By Email and by Post

Submission on the Financial Reporting Council (Amendment) Bill 2021

The amendment bill and other proposed changes are opposed for the following reasons:

1.	The proposal criminalises the inspection process for non-listed company audits (Annex A). The new section 20ZZE(1)(e) (AFRC's Power) should be replaced by section 32D of the existing Cap. 50 Professional Accountants Ordinance (PAO), i.e. the Financial Reporting Council (FRC) may only lodge a complaint as in the existing regime.
2.	The inspection work of the FRC should not cover any non-audit work. Advance notice should be given especially in the first 2 quarters of the year. The government should clarify the scope of work of the FRC covered by the current proposal as soon as possible.
3.	There is insufficient time and information for discussion of this proposal.
4.	Rotation of auditors and the appointment of engagement quality control reviewers (QCRs) should not be required for non-listed company audits. External monitors should not be required after audit work has been criminalised, and the monitors and the QCRs should not be punished (See Endnote 1).
5.	The inspection should be conducted on site and client information (including communication) will not be collected. The government has announced the development of a financial data analytic platform (Annex E) and the sources of the company's information to be collected and inputted into the platform should be disclosed. The existing section 32H (Secrecy of Practice Reviews) should be added to the amendment bill, and the FRC minutes concerning the inspection should be made available to the relevant practice unit on request.
6.	Documents collected under Parts IVA to VA (Practice Reviews, Discipline and Investigations) of the existing PAO should not be transferred to the FRC.
7.	Section 21E (FRC May Require Information for Determining Frequency of Inspection etc.) should not be applied to non-listed company auditors and this section should not be used to collect financial information on companies.
8.	The proposed name of the FRC "Accounting and Financial Reporting Council" is misleading. The FRC should adopt a similar U.S. name, "Public Company Financial Reporting Council", after the abolition of audits for non-listed companies.
9.	**The new section 3B (Professional Irregularity by Professional Persons) and the new Part 8 of Cap. 588 Financial Reporting Council Ordinance (FRCO) must be repealed. Part IVA, V and VA of the PAO must continue to operate for not less than one year after 31.12.2021.** Arrangement for 2022 is generally made from the end of Sep 2021 onwards. The HKICPA and the FRC are two different

	organisations, and the existing investigation work etc. should not be transferred to the FRC. Section 3B should be replaced by the existing sections 33B and 34 of the PAO. **The subsidiary legislation under Part 8 and the criminal offences covered by it must be released before the enactment of this amendment bill and the commencement of the registration work of the FRC**. Subsidiary legislation will be directly published in the Gazette and then laid on the table of the Legislative Council at its meetings. The Council may amend a piece of subsidiary legislation by a resolution passed at a Council meeting held not later than 28 days after the meeting at which it was so laid (which rarely occurred). The CPAs will be notified about the content of the subsidiary legislation and the criminal offences before the commencement date. The views expressed by any accounting committee formed for the purpose of studying the subsidiary legislation only represent the personal views of the individual committee members. The HKICPA must be allowed to finish the outstanding work after 31.12.2021. From the experience of listed company auditors, it appeared that the FRC has taken up investigation cases before it was formed or charged with a specific function. Part 8 should be replaced by something similar to section 32BA of the existing PAO.
10.	The new Part 2A Division 3 (Registration of Corporate Practice) should be repealed. It is the global trend to use the Limited Liability Partnership (LLP) model for professionals for nearly 20 years, and Part 2A Division 3 should be replaced by the LLP model. Lawyers are experts in corporate structure and they have used the LLP structure: e.g. Chak & Associates LLP (Admiralty, Hong Kong) LLP structure is also used by US CPA firms: e.g. BDO USA LLP (Headquartered in Chicago) The USA LLP model agreement (e.g. LLP auditor in Annex I) may be used in Hong Kong.
11.	The new section 20AAZZN (Prohibition on Advertising etc.) should be repealed (see Annex H). The criminal offences (liable to imprisonment for 12 months) do not exist in the existing PAO. There was a complaint on one of the Big 4 accounting firms for distributing souvenirs to participants in a seminar (amounted to advertising) in the past. It is unclear whether the distribution of souvenirs will be allowed if it is made by the tax division or affiliate of a Big 4 accounting firm. Compliance with the Anti-Money Laundering (AML) requirements will not be covered by the work of FRC. AML is not required for audit.
12.	Audit report should cover the minimum requirements as required by the Companies Ordinance. For further elaboration, see Annex I.
13.	The government confirmed that it has only briefed the accounting organisations and

	the business sectors for this instant proposal. Students are also affected by the transfer, and the Student Unions should be separately consulted.
14.	The new Part 2A of the FRCO: Section 20AAL(1)(d) "the applicant is ordinarily resident in Hong Kong" should be abolished and sections 20AAL(4) to (6) should also be deleted (FRC investigation should not be required).
15.	Section 20AAZZI(2) Information on the Register (Qualification of the CPA) should use the wording identical to the existing PAO (i.e. sections 20AAZZI(2)(d), (3)(c) and (4)(c) should be repealed).
16.	The following changes to the PAO should not be made: Section 2(2) repeal section 28D(10)(b)(i). The new Part V should be added to the FRCO if necessary (should not be added to the PAO).
17.	The following changes should be made: The new section 20ZZK (AFRC to Inform certain Bodies etc.) of the FRCO should be repealed. The amended FRCO is messy and incomplete. The PAO and the FRCO should be separated (instead of keeping on referring to the FRCO in the PAO). The new Part 4A (Advisory Committee) of the FRCO does not exist in the existing PAO and should be repealed. The appointment of any consultant should be left to be decided by the Council of the FRC. Section 32 of the PAO should be transferred to the FRCO. Section 18A (Council's Power to Specify Professional Standards i.e. Accounting Standards etc.) and the related definition in the PAO must be repealed. The standard setting division and committees of the HKICPA will be dissolved on the date of transfer of functions to the FRC. The FRC should develop its own standards and code of ethics. The existing continuing professional development requirements for non-listed company auditors are excessive (Annex L) as audit of non-listed companies is not required in other international cities. The FRC should be responsible for the official interpretation of the accounting standards and such interpretation should be published regularly. The HKICPA published the technical interpretation of accounting standards in its magazine in the past. The FRC should set a time limit for concluding a disciplinary case (see Annex G).

Further information or clarification is required for discussion of the proposed changes:

1.	The following delegation of work should not be made to the FRC: (i) the Companies Registry delegates its powers under the Companies Ordinance etc. to the FRC. (ii) the Securities and Futures Commission delegates its powers under the Securities and Futures Ordinance etc. to the FRC.
2.	The FRC has indicated that it will join the International Forum of Independent Audit Regulators (IFIAR) and sign the Multilateral Memorandum of Understanding Concerning Co-operation in the Exchange of Information for Audit Oversight (Annex D). The exchange of information must not cover non-listed company companies. Audit is not required for non-listed companies in the U.S. and other countries. Transfer of audit working papers to third countries is generally prohibited in other countries (e.g. Section 1253D of the Companies Act, U.K.). The financial information for non-listed companies in the U.S. etc. will not be made available to Hong Kong.
3.	The transparency of the IFIAR is low and the information is protected by password (Annex C). The government should make the password available to the accountants and Hong Kong citizens.
4.	The work of the FRC should be paid by the government. The FRC has been criticised for its high budget and over-staffing (see Endnote 2). The U.S. American Institute of Certified Public Accountants (AICPA) does not pay the U.S. Public Company Accounting Oversight Board (PCAOB).
5.	A non-listed company auditor (e.g. sole practitioner) should be allowed to provide service other than audits as long as the sole practitioner does not run the client's business. From the experience of listed company auditors, all persons involved in listed company audits have to be registered with the FRC (section 20B etc. of the FRCO). Such requirement should not be applied to non-listed company auditors.
6.	No AML requirement will be added to the PAO or the FRCO (or its subsidiary legislation). All AML requirements will be included in Cap. 615 Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO).
7.	The HKICPA sends notice to its members under the Parts IVA, V and VA of the existing PAO by registered mail. The FRC should continue to use this formal mode of communication. The new section 20AAR(3)(c) and (d) should be repealed. It implies that the FRC may only phone or email a practice unit. There are cases where the conversation of the government officials over the phone was subsequently denied, or where the practice unit claimed that they have never received an email but the government department claimed that the email was sent according to their system. The new section 20AAR should be replaced by the

	relevant section of the existing PAO.
8.	PIE auditor registers should be kept by the FRC, and disciplinary orders on the PIE auditor registers should cover the FRC disciplinary orders only (Annex K). It appears that there are different categories of auditors (S group, M group etc. as reflected in the registration numbers).
9.	The Wu Chung House of the HKICPA should be sold and leased back to the HKICPA for 1 to 2 years to make sure that sufficient money will be available to terminate the contracts of the management team. One council member may act as the HKICPA Registrar on a voluntary basis. The work of various divisions will be supervised by the HKICPA Council directly after the management team leaves the HKICPA. Sub-contractors may be used as an interim measure. Any surplus will be distributed to members after the transfer.
10.	As the FRC indicates that it will be involved in the student examination and students generally indicate that they prefer the examinations to be run by the government, the QP programme should be terminated after the government sets up a unified examination for professional accountants in Hong Kong, and the HKICPA should only focus on the registration of CPAs and the monitoring of insolvency practitioners as required by the Official Receiver's Office of the government afterwards. The views of the students on approved experience and scope of the examination should be sought immediately.
11.	Minutes of various meetings of the FRC should be made available to the public (same as the meetings of the Legislative Council).
12.	Registration of Specialists should also be transferred to the FRC to improve its transparency.

The Hong Kong Small and Medium-sized Entity Financial Reporting Standard ("SME-FRS") was issued pursuant to the Company (Accounting Standards (Prescribed Body)) Regulation issued under sections 357 and 380 of the Hong Kong Companies Ordinance (Cap. 622). In accordance with Article 9 of the Basic Law of the Hong Kong Special Administrative Region, Hong Kong must use the Chinese language for legal decree. Laws enacted by the legislature must be reported to the Standing Committee of the National People's Congress for the record under Article 17. The Standing Committee could exercise its veto on any Hong Kong legislation. However, the accounting standards have not been issued in Chinese language, gazetted and presented to the National People's Congress. These standards approved by the FRC have contravened the Basic Law. Any financial statement prepared based on these accounting standards should have no effect. The Chinese registers of PIE auditors kept under the FRCO are also not available (Annex K). The SME-FRS approved does not comply with the international standard. There are also mistakes in the SME-FRS (Annex J). In other

countries, the accounting standards form part of the legislation e.g. the Companies (Accounting Standards) Regulations, Singapore. The government should develop its own set of accounting standards and code in accordance with the procedures stated in the Basic Law. From the experience of other organisations, members may prefer a complete transfer of functions to the government (Annex O).

The current proposed amendment bill is premature. A survey based on insufficient and conflicting information may not be reliable. A significant portion of the professional firms in Hong Kong is run by sole practitioners. For example, 48% of Hong Kong law firms are sole proprietorships (Source: Hong Kong government). Similar statistics on accounting firms are not readily available. There are around 1,400,000 corporations in Hong Kong (Source: Companies Registry). Their financial statements are audited by around 3,000 CPA practice units. There are around 2,200 companies (Annex M) listed on the Stock Exchange of Hong Kong (HKEX). Their financial statements are audited by around 20 active PIE auditors. The government proposed a transitional period of not less than 18 months when the FRC (Amendment) Bill 2018 was introduced in January 2018 (the initial proposed commencement date was 1 August 2019). Non-listed company auditors are diversified and not well represented by any leader. The resources available to them are limited. A transitional period of not less than 2 years should be allowed for the current transfer. The subsequent formation of any committee for the purpose of the transfer is strongly opposed. It is unlikely that the committee members can represent the views of all the members or the practising certificate holders and it may only be used as a platform for the government officials to announce their plan. Any legislation published should be discussed at the Legislative Council, which is at least very transparent. Minutes of the HKICPA meetings and documents tabled at any transfer committee meeting may not be available to the HKICPA members. Votes of members etc. on any motion are not available to the public or the HKICPA members. Holders of practising certificates who oppose the non-transparent mode of committee operation are unlikely to participate in the committee and the committee members may be criticised for the outcome. The firm model proposed in Part 2A Division 3 of the amendment bill should be replaced by the LLP model. The legislative councillors have urged the government to implement the LLP model for law firms as soon as possible, years ago in view of the global trend. The current proposal was first announced in the government official's webpage in June 2021. The HKICPA Council immediately requested for a formal consultation and the request was ignored. This amendment bill was published without any prior consultation on 16 July 2021 and the government reassured that there would not be any increase in penalty as a result of the current transfer. However, it is noted that the penalties do increase and the increase should be repealed. FRC employs around 50 PIE inspectors. A ratio of 2.5 inspectors to 1 active

PIE auditor. From the discussion of the FRC (Amendment) Bill 2018, the penalty imposed on auditors has to be updated in line with the global trend. It is therefore essential to abolish the unnecessary audits (audit of non-listed companies) as soon as possible. Non-listed company auditors should not be required to pay for the work by the FRC as (i) audit for non-listed companies is not required in other international cities and (ii) the staff ratio of the FRC is very high (see Endnote 2). The new name of the FRC, "Accounting…" is misleading. This amendment bill affects members and students of the HKICPA only. The FRC will request HKICPA members only to pay for its work. There are other accounting associations in Hong Kong and their disciplinary action etc. will not be taken up by the FRC. Before June 2021, the government assured that the FRC would cover PIE auditors only. With the benefit of hindsight, such assurance was plainly wrong. The current "enact first, criminal offences to be announced later" approach is unacceptable. The CPAs should be informed about all criminal offences together with this amendment bill. An imprisonment of 2 years or 7 years makes a big difference.

