

Outline of the AFRC'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;
 - (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.

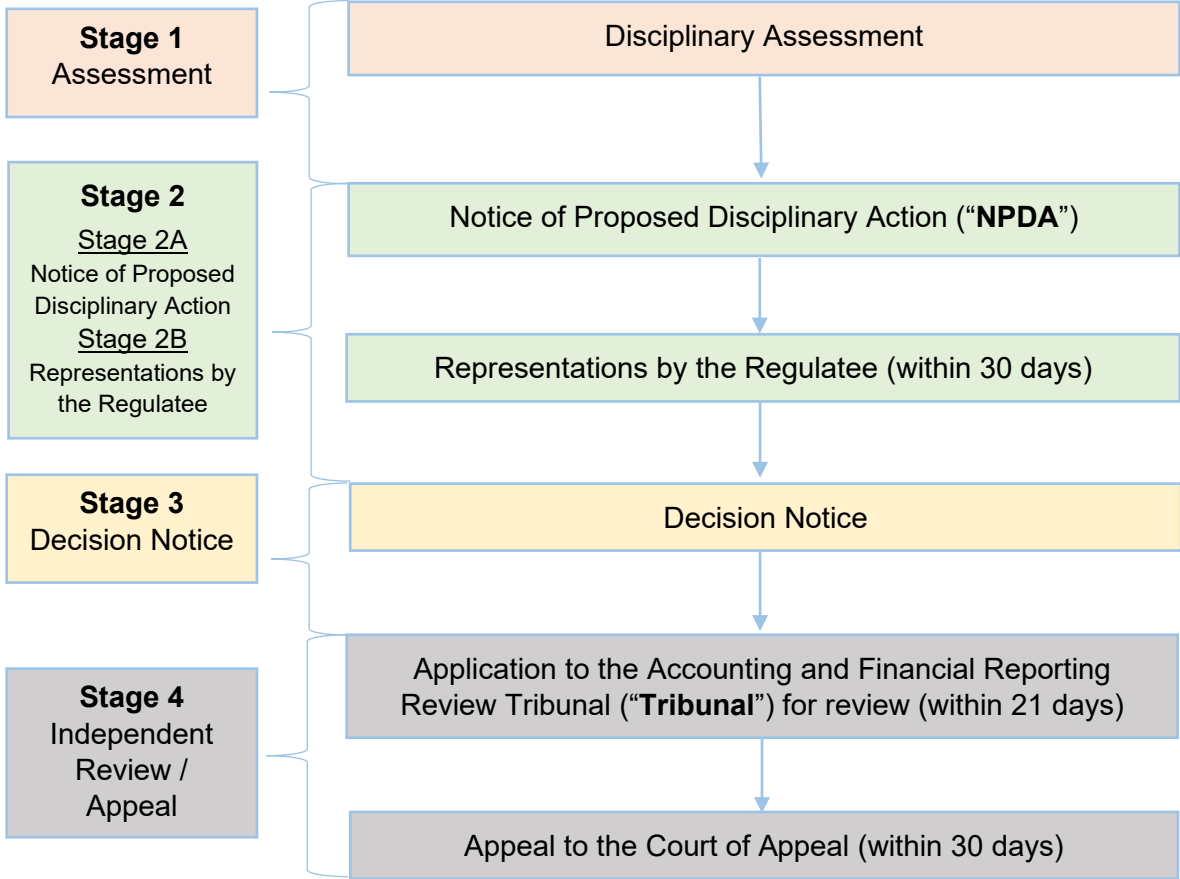
Definitions

4. 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	A practice unit means: <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 name as registered under section 22(2) of the Professional Accountants Ordinance (Cap. 50); 	2(1)

Terms	Meanings defined in the AFRCO	Section under the AFRCO
	<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	<p>A PIE means a listed corporation the listed securities of which comprise at least shares or stocks, or a listed collective investment scheme.</p>	3(1)
PIE auditor	<p>A PIE auditor means a registered or recognized PIE auditor.</p>	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. Cases may be referred to the Department of Discipline by the Department of Investigation and Compliance for consideration of taking disciplinary actions.
- 6. The Department of Discipline will then assess whether there is sufficient evidence to take disciplinary actions.
- 7. 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. 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. 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 11 below) and the expert opinion will be made available.

Stage 2A

NPDA

10. 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. 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. 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. 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 AFRC 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 Regulatee should make this clear in the submission and provide evidence in support.
14. 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. Before making representations, the Regulatee may ask for copies of the documents on the List of Documents from the AFRC.
 16. Under normal circumstances, the Regulatee will be given 30 days to make representations. The AFRC will consider reasonable requests for extension of time.
 17. 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) Meeting with the AFRC

18. Disciplinary actions can be fairly and will normally be 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 AFRC at the same time as the Regulatee files his or her or its written response to the NPDA. In this regard:
 - (a) the AFRC will consider reasonable requests for a meeting;
 - (b) when making a request, the Regulatee should explain why oral representations, in addition to written representations already made, will assist the AFRC in its disciplinary decision-making, and the issues which the Regulatee would like to address the AFRC on in the meeting; and
 - (c) the AFRC 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.

19. 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.

Stage 3

Decision Notice

20. 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.
21. 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

22. 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 beginning on the day 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.
23. The application for review must state the grounds for the application.

(ii) Effective date of a decision

24. 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.
25. 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.

26. 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 day after the Tribunal makes a final determination or the Regulatee withdraws the review application.
27. 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

28. 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.
29. 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.
30. 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

31. 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.
32. 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.afrc.org.hk/>).

Legal representation

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

Cooperation with the AFRC

34. 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.afrc.org.hk/>).

Paying a pecuniary penalty

35. 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
10th Floor, Two Taikoo Place
979 King’s Road, Quarry Bay
Hong Kong

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

Disclaimer

37. 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.