong Institute of Certified Public Accountants takes disciplinary action against a certified public accountant (practising) and a corporate practice**

(HONG KONG, 20 March 2019) A Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants reprimanded Mr. Chan Chant Fai, certified public accountant (practising) (A00567) and Fairyard CPA Limited (M0388) (collectively "Respondents") on 12 February 2019 for their failure or neglect to observe, maintain or otherwise apply a professional standard issued by the Institute. The Committee further ordered the Respondents to jointly pay a penalty of HK\$200,000 and costs of the Institute of HK\$35,134.

Fairyard audited the financial statements of a private company for the financial periods / years ended 31 March from 2005 to 2012. Chan was the engagement director.

At the time of the audits, an immediate family member of Chan was a director of the client company. This significant threat to auditor independence could have only been reduced to an acceptable level by Chan withdrawing from the audit team. Chan's failure to do so significantly compromised the independence of the audits.

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 section 290.128 of the Code of Ethics for Professional Accountants.

Having taken into account the circumstances of the case, the Disciplinary Committee made the above order under section 35(1) of the ordinance. The Committee noted independence is a fundamental principle of the profession, and sufficient sanctions must be imposed for this breach to maintain public confidence in the profession. In mitigation, the Committee noted the private company was set up solely to handle assets of a family and had no outside creditors or debtors, and that the Respondents did not stand to make any financial gain.

### About HKICPA Disciplinary Process

The Hong Kong Institute of Certified Public Accountants (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 HKICPA**

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 43,000 members and 19,000 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執業會計師及一間執業法團作出紀律處分

(香港，二零一九年三月二十日) 香港會計師公會轄下一紀律委員會，於二零一九年二月十二日就一名執業會計師陳燦輝先生（會員編號：A00567）及輝儀會計師行有限公司（執業法團編號：M0388）（統稱為「答辯人」）沒有或忽略遵守、維持或以其他方式應用公會頒佈的專業準則，對他們作出譴責。此外，紀律委員會命令答辯人須共同繳付罰款 200,000 港元及公會費用 35,134 港元。

輝儀曾審計一間私人公司截至二零零五年至二零一二年三月三十一日止各財務期間／年度的財務報表。陳先生是該項目的執業董事。

在該等審計期間，陳先生的一名直系家庭成員是該客戶公司的董事。這會嚴重影響核數師的獨立性，而只有陳先生退出該審計團隊才能將影響降至可接受水平。陳先生沒有退出，引致核數師的獨立性嚴重受損。

經考慮有關情況後，公會根據香港法例第 50 章《專業會計師條例》第 34(1)(a)(vi)條向答辯人作出投訴。

紀律委員會裁定答辯人違反了 **Code of Ethics for Professional Accountants** 第 290.128 條。

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)條向答辯人作出上述命令。委員會認為獨立性是會計專業的基本原則，因此有必要對上述違規施行足夠處罰，以維護公眾對會計專業的信心。就減判方面，紀律委員會注意到該私人公司的成立只為處理家庭資產而公司並無對外的債權人或債務人，以及答辯人並不是為任何金錢利益而牽涉其中。

### 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/>

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## 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、發展和監管本港的會計專業。公會會員超過 43,000 名，學生人數逾 19,000。

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。

### 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(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