

# The Hong Kong Chartered Governance Institute

## Submission

### Financial Reporting Council's Consultation Paper 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

Date: 4 May 2022

By email only: [consultation@frc.org.hk](mailto:consultation@frc.org.hk)

**Financial Reporting Council**

24<sup>th</sup> Floor, Hopewell Centre  
183 Queen's Road East  
Hong Kong

Dear Sirs

**Consultation Paper 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**

We refer to the Financial Reporting Council's (FRC's) consultation paper (**Consultation Paper**) on the above topics. Terms and expressions used under this submission (**Submission**) are as defined under the Consultation Paper.

**About HKCGI**

The Hong Kong Chartered Governance Institute (HKCGI), formerly known as The Hong Kong Institute of Chartered Secretaries (HKICS), is the only qualifying institution in Hong Kong and the Mainland of China for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 70 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extends to all of CGI's nine divisions, with more than 40,000 members and students worldwide. HKCGI is one the fastest growing divisions of CGI, with a current membership of over 6,800, 300 graduates and 3,000 students with significant representations within listed companies and other cross-industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach which takes account of the interests of all stakeholders.

**Support for the proposals**

We note that following the passage of the Amendment Ordinance 2021 the mandate of the FRC (to be renamed AFRC) is to enhance the quality of the accounting profession along with the standards of corporate reporting and audits for all entities (including PIEs) to strengthen the position of Hong Kong as a trading and an international financial centre. Also, for PIEs, given their systemic importance, we agree that there is a need for disciplinary mechanisms with the appropriate regulatory outcomes. As such, we

express our overall support for these strategic approaches embodied under the Consultation Paper as part of applied governance, albeit, day-to-day operational matters should be left to the accounting profession for their views.

We specifically agree, from the governance perspective, that the integrity of the disciplinary process, including for PIEs, should be guided by fairness and impartiality, flexibility, along with simplicity, clarity and ease of reading as detailed in paragraph 15 of the Consultation Paper. We also welcome the tight disciplinary timetable referred to under paragraph 19, subject to the regulatory review of the independent Tribunal and ultimate oversight of the Court of Appeal. Nevertheless, we are obliged to highlight that, based on the rules of natural justice, but for the independent Tribunal hearing to be done on *de novo* basis, we will be concerned with there being no hearing before the issue of the AFRC administrative notice.

### **Consultation Paper questions**

#### **Outline of the AFRC's Disciplinary Process (Document A)**

***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.***

We have set out our observations above. It is important that the hearing at the independent Tribunal is a *de novo* one, and not reduced to an endorsement of some written decision prepared by the AFRC. The rules of natural justice should be adhered to, as well as the confidentiality of the process until acceptance of the AFRC's administrative finding, or the formal decision of the independent Tribunal is made, as the case may be.

The proposal mentioned that disciplinary actions are normally determined on the basis of written submissions. However, if in addition to written representations, the regulatee wishes to make oral representations, the regulatee may ask for a meeting with the AFRC. The current HKICPA Disciplinary hearings are normally conducted in public unless the HKICPA Disciplinary Committee determines that, in the interests of justice, a hearing or any part of it shall be held in private. It would be helpful to clarify if the regulatee's meeting with the AFRC under the new regime will be held in public or in private, and the rationale behind the proposal.

***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.***

As noted above, the confidentiality of the processes should be ensured until acceptance of the administrative finding, or the formal decision of the independent Tribunal is made, as the case may be.

#### **Guidelines for Exercising the Power to Impose a Pecuniary Penalty for PIE Auditors and Registered Responsible Persons (Document B)**

***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.***

We agree that the proposed guidelines should be principle-based and welcome the suggestion that further guidance as to the application of those principles to specific factual scenarios should be provided. This is important as many Hong Kong practitioners have leaned towards adopting a rule-based approach, with the undesirable effect of form over substance compliance. Practitioners should be guided to take a holistic approach to governance which means understanding the meaning and intention of the principles. HKCGI believes that a shift from rule-based to principle-based approach is desirable and achievable with appropriate guidance and training.

**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.**

These are expected factors, and we do not have any particular concerns in this regard. However, we noted that for a particular case, the AFRC might take disciplinary actions against both a practice unit and several Registered Responsible Persons at the same time. It will be useful to clarify the principles that the AFRC will apply when determining the respective pecuniary penalty for each of the practice unit and Registered Responsible Persons.

#### **Guidelines for Exercising the Power to Impose a Pecuniary Penalty for Professional Persons (Document C)**

***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.***

We agree with a principle-based approach which is in good governance as explained under answers to Q3 above.

***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.***

These are expected factors, and we do not have any particular concerns in this regard. Please also refer to our response to Question 4 above.

#### **Sanctions Policy for PIE Auditors and Registered Responsible Persons (Document D)**

***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.***

We agree with a principle-based approach which is in good governance as explained under answers to Q3 above.

***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.*

These are expected factors, and we do not have any particular concerns in this regard.

#### **Sanctions Policy for Professional Persons (Document E)**

*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.*

We agree with a principle-based approach which is in good governance as explained under answers to Q3 above.

*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.*

These are expected factors, and we do not have any particular concerns in this regard.

*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.*

We welcome any further and specific questions and at this stage have nothing to add under the context of the Consultation Paper.

If there are any questions, please feel free to reach out to Ellie Pang FCG HKFCG, Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or [research@hkcgi.org.hk](mailto:research@hkcgi.org.hk).

Yours sincerely

For and on behalf of  
The Hong Kong Chartered Governance Institute

**Ernest Lee FCG HKFCG(PE)**  
President