

Consultation Conclusions on

- (i) Outline of the AFRC's Disciplinary Process**
- (ii) Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons**
- (iii) Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons**
- (iv) Sanctions Policy for PIE Auditors and Registered Responsible Persons**
- (v) Sanctions Policy for Professional Persons**

23 June 2022

About the FRC

The Financial Reporting Council is an independent body established on 1 December 2006 under the Financial Reporting Council Ordinance. It is entrusted with the statutory duty to regulate auditors of listed entities through a system of registration and recognition, and through inspection, investigation and disciplinary action.

The mission of the FRC is to uphold the quality of financial reporting of listed entities in Hong Kong, so as to enhance protection for investors and deepen investor confidence in corporate reporting.

To learn more: please visit <https://www.frc.org.hk/> or follow us on [LinkedIn](#).

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Definitions

In this Consultation Conclusions, the following terms have the meanings set out below:

Terms	Meanings	Section under the AFRCO
AFRC	AFRC means the Accounting and Financial Reporting Council continued under section 6 of the AFRCO.	2(1)
AFRCO	AFRCO means the FRCO as amended by the Amendment Ordinance 2021.	/
Amendment Ordinance 2021	Amendment Ordinance 2021 means the Financial Reporting Council (Amendment) Ordinance 2021.	/
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)
FRC	FRC means the Financial Reporting Council established under section 6 of the FRCO.	/
FRCO	FRCO means the Financial Reporting Council Ordinance (Cap. 588).	/
HKICPA	HKICPA means the Hong Kong Institute of Certified Public Accountants incorporated by section 3 of the PA Ordinance.	2(1)
practice unit	A practice unit means: <ul style="list-style-type: none"> a CPA (practising) who practises accountancy on the accountant's own account under the accountant's own name as registered under section 22(2) of the PA Ordinance (Cap. 50); a CPA firm; or 	2(1)

	<ul style="list-style-type: none"> • a corporate practice. 	
professional person	<p>A professional person means:</p> <ul style="list-style-type: none"> • a CPA; or • a practice unit. 	2(1)
PIE	A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.	3(1)
PIE auditor	A PIE auditor means a registered or recognized PIE auditor.	3A
registered responsible person	<p>A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor:</p> <ul style="list-style-type: none"> • an engagement partner; • an engagement quality control reviewer; or • a quality control system responsible person. 	2(1)
Tribunal	The Tribunal means the Public Interest Entities Auditors Review Tribunal or the Accounting and Financial Reporting Review Tribunal, as the case may be.	/

Subject to the above, this Consultation Conclusions adopts the definitions used in the consultation paper dated 9 March 2022 (the “**Consultation Paper**”).

Executive Summary

1. Since the Government's announcement of the further reform of the accounting profession in June 2021, the FRC has held around 50 meetings, webinars and media interviews with relevant stakeholders including regulatees, users of financial statements, the general public and other regulators. Responses to the engagement programme were generally positive. The 10 webinars that were organized since the issuance of the Consultation Paper were attended by over 6,000 participants.
2. This Consultation Conclusions sets out the FRC's conclusions to the consultation relating to its disciplinary process and sanctions approach in the Consultation Paper, and is the result of the FRC's effective and comprehensive engagement with stakeholders.
3. The FRC received 20 written submissions from a broad range of respondents comprising (a) audit firms / representative associations (45%), (b) professional bodies (25%), (c) listed company directors (5%), (d) users of financial statements (5%) and (e) other regulators / legislator (20%) (see list of respondents at **Appendix A**). The FRC is pleased to note the majority of respondents showed overall support for the regulatory principles behind its proposals. In particular, respondents generally agreed that the proposed disciplinary process is transparent, fair and provides a reasonable opportunity to be heard to regulatees, and were supportive of the principle-based approach to sanctions to achieve effective regulatory outcomes.
4. After carefully considering the feedback, the FRC will proceed with the proposals, with certain amendments to address the comments made by respondents and to clarify the intent and practical aspects of the proposals. The revisions to the policies, processes and guidelines are set out at **Appendix B**.
5. The key amendments are summarized as follows:
 - 5.1 **Time limit for making representations** (see paragraphs 35 and 36) – In response to concerns that the initial 30-day time limit for making representations in response to the NPDA may not be sufficient for complex cases, the FRC has clarified that the initial 30-day time limit applies to normal circumstances only, and that it is not the intention of the FRC to impose an unreasonably tight timetable and the FRC may set a longer time limit in complex cases. In addition, the FRC has amended paragraph 15 of

Final Document II to further clarify that the FRC / AFRC “will” (instead of “may”) consider reasonable requests for extension of time to respond to the NPDA.

- 5.2 **Oral hearing or representations** (see paragraphs 35 and 37) – In response to comments around oral hearing or representations, the FRC wishes to clarify that the FRCO / AFRCO does not envisage an adversarial hearing (i.e. similar to a trial) being held at the first instance stage. Although disciplinary actions are normally determined on the basis of written representations, if, in addition to written representations, a regulatee wishes to request for a meeting to make oral representations, the FRC / AFRC will not unreasonably withhold such a request in order to ensure fairness to the regulatee concerned. However, the regulatee is required to explain how the oral representations, on top of the written representations already made, will assist the FRC / AFRC in its disciplinary decision-making. As a result of the concerns raised, the FRC has revised paragraph 17 of Final Document II to further clarify the relevant requirements for making a request.
- 5.3 **Cooperative and uncooperative conduct** (see paragraphs 57 to 59) – In response to comments around what constitutes cooperative and uncooperative conduct, the FRC has further clarified the general principles behind cooperative and uncooperative conduct. The FRC has made it clear that cooperation in the FRC’s / AFRC’s investigation and disciplinary process will be considered as a mitigating factor at the point of determining sanctions, but the mere fulfilment of statutory or regulatory obligations will not, in itself, be considered a mitigating factor. To avoid any confusion that may be caused by the use of the term “exceptional cooperation”, changes have been made to paragraphs 7 and 9 of Final Document V. Further, in response to concerns that there might be wholly innocent reasons for a failure to self-report issues or produce information to the FRC / AFRC, the FRC has further clarified the general principles that the FRC / AFRC will apply in assessing whether there has been uncooperative conduct in paragraph 12 of Final Document V. If the regulatee concerned engages in uncooperative conduct with the intent or effect of impeding or prejudicing the FRC’s investigation or disciplinary process or fails to provide the level of cooperation reasonably expected of the regulatee in the circumstances, the FRC may take this into account as an aggravating factor.

- 5.4 **List of factors** (see paragraphs 65 to 72) – Having considered the suggestions received in relation to the list of factors that the FRC / AFRC may take into account when determining sanctions, the FRC agrees that it will be appropriate to add two additional factors (i.e. (i) prior sanctions imposed or regulatory action taken by other competent authorities, and (ii) the result of any concluded civil action taken by third parties), remove a factor (i.e. likelihood of recurrence of the same type of misconduct), and change the wording used for one factor (i.e. from “the individual’s experience and position” within the PIE auditor or practice unit, as the case may be, to “the individual’s experience and scope of responsibilities”) (see paragraph 13 of Final Document III, paragraph 10 of Final Document IV, paragraph 12 of Final Document VII and paragraph 10 of Final Document VIII).
- 5.5 **Financial jeopardy** (see paragraphs 73 to 75) – In response to suggestions to further clarify and elaborate the concept of “financial jeopardy”, the FRC would reiterate that financial jeopardy would be relevant as a mitigating factor only when the regulatee intends to rely on it and provides supporting evidence regarding the relevant financial situation. Amendments have been made to paragraph 12(b) of Final Document II, paragraph 14 of Final Document III and paragraph 13 of Final Document VII to further clarify these.
6. The documents applicable to PIE auditors and registered responsible persons will come into effect on 24 June 2022, while those applicable to professional persons will take effect after the commencement of the Amendment Ordinance 2021.
7. Looking forward, the FRC is confident that the new policies, processes and guidelines will facilitate the efficient and effective discharge of its disciplinary function in a transparent and fair manner, and the achievement of its mission to uphold the quality of financial reporting in Hong Kong so as to enhance protection for investors and deepen investor confidence in corporate reporting.
8. The FRC would like to take this opportunity to thank all those who shared their comments and views during the consultation process. The FRC will continue its effort to proactively engage with key stakeholders to facilitate communication, whenever necessary, in order to ensure the market understands its policies and processes, and their underlying principles in a transparent and timely manner.

Section 1 Introduction

9. On 9 March 2022, the FRC launched a public consultation on the proposals relating to its disciplinary process and sanctions approach.
10. The Consultation Paper contained five consultation documents (collectively, the “**Consultation Documents**”), as follows:

Document No.	Consultation Document
A	Outline of the AFRC’s Disciplinary Process
B	Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons
C	Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons
D	Sanctions Policy for PIE Auditors and Registered Responsible Persons
E	Sanctions Policy for Professional Persons

11. In conjunction with the five Consultation Documents, the FRC also published three engagement documents (collectively, the “**Engagement Documents**”) to provide the public with more background about its disciplinary powers and approach to cooperation. The Engagement Documents, which are not subject to consultation, are as follows:

Document No.	Engagement Document
F	Discipline Policy Statement for PIE Auditors and Registered Responsible Persons
G	Discipline Policy Statement for Professional Persons
H	Guidance Note on Cooperation with the AFRC

12. A copy of the Consultation Paper is available at: https://www.frc.org.hk/en-us/Documents/Publications/Consultation_Paper.pdf.
13. In order to facilitate understanding by key stakeholders including the accounting profession, listed company directors, users of financial statements and other regulators of the proposals, and to give the FRC an opportunity to understand if there are any issues from the market that the FRC needs to consider and address, the FRC has held around 50 meetings and webinars with such key stakeholders since the further reform was announced in June 2021. Responses to the engagement programme were generally positive. The 10 webinars that were organized since the issuance of the Consultation Paper were attended by over 6,000 participants.
14. The consultation ended on 4 May 2022. The FRC received 20 written submissions from (a) audit firms / representative associations, (b) professional bodies, (c) listed company directors, (d) users of financial statements and (e) other local regulators / legislator. Submissions are available on the FRC's website (<https://www.frc.org.hk/en-us/publications/engagement-and-consultation/submissions>) and a list of respondents is set out at **Appendix A**.

Category	Number of Submissions	Percentage
Audit firms / representative associations	9	45%
Professional bodies	5	25%
Listed company directors	1	5%
Users of financial statements	1	5%
Regulators / legislator	4	20%
Total	20	100%

15. The FRC is pleased to note that it received overall support for the regulatory principles behind the proposals contained in the Consultation Documents. After carefully considering the comments received, the FRC will proceed with its proposals with certain amendments to address the comments made by respondents and to clarify the intent and practical aspects of the proposals. Please refer to Section 2 for details.
16. The FRC will also make consequential amendments to the Consultation and Engagement Documents in light of the commencement schedule. In brief, the documents applicable to PIE auditors and registered responsible persons will come into effect on 24 June 2022, while those applicable to professional persons will take effect upon the commencement of the Amendment Ordinance 2021. Please refer to Section 3 for details.
17. The revisions to the Consultation and Engagement Documents (“**Final Documents**”) are set out at **Appendix B**. The FRC believes that the Final Documents reflect the FRC’s principle of striving for effective regulatory outcomes through efficient process. This will further reinforce Hong Kong’s status as an international financial centre and promote the long-term development of the accounting profession.
18. The FRC would like to take this opportunity to thank all those who shared their comments and views during the consultation process.
19. A number of respondents also took the opportunity to share with the FRC their views on various other issues relating to the new regulatory regime which, although falling outside the scope of the consultation, are valuable to the FRC’s functions including investigation and enquiry, inspection and registration.

Section 2 Comments received and the FRC's responses

20. The key comments received and the FRC's responses are summarized below.

Document A – Outline of the AFRC's Disciplinary Process

Question 1: Do you think the proposed disciplinary process is transparent, fair and provides a reasonable opportunity to be heard to regulatees? Please explain with rationale any improvements that you would propose.

Question 2: Are there any improvements that should be made to the proposed disciplinary process to facilitate the AFRC's efficient and effective discharge of its disciplinary function? If so, please explain with rationale.

Overall summary of respondents' views and the FRC's responses

21. A majority of the respondents (94%) who responded to these questions either expressed overall support for, or gave no specific indication or did not express negative views, regarding the regulatory principles behind the proposals. In particular, 10 out of the 18 respondents who responded to these questions were supportive of the regulatory principles behind the proposals and agreed that the proposed disciplinary process is transparent, fair and provides a reasonable opportunity to be heard to regulatees, and will help ensure that there is an efficient and effective disciplinary process for the oversight of the accounting profession in Hong Kong. Seven respondents gave no specific indication or did not express negative views. Only one respondent (6%) expressly disagreed that the proposed disciplinary process is transparent, fair and provides a reasonable opportunity to be heard to regulatees.

22. The FRC welcomes the respondents' overall support to the regulatory principles behind its proposed disciplinary process.

Specific comments on the FRC's proposals

23. The FRC also received a number of requests for clarification of certain aspects of the proposed process and suggested improvements, a summary of which and the FRC's responses are set out below.

A. Fairness and independence

Summary of respondents' comments

24. A few respondents expressed concerns about the perceived lack of fairness and independence of the FRC / AFRC when making disciplinary decisions, either because the FRC / AFRC is making an “administrative decision in the first instance” without the right to a hearing before an independent panel, or that the FRC / AFRC is responsible for carrying out the investigation and making the disciplinary decision. One respondent suggested that safeguards should be put in place to ensure that officials making disciplinary decisions would have an impartial mindset. Some respondents called for robust independence between departments in the FRC / AFRC by, for example, establishing a “Chinese wall”.

The FRC's responses

25. The comments directed at the perceived lack of fairness and independence of the FRC / AFRC when making disciplinary decisions are misguided because this is the disciplinary framework envisaged by the FRCO / AFRCO, under which the FRC / AFRC is the first instance decision-maker in respect of all disciplinary decisions. In particular:
- 25.1 The current regulatory procedures established under the FRCO, which are carried out by the FRC executive team under the supervision of the FRC Board comprising all non-practitioners, ensure impartiality and independence of the regulatory process from the profession.
 - 25.2 The rights of regulatees are safeguarded by the availability of a *de novo* review before the independent Tribunal and a further right of appeal to the Court of Appeal.
 - 25.3 In addition, the FRCO / AFRCO does not envisage any strict segregation or “Chinese wall” arrangement between individual departments of the FRC / AFRC. However, the FRC's / AFRC's investigators will not take part in any disciplinary decision-making. This is in line with the practice adopted by other regulators in Hong Kong which operate under a similar legislative framework.

B. External legal advisers and experts

Summary of respondents' comments

26. A couple of respondents appeared to be of the view that the selection of external experts from the FRC's / AFRC's standing panel would create a concern of lack of independence and impartiality on the part of those experts.
27. A respondent expressed concerns about the perceived bias of external legal advisers and experts if the facts and circumstances of the case are explained by the FRC / AFRC and the instructions are given by the FRC / AFRC, and further suggested that regulatees should be given an opportunity to determine a mutually acceptable legal adviser or expert.
28. A respondent also suggested that the FRC / AFRC should disclose all external expert advice received irrespective of whether the FRC / AFRC ultimately decides to rely on that advice.
29. As for external legal advisers, while the majority of respondents gave no specific indication or did not express any negative views with the proposal that an external legal adviser may be instructed by the FRC / AFRC on a discretionary basis, one respondent requested for a legal professional performing a role similar to that of a "case adviser" to be appointed to all disciplinary cases and another took the view that the FRC / AFRC should avoid involving external legal professionals to the extent possible to eliminate prolonged proceedings.

