

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 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	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)

Terms	Meanings defined in the AFRCO	Section under the AFRCO
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	<p>A practice unit means:</p> <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	<p>A professional person means:</p> <ul style="list-style-type: none"> • a CPA; or • a practice unit. 	2(1)
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)

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 CPA misconduct. As provided in section 37AA of the AFRCO, CPA misconduct in this context includes situations where the Regulatee:
 - (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
37CA of the
AFRCO

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 FR inspector or FR 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 FR inspector, FR 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:
- (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 FR 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/>).

Section
37AA of the
AFRCO

Examples of a “professional irregularity”

11. Examples of a “professional irregularity” include situations where a Regulatee:
- (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;

Section 3B
of the
AFRCO

- (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.

Sections 37ZF and 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 37I of the AFRCO – a notice pursuant to section 37I(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.