Endnotes

(1) It is believed that the accounting firm monitoring system was sourced from the international accounting firms. The international affiliates send monitors to other member firms, review the audit work performed, and prepare reports summarising their monitoring work. Such practice was later documented in the international standard. However, the audit process was now criminalised and the monitoring system should no longer be applicable. The auditors should be entitled to the privilege against self-incrimination. The reports prepared by the monitors may point out certain criminal offences. Engagement quality control reviews (ECQR) must be carried out for listed company audits (section 20E etc. of the FRCO). The engagement partner, second partner and the QCR will all be subject to disciplinary action whenever non-compliance with a law and regulation or standard was found. However, the time spent on an audit by the second partner and the reviewer may be shorter than that of a FRC inspector. If a QCR will be subject to disciplinary action, a FRC inspector who fails to detect the problem should also be covered by the investigation and disciplinary action. These points have been raised in the discussion of the FRC (Amendment) Bill 2018 (Annex B) and were ignored by the government. Monitors and QCRs should not be required for non-listed company auditors. Monitor and QCR of a sole practitioner firm are not employees of the firm and should not be covered by any criminal sanction or penalty. Audit of non-listed companies is not required in the U.S. and other countries, and similar problem does not exist in other countries.

(2) Letter from the HKICPA to the Legislative Council:
HKICPA feels that the proposed annual budget of the FRC, a three-fold increase from that of the HKICPA, requires better justifications. Judging from our own experience in regulation, inspection and discipline, the figure seems very high considering the number of PIE auditors under the purview of FRC. We have calculated the annual costs currently incurred by us in respect of the responsibilities to be transferred at around $12 million, the number which we have provided to independent consultants engaged by the Government to develop a budget for the new FRC. The proposed "additional" budget for the new FRC is five times the current costs of regulating this relatively small population of audit firms.

Annexes

A	The Amendment Bill Criminalises the Inspection Process and Activates the Criminal Penalty on Audits
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C	IFIAR Webpage (Password Required)
D	The IFIAR Multilateral Memorandum of Understanding Concerning Co-operation in Exchange of Information for Audit Oversight
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Annex A The Amendment Bill Criminalises the Inspection Process and Activates the Criminal Penalty on Audits

Criminalises the inspection process, and activates the criminal penalties on audit and directors by delegation of functions	It is believed that the government will criminalise the whole audit process after this amendment bill is enacted. In the enactment of the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2018 (AMLO (Amendment) 2018), the government insisted that Trust or Company Service Providers (TCSPs) owned and controlled by the CPAs and solicitors still have to be licensed and regulated by the Companies Registry, and the proposal of self-regulation was rejected. However, shortly after the enactment of the AMLO (Amendment) 2018, the government proposed to transfer its power under the AMLO back to the professional bodies. It is believed that this is an attempt to criminalise the inspection process, and the monitoring of a bundle of criminal penalties related to accountants, directors and company secretaries under the Companies Ordinance will be transferred to the professional bodies and covered by the inspection. The current proposal is the second attempt of the government to activate the criminal penalties related to audits. The HKEX has conducted a Review of the Listing Rules Relating to Disciplinary Powers and Sanctions in 2020 (Annex N). The HKEX may transfer its disciplinary powers over company secretaries and solicitors to the FRC. Before the amendment bill, an accounting firm and its employees are required to supply the necessary document during the HKICPA inspection process. If not, the practice reviewer may lodge a complaint and the membership of the CPAs may be suspended. After the transfer, an accounting firm and its employees are required to supply the necessary

	document. If not, the person may have committed an offence under the Companies Ordinance or the Security and Futures Ordinance. The information may also be requested directly from the company's directors based on the government's power under the Companies Ordinance etc. The accounting professional has requested for the abolition of criminal sanction on inspection before the FRC (Amendment) Bill 2018 was enacted, and the request was ignored by the government (Annex B). **The new section 20ZZE of the FRCO is very different from the relevant section of the existing PAO.** Section 32H (Secrecy of Practice Review) of the existing PAO was also repealed.

The government has not yet clarified whether monitors and engagement quality control reviews (EQCRs) are required for non-listed company auditors. If yes, it is likely that criminal sanctions will be extended to these persons. Unlike listed company auditors, the monitor and QCR are not employees of a sole practitioner firm and therefore monitor and QCR should not be required for non-listed company auditors. In fact, the government should abolish the requirement for an audit of a non-listed company in line with all other international cities.

Annex B Views of the Professional Accountants on the FRCO

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Clerk to Bills Committee on Financial Reporting Council (Amendment) Bill 2018
Legislative Council Secretariat
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9 March 2018

Our Ref: LWHF/EG2

Dear Sirs

Comments on the Financial Reporting Council (Amendment) Bill 2018 (the "Bill")

We thank you for giving PwC the opportunity to comment further on the Bill.

We are pleased to note that a number of the comments in our submissions to the Financial Services and the Treasury Bureau in September 2014 were considered and incorporated into the Bill.

We wish to highlight again at the outset that PwC are fully supportive of the Bill and are of the view that an independent regulation of the auditing profession relating to PIE engagements is of significant benefits to the public.

We would like to take this opportunity to raise a few key matters which we believe ought to be properly addressed in the new law such that this significant regulatory reform will bring about the objectives of transparency, clarity and fairness.

1. Expanding FRC oversight to cover all PIE assurance engagements

1.1. "PIE engagements" are currently defined under the current Bill to include only (i) preparation of auditor's reports on the financial statements of a PIE, (ii) preparation of accountants' reports for inclusion in listing documents, or (iii) preparation of accountants' reports for inclusion in circulars for the purpose of reverse takeovers or very substantial acquisitions (the new Schedule 1A).

1.2. There are other types of assurance engagements performed and externally reported by an auditor for PIEs in accordance with the Listing Rules. These other engagements should also be regulated by the FRC and ought to be covered in the Bill in order to avoid any regulatory overlaps between the FRC and other regulators (such as the HKICPA) and potential duplication of costs.

2. Changing composition of the Council to include solely non-practitioners

2.1. The current Bill requires that the number of non-practitioners must exceed the number of practitioners in the Council (the new section 7). We suggest that all of the members in the Council should be non-practitioners in order to ensure that the FRC is fully independent from the industry and is not influenced by any regulated firms. Having said that, it is important to ensure that a sufficient number of Council members possess the relevant accounting and audit knowledge, experience and expertise to effectively regulate the profession. This can be achieved by including, for example, former practitioners in the Council.

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3. Removing sanctions against quality control system responsible person

3.1. The current Bill provides that the "quality control system responsible person" nominated by the firm may, in his individual capacity, potentially be subject to sanctions for audit deficiencies in a particular PIE engagement (given the current broad wording of the new section 37B).

3.2. We accept that the firm's management and leadership team should assume ultimate responsibility for the firms' system of quality control (as required by HKSQC 1). However, we consider that the current Bill places excessive burden on those persons who are appointed by the firm to oversee the firm's quality control system.

3.3. Any sanctions imposed on the firm by the FRC will already reflect any failures in the quality control system, which will prompt the firm to undertake any appropriate corrective measures to rectify systemic issues.

3.4. We are not aware of any similar powers available to overseas audit regulators to sanction quality control leaders, which may support our position that sanctioning those persons is unnecessary and may create undesirable and unintended consequences.

4. Timely provision of Implementation Guidelines (and Sanctions guidelines)

4.1. We respectfully suggest that the Implementation Guidelines (including those for sanctions), which set out how the FRC will implement the Bill and conduct its operation, should be made available at this stage when the Bills Committee is considering the Bill. One of the key objectives of this regulatory reform is to bring about transparency in the process. It follows, therefore, that the Implementation Guidelines (including those for sanctions) should be made available for comments at this stage.

4.2. The sanctions guidelines (which may be published in the Gazette) are particularly important as the new section 37H specifically provides that the issuing of those guidelines is a pre-condition to imposing pecuniary penalty. The public, especially the stakeholders, should be given the opportunity to comment on them before the law is passed, such that any issues with respect to those guidelines can be identified and, if necessary, rectified before the law comes into force.

5. Ensuring relevant expertise for handling investigations and disciplinary cases

5.1. It was highlighted in the consultation papers that the FRC should seek relevant expert opinion on accounting and auditing standards (which can be very complex for laymen) at different stages of the investigation and disciplinary process. However, the Bill does not provide for a clear mechanism requiring the FRC to do so. This needs to be addressed.

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5.2. We further suggest that the FRC should seek assistance from a panel of experts (consisting of more than one, ideally three persons) rather than from one individual expert as there may be significant risks of bias, especially when professional judgment is involved and the accounting and auditing standards may be open to different interpretations.

5.3. Having a transparent system for the investigation and disciplinary process (including detailing how external assistance will be obtained by the FRC) is so fundamental that it should appropriately be included in the Bill, instead of in the implementation guidelines.

6. Removing criminal sanctions for failing to comply with inspection requests

6.1. The current Bill appears to treat inspections the same as investigations. The purpose of inspections is generally to review the audit policies and practices of audit firms with a view to improving them in order to ensure good standard across the industry. Audit firms will be required to take any necessary corrective measures as recommended by the inspector.

6.2. In contrast, investigations under the new section 23, are very different in nature and require certain thresholds to be met (for instance, the FRC needs to have reasonable cause to believe that there was misconduct). In light of public interests, failing or refusing to comply with an investigation notice should be seen as much more serious than failing to comply with a request for inspection. As such, it is inappropriate to set the same level of penalties for both. In any event, imposing criminal sanctions (including imprisonment) for failing to comply with a request for inspection is in our view inappropriate. There are other measures available (such as by referring the matter to the investigation team for consideration) to ensure compliance with an inspection request.

7. Limiting the sanctions available following inspections

7.1. The current Bill allows the FRC to initiate an investigation or even impose sanctions against the auditor following issuance of an inspection report (the new section 27H). We think this is inappropriate and suggest that sanctions (and disciplinary actions) should only be imposed if a firm fails to carry out any corrective measures as required by the FRC (or the inspector) within a reasonable time.

7.2. As noted above, we fear that the current Bill does not make a clear distinction between inspections and investigations, which by nature are very different. It is unclear how inspections will be used. Given that the Bill appears to allow inspections to be carried out at any time (under the new section 21B), there is a real concern that it may be used effectively as a form of investigation, making the provisions for investigation (as well as the threshold requirement for commencing an investigation) redundant.

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8. Monitoring funding and budget

8.1. We suggest that the funding mechanism and the FRC's budget be subject to regular review and scrutiny. Under the current Bill, the Financial Secretary will only be asked to review the level of levies if the reserves of the FRC exceed two times of its estimated operating expenses (the new section 50D), and such mechanism may be inadequate. The level of reserves may not necessarily indicate how expenses are spent and whether they are excessive (for instance, excessive headcount). In the interest of transparency and public accountability, a mechanism should be established to ensure that the FRC achieves its objectives and uses its funds efficiently and wisely.

8.2. We recommend that the annual budget of the FRC be subject to review by (for example) the Financial Secretary annually, and that the Financial Secretary be given the power to review the level of levies at any time.

We should be grateful if our comments above would be taken into consideration by the Bills Committee.

Yours faithfully

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9 March 2018

Clerk to Bills Committee on
Financial Reporting Council (Amendment) Bill 2018
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Dear Sirs

Financial Reporting Council (Amendment) Bill 2018

EY welcomes the Government's introduction of the Financial Reporting Council (Amendment) Bill 2018 ("Amendment Bill") into the Legislative Council, which will enhance the independence of the regulatory regime for auditors of listed entities. We appreciate the efforts of the Government, the Financial Reporting Council ("FRC"), the Hong Kong Institute of Certified Public Accountants and various stakeholders over the past years for making valuable contributions to the auditor regulatory reform in Hong Kong.

