

STATEMENT OF DISCIPLINARY ACTION

A. The Disciplinary Action

1. Pursuant to sections 37CA, 37D and 37I of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (**AFRCO**), the Accounting and Financial Reporting Council (**AFRC**) has:
 - 1.1. publicly reprimanded each of Prism Hong Kong Limited (**Prism**), Kyaw Sai Hong (**Kyaw**) and Yam Wai Man (**Yam**);
 - 1.2. imposed a pecuniary penalty of **HK\$210,000** against Prism;
 - 1.3. imposed a pecuniary penalty of **HK\$105,000** against Kyaw;
 - 1.4. imposed a pecuniary penalty of **HK\$38,500** against Yam;
 - 1.5. ordered Kyaw to pay the costs and expenses of, and costs and expenses incidental to, the investigation in relation to him in the sum of **HK\$49,699.58**; and
 - 1.6. ordered Yam to pay the costs and expenses of, and costs and expenses incidental to, the investigation in relation to him in the sum of **HK\$40,248.76**(collectively, **Disciplinary Action**).
2. The Disciplinary Action was taken in relation to seven PIE engagements of which Prism was appointed as the auditor in 2023.
3. The AFRC found that in 2023:
 - 3.1. Prism¹ (a) authorized Kyaw, who was not a registered engagement partner (**REP**) or registered engagement quality control reviewer (**REQCR**) of Prism, to carry out activities for Prism as an engagement partner (**EP**) in two PIE engagements and as an engagement quality control reviewer (**EQCR**) in four PIE engagements, and (b) authorized Yam, who was not a REQCR of Prism, to carry out activities for Prism as an EQCR in one PIE engagement, in contravention of section 20V of the AFRCO;²

¹ Prism is registered as a corporate practice and a PIE auditor with the AFRC (M0607). During the relevant period, Prism was registered with its former name, Prism Hong Kong and Shanghai Limited.

² The terms “PIE engagement”, “engagement partner”, “engagement quality control reviewer”, “registered engagement partner” and “registered engagement quality control reviewer” are defined in sections 2, 3A and 20A of the AFRCO.

- 3.2. Kyaw³ carried out activities for Prism (a) as an EP in two PIE engagements when he was not a REP of Prism, in contravention of section 20D of the AFRCO, and (b) as an EQCR in four PIE engagements when he was not a REQCR of Prism, in contravention of section 20E of the AFRCO;
 - 3.3. Yam⁴ carried out activities for Prism as an EQCR in one PIE engagement when he was not a REQCR of Prism, in contravention of section 20E of the AFRCO;
 - 3.4. in light of paragraphs 3.1 to 3.3 above, each of Prism, Kyaw and Yam (collectively, **Regulatees**) failed or neglected to observe, maintain or otherwise apply the fundamental principle of professional behavior, in breach of sections 110.1 A1(e) and R115.1 under Part 1 of Chapter A of the Code of Ethics for Professional Accountants (**COE**); and
 - 3.5. in the circumstances, (a) Prism has committed practice irregularities within the meaning of section 4(2)(a)(v) of the AFRCO, and (b) each of Kyaw and Yam has committed professional irregularities within the meaning of section 3B(1)(c) of the AFRCO.
4. Based on the above:
 - 4.1. Prism has committed FR misconduct pursuant to sections 37A(a) and (e) of the AFRCO; and
 - 4.2. each of Kyaw and Yam is guilty of CPA misconduct pursuant to section 37AA(1)(a) of the AFRCO.

B. Summary of Facts

5. This matter was identified during an inspection carried out by the AFRC's Inspection Department in October 2023.
6. Between February and August 2023, Prism was appointed as the auditor of seven PIE engagements. From around February to September 2023:
 - 6.1. Prism authorized Kyaw to carry out, and Kyaw carried out, activities as an EP of Prism in relation to two PIE engagements;
 - 6.2. Prism authorized Kyaw to carry out, and Kyaw carried out, activities as an EQCR of Prism in relation to four PIE engagements; and
 - 6.3. Prism authorized Yam to carry out, and Yam carried out, activities as an EQCR of Prism in relation to one PIE engagement.

³ Kyaw is a member of the Hong Kong Institute of Certified Public Accountants (**HKICPA**) (A30393) and currently holds a practising certificate (P05611).

⁴ Yam is a member of the HKICPA (A26535) and currently holds a practising certificate (P05999).

