

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)

Introduction

1. The Accounting and Financial Reporting Council (“**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 (“**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.
2. This document is intended to provide a brief overview of the AFRC’s investigation process, which has been designed to ensure that all persons being investigated are treated fairly and impartially.

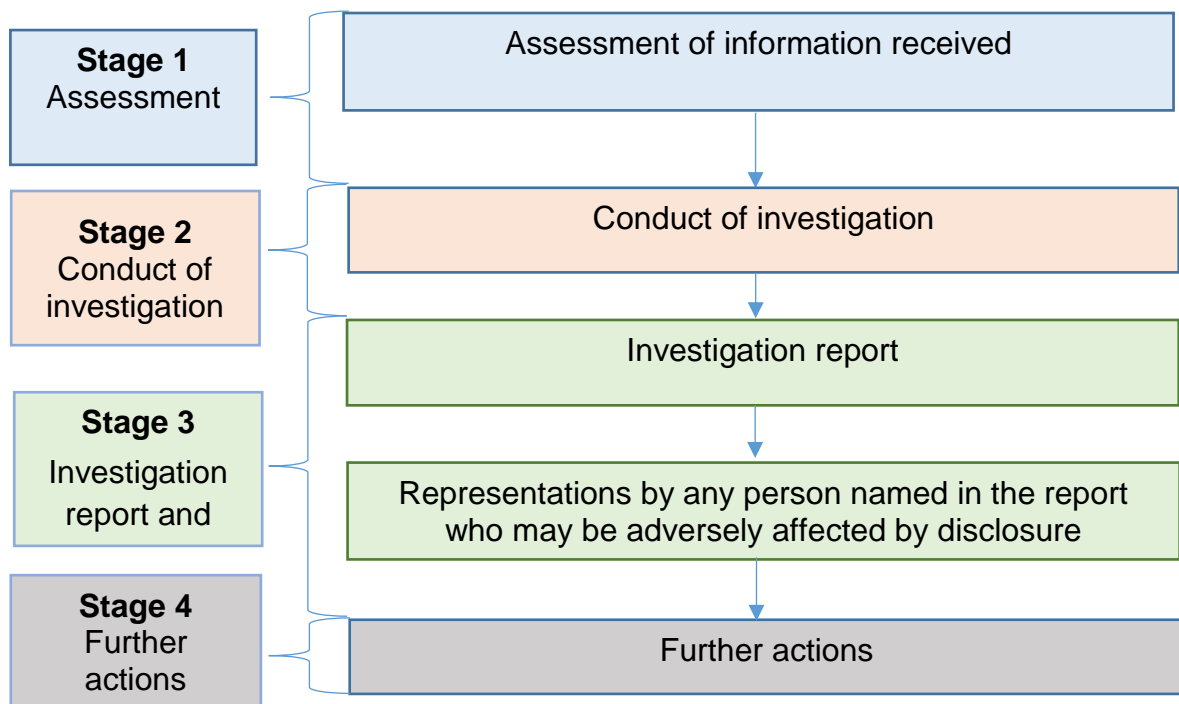
Definitions

3. In this document, 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
investigator	An investigator means: <ul style="list-style-type: none"> • the AFRC; or 	21

	<ul style="list-style-type: none"> 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. 	
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)

Investigation process



Stage 1

Assessment of information received and direction to investigate

- The AFRC acquires information about potential auditing or reporting irregularities 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).

5. The AFRC will assess any such information to determine whether an investigation is warranted by identifying any potential auditing or reporting irregularities and determining whether the evidence meets a relevant threshold for initiating an investigation under the 2019 FRCO. For matters which fall outside the remit of the AFRC, the AFRC may refer them to another appropriate authority.
6. If the AFRC concludes that an investigation is warranted and the evidence meets a relevant threshold for initiating an investigation under the 2019 FRCO, the AFRC will initiate an investigation.
7. Where the AFRC directs the AIB to carry out an investigation, a written direction to investigate will be provided to the AIB.

Stage 2

Conduct of investigation

8. When conducting an investigation, the investigator may exercise the relevant investigation powers under the 2019 FRCO. Such powers include requiring a specified person to produce relevant records and documents, give relevant explanations, attend interviews and answer questions from the investigator, and to give the investigator all other assistance in connection with the investigation, as appropriate.
9. If the investigator requires a person to attend an interview to answer any question that may be raised by the investigator pursuant to the investigator's power under section 28 of the 2019 FRCO, the investigator will notify the relevant person in writing of the time and place of the interview. The interviewee may be accompanied to the interview by his or her legal adviser but must answer any question raised by the investigator directly, and not through his or her legal adviser.
10. For further information as to the investigator's powers, please refer to the ["Investigation Policy Statement \(in relation to audits or the preparation of specified reports completed for listed entities before 1 October 2019\)"](#) which is available on the AFRC's website (www.afrc.org.hk).
11. Any person to whom an investigator discloses information in connection with an investigation, 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 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.

12. Any person who discloses information in contravention of the secrecy obligation commits a criminal offence.

Stage 3

(i) Investigation report

13. The investigator will prepare a written investigation report after the completion of the investigation.

(ii) Representations by any person named in the report who may be adversely affected by disclosure

14. If the AFRC considers that any person named in the investigation 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 investigator will, 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 investigation report. The Named Person will be informed of this right when the draft investigation report is sent to them.

15. The Named Person may make such representations to the investigator as they consider appropriate. However, if the Named Person does not agree with the content of the investigation 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.

16. If the Named Person fails to take issue with the content of the draft investigation report with which they disagree, it may prejudice their ability to take issue with it at a later date. In particular, any attempt to raise new facts or evidence at a later date (such as during the course of disciplinary proceedings) may call into question their credibility or reliability, because such facts or evidence were not advanced during the investigation.

(iii) Legal representation

17. 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 investigation report.

Stage 4

Further actions

18. The AFRC may, in relation to an investigation under the 2019 FRCO concerning a relevant irregularity:

- (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.

Cooperation with the AFRC

19. Parties under investigation are expected to cooperate with the AFRC in all its regulatory processes. It is also in the interest of such parties to cooperate with the AFRC at an early stage. This is because cooperation is an important mitigating factor which may be taken into account by the AFRC when determining sanctions in the event any disciplinary action is taken, and may result in the reduction of sanctions. Conversely, uncooperative conduct (such as a failure to comply with any deadlines imposed by the Investigator during the course of the investigation) may be an aggravating factor which may result in more severe sanctions being imposed.

Disclaimer

20. This document provides a summary of the AFRC's investigation 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 2019 FRCO, the 2019 FRCO shall prevail.