EY supports an enhanced regulatory regime for auditors of listed entities which will further boost the public confidence when investing in public companies and provide better investor protection, and at the same time will strengthen the status of Hong Kong as an international financial centre. We believe that such enhancement will also enable the regulatory regime to gain a wider recognition internationally.

In response to the provisions formulated in the Amendment Bill, we are pleased to take this opportunity to express our views:

1. Powers of FRC

Schedule 1A has been added to the Amendment Bill. It defines the type of engagements that are under the powers of the FRC when regulating auditors of listed entities. Those engagements include the preparation of an auditor's report in relation to annual financial statements or annual accounts, and preparation of a report in other specified situations. However, there are also other assurance services that auditors may provide to listed entities. We believe that these assurance engagements should be under the powers of the FRC as well. To do so will enhance the operational efficiency and avoid the potential duplication of efforts of oversight. We therefore suggest that the definition of Public Interest Entity (PIE) engagements be widened to include any assurance engagement that is provided by a registered PIE auditor in relation to the preparation of a specified report as required by the Listing Rules.

2. Composition of FRC

The Amendment Bill sets out the composition of the FRC in its system of governance. It includes a specific provision that the number of non-practitioners in the Council must exceed the number of practitioners. In this regard, we are mindful that some people may hold a view that if practitioners in the profession participate in the overall management and decision making functions within the Council, it may give rise to a real or apparent conflict of interest.

To further improve the effectiveness of its system of governance, we suggest that the composition of the Council should consist only of members who are "non-practitioners" (as defined in Clause 4 of the Amendment Bill) and that an adequate portion of appointed non-practitioners should possess relevant professional accounting qualifications, and have solid knowledge and extensive experience in the auditing of listed entities prior to the three-year cooling-off period as currently set out in the Amendment Bill. We consider "an adequate portion" should be no less than one third.

3. Criminal offences

We do not believe that imposing criminal offences against a person who fails to comply with the requirements during a regulatory inspection of listed entity auditors is appropriate, given the distinct nature of an inspection when compared to an investigation, for which criminal offences are provided in the Financial Reporting Council Bill.

An inspection is a routine process carried out by regulators to evaluate the effectiveness of a firm's quality control system and the extent of compliance by engagement teams with the firm's quality control policies and procedures. The primary objective of an inspection is to maintain the audit quality in the profession. In contrast, an investigation is carried out by regulators when a suspected auditing/reporting irregularity is identified, and it comes with an element of sanctions for any wrong-doing, which act as a deterrent.

We strongly believe that providing for criminal offences in relation to a failure to comply with requirements during an inspection is inappropriate and would only exert unnecessary pressure on auditors of listed entities. A non-compliance incident in relation to an inspection can be properly dealt with under the existing disciplinary mechanism. Criminal offences are, in our view, excessive and disproportionate.

4. Further guidance

Following the introduction of the Amendment Bill, we believe that further detailed guidance and explanatory notes to be developed by the FRC will be essential to supplement the success of the enhanced regulatory regime. The key areas that will require clarification and elaboration include the independence of governance in the FRC, how the FRC exercises its oversight and delegation powers, the funding requirements and management of the funding, and detailed application of the sanction and disciplinary mechanisms.

We believe that a transparent and practical approach to address the above areas in the forthcoming guidelines will benefit both the FRC and the auditing profession.

If you would like to discuss our comments further, please do not hesitate to contact Alden Leung at alden.leung@hk.ey.com

Yours faithfully

Ernst & Young

Annex C IFIAR Webpage (Password Required)

WELCOME TO IFIAR'S WEBSITE

PLEASE TAKE A LOOK AROUND TO LEARN MORE ABOUT OUR WORK AND OUR MEMBERS.

COVID-19 UPDATES:

- Click here for IFIAR Chair's Update
- Click here for relevant information

IFIAR

The International Forum of Independent Audit Regulators

Established in 2006, the International Forum of Independent Audit Regulators (IFIAR) comprises independent audit regulators from 54 jurisdictions representing Africa, North America, South America, Asia, Oceania, and Europe. Our mission is to serve the public interest, including investors, by enhancing audit oversight globally.

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By accessing the IFIAR Members only website, I acknowledge that this website is for use by current IFIAR Members only and that access to this website by, or transmission of information from the website to, any non-IFIAR Members is not authorised. I further acknowledge and agree to abide by the confidentiality obligations imposed by the IFIAR Charter.

Annex D **The IFIAR Multilateral Memorandum of Understanding Concerning Co-operation in the Exchange of Information for Audit Oversight**

MULTILATERAL MEMORANDUM OF UNDERSTANDING
CONCERNING CO-OPERATION IN THE EXCHANGE OF INFORMATION
FOR AUDIT OVERSIGHT

INTERNATIONAL FORUM OF INDEPENDENT AUDIT REGULATORS

Adopted on June 30, 2015

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INTERNATIONAL FORUM OF INDEPENDENT AUDIT REGULATORS

MULTILATERAL MEMORANDUM OF UNDERSTANDING CONCERNING CO-OPERATION IN THE EXCHANGE OF INFORMATION FOR AUDIT OVERSIGHT

The Parties to this MMOU share the common goal of serving the public interest and enhancing investor protection by improving audit quality globally. Given the global nature of capital markets, the Parties recognize the need for co-operation in matters related to the oversight of auditors that fall within the regulatory jurisdiction of the Parties. The Parties envision that this MMOU will facilitate such co-operation.

The Explanatory Note annexed to this MMOU forms an integral part thereof. It explains why certain approaches were taken in the MMOU and how certain provisions were drafted in order to accommodate legal frameworks that may vary from signatory to signatory.

1. Purpose of MMOU

The purpose of this MMOU is to facilitate co-operation in the exchange of Information between the Parties to the extent permitted by their respective Laws and Regulations in the area of public oversight of auditors, including inspections, investigations, enforcement and/or registration.

2. Definitions

2.1 For the purposes of this MMOU:

(a) "Audit Oversight" means the regulatory functions of a Party relating to Auditors in accordance with the Party's Laws and Regulations;

(b) "Auditor" means an entity regardless of its legal form, a partnership or a Person that is engaged or participates in the practice of auditing and that is subject to the regulatory jurisdiction of a Party;

(c) "Enforcement" means oversight activity directed at preventing or addressing violations of audit laws and regulations, which may result in imposition of penalties, punishments, restrictions, or other disciplinary measures/sanctions;

(d) "IFIAR" means the International Forum of Independent Audit Regulators;

(e) "IFIAR Officers" means the Chair and Vice Chair of IFIAR;

(f) "IFIAR Secretariat" means the individuals designated by IFIAR Officers to provide secretariat support to the IFIAR Officers in performing their role and responsibilities as IFIAR Officers;

(g) "Information" means non-public information – regardless of its form – that relates to the purpose of Audit Oversight;

(h) "Inspections" refers to reviews of audit engagements, quality control and/or Auditors to assess the quality of audits and/or compliance of each Auditor with applicable Laws and Regulations in connection with the performance of audits and related matters;

(i) "Investigations" refers to reviews undertaken by a Party of any act or practice, or omission to act, by an Auditor that may violate applicable Laws and Regulations;

(j) "Laws and Regulations" means:

(a) the provisions of the legal authority (including relevant supranational laws) for a Party's competence over Audit Oversight and its regulatory powers, including any relevant restrictions on gathering, obtaining and sharing of Information (such as regarding confidentiality and personal data protection); and

(b) the provisions in law, related rules, regulations or directive guidance promulgated thereunder and any other regulatory requirements such as auditing, professional and ethical standards that are relevant to Auditors and subject to oversight by a Party;

(k) "MMOU" means this multilateral memorandum of understanding;

(l) "Party" means an IFIAR member who has signed this MMOU;

(m) "Person" means a natural or legal person, or an entity, body, or association, regardless of the legal form, including corporations and partnerships;

(n) "Registration" means the registration of an Auditor that enables the Auditor to perform audits of entities established in the jurisdiction of a Party, entities whose securities are listed in the jurisdiction of a Party, or other entities who must be audited by an Auditor registered with the Party.

3. General principles

3.1 This MMOU does not create any legal obligations or supersede any Laws or Regulations, and does not give rise to a right on the part of any of the Parties or any other governmental or non-governmental entity or any Person to legally challenge, directly or indirectly, the degree or manner of mutual co-operation by any of the Parties.

3.2 The Parties recognize that there may be additional determinations or assessments with respect to the requesting Party that are specifically required by a requested Party's Laws and Regulations before that requested Party may provide Information to the requesting Party. In order to make such determinations or assessments, the requested Party may require certain relevant Information and assurances from the requesting Party.

3.3 This MMOU operates in relation to a request by one or more Parties to another Party or Parties only to the extent that it is consistent with the terms of any bilateral or other multilateral arrangements between those Parties in relation to Audit Oversight and does

not supersede or amend any such bilateral or other multilateral arrangements. In the event of any inconsistency between this MMOU and such other arrangements, the bilateral or other multilateral arrangement will prevail.

3.4 This MMOU does not prohibit any of the Parties from taking measures with regard to Audit Oversight that are different from or in addition to the measures set forth in this MMOU.

3.5 The Parties recognize that transfers of personal data pursuant to this MMOU will be in compliance with their applicable Laws and Regulations for the protection of personal data, and that prior to any transfer, the Parties may need to conclude bilateral data protection agreements or ensure that data that may identify, directly or indirectly, a natural person (personal data) will not be a part of any Information transferred. This MMOU does not constitute consent on behalf of any natural person to the disclosure by a Party to another Party, or to any third party, of any personal data which is protected from disclosure under the Laws and Regulations of the jurisdiction of a Party.

4. Scope of co-operation

4.1 In general, this MMOU covers the exchange of Information between Parties for the purposes permitted or required by their Laws and Regulations, including Inspections, Investigations, Enforcement and/or Registration.

4.2 The Parties will endeavour to provide each other with the fullest assistance permissible in facilitating the exchange of Information to secure compliance with their respective Laws and Regulations in respect to Audit Oversight.

4.3 Cooperation under this MMOU may include:

(a) providing Information held by the requested Party regarding the matter set forth in the request for Information under Chapter 5; and

(b) when the Information is not already held by the requested Party:

(i) obtaining Information upon request of the requesting Party where permitted by the requested Party's Laws and Regulations, or alternatively,

(ii) using best efforts to assist the requesting Party to obtain Information regarding the matter set forth in the request for Information under Chapter 5, and, where permitted by the requested Party's Laws and Regulations, to facilitate the direct transfer of Information from the Auditor or other relevant Person(s) within the requested Party's jurisdiction.

5. Requests for Information

5.1 Requests for Information under this MMOU will be made in writing (including by e-mail) and addressed to an appropriate contact of the requested Party. In urgent circumstances, requests for Information may be made orally, and if required by the requested Party, such communication may be confirmed subsequently in writing.

5.2 Requests for Information will include the following:

(a) the Information requested;

(b) the purpose for which the Information will be used;

(c) the reasons why the Information is needed, including any pertinent facts underlying the request and, if applicable, the relevant provisions that may have been violated;

(d) an indication of the date by which the Information is needed;

(e) any Information known to, or in the possession of, the requesting Party that might assist the requested Party in identifying either the Persons believed to possess the Information sought or the places where such Information may be obtained;

(f) an indication of any special precautions that should be taken in collecting the requested Information due to investigatory considerations, including the sensitivity of such Information;

(g) an indication of whether the Information might, consistent with what the Party has disclosed as part of the Assessment Process (Annex C), be used for another purpose or onward shared under the provisions of Chapter 7, or made public under section 8.5, if no bilateral arrangements are in place.

5.3 The Parties recognize the importance of providing prompt and timely co-operation and exchange of Information for the purposes of Audit Oversight.

6. Execution of the request

6.1 Each request will be assessed on a case-by-case basis by the requested Party to determine the fullest extent of Information that can be provided under the terms of this MMOU and the procedures applicable in the jurisdiction of the requested Party. In any case where the request cannot be met in full within the desired time period, the requested Party will consult with the requesting Party to determine if there are alternative ways to meet the Audit Oversight objectives of the requesting Party.

6.2 A request for Information may, in particular, be denied by the requested Party where the request would require the requested Party to act in a manner that would violate its Laws and Regulations or the request is not made in accordance with the provisions of this MMOU.

6.3 Where a requested Party denies or is unable to provide all or part of the requested Information, the requested Party will identify the Information withheld, provide the reasons for not granting the Information, and consult according to section 9.1 with the requesting Party to determine if there are alternative ways to meet the Audit Oversight objectives of the requesting Party.