The FRC's responses

30. Having carefully considered all of the above responses, the FRC remains of the view that the proposed approach, together with the safeguards set out in paragraph 32 of the Consultation Paper, strike the appropriate balance between the need for transparency and fairness, and the need to have an effective and efficient disciplinary process.
31. The FRC would emphasize that the FRC / AFRC will generally rely on its own in-house expertise to deal with any legal, auditing or accounting issues which may arise. However, the FRC / AFRC may consider it appropriate in the circumstances of a particular case to instruct external legal advisers and/or experts. In this regard:

- 31.1 Depending on the nature, complexity and importance of the issues involved, the FRC / AFRC may consider it appropriate to obtain external advice in a particular case. Where the expert advice is obtained by the FRC / AFRC for use as evidence in the disciplinary action, the evidence will be identified in the List of Documents enclosed with the NPDA and made available to the regulatee. For the avoidance of doubt, this is regardless of whether or not the expert advice received is favourable to the FRC / AFRC. However, legal advice obtained by the FRC / AFRC is generally protected by legal professional privilege and will not be disclosed.
- 31.2 The regulatee will be given an opportunity to comment on any such expert advice obtained by the FRC / AFRC if such advice is used as evidence in the disciplinary action. If the regulatee considers it appropriate to do so, the regulatee may also adduce his or her or its own expert evidence in response to the NPDA regardless of whether the FRC / AFRC has itself obtained any expert advice. The FRC / AFRC will consider all available information, including any representations made and expert evidence produced by the regulatee, before making a decision.
32. The comments received relating to lack of independence and impartiality of experts from a panel appear to arise from a misunderstanding in relation to the nature and purpose of the proposed panel arrangement. The FRC would like to clarify that the proposed panel will not consist of members from its existing Honorary Advisory Panel. Rather, it is a panel of service providers the FRC will maintain internally, i.e. an approved list of external legal advisers and experts, to ensure their independence will be properly assessed, and such that timely instruction of such approved external legal advisers and/or experts can be given for any particular case, with standard terms of engagement relating to independence and conflicts of interests applied.
33. To put in place adequate safeguards in the selection and instruction process, the FRC / AFRC will lay down criteria for shortlisting and including the external legal advisers and experts on the list, which will be subject to oversight by the Board. There will also be a mechanism to review the approved list regularly to

ensure that the external legal advisers and experts are suitably maintained on the list¹.

34. It is envisaged that in the FRC's / AFRC's disciplinary process, an expert will play a similar role to an expert in the court process, and the expert will be subject to similar court principles governing experts. In this regard, the FRC would emphasize that an expert's evidence is the independent product of the expert. An expert witness is not an advocate for a party. Where an expert is permitted by a court to give opinion on a subject as evidence, the expert's overriding duty is to provide independent assistance to the court, by way of an objective, unbiased opinion in relation to those matters within the expert's expertise. An expert witness' paramount duty is to the court and not to the person from whom the expert has received instructions or by whom the expert is paid.

C. Representations to the FRC / AFRC

Summary of respondents' comments

35. The FRC received numerous requests for clarification and suggestions in respect of the process for making representations to the FRC / AFRC. Some respondents were concerned about the timing and time limit for making representations, whilst other respondents were concerned about the form that the representations should take (in particular, the processes around oral hearing or representations). One respondent suggested clarifying whether requesting oral representations would be a routine part of the disciplinary process of the FRC / AFRC and a few respondents suggested that regulatees should be entitled to an automatic right to make oral representations / submissions.

The FRC's responses

36. As regards the timing and time limit for making representations to the FRC / AFRC:
- 36.1 A few respondents suggested that regulatees should be allowed to make representations to the FRC / AFRC before the issuance of the NPDA or at least before sanctions are proposed. The FRC remains of the view that the appropriate juncture for regulatees to make representations to the

¹ These are best practice measures in respect of procurement of services recommended in the Best Practice Checklist on Procurement issued by the Independent Commission Against Corruption.

FRC / AFRC is after the issuance of the NPDA, which will set out the allegations against the regulatee as well as the facts and evidence relevant to the allegations, the FRC's / AFRC's preliminary views on the allegations and the proposed sanctions. At this stage, regulatees will be presented with a complete picture of the case they have to answer and will be in the best position to address all relevant matters, including the appropriateness of any proposed sanctions. There is no unfairness to regulatees as they would have the opportunity to make representations and provide evidence to the investigator during the investigation process, and in any event the FRC / AFRC will not make any final disciplinary decision without first giving the regulatee a reasonable opportunity of being heard at the disciplinary stage.

36.2 The FRC notes the concern of some respondents that the initial 30-day time limit for making representations in response to the NPDA may not be sufficient for complex cases. The FRC does not intend to impose an unreasonably tight timetable on regulatees. While the FRC is of the view that the 30-day time limit is normally an appropriate timeframe for responding to the NPDA, the FRC may set a longer time limit in complex cases and the FRC / AFRC will be pragmatic and reasonable in this regard. Further, the FRC / AFRC will (instead of may) also consider reasonable requests for extension of time. The FRC has further clarified this point in paragraph 15 of Final Document II.

37. Under the proposed process, disciplinary actions are normally determined on the basis of written representations. However, if, in addition to written representations, the regulatee wishes to make oral representations, the regulatee may ask for a meeting with the FRC / AFRC. A few respondents sought further clarification as to when a meeting or hearing would be held and the format of any meeting or hearing. The FRC responds as follows:

37.1 The FRCO / AFRCO does not envisage an adversarial hearing (i.e. similar to a trial) being held at this stage. Accordingly, any meeting with the FRC / AFRC will not be in the nature of a hearing; rather, it is an opportunity for regulatees to make representations orally in circumstances where such representations could not be adequately set out in writing. It is also an opportunity to allow regulatees to answer any questions which the FRC / AFRC may have and clarify matters. As such, the meeting will be held in private with the personnel of the Department

of Discipline, who will make appropriate records of the representations made.

- 37.2 If a regulatee wishes to make oral representations, the regulatee should make a request to the FRC / AFRC in writing. Given the broad spectrum of cases that the FRC / AFRC will consider in the future, it is anticipated that not all regulatees may wish to make oral representations, and efficiency and flexibility in the process can be maintained through the reliance on written representations in the normal course whilst allowing the regulatee an opportunity to request for oral representations provided that the regulatee explains how the oral representations, on top of the written representations already made, will assist the FRC / AFRC in its disciplinary decision-making (see further paragraph 37.3 below). In this regard, the FRC would take this opportunity to emphasize that the FRC / AFRC will not unreasonably withhold requests for a meeting with the FRC / AFRC in order to ensure fairness to the regulatee concerned.
- 37.3 As to the form of the request, it appears that the relevant requirements have not been sufficiently made clear in the proposed Outline of the AFRC's Disciplinary Process. The FRC would like to further clarify as follows:
- (i) Any request for a meeting should be made at the same time as the regulatee submits his or her or its written response to the NPDA.
 - (ii) In addition to explaining how the oral representations, on top of the written representations already made, will assist the FRC / AFRC in its disciplinary decision-making, the regulatee should set out the issues which the regulatee would like to address the FRC / AFRC on in the meeting for the FRC's / AFRC's consideration. The FRC / AFRC expects oral representations to be limited as far as possible to matters which could not be adequately dealt with by way of written representations.
- 37.4 As noted in paragraph 37.1 above, the meetings are not adversarial in nature and not intended to be an oral hearing similar to a trial. As such, these meetings are not intended for legal advisers to make lengthy legal submissions or for expert advisers to present expert evidence, which should ordinarily be set out in writing. The FRC / AFRC will ordinarily expect the regulatee (or, where the regulatee is not an individual, the

authorized representative of the regulatee) to attend the meeting, who may be accompanied by the regulatee's appointed legal and/or expert advisers. Although the FRC / AFRC will ordinarily expect the regulatee or its authorized representative to make oral representations to the FRC / AFRC directly, in an appropriate case, the FRC / AFRC may in its discretion allow the regulatee's legal and/or expert advisers to make oral representations on the regulatee's behalf.

- 37.5 There is a suggestion from some respondents that regulatees are entitled, as a matter of natural justice, to an "automatic right" to make oral representations in all cases and for the regulatees' legal or expert advisers to address the FRC / AFRC directly. The FRC does not agree. What the law stipulates is a reasonable opportunity to be heard before a disciplinary decision is made by the FRC / AFRC, without prescribing the form that representations should take. It is within the FRC's / AFRC's discretion to decide whether oral representations, in addition to written representations already made, is necessary based on the circumstances of each case. The FRC / AFRC will conduct an assessment on a case-by-case basis and will adhere to the requirements of natural justice at all times to ensure fairness to regulatees whilst ensuring efficiency in the process that meets the expectation of the public. This is consistent with the practice of other local financial regulators, such as the Securities and Futures Commission ("**SFC**"), which operates under a similar legislative framework.
38. The FRC would also take this opportunity to correct any misunderstanding that regulatees are only allowed to seek legal advice after the issuance of the NPDA. The FRC fully respects regulatees' right to legal advice and regulatees are at liberty to seek legal advice at any time that they consider appropriate.
39. Amendments have been made to paragraphs 17 and 32 of Final Document II to reflect the above and further clarify matters.

D. Confidentiality and disclosure of sanctions

Summary of respondents' comments

40. One respondent suggested that the disciplinary process should be kept confidential until the disciplinary decision of the FRC / AFRC has been accepted by the regulatee or upon the conclusion of the appeal process. Clarifications were

also requested by one respondent in respect of the disclosure of agreements made pursuant to section 37I of the FRCO / AFRCO.

The FRC's responses

41. To clarify, the disciplinary process of the FRC / AFRC is conducted confidentially in the first instance. Any subsequent review or appeal is subject to the control of the Tribunal or the Court of Appeal, as the case may be.
42. Insofar as the disclosure of sanctions is concerned (including the disclosure of actions taken under an agreement made pursuant to section 37I of the FRCO / AFRCO), the relevant requirements are set out in section 37K of the FRCO / AFRCO and summarized in paragraphs 25 to 27 of Final Document I and paragraphs 24 to 26 of Final Document VI. For convenience, the relevant requirements are reproduced as follows:
 - 42.1 The FRC / AFRC will disclose to the public the material facts of the case, the FRC's / AFRC's decision with reasons and the disciplinary sanction imposed / action taken, unless the disclosure relates to a private reprimand; may adversely affect any criminal proceedings before a court or magistrate; or in the FRC's / AFRC's opinion, is not in the interest of the investing public or in the public interest.
 - 42.2 The disclosure may only be made after:
 - (i) where a sanction is imposed upon the conclusion of the disciplinary process – the expiry of the period for lodging an application for review to the Tribunal; or if an application for review is lodged, the disposal of the review; and
 - (ii) where a settlement is reached and disciplinary action is taken by consent pursuant to section 37I of the FRCO / AFRCO – a notice pursuant to section 37I(4) of the FRCO / AFRCO is issued.

E. Review of interlocutory matters

Summary of respondents' comments

43. Two respondents suggested that regulatees should be granted a right of review in respect of the FRC's / AFRC's decision on interlocutory matters (such as whether to issue an NPDA or grant a time extension request).

The FRC's responses

44. As is common practice, and in accordance with the legislative regime set out in the FRCO / AFRCO, there will not be a review process for interlocutory matters. The rights of regulatees are adequately safeguarded by the review / appeal process.

F. Composition of the FRC's / AFRC's Board and the Tribunal and the review process

Summary of respondents' comments

45. Suggestions were made by a few respondents as regards the composition of the Board of the FRC / AFRC and the Tribunal, as well as the process for review proceedings before the Tribunal. A few respondents were also of the view that the period of 21 days for applying to the Tribunal for review is too short.

The FRC's responses

46. The FRC notes the comments as regards the composition of the Board of the FRC / AFRC and the Tribunal, as well as the process for review proceedings before the Tribunal. These matters are stipulated under the FRCO / AFRCO and the relevant decisions are not made by the FRC / AFRC. The composition of the FRC / AFRC is set out in section 7 of the FRCO / AFRCO, which requires at least one-third of Board members to be appointed because of their knowledge and experience in PIE engagements (i.e. former auditors). The composition of the Tribunal is set out in section 37N and Schedule 4A of the FRCO / AFRCO. The time limit for application for review (21 days) is governed by sections 37M and 37Q of the FRCO / AFRCO.

Document B – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons

Question 3: Do you agree that the proposed guidelines should be principle-based, and that further guidance as to the application of those principles to specific factual scenarios should be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases? Please explain any improvements that you would propose and the reasons therefor.

Question 4: Do you have any comment on the list of factors (as set out in paragraphs 9 to 15 of the proposed guidelines) that the AFRC may take into consideration when determining a pecuniary penalty, including those relating to cooperation (or non-cooperation) with the AFRC? Are there any other factors that you believe the AFRC should include in the list? Please explain with rationale.

Overall summary of respondents' views and the FRC's responses

47. All respondents (100%) who responded to these questions either expressed overall support, or gave no specific indication or did not express negative views, regarding the proposed principle-based approach. In particular, 14 out of the 16 respondents who responded to these questions were supportive of the proposal that the proposed guidelines should be principle-based given the wide spectrum of misconduct that could occur. Most of these respondents also agreed that further application guidance could be provided using experience of the operation of the new system and decided cases. Two respondents gave no specific indication or did not express negative views.
48. Regarding the list of factors, five out of the 16 respondents who responded agreed that it is appropriate and reasonable. There is general agreement among these respondents that the proposed list of factors is reasonable and comprehensive and will assist the FRC / AFRC in arriving at a fair and appropriate decision based on the specific circumstances of each case. 11 respondents gave no specific indication or did not express negative views.
49. The FRC is pleased to note the respondents' overall support.

Specific comments on the FRC's proposals

50. The main areas for suggested improvements or clarification and the FRC's responses are set out below.

A. Specific guidance / more detailed guidelines

Summary of respondents' comments

51. While agreeing with the principle-based approach, numerous respondents also requested for specific guidance or more detailed guidelines with examples as to how the FRC / AFRC would apply those principles in a variety of circumstances. Among these respondents, two further suggested that the FRC / AFRC stratify the applicable ranges of sanction by reference to the nature or gravity of the misconduct, although there are opposing views in this regard.

The FRC's responses

52. To paraphrase one respondent's submission, it is fundamental that all case outcomes must be dependent on the specific circumstances of the case under consideration. Given the wide spectrum of misconduct that could occur, the differing level of responsibilities of the regulatees involved and the changing market environment, the FRC does not consider it appropriate to provide specific guidance or more detailed guidelines as to the operation of particular principles contained in the proposed Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons (Consultation Document B), as ultimately each case will turn on its own facts. For similar reasons, the FRC also does not consider it appropriate to stratify the applicable ranges of sanction based on the nature or gravity of the misconduct.
53. The FRC remains of the view that the most appropriate way of providing application guidance to regulatees is through the experience of the operation of the new process and decided cases. In an effort to familiarize regulatees with the new process, the FRC / AFRC will, in addition to the issuance of decision notices to the regulatee, publish press releases and/or statements of disciplinary action, and proactively engage with key stakeholders to facilitate communication, whenever necessary, in order to ensure that the market understands its policies and processes, and their underlying principles in a fair and transparent manner.

B. Communication of case outcomes

Summary of respondents' comments

54. Three respondents highlighted the importance for the FRC's / AFRC's communications of case outcomes (including decision notices, press releases and statements of disciplinary action) to be comprehensive and clear so as to assist regulatees understand how the FRC / AFRC will apply the principle-based approach in practice. A respondent also requested that the FRC / AFRC includes the matters articulated by the regulatees in the communications.

The FRC's responses

55. The FRC agrees that communications of case outcomes (including decision notices, press releases and statements of disciplinary action) should be clear and contain sufficient details to enable regulatees to understand how the FRC / AFRC applies the principle-based approach in practice. The level of details required will depend on the circumstances of the case and the nature of the communication concerned.
56. In this connection, the FRC would like to clarify that while a decision notice will be issued to the regulatee against whom the decision is being made, this will generally not be made available to the public. However, a summary of that decision will ordinarily be made available by way of a press release and/or a statement of disciplinary action in accordance with the requirements of section 37K of the FRCO / AFRCO (see paragraph 42 above).

C. Cooperative and uncooperative conduct²

Summary of respondents' comments

57. A respondent believed that the baseline for what is considered to be cooperative conduct should be the fulfilment of statutory and regulatory requirements, and that anything over and beyond that baseline is a higher level of cooperation that

² Some of these comments are directed at the Guidance Note on Cooperation with the AFRC (Engagement Document H), which was not subject to consultation. Nevertheless, in light of the concerns expressed, the FRC will also address these comments in this Consultation Conclusions.

is technically required for the purposes of mitigation. The respondent believed it important that the FRC should not confuse the concepts.

58. Some respondents also requested clarification or raised concerns as to what amounts to cooperative or uncooperative conduct particularly in respect of self-reporting to the FRC / AFRC, the withholding or concealing of information, the exercise of the right of regulatees to defend themselves against allegations and the right to apply for review / appeal. One respondent suggested that the FRC may consider adding frivolous defence or challenge with intention to drag or delay the disciplinary process as an example of uncooperative conduct.

