

Enquiry Policy Statement for Listed Entities

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 initiate an enquiry concerning a relevant non-compliance in relation to a listed entity and to secure the removal of identified relevant non-compliance.

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
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)
enquirer	An enquirer means: <ul style="list-style-type: none"> • the AFRC; or • the Financial Reporting Review Committee appointed under section 40(1)(b) of the AFRCO (“Review Committee”). 	38

listed entity	<p>A listed entity means:</p> <ul style="list-style-type: none"> • a listed corporation; or • a listed collective investment scheme. 	3(1)
Listing Rules	<p>The Listing Rules mean:</p> <ul style="list-style-type: none"> • the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (“SEHK”); or • the Rules Governing the Listing of Securities on the Growth Enterprise Market of the SEHK, <p>approved by the Securities and Futures Commission (“SFC”) under section 24 of the Securities and Futures Ordinance (Cap. 571) (“SFO”), and as in force at the material time.</p>	2(1)
operator	<p>An operator means:</p> <ul style="list-style-type: none"> • in relation to a listed corporation, the directors of the corporation; • in relation to a listed collective investment scheme, the manager of the scheme. 	49(3)
Panel Convenor	<p>A Panel Convenor means one of the Panel Convenors appointed by the Chief Executive from amongst the members of the Financial Reporting Review Panel (“Review Panel”).</p>	39(2)
relevant code	<p>A relevant code means:</p> <ul style="list-style-type: none"> • a code or guideline published under section 112ZR of the SFO, as in force at the material time; or • a code or guideline published under section 399 of the SFO for providing guidance in relation to the operation of section 104 of the SFO, as in force at the material time. 	2(1)
relevant Ordinance	<p>Relevant Ordinance means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 2 of</p>	2(1)

	Schedule 9 to the Companies Ordinance (Cap. 622) (“CO”) i.e. 3 March 2014.	
relevant undertaking	<p>A relevant undertaking means:</p> <ul style="list-style-type: none"> • in relation to a listed corporation, an undertaking that is, or was at the material time, (i) a subsidiary undertaking, as construed in accordance with the CO, of the corporation, or (ii) an undertaking that is required to be accounted for and consolidated in the accounts, or the next accounts, of the corporation as a subsidiary for the purposes of the standards of accounting practices under section 18A of the PA Ordinance as in force at the material time, the International Financial Reporting Standards issued by the International Accounting Standards Board as in force at the material time, the Listing Rules or any generally acceptable accounting principles allowed for usage under the Listing Rules; • in relation to a listed collective investment scheme, an undertaking that is, or was at the material time, an undertaking that is required to be accounted for and consolidated in the accounts, or the next accounts, of the scheme as a subsidiary for the purposes of the standards of accounting practices under section 18A of the PA Ordinance as in force at the material time, the International Financial Reporting Standards issued by the International Accounting Standards Board as in force at the material time, the Listing Rules or any generally acceptable accounting principles allowed for usage under the Listing Rules. 	2(1)
Review Committee	A Review Committee means the Financial Reporting Review Committee appointed by the AFRC under section 40(1)(b) of the AFRCO consisting of:	40(1)(b)

	<ul style="list-style-type: none"> • a Panel Convenor, who is to be the chairperson of the Review Committee; and • at least 4 other members of the Review Panel. 	
Review Panel	A Review Panel means the Financial Reporting Review Panel appointed under section 39(1) of the AFRCO i.e. a panel appointed by the Chief Executive, in consultation with the AFRC, consisting of at least 20 persons, whom the Chief Executive considers suitable for appointment under section 40(1)(b) as members of a Review Committee either because of their experience in accounting, auditing, finance, banking, law, administration or management, or because of their professional or occupational experience.	39(1)
specified report	<p>A specified report means:</p> <ul style="list-style-type: none"> • in relation to a prospectus issued by or on behalf of a listed corporation or a corporation seeking to be listed, any report, specified in Part II of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), that is required under section 38 or 342 of that Ordinance to be set out in the prospectus; • in relation to a listing document (other than a prospectus) issued by or on behalf of a listed corporation or listed collective investment scheme, or a corporation or collective investment scheme seeking to be listed, any report on the profits and losses of, the assets and liabilities of, and other financial information on (i) the corporation or scheme or (ii) a business or undertaking to be acquired, or disposed of, by the corporation or scheme, that is required for inclusion in the listing document issued for the purposes of the relevant code or the Listing Rules. 	2(1)
undertaking	An undertaking includes an unincorporated association carrying on a trade or business	2(1)

	(whether or not for profit), a corporation and a partnership.	
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Purpose of this document

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

Objectives of enquiry

6. The AFRC is entrusted with the statutory duty to provide for enquiries into non-compliances with regulatory requirements for financial reports of listed entities. An effective regulatory regime that fosters high quality financial reporting of listed entities is crucial for the capital market and is essential for maintaining Hong Kong's status as an international financial centre.
7. The AFRC regulates through conducting enquiries into potential non-compliance with financial reporting requirements by listed entities. The enquiry process assists to ensure that potential non-compliance with financial reporting requirements in the financial reports of listed entities is identified and rectified, so that investors and other stakeholders are not misled.