7. Permissible Use of Information and Onward Sharing

Any Information received in the course of co-operation for Audit Oversight purposes under this MMOU will not be used for any other purposes or onward shared (including use or onward sharing for criminal proceedings), except where:

(a) the use of Information for other purposes and/or onward sharing is addressed in a bilateral arrangement between the Parties; or,

(b) the requesting Party has obtained prior written consent from the requested Party for the use of Information for other purposes and/or for any onward sharing of such Information.

8. Confidentiality

8.1 Each Party will hold confidential all Information received in the course of co-operating under this MMOU, and will not disclose such Information other than as provided by Chapter 7 or sections 8.5 and 8.6. In addition, each requesting Party will ensure that such confidentiality also applies to those who are or have been authorized to have access to Information according to the applicable Laws and Regulations, in particular:

(a) persons employed, contracted by, or associated with the Party; or

(b) persons involved in the governance of the Party.

8.2 Notwithstanding section 8.1, after notifying the requesting Party, the requested Party may disclose the fact that a request for Information has been made to the extent necessary to execute the request. The Parties may consult and agree to disclose additional details regarding the request.

8.3 Each Party will:

(a) ensure that Information provided to it by another Party in response to a request under this MMOU is protected at least to the same extent and with the same care as it would protect its own Information of a similar nature and that it is retained and destroyed in accordance with appropriate retention policies.

(b) establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of the Information, including storing the Information in a secure location.

(c) comply with this MMOU and all its applicable Laws and Regulations concerning the collection, retention, storage, use and disclosure of Information; and

(d) ensure that any natural persons as referred to in section 8.1 who are partners, employees, officers or representatives of partnerships, companies and individuals that conduct audits of financial reports and who are authorized to have access to Information obtained from another Party under this MMOU:

(i) are bound by confidentiality requirements; and

(ii) do not participate in a matter where a 'reasonable person' would conclude that they may have a conflict of interest;

(iii) receive Information in relation to a matter where they may have a conflict of interest only when that Information can be effectively anonymised; or

(iv) are subject to other appropriate procedures to protect the Information and address any possible conflict of interest.

8.4 The provision of Information by a Party pursuant to this MMOU does not negate or waive any confidentiality or privilege that might otherwise attach to such Information.

Exceptions to confidentiality

8.5 A Party may issue its own public inspection reports that include Information received under this MMOU or in accordance to 3.5 under additional data protection agreements as permitted or required by its Laws and Regulations, including public reports that identify the Auditor inspected and the inspection results, but do not identify the names of the audit clients reviewed. Before issuing public inspection reports, the Party will give prior notice of the publication to the other Party if its Laws and Regulations do not prohibit such notice.

8.6 A Party may also publicly announce its jurisdiction's sanctions – including disciplinary measures - imposed upon Auditors as permitted or required by its Laws and Regulations. Before publicly announcing any sanctions imposed on an Auditor that is located in the other Party's jurisdiction, and subject to the other Party's authority, the Party will give prior notice of the announcement to the other Party if its Laws and Regulations do not prohibit such notice.

9. Consultations

9.1 In the case of specific requests made pursuant to this MMOU, the requesting Party and requested Party will consult with one another as necessary, for example, where a request for Information or consent for onward sharing may have been denied according to section 6.2 or Chapter 7 respectively. If it appears that responding to a request will involve a substantial cost to or administrative burden for the requested Party, the Parties will seek to narrow the request or may agree to cost sharing arrangements. In all consultations, the Parties will endeavour to co-operate to the fullest extent possible, keeping in mind that Audit Oversight is established to serve the public interest and protect investors in global markets. A request may be denied where consultation does not lead to a resolution. In such case, a requesting Party may take measures as provided in section 3.4.

9.2 The Parties may periodically consult on issues related to the matters covered by this MMOU and otherwise exchange views and share experiences and knowledge gained in the discharge of their respective duties to the extent consistent with their respective Laws and Regulations and will consult about matters of common concern with a view to improving its operation and resolving any issues that may arise.

The Parties may, for example, consult in the event of:

(a) a significant change in market or business conditions or in legislation where such change is relevant to the operation of this MMOU;

(b) a demonstrated change in the willingness or ability of a Party to meet the provisions of this MMOU; and

(c) any other circumstance that makes it necessary or appropriate to consult, amend or extend this MMOU in order to achieve its purposes.

10. Participation

10.1 IFIAR members may become a Party to this MMOU in accordance with the procedures set forth in the MMOU's Assessment Process (Annex C). The Assessment Process forms an integral part of this MMOU.

10.2 Subject to the announcement of a positive assessment, an IFIAR member will be added as a new Party under this MMOU by providing a signed copy of this MMOU to the IFIAR Secretariat.

10.3. Each Party agrees to notify the IFIAR Secretariat of any material change in circumstances that may be relevant to its ongoing participation in the MMOU, including changes in circumstances relating to the confidentiality of Information received from other Parties and relevant changes in the governance structure of the Party.

11. Termination

11.1 A Party may terminate its participation in this MMOU at any time upon written notice to the IFIAR Secretariat.

11.2 When a Party terminates its participation in this MMOU, co-operation and assistance by such Party with the other Parties under this MMOU will cease after having provided written notice to the IFIAR Secretariat of its termination of participation. The IFIAR Secretariat will immediately notify the other Parties to the MMOU of such termination.

11.3 A Party who ceases to be an IFIAR member automatically ceases to be a Party to this MMOU on the same date as the date of termination of its status as an IFIAR member, as determined under the IFIAR Charter.

11.4 In the event that it is considered that a Party no longer meets the requirements for continued participation in this MMOU, the Party's participation may be terminated in accordance with section 11.5. The requirements for continued participation are referred to in item 5 of the MMOU's Assessment Process (Annex C). For example, where a Party has failed to comply with provisions of the MMOU or where it contravenes the confidentiality regime, its participation may be terminated.

11.5 The IFIAR Officers may, after consultation with the IFIAR Advisory Council (or any successor IFIAR governing body), terminate the participation of a Party in this MMOU as described in section 11.4. In such a case, the Party's participation is terminated immediately upon the issuance of written confirmation by the IFIAR Chair to the terminated Party and to the other Parties.

11.6 In the event of the termination of a Party's participation in this MMOU, the Party will continue to treat Information obtained under this MMOU in the manner prescribed under Chapters 7 and 8.

11.7 This MMOU continues in force until superseded by a subsequent MMOU or until terminated by the members of IFIAR in accordance with the IFIAR Charter.

12. Effective date

The provisions of this MMOU become effective in relation to a Party on the date such Party executes a signed copy of this MMOU in accordance with section 10.2.

Annex A: List of the Signatories to the MMOU

Annex B: Explanatory Note

Annex C: Assessment Process

MULTILATERAL MEMORANDUM OF UNDERSTANDING

CONCERNING CO-OPERATION IN THE EXCHANGE OF INFORMATION FOR AUDIT OVERSIGHT

INTERNATIONAL FORUM OF INDEPENDENT AUDIT REGULATORS

ANNEX A

List of the Signatories to the MMOU

Signed by

---	---
[Name and title]	[Name of Regulator]
---	---
[Signature]	[Date]

The [signing EU/EEA-regulator] hereby declares that for the purposes of Article 47 of Directive 2006/43/EC, it signs the MMOU and it is effective only with regard to a signing non-EU/EEA regulator that is declared adequate (and as long as it continues to be declared adequate) by the European Commission by a Commission Decision in accordance with and for the purposes of Article 47 of that Directive.

Signed by

---	---
[Name and title]	[Name of Regulator]
---	---
[Signature]	[Date]

MULTILATERAL MEMORANDUM OF UNDERSTANDING

CONCERNING CO-OPERATION IN THE EXCHANGE OF INFORMATION

FOR

AUDIT OVERSIGHT

INTERNATIONAL FORUM OF INDEPENDENT AUDIT REGULATORS

ANNEX B

EXPLANATORY NOTE

(1) Purpose of the Explanatory Note

The Explanatory Note annexed to this MMOU explains why certain approaches were taken in the MMOU and how certain provisions were drafted in order to accommodate legal frameworks that may vary from signatory to signatory. Three general principles were followed in the creation of the MMOU:

- The MMOU is a framework for co-operation, and does not impose a limitation on Parties to make further co-operative arrangements;
- The MMOU seeks to maximize co-operation in a flexible approach with a goal to promote the public interest and to safeguard investors;
- The MMOU works within the scope of existing authorities so as not to require any signatory to change or act in a manner that is inconsistent with its regulatory regime.

In the event there is an inconsistency between the MMOU and the Explanatory Note, the MMOU is authoritative.

(2) Definitions

Because the MMOU includes many Parties whose terminology and scope of each definition might differ in each country, the MMOU sets forth definitions that are as neutral and generic as possible.

The term **"Auditor"** is intended to be expansive and to cover the competence of a given Party.

The definition of "**Information**" applies by its terms to non-public information "regardless of its form" meaning, for example, that if a Party to the MMOU receives information from another Party and subsequently incorporates that information into an internal working document or memorandum, the information that was received from the other Party under the MMOU and is subsequently incorporated into that document or memorandum remains subject to the provisions of the MMOU; or if a Party creates a translation of information received from another Party under the MMOU, the translation of such information would also be subject to the provisions of the MMOU.

'**Investigations'** is stated as a separate definition given there are jurisdictions where this is part of the enforcement-regime (i.e. Japan, USA) and other jurisdictions where it is part of the inspection-regime (for example France, the Netherlands). Including "Investigations", "Inspections" and "Enforcement" as separate definitions makes it clear that all of these activities are covered by the MMOU.

The definition of "**Laws and Regulations**" refers to relevant competences and regulatory powers of a Party and any standards that are applicable to Auditors in its jurisdiction, and also covers any relevant restrictions on gathering, obtaining and sharing of information by that Party. This

definition is used in the MMOU to ensure that domestic and supranational Laws and Regulations are respected. For example section 6.2 of the MMOU says that a request may be denied where the request would require the requested Party to act in a manner that would violate its Laws and Regulations.

The Parties recognize that the application of the definition of a "**Party**" may differ depending on the specific effects of a non-application clause (see further paragraph 12).

(3) MMOU as a non-binding instrument, sections 3.1 and 3.4

The MMOU expressly states it does not create any legal obligations, *i.e.* it is a non-binding agreement (sections 3.1 and 3.4). It cannot override any jurisdiction's laws or regulations and does not create any rights or obligations with respect to any of the Parties or other persons or entities. The non-binding character is also implicit throughout the MMOU through the use of non-binding words such as "may" or "should" with respect to the *framework* of co-operation. In contrast, once two or more Parties actually start co-operating under this MMOU, they have expectations that they will use best efforts to cooperate and act in accordance with the procedures set forth in the MMOU. For this reason stronger terminology – such as "will" is used with respect to the *process* of the co-operation. However, this use does not mean that the MMOU creates any enforceable rights or obligations.

(4) Additional determinations or assessments, section 3.2

The MMOU foresees that in some cases additional determinations or assessments may be needed before a Party may provide confidential information in response to a request. It is understood that, pursuant to a Party's Laws and Regulations, it might be required to undertake an additional assessment on a case-by-case basis.

Some examples of additional determinations/assessments are:

- Where the Laws and Regulations of a requested Party require compliance with additional (legal) requirements to the general assessment process. For example, the requested Party may have to determine first whether the requesting Party has some form of responsibility over the same tasks (registration, inspections, investigations and/or enforcement) and/or exercise similar/additional competences/authority as the requested Party.

- Where a separate legal imperative may be required to be met (see sections 3.2 and 3.5 of the MMOU).

  For example, the Parties of the European Union including Lichtenstein, Norway and Iceland (hereafter referred to as EU/EEA Parties) have informed the other

Parties that they may only share personal data for audit oversight purposes with non-EU/EEA Parties when:

- The jurisdiction of the non-EU/EEA Party has been subject to a positive Decision by the EC on the adequacy of protection of personal data (section 3.2);
- The EU/EEA Party and non-EU/EEA Party have a bilateral agreement on the protection of personal data (section 3.5); or
- When other specific requirements are met as set out in the Data Protection Directive (95/46/EC) (section 3.2).

- Where the Laws and Regulations of a Party require a case-by-case assessment of another Party's confidentiality regime and may impose additional requirements for confidentiality purposes.

Whether additional determinations or assessments may be needed by a Party, and the nature of those determinations or assessments, should be disclosed through the Assessment Process and be made available for information purposes on the Members' area of the IFIAR website.