The FRC's responses

59. Most of the concerns expressed by respondents appear to stem from focusing on the specific examples of what constitutes cooperative and uncooperative conduct, and/or a misconception of how the proposed Guidance Note on Cooperation with the AFRC (Engagement Document H) ("**Guidance Note**") will be applied in practice. The FRC has further clarified the general principles behind cooperative and uncooperative conduct, and would wish to emphasize that:

59.1 As explained in the Guidance Note, cooperation in the FRC's investigation and disciplinary process will be considered as a mitigating factor at the point of determining sanctions, and the FRC / AFRC will adopt a principle-based approach and consider all the circumstances of the case. However, merely fulfilling statutory or regulatory obligations in the FRC's / AFRC's investigations and disciplinary process will not, in and of itself, be considered as a mitigating factor at the point of determining sanctions, as such conduct is considered as "compliant" rather than "cooperative". To avoid any confusion that may be caused by the use of the term "exceptional cooperation" in the Guidance Note, changes have been made to paragraphs 7 and 9 of Final Document V to further clarify matters.

59.2 A respondent was concerned with the inclusion of delay in self-reporting as an example of uncooperative conduct as there could be wholly innocent reasons why the regulatee had failed to self-report. The FRC would like to stress that the FRC / AFRC will adopt a principle-based approach and consider all the circumstances when assessing whether there has been cooperative or uncooperative conduct. Accordingly, the FRC / AFRC will not ordinarily expect a regulatee to self-report issues

which the regulatee was not aware of and could not reasonably be expected to be aware of. Amendments have been made to paragraph 12 of Final Document V to clarify the general principles that the FRC / AFRC would apply in assessing whether there has been uncooperative conduct and to emphasize that the FRC / AFRC will consider all the circumstances of a case.

- 59.3 For similar reasons, the FRC / AFRC will not ordinarily consider a regulatee to be uncooperative for failing to produce information and/or documents which could not have been located or identified by the regulatee with reasonable diligence.
- 59.4 The FRC fully respects the right of regulatees to defend themselves against allegations of misconduct. Accordingly, the exercise of this right will not, in and of itself, be considered to be uncooperative conduct by the FRC / AFRC. However, the FRC / AFRC may take into account the conduct of regulatees in defending themselves (for example, as noted by one respondent, raising frivolous defence or challenge with intention to drag or delay the disciplinary process could be considered as uncooperative) when determining sanctions. As noted above, the FRC / AFRC will adopt a principle-based approach and consider all the circumstances when assessing whether there has been cooperative or uncooperative conduct.
- 59.5 In relation to the exercise of the right to apply for review / appeal, the FRC would like to clarify that any review / appeal will be conducted by the independent Tribunal and the Court of Appeal respectively and this will have passed the stage of determination by the FRC / AFRC. As such, the FRC / AFRC cannot and will not take into account the exercise of the right to review / appeal when determining sanctions at the first instance.
- 59.6 For the avoidance of doubt, the FRC would also take this opportunity to remind regulatees that they can self-report facts and/or matters which may constitute an allegation of misconduct to the FRC / AFRC as soon as the issues are identified without making any admission as to liability.
60. Further application guidance will be provided to regulatees in the manner described in paragraph 53 above.

D. Recognition for cooperation³

Summary of respondents' comments

61. A respondent suggested that the “three stages” approach set out in paragraphs 22 to 23 of the Guidance Note may not be applicable in all circumstances as cooperative conduct may exist even though it does not result in the early resolution of disciplinary matters and questioned how the reduction to sanctions set at a percentage could be applied to the non-financial sanctions. The respondent also invited the FRC to reconsider the possibility of resolving disciplinary matters on a “no admission of liability” basis, as there may be external factors which practically prevent regulatees from admitting liability (for example, parallel proceedings).

The FRC's responses

62. The FRC would like to clarify that the FRC / AFRC will take into account all relevant circumstances, including all cooperative conduct, when determining sanctions regardless of whether the cooperation leads to the early resolution of the disciplinary action. The FRC / AFRC will decide the weight to ascribe to such conduct on a case-by-case basis. Amendments have been made to paragraphs 21, 22 and 23 of Final Document V to further clarify this.
63. As for the reduction to sanctions being set at a percentage, in addition to pecuniary penalties, this may also be applied towards non-financial sanctions such as the length of suspension of registration or the length of non-issuance of practising certificates.
64. The FRC appreciates that some regulatees may find it practically difficult to admit to liability where there are ongoing parallel proceedings. Nevertheless, given the need for credible deterrence and transparency, the FRC maintains the view that it will generally not be in the public interest for disciplinary actions to be resolved in private or on a “no admission of liability” basis.

E. List of factors

65. The FRC received six suggestions in relation to the list of factors.

³ See footnote 2 above.

Summary of respondents' comments

66. Out of the six suggestions:

66.1 There were four suggested additions to the list of factors, being:

- (i) whether the misconduct has led to material misstatement in the relevant financial statements;
- (ii) whether there has been deliberate conduct to delay the disciplinary process;
- (iii) actions of and sanctions imposed by other regulators; and
- (iv) civil claims for damages by the courts in parallel civil proceedings.

66.2 There were two suggested removals from the list of factors, being:

- (v) the likelihood that the same type of misconduct will recur; and
- (vi) the position of an individual regulatee within a PIE auditor.

The FRC's responses

67. In respect of the suggested additions of factors (i) and (ii), the FRC considers that the Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons (Consultation Document B), being principle-based, are sufficiently flexible to address these matters and no amendment in this regard is necessary.

68. In particular, with regard to factor (i), the FRC notes that there appears to be a misconception that the FRC, in assessing the misconduct, should determine whether the financial statements on which the regulatee's audit opinion was expressed were materially misstated. The FRC would wish to emphasize that this is not the case. If the regulatee's conduct has fallen below the expected standards (for example, where the regulatee has failed to properly carry out audit procedures in accordance with the applicable auditing standards), the FRC / AFRC may take disciplinary action against the regulatee regardless of whether the relevant financial statements were materially misstated. The FRC / AFRC

may, however, take this into account when determining sanctions particularly when assessing the impact of the misconduct.

69. Similarly, in relation to factor (ii), it is not necessary to add an additional factor for consideration of whether there has been deliberate conduct to delay the disciplinary process as this is implicit in the consideration of the degree of non-cooperation with the FRC / AFRC and covered by the general principles relating to uncooperative conduct in the Guidance Note (paragraph 13(a) of Final Document III and paragraph 12 of Final Document V).
70. In respect of the requests for clarification as to whether the FRC / AFRC will take into account factor (iii), the actions of and sanctions imposed by other regulators, and factor (iv), civil claims for damages by the courts in parallel civil proceedings in the determination of sanctions, the FRC / AFRC will apply a principle-based, proportionality approach in the determination of sanctions and consider all relevant circumstances on a case-by-case basis. In an appropriate case, this could include the prior sanctions imposed or regulatory action taken by other competent authorities to ensure that consideration is given to the need to be proportionate. Concluded successful civil claims may also reduce the part of a pecuniary penalty, if any, that is intended to stop a regulatee benefiting from his / her / its misconduct. For the avoidance of doubt, factors (iii) and (iv) do not mean that the FRC / AFRC will put on hold its disciplinary action and wait for the other regulator's action or imposition of sanction, or the conclusion of the parallel, ongoing civil proceedings. To do so would compromise the efficient disposal of disciplinary cases, which will be contrary to the public interest. The FRC / AFRC may take into account the prior action taken or sanctions imposed by other regulators, as well as the damages awarded in a concluded civil action. Whether or not such actions, sanctions and/or damages are relevant will depend on the circumstances of the particular case. To further clarify that these factors would be taken into account as part of the proportionality principle, two new factors (i.e. prior sanctions imposed or regulatory action taken by other competent authorities, and the result of any concluded civil action taken by third parties) have been added to paragraphs 13(g) and (h) of Final Document III.
71. Regarding the suggested removal of factor (v) relating to the likelihood that the same misconduct will recur, the FRC has reconsidered this issue in light of the comment received and agrees that there may be practical difficulties in assessing the likelihood of recurrence of misconduct. This factor has been removed in paragraph 13 of Final Document III accordingly.

72. As for factor (vi), the position of an individual regulatee within a PIE auditor, some respondents expressed the view that they did not understand how this could be relevant to the determination of sanctions. Although each case will turn on its own facts, the FRC notes that an individual's position within a PIE auditor may have an impact on the scope of responsibilities of the individual concerned. The FRC has further clarified this factor in paragraph 13(e) of Final Document III.

F. Financial jeopardy

Summary of respondents' comments

73. Some respondents sought further clarification and elaboration of the concept of financial jeopardy.

The FRC's responses

74. Financial jeopardy is not a new concept and was introduced during the legislative discussions in the last regulatory reform in 2019. In response to concerns from the profession at the time that the maximum pecuniary penalty of HK\$10 million (or 3 times the profit gained or loss avoided) was too high, the then Secretary for Financial Services and the Treasury noted that in determining the pecuniary penalty to be imposed in each case, the FRC must take into consideration the principles of fairness and proportionality, and give consideration to the financial position of the relevant firms or persons in order not to put them in financial jeopardy. Financial jeopardy was subsequently incorporated in the Existing Fining Guidelines to safeguard the interests of regulatees. Financial jeopardy is also a well-established principle adopted by other regulators in considering the appropriate amount of pecuniary penalty to be imposed. For example, the SFC and the Insurance Authority note in their respective fining guidelines that a fine should not have the likely effect of putting a regulatee in financial jeopardy. As such, the FRC considers the meaning of "financial jeopardy" to be sufficiently clear and would not require any further clarification.
75. However, the FRC would like to take this opportunity to clarify that "financial jeopardy" would be relevant as a mitigating factor only when the regulatee intends to rely on it and provides supporting evidence regarding his or her or its financial situation. In particular:

- 75.1 In the ordinary course, a regulatee is not required to provide evidence to the FRC / AFRC as to the financial situation of the regulatee when responding to the NPDA.
- 75.2 Such evidence will only be required if the regulatee is of the view that the proposed pecuniary penalty would have the effect of putting the regulatee in financial jeopardy, and the regulatee would like the FRC / AFRC to reduce the penalty on this basis. The FRC has further clarified this in paragraph 12(b) of Final Document II and paragraph 14 of Final Document III.

G. Separate guidelines and/or different sets of factors for different types of regulatees

Summary of respondents' comments

76. Two respondents suggested that, in light of the different roles and responsibilities of different types of regulatees (i.e. registered engagement partners, registered engagement quality control reviewers, registered quality control system responsible persons and PIE auditors), the FRC / AFRC should develop separate guidelines and/or different sets of factors for each type of regulatees.

The FRC's responses

77. The FRC does not agree that separate guidelines and/or different sets of factors should be developed for each type of regulatees. The principle-based approach is sufficiently flexible to accommodate the circumstances of different types of regulatees, and having separate guidelines and/or different sets of factors will create unnecessary complexity to the disciplinary process.

Document C – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons

Question 5: Do you agree that the proposed guidelines should be principle-based, and that further guidance as to the application of those principles to specific factual scenarios should be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases? Please explain any improvements that you would propose and the reasons therefor.

Question 6: Do you have any comment on the list of factors (as set out in paragraphs 8 to 14 of the proposed guidelines) that the AFRC may take into consideration when determining a pecuniary penalty, including those relating to cooperation (or non-cooperation) with the AFRC? Are there any other factors that you believe the AFRC should include in the list? Please explain with rationale.

Overall summary of respondents' views and the FRC's responses

78. All respondents (100%) who responded to these questions either expressed overall support for, or gave no specific indication or did not express negative views, regarding the proposed principle-based approach. In particular, 15 out of the 17 respondents who responded to these questions were supportive of the proposal that the proposed guidelines should be principle-based, while two gave no specific indication or did not express negative views.
79. Regarding the list of factors, four out of the 17 respondents who responded agreed that it is appropriate and reasonable. 13 respondents gave no specific indication or did not express negative views.
80. The FRC welcomes the respondents' support for the regulatory principles behind the proposals.

Specific comments on the FRC's proposals

81. The responses received are broadly in line with those summarized above in respect of Document B – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons and will not be repeated. Please refer to the discussion above in respect of Document B – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons.

List of factors

Summary of respondents' comments

82. A respondent also suggested adding the following to the list of factors that the AFRC may take into consideration when determining a pecuniary penalty: (i) whether the individual regulatee concerned was coerced or pressured into

rendering the CPA misconduct; (ii) whether the individual regulatee initiated the CPA misconduct; and (iii) the degree of culpability of the individual regulatee.

The FRC's responses

83. The FRC is of the view that the Guidelines as presently drafted, which are principle-based, are sufficiently flexible to address these matters and no further amendment in this regard is necessary.

Document D – Sanctions Policy for PIE Auditors and Registered Responsible Persons

Question 7: Do you agree that the proposed policy should be principle-based, and that further guidance as to the application of those principles to specific factual scenarios should be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases? Please explain any improvements that you would propose and the reasons therefor.

Question 8: Do you have any comment on the list of factors (as set out in paragraphs 7 to 10 of the proposed policy) that the AFRC may take into consideration when determining sanctions, including those relating to cooperation (or non-cooperation) with the AFRC? Are there any other factors that you believe the AFRC should include in the lists? Please explain with rationale.

Overall summary of respondents' views and the FRC's responses

84. All respondents (100%) who responded to these questions either expressed overall support for, or gave no specific indication or did not express negative views, regarding the proposed principle-based approach. In particular, 12 out of the 16 respondents who responded to these questions were supportive of the proposal that the proposed policy should be principle-based, while four gave no specific indication or did not express negative views.
85. Regarding the list of factors, six out of the 16 respondents who responded agreed that it is appropriate and reasonable. 10 respondents gave no specific indication or did not express negative views.
86. The FRC welcomes the positive feedback on the proposals.

Specific comments on the FRC's proposals

87. The responses received are broadly in line with that set out above in respect of Document B – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons and will not be repeated. Please refer to the discussion above in respect of Document B – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons.

“Bottoms up” approach

Summary of respondents' comments

88. In addition to those responses, a respondent also suggested that the FRC should consider adopting a “bottoms up” approach which requires the decision-maker to consider all sanctions available in ascending order of seriousness.

The FRC's responses

89. The FRC is of the view that the simplified 2-step approach, which is supported by the majority of respondents, is the most appropriate approach. The FRC / AFRC will perform a holistic assessment and determine the appropriate sanction in the circumstances of the particular case before it.

Document E – Sanctions Policy for Professional Persons

Question 9: Do you agree that the proposed policy should be principle-based, and that further guidance as to the application of those principles to specific factual scenarios should be provided by way of decision notices, press releases and statements of disciplinary action to be issued in respect of future disciplinary cases? Please explain any improvements that you would propose and the reasons therefor.

Question 10: Do you have any comment on the list of factors (as set out in paragraphs 7 to 10 of the proposed policy) that the AFRC may take into consideration when determining sanctions, including those relating to cooperation (or non-cooperation) with the AFRC? Are there any other factors that you believe the AFRC should include in the lists? Please explain with rationale.

Overall summary of respondents' views and the FRC's responses

90. All respondents (100%) who responded to these questions either expressed overall support for, or gave no specific indication or did not express negative views, regarding the proposed principle-based approach. In particular, 13 out of the 17 respondents who responded to these questions were supportive of the proposal that the proposed policy should be principle-based, while four gave no specific indication or did not express negative views.
91. Regarding the list of factors, five out of the 17 respondents who responded agreed that it is appropriate and reasonable. 12 respondents gave no specific indication or did not express negative views.
92. The FRC welcomes the respondents' overall support for the regulatory principles behind the proposals.

Specific comments on the FRC's proposals

93. The responses received are broadly in line with that set out above in respect of Document C – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons and Document D – Sanctions Policy for PIE Auditors and Registered Responsible Persons. Please refer to the discussion above in respect of Document C – Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons and Document D – Sanctions Policy for PIE Auditors and Registered Responsible Persons.

Level of pecuniary penalty on non-practising regulatees

Summary of respondents' comments

94. A respondent further suggested that the AFRC should consider lowering the starting point of pecuniary penalty for non-practising CPAs (who do not usually have professional indemnity insurance coverage) to HK\$200,000, and to consider precedent decisions made by the HKICPA.

The FRC's responses

95. To the extent it is suggested that the pecuniary penalty to be imposed on non-practising regulatees should be lower than that for other regulatees, the FRC does not agree. The appropriate level of sanctions will always depend on the

circumstances of the case, including the nature, seriousness, frequency, duration and impact of the relevant misconduct and any applicable mitigating or aggravating factors.

96. The AFRC may consider past decisions of the HKICPA where it is appropriate to do so. However, the AFRC is not bound by past decisions of the HKICPA.

Others

Question 11: Do you have any other comments on the Proposed Documents that would help the AFRC to discharge its statutory regulatory obligations? If so, please elaborate with rationale.

