

# **Investigation Policy Statement for PIE Auditors, Non-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 direct an investigation to be carried out in respect of the following persons under certain circumstances:
  - (a) public interest entity (“**PIE**”) auditors, being:
    - (i) registered PIE auditors; or
    - (ii) recognized PIE auditors;
  - (b) non-PIE auditors; and
  - (c) registered responsible persons of a registered PIE auditor
 (together referred to as “**Regulatees**”).
3. A non-PIE is defined in the AFRCO as a listed corporation, the listed securities of which do not comprise shares or stocks. A non-PIE auditor is defined in the AFRCO as a practice unit that undertakes or carries out a non-PIE engagement. Readers should refer to the Definitions section below.

## Definitions

4. 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
authorized institution	An authorized institution means an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) i.e. <ul style="list-style-type: none"> <li>• a bank;</li> <li>• a restricted licence bank; or</li> </ul>	2(1)

	<ul style="list-style-type: none"> <li>a deposit-taking company.</li> </ul>	
certified public accountant (“CPA”)	A CPA means a person registered as a certified public accountant by virtue of section 22 of the Professional Accountants Ordinance (Cap. 50) (“PA Ordinance”).	2(1)
controller	A controller means a person who is an indirect controller, or a majority shareholder controller, within the meaning of section 2(1) of the Banking Ordinance (Cap. 155).	2(1)
FR investigator	<p>An FR investigator means:</p> <ul style="list-style-type: none"> <li>the Audit Investigation Board established by section 22(1) of the AFRCO; or</li> <li>a person appointed as an FR investigator under section 22A of the AFRCO i.e. an employee of the AFRC or with the consent of the Financial Secretary, any other person.</li> </ul>	2(1)
listed entity	<p>A listed entity means:</p> <ul style="list-style-type: none"> <li>a listed corporation; or</li> <li>a listed collective investment scheme.</li> </ul>	3(1)
non-PIE	A non-PIE means a listed corporation the listed securities of which do not comprise shares or stocks.	3(1)
non-PIE auditor	A non-PIE auditor means a practice unit that undertakes or carries out a non-PIE engagement.	3A
non-PIE engagement	<p>A non-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 non-PIE’s financial statements required to be prepared under section 379 of the Companies Ordinance (Cap. 622) or annual accounts required to be prepared under the Listing Rules; or</li> </ul>	3A; Part 2 of Schedule 1A

	<ul style="list-style-type: none"> <li>a specified report required to be included in a listing document for the listing of a corporation's securities (other than shares and stocks).</li> </ul>	
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(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 corporation's shares or stocks or for the listing of a collective investment scheme; or</li> <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>	3A(1); Part 1 of Schedule 1A
practice unit	<p>A practice unit means:</p> <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 standard	A professional standard means:	2(1)

	<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 PA Ordinance;</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>	
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	<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)

## **Purpose of this document**

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

## **Objectives of investigation**

7. 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. This is particularly the case for auditors of PIEs and non-PIEs, as investors may rely upon the audited financial statements of PIEs and non-PIEs when making investment decisions.
8. The AFRC regulates through carrying out investigations into the relevant conduct of Regulatees under the AFRCO. It ensures that FR misconduct or practice irregularities committed by Regulatees can be identified and responded to promptly and adequately, so that appropriate follow-up action can be taken. Such follow-up action may include the imposition of sanctions or referral to other regulators or law enforcement agencies for conduct falling within their jurisdiction.

## **Circumstances in which the AFRC may direct investigations to be carried out**

### In relation to PIE auditors and registered responsible persons

9. Pursuant to section 23 of the AFRCO, the AFRC may direct an FR investigator to carry out an investigation in relation to a PIE auditor or registered responsible person where the AFRC:
  - (a) has reasonable cause to believe that a PIE auditor has carried out a PIE engagement completed on or after 1 October 2019 in a way that is not in the interest of the investing public or in the public interest;
  - (b) has reasonable cause to believe that a provision of the AFRCO may have been contravened by a PIE auditor or registered responsible person; or
  - (c) for considering whether to impose a sanction under section 37D, 37E or 37F of the AFRCO, has reason to inquire into whether a PIE auditor or

Section 23 of  
the AFRCO

registered responsible person, or a person while being such an auditor or responsible person, has or had committed an FR misconduct (see paragraph 11 below).

#### In relation to non-PIE auditors

10. Pursuant to section 23A of the AFRCO, the AFRC may direct an FR investigator to carry out an investigation in relation to a non-PIE auditor where the AFRC has a reasonable cause to believe that a non-PIE auditor has or had committed a practice irregularity as defined under section 4 of the AFRCO (see paragraph 12 below).

Section 23A  
of the  
AFRCO

#### FR Misconduct

11. As provided in sections 37A and 37B of the AFRCO, FR misconduct in this context generally refers to:
- (a) a contravention of a provision of the AFRCO (subject to certain exceptions);
  - (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 under the AFRCO (subject to certain exceptions);
  - (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 12 below).

