

Investigation Policy Statement

**(in relation to audits or the
preparation of specified reports
completed for listed entities
before 1 October 2019)**

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. The AFRC is empowered to initiate an investigation under certain circumstances in relation to auditors or reporting accountants of listed entities in respect of any audit, or the preparation of any specified report, that was completed for a listed entity before 1 October 2019. For the purposes of any such investigation, the provisions of the Financial Reporting Council Ordinance (Cap. 588) as in force immediately before 1 October 2019 (the “**2019 FRCO**”) apply. This is because the Accounting and Financial Reporting Council (Transitional and Saving Provisions and Consequential Amendments) Regulation dealing with transitional and savings provisions consequent on the enactment of the Financial Reporting Council (Amendment) Ordinance 2021 (41 of 2021) (the “**2021 Amending Ordinance**”) provide that:
 - (a) For any investigation initiated under Part 3 of the 2019 FRCO before the commencement date of the 2021 Amending Ordinance, the 2019 FRCO continues to apply; and
 - (b) After the commencement date of the 2021 Amending Ordinance, an investigation may still be initiated under Part 3 of the 2019 FRCO in relation to any audit, or the preparation of any specified report, that was completed before 1 October 2019, as if the 2021 Amending Ordinance had not come into operation. For any such investigation, the 2019 FRCO continues to apply.

Definitions

3. In this Policy Statement, the following terms have the meanings defined in the 2019 FRCO as set out below (the definitions in the 2019 FRCO shall prevail in case of any inconsistency):

Terms	Meanings defined in the 2019 FRCO	Section under the 2019 FRCO
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; 	2(1)

	<ul style="list-style-type: none"> • a restricted licence bank; or • a deposit-taking company. 	
authorized officer	An authorized officer means a person authorized by the investigator under section 28(6) of the 2019 FRCO.	21(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)
investigator	<p>An investigator means:</p> <ul style="list-style-type: none"> • the AFRC; or • if the Audit Investigation Board (the “AIB”) established under section 22(1) of the 2019 FRCO is directed to conduct an investigation under section 23(1)(b), 23(2)(b) or 23(3)(b) of the 2019 FRCO concerning an auditing irregularity, a reporting irregularity or a relevant irregularity, the AIB. 	21
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 document	<p>A listing document means:</p> <ul style="list-style-type: none"> • in relation to a listed corporation, (i) a prospectus; or (ii) a document issued for the purposes of the Listing Rules that (A) offers any securities issued by the corporation to the public for subscription, or purchase, for a consideration; or (B) is calculated to invite offers by the public to subscribe for, or purchase, for a consideration any securities issued by the corporation; • in relation to a listed collective investment scheme, a document issued for the purposes of the relevant code or the Listing Rules that (i) offers any interests in the scheme to the public for acquisition for a consideration; (ii) 	2(1)

	offers the scheme to the public for participation for a consideration; or (iii) is calculated to invite offers by the public to acquire for a consideration any interests, or participate for a consideration, in the scheme.	
Listing Rules	<p>Listing Rules means:</p> <ul style="list-style-type: none"> • the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited; or • the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited, <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)
professional standard	<p>A professional standard means any of the professional standards within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50) as in force at the material time (“PAO”) i.e.:</p> <ul style="list-style-type: none"> • statement of professional ethics; or • standards of accounting, auditing and assurance practices, <p>issued or specified or deemed to be issued or specified under section 18A of the PAO.</p>	4(8)
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	Relevant Ordinance means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section 2 of Schedule 9 to the Companies Ordinance (Cap. 622) (“CO”) i.e. 3 March 2014.	2(1)
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 PAO 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 PAO 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)
reporting accountant	A reporting accountant means:	2(1)

