



## **Consultation Paper on**

- (i) Outline of the AFRC's Disciplinary Process**
- (ii) Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons**
- (iii) Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons**
- (iv) Sanctions Policy for PIE Auditors and Registered Responsible Persons**
- (v) Sanctions Policy for Professional Persons**

9 March 2022

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## About the FRC

The Financial Reporting Council is an independent body established on 1 December 2006 under the Financial Reporting Council Ordinance. It is entrusted with the statutory duty to regulate auditors of listed entities through a system of registration and recognition, and through inspection, investigation and disciplinary action.

The mission of the FRC is to uphold the quality of financial reporting of listed entities in Hong Kong, so as to enhance protection for investors and deepen investor confidence in corporate reporting.

To learn more: please visit <https://www.frc.org.hk> or follow us on [LinkedIn](#).

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## How to respond

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Hong Kong

By fax to: (852) 2810 6320

By email to: [consultation@frc.org.hk](mailto:consultation@frc.org.hk)

All submissions received before the expiry of the consultation period will be taken into account before the proposals are finalised.

## Representative groups

Representative groups are asked to give a summary of the organisations or members they represent when they respond.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or may be disclosed. In this connection, please read the Personal Information Collection Statement. If you want the information that you provide to be treated as confidential or you do not wish your response to be published, please make this clear in your response.

## Acknowledgement of response

An acknowledgement will be sent to any individual or organisation submitting a response to this consultation.

## Questions about this consultation

Any questions about the issues raised in this consultation paper should be directed to the Department of Discipline of the FRC at the above email address.

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## Section 1 Introduction

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1. On 22 October 2021, the Financial Reporting Council (Amendment) Ordinance 2021 (“**Amendment Ordinance 2021**”) was passed with a view to further enhance the independence of the regulatory regime for the accounting profession in Hong Kong.
2. The Financial Reporting Council Ordinance (Cap. 588) (“**FRCO**”), as amended by the Amendment Ordinance 2021, will be renamed as the Accounting and Financial Reporting Council Ordinance (“**AFRCO**”).
3. Upon the commencement of the Amendment Ordinance 2021:
  - 3.1 the Financial Reporting Council (“**FRC**”) will be renamed as the Accounting and Financial Reporting Council (“**AFRC**”); and
  - 3.2 the regulatory powers of the FRC will be expanded to cover professional persons in addition to its existing regulatory powers over public interest entity (“**PIE**”) auditors and registered responsible persons of registered PIE auditors.
4. With the introduction of the Amendment Ordinance 2021, the FRC aims to enhance the quality of the accounting profession and the standards of corporate reporting and audits for all entities, whether or not a PIE, in Hong Kong. As the business models of corporate entities become more complex and Hong Kong further strengthens its position as a trading and international financial centre, an effective regulatory regime of the accounting profession, including auditing, is crucial.
5. Against this background, the FRC has formulated new guidelines and other related documents for professional persons in preparation for the expansion of its regulatory powers.
6. Given the significant increase in the number of PIEs in Hong Kong (a significant proportion of which operate outside of Hong Kong), the FRC has also taken this opportunity to conduct a comprehensive review of the previously published disciplinary mechanism, including its approach to sanctions, in order to improve its effectiveness in delivering appropriate regulatory outcomes.
7. The proposals in this consultation are a result of these exercises.
8. In putting forward the proposals set out in this consultation paper, the FRC has carefully considered the requirements of the AFRCO, the practice and

procedures adopted by other professional and financial regulators (both in Hong Kong and overseas), market developments and the local regulatory context.

## Section 2 Definitions

9. In this consultation paper, the following terms have the meanings defined in the AFRCO as set out below:

<b>Terms</b>	<b>Meanings defined in the AFRCO</b>	<b>Section under the AFRCO</b>
practice unit	<p>A practice unit means:</p> <ul style="list-style-type: none"> <li>• a certified public accountant (practising) who practises accountancy on the accountant's own account under the accountant's own name as registered under section 22(2) of the Professional Accountants Ordinance (Cap. 50);</li> <li>• a CPA firm; or</li> <li>• a corporate practice.</li> </ul>	2(1)
professional person	<p>A professional person means:</p> <ul style="list-style-type: none"> <li>• a certified public accountant; or</li> <li>• a practice unit.</li> </ul>	2(1)
PIE	A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.	3(1)
PIE engagement	<p>A PIE engagement means any of the following types of engagements for the preparation of:</p> <ul style="list-style-type: none"> <li>• an auditor's report on a PIE's financial statements / annual accounts required by section 379 of the Companies Ordinance (Cap. 622), the Listing Rules or any relevant code;</li> <li>• a specified report required to be included in a listing document for the listing of a</li> </ul>	3A(1); Part 1 of Schedule 1A

	<p>corporation's shares or stocks or for the listing of a collective investment scheme; or</p> <ul style="list-style-type: none"> <li>• an accountant's report required under the Listing Rules to be included in a circular issued by a PIE for a reverse takeover or a very substantial acquisition.</li> </ul>	
PIE auditor	A PIE auditor means a registered or recognized PIE auditor.	3A
registered responsible person	<p>A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor:</p> <ul style="list-style-type: none"> <li>• an engagement partner;</li> <li>• an engagement quality control reviewer; or</li> <li>• a quality control system responsible person.</li> </ul>	2(1)



## Section 3 Proposals

10. The FRC’s proposals are contained in the proposed documents listed below (collectively, the “**Proposed Documents**”) and attached in **Appendix A**:

Document No.	Proposed Document
<b>A</b>	Outline of the AFRC’s Disciplinary Process
<b>B</b>	Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons
<b>C</b>	Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons
<b>D</b>	Sanctions Policy for PIE Auditors and Registered Responsible Persons
<b>E</b>	Sanctions Policy for Professional Persons

11. The FRC has also prepared the following additional documents (“**Additional Documents**”) in respect of disciplinary matters which are not subject to the current consultation. The Additional Documents are attached in **Appendix B** to assist stakeholders understand how the Proposed Documents fit in the AFRC’s proposed approach to disciplinary matters:

Document No.	Additional Document
<b>F</b>	Discipline Policy Statement for PIE Auditors and Registered Responsible Persons
<b>G</b>	Discipline Policy Statement for Professional Persons
<b>H</b>	Guidance Note on Cooperation with the AFRC

12. It is intended that the existing Disciplinary Policy Statement (“**Existing Policy Statement**”), FRC Guidelines for Exercising the Power to Impose a Pecuniary Penalty dated September 2019 (“**Existing Fining Guidelines**”) and Sanctions

Guidelines dated October 2019 (“**Existing Sanctions Guidelines**”) (collectively, the “**Existing Documents**”) will be superseded or replaced.

13. Please note that although the discussion below uses the terms “AFRC” and “AFRCO” for convenience, depending on the legislative timetable, it is possible that the documents applicable to PIE auditors and registered responsible persons will come into effect before the commencement of the Amendment Ordinance 2021. Further details will be provided upon the conclusion of this consultation exercise.

#### Aims and objectives

14. In preparing the Proposed and Additional Documents, the FRC aims to promote transparency by setting out the AFRC’s general approach to disciplinary matters. The documents are also intended to reflect the FRC’s principle of striving for effective regulatory outcomes through efficient process, with a view to reinforcing Hong Kong’s status as an international financial centre and facilitating the long-term development of the profession.
15. The FRC is further guided by the following:
  - 15.1 **Fairness and impartiality** – It is of paramount importance to the AFRC that all regulatees are treated fairly and impartially in its disciplinary process, including being afforded a reasonable opportunity to be heard before disciplinary decisions are made, and the Proposed and Additional Documents have been developed with this in mind.
  - 15.2 **Flexibility** – The AFRC aims to be transparent and consistent when performing its discipline function. However, in order to discharge its regulatory function effectively and to reach a fair and appropriate decision based on the specific circumstances of the case, it is also of importance that the AFRC retains sufficient flexibility and discretion to deal with individual circumstances and respond to new issues which arise. Therefore, the Proposed Documents are principle-based and explain the AFRC’s general approach to discipline only. More detailed information as to the approach that the AFRC may take in respect of specific disciplinary issues will be provided by way of decision notices, press releases and statements of disciplinary action issued in respect of future disciplinary cases. However, it should be recognized that the AFRC will always impose the sanctions which it considers appropriate on the facts and circumstances of the specific case before it and will not be constrained by the sanctions imposed (or not imposed) in earlier cases.

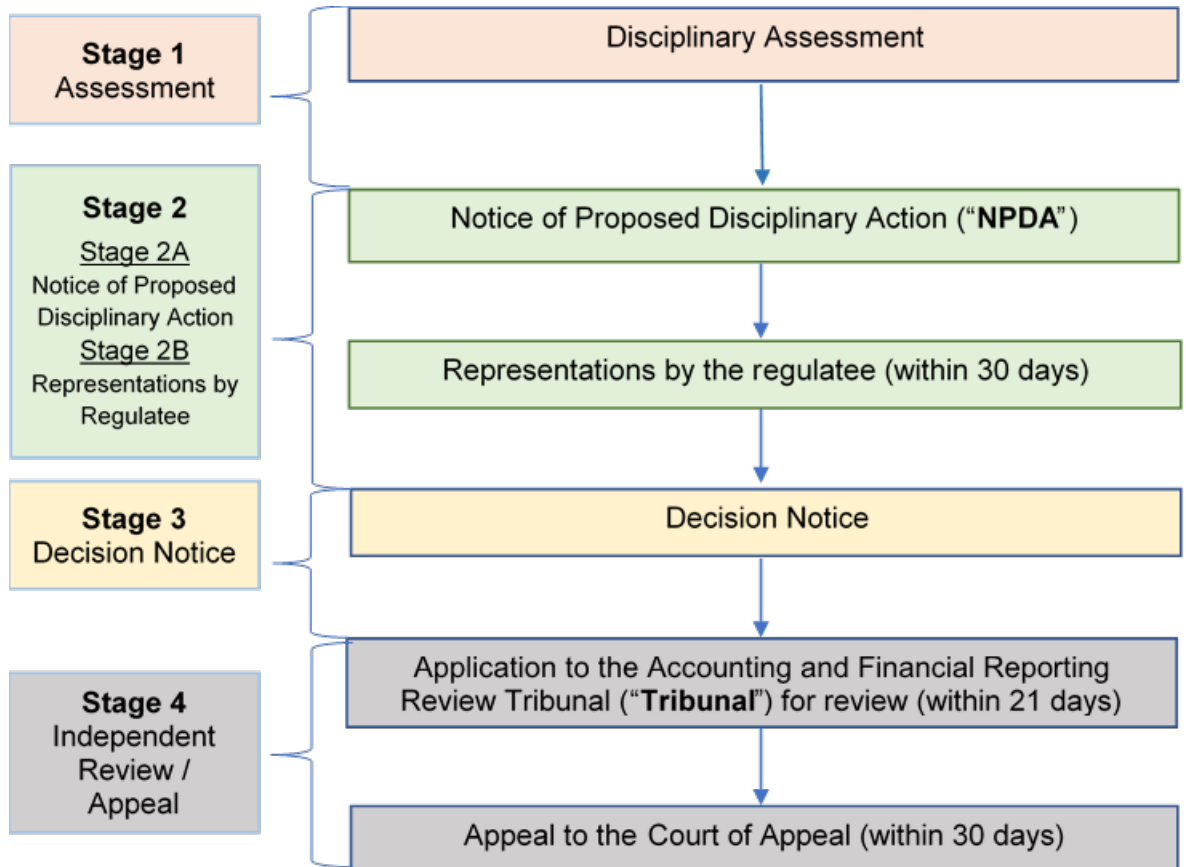
- 15.3 ***Simplicity, clarity and ease of reading*** – With a view to improving clarity and readability, the AFRC has reorganized the contents of the Existing Documents across the Proposed and Additional Documents. The AFRC has also simplified / streamlined the contents of the Existing Documents for easier application and removed duplicated materials.

#### Key features of the Proposed Documents

##### Outline of the AFRC's Disciplinary Process (Document A)

16. The proposed outline is intended to provide a brief overview of the AFRC's disciplinary process in respect of all regulatees, i.e. the process will be the same for both PIE auditors and registered responsible persons, and professional persons.
17. The legal framework for administering disciplinary matters under the AFRCO is different from that currently administered by the Hong Kong Institute of Certified Public Accountants (“**HKICPA**”) under the Professional Accountants Ordinance (Cap. 50) (“**PAO**”). However, the legal framework under the AFRCO is very similar to those applicable to other independent regulators in Hong Kong, such as the Securities and Futures Commission. For this reason, the proposed process is largely in line with that adopted by such other independent regulators, which is well-tested in the courts, well-established and with which the market is familiar. By adopting a similar process used by other regulators, the AFRC can take advantage of their regulatory experience to ensure that all regulatees will be treated fairly and impartially.
18. The proposals also have the effect of streamlining the existing disciplinary mechanism contemplated under the Existing Policy Statement in order to facilitate the efficient resolution of disciplinary matters, which will be of benefit to both the AFRC and regulatees.

19. A high level summary of the proposed revised process is shown in the below diagram:



(i) Stage 1: Disciplinary assessment

20. When conducting an assessment of whether there is sufficient evidence to take disciplinary action, and during the course of the disciplinary action, the AFRC will generally rely on its own in-house expertise to deal with any legal issues and any auditing or accounting issues which may arise. This is in line with the well-established practice adopted by other major regulators in Hong Kong, and the safeguards set out in paragraph 32 below ensure that the rights of regulatees will be properly protected in the event that a regulatee is dissatisfied with the decision made by the AFRC.
21. Notwithstanding the above general approach, depending on the nature, complexity and importance of the issues involved, the AFRC may also choose to instruct an external legal adviser (who is a member of the AFRC’s legal adviser panel) to advise it on particular issues or in respect of the whole case. Each case will depend on its own facts and the AFRC will have absolute discretion in determining whether, when and to what extent such external adviser will be instructed. Therefore, the AFRC will not obtain external legal

advice as a matter of course in every disciplinary case as that would be both inefficient and unnecessary in light of the AFRC's in-house expertise. Legal advice obtained by the AFRC is generally protected by legal professional privilege and will not be disclosed.