(5) Effect of the MMOU on bilateral or multilateral arrangements, section 3.3

As noted in the general principles, the MMOU as a framework document anticipates bilateral arrangements where parties need or want to document more detailed technical points and protocols specific to their two regimes. Many IFIAR members have in place bilateral working arrangements that provide a specific level of co-operation which may include particular conditions and/or responsibilities. The MMOU is not intended to supersede, amend or interpret bilateral working arrangements that are in place or that will be negotiated in the future. Such working arrangements take precedence over the terms of the MMOU. Bilateral working arrangements are beneficial for the Parties to identify and work on specific points of cooperation that may not be provided by a multilateral arrangement.

- The EU/EEA Parties have informed the other Parties that when the MMOU is effective between an EU/EEA Party and a non EU/EEA Party according to the non-application clause (see further paragraph 12), the MMOU may be considered to serve as a working arrangement for the purposes of Article 47 Directive 2006/43/EC.

(6) Reciprocity and the need to accommodate different regulatory regimes, Chapter 4

While reciprocity is a fundamental legal principle in co-operation within many jurisdictions, the concept and application of reciprocity may vary among the Parties' jurisdictions. This does not

imply any limitations in all Parties' ability to cooperate in the exchange of information for audit oversight purposes.

Reciprocity issues under this MMOU should be resolved on a case-by-case basis between those Parties that seek to co-operate with one another (kindly refer to point (4) above about section 3.2 MMOU). Whilst some Parties may have the authority to obtain information on behalf of a foreign regulator, others may not, or they may allow a requesting Party to obtain the information directly from the Auditor. The requested Party may obtain the information or, alternatively, use best efforts to facilitate access to the information sought by the requesting Party (see section 4.3 paragraph (b)). Hence, the MMOU does not seek to define reciprocity or require it other than to set forth that each Party should be able to exchange information which is already held by the requested Party and to use best efforts to assist to obtain the information if the information is not already held by the Party, and, where permitted by the requested Party's Laws and Regulations, to facilitate direct access to that information by the other Party.
The ability of a regulator to obtain information for another regulator, or by alternative means, will be asked in the assessment process and will be duly mentioned in the Members' area of the IFIAR website for information purposes of the other Parties to the MMOU.

(7) Broadest scope possible, sections 4.2 and 4.3

The Parties to this MMOU seek to cooperate to the broadest extent possible consistent with their respective mandates and relevant Laws and Regulations in sharing non-public information for audit oversight (e.g. inspections, enforcement, and registration). In addition, the MMOU may provide a basis for the co-operation on supervisory colleges and multilateral inspections, although for these purposes the Parties may need to develop certain protocols.

(8) Denial of a request, sections 6.2 and 6.3

Section 6.2 outlines two grounds for the denial of a request. A request for information may be denied by the requested Party where the request would require the requested Party to act in a manner that would violate its Laws and Regulations or where the request is not made in accordance with the provisions of the MMOU.

Grounds to deny a request may vary from jurisdiction to jurisdiction, some examples under these general provisions may include:

- Where the provision of information would adversely affect the sovereignty, security, or public order of the requested Party;
- Where judicial proceedings have already been initiated or concluded in respect of the same actions and against the same persons in the requested Party's jurisdiction (Double jeopardy);
- Where final judgment has already been passed in respect of the same actions (for the same violations) and on the same statutory auditors or audit firms by the competent authorities of the requested Party;

- Where the protection of commercial interest of the audited entity, including its industrial and intellectual property, would be undermined;
- Where, in accordance with section 3.2 and/or 3.5, additional determinations or assessments with respect to the requesting Party may be needed before the requested Party may exchange confidential information;
- Where information would be provided to current practitioners as mentioned in section 8.3 (d).

Where a request is denied or likely to be denied, either in part or in whole, the Parties should consult with each other to find any alternative ways (see section 6.3). Section 6.3 refers to Chapter 9 on consultation.

(9) Permissible use of information and onward sharing, Chapter 7

The Parties to this MMOU are subject to various legal and regulatory requirements regarding the possible use and potential onward sharing of information received from another regulator. The MMOU provides that a Party would either need (a) to negotiate a bilateral arrangement on the use of information for other purposes and/or onward sharing of information or (b) to obtain prior written consent on a case-by-case basis to use any received information for purposes other than audit oversight or to share it with other domestic regulators/third parties. Chapter 7 is intended to cover such instances as onward sharing within the same organization (e.g. an integrated audit and securities/market regulator), with other domestic regulators (including a professional body), public prosecutors and regulators in another jurisdiction. In the case where the information becomes needed for criminal proceedings, this will not be considered under this MMOU as use for audit oversight purposes. Thus, where the information received or requested by the requesting Party is intended for an onward transfer to a public prosecutor or judge to be used in criminal proceedings, this is subject to Chapter 7.

Some Parties may have under their Laws and Regulations a legal obligation to onward share information under specific circumstances (or a legal obligation to use it for other purposes). To deal with such circumstances, a bilateral agreement between the two parties could set out specific arrangements to address such situations taking into account the legislation of these involved Parties (Chapter 7 under (a)). Given the various legislative frameworks of all the Parties to this MMOU, this cannot be dealt with in the MMOU itself.

Where a Party has legal obligations to use information for another purpose and/or onward share information in certain circumstances, this should be disclosed through the Assessment Process and will be made available for information purposes on the Members' area of the IFIAR website. This allows any Party in advance to assess the need for a bilateral agreement as mentioned in Chapter 7 with that Party before it decides to transfer any information to that Party under this MMOU.

When information is received under this MMOU from Party (A) and the receiving Party (B) wants to transfer the information to another Party (C) under this MMOU (onward sharing), Chapter 7 is applicable. However, if such a situation occurs, Party (C) should, as a principle, request information directly from Party (A).

(10) Confidentiality, Chapter 8

The sensitivity of information relating to audit oversight is well recognized. Disclosure of such information may cause financial and business implications to the audit client or the Auditor, may undercut administrative or even criminal actions, and may affect capital markets. Consequently, it is important for the Parties to ensure there are adequate safeguards in place to maintain the confidentiality of information exchanged. The MMOU gives prominence to confidentiality for these reasons.

The Chapter of the MMOU on confidentiality does not expressly consider the matter of sharing information with a professional body. Rather, Chapter 7 on permissible use and onward sharing is intended to cover such instances. If a requesting Party seeks to share information with a professional body, it will need to either obtain prior consent or enter into a bilateral arrangement with the requested Party.

Sections 8.5 and 8.6 refer to the issuing of public inspection reports or sanctions of *the requesting Party's own jurisdiction* and requires prior notice of publication to the extent a Party's Laws and Regulations permit. If the requesting Party does not have that authority to provide prior notice before it issues its own reports or sanctions, this should be disclosed to all Parties through the Assessment Process, and posted in the Members' area of the IFIAR website, so that the requested Party can take this into account when considering the request. Where permitted by a requesting Party's Law and Regulations, the prior notice may, upon request, identify the extent to which any information shared by the requested Party is published. Through the Assessment Process a Party should disclose its authority and/or requirements to publish inspection reports and announce sanctions that include personal data.

(11) Consultation, Chapter 9

Chapter 9 provides the basic mechanism for the Parties to resolve, conflicts of law, conflicting demands or varying mandates through consultation. Although, section 9.1 addresses the situation where a request would burden the requested Party disproportionately (in cost or administrative burden) and triggers consultation with the requesting Party, it may also, amongst other matters, include situations provided in sections 6.2 and 6.3. The reference to cost or burden is to the *Party* and should not reflect the cost or burden to the *Auditor* which may bear the costs of copying, reviewing and redacting, etc. as a compliance cost. It is understood that as the number of requests for information increase, there will be costs and burdens. As a general rule, all Parties should benefit from the co-operation framework and requested Parties should bear their own costs. It is recognized, however, that some requests, may involve substantial costs or administrative burdens

on the resources of the requested Party, and therefore could be an appropriate subject for consultation.

(12) Aim, effect and operation of a non-application clause

The MMOU provides a generic framework for cooperation in the exchange of information without mentioning any specific regime of a certain Party or Parties. Within the definition of "Laws and Regulations" (see above under (2)) the mandate of each Party involved will be decisive for the application of this MMOU in a certain case. However, an exception to this approach is made for the Parties of this MMOU that are EU/EEA-regulators.

The EU/EEA Parties have informed the other Parties that an EU/EEA Party only enters into a working arrangement for information exchange and shares certain information with non-EU/EEA regulators after - and as long as - the European Commission (EC) declares that regulator adequate for the purposes of Article 47 of Directive 2006/43/EC (Directive). Since that adequacy assessment is done by the EC before the MMOU is effective between an EU/EEA Party and a non-EU/EEA Party, the requirement is covered by the EU/EEA Parties signing with a non-application clause whereby the MMOU as a whole would not be effective as between an EU/EEA Party and any non-EU/EEA Party that had not been declared adequate by the EC. This means that the MMOU does not apply in relation to 'non-adequate third country' Parties regarding information under the scope of Article 47 of the Directive 2006/43/EC.

This non-application clause will have the effect that, according to the abovementioned information, the MMOU can only operate—and therefore only information can be exchanged—amongst Parties within each of the following groups:

(1) EU/EEA Parties;
(2) EU/EEA Parties and non-EU/EEA Parties that have been declared adequate by the European Commission through the adoption of an EC Decision;
(3) non EU/EEA Parties.

In other words, EU/EEA Parties are only considered as Parties as to an adequate declared non-EU/EEA Party and only so long as the non-EU/EEA Party continues to be declared adequate. Conversely, a non-EU/EEA Party that is not or no longer declared adequate by an EC Decision is not considered as a Party in relation to an EU/EEA Party.

The Assessment Group (as referred to in paragraph 4 of Annex C of the MMOU) may, on request, review the possibility for other non-application clauses. The use of non-application clauses should be consistent with the overall spirit of the MMOU to promote cooperation in the exchange of audit oversight information between audit regulators and limited to compelling circumstances, such as where laws and Regulations would prohibit cooperation with a particular regulator or where the overall relationship with a particular regulator would make cooperation

under the MMOU impossible to implement in practice. It is understood that any non-application clause will operate mutually, ensuring that neither the Party signing with a non-application clause nor the Party or Parties that are intended to be within its scope have any requirement under the MMOU to exchange information with one another, though the non-EU/EEA Party may elect to continue to share information on a voluntary basis despite the lack of reciprocity where it protects investors.

MULTILATERAL MEMORANDUM OF UNDERSTANDING

CONCERNING CO-OPERATION IN THE EXCHANGE OF INFORMATION

FOR AUDIT OVERSIGHT

INTERNATIONAL FORUM OF INDEPENDENT AUDIT REGULATORS

ANNEX C

ASSESSMENT PROCESS

Eligibility to become a Signatory to the MMOU

1. All IFIAR Members are eligible to apply to become a Signatory ("Signatory") to the MMOU subject to the procedures set out below.

Application process

2. Any IFIAR Member who wishes to sign the MMOU ("Applicant") may apply to become a Signatory by submitting an application letter, signed by a duly authorized representative of the IFIAR Member and submitted to the IFIAR Secretariat. The application letter should be accompanied by a full set of assessment documentation, consisting of a completed application questionnaire including copies of applicable laws, regulations, and other governing instruments (e.g., administrative guidance, codes of ethics, etc.) that support the responses to the questionnaire and any additional material that the Applicant would like to submit in support of its application. The assessment documentation should be provided in English.

3. The IFIAR Secretariat will notify the Applicant that its application has been received and that a review process will be carried out by the Assessment Group referred to below in paragraph 4. The application will be reviewed only after the Assessment Group confirms that the application questionnaire has been filled out in full and the required assessment documentation has been attached.

Assessment process

4. The assessment process will be carried out by an "Assessment Group" established and directed by the International Cooperation Working Group (ICWG), in collaboration with the Enforcement Working Group (EWG), as appropriate. The Assessment Group will review each application and then make a recommendation to the Officers based on this review as to whether the Applicant should be invited to become a Signatory.

5. The Assessment Group review will be based on the group's assessment of the ability of the Applicant to comply fully with the MMOU provisions, in particular with respect to the rigor of its confidentiality regime and its ability to exchange information and to ensure that any information it uses for other purposes or any information it onward shares under this MMOU will be under the application of Chapter 7 of the MMOU and be maintained confidential in accordance with Chapter 8.

6. The Assessment Group may establish subgroups and may call on assistance outside of the group, to assist in its review process. In addition, the Assessment Group may look to the IFIAR Secretariat for assistance and support. The Assessment Group will ensure that no IFIAR Member participates in a review of its own application.

7. The Assessment Group may seek such information from the Applicant and from other IFIAR Members as it deems necessary to carry out the review.