Circumstances in which the AFRC may initiate enquiries

8. Pursuant to section 40 of the AFRCO, the AFRC may initiate an enquiry if it appears to the AFRC that there is or may be a question whether or not there is a relevant non-compliance in relation to a listed entity, and the AFRC certifies in writing to that effect. Section 40 of the AFRCO
9. For the purposes of an enquiry, the enquirer may either be the AFRC or a Review Committee appointed by the AFRC. If the enquirer is a Review Committee, the AFRC must notify the listed entity in writing of the names of the members of the Review Committee.

Relevant non-compliance

10. The term relevant non-compliance is defined in section 5 and Schedule 1 of the AFRCO. For the purposes of the AFRCO generally including initiating an enquiry, Section 5 of the AFRCO

there is a relevant non-compliance in relation to a listed entity if a relevant financial report, within the meaning of Part 1 of Schedule 1 of the AFRCO, has not complied with a relevant requirement, within the meaning of Part 1 of Schedule 1 of the AFRCO, that applies to the report.

11. A relevant financial report means:

Part 1 of
Schedule 1 of
the AFRCO

- (a) in relation to a listed corporation,
 - (i) a balance sheet of the corporation and any accounts annexed to it for the purposes of sections 129C and 129G of the relevant Ordinance;
 - (ii) a copy of the financial statements of the corporation sent under section 430 of the CO;
 - (iii) the accounts of the corporation under section 336 of the relevant Ordinance or section 789 of the CO;
 - (iv) a summary financial report of the corporation sent in compliance with section 141CA of the relevant Ordinance, section 441 or section 444 of the CO;
 - (v) a set of financial statements of the corporation (A) providing information on the results of the operations or cash flows of the corporation in a period of at least 3 months, (B) providing information on the state of affairs of the corporation as at the end of that period, and (C) issued, circulated, published or distributed for the purposes of the Listing Rules; or
 - (vi) a specified report required for a listing document issued by or on behalf of the corporation.
- (b) in relation to a listed collective investment scheme,
 - (i) a set of financial statements of the scheme (A) providing information on the results of the operations or cash flows of the scheme in a period of at least 3 months, (B) providing information on the state of affairs of the scheme as at the end of that period, and (C) issued, circulated, published or distributed for the purposes of the relevant code or the Listing Rules; or
 - (ii) a specified report required for a listing document issued by or on behalf of the scheme.

12. A relevant requirement means an accounting requirement as to the matters or information to be included in the relevant financial report, as provided in:
- (a) the relevant Ordinance or the CO as in force at the material time (applicable for listed corporations only);
 - (b) the standards of accounting practices issued or specified under section 18A of the PA Ordinance;
 - (c) the International Financial Reporting Standards issued by the International Accounting Standards Board;
 - (d) the Listing Rules;
 - (e) any generally acceptable accounting principles allowed for usage under the Listing Rules; or
 - (f) the relevant code (applicable for listed collective investment schemes only).
13. A different definition of relevant non-compliance applies for the purposes of section 50 of the AFRCO, which relates to the powers of the Court of First Instance to secure removal of a relevant non-compliance. Please refer to section 5 and Schedule 1 of the AFRCO for details.

Part 1 of
Schedule 1 of
the AFRCO

Section 5 and
Part 1 of
Schedule 1 of
the AFRCO

Powers of enquiry

Powers of enquirer to issue certain requirements

14. Pursuant to section 43(1) of the AFRCO, an enquirer may, in writing, require certain persons to produce or give, within the time and at the place specified in the requirement, any record or document, or any information or explanation, specified in the requirement. The enquirer may do so if the enquirer has reasonable cause to believe, and certifies in writing that the enquirer has reasonable cause to believe, that the record or document, or the information or explanation, is relevant to the relevant non-compliance or to the question whether or not there is such a non-compliance.
15. The persons upon whom a requirement may be imposed pursuant to section 43 of the AFRCO are:

Section 43 of
the AFRCO

Section 43 of
the AFRCO

- (a) where the listed entity is a listed corporation, the listed corporation;
- (b) where the listed entity is a listed collective investment scheme, a person who is, or was at the material time, a responsible person of the listed collective investment scheme;
- (c) a relevant undertaking of the listed entity;
- (d) a person who is, or was at the material time, an auditor of the corporation, scheme or undertaking; or
- (e) a person who is, or was at the material time, an officer or employee of the corporation, responsible person or undertaking.

Rights of a Specified Person

16. A person upon whom a requirement is imposed pursuant to section 43(1) of the AFRCO (a "**Specified Person**") has certain rights.

Right against self-incrimination

17. A Specified Person is not excused from complying with a requirement to provide information or an explanation only on the ground that to do so might tend to incriminate the Specified Person. However, if an enquirer requires a Specified Person to give any information or explanation, the enquirer must ensure that the Specified Person has first been informed or reminded of the limitations imposed by section 44(2) of the AFRCO on the admissibility in evidence of the requirement and of the information or explanation.
18. Section 44(2) of the AFRCO provides that, if the information or explanation might tend to incriminate the Specified Person and the Specified Person so claims before giving the information or explanation, the requirement as well as the information or explanation, 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.