22. Similarly, the AFRC may also choose to instruct an external expert (who is a member of the AFRC's expert panel) to advise it on particular issues in an appropriate case depending on the nature, complexity and importance of the issues involved. Each case will depend on its own facts and the AFRC will have absolute discretion in determining whether, when and to what extent such external expert will be instructed. Therefore, the AFRC will not obtain external expert advice as a matter of course in every disciplinary case as that would be both inefficient and unnecessary in light of the AFRC's in-house expertise.
23. It is anticipated that the circumstances in which external expert advice is required will likely arise only where the AFRC considers the correct interpretation of the standard on a point which is relevant and material to the action to be the subject of controversy within the profession. This is in line with the approach currently adopted by the Disciplinary Committee of the HKICPA<sup>1</sup> when considering whether to allow expert evidence to be adduced on auditing or accounting issues.
24. Where the external expert advice is obtained by the AFRC for use as evidence in the disciplinary action, the evidence will be identified in the list of documents enclosed with the NPDA ("**List of Documents**") to be issued (see paragraph 25 below) and the expert opinion will be made available.
  - (ii) Stage 2: NPDA and representations by the regulatee
25. If the AFRC decides to commence disciplinary action, an NPDA will be sent to the regulatee concerned. The NPDA will set out the allegations against the regulatee as well as the facts and evidence relevant to the allegations. The NPDA will also state the AFRC's preliminary views on the allegations and the proposed sanctions that the AFRC considers appropriate to impose on the basis of the information then available. A List of Documents relevant to the matters set out in the NPDA will be enclosed with the NPDA for the regulatee to obtain copies, if needed.
26. Further, to ensure the fairness of the disciplinary process and compliance with the AFRCO, the regulatee will be given an opportunity to be heard before any sanctions are imposed. Accordingly, if the regulatee does not agree with the

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<sup>1</sup> See also *Hong Kong Institute of Certified Public Accountants v Disciplinary Committee and others* (unrep., HCAL 135/2005, 15 November 2005).

allegations, facts, preliminary views or proposed sanctions set out in the NPDA, the regulatee should explain why by making representations in writing to the AFRC. In addition:

- 26.1 the regulatee should identify and produce evidence in support of the mitigating factors which the regulatee relies upon; and
  - 26.2 if the regulatee is of the view that any pecuniary penalty proposed has the effect of putting the regulatee in financial jeopardy, the regulatee should make this clear in the submission and provide evidence in support.
27. The AFRC may not take into account or attach any weight to any mitigating factor or any submission that the proposed pecuniary penalty has the effect of putting the regulatee in financial jeopardy if such factor or submission has not been so identified and substantiated by the regulatee in the representations to the AFRC.
  28. The regulatee is entitled to seek legal advice at any point in the process, including obtaining the assistance of legal advisers to prepare written representations in response to the NPDA, if the regulatee considers it appropriate to do so.
  29. Disciplinary actions are normally determined on the basis of written submissions. However, if in addition to written representations, the regulatee wishes to make oral representations, the regulatee may ask for a meeting with the AFRC. The regulatee must write to the AFRC explaining why the regulatee thinks a meeting is necessary. Such a meeting may be held if the AFRC considers fairness in the circumstances requires it. The regulatee may be accompanied by his or her or its legal advisers to the meeting but the AFRC will ordinarily expect the regulatee (rather than the legal adviser) to make oral representations to the AFRC.
- (iii) Stage 3: Decision notice
30. The AFRC will consider all available information, including the representations made by the regulatee, before making a decision. The AFRC will inform the regulatee of its decision (together with reasons) by way of a written decision notice.
- (iv) Stage 4: Independent review / appeal
31. As a further safeguard to ensure that disciplinary decisions made by the AFRC are fair and reasonable, the disciplinary decisions of the AFRC are subject to

review by the Tribunal, which is independent of the AFRC and chaired by a former Justice of Appeal, a former judge, a former recorder or a former deputy judge of the Court of First Instance, or a person who is eligible for appointment as a judge of the High Court. Any regulatee dissatisfied with a determination of the Tribunal may further appeal against that determination to the Court of Appeal with leave from the court.

(v) Overall fairness

32. In the view of the FRC, the proposed revised process will ensure the disciplinary process is transparent and fair, and the rights of regulatees are properly protected. This is achieved by:

32.1 the disclosure of the AFRC's analysis of all relevant issues in the NPDA, including the facts upon which the AFRC relies, the evidence in support of those facts and full details of the AFRC's interpretation and application of any relevant professional standards;

32.2 disclosing all relevant evidence in the possession of the AFRC in the List of Documents to be enclosed with the NPDA, including any independent expert opinion obtained by the AFRC for use as evidence in the proceedings, for regulatees to obtain copies if needed;

32.3 giving a reasonable opportunity for regulatees to make representations and present evidence in response to the NPDA; and

32.4 in the event that regulatees are dissatisfied with the disciplinary decision of the AFRC, the regulatees have the right to apply for a de novo review by the independent Tribunal. The regulatees may further appeal against the determination of the Tribunal to the Court of Appeal with leave from the court.

33. At the same time, the proposed process strikes a balance between the need for transparency and fairness, and the need to have an effective disciplinary process to facilitate the efficient resolution of disciplinary matters, which will be of benefit to both the AFRC and regulatees.

(vi) Comparison with the HKICPA's decision-making process

34. It is worth noting that, although the legal framework for administering disciplinary matters under the AFRCO is different from that under the PAO, under both ordinances a regulatee will be afforded an opportunity to have his or her or its case heard by an independent decision-maker (the Tribunal under the AFRCO and the Disciplinary Committee of the HKICPA under the PAO),

with a further right to appeal to the Court of Appeal. A summary of the decision-making process for disciplinary matters under the AFRCO and the PAO is set out in the table below:

Levels	AFRCO	PAO
(i) Administrative decision by the regulator	The AFRC will make an administrative decision on a disciplinary matter in the first instance without a hearing.	Nil.
(ii) Decision by an independent decision-maker after a hearing	A regulatee dissatisfied with a decision of the AFRC may apply for a de novo review by the independent Tribunal.  The Tribunal will make a decision after a hearing.	The Disciplinary Committee of the HKICPA, which comprises of members independent of the HKICPA, will make a decision on a disciplinary matter in the first instance after a hearing.
(iii) Appeal to the Court of Appeal	A party dissatisfied with a decision of the Tribunal may appeal to the Court of Appeal with leave.	A regulatee dissatisfied with a decision of the Disciplinary Committee of the HKICPA may appeal to the Court of Appeal.

35. In other words, the main difference between the decision-making process under the AFRCO and the PAO is the introduction of an additional level under the AFRCO whereby the AFRC will make an administrative decision on a disciplinary matter in the first instance without a hearing (i.e. level (i) above). This is intended to facilitate the efficient resolution of disciplinary matters, while at the same time preserving the regulatee's right to a full hearing before an independent decision-maker and appeal to the Court of Appeal in an appropriate case.

**Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons (Document B)**

36. The AFRC has refined the Existing Fining Guidelines to be more focused, streamlined and reader-friendly.



37. The proposed guidelines for PIE auditors and registered responsible persons are intended to be published pursuant to sections 13 and 37H of the AFRCO to indicate the manner in which the AFRC will exercise its powers to impose a pecuniary penalty on a PIE auditor or a registered responsible person pursuant to sections 37D(3)(b)(iv) and 37E(3)(b)(iii) of the AFRCO. The AFRC is required to have regard to the guidelines in imposing any pecuniary penalty.
38. The key changes made in the proposed guidelines (in comparison with the Existing Fining Guidelines) are as follows:
- 38.1 As explained in paragraph 15.2 above, to enable the AFRC to discharge its regulatory function effectively and to reach a fair and appropriate decision based on the specific circumstances of the case, it is important that the AFRC retains sufficient flexibility and discretion to deal with individual circumstances and respond to new issues which arise. This is particularly important in the context of PIE auditors and registered responsible persons, given the increasing number of PIEs in Hong Kong, the increasingly complex business environment in which PIE auditors and registered responsible persons operate and the variety of regulatory issues which may arise as a consequence. Accordingly, the FRC developed the proposed guidelines to be principle-based. Further guidance as to the application of those principles to specific factual scenarios will be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases.
- 38.2 The general approach to determining whether a pecuniary penalty is appropriate and, if so, the amount of pecuniary penalty to be ordered has been simplified. Under the simplified approach, the AFRC will consider the full circumstances of each case, including the seriousness of the misconduct involved and the circumstances of the regulatee concerned. This will generally involve the following 2-step approach:
- (i) the AFRC will first assess the misconduct including its nature, seriousness, frequency, duration and impact to form a view on the appropriateness of a pecuniary penalty; and
  - (ii) the AFRC will then make any necessary adjustment to take account of any relevant aggravating and mitigating factors and to avoid the effect of putting the regulatee in financial jeopardy.

The above described 2-step approach is clear, straightforward and easy to apply, and will assist the AFRC in arriving at a fair and appropriate decision based on the specific circumstances of the case.

- 38.3 The principles that the AFRC may have regard to when determining sanctions generally (e.g. the objectives of discipline, the principle of proportionality etc.) are dealt with in the proposed Sanctions Policy for PIE Auditors and Registered Responsible Persons (i.e. Document D) and are not repeated in the proposed guidelines.
- 38.4 The Existing Fining Guidelines provide that the FRC should have regard to any arrangements which would result in the pecuniary penalty or part thereof being paid or indemnified by insurers or by a PIE auditor or employer, and that the existence of any such arrangements should not be a ground for increasing any pecuniary penalty beyond the level that would otherwise be considered appropriate. This statement has been removed as it is anticipated that the issue will rarely arise and because it is a specific aspect of the more general issue of whether the proposed pecuniary penalty would place the regulatee concerned in financial jeopardy, which is already addressed in the proposed guidelines.
- 38.5 To avoid repetition and to promote clarity and simplicity, the list of factors that the AFRC may take into consideration when assessing the misconduct have been reorganized and consolidated. For example, factors of similar nature are now grouped under sub-headings for easier reading.
- 38.6 Other duplicative contents have been removed.

*Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons (Document C)*

39. The proposed guidelines for professional persons are intended to be published pursuant to sections 13 and 37H of the AFRCO to indicate the manner in which the AFRC will exercise its powers to impose a pecuniary penalty on a professional person pursuant to section 37CA(2)(b) of the AFRCO. The AFRC is required to have regard to the guidelines in imposing any pecuniary penalty.
40. The proposed guidelines for professional persons largely align with the proposed guidelines for PIE auditors and registered responsible persons (i.e. Document B) and adopt the same principle-based approach as described in paragraph 38.1 above. Further guidance as to the application of those principles to specific factual scenarios will be provided by way of decision notices, press releases and statements of disciplinary action to be issued in

respect of future disciplinary cases. The principle-based approach enables the AFRC to respond quickly to new issues which arise, especially given the wide-ranging circumstances which may lead to the imposition of pecuniary penalties and the increasingly complex business environment in which professional persons operate.

41. The AFRC proposes to adopt the same principle-based approach for PIE auditors, registered responsible persons and professional persons given the need for flexibility, and the general principles and factors that the AFRC may take into account when considering a pecuniary penalty should be the same for all regulatees. However, the scope of circumstances in which sanctions may be imposed, and the sanction options available for PIE auditors and registered responsible persons on the one hand, and professional persons on the other, are different.
42. Accordingly, even though the general approach may be the same, there are inherent differences between the regulatory framework for PIE auditors and registered responsible persons on the one hand, and professional persons on the other, which may lead to differences in any pecuniary penalties that may be imposed. Among other things:
  - 42.1 considerations of public interest and the interest of the investing public may be more relevant to cases concerning PIE engagements, although each case will turn on its own facts; and
  - 42.2 the maximum pecuniary penalty that the AFRC may impose on PIE auditors and registered responsible persons for a misconduct is \$10,000,000 or 3 times the profit gained or loss avoided, whereas that on professional persons is \$500,000.

*Sanctions Policy for PIE Auditors and Registered Responsible Persons (Document D)*

43. The AFRC has refined the Existing Sanctions Guidelines to be more focused, streamlined and reader-friendly.
44. The proposed policy for PIE auditors and registered responsible persons sets out the AFRC's general approach to determining the sanctions to be imposed on PIE auditors and registered responsible persons pursuant to sections 37D, 37E and 37F of the AFRCO.
45. The key changes made in the proposed policy (in comparison with the Existing Sanctions Guidelines) are as follows:

- 45.1 The name of the document has been changed from “Sanctions Guidelines” to “Sanctions Policy” to better reflect the nature of the document.
- 45.2 As explained in paragraph 15.2 above, to enable the AFRC to discharge its regulatory function effectively and to reach a fair and appropriate decision based on the specific circumstances of the case, it is important that the AFRC retains sufficient flexibility and discretion to deal with individual circumstances and respond to new issues which arise. This is particularly important in the context of PIE auditors and registered responsible persons, given the increasing number of PIEs in Hong Kong, the increasingly complex business environment in which PIE auditors and registered responsible persons operate and the variety of regulatory issues which may arise as a consequence. Accordingly, the proposed policy is principle-based. Further guidance as to the application of those principles to specific factual scenarios will be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases.
- 45.3 The general approach to determining sanctions has been simplified. Under the simplified approach, the AFRC will consider the full circumstances of each case, including the seriousness of the conduct involved and the circumstances of the regulatee concerned. This will generally involve the following 2-step approach:
- (i) the AFRC will first assess the conduct including its nature, seriousness, frequency, duration and impact to identify the sanction or combination of sanctions that the AFRC considers potentially appropriate; and
  - (ii) the AFRC will then consider any relevant aggravating and mitigating circumstances and how those circumstances affect the level, nature or combination of sanctions under consideration.

In contrast with the previous more complicated 6-step approach set out in the Existing Sanctions Guidelines, the simplified approach is clear, straightforward and easy to apply, and will assist the AFRC in arriving at a fair and appropriate decision based on the specific circumstances of the case.

- 45.4 The general principles that the AFRC may have regard to when determining sanctions (which were previously set out in different parts

of the Existing Sanctions Guidelines) have been grouped together and set out upfront for easier reading.

