



3 May 2022

By email to: consultation@frc.org.hk

Financial Reporting Council
24 Floor, Hopewell Centre
183 Queen's Road East
Hong Kong

Dear Sirs,

Consultation paper on Accounting and Financial Reporting Council disciplinary process, guidelines and policies

I am pleased to submit, on behalf of the Hong Kong Institute of Certified Public Accountants ("Institute") a response to the Financial Reporting Council's ("FRC") consultation paper on various processes, guidelines and policies related to regulatory powers that will be available to the (renamed) Accounting and Financial Reporting Council ("AFRC") after the commencement of the enhanced independent regulatory regime for the accounting profession. The enhanced regulatory regime will be a further positive step to maintaining the reputation of Hong Kong as a respected international financial centre and capital market.

The Institute appreciates the FRC's commitment to transparency and engagement with the Hong Kong accounting profession throughout the consultation process. The engagement has facilitated a fuller understanding by current and future regulatees of the aims and objectives of the new regulatory system and how the AFRC will carry out its responsibilities.

The Institute was pleased to be able to assist the FRC in arranging three forums for Institute members to listen to presentations by the FRC and to ask questions about the new regulatory powers and processes of the AFRC. In preparation for the forums we provided the FRC with some areas where we anticipated members might ask questions or request further clarification. For completeness we have included this information as **Annex 1** and **Annex 2**.

In total the three virtual forums attracted more than 3000 attendees. The questions raised were wide ranging and we trust that the more important issues raised will be taken into account by the FRC in concluding the consultation. This response does not attempt to repeat all the comments, questions and views raised during the forums but does identify one or two common "themes".

We respectfully suggest that for the majority of Institute members who will come under the remit of the AFRC/FRC for the first time after the commencement of the new regime the major concern will simply be a less than full understanding of new processes and procedures. For example, the member forums highlighted some uncertainty over the AFRC disciplinary procedures which will be very different



from the systems that have been operating under the Institutes regulatory authority for many years. While this may have no impact for the vast majority of Institute members, it will take time to understand how and when the new independent tribunal will come into play in the enforcement process. In our experience, holding annual briefings for regulatees on the findings and outcomes of inspection and enforcement work has been an effective way to build understanding of regulatory systems and expectations.

Other questions focused on operational details of registration and inspection as they will affect professional persons. Despite all the efforts put into engagement during the consultation this unfamiliarity is likely to persist for some time. Given the pledges that were made during the legislative process practice units will expect to see the same requirements and operational approach being applied in licensing and inspection under the new regime as have been applied by the Institute.

Overall we are of the view that the processes, guidelines and policies included in the consultation are understandable, reasonable and proportionate. We recognize that in addition to provisions specified in the Accounting and Financial Reporting Council Ordinance (“AFRCO”) the FRC has taken into account practices and procedures adopted by other professional and financial regulators both in Hong Kong and overseas.

Our responses to the specific consultation questions are provided below:

Question 1.

The proposed disciplinary process is transparent, fair and provides a reasonable opportunity for regulatees to be heard. We would note that the process may be unfamiliar to new regulatees as it is a different model to the current Institute disciplinary process. There may be an initial expectation that requests for a meeting with the AFRC will be a routine part of the process, and further clarification may be necessary to avoid this happening. We also suggest that it is made clear that the AFRC will delegate (under s11 AFRCO) authority to hold such meetings to a specified committee or department and that it is not the Council (Board) that will participate in this stage of the disciplinary process.

Question 2.

In our view no improvements to the proposed disciplinary process are necessary to facilitate the AFRC’s efficient and effective discharge of its disciplinary function. Document A clearly sets out the stages of the disciplinary process and emphasizes clear communication of preliminary allegations and proposed sanctions; opportunities for the regulatee to make representations; communication of decisions; and the provision for an independent review of decisions.



Questions 3, 5, 7 and 9.

