

Outline of the AFRC's Investigation Process

Introduction

1. Under Division 3 of Part 3AA and of Part 3A respectively of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”), the Accounting and Financial Reporting Council (“**AFRC**”) is given the power to direct an investigation to be carried out in respect of the following persons:
 - (a) public interest entity (“**PIE**”) auditors registered or recognized under Part 3 of the AFRCO;
 - (b) non-PIE auditors;
 - (c) registered responsible persons of registered PIE auditors; and
 - (d) professional persons(together referred to as “**Regulatees**”).
2. This document is intended to provide a brief overview of the AFRC’s investigation process, which has been designed to ensure that all Regulatees are treated fairly and impartially.
3. The investigation process outlined in this document is applicable to all Regulatees. However, the scope of investigation, the investigation grounds and the AFRC’s investigation powers over (i) PIE auditors, non-PIE auditors and registered responsible persons of registered PIE auditors; and (ii) professional persons, are different, and the AFRC has issued separate Policy Statements for them. For details, please refer to the [“Investigation Policy Statement for PIE Auditors, Non-PIE Auditors and Registered Responsible Persons”](#) and the [“Investigation Policy Statement for Professional Persons”](#), both of which are available on the AFRC’s website (www.afrc.org.hk).

Definitions

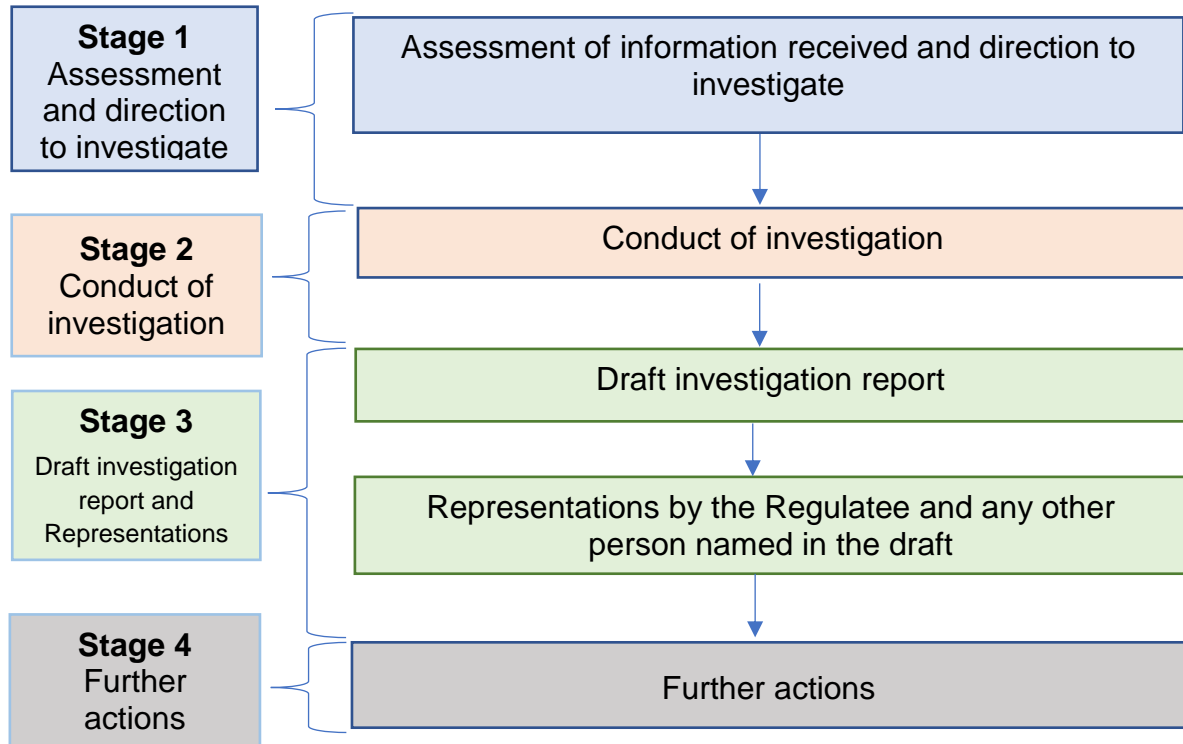
4. In this document, the following terms have the meanings defined in the AFRCO as set out below (the definitions in the AFRCO shall prevail in case of any inconsistency):

| Terms | Meanings defined in the AFRCO | Section under the AFRCO |
|--------------------|---|--------------------------------|
| CPA investigator | A CPA investigator means a person appointed as a CPA investigator under section 20ZZG of the AFRCO, i.e. an employee of the AFRC or with the consent of the Financial Secretary, any other person. | 2(1) |
| FR investigator | An FR investigator means: <ul style="list-style-type: none"> the Audit Investigation Board established by section 22(1) of the AFRCO; or 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. | 2(1) |
| listed entity | A listed entity means: <ul style="list-style-type: none"> a listed corporation; or a listed collective investment scheme. | 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 | A non-PIE engagement means any of the following types of engagements for the preparation of: | 3A; Part 2 of Schedule 1A |

| | | |
|-------------------------------|--|-------|
| | <ul style="list-style-type: none"> • 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 • a specified report required to be included in a listing document for the listing of a corporation's securities (other than shares and stocks). | |
| practice unit | <p>A practice unit means:</p> <ul style="list-style-type: none"> • 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); • a CPA firm; or • a corporate practice. | 2(1) |
| professional person | <p>A professional person means:</p> <ul style="list-style-type: none"> • a certified public accountant; or • a practice unit. | 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 auditor | A PIE auditor means a registered or recognized PIE auditor. | 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"> • an engagement partner; • an engagement quality control reviewer; or • a quality control system responsible person. | 2(1) |