- 45.5 Unlike the Existing Sanctions Guidelines and in line with the principle-based approach, the proposed policy does not purport to set out the circumstances in which the AFRC may impose a particular sanction. Further, the FRC notes that some of the explanations provided in the Existing Sanctions Guidelines in respect of specific sanctions (for example that a public reprimand may be used in conjunction with other sanctions) apply equally to other types of sanction, and do not assist stakeholders understand when a particular sanction may be imposed.
- 45.6 Similarly, the discussion as to intent and recklessness in the Existing Sanctions Guidelines has been removed. Whether or not the regulatee concerned has acted intentionally or recklessly is a highly fact sensitive issue which needs to be assessed by the AFRC on a case-by-case basis, and it is difficult to capture all the circumstances which may arise.
- 45.7 To avoid repetition and to promote clarity and simplicity, the list of factors that the AFRC may take into consideration when assessing the relevant conduct and the list of mitigating / aggravating factors have been reorganized and consolidated. For example, one of the factors that the AFRC may take into consideration is whether relevant conduct was isolated or repeated. However, this factor appears three times in the Existing Sanctions Guidelines, which is unnecessarily duplicative. As with the Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons (i.e. Document B), factors of similar nature are also grouped under sub-headings for easier reading.
- 45.8 Other duplicative contents have been removed.

#### *Sanctions Policy for Professional Persons (Document E)*

46. The proposed policy for professional persons sets out the AFRC's general approach to determining the sanctions to be imposed on professional persons pursuant to section 37CA of the AFRCO.
47. The proposed policy for professional persons largely aligns with the proposed policy for PIE auditors and registered responsible persons (i.e. Document D) and adopts the same principle-based approach, as described in paragraph 45.2 above. Further guidance as to the application of those principles to specific factual scenarios will be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future

disciplinary cases. The principle-based approach enables the AFRC to respond quickly to new issues which arise, especially given the wide-ranging circumstances which may lead to the imposition of disciplinary sanctions and the increasingly complex business environment in which professional persons operate.

48. The AFRC proposes to adopt the same principle-based approach for PIE auditors, registered responsible persons and professional persons given the need for flexibility, and the general principles and factors that the AFRC may take into account when considering sanctions should be the same for all regulatees. However, the scope of circumstances in which sanctions may be imposed and the sanction options available for PIE auditors and registered responsible persons on the one hand, and professional persons on the other, are different.
49. Accordingly, even though the general approach may be the same, there are inherent differences between the regulatory framework for PIE auditors and registered responsible persons on the one hand, and professional persons on the other, which may lead to differences in any sanctions that may be imposed. Among other things:
  - 49.1 considerations of public interest and the interest of the investing public may be more relevant to cases concerning PIE engagements, although each case will turn on its own facts; and
  - 49.2 the sanctions which may be imposed by the AFRC on PIE auditors and registered responsible persons on the one hand, and professional persons on the other are different. For example:
    - (i) while the AFRC has the power to order PIE auditors and registered responsible persons to carry out specified remedial action, there is no corresponding sanction available for professional persons; and
    - (ii) the maximum pecuniary penalty that the AFRC may impose on PIE auditors and registered responsible persons for a misconduct is \$10,000,000 or 3 times the profit gained or loss avoided, whereas that on professional persons is \$500,000.

## Overview of the Additional Documents

### *Discipline Policy Statement for PIE Auditors and Registered Responsible Persons (Document F)*

### *Discipline Policy Statement for Professional Persons (Document G)*

50. The two policy statements are intended to provide an overview of the legal framework of the disciplinary function of the AFRC for PIE auditors and registered responsible persons, and professional persons respectively.

### *Guidance Note on Cooperation with the AFRC (Document H)*

51. The guidance note refines and further elaborates on the AFRC's approach to cooperation as currently set out in brief form in the Existing Sanctions Guidelines. The AFRC has prepared the guidance note by reference to the approach adopted by other regulators, both local and overseas. It is intended to apply to all regulatees and provide guidance on the AFRC's approach to cooperation in investigations and disciplinary actions with a view to improving transparency and incentivizing regulatees to cooperate with the AFRC.
52. As explained in the guidance note, the AFRC recognizes and values cooperation in its investigations and disciplinary actions as it assists the AFRC to achieve its regulatory objectives. Among other things, cooperation facilitates the early detection and prompt remediation of misconduct and fosters a culture of responsibility and self-improvement in regulatees. From the regulatees' perspective, providing early and full cooperation to the AFRC may result in a reduction in the level of sanctions imposed, and the timely conclusion of disciplinary matters will result in costs savings for all parties concerned.
53. The key features of the guidance note are as follows:
- 53.1 The guidance note sets out examples of cooperative and uncooperative conduct which the AFRC may take into account when determining the appropriate sanctions to be imposed, and the factors which the AFRC will generally take into account to assess the degree of cooperation provided. Merely fulfilling statutory or regulatory obligations does not, in itself, constitute cooperation for the purpose of the guidance note.
- 53.2 The guidance note further explains the AFRC's approach to resolving concerns in relation to which the AFRC is contemplating whether to impose a disciplinary sanction by way of agreement pursuant to section 37I(1) or section 37I(1A) of the AFRCO. Among other things, the AFRC will consider the nature and degree of cooperation provided by

regulatees and whether it is appropriate to do so in the interest of the investing public or in the public interest.

- 53.3 To encourage early cooperation and resolution of cases, the AFRC will also introduce a staged approach for recognizing cooperation, i.e. by dividing its disciplinary process into three stages and setting the maximum discount that the AFRC will generally consider depending on the stage in which the early resolution is reached. The staged approach is largely in line with the practice adopted by other regulators and the courts and would have the advantage of encouraging early cooperation and efficient resolution of cases.
- 53.4 The guidance note also sets out the approach that the AFRC will generally take to provide an appropriate level of disclosure regarding cooperation to enhance the transparency of the disciplinary process.
54. For the avoidance of doubt, the provisions in the guidance note are guiding principles only and the AFRC retains sole discretion in giving the appropriate discount in sanctions depending on the circumstances of the case.



## **Section 4 Invitation to comment**

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55. The FRC is seeking your views and invites written comments on the Proposed Documents, including comments responding to the following questions:

### *Outline of the AFRC's Disciplinary Process (Document A)*

**Question 1:** Do you think the proposed disciplinary process is transparent, fair and provides a reasonable opportunity to be heard to regulatees? Please explain with rationale any improvements that you would propose.

**Question 2:** Are there any improvements that should be made to the proposed disciplinary process to facilitate the AFRC's efficient and effective discharge of its disciplinary function? If so, please explain with rationale.

### *Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons (Document B)*

**Question 3:** Do you agree that the proposed guidelines should be principle-based, and that further guidance as to the application of those principles to specific factual scenarios should be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases? Please explain any improvements that you would propose and the reasons therefor.

**Question 4:** Do you have any comment on the list of factors (as set out in paragraphs 9 to 15 of the proposed guidelines) that the AFRC may take into consideration when determining a pecuniary penalty, including those relating to cooperation (or non-cooperation) with the AFRC? Are there any other factors that you believe the AFRC should include in the list? Please explain with rationale.

### *Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons (Document C)*

**Question 5:** Do you agree that the proposed guidelines should be principle-based, and that further guidance as to the application of those principles to specific factual scenarios should be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases? Please explain any improvements that you would propose and the reasons therefor.

**Question 6:** Do you have any comment on the list of factors (as set out in paragraphs 8 to 14 of the proposed guidelines) that the AFRC may take into consideration when determining a pecuniary penalty, including those relating to cooperation (or non-cooperation) with the AFRC? Are there any other factors that you believe the AFRC should include in the list? Please explain with rationale.

*Sanctions Policy for PIE Auditors and Registered Responsible Persons (Document D)*

**Question 7:** Do you agree that the proposed policy should be principle-based, and that further guidance as to the application of those principles to specific factual scenarios should be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases? Please explain any improvements that you would propose and the reasons therefor.

**Question 8:** Do you have any comment on the list of factors (as set out in paragraphs 7 to 10 of the proposed policy) that the AFRC may take into consideration when determining sanctions, including those relating to cooperation (or non-cooperation) with the AFRC? Are there any other factors that you believe the AFRC should include in the lists? Please explain with rationale.

*Sanctions Policy for Professional Persons (Document E)*

**Question 9:** Do you agree that the proposed policy should be principle-based, and that further guidance as to the application of those principles to specific factual scenarios should be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases? Please explain any improvements that you would propose and the reasons therefor.

**Question 10:** Do you have any comment on the list of factors (as set out in paragraphs 7 to 10 of the proposed policy) that the AFRC may take into consideration when determining sanctions, including those relating to cooperation (or non-cooperation) with the AFRC? Are there any other factors that you believe the AFRC should include in the lists? Please explain with rationale.

Others

**Question 11:** Do you have any other comments on the Proposed Documents that would help the AFRC to discharge its statutory regulatory obligations? If so, please elaborate with rationale.

56. Comments are most helpful if they:
- 56.1 address the above questions;
  - 56.2 indicate the Proposed Document(s) and the specific paragraph(s) of the Proposed Document(s) to which they relate;
  - 56.3 contain a clear rationale; and
  - 56.4 include any alternative the FRC should consider, if applicable.
57. Please note that the FRC wishes to obtain feedback on all of the Proposed Documents in order to ensure the suitability of the new framework as a whole. Whether or not the FRC undertakes a consultation in respect of any changes which may be made to the Proposed Documents in the future will depend on the nature and significance of those changes, and the FRC's policy at that time.

## Appendix A

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Draft for Consultation Purpose

# Document A – Outline of the AFRC’s Disciplinary Process

## Introduction

1. Under Part 3B of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”), the Accounting and Financial Reporting Council (“**AFRC**”) is given the power to discipline:
  - (a) public interest entity (“**PIE**”) auditors registered or recognized under Part 3 of the AFRCO;
  - (b) registered responsible persons of registered PIE auditors; and
  - (c) professional persons
 (together referred to as “**Regulatees**”).
2. This document is intended to provide a brief overview of the AFRC’s disciplinary process, which has been designed to ensure that all Regulatees are treated fairly and impartially.
3. The disciplinary process outlined in this document is applicable to all Regulatees. However, the scope of sanctionable conduct, the disciplinary grounds and the sanction options available for (i) PIE auditors and registered responsible persons of registered PIE auditors; and (ii) professional persons, are different, and the AFRC has issued separate Policy Statements, Guidelines for Exercising the Power to Impose a Pecuniary Penalty and Sanctions Policies for them.

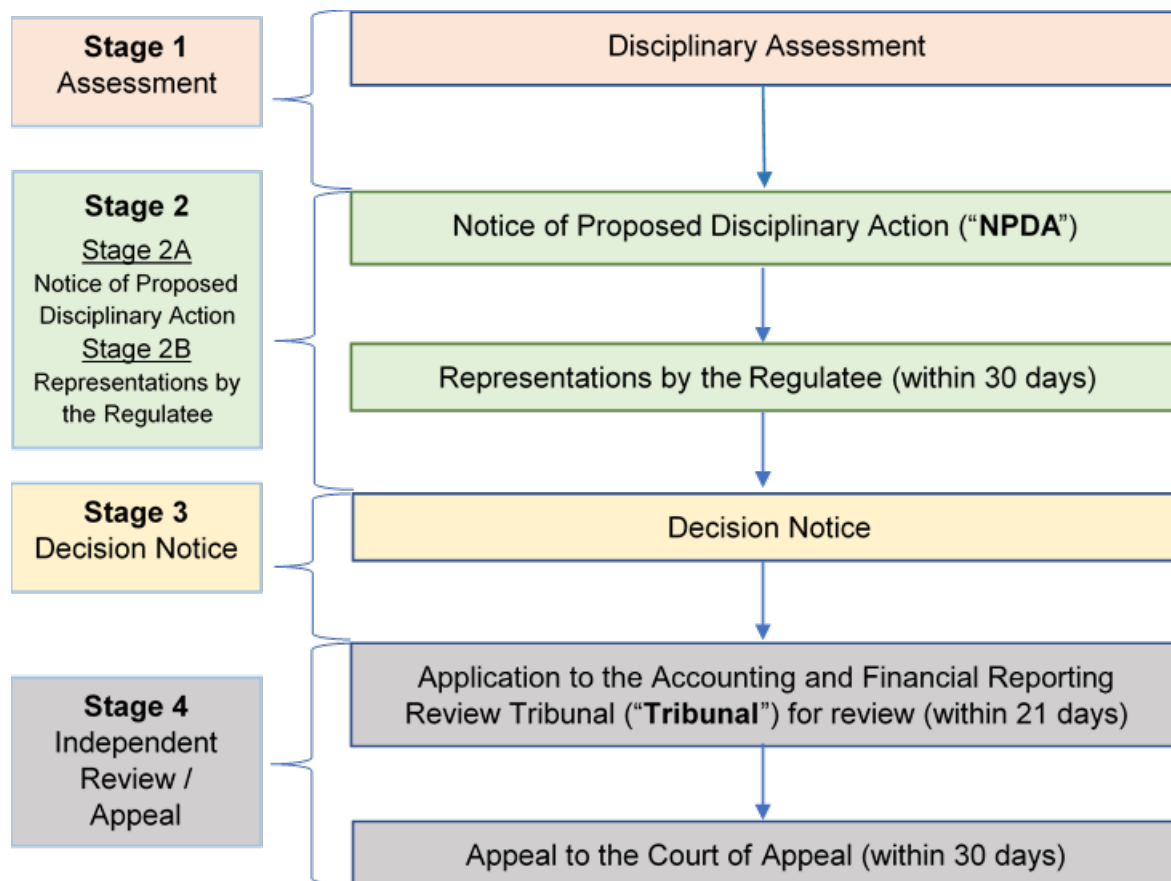
## Definitions

4. In this document, the following terms have the meanings defined in the AFRCO as set out below (the definitions in the AFRCO shall prevail in case of any inconsistency):

Terms	Meanings defined in the AFRCO	Section under the AFRCO
practice unit	A practice unit means: <ul style="list-style-type: none"> <li>• a certified public accountant (practising) who practises accountancy on the accountant’s own account under the accountant’s own name as registered under section 22(2) of the</li> </ul>	2(1)

	<p>Professional Accountants Ordinance (Cap. 50);</p> <ul style="list-style-type: none"> <li>• a CPA firm; or</li> <li>• a corporate practice.</li> </ul>	
professional person	<p>A professional person means:</p> <ul style="list-style-type: none"> <li>• a certified public accountant; or</li> <li>• a practice unit.</li> </ul>	2(1)
PIE	<p>A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.</p>	3(1)
PIE auditor	<p>A PIE auditor means a registered or recognized PIE auditor.</p>	3A
registered responsible person	<p>A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor:</p> <ul style="list-style-type: none"> <li>• an engagement partner;</li> <li>• an engagement quality control reviewer; or</li> <li>• a quality control system responsible person.</li> </ul>	2(1)

## Disciplinary process



### Stage 1

#### *Disciplinary assessment*

5. Cases may be referred to the Department of Discipline by the Department of Investigation and Compliance for consideration of taking disciplinary actions.
6. The Department of Discipline will then assess whether there is sufficient evidence to take disciplinary actions.
7. Depending on the nature, complexity and importance of the issues involved, the AFRC may choose to instruct an external legal adviser to advise it on particular issues or in respect of the whole case. Each case will depend on its own facts and the AFRC will have absolute discretion in determining whether, when and to what extent such external adviser will be instructed. Legal advice obtained by the AFRC is generally protected by legal professional privilege and will not be disclosed.