We agree that the proposed guidelines for exercising the power to impose a pecuniary penalty and sanctions policies for PIE auditors, registered responsible persons and professional persons should be principle-based and further application guidance should be provided using experience of the operation of the new system and decided cases. Some Institute members may suggest the use of a tariff-based system to give consistency and certainty to pecuniary penalties and other sanctions. We do not support that view and believe that the fundamental principle should be that all case outcomes must be dependent on the specific circumstances of the case under consideration. We understand that precedent cases should not restrict determination of pecuniary penalties and sanctions. To address market expectations that the outcome of enforcement proceedings by the AFRC will be largely the same as under the Institute's processes it will be important that Decision Notices are comprehensive and clear on case specific circumstances.

Questions 4, 6, 8 and 10.

We believe the lists of factors that the AFRC may take into account when determining pecuniary penalties and sanctions for PIE auditors, registered responsible persons and professional persons are reasonable and comprehensive. It will be important for the market and regulatees to observe and understand how factors are being considered and applied in practice. Comprehensive decision notices and other public communication of case outcomes will be important in this respect. Regulatees may need to be reminded that co-operation with the AFRC means more than complying with legally backed requests for information or responses to questions asked by the AFRC.

Question 11.

We have no further comments on the proposed documents that would help the AFRC to discharge its statutory regulatory obligations.

I trust that these comments are of value. If you require any clarification on the comments, please do not hesitate to contact me at ce@hki CPA.org.hk

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Margaret W.S. Chan', written in a cursive style.

Margaret W.S. Chan
Chief Executive and Registrar

Points to share with FRC before forums (discipline, investigation and inspection)

Discipline and sanctions

1. The AFRC disciplinary process will be “new” to most HKICPA members so there are likely to be questions about why an internal administrative process is as “fair” as an independent disciplinary committee. It may be necessary to explain that independence in the AFRC is at the organizational level without the need to make individual functions independent; operationally the disciplinary process is separate from inspection and investigation; and the fairness and due process is clearly set out in legislation, policy statements and guidelines.
2. The need for a regulatee to request a meeting to make oral representations during the disciplinary process is different to HKICPA disciplinary proceedings which are conducted mainly as in person hearings. This difference is likely to be questioned although it is a common regulatory model for independent regulators.
3. There is a chance that it might need to be clarified that a request for a meeting to make oral representations during the disciplinary process is made to the AFRC as the body corporate and not the Council/Board.
4. Apart from a general reference in 5(d) of the *Sanctions Policy for Professional Persons* there is no specific reference to “past similar cases” or precedents in the guidance on determining sanctions and pecuniary penalties. In the first phase of regulatory reform this issue was raised by some PIE auditors, suggesting a preference for a “tariff” approach to sanctioning, and may come up again.
5. The lists of factors to be considered in determining sanctions and pecuniary penalties are comprehensive and similar to guidance used by other regulators and the HKICPA. If questions are raised they may be about whether the factors are weighted or requesting clarity about specific factors e.g. the nature of the CPAs role in the engagement.
6. Although its role, composition and appointment of members are set out in legislation there may be questions about the Accounting and Financial Reporting Review Tribunal, simply because it will be a new body to most HKICPA members.
7. In the *Discipline Policy Statement for Professional Persons* the description of sanctions in paragraph 15 includes “investigation costs and expenses”. This is the wording of s37CA of the AFRCO. As this does not appear in the descriptions of sanctions in other parts of the AFRCO or other policy statements an explanation might be requested.

Inspections

8. One of the inspection outcomes available to the AFRC is to directly exercise sanctions under s37CA. In the context of an independent regulator this is logical but will be unfamiliar to HKICPA members as the practice review committee cannot impose sanctions but has to raise a complaint to be dealt with through the disciplinary process. Lack of familiarity may prompt questions.