Specific comments on the FRC's proposals

Summary of respondents' comments

97. The FRC has received a number of requests for clarification / suggestions in relation to the disciplinary regime. These include:
- 97.1 clarification as to the appropriate standard and burden of proof in disciplinary matters;
 - 97.2 clarification as regards the applicable transitional arrangements for audits completed before 1 October 2019;
 - 97.3 the creation of a publicly available sanction list to facilitate the search of sanction records to help ensure no “rolling bad apples”;
 - 97.4 continuous engagement with the profession and further education to help build understanding of regulatory systems and expectations; and
 - 97.5 periodically updating the relevant policies and guidelines.

The FRC's responses

98. The FRC appreciates the respondents' constructive comments and will respond as follows:

- 98.1 As with all disciplinary proceedings, the standard of proof is the civil standard of proof (on a balance of probabilities) and the burden is on the FRC / AFRC to prove the misconduct.
- 98.2 The relevant transitional arrangements are to be set out in subsidiary legislation which is in the process of being enacted. Further information will be available in due course.
- 98.3 The FRC agrees that the creation of a publicly available sanction list will be helpful to ensure no “rolling bad apples” and will consider creating a dedicated section on its website to facilitate the search of sanction records.
- 98.4 The FRC agrees with the importance of continuous engagement and education. As such, the FRC / AFRC will continue its effort to proactively engage with key stakeholders to facilitate communication, whenever necessary, in order to ensure the market understands its policies and processes, and their underlying principles in a transparent and timely manner.
- 98.5 As stated in the relevant policies and guidelines (i.e. Final Documents III, IV, VII and VIII), the FRC / AFRC will review the relevant policies and guidelines periodically and (where appropriate) revise the policies and guidelines in the light of experience.

Section 3 Conclusions and the way forward

99. Having carefully considered all of the responses received and in light of the overall support for the regulatory principles behind the proposals contained in the Consultation Documents, the FRC will implement the proposals subject to the amendments set out above. Consequential amendments will also be made to the Consultation and Engagement Documents in light of the commencement schedule below:

99.1 Documents applicable to PIE auditors and registered responsible persons will come into effect on 24 June 2022 and will supersede the Existing Documents. These include:

Document No.	Final Document
I	Discipline Policy Statement for PIE Auditors and Registered Responsible Persons
II	Outline of the FRC's Disciplinary Process
III	Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons
IV	Sanctions Policy for PIE Auditors and Registered Responsible Persons
V	Guidance Note on Cooperation with the FRC

Further consequential amendments will be made to the above documents upon the commencement of the Amendment Ordinance 2021.

99.2 Documents applicable to professional persons will take effect upon the commencement of the Amendment Ordinance 2021. These include:

Document No.	Final Document
VI	Discipline Policy Statement for Professional Persons

VII	Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons
VIII	Sanctions Policy for Professional Persons

100. The marked-up texts of the Final Documents are set out at **Appendix B**.
101. The FRC firmly believes that the proposals will facilitate the efficient and effective discharge of the FRC's / AFRC's disciplinary function in a transparent and fair manner, and the achievement of the FRC's / AFRC's aim of enhancing the quality of the accounting profession and the standards of corporate reporting and audits.
102. The FRC would like to thank all respondents for their time and effort in reviewing the proposals and for their detailed and thoughtful comments. The FRC will continue its effort to proactively engage with its key stakeholders to facilitate communication, whenever necessary, in order to ensure the market understands its policies, processes and their underlying principles in a transparent and timely manner.

Appendix A

List of respondents

(in alphabetical order)

1. An anonymous respondent
2. ACCA Hong Kong
3. BDO Limited
4. CPA Australia Ltd
5. Deloitte Touche Tohmatsu
6. Ernst & Young
7. Grant Thornton Hong Kong Limited
8. Hon Wong Chun-sek Edmund
9. Hong Kong Association of Registered Public Interest Entity Auditors Limited
10. Hong Kong Business Accountants Association
11. Hong Kong Institute of Certified Public Accountants
12. Insurance Authority
13. KPMG
14. Moore Stephens CPA Limited
15. PricewaterhouseCoopers
16. Securities and Futures Commission
17. The Hong Kong Association of Banks
18. The Hong Kong Chartered Governance Institute
19. The Hong Kong Institute of Directors
20. The Society of Chinese Accountants and Auditors

The submissions received are available on the FRC's website (<https://www.frc.org.hk/en-us/publications/engagement-and-consultation/submissions>), save for one respondent which requested its response to be withheld from publication.

Appendix B

Final Document I

**Discipline Policy
Statement for PIE Auditors
and Registered
Responsible Persons**

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 impose sanctions on the following persons where they have committed a misconduct and under certain specified situations:
 - (a) public interest entity (“**PIE**”) auditors, being:
 - (i) registered PIE auditors;
 - (ii) recognized PIE auditors; and
 - (b) registered responsible persons of a registered PIE auditor
 (together referred to as “**Regulatees**”).

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
PIE	A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.	3(1)
PIE engagement	A PIE engagement means any of the following types of engagements for the preparation of: <ul style="list-style-type: none"> • an auditor’s report on a PIE’s financial statements/annual accounts required by section 379 of the Companies Ordinance 	3A(1); Part 1 of Schedule 1A

	<p>(Cap. 622), the Listing Rules or any relevant code;</p> <ul style="list-style-type: none"> • a specified report required to be included in a listing document for the listing of a corporation's shares or stocks or for the listing of a collective investment scheme; or • an accountant's report required under the Listing Rules to be included in a circular issued by a PIE for a reverse takeover or a very substantial acquisition. 	
PIE auditor	A PIE auditor means a registered or recognized PIE auditor.	3A(1)
professional standard	<p>A professional standard means:</p> <ul style="list-style-type: none"> • any statement of professional ethics, or standard of accounting, auditing or assurance practices, issued or specified, or deemed to have been issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50); • any standard on professional ethics, or accounting, auditing or assurance practices, issued or specified by the International Accounting Standards Board, the International Auditing and Assurance Standards Board or the International Ethics Standards Board for Accountants; • any standard on professional ethics, or accounting, auditing or assurance practices, comparable to those referred to above which is allowed by the Securities and Futures Commission pursuant to the relevant code or by the Hong Kong Exchanges and Clearing Limited pursuant to the Listing Rules; or • any standard on professional ethics, or accounting, auditing or assurance practices, specified in the Listing Rules. 	2(1)

recognized PIE auditor	A recognized PIE auditor means an overseas auditor recognized under Division 3 of Part 3, including a Mainland auditor recognized under section 20ZT of the AFRCO.	3A(1)
registered PIE auditor	A registered PIE auditor means a practice unit registered under Division 2 of Part 3 of the AFRCO.	3A(1)
registered responsible person	A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor: <ul style="list-style-type: none"> • an engagement partner; • an engagement quality control reviewer; or • a quality control system responsible person. 	2(1)

Purpose of this document

4. The purpose of this Policy Statement is to provide an overview of the legal regime of the disciplinary function of the AFRC for Regulatees.
5. For details of the AFRC's disciplinary process, please refer to the [“Outline of the AFRC's Disciplinary Process”](#), which is available on the AFRC's website (<https://www.frc.org.hk/>).

Objectives of discipline

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.
7. The AFRC regulates through imposing disciplinary sanctions on Regulatees. It ensures that where there has been misconduct committed by Regulatees, or upon

the occurrence of certain specified events (as further elaborated in paragraph 11 below), appropriate and timely action will be taken:

- (a) to uphold proper standards of conduct amongst Regulatees so as to maintain and enhance the quality and reliability of future audits;
- (b) to maintain and promote public confidence in:
 - (i) the integrity of the accountancy profession;
 - (ii) the quality of their audits; and
 - (iii) the regulation of the accountancy profession;
- (c) to protect the public from Regulatees whose conduct has failed to comply with the relevant requirements set out in the AFRCO; and
- (d) to deter Regulatees from committing misconduct relating to PIE audits.

Circumstances in which disciplinary sanctions may be imposed

Misconduct

8. Pursuant to sections 37D and 37E of the AFRCO, disciplinary action may be taken against a Regulatee who has committed a misconduct. As provided in sections 37A and 37B of the AFRCO, misconduct in this context includes:
- (a) a contravention of a provision of the AFRCO;
 - (b) a contravention of a condition imposed in relation to the registration or recognition of the PIE auditor concerned;
 - (c) a contravention of a requirement imposed on a Regulatee under the AFRCO;
 - (d) conduct in relation to a PIE engagement which is or is likely to be prejudicial to the interest of the investing public or the public interest; or
 - (e) a “practice irregularity” as defined under section 4 of the AFRCO (see paragraph 9 below).

Sections
37D and
37E of the
AFRCO

Sections
37A and
37B of the
AFRCO

9. Examples of a “practice irregularity” include situations where a Regulatee, in relation to a PIE engagement:
- (a) falsified or caused to be falsified a document;
 - (b) made a statement, in respect of a document, that was material and that the Regulatee knew to be false or did not believe to be true;
 - (c) has been negligent in the conduct of the Regulatee’s profession;
 - (d) has been guilty of professional misconduct;
 - (e) did or omitted to do something that would reasonably be regarded as bringing or likely to bring discredit on the Regulatee, 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 ~~any direction lawfully given by the AFRC,~~ or the provisions of any bylaw or rule made, or any direction lawfully given by the Council of the HKICPA.
10. The above examples are not exhaustive. Please refer to section 4 of the AFRCO for a full list of matters that constitute a “practice irregularity”.

Section 4 of the AFRCO

Other situations where the AFRC may impose sanctions

11. Section 37F of the AFRCO sets out a number of additional situations in which the AFRC may impose sanctions on registered PIE auditors and registered responsible persons. These generally relate to insolvency events, the conviction of an offence that impugns the fitness and properness of the relevant persons and mental incapacity.

Section 37F of the AFRCO

Opportunity to be heard

12. The AFRC must not impose a sanction on a Regulatee without first giving the Regulatee a reasonable opportunity of being heard, i.e. an opportunity to make written or oral representations. Section 37G of the AFRCO
13. Please refer to the [“Outline of the AFRC’s Disciplinary Process”](#), which is available on the AFRC’s website (<https://www.frc.org.hk/>) for details in relation to the opportunity to make representations.

Sanctions

Sanctions for misconduct

14. The AFRC may impose the following sanctions for misconduct on a PIE auditor: Section 37D of the AFRCO
- (a) public or private reprimand;
 - (b) remedial action;
 - (c) pecuniary penalty;
 - (d) imposition of a condition on the registration or recognition;
 - (e) revocation or suspension of the registration or recognition; and
 - (f) prohibition from applying to be registered or recognized as a PIE auditor for a period of time.
15. The AFRC may impose the following sanctions for misconduct on a registered responsible person: Section 37E of the AFRCO
- (a) public or private reprimand;
 - (b) remedial action;
 - (c) pecuniary penalty; and

- (d) removal of name from the list of registered responsible persons permanently or for a period of time.

16. The above sanctions may be imposed singly or in combination.

Other situations where the AFRC may impose sanctions

17. In the situations described in paragraph 11 above, the AFRC may:

Section 37F
of the
AFRCO

- (a) revoke or suspend the registration of a registered PIE auditor; and
- (b) remove the name of a registered responsible person from the list of registered responsible persons permanently or for a period of time.

Approach to determining pecuniary penalty and other sanctions

18. The AFRC will consider all the relevant circumstances of a case to determine the appropriate sanction or combination of sanctions which would achieve the purpose of disciplinary action with due regard to the principle of proportionality.

Sections 13
and 37H of
the AFRCO

19. Before imposing a pecuniary penalty, the AFRC is required to have regard to the ["Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons"](#), which is available on the AFRC's website (<https://www.frc.org.hk/>).

20. For further information as to the AFRC's approach to sanctions generally, please refer to the ["Sanctions Policy for PIE Auditors and Registered Responsible Persons"](#), which is also available on the AFRC's website (<https://www.frc.org.hk/>).

Review of the AFRC's disciplinary decisions

21. Any Regulatee who is aggrieved by the AFRC's disciplinary decision may, within 21 days beginning ~~on the day~~ after the day on which a notice of the decision is issued by the AFRC, apply to the ~~Accounting and Financial Reporting Public Interest Entities Auditors~~ Review Tribunal ("**Tribunal**") for a review of that decision.

Sections
37M and
37Q of the
AFRCO

22. The Tribunal is independent of the AFRC. The Tribunal consists of a chairperson (a former Justice of Appeal of the Court of Appeal, a former judge / recorder / deputy judge of the Court of First Instance or a person eligible for appointment as a judge

Sections 2,
3, and 5 of
Schedule
4A of the
AFRCO

of the High Court) and two other ordinary members from the Tribunal panel, all of whom must not be public officers.

23. The chairperson and members of the Tribunal panel must be appointed by the Chief Executive of the HKSAR. Sections 2 and 3 of Schedule 4A of the AFRCO

Appeal

24. If a party to a review is dissatisfied with the determination of the review made by the Tribunal, the party may, within 30 days after the day on which the determination is issued to the party, apply to the Court of Appeal for leave to appeal against that determination on a question of law and/or fact. Section 37ZG of the AFRCO

Disclosure of sanctions

25. The AFRC must disclose to the public the material facts of the case, the AFRC's decision with reasons and the disciplinary sanction imposed / action taken, unless the disclosure: Section 37K of the AFRCO
- (a) relates to a private reprimand;
 - (b) may adversely affect any criminal proceedings before a court or magistrate; or
 - (c) in the AFRC's opinion, is not in the interest of the investing public or in the public interest.
26. The disclosure may only be made after:
- (a) where a sanction is imposed upon the conclusion of the disciplinary process –
 - (i) the expiry of the period for lodging an application for review to the Tribunal; or
 - (ii) if an application for review is lodged, the disposal of the review; or
 - (b) where a settlement is reached and disciplinary action is taken by consent pursuant to section 37I of the AFRCO – a notice pursuant to section 37I(4) of the AFRCO is issued.

27. In general, disclosure will be made by means of a press release, which will be made available on the AFRC's website (<https://www.frc.org.hk/>).

Disclaimer

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

Final Document II

Outline of the **A**FRC's Disciplinary Process

Introduction

1. Under Part 3B of the ~~Accounting and~~ Financial Reporting Council Ordinance (Cap. 588) (“~~AFRCO~~”), the ~~Accounting and~~ Financial Reporting Council (“~~AFRC~~”) is given the power to discipline:
 - (a) public interest entity (“**PIE**”) auditors registered or recognized under Part 3 of the ~~AFRCO~~; and
 - (b) registered responsible persons of registered PIE auditors; ~~and~~
 - ~~(c) professional persons~~

(together referred to as “**Regulatees**”).
2. This document is intended to provide a brief overview of the ~~AFRC~~’s disciplinary process, which has been designed to ensure that all Regulatees are treated fairly and impartially.
- ~~3. The disciplinary process outlined in this document is applicable to all Regulatees. However, the scope of sanctionable conduct, the disciplinary grounds and the sanction options available for (i) PIE auditors and registered responsible persons of registered PIE auditors; and (ii) professional persons, are different, and the AFRC has issued separate Policy Statements, Guidelines for Exercising the Power to Impose a Pecuniary Penalty and Sanctions Policies for them.~~