8. Similarly, the AFRC may also choose to instruct an external auditing or accounting expert to advise it on particular issues in an appropriate case depending on the nature, complexity and importance of the issues involved. Each case will depend on its own facts and the AFRC will have absolute discretion in determining whether, when and to what extent such external expert will be instructed. It is anticipated that the circumstances in which external expert advice is required will likely arise only where the AFRC considers the correct interpretation of the standard on a point which is relevant and material to the action to be the subject of controversy within the profession.
9. Where the external expert advice is obtained by the AFRC for use as evidence in the disciplinary action, the evidence will be identified in the List of Documents to be issued (see paragraph 11 below) and the expert opinion will be made available.

## Stage 2A

### *NPDA*

10. If the AFRC decides to commence disciplinary action, an NPDA will be sent to the Regulatee concerned. The NPDA sets out the allegations against the Regulatee as well as the facts and evidence relevant to the allegations. The NPDA also states the AFRC's preliminary views on the allegations and the proposed sanctions that the AFRC considers appropriate to impose on the basis of the information then available.
11. A list of documents relevant to the matters set out in the NPDA will be enclosed with the NPDA ("**List of Documents**") for the Regulatee to obtain copies, if needed.

## Stage 2B

### *(i) Representations by the Regulatee*

12. Before imposing any sanctions, the AFRC must give the Regulatee a reasonable opportunity to be heard by allowing the Regulatee to make representations explaining the matter and commenting on the appropriateness of the proposed sanctions. The Regulatee will be informed of this right in the NPDA.
13. If the Regulatee does not agree with the allegations, facts, preliminary views or proposed sanctions set out in the NPDA, the Regulatee should explain why by making representations in writing to the AFRC. In addition:



- (a) the Regulatee should identify and produce evidence in support of the mitigating factors which the Regulatee relies upon; and
  - (b) if the Regulatee is of the view that any pecuniary penalty proposed has the effect of putting the Regulatee in financial jeopardy, the Regulatee should make this clear in the submission and provide evidence in support.
14. The AFRC may not take into account or attach any weight to any mitigating factor or any submission that the proposed pecuniary penalty has the effect of putting the Regulatee in financial jeopardy if such factor or submission has not been so identified and substantiated by the Regulatee in the representations to the AFRC.
15. Before making representations, the Regulatee may ask for copies of the documents on the List of Documents from the AFRC.
16. Under normal circumstances, the Regulatee will be given 30 days to make representations. The AFRC may consider any reasonable request for extension of time.
17. If the Regulatee does not make any representation before the deadline stated in the NPDA (or the extended deadline, if extension of time has been granted), the AFRC will proceed to issue a Decision Notice based on the evidence before it.
- (ii) Legal representation*
18. The Regulatee may seek legal advice at any point in the process, including obtaining the assistance of legal advisers to prepare written representations in response to the NPDA.
- (iii) Meeting with the AFRC*
19. Disciplinary actions are normally determined on the basis of written submissions. However, if in addition to written representations, the Regulatee wishes to make oral representations, the Regulatee may ask for a meeting with the AFRC. The Regulatee must write to the AFRC explaining why the Regulatee thinks a meeting is necessary. Such a meeting may be held if the AFRC considers fairness in the circumstances requires it.
20. However, irrespective of whether the Regulatee requests it, the AFRC may invite the Regulatee to attend a meeting to clarify certain issues if the AFRC considers fairness in the circumstances requires it.

21. For the avoidance of doubt, while the Regulatee may be accompanied by his or her or its legal adviser to the meeting, the AFRC will ordinarily expect the Regulatee (rather than the legal adviser) to make oral representations to the AFRC.

### Stage 3

#### *Decision Notice*

22. The AFRC will consider all available information, including the representations made by the Regulatee, and then make a decision. The AFRC will inform the Regulatee of its decision by way of a written Decision Notice, which sets out:
- (a) a statement of the reasons for the decision;
  - (b) the time when the decision is to take effect; and
  - (c) the details of the sanction imposed.
23. The Decision Notice will also include information on the Regulatee's right to apply for a review of the AFRC's decision by the Tribunal.

### Stage 4

#### *(i) Application to the Tribunal for review*

24. The Regulatee, if aggrieved by a disciplinary decision of the AFRC, may apply to the Tribunal for a review of the decision. Such application must be made in writing within 21 days after the AFRC has issued the Decision Notice to the Regulatee. This period may be extended by applying to the Tribunal and demonstrating a good cause.
25. The application for review must state the grounds for the application.

#### *(ii) Effective date of a decision*

26. If the Regulatee does not apply to the Tribunal for a review of the AFRC's decision within 21 days (or such period as extended by the Tribunal), the decision will take effect on the day after the period expires.

27. If, before such period expires, the Regulatee notifies the AFRC in writing that the Regulatee will not make a review application, the AFRC's decision will take effect on the day after the AFRC is so notified.
28. If the Regulatee applies for a review within 21 days (or such period as extended by the Tribunal), the AFRC's decision will not take effect until the Tribunal makes a final determination or the Regulatee withdraws the review application.
29. Notwithstanding the above, if the AFRC considers it appropriate in the public interest to do so, it may specify any other day on which its decision is to take effect.

*(iii) Appeal to the Court of Appeal*

30. If a party to a review is dissatisfied with a determination of the Tribunal, an appeal can be made to the Court of Appeal on a question of law and/or fact. The party concerned must first apply to the Court of Appeal for leave to appeal within 30 days after the Tribunal has issued the determination to the party.
31. Leave to appeal may only be granted if the Court of Appeal is satisfied that the appeal has a reasonable prospect of success or there are some other reasons in the interests of justice that the appeal should be heard.
32. Any party to an appeal may apply to the Court of Appeal for a stay of execution of the determination of the Tribunal.

**Taking action in place of or in addition to imposing sanctions with consent**

33. The AFRC has power to take disciplinary actions by consent if the AFRC considers it appropriate to do so in the interest of the investing public or in the public interest.
34. The Regulatee may make a resolution proposal to the AFRC at any time before the issuance of a Decision Notice. Whether the AFRC will agree to enter into resolution negotiations depends on the facts and circumstances of each case. Unless otherwise agreed, all discussion about resolution proposals will be treated as "without prejudice", meaning that neither the AFRC nor the Regulatee may refer to those discussions in the disciplinary actions or subsequent legal proceedings. For more information, please refer to the ["Guidance Note on Cooperation with the AFRC"](#), which is available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)).

## Cooperation with the AFRC

35. Regulatees are expected to cooperate with the AFRC in all its regulatory processes. In deciding the sanctions to be imposed, the AFRC will consider whether the Regulatee has cooperated with the AFRC in its investigations and disciplinary process. In appropriate circumstances, the sanctions may be reduced depending on, among other things, the timeliness, nature and degree of the cooperation. For more information, please refer to the [“Guidance Note on Cooperation with the AFRC”](#), which is available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)).

## Paying a pecuniary penalty

36. If the Regulatee is ordered to pay a pecuniary penalty, the penalty must be paid to the AFRC by the deadline specified in the Decision Notice, by cheque made payable to the “Accounting and Financial Reporting Council” and delivered to:

Accounting and Financial Reporting Council  
24<sup>th</sup> Floor, Hopewell Centre  
183 Queen’s Road East  
Hong Kong

37. Please quote the AFRC’s case reference which is quoted on the AFRC’s correspondence relating to the matter.

## Disclaimer

38. This document provides a summary of the AFRC’s disciplinary process for reference only. It is not legal advice. Regulatees should seek their own legal advice. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

Draft for Consultation Purpose

# **Document B – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons**

## Introduction

1. These guidelines are made pursuant to sections 13 and 37H of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”) to indicate the manner in which the Accounting and Financial Reporting Council (“**AFRC**”) will exercise its powers to impose a pecuniary penalty on a public interest entity (“**PIE**”) auditor or a registered responsible person of a registered PIE auditor (together referred to as “**Regulatees**”) pursuant to sections 37D(3)(b)(iv) and 37E(3)(b)(iii) of the AFRCO respectively. Section 37H(1)(b) requires the AFRC to have regard to these guidelines in imposing any pecuniary penalty.
2. Unless otherwise stated, terms defined in the AFRCO shall have the same meanings in these guidelines.
3. These guidelines will be reviewed periodically and (where appropriate) revised in the light of experience. These guidelines cannot deal with every single situation and exceptions will sometimes arise.

## Power to order pecuniary penalties for misconduct

4. Pursuant to section 37D(3)(b)(iv) of the AFRCO, if the AFRC is satisfied that a person who is or was a PIE auditor has committed a misconduct, the AFRC may order that person to pay a pecuniary penalty not exceeding the amount which is the greater of—
  - (a) \$10,000,000; or
  - (b) 3 times the amount of the profit gained or loss avoided by the person as a result of the misconduct.
5. Pursuant to section 37E(3)(b)(iii) of the AFRCO, if the AFRC is satisfied that a person who is or was a registered responsible person of a registered PIE auditor has committed a misconduct, the AFRC may order that person to pay a pecuniary penalty not exceeding the amount which is the greater of—
  - (a) \$10,000,000; or
  - (b) 3 times the amount of the profit gained or loss avoided by the person as a result of the misconduct.

## **General approach to determining a pecuniary penalty**

6. In determining whether a pecuniary penalty is appropriate and, if so, the amount of pecuniary penalty to be ordered, the AFRC will consider the full circumstances of each case, including the seriousness of the misconduct involved and the circumstances of the Regulatee concerned. The AFRC will also have regard to the upper limit on the pecuniary penalty that can be imposed in respect of each misconduct.
7. Without prejudice to the matters stated in paragraph 6 above, in undertaking the assessment of whether to impose a pecuniary penalty and the appropriate amount of pecuniary penalty, the AFRC will generally adopt the following approach:
  - (a) the AFRC will first assess the misconduct including its nature, seriousness, frequency, duration and impact to form a view on the appropriateness of a pecuniary penalty as set out in paragraphs 9 and 10 below; and
  - (b) the AFRC will then make any necessary adjustment to take account of any relevant aggravating and mitigating factors and to avoid the effect of putting a Regulatee in financial jeopardy as set out in paragraphs 11 to 15 below.
8. Where a case potentially gives rise to multiple pecuniary penalties, the AFRC will look at the totality of the pecuniary penalties to ensure that they are not disproportionate to the seriousness of the misconduct in question for each of the Regulatees.

### Step (a): Assessing the misconduct

9. In assessing the misconduct, the AFRC may consider the factors summarized in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. The AFRC may also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
10. Factors which the AFRC may consider include:

#### *The nature and seriousness of the misconduct*

- (a) the nature, extent and importance of any laws, standards or regulations breached;

- (b) whether the misconduct was intentional, dishonest, deliberate, reckless or negligent, or involved a failure to act or conduct business with integrity or an abuse of a position of trust;
- (c) whether the misconduct was engaged in by the Regulatee alone or as a group, and if so the Regulatee's role in that group, including whether the Regulatee caused or encouraged other individuals to commit misconduct;
- (d) whether the Regulatee facilitated wrongdoing by a third party or collusion with a client;
- (e) in the case of a PIE auditor, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of any relevant Hong Kong Standard on Quality Control (or equivalent);

*The frequency and duration of the misconduct*

- (f) whether the misconduct was isolated, or repeated or ongoing;
- (g) if repeated or ongoing, the duration of the misconduct;

*The impact of the misconduct*

- (h) whether the misconduct damaged, or (if known) could have damaged, the public interest and the interest of the investing public;
- (i) whether the misconduct damaged, or (if known) could have damaged, investor, market and public confidence in the truth and fairness of the financial statements of PIEs;
- (j) whether the misconduct undermined, or (if known) could have undermined, public confidence in the standards of conduct in general of Regulatees and the reputation of Hong Kong as an international financial centre;
- (k) whether the misconduct adversely affected, or (if known) could have adversely affected, a significant number of people (such as the investing public), including the loss of significant sums of money; and
- (l) the financial benefit derived or intended to be derived from the misconduct (the amount of profits gained or intended to be gained or losses avoided or intended to be avoided by the Regulatee, in so far as they can be determined). If the Regulatee has derived any illegitimate financial benefits



or has illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. The AFRC may also allocate an amount in respect of interest on the benefit obtained or loss avoided.

#### Step (b): Making necessary adjustment

11. Having assessed the circumstances of the misconduct and reached a view on the appropriateness of a pecuniary penalty, the AFRC will then consider whether any adjustments need to be made to take account of any relevant aggravating and mitigating factors (to the extent those factors have not already been taken into account in the AFRC's assessment of the misconduct) and to avoid the effect of putting a Regulatee in financial jeopardy.