8. Whenever the Assessment Group believes there is insufficient evidence to support a positive recommendation or is otherwise unable to support a positive recommendation, it will notify the Applicant in writing of the status of its application and the reasons therefore, highlighting the specific MMOU provisions with which the Applicant appears to be unable to comply. If desired, the Applicant may request a further discussion with the full Assessment Group following such written notification and prior to the Assessment Group notifying the Officers of its recommendation.

Decision Making Process

9. With respect to the assessment review of potential initial Signatories, the Officers shall request that applications be submitted by a date certain. All applications received by such date will be reviewed simultaneously by the Assessment Group. Upon completion of the reviews, all applications will be forwarded at the same time to the Officers along with the recommendations of the Assessment Group, both positive and negative, and the relevant assessment documentation. The Officers, after consultation with the Advisory Council1, will notify the IFIAR membership as a whole of those applications having received positive recommendations from the Assessment Group, giving them 15 calendar days to object. Provided there is no objection by any IFIAR Member to these positive recommendations, the Officers will invite the initial Applicants having received positive recommendation to sign the MMOU. If there is an objection to any of the applications, the Officers will consult with the relevant parties to resolve the matter, which may include returning any of the applications to the Assessment Group for further review. If the matter cannot be resolved, any Applicant having a negative recommendation or receiving an objection may ask for a decision by the Members under Section 3.1.E of the IFIAR Charter. Upon resolution of the matter either through consultation or by decision, the Officers will invite the Applicants to sign the MMOU.

10. For any subsequent application, the Assessment Group shall provide to the Officers the recommendation, positive or negative, of the Assessment Group. The Officers, after consultation with the Advisory Council, will notify the Applicant and Signatories of the recommendation of the Assessment Group, giving them 15 calendar days to object. The Officers will also make the assessment documentation and recommendation available to all

[1] Any reference to the Advisory Council in this document also refers to any successor IFIAR governing body.

IFIAR Members at the same time they are provided to the Applicant and Signatories. Provided there is no objection to a positive recommendation by any Signatory, the Officers will invite the Applicant having received the positive recommendation to sign the MMOU.

11. Where an objection to a recommendation (in writing and with stated reasons for such objections) has been raised by one or more Signatories or (by an Applicant to a negative recommendation), the Officers will consult with the relevant parties to resolve the matter, which may include returning the application to the Assessment Group for further review. At their discretion, the Officers may also take into consideration any issues raised by non-Signatories. If there are objections and the matter cannot be resolved, the Applicant may ask for a decision by the Signatories, which will require the consent of at least 90 percent of the Signatories. Upon resolution of the matter either through consultation or by decision, the Officers will invite the Applicant to sign the MMOU.

12. If its application has been denied, an Applicant may re-apply to become a Signatory, in accordance with the procedure above, once it has taken the necessary steps to address satisfactorily the reasons for the denial of its application during the previous assessment process.

13. MMOU Annex A will be maintained to list all IFIAR Members that are Signatories.

Procedure for the monitoring of the operation of the MMOU and the ongoing assessment

14. To ensure that the MMOU continues to achieve its objectives to promote cooperation amongst the Signatories and that its provisions are being properly observed and implemented, this MMOU may be reviewed in light of evolving international practices on cooperation in the exchange of information as well as on any feedback received by the Signatories. Such review will be carried out by the Assessment Group.

15. In order to ensure continuous compliance with the provisions of the MMOU, the Signatories should update as appropriate their assessment documentation that will be posted on the members only section of the IFIAR website and notify immediately the IFIAR Secretariat of any material changes in relevant domestic laws and regulations (including administrative guidance, codes of ethics, etc.) that may affect their ability to cooperate within the MMOU.

16. The Assessment Group may review any assessment recommendation:

    a. Based on any changes in the relevant domestic laws, regulations, guidance, codes, etc. of a Signatory;

b. If any considerations are presented or concerns raised by a Signatory that another Signatory may no longer meet the terms of the MMOU; or
c. If it deems it necessary for any other reason.

17. If, based on the review of the Assessment Group, it is determined that a Signatory can no longer comply with the terms of the MMOU, the participation of the Signatory in the MMOU may be terminated by the Officers according to section 11.5 of the MMOU.

Annex E The Proposed Financial Data Analytic Platform

For discussion
5 July 2021

Legislative Council Panel on Financial Affairs
Development of Financial Data Analytic Platform
for the Hong Kong Police Force

PURPOSE

This paper sets out the proposal to develop a financial data analytic platform ("FDAP") for the Joint Financial Intelligence Unit ("JFIU") of the Hong Kong Police Force ("HKPF"), with a view to enhancing the HKPF's capability in developing financial intelligence and harnessing advanced technologies to combat increasingly sophisticated financial crimes.

JUSTIFICATIONS

Recommendation of the Financial Action Task Force

2. Over the years, Hong Kong has built a robust anti-money laundering and counter-terrorist financing ("AML/CTF") system in accordance with the recommendations of the Financial Action Task Force ("FATF"), an inter-governmental body which sets international standards for combating money laundering and terrorist financing ("ML/TF") and oversees global compliance through a peer review process called "mutual evaluation". In the latest round of mutual evaluation conducted by FATF, Hong Kong has become the first jurisdiction in the Asia Pacific region to have attained an overall compliant result. While Hong Kong is commended for having a strong legal foundation and effective system for combating ML/TF, the FATF has also put forth a number of recommendations on areas requiring further efforts. One of the

recommendations[1] is for the JFIU to enhance its information technology ("IT") system and make better use of advanced technologies to assist its work in processing suspicious transactions reports[2] ("STRs") and developing financial intelligence for further investigations.

Suspicious Transaction Report and Management System

3. Jointly run by staff members of the HKPF and the Customs and Excise Department ("C&ED"), the JFIU is the designated authority in Hong Kong for receiving and processing STRs, cultivating intelligence based on STRs, and disseminating value-added intelligence to assist investigations by local and overseas law enforcement agencies ("LEAs"). The outputs of the JFIU range from case-specific intelligence, criminal typologies and STR trends to strategic intelligence reports on selected themes for facilitating the formulation of enforcement operations, regulatory/supervisory approaches and policy responses. Intelligence products of the JFIU such as STR trends and criminal typologies are published on a regular basis to help build the capacity of the private sector and the public in detecting and combating ML/TF.

4. At present, the JFIU relies on the Suspicious Transaction Report and Management System ("STREAMS") to receive, process and disseminate STRs. Based on the outputs of STREAMS, JFIU officers will conduct further analysis and communicate with the reporting entities or other authorities as appropriate. STREAMS has the following key functions –

(a) Maintaining data of STRs: STREAMS serves as the STR database for Hong Kong. Reporting entities (including

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[1] The FATF also recommends the HKPF to establish a dedicated Financial Intelligence and Investigation Bureau within the HKPF to strengthen its capability in developing intelligence and conducting ML/TF investigations. With the approval of the Finance Committee of the Legislative Council on 21 May 2021, a supernumerary Chief Superintendent of Police post has been created for five years to head the newly established Financial Intelligence and Investigation Bureau under the HKPF.

[2] Pursuant to section 25A(1) of the Organized and Serious Crimes Ordinance (Cap. 455) and the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), as well as section 12(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), where a person knows or suspects that any property (a) in whole or in part directly or indirectly represents any person's proceeds of, (b) was used in connection with, or (c) is intended to be used in connection with drug trafficking or an indictable offence; or that any property is terrorist property, the person shall as soon as it is reasonable for him to do so, file an STR with the JFIU.

financial institutions[3] and designated non-financial businesses and professions ("DNFBP")[4]) may submit STRs to the JFIU by completing an electronic template through STREAMS or in paper form which would then require manual input of the information contained therein. The reporting template contains information such as details of the reporting source, transaction and property arousing ML/TF suspicion, financial account involved, suspected crime, suspicious indicators, etc.. STREAMS will transform data in completed templates to formatted versions for verification and review by JFIU officers manually;

(b) Conducting automated checks against historical records and other databases/systems: STREAMS performs automated data matching of STRs received with records contained therein and in other databases/systems of the HKPF and the C&ED for identification of criminal records, connections and linkages or other threads. STREAMS will then identify relevant ML/TF cases (e.g. ML/TF cases sharing the same key data such as personal particulars) for further review by JFIU officers;

(c) Assessing the risk level of STRs received: STREAMS also conducts automated checks against keywords contained in STRs to facilitate the categorisation of STRs into different risk levels. This will help JFIU officers assess the intelligence value of the STRs and facilitate their decisions on further gathering of intelligence or dissemination of the STRs to relevant investigation units, other LEAs or regulators for follow-up actions; and

(d) Providing feedback to reporting entities: STREAMS allows JFIU officers to provide feedback on the STRs received to reporting entities, such as on advising them on how to handle the relevant property reported in an STR.

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[3] Including banks, securities firms, insurance companies, money service operators, stored value facility operators, money lenders and virtual assets service providers.

[4] Including legal professionals, accounting professionals, estate agents, trust or company service providers, and dealers in precious metals and stones.

Limited Capabilities of STREAMS

5. Since its inception in 2006, STREAMS has undergone only minor and technical improvements (focusing on capacity expansion and provision of online access) mainly for meeting the JFIU's operational needs. The functions of STREAMS are confined to data maintenance and mechanical data checking notwithstanding technological advancement over the past decade. As STREAMS is not equipped with any advanced data mining or analytical tools, it is unable to perform in-depth, advanced strategic analysis which is instrumental to facilitate financial investigation.

6. Owing to STREAMS' limited capabilities, at present, JFIU officers have to manually review each STR generated from STREAMS. Further analyses are conducted manually based on the checking outcomes of STREAMS and intelligence collected from other sources. JFIU officers often need to initiate wider searches of databases to perform network analysis and mapping exercises, so that they can refine the scope in identifying syndicates. As the review and analysis process is largely manual and heavily reliant on the experience and expertise of individual JFIU officers, it could be labour-intensive and time-consuming for the JFIU to determine the proper way to deal with each and every case. For instance, depending on the amount and complexity of data involved, it could take up to six weeks for JFIU officers[5] to come up with an informed decision on further handling of the relevant property reported in an STR.

7. The limitation of STREAMS is amplified by a continuous influx and increased complexity of STRs. The number of STRs received by the JFIU has increased from 23 282 in 2012 to the peak of 92 115 in 2017, before levelling to 57 130 in 2020 due to substantial efforts devoted by the JFIU to improve the quality of reporting. It is anticipated that the number of STRs received will continue to grow alongside the increasing number of reporting entities. The number of the so-called "super STRs" is also on the rise, with each STR involving hundreds of suspects, thousands of accounts and numerous transactions. Extensive mapping and cross-database analysis is required for super STRs in order to develop further intelligence for operational use. STREAMS, however, does not support data mining and mapping to facilitate the identification of seemingly

[5] Currently, 40 disciplined officers in eight teams are responsible for screening of each and every STR. They conduct in-depth analysis and value-added development on STRs, liaise with reporting entities and other agencies for further intelligence cultivation and conduct ML/TF network mapping. These officers are overseen by two Chief Inspectors of Police.

unrelated syndicated networks and criminal associations. In the absence of advanced analytical tools, it takes JFIU officers considerable time to identify syndication and association of criminals through manual analysis of STRs. A lengthy process may cause delay in disseminating value-added intelligence to domestic and overseas counterparts for investigation, enforcement and recovery actions, which in turn might cause more financial losses to victims, in particular for cases of fraud and deception cases[6] due to delay in stopping payments. The surge in the number of STRs received over the past years has added to the challenge and posed enormous pressure on the existing set-up of JFIU.

The Need for Upgrading IT Infrastructure

8. As an international financial centre, Hong Kong is facing various challenges brought by a fast-evolving financial landscape. Financial crimes have become increasingly complex and diverse. Criminals engaging in ML/TF activities use increasingly sophisticated techniques to disguise funds obtained from illegal activities such as drug trafficking, corruption, tax evasion and fraud, and in particular higher-end crimes involving professional syndicates operating across borders. The emergence of virtual assets, development of financial technologies and proliferation of cybercrimes in recent years has posed an additional challenge to conventional means of law enforcement. To stay ahead of criminals, it is of vital importance for the HKPF to apply advanced technologies to support intelligence development work and facilitate financial investigation.

9. In recent years, reporting entities (international financial institutions in particular) have already adopted regulatory technology ("RegTech")[7] tools to enhance AML/CTF monitoring, reporting and compliance. The use of RegTech strengthens the capabilities of reporting entities in identifying emerging ML/TF risks and detecting suspicious transactions for onward submission to JFIU. To keep pace with the technological advancement in financial institutions and ensure that the JFIU maintains sufficient capabilities of processing financial intelligence

[6] Fraud and deception are the predominant crimes investigated and prosecuted for ML in Hong Kong. In 2020, 2 594 stop payment requests were processed with $3,067 million withheld. With live intelligence fed by the banks, 95 arrests were coordinated when the culprits approached the banks for operating the money laundering accounts.