	<ul style="list-style-type: none"> • in relation to a listed corporation, <ul style="list-style-type: none"> ○ a person appointed for the purposes of paragraph 43 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“CWUMPO”), or the Listing Rules, to prepare a specified report required for a listing document issued by or on behalf of the corporation, regardless of whether or not the person is qualified for the appointment; and ○ includes (A) if the person so appointed is an individual, an employee or agent of that person involved in the preparation of the specified report; (B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the preparation of the specified report; and (C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved in the preparation of the specified report; • in relation to a listed collective investment scheme, <ul style="list-style-type: none"> ○ a person appointed for the purposes of the relevant code or the Listing Rules to prepare a specified report required for a listing document issued by or on behalf of the scheme, regardless of whether or not the person is qualified for the appointment; and ○ includes (A) if the person so appointed is an individual, an employee or agent of that person involved in the preparation of the specified report; (B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the preparation of the specified report; and (C) if the person so appointed is a corporation, a member, director, employee or agent of that 	
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	person involved in the preparation of the specified report.	
responsible person	<p>A responsible person, in relation to a listed collective investment scheme, means:</p> <ul style="list-style-type: none"> • the manager of the scheme; or • the person appointed as the trustee, or custodian, of the property of the scheme. 	2(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, any report, specified in Part II of the Third Schedule to the CWUMPO, that is required under section 38 or 342 of the CWUMPO 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 entity, any report on the profits and losses of, the assets and liabilities of, and other financial information on (i) the entity; or (ii) a business or undertaking to be acquired, or disposed of, by the entity, that is required for inclusion in the listing document issued for the purposes of the relevant code or the Listing Rules. 	2(1)

Purpose of this document

4. The purpose of this Policy Statement is to provide an overview of the legal regime of the investigation function of the AFRC in respect of any audit, or the preparation of any specified report, that was completed for a listed entity before 1 October 2019.
5. For details of the investigation process of the AFRC in relation to such investigations, please refer to the [“Outline of the AFRC’s Investigation Process \(in relation to audits or the preparation of specified reports completed for listed entities before 1 October 2019\)”](#), which is available on the AFRC’s website (www.afrc.org.hk).

Objectives of investigation

6. 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. This is particularly the case for auditors of listed entities, as investors may rely upon the audited financial statements of listed entities when making investment decisions.
7. The AFRC regulates through carrying out investigations into the relevant conduct of auditors or reporting accountants. This ensures that auditing or reporting irregularities can be identified and responded to promptly and adequately, so that appropriate follow-up action can be taken. Such follow-up action may include referral to other regulators or law enforcement agencies for conduct falling within their jurisdiction.

Circumstances in which the AFRC may initiate investigations

Circumstances suggesting that there is an auditing irregularity or a reporting irregularity

8. Pursuant to section 23(1) of the 2019 FRCO, if it appears to the AFRC that there are circumstances suggesting that there is an auditing irregularity in relation to a listed entity and the AFRC certifies in writing to that effect, the AFRC may:
 - (a) for the purpose of investigating the irregularity or the question whether or not there is such an irregularity, exercise the powers under sections 25 and 27 and Division 3 of the 2019 FRCO; or
 - (b) in writing, direct the AIB to investigate, with those powers, the irregularity and the question whether or not there is such an irregularity.
9. Pursuant to section 23(2) of the 2019 FRCO, if it appears to the AFRC that there are circumstances suggesting that there is a reporting irregularity in relation to a listed entity, and the AFRC certifies in writing to that effect, the AFRC may:
 - (a) for the purpose of investigating the irregularity or the question whether or not there is such an irregularity, exercise the powers under sections 26 and 27 and Division 3 of the 2019 FRCO; or
 - (b) in writing, direct the AIB to investigate, with those powers, the irregularity and the question whether or not there is such an irregularity.

Section
23(1) of the
2019 FRCO

Section
23(2) of the
2019 FRCO

Reasonable cause to believe that there is or may be a relevant irregularity

10. Pursuant to section 23(3) of the 2019 FRCO, if the AFRC has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that there is or may be a relevant irregularity in relation to a listed entity, the AFRC may:
- (a) for the purpose of investigating the irregularity or the question whether or not there is such an irregularity, exercise the powers under section 28 and Division 3 of the 2019 FRCO; or
 - (b) in writing, direct the AIB to investigate, with those powers, the irregularity and the question whether or not there is such an irregularity.