#### *Aggravating and mitigating factors*

12. The list below is not exhaustive and not all factors will be applicable in a particular case. The AFRC will also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
13. Factors which the AFRC may consider include:
  - (a) the degree of cooperation (or non-cooperation) with the AFRC, including whether remedial actions have been taken – please refer to the [“Guidance Note on Cooperation with the AFRC”](#) which is available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)) for more information;
  - (b) whether similar previous misconduct by the Regulatee or issues similar or related to the misconduct have been identified, and whether appropriate steps had been taken to address any such similar misconduct or issues;
  - (c) whether the Regulatee has failed to comply with any previous direction or order relevant to the misconduct;
  - (d) the likelihood that the same type of misconduct will recur;
  - (e) the Regulatee's compliance history and disciplinary record;
  - (f) in the case of an individual, the individual's experience in the profession and position within the PIE auditor; and
  - (g) in the case of an individual, personal mitigating circumstances.

### *Financial jeopardy*

14. A pecuniary penalty should not have the effect of putting the Regulatee concerned in financial jeopardy. Where a Regulatee submits that a pecuniary penalty may put it, him or her in such a position and provides relevant information in support of such submission, the AFRC will consider the following:
  - (a) in the case of a PIE auditor, the AFRC will have regard to the PIE auditor's size, financial resources and financial strength, as indicated by, for example, the total turnover of the PIE auditor and the effect of the pecuniary penalty on its practice; and
  - (b) in the case of an individual, the AFRC will have regard to the individual's financial resources (including his or her annual income and assets) and the effect of the pecuniary penalty on that individual.
15. However, if a Regulatee takes or has taken deliberate steps to create the false appearance that the pecuniary penalty will place it, him or her in financial jeopardy, e.g. by transferring assets to third parties, this will be taken into account.

### **Disclaimer**

16. The provisions in these guidelines are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances.
17. For the avoidance of doubt, these guidelines do not purport to set out an exhaustive list of the principles and factors that the AFRC may take into account when imposing pecuniary penalties, and not all of the matters referred to above will be applicable in a particular case.
18. These guidelines do not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the AFRCO.
19. The AFRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this guidelines or arising from any omission from it.

20. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

Draft for Consultation Purpose

# **Document C – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons**

## Introduction

1. These guidelines are made pursuant to sections 13 and 37H of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”) to indicate the manner in which the Accounting and Financial Reporting Council (“**AFRC**”) will exercise its powers to impose a pecuniary penalty on professional persons (i.e. certified public accountants and practice units) (“**Regulatees**”) pursuant to section 37CA of the AFRCO. Section 37H(1)(b) requires the AFRC to have regard to these guidelines in imposing any pecuniary penalty.
2. Unless otherwise stated, terms defined in the AFRCO shall have the same meanings in these guidelines.
3. These guidelines will be reviewed periodically and (where appropriate) revised in the light of experience. These guidelines cannot deal with every single situation and exceptions will sometimes arise.

## Power to order pecuniary penalties for CPA misconduct

4. Pursuant to section 37CA(2)(b) of the AFRCO, if the AFRC is satisfied that a person who is or was a Regulatee has committed a CPA misconduct, the AFRC may order that person to pay a pecuniary penalty not exceeding \$500,000.

## General approach to determining a pecuniary penalty

5. In determining whether a pecuniary penalty is appropriate and, if so, the amount of pecuniary penalty to be ordered, the AFRC will consider the full circumstances of each case, including the seriousness of the CPA misconduct involved and the circumstances of the Regulatee concerned. The AFRC will also have regard to the upper limit on the pecuniary penalty that can be imposed in respect of each CPA misconduct.
6. Without prejudice to the matters stated in paragraph 5 above, in undertaking the assessment of whether to impose a pecuniary penalty and the appropriate amount of pecuniary penalty, the AFRC will generally adopt the following approach:
  - (a) the AFRC will first assess the CPA misconduct including its nature, seriousness, frequency, duration and impact to form a view on the appropriateness of a pecuniary penalty as set out in paragraphs 8 and 9 below; and

- (b) the AFRC will then make any necessary adjustment to take account of any relevant aggravating and mitigating factors and to avoid the effect of putting a Regulatee in financial jeopardy as set out in paragraphs 10 to 14 below.
7. Where a case potentially gives rise to multiple pecuniary penalties, the AFRC will look at the totality of the pecuniary penalties to ensure that they are not disproportionate to the seriousness of the CPA misconduct in question for each of the Regulatees.

Step (a): Assessing the CPA misconduct

8. In assessing the CPA misconduct, the AFRC may consider the factors summarized in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. The AFRC may also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
9. Factors which the AFRC may consider include:

*The nature and seriousness of the CPA misconduct*

- (a) the nature, extent and importance of any laws, standards or regulations breached;
- (b) whether the CPA misconduct was intentional, dishonest, deliberate, reckless or negligent, or involved a failure to act or conduct business with integrity or an abuse of a position of trust;
- (c) whether the CPA misconduct was engaged in by the Regulatee alone or as a group, and if so the Regulatee's role in that group, including whether the Regulatee caused or encouraged other individuals to commit CPA misconduct;
- (d) whether the Regulatee facilitated wrongdoing by a third party or collusion with a client;
- (e) in the case of a practice unit, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of any relevant Hong Kong Standard on Quality Control (or equivalent);

*The frequency and duration of the CPA misconduct*

- (f) whether the CPA misconduct was isolated, or repeated or ongoing;
- (g) if repeated or ongoing, the duration of the CPA misconduct;

*The impact of the CPA misconduct*

- (h) whether the CPA conduct damaged, or (if known) could have damaged, the public interest and the interest of the investing public;
- (i) whether the CPA misconduct damaged, or (if known) could have damaged, public confidence in the quality of corporate reporting and financial statements;
- (j) whether the CPA misconduct undermined, or (if known) could have undermined, public confidence in the standards of conduct in general of Regulatees and the reputation of Hong Kong as an international financial centre;
- (k) whether the CPA misconduct adversely affected, or (if known) could have adversely affected, a significant number of people (such as the investing public), including the loss of significant sums of money; and
- (l) the financial benefit derived or intended to be derived from the CPA misconduct (the amount of profits gained or intended to be gained or losses avoided or intended to be avoided by the Regulatee, in so far as they can be determined). If the Regulatee has derived any illegitimate financial benefits or has illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. The AFRC may also allocate an amount in respect of interest on the benefit obtained or loss avoided.

Step (b): Making necessary adjustment

10. Having assessed the circumstances of the CPA misconduct and reached a view on the appropriateness of a pecuniary penalty, the AFRC will then consider whether any adjustments need to be made to take account of any relevant aggravating and mitigating factors (to the extent those factors have not already been taken into account in the AFRC's assessment of the CPA misconduct) and to avoid the effect of putting a Regulatee in financial jeopardy.

### *Aggravating and mitigating factors*

11. The list below is not exhaustive and not all factors will be applicable in a particular case. The AFRC will also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
12. Factors which the AFRC may consider include:
  - (a) the degree of cooperation (or non-cooperation) with the AFRC, including whether remedial actions have been taken – please refer to the [“Guidance Note on Cooperation with the AFRC”](#) which is available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)) for more information;
  - (b) whether similar previous CPA misconduct by the Regulatee or issues similar or related to the CPA misconduct have been identified, and whether appropriate steps had been taken to address any such similar CPA misconduct or issues;
  - (c) whether the Regulatee has failed to comply with any previous direction or order relevant to the CPA misconduct;
  - (d) the likelihood that the same type of CPA misconduct will recur;
  - (e) the Regulatee’s compliance history and disciplinary record;
  - (f) in the case of an individual, the individual’s experience in the profession and position within the practice unit; and
  - (g) in the case of an individual, personal mitigating circumstances.

### *Financial jeopardy*

13. A pecuniary penalty should not have the effect of putting the Regulatee concerned in financial jeopardy. Where a Regulatee submits that a pecuniary penalty may put it, him or her in such a position and provides relevant information in support of such submission, the AFRC will consider the following:
  - (a) in the case of a practice unit, the AFRC will have regard to the practice unit’s size, financial resources and financial strength, as indicated by, for example, the total turnover of the practice unit and the effect of the pecuniary penalty on its practice; and



- (b) in the case of an individual, the AFRC will have regard to the individual's financial resources (including his or her annual income and assets) and the effect of the pecuniary penalty on that individual.
14. However, if a Regulatee takes or has taken deliberate steps to create the false appearance that the pecuniary penalty will place it, him or her in financial jeopardy, e.g. by transferring assets to third parties, this will be taken into account.

### **Disclaimer**

15. The provisions in these guidelines are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances.
16. For the avoidance of doubt, these guidelines do not purport to set out an exhaustive list of the principles and factors that the AFRC may take into account when imposing pecuniary penalties, and not all of the matters referred to above will be applicable in a particular case.
17. These guidelines do not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the AFRCO.
18. The AFRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this guidelines or arising from any omission from it.
19. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

Draft for Consultation Purpose

# **Document D – Sanctions Policy for PIE Auditors and Registered Responsible Persons**

## Introduction

1. This policy sets out the general approach that the Accounting and Financial Reporting Council (“**AFRC**”) will adopt when considering the imposition of sanctions on public interest entity (“**PIE**”) auditors and registered responsible persons of a registered PIE auditor (together referred to as “**Regulatees**”) pursuant to sections 37D, 37E and 37F of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”). For the types of sanctions that the AFRC could impose on Regulatees under the AFRCO, please refer to the [“Discipline Policy Statement for PIE Auditors and Registered Responsible Persons”](#), which is available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)).
2. Unless otherwise stated, terms defined in the AFRCO shall have the same meanings in this policy.
3. This policy will be reviewed periodically and (where appropriate) revised in the light of experience. This policy cannot deal with every single situation and exceptions will sometimes arise.

## General approach to determining sanctions

4. The AFRC will consider the full circumstances of each case, including the seriousness of the conduct involved and the circumstances of the Regulatee concerned, before determining which sanction or combination of sanctions to impose on the Regulatee.
5. Generally speaking:
  - (a) the AFRC will consider the objectives of discipline in the context of the AFRCO. The primary purpose of imposing sanctions is not to punish, but to protect the public and the wider public interest and for deterrence;
  - (b) the AFRC will aim to impose sanctions which are proportionate. In assessing proportionality, the AFRC will consider whether the particular sanctions are commensurate with the circumstances of the case, including the seriousness of the conduct and the circumstances of the Regulatee concerned;
  - (c) where a case potentially gives rise to multiple sanctions, the AFRC will look at the totality of the sanctions to ensure that they are not disproportionate to the seriousness of the conduct in question for each of the Regulatees; and

- (d) the AFRC may have regard to sanctions (including the amount of any pecuniary penalty) imposed in other cases. It will, however, impose the sanctions which it considers appropriate on the facts and circumstances of the specific case before it and will not be constrained by the sanctions imposed (or not imposed) in earlier cases. The AFRC may also adjust its approach from time to time in light of various considerations it deems relevant to the discharge of its functions and to changing market circumstances, particularly the behaviour of Regulatees.
6. Without prejudice to the matters stated in paragraphs 4 and 5 above, the AFRC will generally adopt the following approach to determining the sanction to be imposed in a particular case:
- (a) the AFRC will first assess the relevant conduct including its nature, seriousness, frequency, duration and impact to identify the sanction or combination of sanctions that the AFRC considers potentially appropriate (paragraphs 7 and 8 below); and
  - (b) the AFRC will then consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level, nature or combination of sanctions under consideration (paragraphs 9 and 10 below).

Step (a): Undertaking the initial assessment of the conduct

7. In assessing the conduct, the AFRC may consider the factors summarized in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. The AFRC may also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
8. Factors which the AFRC may consider include:

*The nature and seriousness of the conduct*

- (a) the nature, extent and importance of any laws, standards or regulations breached;
- (b) whether the conduct was intentional, dishonest, deliberate, reckless or negligent, or involved a failure to act or conduct business with integrity or an abuse of a position of trust;

- (c) whether the conduct was engaged in by the Regulatee alone or as a group, and if so the Regulatee's role in that group, including whether the Regulatee caused or encouraged other individuals to commit the relevant conduct;
- (d) whether the Regulatee facilitated wrongdoing by a third party or collusion with a client;
- (e) in the case of a PIE auditor, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of any relevant Hong Kong Standard on Quality Control (or equivalent);

*The frequency and duration of the conduct*

- (f) whether the conduct was isolated, or repeated or ongoing;
- (g) if repeated or ongoing, the duration of the conduct;

*The impact of the conduct*

- (h) whether the conduct damaged, or (if known) could have damaged, the public interest and the interest of the investing public;
- (i) whether the conduct damaged, or (if known) could have damaged, investor, market and public confidence in the truth and fairness of the financial statements of PIEs;
- (j) whether the conduct undermined, or (if known) could have undermined, public confidence in the standards of conduct in general of Regulatees and the reputation of Hong Kong as an international financial centre;
- (k) whether the conduct adversely affected, or (if known) could have adversely affected, a significant number of people (such as the investing public), including the loss of significant sums of money; and
- (l) the financial benefit derived or intended to be derived from the conduct (the amount of profits gained or intended to be gained or losses avoided or intended to be avoided by the Regulatee, in so far as they can be determined). If the Regulatee has derived any illegitimate financial benefits or has illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. The AFRC may also allocate an amount in respect of interest on the benefit obtained or loss avoided.

Step (b): Considering any relevant aggravating or mitigating circumstances

9. Having assessed the circumstances of the conduct and reached a view on the potential sanction that would be appropriate, the AFRC will then consider whether to adjust that sanction to reflect any aggravating or mitigating factors (summarized in the paragraph below) that may exist (to the extent those factors have not already been taken into account in the AFRC's assessment of the conduct). The list below is not exhaustive and not all factors will be applicable in a particular case. The AFRC will also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
  
10. Factors which the AFRC may consider include:
  - (a) the degree of cooperation (or non-cooperation) with the AFRC, including whether remedial actions have been taken – please refer to the [“Guidance Note on Cooperation with the AFRC”](#) which is available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)) for more information;
  - (b) whether similar previous conduct by the Regulatee or issues similar or related to the conduct have been identified, and whether appropriate steps had been taken to address any such similar conduct or issues;
  - (c) whether the Regulatee has failed to comply with any previous direction or order relevant to the conduct;
  - (d) the likelihood that the same type of conduct will recur;
  - (e) the Regulatee's compliance history and disciplinary record;
  - (f) in the case of an individual, the individual's experience in the profession and position within the PIE auditor; and
  - (g) in the case of an individual, personal mitigating circumstances.