| | | |
|------------------------------|--|------|
| specified authority | <p>A specified authority means:</p> <ul style="list-style-type: none"> • an authority, or regulatory organization, whether in Hong Kong or elsewhere; or an accountancy body, whether in Hong Kong or elsewhere, that is a member of the International Federation of Accountants; but • does not include a specified enforcement agency. | 2(1) |
| specified enforcement agency | <p>A specified enforcement agency means:</p> <ul style="list-style-type: none"> • the Commissioner of Police of Hong Kong; • the Commissioner of the Independent Commission Against Corruption; • the Hong Kong Institute of Certified Public Accountants; • the Hong Kong Exchanges and Clearing Limited; • the Securities and Futures Commission; • the Registrar of Companies; • the Monetary Authority; • the Insurance Authority; • the Commissioner of Inland Revenue; • the Official Receiver; • the Mandatory Provident Fund Schemes Authority; or • the Market Misconduct Tribunal. | 2(1) |
| specified body | A specified body means a specified authority or a specified enforcement agency. | 2(1) |

Investigation process



Stage 1

Assessment of information received and direction to investigate

5. The AFRC acquires information about potential misconduct or irregularities from various sources, including complaints from the public, referrals from other regulators, reports from whistleblowers, inspections of practice units, and the AFRC's own review of the financial statements of listed entities. For more information on lodging whistleblowing reports and complaints to the AFRC, please refer to the AFRC's website (www.afrc.org.hk).
6. The AFRC will assess any such information to determine whether to give direction to investigate by identifying any potential misconduct or practice or professional irregularities and determining whether the evidence meets a relevant threshold for initiating an investigation under the AFRCO. For matters which fall outside the remit of the AFRC, the AFRC may refer them to another specified body.
7. If the AFRC concludes that an investigation is warranted and the evidence meets a relevant threshold for initiating an investigation under the AFRCO, the AFRC will direct an investigation to be carried out.

8. Where the AFRC directs an FR investigator or CPA investigator (in either case, the "**Investigator**") to carry out an investigation, a written direction to investigate will be provided to the Investigator.

Stage 2

Conduct of investigation

9. The Investigator will then conduct an investigation, and for such purpose may exercise the relevant investigation powers under the AFRCO. Such powers include requiring the Regulatee and any other specified persons to produce relevant records and documents, provide information, attend interviews and answer questions from the Investigator, and to give the Investigator all other assistance in connection with the investigation, as appropriate.
10. In respect of an investigation pursuant to section 23 or 23A of the AFRCO in relation to a PIE auditor, non-PIE auditor or registered responsible person, the investigator may require a person to attend an interview to answer any question that may be raised by the investigator pursuant to the investigator's power under section 25(1)(c) of the AFRCO. If so, the investigator will notify the relevant person in writing of the time and place of the interview. The interviewee may be accompanied to the interview by his or her legal adviser but must answer any question raised by the investigator directly, and not through his or her legal adviser.
11. For further information as to the Investigator's powers, please refer to the ["Investigation Policy Statement for PIE Auditors, Non-PIE Auditors and Registered Responsible Persons"](#) and the ["Investigation Policy Statement for Professional Persons"](#), both of which are available on the AFRC's website (www.afrc.org.hk).
12. Any person to whom an Investigator discloses information in connection with an investigation, and any other person obtaining or receiving the information from that person, is subject to a strict obligation to preserve the secrecy of the information. Such persons 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.
13. Any person who discloses information in contravention of the secrecy obligation commits a criminal offence.

Stage 3

(i) Draft investigation report

14. The Investigator will prepare a written investigation report after the completion of the investigation, and send a dated draft of the investigation report to the Regulatee and any other person named in the draft ("**Other Named Persons**") before submitting the investigation report to the AFRC.

(ii) Representations by the Regulatee and Other Named Persons

15. The Investigator will give the Regulatee and any Other Named Persons a reasonable opportunity to be heard in respect of the dated draft investigation report. This will be done by allowing the Regulatee and Other Named Persons to make representations in respect of the draft investigation report. The Regulatee and any Other Named Persons will be informed of this right when the dated draft investigation report is sent to them.
16. The Regulatee and any Other Named Person may make such representations to the Investigator as they consider appropriate. However, if the Regulatee or any Other Named Person does not agree with the content of the draft investigation report, they should identify the matters with which they disagree and explain why they disagree. They should further provide any evidence in their possession which may substantiate their representations.
17. If the Regulatee or Other Named Person fails to take issue with the content of the draft investigation report with which they disagree, it may prejudice their ability to take issue with it at a later date. In particular, any attempt to raise new

facts or evidence at a later date (such as during the course of disciplinary proceedings) may call into question their credibility or reliability, because such facts or evidence were not advanced during the investigation.

(iii) *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 dated draft investigation report.

Stage 4

Further actions

19. On an investigation report being submitted to the AFRC, the AFRC may, having regard to the investigation report:
- 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. impose a sanction on, or take an action in relation to, the Regulatee investigated under the AFRCO.

Cooperation with the AFRC

20. Regulatees are expected to cooperate with the AFRC in all its regulatory processes. It is also in the interest of Regulatees to cooperate with the AFRC at an early stage. This is because cooperation is an important mitigating factor which will be taken into account by the AFRC when determining sanctions in the event any disciplinary action is taken, and may result in the reduction of sanctions. Conversely, uncooperative conduct (such as a failure to comply with any deadlines imposed by the Investigator during the course of the investigation) is an aggravating factor which may result in more severe sanctions being imposed.
21. 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).

Disclaimer

22. This document provides a summary of the AFRC's investigation 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.