Sections 37A  
and 37B of  
the AFRCO

#### Examples of a “practice irregularity”

12. Examples of a “practice irregularity” include situations where a Regulatee, in relation to a PIE engagement or non-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;

Section 4 of  
the AFRCO

- (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.

13. 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”.

## **Powers of investigation**

### Powers of FR investigator to issue certain requirements

14. Pursuant to section 25 of the AFRCO, for the purpose of the investigation, an FR investigator may require a person, (i) who is relevant to the matter under investigation; or (ii) whom an FR investigator has reasonable cause to believe to be in possession of a relevant record or document, or to be otherwise in possession of the relevant information (“**Specified Person**”), to:

Section 25 of  
the AFRCO

- (a) produce any record or document relevant to the investigation;
- (b) explain or give further particulars in relation to a record or document produced;
- (c) attend before the FR investigator to answer questions relating to the investigation;
- (d) answer in writing to a question relating to the investigation raised by the FR investigator; and
- (e) give the FR investigator all other assistance in connection with the investigation that the person is reasonably able to give.



15. An FR investigator may also require a Specified Person to verify by a statutory declaration within the time specified in a written notice: Section 26 of the AFRCO
- (a) the explanation, particulars or answer if a person gives any explanation, further particulars or answer in compliance with the requirement imposed in paragraph 14 above; or
  - (b) the relevant fact or reason if a person does not give any explanation, further particulars or answer in compliance with the requirement imposed in paragraph 14 above for the reason that the information concerned is not within the person's knowledge or possession.

(the requirements in paragraphs 14 and 15 above are together referred to as "**Specified Requirements**")

#### Powers to apply to the magistrate for warrants

16. If a magistrate is satisfied by information on oath laid by an FR investigator that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced, the magistrate may issue a warrant authorizing a person specified in it to: Section 34 of the AFRCO
- (a) enter the premises, if necessary by force, at any time within 7 days, or any other specified period; and
  - (b) search for, seize and remove any record or document that the person so specified has reasonable cause to believe may be required to be produced.
17. Please refer to section 34 of the AFRCO for details.

#### Rights of a Specified Person

18. A Specified Person upon whom a requirement is imposed pursuant to section 25 of the AFRCO has certain rights.

#### *Right against self-incrimination*

19. A Specified Person is not excused from complying with a requirement to provide information or an explanation, or to answer a question only on the ground that to do so might tend to incriminate the Specified Person. However, if an FR investigator requires a Specified Person to give an explanation or further Sections 30 and 31(9) of the AFRCO

particulars, or to answer a question, the FR investigator must ensure that the Specified Person has first been informed or reminded of the limitations imposed by section 30(2) of the AFRCO on the admissibility in evidence of the requirement and of the explanation or particulars, or the question and answer.

20. Section 30(2) of the AFRCO provides that, if the relevant explanation, particulars or answer might tend to incriminate the Specified Person and the Specified Person so claims before giving the relevant explanation, particulars or answer, the requirement, as well as the explanation or particulars, or the question and answer, are not admissible in evidence against the Specified Person in criminal proceedings other than those in which the Specified Person is charged with an offence referred to in paragraph 22 below or which relate to perjury.

#### *Right to inspection of records or documents seized*

21. If the FR investigator has taken possession of any record or document during the investigation, the FR investigator must, subject to any reasonable conditions the FR investigator imposes as to security, permit a Specified Person who would be entitled to inspect the record or document had the FR investigator not taken possession of it, to inspect it and to make copies or otherwise record details of it at all reasonable times.

Section 33 of  
the AFRCO

#### Consequences of non-compliance with the Specified Requirements

##### *Offences*

22. It is important for any person issued with Specified Requirements to comply with them. Failure to do so without reasonable excuse or with intent to defraud amounts to an offence under the AFRCO and is punishable upon conviction by a fine and/or imprisonment. Please refer to section 31 of the AFRCO for a full list of the relevant offences.

Section 31 of  
the AFRCO

##### *Powers of the Court of First Instance*

23. If a Specified Person fails to comply with the Specified Requirements, an FR investigator may make an application to the Court of First Instance. On being satisfied that there is no reasonable excuse for the Specified Person not to comply with the Specified Requirements, the Court of First Instance may, upon request by the FR investigator:

Section 32 of  
the AFRCO

- (a) order the Specified Person to comply with the Specified Requirements within the specified period; and

- (b) punish the Specified Person and any other person knowingly involved in the failure, in the same manner as if the person had been guilty of contempt of court.

## **Interrelation with certain regulatory bodies**

### Informing other regulators of the investigation

24. If the investigation relates to a PIE engagement or non-PIE engagement completed on or after 1 October 2019 for a listed entity which is the following:

Section 24 of  
the AFRCO

- (a) an authorized institution or to the AFRC's knowledge, an entity which is a controller of an authorized institution, has as its controller an authorized institution or has a controller that is also a controller of an authorized institution;
- (b) an insurer authorized under the Insurance Ordinance (Cap. 41);
- (c) a licensed person within the meaning of the Securities and Futures Ordinance (Cap. 571) ("**SFO**"), or a collective investment scheme authorized under the SFO; or
- (d) an approved trustee within the meaning of the Mandatory Provident Fund Schemes Ordinance (Cap. 485),

the AFRC must give a written notice to the Monetary Authority, the Insurance Authority, the Securities and Futures Commission, or the Monetary Provident Fund Schemes Authority respectively as the relevant regulator of that entity informing them that the investigation is to be carried out.