**Disclaimer**

11. The provisions in this policy are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances.
  
12. For the avoidance of doubt, this policy does not purport to set out an exhaustive

list of the principles and factors that the AFRC may take into account when determining sanctions, and not all of the matters referred to above will be applicable in a particular case.

13. This policy does not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the AFRCO.
14. The AFRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this policy or arising from any omission from it.
15. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

Draft for Consultation Purpose

# **Document E – Sanctions Policy for Professional Persons**



## Introduction

1. This policy sets out the general approach that the Accounting and Financial Reporting Council (“**AFRC**”) will adopt when considering the imposition of sanctions on professional persons (i.e. certified public accountants and practice units) (“**Regulatees**”) pursuant to section 37CA of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”). For the types of sanctions that the AFRC could impose on Regulatees under the AFRCO, please refer to the [\*“Discipline Policy Statement for Professional Persons”\*](#), which is available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)).
2. Unless otherwise stated, terms defined in the AFRCO shall have the same meanings in this policy.
3. This policy will be reviewed periodically and (where appropriate) revised in the light of experience. This policy cannot deal with every single situation and exceptions will sometimes arise.

## General approach to determining sanctions

4. The AFRC will consider the full circumstances of each case, including the seriousness of the conduct involved and the circumstances of the Regulatee concerned, before determining which sanction or combination of sanctions to impose on the Regulatee.
5. Generally speaking:
  - (a) the AFRC will consider the objectives of discipline in the context of the AFRCO. The primary purpose of imposing sanctions is not to punish, but to protect the public and the wider public interest and for deterrence;
  - (b) the AFRC will aim to impose sanctions which are proportionate. In assessing proportionality, the AFRC will consider whether the particular sanctions are commensurate with the circumstances of the case, including the seriousness of the conduct and the circumstances of the Regulatee concerned;
  - (c) where a case potentially gives rise to multiple sanctions, the AFRC will look at the totality of the sanctions to ensure that they are not disproportionate to the seriousness of the conduct in question for each of the Regulatees; and

- (d) the AFRC may have regard to sanctions (including the amount of any pecuniary penalty) imposed in other cases. It will, however, impose the sanctions which it considers appropriate on the facts and circumstances of the specific case before it and will not be constrained by the sanctions imposed (or not imposed) in earlier cases. The AFRC may also adjust its approach from time to time in light of various considerations it deems relevant to the discharge of its functions and to changing market circumstances, particularly the behaviour of Regulatees.
6. Without prejudice to the matters stated in paragraphs 4 and 5 above, the AFRC will generally adopt the following approach to determining the sanction to be imposed in a particular case:
- (a) the AFRC will first assess the relevant conduct including its nature, seriousness, frequency, duration and impact to identify the sanction or combination of sanctions that the AFRC considers potentially appropriate (paragraphs 7 and 8 below); and
  - (b) the AFRC will then consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level, nature or combination of sanctions under consideration (paragraphs 9 and 10 below).

Step (a): Undertaking the initial assessment of the conduct

7. In assessing the conduct, the AFRC may consider the factors summarized in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. The AFRC may also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
8. Factors which the AFRC may consider include:

*The nature and seriousness of the conduct*

- (a) the nature, extent and importance of any laws, standards or regulations breached;
- (b) whether the conduct was intentional, dishonest, deliberate, reckless or negligent, or involved a failure to act or conduct business with integrity or an abuse of a position of trust;
- (c) whether the conduct was engaged in by the Regulatee alone or as a group,

and if so the Regulatee's role in that group, including whether the Regulatee caused or encouraged other individuals to commit the relevant conduct;

- (d) whether the Regulatee facilitated wrongdoing by a third party or collusion with a client;
- (e) in the case of a practice unit, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of any relevant Hong Kong Standard on Quality Control (or equivalent);

*The frequency and duration of the conduct*

- (f) whether the conduct was isolated, or repeated or ongoing;
- (g) if repeated or ongoing, the duration of the conduct;

*The impact of the conduct*

- (h) whether the conduct damaged, or (if known) could have damaged, the public interest and the interest of the investing public;
- (i) whether the conduct damaged, or (if known) could have damaged, public confidence in the quality of corporate reporting and financial statements;
- (j) whether the conduct undermined, or (if known) could have undermined, public confidence in the standards of conduct in general of Regulatees and the reputation of Hong Kong as an international financial centre;
- (k) whether the conduct adversely affected, or (if known) could have adversely affected, a significant number of people (such as the investing public), including the loss of significant sums of money; and
- (l) the financial benefit derived or intended to be derived from the conduct (the amount of profits gained or intended to be gained or losses avoided or intended to be avoided by the Regulatee, in so far as they can be determined). If the Regulatee has derived any illegitimate financial benefits or has illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. The AFRC may also allocate an amount in respect of interest on the benefit obtained or loss avoided.

Step (b): Considering any relevant aggravating or mitigating circumstances

9. Having assessed the circumstances of the conduct and reached a view on the potential sanction that would be appropriate, the AFRC will then consider whether to adjust that sanction to reflect any aggravating or mitigating factors (summarized in the paragraph below) that may exist (to the extent those factors have not already been taken into account in the AFRC's assessment of the conduct). The list below is not exhaustive and not all factors will be applicable in a particular case. The AFRC will also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
  
10. Factors which the AFRC may consider include:
  - (a) the degree of cooperation (or non-cooperation) with the AFRC, including whether remedial actions have been taken – please refer to the [“Guidance Note on Cooperation with the AFRC”](#) which is available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)) for more information;
  - (b) whether similar previous conduct by the Regulatee or issues similar or related to the conduct have been identified, and whether appropriate steps had been taken to address any such similar conduct or issues;
  - (c) whether the Regulatee has failed to comply with any previous direction or order relevant to the conduct;
  - (d) the likelihood that the same type of conduct will recur;
  - (e) the Regulatee's compliance history and disciplinary record;
  - (f) in the case of an individual, the individual's experience in the profession and position within the practice unit; and
  - (g) in the case of an individual, personal mitigating circumstances.

**Disclaimer**

11. The provisions in this policy are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances.
  
12. For the avoidance of doubt, this policy does not purport to set out an exhaustive

list of the principles and factors that the AFRC may take into account when determining sanctions, and not all of the matters referred to above will be applicable in a particular case.

13. This policy does not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the AFRCO.
14. The AFRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this policy or arising from any omission from it.
15. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

## Appendix B

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# **Document F – Discipline Policy Statement for PIE Auditors and Registered Responsible Persons**

## Introduction

1. The Accounting and Financial Reporting Council (“**AFRC**”) is an independent body established under the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”).
2. Under the AFRCO, the AFRC is empowered to impose sanctions on the following persons where they have committed a misconduct and under certain specified situations:
  - (a) public interest entity (“**PIE**”) auditors, being:
    - (i) registered PIE auditors;
    - (ii) recognized PIE auditors; and
  - (b) registered responsible persons of a registered PIE auditor
 (together referred to as “**Regulatees**”).

## Definitions

3. In this Policy Statement, the following terms have the meanings defined in the AFRCO as set out below (the definitions in the AFRCO shall prevail in case of any inconsistency):

Terms	Meanings defined in the AFRCO	Section under the AFRCO
PIE	A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.	3(1)
PIE engagement	<p>A PIE engagement means any of the following types of engagements for the preparation of:</p> <ul style="list-style-type: none"> <li>• an auditor’s report on a PIE’s financial statements / annual accounts required by the section 379 of Companies Ordinance (Cap. 622), the Listing Rules or any relevant code;</li> <li>• a specified report required to be included in a listing document for the listing of a</li> </ul>	3A(1); Part 1 of Schedule 1A

	<p>corporation's shares or stocks or for the listing of a collective investment scheme; or</p> <ul style="list-style-type: none"> <li>• an accountant's report required under the Listing Rules to be included in a circular issued by a PIE for a reverse takeover or a very substantial acquisition.</li> </ul>	
PIE auditor	A PIE auditor means a registered or recognized PIE auditor.	3A(1)
professional standard	<p>A professional standard means:</p> <ul style="list-style-type: none"> <li>• any statement of professional ethics, or standard of accounting, auditing or assurance practices, issued or specified, or deemed to have been issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50);</li> <li>• any standard on professional ethics, or accounting, auditing or assurance practices, issued or specified by the International Accounting Standards Board, the International Auditing and Assurance Standards Board or the International Ethics Standards Board for Accountants;</li> <li>• any standard on professional ethics, or accounting, auditing or assurance practices, comparable to those referred to above which is allowed by the Securities and Futures Commission pursuant to the relevant code or by the Hong Kong Exchanges and Clearing Limited pursuant to the Listing Rules; or</li> <li>• any standard on professional ethics, or accounting, auditing or assurance practices, specified in the Listing Rules.</li> </ul>	2(1)
recognized PIE auditor	A recognized PIE auditor means an overseas auditor recognized under Division 3 of Part 3, including a Mainland auditor recognized under section 20ZT of the AFRCO.	3A(1)



registered PIE auditor	A registered PIE auditor means a practice unit registered under Division 2 of Part 3 of the AFRCO.	3A(1)
registered responsible person	A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor: <ul style="list-style-type: none"> <li>• an engagement partner;</li> <li>• an engagement quality control reviewer; or</li> <li>• a quality control system responsible person.</li> </ul>	2(1)

### Purpose of this document

4. The purpose of this Policy Statement is to provide an overview of the legal regime of the disciplinary function of the AFRC for Regulatees.
5. For details of the AFRC's disciplinary process, please refer to the [“Outline of the AFRC's Disciplinary Process”](#), which is available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)).

### Objectives of discipline

6. The AFRC is entrusted with the statutory duty to regulate the accountancy profession. An effective regulatory regime of the accountancy profession is crucial for the business community and is essential for maintaining Hong Kong's status as an international financial centre.
7. The AFRC regulates through imposing disciplinary sanctions on Regulatees. It ensures that where there has been misconduct committed by Regulatees, or upon the occurrence of certain specified events (as further elaborated in paragraph 11 below), appropriate and timely action will be taken:
  - (a) to uphold proper standards of conduct amongst Regulatees so as to maintain and enhance the quality and reliability of future audits;
  - (b) to maintain and promote public confidence in:
    - (i) the integrity of the accountancy profession;

- (ii) the quality of their audits; and
- (iii) the regulation of the accountancy profession;
- (c) to protect the public from Regulatees whose conduct has failed to comply with the relevant requirements set out in the AFRCO; and
- (d) to deter Regulatees from committing misconduct relating to PIE audits.

## **Circumstances in which disciplinary sanctions may be imposed**

### Misconduct

8. Pursuant to sections 37D and 37E of the AFRCO, disciplinary action may be taken against a Regulatee who has committed a misconduct. As provided in sections 37A and 37B of the AFRCO, misconduct in this context includes:
- (a) a contravention of a provision of the AFRCO;
  - (b) a contravention of a condition imposed in relation to the registration or recognition of the PIE auditor concerned;
  - (c) a contravention of a requirement imposed on a Regulatee under the AFRCO;
  - (d) conduct in relation to a PIE engagement which is or is likely to be prejudicial to the interest of the investing public or the public interest; or
  - (e) a “practice irregularity” as defined under section 4 of the AFRCO (see paragraph 9 below).
9. Examples of a “practice irregularity” include situations where a Regulatee, in relation to a PIE engagement:
- (a) falsified or caused to be falsified a document;
  - (b) made a statement, in respect of a document, that was material and that the Regulatee knew to be false or did not believe to be true;
  - (c) has been negligent in the conduct of the Regulatee’s profession;
  - (d) has been guilty of professional misconduct;

- (e) did or omitted to do something that would reasonably be regarded as bringing or likely to bring discredit on the Regulatee, the Hong Kong Institute of Certified Public Accountants (“**HKICPA**”) or the accountancy profession;
  - (f) failed or neglected to observe, maintain or otherwise apply a professional standard; or
  - (g) refused or neglected to comply with any direction lawfully given by the AFRC, or the provisions of any bylaw or rule made, or any direction lawfully given by the Council of the HKICPA.
10. The above examples are not exhaustive. Please refer to section 4 of the AFRCO for a full list of matters that constitute a “practice irregularity”.

#### Other situations where the AFRC may impose sanctions

11. Section 37F of the AFRCO sets out a number of additional situations in which the AFRC may impose sanctions on registered PIE auditors and registered responsible persons. These generally relate to insolvency events, the conviction of an offence that impugns the fitness and properness of the relevant persons and mental incapacity. Section 37F of the AFRCO

#### **Opportunity to be heard**

12. The AFRC must not impose a sanction on a Regulatee without first giving the Regulatee a reasonable opportunity of being heard, i.e. an opportunity to make written or oral representations. Section 37G of the AFRCO
13. Please refer to the [“\*Outline of the AFRC’s Disciplinary Process\*”](#), which is available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)) for details in relation to the opportunity to make representations.

#### **Sanctions**

##### Sanctions for misconduct

14. The AFRC may impose the following sanctions for misconduct on a PIE auditor: Section 37D of the AFRCO
- (a) public or private reprimand;
  - (b) remedial action;

- (c) pecuniary penalty;
  - (d) imposition of a condition on the registration or recognition;
  - (e) revocation or suspension of the registration or recognition; and
  - (f) prohibition from applying to be registered or recognized as a PIE auditor for a period of time.
15. The AFRC may impose the following sanctions for misconduct on a registered responsible person: Section 37E of the AFRCO
- (a) public or private reprimand;
  - (b) remedial action;
  - (c) pecuniary penalty; and
  - (d) removal of name from the list of registered responsible persons permanently or for a period of time.
16. The above sanctions may be imposed singly or in combination.

#### Other situations where the AFRC may impose sanctions

17. In the situations described in paragraph 11 above, the AFRC may: Section 37F of the AFRCO
- (a) revoke or suspend the registration of a registered PIE auditor; and
  - (b) remove the name of a registered responsible person from the list of registered responsible persons permanently or for a period of time.