[7] RegTech is a sub-set of financial technologies that focuses on technologies that may facilitate the delivery of regulatory requirements more efficiently and effectively.

provided by its reporting entities, it is necessary for the JFIU to be equipped with a more sophisticated IT infrastructure leveraging on advanced technologies and data analytics solutions such as big data analytics, network analysis, machine learning and artificial intelligence ("AI"). This will assist the JFIU in expediting the processing of STRs and, more importantly, in performing sophisticated intelligence cultivation work and producing value-added analyses of strategic value through closer interface with the databases/systems of other government agencies while capitalising on intelligence obtained from additional information sources. There is a genuine need to develop the proposed FDAP to improve the quality of the HKPF's financial data analysis and support the modern-day need of law enforcement.

THE PROPOSAL

Financial Data Analytic Platform

10. To supplement STREAMS in developing financial intelligence, we propose to develop a new financial data analytic platform for operation and oversight by the JFIU. While STREAMS will continue to receive STRs, the proposed FDAP will be equipped with data processing and analytic capabilities to be supported by advanced technologies such as data mining, machine learning and AI, with a view to supporting the JFIU in conducting strategic analysis and disseminating value-added intelligence to counterparts in a more efficient and timely manner.

AML/CTF analytical tools

11. The proposed FDAP will be equipped with sophisticated AML/CTF analytical tools for performing risk assessment on STRs received through STREAMS and intelligence collected by the JFIU. With inputs of specific risk indicators and parameters such as ML/TF risks of certain geographical locations, characteristics of high-risk entities, etc., the proposed FDAP will be able to identify anomalies and alert JFIU officers. The proposed FDAP will also be equipped with functions such as fund flow analysis and network analysis by performing extensive mapping of multiple data sources to help uncover illicit fund flow as well as hidden network in a more efficient and effective manner. The analysis can be further refined by data mining, machine learning and AI over time with growing amount of data stored and observations of trends.

12. The proposed FDAP will be embedded with interfaces to obtain information from other systems of various government departments to expedite the data exchanges amongst the departments.[8] Additional functions such as automatic crawling of information will streamline data collection from open sources, such as sanction lists of the United Nations, ML/TF-related news etc., saving much effort in web browsing and manual updating.

13. In terms of data processing, the proposed FDAP will enable processing of both structured and unstructured data[9], which can help ensure accuracy in data matching process, in particular in conducting parallel investigations. The proposed FDAP will be able to extract unstructured data from different sources such as media reports and typology reports, and analyse relevant information through the use of optical character recognition and natural language processing.

14. With the proposed AML/CTF analytical tools, it is expected that the decision-making process of the JFIU can be streamlined. For instance, it is expected that the feedback on consideration of handling property involved in STRs can be provided to reporting entity within one week.

Internal user portal

15. Apart from the aforesaid analytical tools, the proposed FDAP also provides an internal platform for JFIU officers and other specialised formations[10] of the HKPF to facilitate investigation of ML/TF cases, as well as to provide, update, analyse and disseminate intelligence. System interfaces with the HKPF's other internal systems, such as STREAMS of the JFIU and the systems used by the Anti-Deception Coordination Centre, will also be established for consolidating data from multiple internal sources to support ML/TF case investigation. Business intelligence and reporting tools for visualising the intelligence information will be provided

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[8] The project has already covered additional costs that may arise from the enhancement of other databases/systems interfacing with the new system.

[9] Structured data refers to data with a pre-defined data model, or data organised in a predefined manner. Unstructured data refers to data in different forms and not structured in a predefined manner, such as email messages, images, etc..

[10] Other specialised formations of the HKPF include the Money Laundering and Terrorist Financing Risk Assessment Unit, Anti-Deception Coordination Centre, as well as Fraud and Money Laundering Intelligence Taskforce.

to users to identify crime trends and other significant observations, and to automate the generation of intelligence reports and letters.

External user portal

16. The proposed FDAP provides an external portal which is a secured channel for the JFIU to exchange criminal intelligence, typologies and trends with other domestic and overseas LEAs. It will also facilitate the JFIU to expedite the processing of requests for intelligence and investigation support from foreign counterparts.

Implementation

17. We plan to adopt a hybrid approach for developing the proposed FDAP, involving the procurement of a commercial-off-the-shelf ("COTS") solution and development of a bespoke system. The hybrid approach has two major benefits. On one hand, procuring COTS solution allows the system to leverage on the highly specialised solution developed by AML/CTF domain experts with international sources of intelligence and global experience. On the other hand, the development of a bespoke system provides flexibility and allows customisation of the analytical modules to cater for local investigative needs and help mitigate the risk of over-reliance on COTS solution.

18. Subject to funding approval of the Legislative Council, the HKPF will carry out tendering for the proposed FDAP as soon as possible, with a view to awarding contract(s) in around the second quarter of 2022. To enable early implementation, the project will be divided into sub-projects for implementation in parallel. The AML/CTF analytic tools and the external user portal are expected to be rolled out in the fourth quarter of 2022. Customisation of the AML/CTF analytic tools and the internal user interface will be rolled out in phases from 2024 to 2027. Full commissioning of the FDAP is targeted in 2027. A tentative implementation schedule is at **Annex A**.

FINANCIAL IMPLICATIONS

Non-recurrent Expenditure

19. The proposal will involve an estimated non-recurrent expenditure of $698,113,000 over a six-year period from 2021-22 to 2026-27, with breakdown at **Annex B**.

Other Non-recurrent Expenditure

20. In addition, the implementation of the proposed FDAP will require a project team comprising officers with the necessary knowledge and expertise in AML/CTF for developing and customising data analysis models of the proposed FDAP. This entails a total staff cost of $45,148,000 from 2021-22 to 2026-27, which will be absorbed by the existing resources of HKPF.

Recurrent Expenditure

21. The estimated recurrent expenditure for the proposed FDAP will be $25,770,000 per annum in 2025-26 and 2026-27, and will increase to $47,635,000 per annum from 2027-28 onwards. The recurrent expenditure will mainly cover hardware and software maintenance, cloud services, system maintenance, engagement of contract staff and regular user trainings. The cost breakdown is at **Annex C**.

Cost Savings

22. Upon the full commissioning of the FDAP, it is estimated that an annual notional saving of $4,552,000 will be generated from 2027-28 onwards. The notional savings will be achieved through staff efficiency gain as a result of automation of data input and processing.

ADVICE SOUGHT

23. Members are invited to support the proposal, which will go a long way towards enhancing the HKPF's capability in developing financial intelligence and combating financial crimes. Subject to Members' views, we will proceed to seek the funding approval of the Finance Committee within this legislative session.

Financial Services and the Treasury Bureau
Hong Kong Police Force
June 2021

Annex A

Tentative Implementation Schedule for the Financial Data Analytic Platform

	Task	Target Completion Date
(a)	Tender preparation, tender evaluation and award of contracts	Q2 2022
(b)	Initial roll-out of the AML/CTF analytic tools	Q4 2022
(c)	Roll-out of the external user portal	Q4 2022
(d)	Roll-out of the customised AML/CTF analytic tools	Q1 2024
(e)	Roll-out of the first phase of the internal user portal	Q2 2024
(f)	Roll-out of the last phase of the internal user portal	Q1 2027
(g)	Full commissioning of the proposed FDAP	Q1 2027
(h)	System nursing	Q2 2027

Annex B

Non-recurrent Expenditure for the Provision of Financial Data Analytic Platform

Item	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	Total
			($'000)				
(a) Hardware		73,556					73,556
(b) Software		106,635					106,635
(c) Communication Network		592					592
(d) Cloud Services		1,137	1,137	1,137	1,137	1,137	5,685
(e) Implementation Services		500	96,860	67,900	8,880	6,380	180,520
(f) Contract Staff	11,193	60,084	64,424	64,424	31,067	28,898	260,090
(g) Site Preparation			112				112
(h) Training		2,486	2,486	2,486			7,458
(i) Contingency	1,119	24,499	16,502	13,595	4,108	3,642	63,465
Total	12,312	269,489	181,521	149,542	45,192	40,057	698,113

Note:

Item (a): The estimate of $73,556,000 is for acquiring the computer hardware for the proposed FDAP, including servers, storage devices, backup devices, etc..

Item (b): The estimate of $106,635,000 is for acquiring related computer software, including servers application, database application, backup application, analytical tools, etc..

Item (c): The estimate of $592,000 is for acquiring communication network, including network switches, etc..

Item (d): The estimates of $5,685,000 is for rental of the Government Cloud Infrastructure Services to host the proposed external user portal.

Item (e): The estimate of $180,520,000 is for engaging service providers for implementation and support services. Main implementation activities include system analysis and design, application development, system installation and configuration, infrastructure implementation at data centres, production rollout and nursing, etc.

Item (f): The estimate of $260,090,000 is for hiring contract IT professional staff to carry out project management duties, including project planning and monitoring, development of application, infrastructure, enhancement of other systems interfacing with the new system, and conducting system acceptance tests.

Item (g): The estimate of $112,000 is for site preparation in respect of installation of network ports, power sockets and cabling channels etc. at data centres.

Item (h): The estimate of $7,458,000 is for providing relevant training service for external and internal stakeholders.

Item (i): The estimate of $63,465,000 represents a 10% contingency on the items (a) to (h) above.

Annex C

Annual Recurrent Expenditure for the Financial Data Analytic Platform

Item	2025-26	2026-27	2027-28 onwards
		($'000)	
(a) Hardware and Software Maintenance	23,073	23,073	23,073
(b) Communication Network	70	70	70
(c) Cloud Services	-	-	1,137
(d) System Maintenance	1,570	1,570	7,450
(e) Contract Staff	-	-	14,848
(f) Training	1,057	1,057	1,057
Total	**25,770**	**25,770**	**47,635**

Annex F International Monetary Fund Reports

(1) The FRC was formed based on the U.S. PCAOB model and the PCAOB will only register an accounting firm for the protection of investors.
(2) Certain countries, such as Singapore, will not disclose the details of any disciplinary findings except for suspensions and cancellations (where identities are revealed). Press release prepared by the HKICPA and the disclosure of disciplinary orders in the magazine should be reviewed.

International Monetary Fund April 2015
United States
DETAILED ASSESSMENT OF IMPLEMENTATION OF THE IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

Principles for Auditors, Credit Ratings Agencies, and Other Information Service Providers
Each public accounting firm (including foreign firms) must register with the PCAOB if the firm (i) prepares or issues any report with respect to any issuer, broker or dealer or (ii) plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer, broker or dealer.

The PCAOB will not register a firm unless it finds that registration is consistent with the Board's responsibilities under the SOX to protect the interests of investors.

International Monetary Fund December 2013
SINGAPORE
DETAILED ASSESSMENT OF IMPLEMENTATION—IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

Principles for Auditors, Credit Ratings Agencies, and Other Information Service Providers
The conclusions of the Practice Management Programs are only disclosed at a high level of generality by way of "key observations." Except for suspensions and cancellations (where identities are revealed) there is little transparency of the identity of the parties involved and the nature and extent of the failure to meet the standards required.

Annex G CPAs Acts in Other Countries

(1) The FRC should set a time limit for its disciplinary action as certain disciplinary cases were only concluded after 20 years (see APlus magazine Sep 2018 issue). The Certified Public Accountant Act, Korea is a good example.

(2) Certain CPAs state that persons who are not registered CPAs hold out as CPAs in Hong Kong. Such issue was discussed in the Legislative Council, and they were urged (i) to provide details of court cases whereby the defendants concerned were convicted or acquitted of the offences relating to misleading representation and the relevant penalties imposed; and (ii) to report any case to the Police to substantiate their claims (see Annex H).

Section 20AAZZN (Prohibition on Advertising etc.) of the amendment bill should be repealed and replaced by section 14 of the New Zealand Institute of Chartered Accountant Act. It should be the use of the professional title of the accountant which should be regulated.

Certified Public Accountant Act, Korea
Enforcement Date 21. Feb, 2018.