Sections
43(3) and 44
of the
AFRCO

Right to inspection of records or documents seized

19. If the enquirer has taken possession of any record or document during the enquiry, the enquirer must, subject to any reasonable conditions the enquirer imposes as to security, permit a Specified Person who would be entitled to inspect the record or document had the enquirer not taken possession of it, to

Section 46 of
the AFRCO

inspect it and to make copies or otherwise record details of it at all reasonable times.

Consequences of non-compliance of the requirements

Powers of the Court of First Instance

20. If a Specified Person fails to comply with a requirement imposed by an enquirer pursuant to section 43(1) of the AFRCO, an enquirer 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, the Court of First Instance may:

Section 45 of
the AFRCO

- (a) order the Specified Person to comply with the requirement 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

Notifying other regulators of the powers of enquirer being exercisable

21. If the AFRC certifies that it appears to the AFRC that there is or may be a question whether or not there is a relevant non-compliance in relation to a listed entity that is one of the following:

Section 42 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 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 SFC, or the Monetary Provident Fund Schemes Authority respectively as the relevant regulator of that entity specifying that the powers in section 43(1) of the AFRCO are exercisable for the purpose of enquiring into the

relevant non-compliance or the question whether or not there is such a non-compliance.

Consulting other regulators before imposing the requirements

22. Similarly, if the Specified Person belongs to any of the categories referred to in paragraphs 21(a) to (d) above (save that (c) shall refer to a responsible person of the collective investment scheme), the enquirer must not impose a requirement under section 43(1) of the AFRCO on that person unless, before doing so, the investigator has consulted the Monetary Authority, the Insurance Authority, the SFC, and the Monetary Provident Fund Schemes Authority respectively. Section 43(2)
of the
AFRCO

Enquiry report

23. After the completion of the enquiry, the enquirer must prepare a written report on the findings of the enquiry. Section 47 of
the AFRCO

Opportunity to be heard

24. If the AFRC considers that any person named in the enquiry report (“**Named Person**”) would in the event of publication or other disclosure of the report be adversely affected by the publication or disclosure, the enquirer must, before the report is adopted by the AFRC, first give the Named Person a reasonable opportunity of being heard, i.e. an opportunity to make representations. Section 47 of
the AFRCO
25. Please refer to the [“Outline of the AFRC’s Enquiry Process”](#), which is available on the AFRC’s website (www.afrc.org.hk) for details in relation to the opportunity to make representations.

Further actions

26. The AFRC may, in relation to an enquiry after taking into account the enquiry report: Section 48 of
the AFRCO
- (a) close the case without further action;
 - (b) suspend the enquiry for such period as the AFRC thinks fit;
 - (c) secure the removal of the non-compliance in accordance with Division 4 of Part 4 of the AFRCO (see paragraphs 27-29 below); or
 - (d) carry out such other follow-up action in accordance with the AFRCO as the AFRC thinks fit.

The AFRC's powers to secure removal of relevant non-compliance

Giving written notice to the operator of the listed entity

27. After the AFRC has taken into account the enquiry report, if it appears to the AFRC that there is or may be a question whether or not there is a relevant non-compliance, the AFRC may give a written notice ("Notice") to the operator of the listed entity to:

Section 49 of
the AFRCO

- (a) indicate the respects in which it appears to the AFRC that such a question arises or may arise;
- (b) specify such manner of revising the relevant financial report of the listed entity or such other remedial action concerning that report as the AFRC thinks fit; and
- (c) specify a period for the operator to (i) give a satisfactory explanation of the relevant financial report of the entity, (ii) cause that report to be revised in such manner as specified in the Notice, or (iii) take such other remedial action concerning that report as specified in the Notice.

Applying to the Court of First Instance

28. In respect of a relevant non-compliance as defined in section 5(2) and Part 2 of Schedule 1 of the AFRCO, where the AFRC has given a Notice to the operator of the listed entity and it appears to the AFRC at the end of the period specified in the Notice or such longer period as the AFRC may allow that the directors have not taken the steps specified in the Notice (see paragraph 27(c) above), the AFRC may apply to the Court of First Instance for:

Section 50 of
the AFRCO

- (a) a declaration that there is a relevant non-compliance in relation to the listed corporation; and
 - (b) an order requiring the directors of the corporation to cause the relevant financial report of the corporation to be revised in such manner as the Court considers necessary, or to take such other remedial action concerning that report as the Court considers necessary within a specified period.
29. Please refer to section 50 of the AFRCO for details.

Disclosure of enquiry report

30. After adopting the enquiry report, the AFRC may publish or disclose the whole or any part of the enquiry report. Section 47 of the AFRCO
31. In deciding whether to publish or disclose an enquiry 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 Named Person; and
 - (c) whether the publication or disclosure would be in the interest of the investing public or in the public interest.

Preservation of secrecy

32. 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 enquiry. Section 51 of the AFRCO
33. 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.
34. 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.
35. Any person who contravenes the secrecy obligations imposed by section 51 of the AFRCO commits a criminal offence.

Disclaimer

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