

Investigation 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 direct an investigation to be carried out in relation to professional persons (“**Regulatees**”) in respect of a possible professional irregularity.

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)
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"> • a bank; • a restricted licence bank; or • a deposit-taking company. 	2(1)
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)

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)
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: <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). 	3A; Part 2 of Schedule 1A
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(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"> • 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; • 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 • 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. 	3A; Part 1 of Schedule 1A
practice unit	<p>A practice unit means:</p> <ul style="list-style-type: none"> • 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; • a CPA firm; or • a corporate practice. 	2(1)
professional person	<p>A professional person means:</p> <ul style="list-style-type: none"> • a CPA; or • a practice unit. 	2(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 	2(1)

	<ul style="list-style-type: none"> a quality control system responsible person. 	
specified document	A specified document means any record or document specified by a CPA investigator, or any record or document that is of a class or description specified by a CPA investigator, for the purposes of section 20ZZJ(1) of the AFRCO.	20ZZJ(6)

Purpose of this document

- The purpose of this Policy Statement is to provide an overview of the legal regime of the investigation function of the AFRC for Regulatees.
- 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).

Objectives of investigation

- 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.
- The AFRC regulates through carrying out investigations in relation to Regulatees into possible professional irregularities. It ensures that professional 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

- Pursuant to section 20ZZH of the AFRCO, the AFRC may direct a CPA investigator to carry out an investigation in relation to a Regulatee where the AFRC, for considering whether to impose a sanction under section 37CA of the AFRCO, has reason to inquire into whether a professional person, or a person while being a professional person, has committed a professional irregularity as defined under section 3B of the AFRCO (see paragraph 11 below).

Section 20ZZH of the AFRCO

9. However, the direction referred to above must not require an investigation to be carried out if:
- (a) the person to be investigated is or was a PIE auditor, a non-PIE auditor or a registered responsible person of a registered PIE auditor;
 - (b) the investigation relates to a PIE engagement or non-PIE engagement completed by the auditor; and
 - (c) the professional irregularity to be investigated is a practice irregularity as defined under section 4 of the AFRCO.
10. For such cases, please refer to the [*“Investigation Policy Statement for PIE Auditors, non-PIE Auditors and Registered Responsible Persons”*](#) available on the AFRC’s website (www.afrc.org.hk).

Section
20ZZH of the
AFRCO

Examples of a “professional irregularity”

11. Examples of a “professional irregularity” include situations where a Regulatee:
- (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

Section 3B of
the AFRCO

- (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 (“**HKICPA**”);
 - (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”.

Powers of investigation

Powers of CPA investigator to issue certain requirements

13. Pursuant to section 20ZZJ of the AFRCO, for the purpose of the investigation, a CPA investigator has powers to issue certain requirements (“**Specified Requirements**”) to the following persons (“**Specified Persons**”) whom the CPA investigator has reasonable cause to believe to be in possession of, or in control of, a Required Document (as defined in paragraph 14(a) below):

Section
20ZZJ of the
AFRCO

- (a) a professional person;
- (b) a person who is an employee or former employee of a professional person, and a student registered with the HKICPA;
- (c) if the investigation relates to a practice unit, an employee or former employee of the practice unit; and
- (d) if the investigation relates to a CPA, the employer or former employer of the CPA.

14. The Specified Requirements are to:

- (a) produce to the CPA investigator, or give the CPA investigator access to, any specified document in the Specified Person’s possession or under the Specified Person’s control that the CPA investigator has reasonable cause to believe to be relevant to the investigation (“**Required Document**”);

Section
20ZZJ of the
AFRCO

- (b) give to the CPA investigator such explanation or further particulars in respect of a Required Document as the CPA investigator specifies; and
 - (c) give to the CPA investigator all assistance in connection with the investigation that the Specified Person is reasonably able to give.
15. A CPA investigator may also:
- (a) inspect, examine or make copies of a Required Document; or
 - (b) take any abstract of, or extract from, a Required Document.

Section
20ZZJ of the
AFRCO

Rights of a Specified Person

16. A Specified Person upon whom a requirement is imposed pursuant to section 20ZZJ of the AFRCO has certain rights.
17. If a CPA investigator requires a Specified Person to give an explanation or further particulars, the CPA investigator must ensure that the Specified Person has first been informed or reminded of the limitations imposed by section 20ZZM(2) of the AFRCO on the admissibility in evidence of the requirement and of the explanation or particulars.
18. Section 20ZZM(2) of the AFRCO provides that if the relevant explanation or particulars might tend to incriminate the Specified Person and the Specified Person so claims before giving the relevant explanation or particulars, the requirements, as well as the explanation or particulars, 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 which relates to perjury.

Section
20ZZM of the
AFRCO

Interrelation with certain regulatory bodies

Informing other regulators of the investigation

19. If the investigation relates to the provision of services to any of the following persons:
- (a) an authorized institution or an entity which to the AFRC's knowledge 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;

Section
20ZZK of the
AFRCO

- (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 person informing them that the investigation is to be carried out.

Consulting other regulators before imposing Specified Requirements

20. Similarly, if the Specified Person belongs to any of the categories referred to in paragraphs 19(a) to (d) above (save that (c) shall refer to a responsible person of the collective investment scheme), the CPA investigator must not impose a requirement under section 20ZZJ of the AFRCO on that person unless, before doing so, the CPA investigator has consulted the Monetary Authority, the Insurance Authority, the Securities and Futures Commission, and the Monetary Provident Fund Schemes Authority respectively.

Section
20ZZL of the
AFRCO

Investigation report

21. The CPA investigator will prepare and submit a written investigation report to the AFRC after the completion of the investigation.

Section
20ZZN of the
AFRCO

Opportunity to be heard

22. Before submitting the investigation report to the AFRC, the CPA 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.
23. Please refer to the [“Outline of the AFRC’s Investigation Process”](#), which is available on the AFRC’s website (www.afrc.org.hk) for details in relation to the opportunity to make representations.

Section
20ZZN of the
AFRCO

Further actions

24. 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; or
 - (b) impose a sanction on, or take an action in relation to, the Regulatee under section 37CA or 37I(1A) of the AFRCO.

Section
20ZZO of the
AFRCO

Disclosure of investigation report

25. The AFRC may publish or disclose the whole or any part of the investigation report submitted by the CPA investigator.
26. 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 of decisions on Regulatees;
 - (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.

Section
20ZZN of the
AFRCO

Preservation of secrecy

27. 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.
28. 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.
29. Sections 51(5) and (6) 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.
30. Any person who contravenes the secrecy obligations imposed by section 51 commits a criminal offence.

Disclaimer

31. 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.