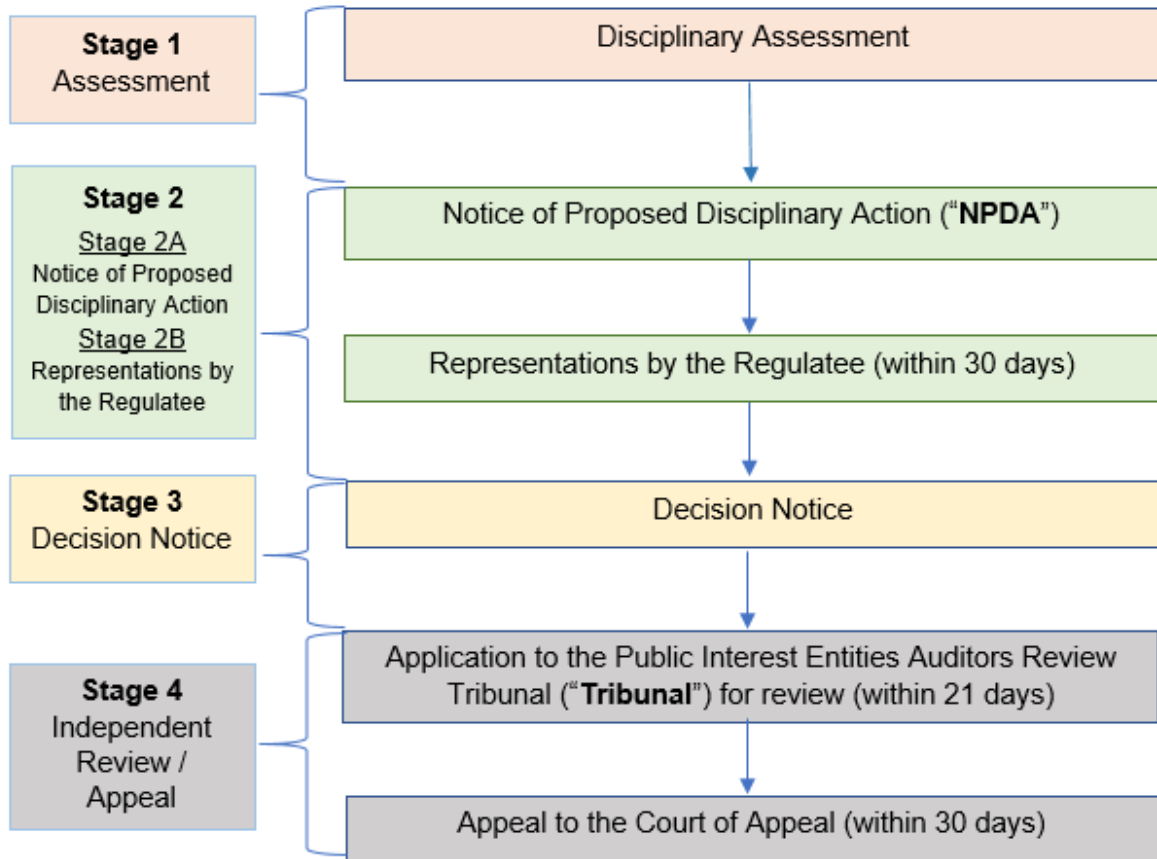
Definitions

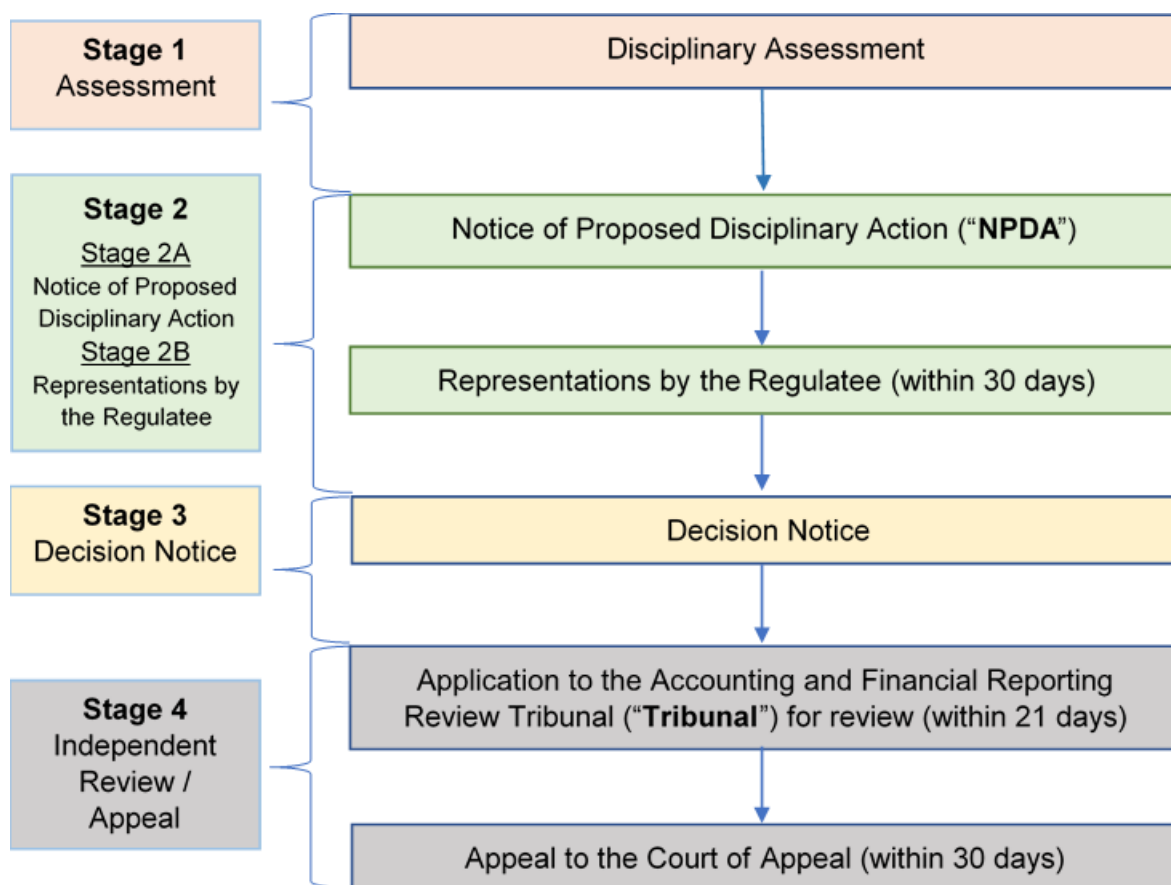
- 4.3. In this document, the following terms have the meanings defined in the ~~AFRCO~~ as set out below (the definitions in the ~~AFRCO~~ shall prevail in case of any inconsistency):

Terms	Meanings defined in the AFRCO	Section under the AFRCO
practice unit	<p>A practice unit means:</p> <ul style="list-style-type: none"> • a certified public accountant (practising) who practises accountancy on the accountant’s own account under the accountant’s own 	2(1)

	<p>name as registered under section 22(2) of the Professional Accountants Ordinance (Cap. 50);</p> <ul style="list-style-type: none"> • a CPA firm; or • a corporate practice. 	
professional person	<p>A professional person means:</p> <ul style="list-style-type: none"> • a certified public accountant; or • a practice unit. 	2(1)
PIE	A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.	3(1)
PIE auditor	A PIE auditor means a registered or recognized PIE auditor.	3A
registered responsible person	<p>A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor:</p> <ul style="list-style-type: none"> • an engagement partner; • an engagement quality control reviewer; or • a quality control system responsible person. 	2(1)

Disciplinary process





Stage 1

Disciplinary assessment

5.4. Cases may be referred to the Department of Discipline by the Department of Investigation and Compliance for consideration of taking disciplinary actions.

6.5. The Department of Discipline will then assess whether there is sufficient evidence to take disciplinary actions.

7.6. Depending on the nature, complexity and importance of the issues involved, the AFRC may choose to instruct an external legal adviser to advise it on particular issues or in respect of the whole case. Each case will depend on its own facts and the AFRC will have absolute discretion in determining whether, when and to what extent such external adviser will be instructed. Legal advice obtained by the AFRC is generally protected by legal professional privilege and will not be disclosed.

~~8.7.~~ Similarly, the AFRC may also choose to instruct an external auditing or accounting expert to advise it on particular issues in an appropriate case depending on the nature, complexity and importance of the issues involved. Each case will depend on its own facts and the AFRC will have absolute discretion in determining whether, when and to what extent such external expert will be instructed. It is anticipated that the circumstances in which external expert advice is required will likely arise only where the AFRC considers the correct interpretation of the standard on a point which is relevant and material to the action to be the subject of controversy within the profession.

~~9.8.~~ Where the external expert advice is obtained by the AFRC for use as evidence in the disciplinary action, the evidence will be identified in the List of Documents to be issued (see paragraph ~~10.4~~ below) and the expert opinion will be made available.

Stage 2A

NPDA

~~10.9.~~ If the AFRC decides to commence disciplinary action, an NPDA will be sent to the Regulatee concerned. The NPDA sets out the allegations against the Regulatee as well as the facts and evidence relevant to the allegations. The NPDA also states the AFRC's preliminary views on the allegations and the proposed sanctions that the AFRC considers appropriate to impose on the basis of the information then available.

~~11.10.~~ A list of documents relevant to the matters set out in the NPDA will be enclosed with the NPDA ("**List of Documents**") for the Regulatee to obtain copies, if needed.

Stage 2B

(i) *Representations by the Regulatee*

~~12.11.~~ Before imposing any sanctions, the AFRC must give the Regulatee a reasonable opportunity to be heard by allowing the Regulatee to make representations explaining the matter and commenting on the appropriateness of the proposed sanctions. The Regulatee will be informed of this right in the NPDA.

~~13.12.~~ If the Regulatee does not agree with the allegations, facts, preliminary views or proposed sanctions set out in the NPDA, the Regulatee should explain why by making representations in writing to the AFRC. In addition:

- (a) the Regulatee should identify and produce evidence in support of the mitigating factors which the Regulatee relies upon; and
- (b) the Regulatee is not required to provide evidence to the FRC as to the financial situation of the Regulatee when responding to the NPDA. Such evidence will only be required if the Regulatee is of the view that any pecuniary penalty proposed has the effect of putting the Regulatee in financial jeopardy. ~~the~~ the Regulatee should make this clear in the submission and provide evidence in support.

~~14.13.~~ The AFRC may not take into account or attach any weight to any mitigating factor or any submission that the proposed pecuniary penalty has the effect of putting the Regulatee in financial jeopardy if such factor or submission has not been so identified and substantiated by the Regulatee in the representations to the AFRC.

~~15.14.~~ Before making representations, the Regulatee may ask for copies of the documents on the List of Documents from the AFRC.

~~16.15.~~ Under normal circumstances, the Regulatee will be given 30 days to make representations. The AFRC may will consider ~~any~~ reasonable requests s for extension of time.

~~17.16.~~ If the Regulatee does not make any representation before the deadline stated in the NPDA (or the extended deadline, if extension of time has been granted), the AFRC will proceed to issue a Decision Notice based on the evidence before it.

~~(ii) Legal representation~~

~~18.1. The Regulatee 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 NPDA.~~

~~(iii) Meeting with the AFRC~~

17. Disciplinary actions ~~are~~ can be fairly and will normally be determined on the basis of written ~~submissions~~ representations. However, if, in addition to written representations, the Regulatee wishes to make oral representations, the Regulatee may ask for a meeting with the AFRC at the same time as the Regulatee files his or her or its written response to the NPDA. In this regard:

- ~~(a) The FRC will consider reasonable requests for a meeting;~~
- ~~(b) when making a request, the Regulatee must write to the AFRC explaining should explain why oral representations, in addition to the written representations already made, Regulatee thinks a meeting is necessary will assist the FRC in its disciplinary decision-making, and the issues which the Regulatee would like to address the FRC on in the meeting.; and~~
- ~~(c) the FRC expects any oral representations to be limited as far as possible to matters which could not be adequately dealt with by way of written representations. Such a meeting may be held if the AFRC considers fairness in the circumstances requires it.~~

~~19.~~

~~20-18.~~ However, irrespective of whether the Regulatee requests it, the AFRC may invite the Regulatee to attend a meeting to clarify certain issues if the AFRC considers fairness in the circumstances requires it.

~~21. For the avoidance of doubt, while the Regulatee may be accompanied by his or her or its legal adviser to the meeting, the AFRC will ordinarily expect the Regulatee (rather than the legal adviser) to make oral representations to the AFRC.~~

Stage 3

Decision Notice

~~22-19.~~ The AFRC will consider all available information, including the representations made by the Regulatee, and then make a decision. The AFRC will inform the Regulatee of its decision by way of a written Decision Notice, which sets out:

- (a) a statement of the reasons for the decision;
- (b) the time when the decision is to take effect; and
- (c) the details of the sanction imposed.

~~23-20.~~ The Decision Notice will also include information on the Regulatee's right to apply for a review of the AFRC's decision by the Tribunal.

Stage 4

(i) Application to the Tribunal for review

24-21. The Regulatee, if aggrieved by a disciplinary decision of the AFRC, may apply to the Tribunal for a review of the decision. Such application must be made in writing within 21 days after the AFRC has issued the Decision Notice to the Regulatee. This period may be extended by applying to the Tribunal and demonstrating a good cause.

25-22. The application for review must state the grounds for the application.

(ii) Effective date of a decision

23. If the Regulatee does not apply to the Tribunal for a review of the AFRC's decision within 21 days (or such period as extended by the Tribunal), the decision will take effect on the day after the period expires.

24. If, before such period expires, the Regulatee notifies the AFRC in writing that the Regulatee will not make a review application, the AFRC's decision will take effect on the day after the AFRC is so notified.

25. If the Regulatee applies for a review within 21 days (or such period as extended by the Tribunal), the AFRC's decision will not take effect until the Tribunal makes a final determination or the Regulatee withdraws the review application.

26. Notwithstanding the above, if the AFRC considers it appropriate in the public interest to do so, it may specify any other day on which its decision is to take effect.

(iii) Appeal to the Court of Appeal

27. If a party to a review is dissatisfied with a determination of the Tribunal, an appeal can be made to the Court of Appeal on a question of law and/or fact. The party concerned must first apply to the Court of Appeal for leave to appeal within 30 days after the Tribunal has issued the determination to the party.

28. Leave to appeal may only be granted if the Court of Appeal is satisfied that the appeal has a reasonable prospect of success or there are some other reasons in the interests of justice that the appeal should be heard.
29. Any party to an appeal may apply to the Court of Appeal for a stay of execution of the determination of the Tribunal.

Taking action in place of or in addition to imposing sanctions with consent

30. The AFRC has power to take disciplinary actions by consent if the AFRC considers it appropriate to do so in the interest of the investing public or in the public interest.
31. The Regulatee may make a resolution proposal to the AFRC at any time before the issuance of a Decision Notice. Whether the AFRC will agree to enter into resolution negotiations depends on the facts and circumstances of each case. Unless otherwise agreed, all discussion about resolution proposals will be treated as “without prejudice”, meaning that neither the AFRC nor the Regulatee may refer to those discussions in the disciplinary actions or subsequent legal proceedings. For more information, please refer to the [“Guidance Note on Cooperation with the AFRC”](#), which is available on the AFRC’s website (<https://www.frc.org.hk/>).

Legal representation

32. The Regulatee may seek legal advice at any point in the process, which may include instructing legal advisers to make representations to the FRC on their behalf.

Cooperation with the AFRC

- ~~32-33.~~ Regulatees are expected to cooperate with the AFRC in all its regulatory processes. In deciding the sanctions to be imposed, the AFRC will consider whether the Regulatee has cooperated with the AFRC in its investigations and disciplinary process. In appropriate circumstances, the sanctions may be reduced depending on, among other things, the timeliness, nature and degree of the cooperation. For more information, please refer to the [“Guidance Note on Cooperation with the AFRC”](#), which is available on the AFRC’s website (<https://www.frc.org.hk/>).

Paying a pecuniary penalty

33-34. If the Regulatee is ordered to pay a pecuniary penalty, the penalty must be paid to the AFRC by the deadline specified in the Decision Notice, by cheque made payable to the “~~Accounting and~~ Financial Reporting Council” and delivered to:

~~Accounting and~~ Financial Reporting Council
24th Floor, Hopewell Centre
183 Queen’s Road East
Hong Kong

34-35. Please quote the AFRC’s case reference which is quoted on the AFRC’s correspondence relating to the matter.

Disclaimer

35-36. This document provides a summary of the AFRC’s disciplinary process for reference only. It is not legal advice. Regulatees should seek their own legal advice. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

Final Document III

Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons

Introduction

1. These guidelines are made pursuant to sections 13 and 37H of the ~~Accounting and~~ Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”) to indicate the manner in which the ~~Accounting and~~ Financial Reporting Council (“**AFRC**”) will exercise its powers to impose a pecuniary penalty on a public interest entity (“**PIE**”) auditor or a registered responsible person of a registered PIE auditor (together referred to as “**Regulatees**”) pursuant to sections 37D(3)(b)(iv) and 37E(3)(b)(iii) of the ~~AFRCO~~ respectively. Section 37H(1)(b) requires the ~~AFRC~~ to have regard to these guidelines in imposing any pecuniary penalty.
2. Unless otherwise stated, terms defined in the ~~AFRCO~~ shall have the same meanings in these guidelines.
3. These guidelines will be reviewed periodically and (where appropriate) revised in the light of experience. These guidelines cannot deal with every single situation and exceptions will sometimes arise.

Power to order pecuniary penalties for misconduct

4. Pursuant to section 37D(3)(b)(iv) of the ~~AFRCO~~, if the ~~AFRC~~ is satisfied that a person who is or was a PIE auditor has committed a misconduct, the ~~AFRC~~ may order that person to pay a pecuniary penalty not exceeding the amount which is the greater of—
 - (a) \$10,000,000; or
 - (b) 3 times the amount of the profit gained or loss avoided by the person as a result of the misconduct.
5. Pursuant to section 37E(3)(b)(iii) of the ~~AFRCO~~, if the ~~AFRC~~ is satisfied that a person who is or was a registered responsible person of a registered PIE auditor has committed a misconduct, the ~~AFRC~~ may order that person to pay a pecuniary penalty not exceeding the amount which is the greater of—
 - (a) \$10,000,000; or
 - (b) 3 times the amount of the profit gained or loss avoided by the person as a result of the misconduct.