#### **Approach to determining pecuniary penalty and other sanctions**

18. The AFRC will consider all the relevant circumstances of a case to determine the appropriate sanction or combination of sanctions which would achieve the purpose of disciplinary action with due regard to the principle of proportionality.
19. Before imposing a pecuniary penalty, the AFRC is required to have regard to the ["Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE"](#) Section 37H of the AFRCO

[Auditors and Registered Responsible Persons](#), which is available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)).

20. For further information as to the AFRC’s approach to sanctions generally, please refer to the [“Sanctions Policy for PIE Auditors and Registered Responsible Persons”](#), which is also available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)).

### **Review of the AFRC’s disciplinary decisions**

21. Any Regulatee who is aggrieved by the AFRC’s disciplinary decision may, within 21 days beginning on the day after a notice of the decision is issued by the AFRC, apply to the Accounting and Financial Reporting Review Tribunal (“**Tribunal**”) for a review of that decision. Sections 37M and 37Q of the AFRCO
22. The Tribunal is independent of the AFRC. The Tribunal consists of a chairperson (a former Justice of Appeal of the Court of Appeal, a former judge / recorder / deputy judge of the Court of First Instance or a person eligible for appointment as a judge of the High Court) and two other ordinary members from the Tribunal panel, all of whom must not be public officers. Sections 2, 3, and 5 of Schedule 4A of the AFRCO
23. The chairperson and members of the Tribunal panel must be appointed by the Chief Executive of the HKSAR. Sections 2 and 3 of Schedule 4A of the AFRCO

### **Appeal**

24. If a party to a review is dissatisfied with the determination of the review made by the Tribunal, the party may, within 30 days after the day on which the determination is issued to the party, apply to the Court of Appeal for leave to appeal against that determination on a question of law and/or fact. Sections 37ZF and 37ZG of the AFRCO

### **Disclosure of sanctions**

25. The AFRC must disclose to the public the material facts of the case, the AFRC’s decision with reasons and the disciplinary sanction imposed / action taken, unless the disclosure: Section 37K of the AFRCO
- (a) relates to a private reprimand;
  - (b) may adversely affect any criminal proceedings before a court or magistrate;
- or

- (c) in the AFRC's opinion, is not in the interest of the investing public or in the public interest.

26. The disclosure may only be made after:

Section 37K  
of the  
AFRCO

- (a) where a sanction is imposed upon the conclusion of the disciplinary process –
  - (i) the expiry of the period for lodging an application for review to the Tribunal; or
  - (ii) if an application for review is lodged, the disposal of the review; or
- (b) where a settlement is reached and disciplinary action is taken by consent pursuant to section 37I of the AFRCO – a notice pursuant to section 37I(4) of the AFRCO is issued.

27. In general, disclosure will be made by means of a press release, which will be made available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)).

### **Disclaimer**

28. This document provides a summary for reference only. It is not legal advice. Regulatees should seek their own legal advice. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

# **Document G – Discipline Policy Statement for Professional Persons**

## Introduction

1. The Accounting and Financial Reporting Council (“**AFRC**”) is an independent body established under the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”).
2. Under the AFRCO, the AFRC is empowered to impose sanctions on professional persons (“**Regulatees**”) where they have committed a CPA misconduct.

## Definitions

3. In this Policy Statement, the following terms have the meanings defined in the AFRCO as set out below (the definitions in the AFRCO shall prevail in case of any inconsistency):

Terms	Meanings defined in the AFRCO	Section under the AFRCO
AML / CTF requirement	An AML / CTF requirement means a requirement set out in Part 2, 3 or 4 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) as may be applicable.	3B(5)
certified public accountant (“ <b>CPA</b> ”)	A CPA means a person registered as a certified public accountant by virtue of section 22 of the Professional Accountants Ordinance (Cap. 50) (“ <b>PA Ordinance</b> ”).	2(1)
CPA misconduct	A CPA misconduct means a misconduct as defined in section 37AA of the AFRCO, as further elaborated under the sub-section “CPA misconduct” below.	37AA
PAO professional standard	A PAO professional standard means any statement of professional ethics, or standard of accounting, auditing or assurance practices, issued or specified, or deemed to have been issued or specified, under section 18A of the PA Ordinance.	2(1)



public interest entity (“PIE”)	A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.	3(1)
PIE auditor	A PIE auditor means a registered or recognized PIE auditor.	3A
practice unit	A practice unit means: <ul style="list-style-type: none"> <li>• a CPA (practising) who practises accountancy on the accountant's own account under the accountant's own name as registered under section 22(2) of the PA Ordinance;</li> <li>• a CPA firm; or</li> <li>• a corporate practice.</li> </ul>	2(1)
professional person	A professional person means: <ul style="list-style-type: none"> <li>• a CPA; or</li> <li>• a practice unit.</li> </ul>	2(1)
registered responsible person	A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor: <ul style="list-style-type: none"> <li>• an engagement partner;</li> <li>• an engagement quality control reviewer; or</li> <li>• a quality control system responsible person.</li> </ul>	2(1)

### Purpose of this document

4. The purpose of this Policy Statement is to provide an overview of the legal regime of the disciplinary function of the AFRC for Regulatees.
5. For details of the AFRC’s disciplinary process, please refer to the [“Outline of the AFRC’s Disciplinary Process”](#), which is available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)).

## Objectives of discipline

6. The AFRC is entrusted with the statutory duty to regulate the accountancy profession. An effective regulatory regime of the accountancy profession is crucial for the business community and is essential for maintaining Hong Kong's status as an international financial centre.
7. The AFRC regulates through imposing disciplinary sanctions on Regulatees. It ensures that where there has been CPA misconduct committed by Regulatees, appropriate and timely action will be taken:
  - (a) to uphold proper standards of conduct amongst Regulatees so as to maintain and enhance the quality and reliability of accounting and auditing work;
  - (b) to maintain and promote public confidence in:
    - (i) the integrity of the accountancy profession;
    - (ii) the quality of corporate reporting; and
    - (iii) the regulation of the accountancy profession;
  - (c) to protect the public from Regulatees whose conduct has failed to comply with the relevant requirements set out in the AFRCO; and
  - (d) to deter Regulatees from committing CPA misconduct.

## Circumstances in which disciplinary sanctions may be imposed

### CPA misconduct

8. Pursuant to section 37CA of the AFRCO, disciplinary action may be taken against a Regulatee who has been guilty of a CPA misconduct. As provided in section 37AA of the AFRCO, CPA misconduct in this context includes situations where the Regulatee:
  - (a) does an act or makes an omission that amounts to a “professional irregularity” as defined under section 3B of the AFRCO (see paragraph 11 below);

Section 37CA  
of the  
AFRCO

Section 37AA  
of the  
AFRCO

- (b) is convicted of an offence under section 21F or 31 of the AFRCO, which generally relates to a failure to properly comply with a requirement imposed by an inspector or investigator;
  - (c) is punished by the Court of First Instance under section 32(2)(b) or 45(2)(b) of the AFRCO for failing to comply with a requirement imposed by an inspector, investigator or enquirer or for being involved in the failure;
  - (d) (where the Regulatee is a CPA) is convicted of an offence under Part V (Perjury) of the Crimes Ordinance (Cap. 200); or
  - (e) (where the Regulatee is a CPA) is convicted in Hong Kong or elsewhere of any offence involving dishonesty.
9. However, a Regulatee who does an act or makes an omission referred to above is not to be regarded as being guilty of CPA misconduct if: Section 37AA of the AFRCO
- (a) the Regulatee is a PIE auditor or a registered responsible person;
  - (b) the act or omission amounts to a practice irregularity within the meaning of section 4 of the AFRCO; and
  - (c) the Regulatee has accordingly committed misconduct as described in section 37A or 37B of the AFRCO.
10. For such cases, please refer to the [“Discipline Policy Statement for PIE Auditors and Registered Responsible Persons”](#) available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)).

#### Examples of a “professional irregularity”

11. Examples of a “professional irregularity” include situations where a Regulatee: Section 3B of the AFRCO
- (a) falsifies or causes to be falsified a document;
  - (b) makes a statement, in respect of a document, that is material and that the Regulatee knows to be false or does not believe to be true;
  - (c) fails to observe, maintain or otherwise apply a PAO professional standard;
  - (d) fails to comply with an applicable AML / CTF requirement;

- (e) while being a director of a corporate practice or a trust or company services provider (TCSP) licensee, or a responsible person of a limited partnership fund:
    - (i) causes or allows a breach of an AML / CTF requirement by the corporate practice, licensee or fund; or
    - (ii) fails to take reasonable steps to prevent such a breach;
  - (f) fails, without reasonable excuse, to comply with a requirement imposed by a CPA inspector or CPA investigator;
  - (g) fails to comply with-
    - (i) any regulation made or any direction lawfully given by the AFRC; or
    - (ii) the provisions of any bylaw or rule made or any direction lawfully given by the Council of the Hong Kong Institute of Certified Public Accountants;
  - (h) is negligent in the conduct of the Regulatee's profession;
  - (i) is guilty of professional misconduct; or
  - (j) is guilty of dishonourable conduct (or, in the case of a corporate practice, does or omits to do something that, if the person were an individual CPA, would reasonably be regarded as being dishonourable conduct).
12. The above examples are not exhaustive. Please refer to section 3B of the AFRCO for a full list of matters that constitute a "professional irregularity".

### **Opportunity to be heard**

13. The AFRC must not impose a sanction on a Regulatee without first giving the Regulatee a reasonable opportunity of being heard, i.e. an opportunity to make written or oral representations. Section 37G of the AFRCO
14. Please refer to the ["Outline of the AFRC's Disciplinary Process"](#), which is available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)) for details in relation to the opportunity to make representations.

## Sanctions for CPA misconduct

15. The AFRC may impose the following sanctions for CPA misconduct on a Regulatee: Section 37CA of the AFRCO
- (a) public or private reprimand;
  - (b) pecuniary penalty;
  - (c) revocation or suspension of the Regulatee’s registration;
  - (d) cancellation or non-issuance of a practising certificate; and
  - (e) investigation costs and expenses.
16. The above sanctions may be imposed singly or in combination.

## Approach to determining pecuniary penalty and other sanctions

17. The AFRC will consider all the relevant circumstances of a case to determine the appropriate sanction or combination of sanctions which would achieve the purpose of disciplinary action with due regard to the principle of proportionality.
18. Before imposing a pecuniary penalty, the AFRC is required to have regard to the [“Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons”](#), which is available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)). Section 37H of the AFRCO
19. For further information as to the AFRC’s approach to sanctions generally, please refer to the [“Sanctions Policy for Professional Persons”](#) which is also available on the AFRC’s website ([www.afrc.org.hk](http://www.afrc.org.hk)).

## Review of the AFRC’s disciplinary decisions

20. Any Regulatee who is aggrieved by the AFRC’s disciplinary decision may, within 21 days beginning on the day after a notice of the decision is issued by the AFRC, apply to the Accounting and Financial Reporting Review Tribunal (“**Tribunal**”) for a review of that decision. Sections 37M and 37Q of the AFRCO
21. The Tribunal is independent of the AFRC. The Tribunal consists of a chairperson (a former Justice of Appeal of the Court of Appeal, a former judge / recorder / deputy judge of the Court of First Instance or a person eligible for appointment Sections 2, 3, and 5 of Schedule 4A of the AFRCO

as a judge of the High Court) and two other ordinary members from the Tribunal panel, all of whom must not be public officers.

22. The chairperson and members of the Tribunal panel must be appointed by the Chief Executive of the HKSAR.

Sections 2 and 3 of Schedule 4A of the AFRCO

## Appeal

23. If a party to a review is dissatisfied with the determination of the review made by the Tribunal, the party may, within 30 days after the day on which the determination is issued to the party, apply to the Court of Appeal for leave to appeal against that determination on a question of law and/or fact.

Sections 37ZF and 37ZG of the AFRCO

## Disclosure of sanctions

24. The AFRC must disclose to the public the material facts of the case, the AFRC's decision with reasons and the disciplinary sanction imposed / action taken, unless the disclosure:

Section 37K of the AFRCO

- (a) relates to a private reprimand;
- (b) may adversely affect any criminal proceedings before a court or magistrate; or
- (c) in the AFRC's opinion, is not in the interest of the investing public or in the public interest.

25. The disclosure may only be made after:

Section 37K of the AFRCO

- (a) where a sanction is imposed upon the conclusion of the disciplinary process –
  - (i) the expiry of the period for lodging an application for review to the Tribunal; or
  - (ii) if an application for review is lodged, the disposal of the review; or
- (b) where a settlement is reached and disciplinary action is taken by consent pursuant to section 37I of the AFRCO – a notice pursuant to section 37I(4) of the AFRCO is issued.

26. In general, disclosure will be made by means of a press release, which will be made available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)).

**Disclaimer**

27. This document provides a summary for reference only. It is not legal advice. Regulatees should seek their own legal advice. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

# **Document H – Guidance Note on Cooperation with the AFRC**



## Purpose of this document

1. The Accounting and Financial Reporting Council (“**AFRC**”) is publishing this Guidance Note to explain and provide guidance on the AFRC’s approach to cooperation in investigations and disciplinary actions.
2. The approach to cooperation outlined in this Guidance Note is applicable to all regulatees of the AFRC (i.e. public interest entity (“**PIE**”) auditors, registered responsible persons of registered PIE auditors and professional persons (together referred to as “**Regulatees**”).
3. The AFRC recognizes and values cooperation in its investigations and disciplinary actions as it assists the AFRC to achieve its regulatory objectives. Among other things, cooperation facilitates the early detection and prompt remediation of misconduct and fosters a culture of responsibility and self-improvement in Regulatees. It also facilitates the efficient use of the AFRC’s manpower and other resources in investigating and disciplining misconduct, and the timely conclusion of such matters will in return benefit the Regulatees concerned.
4. The AFRC takes cooperation into consideration when determining sanctions and may reduce the sanctions as appropriate in light of all the circumstances of the case.
5. This Guidance Note will not operate in criminal cases as the Department of Justice has the sole discretion over criminal prosecutions of offences under the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”).