9. The FRC grades PIE auditor inspections: 1 (Good), 2 (Limited improvements required), 3 (Improvements required) and 4 (Significant improvements required). There is no reference to these classifications in the policy statements or legislation so a question might be asked whether the AFRC will extend the practice to inspection of practice units and how the classification is used or publicized.
10. It may be prudent to anticipate questions about the basis of selection of practice units for inspection and the frequency or cycles of inspections. Practice units will want to understand how the AFRC approach will compare to the current HKICPA practices.

Engagement Relating to Registration and Issuance of Practising Certificates

1. It's not clear whether AFRC requires QCSR to be practicing members.
 HKICPA requires QCSR to be a practicing member.
 (Page 236, para 13)
 Other reference: AFRCO s.20H, HKICPA Guideline – see p.4, para (iii)
https://www.hkicpa.org.hk/-/media/HKICPA-Website/HKICPA/section3_registration/PIE-Auditors/guide-to-application.pdf
2. Under what circumstances will AFRC impose condition and what types of conditions to be imposed?
 HKICPA sets out its policy on imposing conditions in a published guideline
 (Page 239, para 25-26)
 Other reference: AFRCO s.20S, HKICPA Guideline – see p.4-5
https://www.hkicpa.org.hk/-/media/HKICPA-Website/HKICPA/section3_registration/PIE-Auditors/guidelines-on-the-registration-and-new-processes.pdf
3. AFRC defines ordinarily resident in one way whereas HKICPA accepts other circumstances as outlined attached. Will AFRC adopt the same?
 (Page 263, para 11(d))
 Other reference: AFRCO s.20AAL(1)(d), PAO s.29A(2)(a)
4. Whether AFRC will keep to the same proportion of the partners/ directors of firms/ corp. practice as required by HKICPA (67% or 2/3)
 (Page 281, para 12(b)(ii), Page 299, para 10(c)(ii))
 Other reference: AFRCO s.20AAZE(b); s.20AAZX4(b), PAO s. 28A(5); s.28D(2)(b)(i)
5. Unclear if AFRC will keep to HKICPA's rules on PC holders (outside of PAO):
 1. Max number of mode of practice = 4
 2. The sole proprietor or at least one of the practising partners/ director of a CPA firm/ corp. practice must practise on a full time basis
6. Authorized signature is not mentioned in PAO or AFRCO.
 HKICPA allows authorized signatory be registered for firms. Not sure if AFRC will do the same.
7. The following requirements for corp. practice are based on HKICPA CPPR rules. Will AFRC adopt the CPPR to its entirety?
 - (a) The shareholders of the CP must be the ultimate beneficial owners of shares that they hold in the CP applicant;
 - (b) Not less than two-thirds of the total number of directors of the CP are CPAs (practising);
 - (c) Not less than two-thirds of the voting shares in the CP applicant are beneficially owned by CPAs (practising); and
 - (d) Every non-practising member director satisfies the requirements from time to time laid down by the HKICPA Council

Council rulings on ordinarily residence

1. A person is deemed as ordinarily resident in Hong Kong if he fulfills any one of the following conditions:-
 - (i) he has been present in Hong Kong for not less than 180 days during the period of 12 months preceding the date of his PC application; or
 - (ii) he is presently residing in Hong Kong and he intends to reside in Hong Kong for the next 12 months and he has the right of abode in Hong Kong or the right to land in Hong Kong and not to have imposed on him any condition of stay; or (R&PC 3.4.1989)
 - (iii) he is working in China and he continues to be a partner/ director/ employee of a CPA firm/ corporate practice registered with the Institute, and has the right of abode in Hong Kong or the right to land in Hong Kong and not to have imposed on him any condition of stay, and he continues to maintain a place of residence in Hong Kong or the principal members of his family have been present in Hong Kong for not less than 180 days in the past 12 months. (R&PC 12.9.2005)
2. For a PC holder who may occasionally be required to work or reside overseas on a temporary basis, a waiver from meeting any one of the above three conditions for ordinarily resident may be granted to him on an individual merit basis, but such waiver will not be granted for more than three consecutive years. (R&PC 27.1.1997)