Relevant irregularity, auditing irregularity and reporting irregularity

11. The terms relevant irregularity, auditing irregularity and reporting irregularity are defined in section 4 of the 2019 FRCO. In summary, a relevant irregularity means an auditing irregularity or a reporting irregularity. Section 4 of the 2019 FRCO
12. There is an auditing irregularity if, in relation to the audit of certain accounts of a listed entity, a “specified event” has occurred in relation to the auditor of the entity at the material time. The relevant accounts are: Section 4(2)(a) of the 2019 FRCO
- (a) in the case where the entity was a listed corporation, those accounts a copy of the auditor’s report on which: Section 4(7) of the 2019 FRCO
 - (i) was sent at the relevant time under section 129G(1) of the relevant Ordinance or section 430 of the CO; or
 - (ii) was issued, circulated, published or distributed at the relevant time for the purposes of the Listing Rules;
 - (b) in the case where the entity was a listed collective investment scheme, those accounts a copy of the auditor’s report on which was issued, circulated, published or distributed at the relevant time for the purposes of the relevant code or the Listing Rules.
13. There is a reporting irregularity in relation to a listed entity if, in respect of the preparation of a specified report required for a listing document issued at the relevant time by or on behalf of the entity, a “specified event” has occurred in relation to the reporting accountant of the entity at the material time. Section 4(2)(b) of the 2019 FRCO
14. Under section 4(3) of the 2019 FRCO, a “specified event” has occurred in relation to an auditor or reporting accountant of a listed entity, if the auditor or reporting accountant: Section 4(3) of the 2019 FRCO

- (a) falsified or caused to be falsified a document;
 - (b) made a statement, in respect of a document, that was material and that the auditor or reporting accountant knew to be false or did not believe to be true;
 - (c) has been negligent in the conduct of the auditor or reporting accountant's profession;
 - (d) has been guilty of professional misconduct; or
 - (e) did or omitted to do something that, were the auditor or reporting accountant an individual certified public accountant, would reasonably be regarded as bringing or likely to bring discredit upon the auditor or reporting accountant, the Hong Kong Institute of Certified Public Accountants ("HKICPA") or the accountancy profession;
 - (f) failed or neglected to observe, maintain or otherwise apply a professional standard; or
 - (g) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the Council of the HKICPA.
15. Sections 4(4) to 4(6) of the 2019 FRCO go on to identify certain further circumstances which constitute a "specified event" where the auditor or reporting accountant is a corporate practice, a certified public accountant or a firm of certified public accountants (practising), respectively. Please refer to section 4 of the 2019 FRCO for details. [Sections 4\(4\) to 4\(6\) of the 2019 FRCO](#)

Powers of investigation

16. As indicated above, the investigator's powers of investigation differ depending on whether the investigation is initiated on grounds of "circumstances suggesting", or "reasonable cause to believe".

Powers where the investigation is initiated on grounds of "circumstances suggesting"

17. If an investigation is initiated on the grounds of "circumstances suggesting", pursuant to sections 25 to 27 of the 2019 FRCO, the investigator may, in writing, require certain persons such as auditors or reporting accountants, listed entities [Sections 25 to 27 of the 2019 FRCO](#)

and their current or past officers or employees, authorised institutions or transaction counterparts:

- (a) to produce records or documents;
- (b) to explain or make a statement regarding records or documents produced and to verify their explanation or statement by a statutory declaration;
- (c) to state the whereabouts of any missing records or documents and to verify their statement by a statutory declaration;
- (d) to make copies or record the details of records or documents produced; and
- (e) if an explanation or statement is not given or made for the reason that the information concerned is not within their knowledge or possession, to verify that reason and fact by a statutory declaration.

18. The investigator is required to certify that certain conditions as set out in the 2019 FRCO are satisfied, for example, the investigator has reasonable cause to believe that a person is in possession of records or documents that relate to the audit of the accounts or the preparation of the accountants' report of the listed entity, and the relevant records or documents required to be produced is relevant to the relevant irregularity.