## Definitions

6. In this document, the following terms have the meanings defined in the AFRCO as set out below (the definitions in the AFRCO shall prevail in case of any inconsistency):

Terms	Meanings defined in the AFRCO	Section under the AFRCO
practice unit	<p>A practice unit means:</p> <ul style="list-style-type: none"> <li>• a certified public accountant (practising) who practises accountancy on the accountant’s own account under the accountant’s own</li> </ul>	2(1)

	<p>name as registered under section 22(2) of the Professional Accountants Ordinance (Cap. 50);</p> <ul style="list-style-type: none"> <li>• a CPA firm; or</li> <li>• a corporate practice.</li> </ul>	
professional person	<p>A professional person means:</p> <ul style="list-style-type: none"> <li>• a certified public accountant; or</li> <li>• a practice unit.</li> </ul>	2(1)
PIE	<p>A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.</p>	3(1)
PIE auditor	<p>A PIE auditor means a registered or recognized PIE auditor.</p>	3A
registered responsible person	<p>A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor:</p> <ul style="list-style-type: none"> <li>• an engagement partner;</li> <li>• an engagement quality control reviewer; or</li> <li>• a quality control system responsible person.</li> </ul>	2(1)

### Forms of cooperation

7. Regulatees are expected to cooperate with the AFRC in all its regulatory processes. As such, cooperation in the AFRC's investigations and disciplinary process will be considered as a mitigating factor at the point of determining sanctions only when the Regulatee concerned has provided an exceptional level of cooperation with the AFRC.
8. Non-exhaustive examples of conduct which may constitute cooperation include:
  - (a) promptly and voluntarily self-reporting to the AFRC any facts and/or matters which may constitute an allegation of misconduct and making full disclosure of such facts and/or matters before the allegation comes to the attention of

the AFRC. Self-reporting is generally more valuable the earlier it is provided and will generally attract greater credit than cooperation with an investigation which has been prompted by someone or something else;

- (b) providing true and complete information regarding the misconduct, including:
  - (i) taking early and proactive steps to preserve and collect important evidence;
  - (ii) making full and frank disclosure of all relevant information;
  - (iii) promptly and voluntarily providing useful information or documentation to the AFRC that might not have been discovered absent that cooperation, or not specifically requested by the AFRC and beyond what is required pursuant to legal and regulatory reporting requirements;
  - (iv) conducting a timely, thorough, objective and competent internal investigation into the misconduct when it was discovered and sharing the outcomes of such internal investigation with the AFRC voluntarily and promptly;
  - (v) making timely arrangements to provide evidence and information;
  - (vi) providing useful intelligence; and
  - (vii) to the extent legally permissible, disclosing relevant documents located outside Hong Kong and facilitating the timely production of documents and witnesses from outside Hong Kong;
- (c) taking a proactive approach and devoting manpower and resources to assist the AFRC's investigation;
- (d) acceptance of liability, for instance:
  - (i) willingness to take responsibility for the misconduct;
  - (ii) accepting liability and proposed sanctions; and
  - (iii) taking a proactive and positive approach to bring the case to an early conclusion; and

- (e) taking prompt and timely remedial actions (i.e. voluntary, timely and meaningful actions designed to reduce the likelihood and risk that similar misconduct will recur, as well as actions to correct the misconduct), for instance:
    - (i) taking early and active steps to contain and remedy the misconduct (e.g. correcting any misleading statement or impression);
    - (ii) promptly and voluntarily modifying and improving the practice unit's or PIE auditor's quality controls or other internal policies and procedures to prevent recurrence of the misconduct. A practice unit's or PIE auditor's improvements in response to quality control criticisms or defects identified by the AFRC in its inspection process would not ordinarily constitute cooperation for the purpose of this Guidance Note;
    - (iii) re-assigning or limiting the activities of those individuals (which might include members of the audit team, as well as persons outside the audit team, including persons in the practice unit's or PIE auditor's management) responsible for the misconduct and, in appropriate cases, by disciplining the responsible individuals;
    - (iv) promptly notifying and cooperating with the entity (or audit committee thereof) for which the Regulatee performed services related to the misconduct, so that the entity (or audit committee thereof) can, if necessary, take steps to comply with relevant laws and regulations;
    - (v) proactively carrying out effective remediation to address the AFRC's concerns and prevent similar misconduct from arising in the future; and
    - (vi) establishing whether the misconduct adversely affected, or (if known) would have adversely affected, other persons and voluntarily and appropriately taking remedial actions to address any such adverse effects (such as by making compensation).
9. Merely fulfilling statutory or regulatory obligations does not, in itself, constitute cooperation for the purpose of this Guidance Note. This includes, for instance, compliance with an inspector's or investigator's requirement issued pursuant to section 20ZZC(1), 20ZZJ(1), 21C(2), 21D(1) or (2), 25(1) or 26(1) or (2) of the AFRCO for producing documents, attending an interview or making a statutory declaration.

## **Assessing the degree of cooperation**

10. While the AFRC seeks to maintain consistency in its disciplinary actions, fairness and public interest require each case to be considered on its own facts. As such, the principles and assessment factors set out in this Guidance Note are neither exhaustive nor definitive.
11. The AFRC considers all relevant circumstances when assessing the degree of cooperation. The factors which the AFRC generally takes into account include:
  - (a) the nature and value of the cooperation provided, including:
    - (i) timeliness of the cooperation;
    - (ii) quality, extent, substance and reliability of the assistance or remedial actions;
    - (iii) truthfulness and completeness of any information provided;
    - (iv) usefulness of intelligence provided (e.g. whether the AFRC's investigation was initiated based on the intelligence provided); and
    - (v) amount of time, costs and resources saved by the AFRC as a result of the cooperation;
  - (b) the nature, seriousness and impact of the misconduct and the degree of cooperation relative to those matters; and
  - (c) the general conduct of the Regulatee concerned after the misconduct and other circumstances of the Regulatee.

## **Uncooperative conduct**

12. If the Regulatee concerned fails to provide the level of cooperation required, or engages in uncooperative conduct with the intent or effect of impeding or prejudicing the AFRC's investigation or disciplinary process, the AFRC may take this into account as an aggravating factor when determining the appropriate sanction.
13. Non-exhaustive examples of uncooperative conduct include:

- (a) delaying the self-reporting of the misconduct;
- (b) withholding or concealing information relating to the misconduct;
- (c) engaging in evasive conduct during the AFRC's investigation;
- (d) intentionally and unnecessarily prolonging the AFRC's investigation;
- (e) failing to comply, within the stipulated timeframe specified by the AFRC and without reasonable excuse, with requirements to produce the required information / documentation, attend interviews or make statutory declarations;
- (f) lack of care in ensuring that information provided to the AFRC is accurate and complete;
- (g) failing to provide adequate explanation of documents and information provided;
- (h) failing to prepare properly for interviews (e.g. failing to review materials provided by the AFRC in advance);
- (i) failing to conduct an adequate search for documents and information requested by the AFRC; and
- (j) failing to take prompt and timely remedial actions.

### **Legal professional privilege**

14. The AFRC fully respects Regulatees' right to exercise legal professional privilege. The assertion of this right, such as a bona fide refusal to waive legal professional privilege attached to a document provided to the AFRC, will not be regarded as uncooperative conduct.
15. However, voluntary waiver of legal professional privilege over one or more documents, even on a limited basis, may assist the AFRC's investigation and will be taken into consideration when the AFRC assesses the degree of cooperation provided.

### **The AFRC's approach to cooperation**

16. The AFRC takes into account the cooperation provided by Regulatees and all relevant circumstances when determining the appropriate disciplinary response.

17. Among other things, the AFRC may enter into an agreement with a PIE auditor or registered responsible person pursuant to section 37I(1) of the AFRCO (“**section 37I(1) Agreement**”) or with a professional person pursuant to section 37I(1A) of the AFRCO (“**section 37I(1A) Agreement**”) to resolve concerns in relation to which the AFRC is contemplating whether to impose a disciplinary sanction, provided that the AFRC considers it appropriate to do so in the interest of the investing public or in the public interest. In exercising this discretion, the AFRC will consider the nature and degree of cooperation provided by the Regulatee concerned.
18. A Regulatee may approach the AFRC for discussions with a view to resolving the AFRC’s concerns at any time from the detection of the misconduct up to the issuance of the Decision Notice. Such discussions are normally conducted on a “without prejudice” basis. Whether and, if so, at what stage the AFRC is willing to consider resolution discussions depends on the circumstances of each case. As a general principle, the AFRC is more willing to enter into a section 37I(1) or 37I(1A) Agreement if extensive and valuable cooperation is demonstrated by the Regulatee in the ways described in paragraphs 8 and 15 above, and in particular, self-reporting.
19. Given the need for credible deterrence and public accountability, the AFRC considers that, as a general principle, it would not be in the public interest for disciplinary actions to be resolved in private (i.e. without publicity) or on a “no admission of liability” basis. Accordingly, offers to resolve disciplinary actions on such terms are unlikely to be acceptable to the AFRC or regarded as cooperation.
20. While cooperation is a factor to be taken into account, each case turns on its own facts. The AFRC’s willingness to resolve disciplinary actions with a Regulatee under a section 37I(1) or 37I(1A) Agreement based on a particular set of facts does not mean that the AFRC will consider it appropriate to do so if the circumstances are different.

### **Recognition for cooperation**

21. In recognition of the benefits of early disposals of disciplinary matters, the AFRC may recognize cooperation by reducing the sanctions if this is appropriate in all the circumstances of the case. The reduction may vary depending on when the early resolution is reached.
22. To encourage early cooperation and resolution of cases, the AFRC has divided its disciplinary process into three stages:

- (a) **Stage 1** – from the detection of the misconduct by the Regulatee up to before the issuance of a Notice of Proposed Disciplinary Action (“**NPDA**”);
  - (b) **Stage 2** – from the issuance of an NPDA up to the deadline for the Regulatee to make representations in response to the NPDA; and
  - (c) **Stage 3** – from the day after the deadline for making representations up to the issuance of a Decision Notice.
23. As a general principle, where a Regulatee fully cooperates with the AFRC and a section 37I(1) or 37I(1A) Agreement is reached in:
- (a) **Stage 1**, the AFRC may reduce the sanction(s) by up to 30%;
  - (b) **Stage 2** (or if the Regulatee accepts the AFRC’s findings and proposed sanctions in the NPDA in Stage 2), the AFRC may reduce the sanction(s) by up to 20%; and
  - (c) **Stage 3** (or if the Regulatee accepts the AFRC’s findings and proposed sanctions in the NPDA in Stage 3), the AFRC may reduce the sanction(s) by up to 10%.
24. However, if the Regulatee has derived any illegitimate financial benefits or has illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. Accordingly, no discount will generally be applied to the amount of any pecuniary penalty that equates to the removal of any such benefit gained or loss avoided.
25. For the avoidance of doubt, the discounts in sanction referred to in paragraph 23 above represent the maximum discount that the AFRC will generally render at each stage. Notwithstanding the early resolution of the matter, the discount rendered to a Regulatee may be reduced if, for example, the Regulatee had previously engaged in uncooperative conduct.

### **Enhancing transparency of the AFRC’s cooperation policy**

26. To enhance the transparency of the disciplinary process, the AFRC seeks to provide an appropriate level of disclosure regarding cooperation.
27. Where the AFRC takes into account the cooperation provided by a Regulatee in determining the appropriate disciplinary sanctions, the AFRC will generally:



- (a) in the course of resolution discussions, if the AFRC considers it appropriate to impose a reduced sanction, inform the Regulatee of what the original sanction would have been and the final sanction imposed after taking cooperation into account; and
- (b) at the conclusion of the disciplinary action, state in the relevant Decision Notice, Statement of Disciplinary Action and/or press release that the Regulatee cooperated with the AFRC and provide a general description of the cooperation provided.

### **Disclaimer**

28. The provisions in this Guidance Note are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances. They do not confer any right or create any legitimate expectation on any person to:
- (a) be informed of the progress and findings of any AFRC investigation;
  - (b) be informed of the AFRC's preliminary assessment of any potential disciplinary action prior to the issuance of the NPDA;
  - (c) resolve a matter pursuant to section 37I(1) or 37I(1A) of the AFRCO; or
  - (d) receive any reduction in the proposed sanctions.
29. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

## Appendix C

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# Personal Information Collection Statement

## PERSONAL INFORMATION COLLECTION STATEMENT

This Personal Information Collection Statement (“**PICS**”) is made in accordance with the guidelines issued by the Office of the Privacy Commissioner for Personal Data. The PICS sets out the policies and practices of the Financial Reporting Council (“**FRC**”) with regard to your Personal Data (which means personal data as defined in the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”). For the FRC’s Privacy Policy Statement, please refer to: <https://www.frc.org.hk/en-us/privacy-policy>.

### Purpose of Collection

The FRC may use the Personal Data provided by you for one or more of the following purposes:-

- to administer and perform the FRC’s statutory functions under the Financial Reporting Council Ordinance (Cap. 588) (“**FRCO**”) and other rules, regulations and guidelines made or promulgated pursuant to the powers vested in the FRC as in force at the relevant time or from time to time and to carry out its functions as a regulator;
- for research and statistical purposes; and
- other purposes directly relating to any of the above or those permitted by law.

Failure to provide the requested Personal Data may result in the FRC being unable to perform its statutory functions under the FRCO.

### Transfer of Personal Data

Personal Data may be disclosed by the FRC to members of the public in Hong Kong and elsewhere as part of the public consultation on this consultation paper. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This may be done by publishing this information on the FRC’s website and in documents to be published by the FRC during the consultation period or at its conclusion.

Personal Data may also be used, disclosed or transferred by the FRC for any purpose related to the performance of its statutory functions.

## **Access to Data**

You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to request a copy of your Personal Data provided to the FRC. The FRC has the right to charge a reasonable fee for processing any data access request.

## **Retention**

Personal Data provided to the FRC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the FRC's functions.

## **Enquiries**

Any enquiries regarding the Personal Data provided or requests for access to Personal Data or correction of Personal Data, shall be addressed in writing to:-

Financial Reporting Council  
24th Floor, Hopewell Centre  
183 Queen's Road East  
Hong Kong