

# **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 Regulatee's compliance history and disciplinary record;
  - (e) in the case of an individual, the individual's experience in the profession and scope of responsibilities within the practice unit;
  - (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.

### **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.