General approach to determining a pecuniary penalty

6. In determining whether a pecuniary penalty is appropriate and, if so, the amount of pecuniary penalty to be ordered, the AFRC will consider the full circumstances of each case, including the seriousness of the misconduct involved and the circumstances of the Regulatee concerned. The AFRC will also have regard to the upper limit on the pecuniary penalty that can be imposed in respect of each misconduct.
7. Without prejudice to the matters stated in paragraph 6 above, in undertaking the assessment of whether to impose a pecuniary penalty and the appropriate amount of pecuniary penalty, the AFRC will generally adopt the following approach:
 - (a) the AFRC will first assess the misconduct including its nature, seriousness, frequency, duration and impact to form a view on the appropriateness of a pecuniary penalty as set out in paragraphs 9 and 10 below; and
 - (b) the AFRC will then make any necessary adjustment to take account of any relevant aggravating and mitigating factors and to avoid the effect of putting a Regulatee in financial jeopardy as set out in paragraphs 11 to 15 below.
8. Where a case potentially gives rise to multiple pecuniary penalties, the AFRC will look at the totality of the pecuniary penalties to ensure that they are not disproportionate to the seriousness of the misconduct in question for each of the Regulatees.

Step (a): Assessing the misconduct

9. In assessing the misconduct, the AFRC may consider the factors summarized in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. The AFRC may also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
10. Factors which the AFRC may consider include:

The nature and seriousness of the misconduct

- (a) the nature, extent and importance of any laws, standards or regulations breached;
- (b) whether the misconduct was intentional, dishonest, deliberate, reckless or negligent, or involved a failure to act or conduct business with integrity or an abuse of a position of trust;
- (c) whether the misconduct was engaged in by the Regulatee alone or as a group, and if so the Regulatee's role in that group, including whether the Regulatee caused or encouraged other individuals to commit misconduct;
- (d) whether the Regulatee facilitated wrongdoing by a third party or collusion with a client;
- (e) in the case of a PIE auditor, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of any relevant Hong Kong Standard on Quality Control (or equivalent);

The frequency and duration of the misconduct

- (f) whether the misconduct was isolated, or repeated or ongoing;
- (g) if repeated or ongoing, the duration of the misconduct;

The impact of the misconduct

- (h) whether the misconduct damaged, or (if known) could have damaged, the public interest and the interest of the investing public;
- (i) whether the misconduct damaged, or (if known) could have damaged, investor, market and public confidence in the truth and fairness of the financial statements of PIEs;
- (j) whether the misconduct undermined, or (if known) could have undermined, public confidence in the standards of conduct in general of Regulatees and the reputation of Hong Kong as an international financial centre;
- (k) whether the misconduct adversely affected, or (if known) could have adversely affected, a significant number of people (such as the investing public), including the loss of significant sums of money; and

- (I) the financial benefit derived or intended to be derived from the misconduct (the amount of profits gained or intended to be gained or losses avoided or intended to be avoided by the Regulatee, in so far as they can be determined). If the Regulatee has derived any illegitimate financial benefits or has illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. The AFRC may also allocate an amount in respect of interest on the benefit obtained or loss avoided.

Step (b): Making necessary adjustment

11. Having assessed the circumstances of the misconduct and reached a view on the appropriateness of a pecuniary penalty, the AFRC will then consider whether any adjustments need to be made to take account of any relevant aggravating and mitigating factors (to the extent those factors have not already been taken into account in the AFRC's assessment of the misconduct) and to avoid the effect of putting a Regulatee in financial jeopardy.

Aggravating and mitigating factors

12. The list below is not exhaustive and not all factors will be applicable in a particular case. The AFRC will also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
13. Factors which the AFRC may consider include:
- (a) the degree of cooperation (or non-cooperation) with the AFRC, including whether remedial actions have been taken – please refer to the [“Guidance Note on Cooperation with the AFRC”](#) which is available on the AFRC's website (<https://www.frc.org.hk/>) for more information;
 - (b) whether similar previous misconduct by the Regulatee or issues similar or related to the misconduct have been identified, and whether appropriate steps had been taken to address any such similar misconduct or issues;
 - (c) whether the Regulatee has failed to comply with any previous direction or order relevant to the misconduct;
 - ~~(d) the likelihood that the same type of misconduct will recur;~~

~~(e)~~(d) the Regulatee's compliance history and disciplinary record;

~~(f)~~(e) in the case of an individual, the individual's experience in the profession and positions/scope of responsibilities within the PIE auditor; ~~and~~

~~(f)~~ in the case of an individual, personal mitigating circumstances;

~~(g)~~ prior sanctions imposed or regulatory action taken by other competent authorities; and

~~(g)~~(h) result of any concluded civil action taken by third parties.

Financial jeopardy

14. A pecuniary penalty should not have the effect of putting the Regulatee concerned in financial jeopardy. The Regulatee is only required to provide evidence to the FRC as to the financial situation of the Regulatee ~~Where a Regulatee submits that~~ at the FRC's proposed pecuniary penalty may put it, him or her in such a position ~~and provides relevant information in support of such submission,~~ In this regard, the AFRC will consider the following:

(a) in the case of a PIE auditor, the AFRC will have regard to the PIE auditor's size, financial resources and financial strength, as indicated by, for example, the total turnover of the PIE auditor and the effect of the pecuniary penalty on its practice; and

(b) in the case of an individual, the AFRC will have regard to the individual's financial resources, as indicated by, for example, ~~(including~~ his or her annual income and assets ~~)~~, ~~and~~ the effect of the pecuniary penalty on that individual.

15. However, if a Regulatee takes or has taken deliberate steps to create the false appearance that the pecuniary penalty will place it, him or her in financial jeopardy, e.g. by transferring assets to third parties, this will be taken into account.

Disclaimer

16. The provisions in these guidelines are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances.

17. For the avoidance of doubt, these guidelines do not purport to set out an exhaustive list of the principles and factors that the AFRC may take into account when imposing pecuniary penalties, and not all of the matters referred to above will be applicable in a particular case.
18. These guidelines do not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the AFRCO.
19. The AFRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using ~~this policy~~these guidelines or arising from any omission from ~~it~~them.
20. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

Final Document IV

Sanctions Policy for PIE Auditors and Registered Responsible Persons

Introduction

1. This policy sets out the general approach that the ~~Accounting and~~ Financial Reporting Council (“**AFRC**”) will adopt when considering the imposition of sanctions on public interest entity (“**PIE**”) auditors and registered responsible persons of a registered PIE auditor (together referred to as “**Regulatees**”) pursuant to sections 37D, 37E and 37F of the ~~Accounting and~~ Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”). For the types of sanctions that the **AFRC** could impose on Regulatees under the **AFRCO**, please refer to the [“Discipline Policy Statement for PIE Auditors and Registered Responsible Persons”](#), which is available on the **AFRC**’s website (<https://www.frc.org.hk/>).
2. Unless otherwise stated, terms defined in the **AFRCO** shall have the same meanings in this policy.
3. This policy will be reviewed periodically and (where appropriate) revised in the light of experience. This policy cannot deal with every single situation and exceptions will sometimes arise.

General approach to determining sanctions

4. The **AFRC** will consider the full circumstances of each case, including the seriousness of the conduct involved and the circumstances of the Regulatee concerned, before determining which sanction or combination of sanctions to impose on the Regulatee.
5. Generally speaking:
 - (a) the **AFRC** will consider the objectives of discipline in the context of the **AFRCO**. The primary purpose of imposing sanctions is not to punish, but to protect the public and the wider public interest and for deterrence;
 - (b) the **AFRC** will aim to impose sanctions which are proportionate. In assessing proportionality, the **AFRC** will consider whether the particular sanctions are commensurate with the circumstances of the case, including the seriousness of the conduct and the circumstances of the Regulatee concerned;
 - (c) where a case potentially gives rise to multiple sanctions, the **AFRC** will look at the totality of the sanctions to ensure that they are not disproportionate to the seriousness of the conduct in question for each of the Regulatees; and

(d) the AFRC may have regard to sanctions (including the amount of any pecuniary penalty) imposed in other cases. It will, however, impose the sanctions which it considers appropriate on the facts and circumstances of the specific case before it and will not be constrained by the sanctions imposed (or not imposed) in earlier cases. The AFRC may also adjust its approach from time to time in light of various considerations it deems relevant to the discharge of its functions and to changing market circumstances, particularly the behaviour of Regulatees.

6. Without prejudice to the matters stated in paragraphs 4 and 5 above, the AFRC will generally adopt the following approach to determining the sanction to be imposed in a particular case:

(a) the AFRC will first assess the relevant conduct including its nature, seriousness, frequency, duration and impact to identify the sanction or combination of sanctions that the AFRC considers potentially appropriate (paragraphs 7 and 8 below); and

(b) the AFRC will then consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level, nature or combination of sanctions under consideration (paragraphs 9 and 10 below).

Step (a): Undertaking the initial assessment of the conduct

7. In assessing the conduct, the AFRC may consider the factors summarized in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. The AFRC may also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.

8. Factors which the AFRC may consider include:

The nature and seriousness of the conduct

(a) the nature, extent and importance of any laws, standards or regulations breached;

(b) whether the conduct was intentional, dishonest, deliberate, reckless or

negligent, or involved a failure to act or conduct business with integrity or an abuse of a position of trust;

- (c) whether the conduct was engaged in by the Regulatee alone or as a group, and if so the Regulatee's role in that group, including whether the Regulatee caused or encouraged other individuals to commit the relevant conduct;
- (d) whether the Regulatee facilitated wrongdoing by a third party or collusion with a client;
- (e) in the case of a PIE auditor, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of any relevant Hong Kong Standard on Quality Control (or equivalent);

The frequency and duration of the conduct

- (f) whether the conduct was isolated, or repeated or ongoing;
- (g) if repeated or ongoing, the duration of the conduct;

The impact of the conduct

- (h) whether the conduct damaged, or (if known) could have damaged, the public interest and the interest of the investing public;
- (i) whether the conduct damaged, or (if known) could have damaged, investor, market and public confidence in the truth and fairness of the financial statements of PIEs;
- (j) whether the conduct undermined, or (if known) could have undermined, public confidence in the standards of conduct in general of Regulatees and the reputation of Hong Kong as an international financial centre;
- (k) whether the conduct adversely affected, or (if known) could have adversely affected, a significant number of people (such as the investing public), including the loss of significant sums of money; and
- (l) the financial benefit derived or intended to be derived from the conduct (the amount of profits gained or intended to be gained or losses avoided or intended to be avoided by the Regulatee, in so far as they can be determined).

If the Regulatee has derived any illegitimate financial benefits or has illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. The AFRC may also allocate an amount in respect of interest on the benefit obtained or loss avoided.

Step (b): Considering any relevant aggravating or mitigating circumstances

9. Having assessed the circumstances of the conduct and reached a view on the potential sanction that would be appropriate, the AFRC will then consider whether to adjust that sanction to reflect any aggravating or mitigating factors (summarized in the paragraph below) that may exist (to the extent those factors have not already been taken into account in the AFRC’s assessment of the conduct). The list below is not exhaustive and not all factors will be applicable in a particular case. The AFRC will also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
10. Factors which the AFRC may consider include:
- (a) the degree of cooperation (or non-cooperation) with the AFRC, including whether remedial actions have been taken – please refer to the [“Guidance Note on Cooperation with the AFRC”](#) which is available on the AFRC’s website (<https://www.frc.org.hk/>) for more information;
 - (b) whether similar previous conduct by the Regulatee or issues similar or related to the conduct have been identified, and whether appropriate steps had been taken to address any such similar conduct or issues;
 - (c) whether the Regulatee has failed to comply with any previous direction or order relevant to the conduct;
 - ~~(d) the likelihood that the same type of conduct will recur;~~
 - ~~(e)~~(d) the Regulatee’s compliance history and disciplinary record;
 - ~~(f)~~(e) in the case of an individual, the individual’s experience in the profession and ~~position~~ scope of responsibilities within the PIE auditor; ~~and~~
 - (f) in the case of an individual, personal mitigating circumstances;

(g) prior sanctions imposed or regulatory action taken by other competent authorities; and

~~(g)~~(h) result of any concluded civil action taken by third parties.

Disclaimer

11. The provisions in this policy are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances.
12. For the avoidance of doubt, this policy does not purport to set out an exhaustive list of the principles and factors that the AFRC may take into account when determining sanctions, and not all of the matters referred to above will be applicable in a particular case.
13. This policy does not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the AFRCO.
14. The AFRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this policy or arising from any omission from it.
15. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

Final Document V

Guidance Note on Cooperation with the **A**FRC

Purpose of this document

1. The ~~Accounting and~~ Financial Reporting Council (“**AFRC**”) is publishing this Guidance Note to explain and provide guidance on the **AFRC**’s approach to cooperation in investigations and disciplinary actions.
2. The approach to cooperation outlined in this Guidance Note is applicable to all regulatees of the **AFRC** (i.e. public interest entity (“**PIE**”) auditors ~~and~~; registered responsible persons of registered PIE auditors ~~and professional persons~~ (together referred to as “**Regulatees**”)).
3. The **AFRC** recognizes and values cooperation in its investigations and disciplinary actions as it assists the **AFRC** to achieve its regulatory objectives. Among other things, cooperation facilitates the early detection and prompt remediation of misconduct and fosters a culture of responsibility and self-improvement in Regulatees. It also facilitates the efficient use of the **AFRC**’s manpower and other resources in investigating and disciplining misconduct, and the timely conclusion of such matters will in return benefit the Regulatees concerned.
4. The **AFRC** takes cooperation into consideration when determining sanctions and may reduce the sanctions as appropriate in light of all the circumstances of the case.
5. This Guidance Note will not operate in criminal cases as the Department of Justice has the sole discretion over criminal prosecutions of offences under the ~~Accounting and~~ Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”).

Definitions

6. 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
practice unit	<p>A practice unit means:</p> <ul style="list-style-type: none"> • a certified public accountant (practising) who practises accountancy on the accountant’s own account under the accountant’s own 	2(1)

	<p>name as registered under section 22(2) of the Professional Accountants Ordinance (Cap. 50);</p> <ul style="list-style-type: none"> • a CPA firm; or • a corporate practice. 	
professional person	<p>A professional person means:</p> <ul style="list-style-type: none"> • a certified public accountant; or • a practice unit. 	2(1)
PIE	A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.	3(1)
PIE auditor	A PIE auditor means a registered or recognized PIE auditor.	3A
registered responsible person	<p>A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor:</p> <ul style="list-style-type: none"> • an engagement partner; • an engagement quality control reviewer; or • a quality control system responsible person. 	2(1)

Forms of cooperation

7. ~~Regulatees are expected to cooperate with the AFRC in all its regulatory processes. As such, c~~Cooperation in the AFRC's investigations and disciplinary process will be considered as a mitigating factor at the point of determining sanctions ~~only when the Regulatee concerned has provided an exceptional level of cooperation with the AFRC. In doing so, the FRC will consider all the circumstances of a particular case.~~
8. Non-exhaustive examples of conduct which may constitute cooperation include:

- (a) promptly and voluntarily self-reporting to the AFRC any facts and/or matters which may constitute an allegation of misconduct and making full disclosure of such facts and/or matters before the allegation comes to the attention of the AFRC. Self-reporting is generally more valuable the earlier it is provided and will generally attract greater credit than cooperation with an investigation which has been prompted by someone or something else;
- (b) providing true and complete information regarding the misconduct, including:
 - (i) taking early and proactive steps to preserve and collect important evidence;
 - (ii) making full and frank disclosure of all relevant information;
 - (iii) promptly and voluntarily providing useful information or documentation to the AFRC that might not have been discovered absent that cooperation, or not specifically requested by the AFRC and beyond what is required pursuant to legal and regulatory reporting requirements;
 - (iv) conducting a timely, thorough, objective and competent internal investigation into the misconduct when it was discovered and sharing the outcomes of such internal investigation with the AFRC voluntarily and promptly;
 - (v) making timely arrangements to provide evidence and information;
 - (vi) providing useful intelligence; and
 - (vii) to the extent legally permissible, disclosing relevant documents located outside Hong Kong and facilitating the timely production of documents and witnesses from outside Hong Kong;
- (c) taking a proactive approach and devoting manpower and resources to assist the AFRC's investigation;
- (d) acceptance of liability, for instance:
 - (i) willingness to take responsibility for the misconduct;
 - (ii) accepting liability and proposed sanctions; and

- (iii) taking a proactive and positive approach to bring the case to an early conclusion; and
- (e) taking prompt and timely remedial actions (i.e. voluntary, timely and meaningful actions designed to reduce the likelihood and risk that similar misconduct will recur, as well as actions to correct the misconduct), for instance:
 - (i) taking early and active steps to contain and remedy the misconduct (e.g. correcting any misleading statement or impression);
 - (ii) promptly and voluntarily modifying and improving the ~~practice unit's or~~ PIE auditor's quality controls or other internal policies and procedures to prevent recurrence of the misconduct. A ~~practice unit's or~~ PIE auditor's improvements in response to quality control criticisms or defects identified by the AFRC in its inspection process would not ordinarily constitute cooperation for the purpose of this Guidance Note;
 - (iii) re-assigning or limiting the activities of those individuals (which might include members of the audit team, as well as persons outside the audit team, including persons in the ~~practice unit's or~~ PIE auditor's management) responsible for the misconduct and, in appropriate cases, by disciplining the responsible individuals;
 - (iv) promptly notifying and cooperating with the entity (or audit committee thereof) for which the Regulatee performed services related to the misconduct, so that the entity (or audit committee thereof) can, if necessary, take steps to comply with relevant laws and regulations;
 - (v) proactively carrying out effective remediation to address the AFRC's concerns and prevent similar misconduct from arising in the future; and
 - (vi) establishing whether the misconduct adversely affected, or (if known) would have adversely affected, other persons and voluntarily and appropriately taking remedial actions to address any such adverse effects (such as by making compensation).