Sections 25
to 27 of the
2019 FRCO

19. Please refer to sections 25 to 27 of the 2019 FRCO for details.

Powers where the investigation is initiated on grounds of "reasonable cause to believe"

20. If an investigation is initiated on grounds of "reasonable cause to believe", pursuant to section 28 of the 2019 FRCO, the investigator may, in writing, require the auditors, reporting accountants or any other persons whom the investigator has reasonable cause to believe to be in possession of records, documents or information relevant to the relevant irregularity:

Section 28 of
the 2019
FRCO

- (a) to produce records or documents;
- (b) to attend interviews and answer questions;
- (c) to respond to written questions;
- (d) to give the investigator all other assistance in connection with the investigation;

- (e) to explain or give further particulars regarding records or documents produced;
- (f) to verify their answer, response, explanation or particulars given under (a) to (e) by a statutory declaration; and
- (g) if an answer, response, explanation or particulars is not given for the reason that the information concerned is not within their knowledge or possession, to verify that reason and fact by a statutory declaration.

21. Please refer to section 28 of the 2019 FRCO for details.

Powers to apply to the magistrate for warrants

22. If a magistrate is satisfied by information on oath laid by the investigator that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced, the magistrate may issue a warrant authorizing a person specified in it to:
- (a) enter the premises, if necessary by force, at any time within 7 days; and
 - (b) search for, seize and remove any record or document that the person so specified has reasonable cause to believe may be required to be produced.

Section 34 of
the 2019
FRCO

23. Please refer to section 34 of the 2019 FRCO for details.

Rights of a person on whom a requirement is imposed

24. A person upon whom a requirement is imposed pursuant to sections 27 and 28 of the 2019 FRCO has certain rights.

Right against self-incrimination

25. A person is not excused from complying with a requirement under the 2019 FRCO only on the ground that to do so might tend to incriminate the person. However, if the investigator or an authorized officer requires a person to:
- (a) give an explanation, or make a statement, under section 27 of the 2019 FRCO;

Section 30 of
the 2019
FRCO

- (b) give an answer or response to any question under section 28 of the 2019 FRCO; or
- (c) give an explanation or further particulars under section 28 of the 2019 FRCO,

the investigator or officer shall ensure that the person has first been informed or reminded of the limitations imposed by section 30(2) of the 2019 FRCO on the admissibility in evidence of the requirement and of the explanation, particulars or statement, or the question and the answer or response.

26. Section 30(2) of the 2019 FRCO provides that, if the explanation, particulars or statement, or the answer or response, might tend to incriminate the person, and the person so claims before giving the explanation or particulars, or making the statement, or giving the answer or response, the requirement, as well as the explanation, particulars or statement, or the question and the answer or response, are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged with an offence under section 31 of the 2019 FRCO or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the explanation, particulars or statement, or the answer or response.

Right to inspection of records or documents seized

27. If the investigator has taken possession of any record or document during the investigation, the investigator must, subject to any reasonable conditions the investigator imposes as to security, permit any person who would be entitled to inspect the record or document had the investigator not taken possession of it, to inspect it and to make copies or otherwise record details of it at all reasonable times.

Section 33 of
the 2019
FRCO

Consequences of non-compliance with requirements

Offences

28. It is important for any person issued with a requirement to comply with it. Failure to do so without reasonable excuse or with intent to defraud amounts to an offence under the 2019 FRCO and is punishable upon conviction by a fine and/or imprisonment. Please refer to section 31 of the 2019 FRCO for a full list of the relevant offences.

