

# Outline of the AFRC's Enquiry Process

## Introduction

1. Under Part 4 of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”), the Accounting and Financial Reporting Council (“**AFRC**”) is given the power to initiate an enquiry concerning a relevant non-compliance as defined under section 5 of the AFRCO in relation to a listed entity.
2. This document is intended to provide a brief overview of the AFRC’s enquiry process that applies to all listed entities. For details on the scope of an enquiry, and the AFRC’s enquiry powers, please refer to the [“Enquiry Policy Statement for Listed Entities”](#), which is available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)).

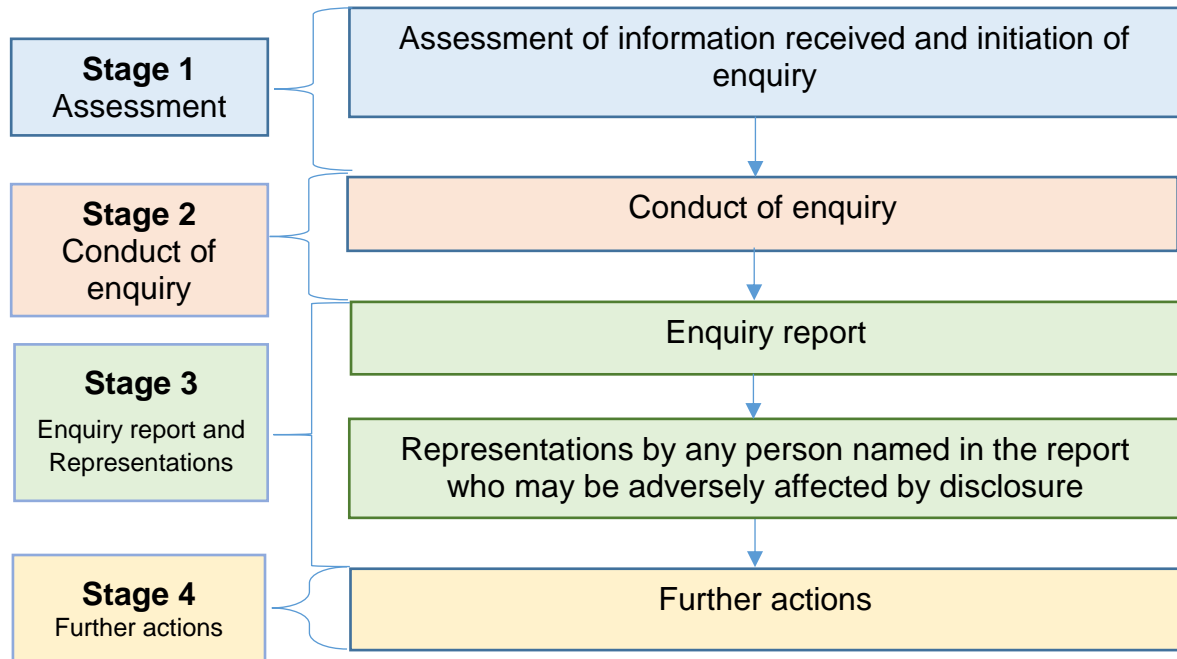
## Definitions

3. 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
enquirer	An enquirer means: <ul style="list-style-type: none"> <li>• the AFRC; or</li> <li>• the Financial Reporting Review Committee appointed under section 40(1)(b) of the AFRCO (“<b>Review Committee</b>”).</li> </ul>	38
listed entity	A listed entity means: <ul style="list-style-type: none"> <li>• a listed corporation; or</li> <li>• a listed collective investment scheme.</li> </ul>	3(1)
relevant non-compliance	A relevant non-compliance means: <ul style="list-style-type: none"> <li>• For the purposes of the AFRCO (except section 50), 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, of the entity has not complied with a relevant requirement, within the meaning of Part 1 of that Schedule, that applies to the report.</li> </ul>	5

	<ul style="list-style-type: none"> <li>For the purposes of section 50 of the AFRCO, there is a relevant non-compliance in relation to a listed corporation if a relevant financial report, within the meaning of Part 2 of Schedule 1 of the AFRCO, of the corporation has not complied with a relevant requirement, within the meaning of Part 2 of that Schedule, that applies to the report.</li> </ul>	
Panel Convenor	A Panel Convenor means one of the Panel Convenors appointed by the Chief Executive from amongst the members of the Financial Reporting Review Panel (“ <b>Review Panel</b> ”).	39(2)
Review Committee	<p>A Review Committee means the Financial Reporting Review Committee appointed by the AFRC under section 40(1)(b) of the AFRCO consisting of:</p> <ul style="list-style-type: none"> <li>a Panel Convenor, who is to be the chairperson of the Review Committee; and</li> <li>at least 4 other members of the Review Panel.</li> </ul>	40(1)(b)
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)

## Enquiry process



## Stage 1

### *Assessment of information received and initiation of enquiry*

4. The AFRC acquires information about potential non-compliance 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](http://www.afrc.org.hk)).
5. The AFRC will assess any such information to determine whether to initiate an enquiry by identifying any potential non-compliance and determining whether the evidence meets the relevant threshold for initiating an enquiry under the AFRCO. For matters which fall outside the remit of the AFRC, the AFRC may refer them to another specified body.
6. If the AFRC concludes that an enquiry is warranted and the evidence meets the relevant threshold for the purpose of initiating an enquiry under the AFRCO, the AFRC will initiate an enquiry.
7. The AFRC will determine whether the enquiry is to be carried out by the AFRC or a Review Committee. If it is the latter, the AFRC will appoint a Review Committee as the enquirer and notify the listed entity concerned in writing of the names of the members of the Review Committee.

## Stage 2

### *Conduct of enquiry*

8. When conducting an enquiry, the enquirer may exercise its enquiry powers under the AFRCO. Such powers include, among other things, requiring any specified persons to produce relevant records and documents and to provide information and explanations. For further information as to the enquirer's powers, please refer to the "[Enquiry Policy Statement for Listed Entities](#)", which is available on the AFRC's website ([www.afrc.org.hk](http://www.afrc.org.hk)).
9. Any person to whom an enquirer discloses information in connection with an enquiry, 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.
10. Any person who discloses information in contravention of the secrecy obligation commits a criminal offence.

## Stage 3

- (i) *Enquiry report*

11. The enquirer will prepare a written enquiry report on the findings of the enquiry after the enquiry has been completed.
  - (ii) *Representations by any person named in the report who may be adversely affected by disclosure*
12. If the AFRC considers that any person named in the enquiry report (“**Named Person**”) would in the event of a 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. This will be done by allowing the Named Person to make representations in respect of the enquiry report. The Named Person will be informed of this right when the enquiry report is sent to the Named Person.
13. The Named Person may make such representations to the enquirer as they consider appropriate. However, if the Named Person does not agree with the content of the enquiry 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.
14. The Named Person 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 enquiry report.

#### Stage 4

##### *Further actions*

15. Pursuant to section 48(1) of the AFRCO, the AFRC may, in relation to the enquiry after taking into account the enquiry report:
  - (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; or
  - (d) carry out such other follow-up action in accordance with the AFRCO as the AFRC thinks fit.

## **Disclaimer**

16. This document provides a summary of the AFRC's enquiry process 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.