### Consulting other regulators before imposing Specified Requirements

25. Similarly, if the Specified Person belongs to any of the categories referred to in paragraphs 24(a) to (d) above (save that (c) shall refer to a responsible person of the collective investment scheme), the FR investigator must not impose a Specified Requirement on that person unless, before doing so, the FR investigator has consulted the Monetary Authority, the Insurance Authority, the Securities and Futures Commission, and the Monetary Provident Fund Schemes Authority respectively.

Section 29 of  
the AFRCO

## Investigation report

26. The FR investigator will prepare and submit a written investigation report to the AFRC after the completion of the investigation. Section 31A  
of the  
AFRCO

## Opportunity to be heard

27. Before submitting the investigation report to the AFRC, the FR investigator must send a dated draft of the report to the Regulatee and any other person named in the draft investigation report and give them a reasonable opportunity of being heard, i.e. an opportunity to make representations on any matters relating to the report. Section 31A  
of the  
AFRCO
28. Please refer to the [\*“Outline of the AFRC’s Investigation 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.

## Further actions

29. On an investigation report being submitted to the AFRC, the AFRC may, having regard to the investigation report: Section 31B  
of the  
AFRCO
- (a) close the case without further action;
  - (b) take any follow-up action in accordance with the AFRCO that the AFRC considers appropriate; or
  - (c) if the investigation was carried out under section 23 of the AFRCO, also impose a sanction on, or take an action in relation to, the Regulatee concerned under section 37D, 37E, 37F or 37I(1) of the AFRCO as appropriate; or
  - (d) if the investigation was carried out under section 23A of the AFRCO, also impose a sanction on, or take an action in relation to, the Regulatee concerned under section 37CA or 37I(1A) of the AFRCO.

## Disclosure of investigation report

30. The AFRC may adopt and publish or disclose the whole or any part of the investigation report submitted by the FR investigator. Section 31A  
of the  
AFRCO

31. In deciding whether to publish or disclose an investigation report or any part of it, the AFRC must take into account:
- (a) whether the publication or disclosure may adversely affect any of the following proceedings that have been, or are likely to be, instituted:
    - (i) any proceedings under Part 3C of the AFRCO relating to reviews and appeals;
    - (ii) any criminal proceedings before a court or magistrate;
    - (iii) any proceedings before the Market Misconduct Tribunal established by section 251(1) of the SFO;
    - (iv) any proceedings under section 41 of the PA Ordinance; or
    - (v) any proceedings before a Disciplinary Committee constituted under section 33(3) of the PA Ordinance as in force immediately before the commencement date of the Financial Reporting Council (Amendment) Ordinance 2021;
  - (b) whether the publication or disclosure may adversely affect any person named in the report; and
  - (c) whether the publication or disclosure would be in the interest of the investing public or in the public interest.

### **Costs and expenses of investigation in relation to Regulatees**

32. If, on a prosecution instituted as a result of the findings of an investigation, a person is convicted by a court or magistrate, the court or magistrate may order the person to pay to the AFRC a sum that is the whole or a part of the costs and expenses of the investigation and the AFRC may recover the sum so ordered as a civil debt due to it.

Section 31C  
of the  
AFRCO

### **Preservation of secrecy**

33. The AFRCO imposes secrecy obligations on the AFRC and any person to whom the AFRC discloses secret information, including any Specified Person to whom the AFRC discloses information in the course of an investigation.

Section 51 of  
the AFRCO

34. In particular, section 51 of the AFRCO provides that, except in the performance of any function under the AFRCO or for carrying into effect the provisions of the AFRCO, or in the circumstances described in sections 51(2) and (3), the AFRC must not:
- (a) suffer or permit any person to have access to any matter relating to the affairs of any person that comes to the AFRC's knowledge in the performance of any function under the AFRCO; or
  - (b) communicate any such matter to any person other than the person to whom such matter relates.
35. Sections 51(5) and (6) of the AFRCO provide that, where the AFRC discloses information to any person, the person to whom the information is so disclosed, and any other person obtaining or receiving the information from that person, must not disclose the information to any other person unless:
- (a) the AFRC consents to the disclosure;
  - (b) the information has already been made available to the public;
  - (c) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel, or a solicitor, or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under the AFRCO;
  - (d) the disclosure is in connection with any judicial or other proceedings to which the person is a party; or
  - (e) the disclosure is in accordance with an order of a court, magistrate or tribunal, or in accordance with a law or a requirement made under a law.
36. Any person who contravenes the secrecy obligations imposed by section 51 of the AFRCO commits a criminal offence.

### **Disclaimer**

37. 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.