7. However, Kyaw and Yam were not a REP or REQCR of Prism at all times.

The Regulatees' explanations

8. The Regulatees submitted that they were under an honest belief that the relevant registrations for Kyaw and Yam had been completed, the failures were inadvertent, and they had no intention to mislead the public. They explained, among other things, that:
 - 8.1. At the relevant time, Prism had no official policies and procedures for the registration of responsible persons of Prism. Prism adhered to its past practice where the responsibility of registering responsible persons would be passed to its general manager (**GM**) once its board of directors approved an appointment of responsible persons.
 - 8.2. It was, however, the first time that the GM dealt with these procedures. The failures were a result of the GM's inadvertent oversight of the relevant registration procedures under the AFRCO and various mistaken beliefs or misinterpretations of documents, including that:
 - 8.2.1 the "Notification for Change in Particulars of a Corporate Practice (Form CP-3)" submitted by Prism to the AFRC on 29 March 2023 alone would suffice for Kyaw's registration as EP, and an email from the AFRC to Prism on 13 April 2023 confirming that Form CP-3 had been processed would be equivalent to the completion of Kyaw's registration as EP of Prism; and
 - 8.2.2 Yam's registration as an EQCR of Prism was not required since he was a REQCR of another registered PIE auditor at the relevant time.
 - 8.3. Kyaw and Yam had enquired with the GM, who confirmed that the registrations were being properly handled, and they therefore believed that they did not need to take any further action.
 - 8.4. The Regulatees encountered difficulties in interpreting and understanding the relevant provisions of the AFRCO, the guidance in the AFRC's Guide for the Registration of PIE Auditors and the relevant registration requirements and process.
 - 8.5. Upon noticing that the AFRC's website did not show Kyaw's and Yam's registrations, the GM filed the "Application for Registration of Additional Responsible Person of a Registered Public Interest Entity Auditor (Form PIE-3)" to the AFRC on 29 September 2023, and Prism ceased assigning Kyaw and Yam to any PIE engagements pending completion of registrations.

C. Findings

Contravention of sections 20D, 20E and 20V of the AFRCO

9. The AFRCO sets out prohibitions concerning the carrying out of activities in relation to PIE engagements by unregistered EP and unregistered EQCR:
 - 9.1. under section 20D of the AFRCO, a person must not carry out any activity as an EP of a registered PIE auditor unless the person is a REP of the auditor;
 - 9.2. under section 20E of the AFRCO, a person must not carry out any activity as an EQCR of a registered PIE auditor unless the person is a REQCR of the auditor; and
 - 9.3. under section 20V of the AFRCO, a registered PIE auditor must not authorize a person, who is not a REP or REQCR of the auditor, to carry out any activity for the auditor as an EP or EQCR.
10. In light of paragraphs 6 and 7 above, (a) Prism contravened section 20V of the AFRCO, (b) Kyaw contravened sections 20D and 20E of the AFRCO, and (c) Yam contravened section 20E of the AFRCO.
11. Contraventions of sections 20D, 20E and 20V of the AFRCO constitute serious misconduct for the following reasons:
 - 11.1. Prism (as a registered PIE auditor) and Kyaw and Yam (as professional persons) are expected to strictly comply with the relevant laws and regulations, including but not limited to the AFRCO, at all times.
 - 11.2. The PIE auditor regime, including sections 20D, 20E and 20V of the AFRCO and the relevant registration requirements in relation to responsible persons (including EP and EQCR) (collectively, **Registration Requirements**), is designed to safeguard the audit quality of PIE engagements, and in turn, enhance protection of the investing public and safeguard the public interest. Contravention of section 20D or 20E of the AFRCO without reasonable excuse would amount to a criminal offence under section 20F of the AFRCO.
 - 11.3. Failure to comply with the Registration Requirements and the carrying out of activities in relation to PIE engagements by unregistered EP and unregistered EQCR not only adversely impacted upon the AFRC's discharge of its regulatory duties but also undermine the credibility of the accounting profession and put investors at risk.
 - 11.4. By contravening sections 20D, 20E and 20V of the AFRCO, the Regulatees failed to conduct themselves in a manner consistent with the profession's responsibility to comply with relevant laws and regulations.