Section 31 of
the 2019
FRCO

Powers of the Court of First Instance

Section 32 of
the 2019
FRCO

29. If a person fails to comply with a requirement imposed under section 25, 26, 27 or 28 of the 2019 FRCO, the investigator may make an application to the Court of First Instance for inquiry into the failure. On being satisfied that there is no reasonable excuse for the person not to comply with the requirements, the Court of First Instance may:
- (a) order the person to comply with the requirement within the specified period; and
 - (b) punish the 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 investigation powers being exercisable

30. If the AFRC certifies under section 23 of the 2019 FRCO that it appears to the AFRC that there are circumstances suggesting that there is an auditing or reporting irregularity in relation to a listed entity, or that the AFRC has reasonable cause to believe that there is or may be a relevant irregularity in relation to a listed entity, and the investigation relates to a listed entity which is:
- (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),

Section 24 of
the 2019
FRCO

the AFRC shall give a written notice to the Monetary Authority, the Insurance Authority, the SFC, or the Mandatory Provident Fund Schemes Authority respectively as the relevant regulator of that entity specifying that the relevant powers under sections 25, 26, 27, 28 and Division 3 of the 2019 FRCO are exercisable for the purpose of investigating the irregularity or the question whether or not there is such an irregularity.

Consulting other regulators before imposing the requirements

31. Similarly, if the person belongs to any of the categories referred to in paragraph 30(a) to (d) above (save that (c) shall refer to a responsible person of the collective investment scheme), the investigator shall not impose a requirement on that person under section 25, 26, or 28 of the 2019 FRCO unless, before doing so, the investigator has consulted the Monetary Authority, the Insurance Authority, the SFC, and the Mandatory Provident Fund Schemes Authority, respectively.

Investigation report

32. The investigator will prepare a written investigation report after the completion of the investigation. Section 35 of the 2019 FRCO

Opportunity to be heard

33. If the AFRC considers that any person named in the investigation report (“**Named Person**”) would in the event of publication or other disclosure of the report be adversely affected by the publication or disclosure, the investigator shall, 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 35 of the 2019 FRCO
34. Please refer to the [*“Outline of the AFRC’s Investigation Process \(in relation to audits or the preparation of specified reports completed for listed entities before 1 October 2019\)”*](#), which is available on the AFRC’s website (www.afrc.org.hk) for details in relation to the opportunity to make representations.

Further actions

35. The AFRC may, in relation to an investigation under the 2019 FRCO concerning a relevant irregularity: Section 36 of the 2019 FRCO
- (a) close the case without further action;
 - (b) suspend the investigation for such period as the AFRC thinks fit; or
 - (c) carry out such other follow-up action in accordance with the 2019 FRCO as the AFRC thinks fit.

Disclosure of investigation report

36. The AFRC may adopt and publish the whole or any part of the investigation report. Section 35 of the 2019 FRCO

37. In deciding whether to publish an investigation report or any part of it, the AFRC shall take into account:
- (a) whether the publication may adversely affect any of the following proceedings that have been, or are likely to be, instituted:
 - (i) any criminal proceedings before a court or magistrate;
 - (ii) any proceedings before the Market Misconduct Tribunal established by section 251(1) of the SFO;
 - (iii) any proceedings under Part V of the PAO; or
 - (b) whether the publication may adversely affect any person named in the report; and
 - (c) whether the report should be published in the interest of the investing public or in the public interest.

Costs and expenses of investigation

38. If, on a prosecution instituted as a result of an investigation under the 2019 FRCO, a person is convicted by a court or magistrate, the court or magistrate may order the person to pay to the AFRC the sum the court or magistrate considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the AFRC and the AFRC may recover the sum so ordered as a civil debt due to it. [Section 37 of the 2019 FRCO](#)

Preservation of secrecy

39. The 2019 FRCO imposes secrecy obligations on the AFRC and any person to whom the AFRC discloses secret information, including any person to whom the AFRC discloses information in the course of an investigation. [Section 51 of the 2019 FRCO](#)
40. In particular, section 51 of the 2019 FRCO provides that, except in the performance of any function under the 2019 FRCO or for carrying into effect the provisions of the 2019 FRCO, or in the circumstances described in sections 51(2) and (3), the AFRC shall 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 2019 FRCO; or

- (b) communicate any such matter to any person other than the person to whom such matter relates.
41. Sections 51(5) and (6) of the 2019 FRCO 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, shall 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 2019 FRCO;
 - (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.
42. Any person who contravenes the secrecy obligations imposed by section 51 of the 2019 FRCO commits a criminal offence.

Disclaimer

43. 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 2019 FRCO, the 2019 FRCO shall prevail.