9. As Regulatees are expected to cooperate with the FRC in all its regulatory processes, Merely fulfilling statutory or regulatory obligations does not, in itself,

constitute cooperation for the purpose of this Guidance Note. This includes, for instance, compliance with an inspector's or investigator's requirement issued pursuant to section ~~20ZZC(1), 20ZZJ(1)~~, 21C(2), 21D(1) or (2), 25(1) or 26(1) or (2) of the AFRCO for producing documents, attending an interview or making a statutory declaration.

~~9.~~

Assessing the degree of cooperation

10. While the AFRC seeks to maintain consistency in its disciplinary actions, fairness and public interest require each case to be considered on its own facts. As such, the principles and assessment factors set out in this Guidance Note are neither exhaustive nor definitive.
11. The AFRC considers all relevant circumstances when assessing the degree of cooperation. The factors which the AFRC generally takes into account include:
 - (a) the nature and value of the cooperation provided, including:
 - (i) timeliness of the cooperation;
 - (ii) quality, extent, substance and reliability of the assistance or remedial actions;
 - (iii) truthfulness and completeness of any information provided;
 - (iv) usefulness of intelligence provided (e.g. whether the AFRC's investigation was initiated based on the intelligence provided); and
 - (v) amount of time, costs and resources saved by the AFRC as a result of the cooperation;
 - (b) the nature, seriousness and impact of the misconduct and the degree of cooperation relative to those matters; and
 - (c) the general conduct of the Regulatee concerned after the misconduct and other circumstances of the Regulatee.

Uncooperative conduct

12. If the Regulatee concerned ~~fails to provide the level of cooperation required, or~~ engages in uncooperative conduct with the intent or effect of impeding or prejudicing the AFRC's investigation or disciplinary process or fails to provide the level of cooperation reasonably expected of the Regulatee in the circumstances, the AFRC may take this into account as an aggravating factor when determining the appropriate sanction. In doing so, the FRC will consider all the circumstances of a particular case.
13. Non-exhaustive examples of uncooperative conduct include:
- (a) delaying the self-reporting of the misconduct;
 - (b) withholding or concealing information relating to the misconduct;
 - (c) engaging in evasive conduct during the AFRC's investigation;
 - (d) intentionally and unnecessarily prolonging the AFRC's investigation;
 - (e) failing to comply, within the stipulated timeframe specified by the AFRC and without reasonable excuse, with requirements to produce the required information / documentation, attend interviews or make statutory declarations;
 - (f) lack of care in ensuring that information provided to the AFRC is accurate and complete;
 - (g) failing to provide adequate explanation of documents and information provided;
 - (h) failing to prepare properly for interviews (e.g. failing to review materials provided by the AFRC in advance);
 - (i) failing to conduct an adequate search for documents and information requested by the AFRC; and
 - (j) failing to take prompt and timely remedial actions.

Legal professional privilege

14. The AFRC fully respects Regulatees' right to exercise legal professional privilege. The assertion of this right, such as a bona fide refusal to waive legal professional privilege attached to a document provided to the AFRC, will not be regarded as uncooperative conduct.
15. However, voluntary waiver of legal professional privilege over one or more documents, even on a limited basis, may assist the AFRC's investigation and will be taken into consideration when the AFRC assesses the degree of cooperation provided.

The AFRC's approach to cooperation

16. The AFRC takes into account the cooperation provided by Regulatees and all relevant circumstances when determining the appropriate disciplinary response.
17. Among other things, the AFRC may enter into an agreement with a PIE auditor or registered responsible person pursuant to section 37I(1) of the AFRCO ("**section 37I(1) Agreement**") ~~or with a professional person pursuant to section 37I(1A) of the AFRCO ("**section 37I(1A) Agreement**")~~ to resolve concerns in relation to which the AFRC is contemplating whether to impose a disciplinary sanction, provided that the AFRC considers it appropriate to do so in the interest of the investing public or in the public interest. In exercising this discretion, the AFRC will consider the nature and degree of cooperation provided by the Regulatee concerned.
18. A Regulatee may approach the AFRC for discussions with a view to resolving the AFRC's concerns at any time from the detection of the misconduct up to the issuance of the Decision Notice. Such discussions are normally conducted on a "without prejudice" basis. Whether and, if so, at what stage the AFRC is willing to consider resolution discussions depends on the circumstances of each case. As a general principle, the AFRC is more willing to enter into a section 37I(1) ~~or 37I(1A)~~ Agreement if extensive and valuable cooperation is demonstrated by the Regulatee in the ways described in paragraphs 8 and 15 above, and in particular, self-reporting.
19. Given the need for credible deterrence and public accountability, the AFRC considers that, as a general principle, it would not be in the public interest for disciplinary actions to be resolved in private (i.e. without publicity) or on a "no

admission of liability” basis. Accordingly, offers to resolve disciplinary actions on such terms are unlikely to be acceptable to the AFRC or regarded as cooperation.

20. While cooperation is a factor to be taken into account, each case turns on its own facts. The AFRC’s willingness to resolve disciplinary actions with a Regulatee under a section 37I(1) ~~or 37I(1A)~~ Agreement based on a particular set of facts does not mean that the AFRC will consider it appropriate to do so if the circumstances are different.

Recognition for cooperation

21. In recognition of the benefits of early disposals of disciplinary matters, the AFRC may recognize cooperation by reducing the sanctions ~~if this is appropriate in all the circumstances of the case imposed. Cooperation is one of the mitigating factors in determining the appropriate sanction and the FRC will consider all the circumstances of a case when assessing the degree of cooperation~~The reduction may vary depending on when the early resolution is reached.
22. Without prejudice to the above, To encourage early cooperation and resolution of cases through reaching a section 37I(1) Agreement, the AFRC has divided its disciplinary process into three stages:
- (a) **Stage 1** – from the detection of the misconduct by the Regulatee up to before the issuance of a Notice of Proposed Disciplinary Action (“NPDA”);
 - (b) **Stage 2** – from the issuance of an NPDA up to the deadline for the Regulatee to make representations in response to the NPDA; and
 - (c) **Stage 3** – from the day after the deadline for making representations up to the issuance of a Decision Notice.
23. As a general principle, ~~where a Regulatee fully cooperates with the AFRC and a section 37I(1) or 37I(1A) Agreement is reached in:~~
- (a) where a Regulatee cooperates with the FRC and a section 37I(1) Agreement is reached in Stage 1, the AFRC may reduce the sanction(s) by up to 30%;
 - (b) where a Regulatee cooperates with the FRC and a section 37I(1) Agreement is reached in Stage 2, ~~or if the Regulatee accepts the AFRC’s findings and~~

proposed sanctions in the NPDA in Stage 2}, the AFRC may reduce the sanction(s) by up to 20%; and

- (c) where a Regulatee cooperates with the FRC and section 37I(1) Agreement is reached in Stage 3, (or if the Regulatee accepts the AFRC's findings and proposed sanctions in the NPDA in Stage 3}, the AFRC may reduce the sanction(s) by up to 10%.

24. However, if the Regulatee has derived any illegitimate financial benefits or has illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. Accordingly, no discount will generally be applied to the amount of any pecuniary penalty that equates to the removal of any such benefit gained or loss avoided.
25. For the avoidance of doubt, the discounts in sanction referred to in paragraph 23 above represent the maximum discount that the AFRC will generally render at each stage. Notwithstanding the early resolution of the matter, the discount rendered to a Regulatee may be reduced if, for example, the Regulatee had previously engaged in uncooperative conduct.

Enhancing transparency of the AFRC's cooperation policy

26. To enhance the transparency of the disciplinary process, the AFRC seeks to provide an appropriate level of disclosure regarding cooperation.
27. Where the AFRC takes into account the cooperation provided by a Regulatee in determining the appropriate disciplinary sanctions, the AFRC will generally:
- (a) in the course of resolution discussions, if the AFRC considers it appropriate to impose a reduced sanction, inform the Regulatee of what the original sanction would have been and the final sanction imposed after taking cooperation into account; and
- (b) at the conclusion of the disciplinary action, state in the relevant Decision Notice, Statement of Disciplinary Action and/or press release that the Regulatee cooperated with the AFRC and provide a general description of the cooperation provided.

Disclaimer

28. The provisions in this Guidance Note are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances. They do not confer any right or create any legitimate expectation on any person to:
- (a) be informed of the progress and findings of any AFRC investigation;
 - (b) be informed of the AFRC's preliminary assessment of any potential disciplinary action prior to the issuance of the NPDA;
 - (c) resolve a matter pursuant to section 37I(1) ~~or 37I(1A)~~ of the AFRCO; or
 - (d) receive any reduction in the proposed sanctions.
29. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

Final Document VI

Discipline Policy Statement for Professional Persons

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 impose sanctions on professional persons (“**Regulatees**”) where they have committed a CPA misconduct.

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
AML/ CTF requirement	An AML/ CTF requirement means a requirement set out in Part 2, 3 or 4 of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) as may be applicable.	3B(5)
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)
CPA misconduct	A CPA misconduct means a misconduct as defined in section 37AA of the AFRCO, as further elaborated under the sub-section “CPA misconduct” below.	37AA
PAO professional standard	A PAO professional standard means any statement of professional ethics, or standard of accounting, auditing or assurance practices, issued or specified, or deemed to have been issued or specified, under section 18A of the PA Ordinance.	2(1)

public interest entity (“ PIE ”)	A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.	3(1)
PIE auditor	A PIE auditor means a registered or recognized PIE auditor.	3A
practice unit	A practice unit means: <ul style="list-style-type: none"> • a CPA (practising) who practises accountancy on the accountant's own account under the accountant's own name as registered under section 22(2) of the PA Ordinance; • a CPA firm; or • a corporate practice. 	2(1)
professional person	A professional person means: <ul style="list-style-type: none"> • a CPA; or • a practice unit. 	2(1)
registered responsible person	A registered responsible person means any of the following individuals whose name is recorded in the PIE auditors register as a responsible person of a registered PIE auditor: <ul style="list-style-type: none"> • an engagement partner; • an engagement quality control reviewer; or • a quality control system responsible person. 	2(1)

Purpose of this document

4. The purpose of this Policy Statement is to provide an overview of the legal regime of the disciplinary function of the AFRC for Regulatees.

5. For details of the AFRC's disciplinary process, please refer to the [“Outline of the AFRC's Disciplinary Process”](https://www.afrc.org.hk/), which is available on the AFRC's website (<https://www.afrc.org.hk/>).

Objectives of discipline

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.
7. The AFRC regulates through imposing disciplinary sanctions on Regulatees. It ensures that where there has been CPA misconduct committed by Regulatees, appropriate and timely action will be taken:
- (a) to uphold proper standards of conduct amongst Regulatees and to maintain and enhance the quality and reliability of accounting and auditing work;
 - (b) to maintain and promote public confidence in:
 - (i) the integrity of the accountancy profession;
 - (ii) the quality of corporate reporting; and
 - (iii) the regulation of the accountancy profession;
 - (c) to protect the public from Regulatees whose conduct has failed to comply with the relevant requirements set out in the AFRCO; and
 - (d) to deter Regulatees from committing CPA misconduct.

Circumstances in which disciplinary sanctions may be imposed

CPA misconduct

8. Pursuant to section 37CA of the AFRCO, disciplinary action may be taken against a Regulatee who has been guilty of a CPA misconduct. As provided in section 37AA of the AFRCO, CPA misconduct in this context includes situations where the Regulatee:

Section
37CA of the
AFRCO

- (a) does an act or makes an omission that amounts to a “professional irregularity” as defined under section 3B of the AFRCO (see paragraph 11 below); Section 37AA of the AFRCO
 - (b) is convicted of an offence under section 21F or 31 of the AFRCO, which generally relates to a failure to properly comply with a requirement imposed by an inspector or investigator;
 - (c) is punished by the Court of First Instance under section 32(2)(b) or 45(2)(b) of the AFRCO for failing to comply with a requirement imposed by an inspector, investigator or enquirer or for being involved in the failure;
 - (d) (where the Regulatee is a CPA) is convicted of an offence under Part V (Perjury) of the Crimes Ordinance (Cap. 200); or
 - (e) (where the Regulatee is a CPA) is convicted in Hong Kong or elsewhere of any offence involving dishonesty.
9. However, a Regulatee who does an act or makes an omission referred to above is not to be regarded as being guilty of CPA misconduct if: Section 37AA of the AFRCO
- (a) the Regulatee is a PIE auditor or a registered responsible person;
 - (b) the act or omission amounts to a practice irregularity within the meaning of section 4 of the AFRCO; and
 - (c) the Regulatee has accordingly committed misconduct as described in section 37A or 37B of the AFRCO.
10. For such cases, please refer to the [“Discipline Policy Statement for PIE Auditors and Registered Responsible Persons”](#) available on the AFRC’s website (<https://www.afrc.org.hk/>).

Examples of a “professional irregularity”

11. Examples of a “professional irregularity” include situations where a Regulatee: Section 3B of the AFRCO
- (a) falsifies or causes to be falsified a document;

- (b) makes a statement, in respect of a document, that is material and that the Regulatee knows to be false or does not believe to be true;
 - (c) fails to observe, maintain or otherwise apply a PAO professional standard;
 - (d) fails to comply with an applicable AML/ CTF requirement;
 - (e) while being a director of a corporate practice or a trust or company services provider (TCSP) licensee, or a responsible person of a limited partnership fund:
 - (i) causes or allows a breach of an AML/ CTF requirement by the corporate practice, licensee or fund; or
 - (ii) fails to take reasonable steps to prevent such a breach;
 - (f) fails, without reasonable excuse, to comply with a requirement imposed by a CPA inspector or CPA investigator;
 - (g) fails to comply with-
 - (i) any regulation made or any direction lawfully given by the AFRC; or
 - (ii) the provisions of any bylaw or rule made or any direction lawfully given by the Council of the Hong Kong Institute of Certified Public Accountants;
 - (h) is negligent in the conduct of the Regulatee's profession;
 - (i) is guilty of professional misconduct; or
 - (j) is guilty of dishonourable conduct (or, in the case of a corporate practice, does or omits to do something that, if the person were an individual CPA, would reasonably be regarded as being dishonourable conduct).
12. The above examples are not exhaustive. Please refer to section 3B of the AFRCO for a full list of matters that constitute a "professional irregularity".

Opportunity to be heard

13. The AFRC must not impose a sanction on a Regulatee without first giving the Regulatee a reasonable opportunity of being heard, i.e. an opportunity to make written or oral representations. Section 37G of the AFRCO
14. Please refer to the [“Outline of the AFRC’s Disciplinary Process”](#), which is available on the AFRC’s website (<https://www.afrc.org.hk/>) for details in relation to the opportunity to make representations.

Sanctions for CPA misconduct

15. The AFRC may impose the following sanctions for CPA misconduct on a Regulatee: Section 37CA of the AFRCO
- (a) public or private reprimand;
 - (b) pecuniary penalty;
 - (c) revocation or suspension of the Regulatee’s registration;
 - (d) cancellation or non-issuance of a practising certificate; and
 - (e) investigation costs and expenses.
16. The above sanctions may be imposed singly or in combination.