12. In addition, Prism admitted that it did not have official policies and procedures in place for the registration of responsible persons at the relevant time. The Regulatees relied solely on the GM, who dealt with such procedures only for the first time, to handle the registrations of Kyaw and Yam as responsible persons. Such conduct demonstrated that the Regulatees disregarded their own responsibilities to comply with the law (including the Registration Requirements) and failed to take reasonable and sufficient steps to handle, monitor and follow up on the process and completion of registrations of Kyaw and Yam as responsible persons of Prism before Kyaw and Yam were to carry out any activity as an EP or EQCR of Prism.
13. Further, the Regulatees' explanations in relation to Form CP-3 and the email notification are not justified. Both documents only dealt with the admission of Kyaw as practising member director, and had nothing to do with the registrations of EP or EQCR at all. In any event, Kyaw's and Yam's names were not on the list of registered responsible persons of Prism on the PIE auditors register at all times, and the Regulatees ought to have noticed that.

Breach of the fundamental principle of professional behavior

14. The fundamental principle of professional behavior as set out in sections 110.1 A1(e) and R115.1 under Part 1 of Chapter A of the COE requires the Regulatees to, among other things, comply with relevant laws and regulations.
15. The Regulatees' contraventions of sections 20D, 20E and 20V of the AFRCO constitute a failure to comply with relevant laws and regulations. Accordingly, the Regulatees failed or neglected to observe, maintain or otherwise apply the fundamental principle of professional behavior, in breach of sections 110.1 A1(e) and R115.1 under Part 1 of Chapter A of the COE.
16. In light of the above, (a) Prism has committed practice irregularities pursuant to section 4(2)(a)(v) of the AFRCO, and (b) each of Kyaw and Yam has committed professional irregularities pursuant to section 3B(1)(c) of the AFRCO.

The Regulatees' Admission

17. The Regulatees have each accepted the above findings in full. Prism has admitted the FR misconduct found by the AFRC, and Kyaw and Yam have each admitted the CPA misconduct found by the AFRC.

D. Conclusion

18. Having considered all relevant circumstances, the AFRC is of the view that Prism has committed FR misconduct pursuant to sections 37A(a) and (e) of the AFRCO, and each of Kyaw and Yam is guilty of CPA misconduct pursuant to section 37AA(1)(a) of the AFRCO.

19. In determining the Disciplinary Action, the AFRC has had regard to the Sanctions Policy for PIE Auditors and Registered Responsible Persons, Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons, Sanctions Policy for Professional Persons, Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons and the Guidance Note on Cooperation with the AFRC (**Guidance Note on Cooperation**), and has taken into account all relevant circumstances, including the following:
- 19.1. The Regulatees' breaches and misconduct were serious as set out in paragraphs 11 to 13 above. In particular, failure to comply with the Registration Requirements and the carrying out of activities in relation to PIE engagements by unregistered EP and unregistered EQCR not only adversely impacted upon the AFRC's discharge of its regulatory duties but also undermine the credibility of the accounting profession and put investors at risk.
- 19.2. In respect of Prism and Kyaw, their misconduct constituted multiple contraventions of the law, which spanned over eight months in 2023. As a result of their breaches, audits of various PIE engagements were not conducted by a REP or reviewed by a REQCR of Prism.
- 19.3. The Regulatees' submissions on the interpretation of the relevant provisions of the AFRCO and the guidance materials also indicated that they did not have a sufficient understanding of the PIE auditor regime and the AFRCO.
- 19.4. That said, there is no finding of intentional, dishonest or deliberate misconduct by any of the Regulatees.

Aggravating circumstances

- 19.5. Yam has a clean disciplinary record with the AFRC but has one disciplinary record with the HKICPA in 2022.

Mitigating circumstances

- 19.6. The Regulatees admitted their liabilities, initiated resolution discussions with the AFRC, accepted the Disciplinary Action and entered into an agreement with the AFRC pursuant to section 37I of the AFRCO before the issuance of a Notice of Proposed Disciplinary Action against each of them.
- 19.7. Upon discovery of the contravention of the Registration Requirements, Prism promptly and voluntarily undertook remedial actions to minimise the risk of future non-compliance of the Registration Requirements, including improving its internal policies and procedures and providing trainings to its relevant staff.

- 19.8. Both Prism and Kyaw have a clean disciplinary record with the HKICPA and the AFRC.
20. Having considered all the relevant circumstances in the present case and the Guidance Note on Cooperation, the AFRC is of the view that a reduction of 30% to the original pecuniary penalties assessed against each of the Regulatees is appropriate, and that it is in the interest of the investing public and the public interest for the AFRC to enter into an agreement pursuant to section 371 of the AFRCO with each of the Regulatees.