Approach to determining pecuniary penalty and other sanctions

17. The AFRC will consider all the relevant circumstances of a case to determine the appropriate sanction or combination of sanctions which would achieve the purpose of disciplinary action with due regard to the principle of proportionality.
18. Before imposing a pecuniary penalty, the AFRC is required to have regard to the [“Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons”](#), which is available on the AFRC’s website (<https://www.afrc.org.hk/>). Sections 13 and 37H of the AFRCO
19. For further information as to the AFRC’s approach to sanctions generally, please refer to the [“Sanctions Policy for Professional Persons”](#) which is also available on the AFRC’s website (<https://www.afrc.org.hk/>).

Review of the AFRC's disciplinary decisions

20. Any Regulatee who is aggrieved by the AFRC's disciplinary decision may, within 21 days beginning on the day after a notice of the decision is issued by the AFRC, apply to the Accounting and Financial Reporting Review Tribunal ("**Tribunal**") for a review of that decision. Sections 37M and 37Q of the AFRCO
21. The Tribunal is independent of the AFRC. The Tribunal consists of a chairperson (a former Justice of Appeal of the Court of Appeal, a former judge / recorder / deputy judge of the Court of First Instance or a person eligible for appointment as a judge of the High Court) and two other ordinary members from the Tribunal panel, all of whom must not be public officers. Sections 2, 3, and 5 of Schedule 4A of the AFRCO
22. The chairperson and members of the Tribunal panel must be appointed by the Chief Executive of the HKSAR. Sections 2 and 3 of Schedule 4A of the AFRCO

Appeal

23. If a party to a review is dissatisfied with the determination of the review made by the Tribunal, the party may, within 30 days after the day on which the determination is issued to the party, apply to the Court of Appeal for leave to appeal against that determination on a question of law and/or fact. Section 37ZG of the AFRCO

Disclosure of sanctions

24. The AFRC must disclose to the public the material facts of the case, the AFRC's decision with reasons and the disciplinary sanction imposed / action taken, unless the disclosure: Section 37K of the AFRCO
- (a) relates to a private reprimand;
 - (b) may adversely affect any criminal proceedings before a court or magistrate; or
 - (c) in the AFRC's opinion, is not in the interest of the investing public or in the public interest.
25. The disclosure may only be made after:
- (a) where a sanction is imposed upon the conclusion of the disciplinary process –

- (i) the expiry of the period for lodging an application for review to the Tribunal; or
 - (ii) if an application for review is lodged, the disposal of the review; or
- (b) where a settlement is reached and disciplinary action is taken by consent pursuant to section 371 of the AFRCO – a notice pursuant to section 371(4) of the AFRCO is issued.
26. In general, disclosure will be made by means of a press release, which will be made available on the AFRC's website (<https://www.afrc.org.hk/>).

Disclaimer

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

Final Document VII

Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons

Introduction

1. These guidelines are made pursuant to sections 13 and 37H of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”) to indicate the manner in which the Accounting and Financial Reporting Council (“**AFRC**”) will exercise its powers to impose a pecuniary penalty on professional persons (i.e. certified public accountants and practice units) (“**Regulatees**”) pursuant to section 37CA of the AFRCO. Section 37H(1)(b) requires the AFRC to have regard to these guidelines in imposing any pecuniary penalty.
2. Unless otherwise stated, terms defined in the AFRCO shall have the same meanings in these guidelines.
3. These guidelines will be reviewed periodically and (where appropriate) revised in the light of experience. These guidelines cannot deal with every single situation and exceptions will sometimes arise.

Power to order pecuniary penalties for CPA misconduct

4. Pursuant to section 37CA(2)(b) of the AFRCO, if the AFRC is satisfied that a person who is or was a Regulatee has committed a CPA misconduct, the AFRC may order that person to pay a pecuniary penalty not exceeding \$500,000.

General approach to determining a pecuniary penalty

5. In determining whether a pecuniary penalty is appropriate and, if so, the amount of pecuniary penalty to be ordered, the AFRC will consider the full circumstances of each case, including the seriousness of the CPA misconduct involved and the circumstances of the Regulatee concerned. The AFRC will also have regard to the upper limit on the pecuniary penalty that can be imposed in respect of each CPA misconduct.
6. Without prejudice to the matters stated in paragraph 5 above, in undertaking the assessment of whether to impose a pecuniary penalty and the appropriate amount of pecuniary penalty, the AFRC will generally adopt the following approach:
 - (a) the AFRC will first assess the CPA misconduct including its nature, seriousness, frequency, duration and impact to form a view on the appropriateness of a pecuniary penalty as set out in paragraphs 8 and 9 below; and

- (b) the AFRC will then make any necessary adjustment to take account of any relevant aggravating and mitigating factors and to avoid the effect of putting a Regulatee in financial jeopardy as set out in paragraphs 10 to 14 below.
7. Where a case potentially gives rise to multiple pecuniary penalties, the AFRC will look at the totality of the pecuniary penalties to ensure that they are not disproportionate to the seriousness of the CPA misconduct in question for each of the Regulatees.

Step (a): Assessing the CPA misconduct

8. In assessing the CPA misconduct, the AFRC may consider the factors summarized in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. The AFRC may also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
9. Factors which the AFRC may consider include:

The nature and seriousness of the CPA misconduct

- (a) the nature, extent and importance of any laws, standards or regulations breached;
- (b) whether the CPA misconduct was intentional, dishonest, deliberate, reckless or negligent, or involved a failure to act or conduct business with integrity or an abuse of a position of trust;
- (c) whether the CPA misconduct was engaged in by the Regulatee alone or as a group, and if so the Regulatee's role in that group, including whether the Regulatee caused or encouraged other individuals to commit CPA misconduct;
- (d) whether the Regulatee facilitated wrongdoing by a third party or collusion with a client;
- (e) in the case of a practice unit, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of any relevant Hong Kong Standard on Quality Control (or equivalent);

The frequency and duration of the CPA misconduct

- (f) whether the CPA misconduct was isolated, or repeated or ongoing;
- (g) if repeated or ongoing, the duration of the CPA misconduct;

The impact of the CPA misconduct

- (h) whether the CPA conduct damaged, or (if known) could have damaged, the public interest and the interest of the investing public;
- (i) whether the CPA misconduct damaged, or (if known) could have damaged, public confidence in the quality of corporate reporting and financial statements;
- (j) whether the CPA misconduct undermined, or (if known) could have undermined, public confidence in the standards of conduct in general of Regulatees and the reputation of Hong Kong as an international financial centre;
- (k) whether the CPA misconduct adversely affected, or (if known) could have adversely affected, a significant number of people (such as the investing public), including the loss of significant sums of money; and
- (l) the financial benefit derived or intended to be derived from the CPA misconduct (the amount of profits gained or intended to be gained or losses avoided or intended to be avoided by the Regulatee, in so far as they can be determined). If the Regulatee has derived any illegitimate financial benefits or has illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. The AFRC may also allocate an amount in respect of interest on the benefit obtained or loss avoided.

Step (b): Making necessary adjustment

10. Having assessed the circumstances of the CPA misconduct and reached a view on the appropriateness of a pecuniary penalty, the AFRC will then consider whether any adjustments need to be made to take account of any relevant aggravating and mitigating factors (to the extent those factors have not already been taken into account in the AFRC's assessment of the CPA misconduct) and to avoid the effect of putting a Regulatee in financial jeopardy.

Aggravating and mitigating factors

11. The list below is not exhaustive and not all factors will be applicable in a particular case. The AFRC will also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.

12. Factors which the AFRC may consider include:

(a) the degree of cooperation (or non-cooperation) with the AFRC, including whether remedial actions have been taken – please refer to the [“Guidance Note on Cooperation with the AFRC”](#) which is available on the AFRC’s website (<https://www.afrc.org.hk/>) for more information;

(b) whether similar previous CPA misconduct by the Regulatee or issues similar or related to the CPA misconduct have been identified, and whether appropriate steps had been taken to address any such similar CPA misconduct or issues;

(c) whether the Regulatee has failed to comply with any previous direction or order relevant to the CPA misconduct;

~~(d) the likelihood that the same type of CPA misconduct will recur;~~

~~(e)~~(d) the Regulatee’s compliance history and disciplinary record;

~~(f)~~(e) in the case of an individual, the individual’s experience in the profession and ~~position~~ scope of responsibilities within the practice unit; ~~and~~

~~(f)~~ in the case of an individual, personal mitigating circumstances;

~~(g) prior sanctions imposed or regulatory action taken by other competent authorities; and~~

~~(h) result of any concluded civil action taken by third parties.~~

Financial jeopardy

13. A pecuniary penalty should not have the effect of putting the Regulatee concerned in financial jeopardy. The Regulatee is only required to provide evidence to the AFRC as to the financial situation of the Regulatee wwhere a Regulatee submits that the AFRC's proposed a pecuniary penalty may put it, him or her in such a position. In this regard, and provides relevant information in support of such submission, the AFRC will consider the following:
- (a) in the case of a practice unit, the AFRC will have regard to the practice unit's size, financial resources and financial strength, as indicated by, for example, the total turnover of the practice unit and the effect of the pecuniary penalty on its practice; and
 - (b) in the case of an individual, the AFRC will have regard to the individual's financial resources, as indicated by, for example, (including his or her annual income and assets) and the effect of the pecuniary penalty on that individual.
14. However, if a Regulatee takes or has taken deliberate steps to create the false appearance that the pecuniary penalty will place it, him or her in financial jeopardy, e.g. by transferring assets to third parties, this will be taken into account.

Disclaimer

15. The provisions in these guidelines are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances.
16. For the avoidance of doubt, these guidelines do not purport to set out an exhaustive list of the principles and factors that the AFRC may take into account when imposing pecuniary penalties, and not all of the matters referred to above will be applicable in a particular case.
17. These guidelines do not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the AFRCO.
18. The AFRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person

relying on or otherwise using ~~this policy~~ these guidelines or arising from any omission from ~~it~~ them.

19. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.

Final Document VIII

Sanctions Policy for Professional Persons

Introduction

1. This policy sets out the general approach that the Accounting and Financial Reporting Council (“**AFRC**”) will adopt when considering the imposition of sanctions on professional persons (i.e. certified public accountants and practice units) (“**Regulatees**”) pursuant to section 37CA of the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”). For the types of sanctions that the AFRC could impose on Regulatees under the AFRCO, please refer to the [*“Discipline Policy Statement for Professional Persons”*](#), which is available on the AFRC’s website (<https://www.afrc.org.hk/>).
2. Unless otherwise stated, terms defined in the AFRCO shall have the same meanings in this policy.
3. This policy will be reviewed periodically and (where appropriate) revised in the light of experience. This policy cannot deal with every single situation and exceptions will sometimes arise.

General approach to determining sanctions

4. The AFRC will consider the full circumstances of each case, including the seriousness of the conduct involved and the circumstances of the Regulatee concerned, before determining which sanction or combination of sanctions to impose on the Regulatee.
5. Generally speaking:
 - (a) the AFRC will consider the objectives of discipline in the context of the AFRCO. The primary purpose of imposing sanctions is not to punish, but to protect the public and the wider public interest and for deterrence;
 - (b) the AFRC will aim to impose sanctions which are proportionate. In assessing proportionality, the AFRC will consider whether the particular sanctions are commensurate with the circumstances of the case, including the seriousness of the conduct and the circumstances of the Regulatee concerned;
 - (c) where a case potentially gives rise to multiple sanctions, the AFRC will look at the totality of the sanctions to ensure that they are not disproportionate to the seriousness of the conduct in question for each of the Regulatees; and

- (d) the AFRC may have regard to sanctions (including the amount of any pecuniary penalty) imposed in other cases. It will, however, impose the sanctions which it considers appropriate on the facts and circumstances of the specific case before it and will not be constrained by the sanctions imposed (or not imposed) in earlier cases. The AFRC may also adjust its approach from time to time in light of various considerations it deems relevant to the discharge of its functions and to changing market circumstances, particularly the behaviour of Regulatees.
6. Without prejudice to the matters stated in paragraphs 4 and 5 above, the AFRC will generally adopt the following approach to determining the sanction to be imposed in a particular case:
- (a) the AFRC will first assess the relevant conduct including its nature, seriousness, frequency, duration and impact to identify the sanction or combination of sanctions that the AFRC considers potentially appropriate (paragraphs 7 and 8 below); and
 - (b) the AFRC will then consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level, nature or combination of sanctions under consideration (paragraphs 9 and 10 below).

Step (a): Undertaking the initial assessment of the conduct

7. In assessing the conduct, the AFRC may consider the factors summarized in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. The AFRC may also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
8. Factors which the AFRC may consider include:

The nature and seriousness of the conduct

- (a) the nature, extent and importance of any laws, standards or regulations breached;
- (b) whether the conduct was intentional, dishonest, deliberate, reckless or negligent, or involved a failure to act or conduct business with integrity or an

abuse of a position of trust;

- (c) whether the conduct was engaged in by the Regulatee alone or as a group, and if so the Regulatee's role in that group, including whether the Regulatee caused or encouraged other individuals to commit the relevant conduct;
- (d) whether the Regulatee facilitated wrongdoing by a third party or collusion with a client;
- (e) in the case of a practice unit, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of any relevant Hong Kong Standard on Quality Control (or equivalent);

The frequency and duration of the conduct

- (f) whether the conduct was isolated, or repeated or ongoing;
- (g) if repeated or ongoing, the duration of the conduct;

The impact of the conduct

- (h) whether the conduct damaged, or (if known) could have damaged, the public interest and the interest of the investing public;
- (i) whether the conduct damaged, or (if known) could have damaged, public confidence in the quality of corporate reporting and financial statements;
- (j) whether the conduct undermined, or (if known) could have undermined, public confidence in the standards of conduct in general of Regulatees and the reputation of Hong Kong as an international financial centre;
- (k) whether the conduct adversely affected, or (if known) could have adversely affected, a significant number of people (such as the investing public), including the loss of significant sums of money; and
- (l) the financial benefit derived or intended to be derived from the conduct (the amount of profits gained or intended to be gained or losses avoided or intended to be avoided by the Regulatee, in so far as they can be determined). If the Regulatee has derived any illegitimate financial benefits or has

illegitimately avoided any losses, the AFRC will generally take steps to ensure that no illegitimate gain is retained. The AFRC may also allocate an amount in respect of interest on the benefit obtained or loss avoided.

Step (b): Considering any relevant aggravating or mitigating circumstances

9. Having assessed the circumstances of the conduct and reached a view on the potential sanction that would be appropriate, the AFRC will then consider whether to adjust that sanction to reflect any aggravating or mitigating factors (summarized in the paragraph below) that may exist (to the extent those factors have not already been taken into account in the AFRC's assessment of the conduct). The list below is not exhaustive and not all factors will be applicable in a particular case. The AFRC will also consider any other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, the AFRC will decide the relative weight to ascribe to each relevant factor.
10. Factors which the AFRC may consider include:
 - (a) the degree of cooperation (or non-cooperation) with the AFRC, including whether remedial actions have been taken – please refer to the [“Guidance Note on Cooperation with the AFRC”](#) which is available on the AFRC's website (<https://www.afrc.org.hk/>) for more information;
 - (b) whether similar previous conduct by the Regulatee or issues similar or related to the conduct have been identified, and whether appropriate steps had been taken to address any such similar conduct or issues;
 - (c) whether the Regulatee has failed to comply with any previous direction or order relevant to the conduct;
 - ~~(d) the likelihood that the same type of conduct will recur;~~
 - ~~(e)~~(d) the Regulatee's compliance history and disciplinary record;
 - ~~(f)~~(e) in the case of an individual, the individual's experience in the profession and ~~position~~ scope of responsibilities within the practice unit; ~~and~~
 - (f) in the case of an individual, personal mitigating circumstances;
 - ~~(g) prior sanctions imposed or regulatory action taken by other competent~~

authorities; and

(g)(h) result of any concluded civil action taken by third parties.

Disclaimer

11. The provisions in this policy are guiding principles only. They do not in any way limit the discretion of the AFRC to evaluate each case on its own facts and circumstances.
12. For the avoidance of doubt, this policy does not purport to set out an exhaustive list of the principles and factors that the AFRC may take into account when determining sanctions, and not all of the matters referred to above will be applicable in a particular case.
13. This policy does not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the AFRCO.
14. The AFRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this policy or arising from any omission from it.
15. In the event of any inconsistency between this document and the AFRCO, the AFRCO shall prevail.