CHAPTER VII DISCIPLINARY ACTION
Article 48 (Disciplinary Action)
(1) Where a certified public accountant falls under any of the following subparagraphs, the Financial Services Commission may take a disciplinary action against him as prescribed in paragraph (2) in accordance with a resolutions of the Certified Public Accountants Disciplinary Committee: <Amended by Act No. 6426, Mar. 28, 2001; Act No. 8863, Feb. 29, 2008>
1. Where he violates this Act or order issued under this Act;
2. Where he makes gross mistakes or omissions in audit or certification;
3. Where he violates the bylaws of the Institute;
4. Where he causes damage to the integrity of certified public accountants regardless of accountant's functions or other functions.
(2) Types of disciplinary action against certified public accountant shall be as follows:
1. Cancellation of registration;
2. Suspension of performance of duties for two years or less;
3. Suspension of performance of some duties for one year or less;
4. Reprimand.
(3) The Institute may, where it recognizes the existence of the grounds for taking a

disciplinary action falling under each subparagraph of paragraph (1) against a certified public accountant (including any certified public accountant affiliated with any accounting corporation; hereinafter the same shall apply in this Article) who is its member, file a request, accompanied by evidential documents, with the Financial Services Commission for taking such disciplinary action.<Amended by Act No. 6426, Mar. 28, 2001; Act No. 8863, Feb. 29, 2008>

(4) The disciplinary action under paragraph (1) shall not be taken after three years have elapsed from the date when reasons provided for in each subparagraph of paragraph (1) arise.

(5) Matters relating to the Certified Public Accountants Disciplinary Committee shall be prescribed by Presidential Decree.

New Zealand Institute of Chartered Accountants Act 1996

Offences

14 Improper use of terms implying membership of Institute

(1) Every person commits an offence who,—

(a) not being a member of the Institute, uses in connection with his or her business, employment, or profession any written words, initials, or abbreviations of words intended to cause or which may reasonably cause any other person to believe that the person is a member of the Institute;

or

(b) not being entitled to do so under the rules, describes himself or herself in writing as a chartered accountant or a chartered accountant in public practice or an associate chartered accountant or an associate chartered accountant in public practice or an accounting technician; or

(c) not being a member of the Institute, describes himself or herself in writing as a registered accountant, unless it is proved that the manner and circumstances in which the description was given were such as to raise no reasonable inference that it was referring to membership of the Institute; or

(d) not being entitled to do so under the rules, uses in connection with his or her name, or with the name under which he or she carries on business, the initials CA, ACA, FCA, FACA, CA (PP), ACA (PP), or AT or an abbreviation of the words chartered accountant, associate chartered chartered accountant, registered accountant, or accounting technician, or any combination of any such initials or abbreviations, unless it is proved that the manner and circumstances in which the initials or abbreviations were used were such as to raise no reasonable inference that they were referring to membership of the Institute.

(2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding $5,000.

Section 14(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Annex H Discussion of the Professional Accountants (Amendment) Bill 2018

Annex

Proceedings of the third meeting of
the Bills Committee on Professional Accountants (Amendment) Bill 2018
on Friday, 22 February 2019, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Time marker	Speaker	Subject(s)	Action required
000350 – 000604	Chairman	Opening remarks.	
000605 – 001435	Chairman Mr Kenneth LEUNG	Briefing by Mr Kenneth LEUNG on his response to the issues raised at the meeting on 18 January 2019 (LC Paper No. CB(1)591/18-19(02)).	
001436 – 002215	Chairman Director, Admission of Hong Kong Institute of Certified Public Accountants ("D/HKICPA")	Briefing by D/HKICPA on HKICPA's response to the issues raised at the meeting on 18 January 2019 (LC Paper No. CB(1)591/18-19(03)).	
002216 – 002453	Chairman Administration	Briefing by Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 4 on the Administration's response to the issues raised at the meeting on 18 January 2019 (LC Paper No. CB(1)591/18-19(04)).	
002454 – 003102	Chairman Mr James TO	Referring to paragraph 2 and 3 of the further submission from Hong Kong Accounting Professionals Association ("HKAPA") dated 11 February 2019 (LC Paper No. CB(1)591/18-19(05)), Mr James TO made the following observations – (a) he shared HKAPA's concern that the prohibited use of the description "professional accounting" or "專業會計" as proposed in the Bill, which was arguably descriptive in nature, might cause serious and widespread repercussion on the survival of small and medium-sized accounting firms and other practitioners providing legitimate accounting-related services; (b) he agreed with HKAPA's view that the existing provisions under section 42(1) of the Professional Accountants Ordinance (Cap. 50) ("PAO") already prohibited any individual or body corporate which was not a CPA or a practice unit registered under PAO from providing auditing services, and	

Time marker	Speaker	Subject(s)	Action required
		using the specified descriptions "certified public accountant", "CPA" or "會計師" in its name, so that there was no need to further tighten up the use of specified descriptions which were similar in meaning to "professional accountant" or "certified public accountant" to address concerns about acts of bogus accountants/CPAs; and (c) among the additional specified descriptions proposed in the Bill, he found the prohibited use of the descriptions "registered accounting" or "註冊會計" and "certified accounting" or "認可會計" by non-qualified individuals/body corporates acceptable, as the descriptions tended to imply that relevant qualification was held by the individuals/body corporates hailing themselves as such. It would be easier for the prosecution to establish the facts whether the individuals/body corporates concerned had the intention to mislead with the use of such descriptions.	
003103 – 003727	Chairman Mr CHAN Chun-ying D/HKICPA	Mr CHAN Chun-ying also found the prohibited use of the descriptions "registered accounting" or "註冊會計" and "certified accounting" or "認可會計" by non-qualified individuals/body corporates as proposed in the Bill acceptable. He however expressed concern that if the description "professional accounting" or "專業會計" was to be deleted from the prohibited descriptions as proposed in the Bill, it might give rise to doubt about whether the title of PAO should also be amended. D/HKICPA advised that the exclusive use of the description "professional accountant" or "專業會計師" (which referred to a qualification, vis-à-vis "professional accounting"/"專業會計" which was a description) by HKICPA members had been adopted since 1973 when PAO was enacted. As such, there should not be a problem with the title of PAO even if the description "professional accounting" was to be deleted from the prohibited descriptions as proposed in the Bill. In response to Mr CHAN's enquiry, D/HKICPA	

Time marker	Speaker	Subject(s)	Action required
		confirmed that as stated in Mr Kenneth LEUNG's response to the matters raised at the meeting on 18 January 2019, it would be unlikely for HKICPA to refer to the Police a complaint against a body corporate or a firm using the description "professional accounting" in its name if the subject body corporate or firm did not have the intention to mislead or reasonably cause any person into believing that it was a practice unit registered under PAO. In response to the Chairman's enquiry, D/HKICPA agreed that when compared to the description "professional accounting" or "專業會計", the descriptions "registered accounting" or "註冊會計" and "certified accounting" or "認可會計", which were currently not prohibited for use by non-HKICPA members/non-practice units in their name, would be more misleading to cause any person to believe that the entities using such descriptions were members/practice units registered with HKICPA and subject to its regulation under PAO.	
003728 – 004455	Chairman Ms Alice MAK Mr James TO D/HKICPA	Ms Alice MAK reiterated her support for the Bill given an increasing number of crimes involving money lending business activities by financial intermediaries operating under the name of an "accounting firm" ("會計事務所"), causing the general public to believe that such intermediaries provided professional accounting services. She was of the view that the Bill would serve to educate the public not to blindly trust any company hailing themselves as an accounting firm. In response to Ms Alice MAK's and the Chairman's enquiry, D/HKICPA advised that the Registration and Practising Committee ("RPC") of HKICPA would revisit in the first half of 2019 the suggestion of requiring its practice units to display their registration numbers together with their names at all times, and would revert to the Legislative Council (i.e. the relevant Panel) on the outcome of the discussion.	
004456 – 004930	Chairman Mr Kenneth LEUNG Mr James TO	Mr Kenneth LEUNG said that there were established international legal precedents that the description "accountant" or "會計師" should	

Time marker	Speaker	Subject(s)	Action required
		not be limited to the exclusive use by a certain group. Nevertheless, given that the description "accountant" could also be rendered as "會計" in addition to "會計師" in Chinese, the Bill sought to clarify the situation by proposing the prohibited use of the description "professional accounting" or "專業會計", among other descriptions. In response to members' concern that the prohibited use of the description "professional accounting" or "專業會計" which might cause serious repercussion on the survival of small and medium-sized accounting firms providing legitimate accounting-related services, Mr Kenneth LEUNG was requested to provide a written response on whether he would propose an amendment to the Bill to delete the description "professional accounting" or "專業會計" from the prohibited descriptions as proposed in the Bill.	Mr Kenneth LEUNG to follow up as per paragraph 4.
004931 – 005514	Chairman Mr James TO Mr Kenneth LEUNG	Discussion on the legislative timetable. Meeting arrangement.	

Council Business Division 1
Legislative Council Secretariat
7 May 2019

Annex I Audit Report of Apple Inc.[1]

The audit reports of the U.S. listed companies are more precise than those of non-listed companies in Hong Kong. The Hong Kong audit reports should be limited to the scope covered by the Hong Kong Companies Ordinance and no more after the audit work was criminalised.

The report on internal control is a separate report in the U.S.

[1] Market capitalisation of USD 2 trillion. (Source: Google)

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Apple Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Apple Inc. as of September 26, 2020 and September 28, 2019, the related consolidated statements of operations, comprehensive income, shareholders' equity and cash flows for each of the three years in the period ended September 26, 2020, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of Apple Inc. at September 26, 2020 and September 28, 2019, and the results of its operations and its cash flows for each of the three years in the period ended September 26, 2020, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (the "PCAOB"), Apple Inc.'s internal control over financial reporting as of September 26, 2020, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated October 29, 2020 expressed an unqualified opinion thereon.

Basis for Opinion

These financial statements are the responsibility of Apple Inc.'s management. Our responsibility is to express an opinion on Apple Inc.'s financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to Apple Inc. in accordance with the U.S. federal securities laws and the applicable rules and regulations of the U.S. Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the account or disclosure to which it relates.

Uncertain Tax Positions

Description of the Matter	As discussed in Note 5 to the financial statements, Apple Inc. is subject to taxation and files income tax returns in the U.S. federal jurisdiction and many state and foreign jurisdictions. As of September 26, 2020, the total amount of gross unrecognized tax benefits was $16.5 billion, of which $8.8 billion, if recognized, would impact Apple Inc.'s effective tax rate. Apple Inc. uses significant judgment in the calculation of tax liabilities in estimating the impact of uncertainties in the application of technical merits and complex tax laws. Auditing management's evaluation of whether an uncertain tax position is more likely than not to be sustained and the measurement of the benefit of various tax positions can be complex, involves significant judgment, and is based on interpretations of tax laws and legal rulings.

How We Addressed the Matter in Our Audit	We tested controls relating to the evaluation of uncertain tax positions, including controls over management's assessment as to whether tax positions are more likely than not to be sustained, management's process to measure the benefit of its tax positions, and the development of the related disclosures. To evaluate Apple Inc.'s assessment of which tax positions are more likely than not to be sustained, our audit procedures included, among others, reading and evaluating management's assumptions and analysis, and, as applicable, Apple Inc.'s communications with taxing authorities, that detailed the basis and technical merits of the uncertain tax positions. We involved our tax subject matter resources in assessing the technical merits of certain of Apple Inc.'s tax positions based on our knowledge of relevant tax laws and experience with related taxing authorities. For certain tax positions, we also received external legal counsel confirmation letters and discussed the matters with external advisors and Apple Inc. tax personnel. In addition, we evaluated Apple Inc.'s disclosure in relation to these matters included in Note 5 to the financial statements.

/s/ Ernst & Young LLP

We have served as Apple Inc.'s auditor since 2009.

San Jose, California
October 29, 2020

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Apple Inc.

Opinion on Internal Control Over Financial Reporting

We have audited Apple Inc.'s internal control over financial reporting as of September 26, 2020, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the "COSO criteria"). In our opinion, Apple Inc. maintained, in all material respects, effective internal control over financial reporting as of September 26, 2020, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (the "PCAOB"), the consolidated balance sheets of Apple Inc. as of September 26, 2020 and September 28, 2019, the related consolidated statements of operations, comprehensive income, shareholders' equity and cash flows for each of the three years in the period ended September 26, 2020, and the related notes and our report dated October 29, 2020 expressed an unqualified opinion thereon.

Basis for Opinion

Apple Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on Apple Inc.'s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to Apple Inc. in accordance with the U.S. federal securities laws and the applicable rules and regulations of the U.S. Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

San Jose, California
October 29, 2020

Annex J The Hong Kong Small and Medium-sized Entity Financial Reporting Standard

There is a mistake in the standard/model accounts published in the SME-FRS:
"interest income is recognised on a time proportion basis taking into account the principal outstanding and the interest [Add: rate] applicable;

The paragraph describes a formula:
Interest = Principal * Interest Rate

The CPAs prepare the accounts based on the model.

The CPAs may not detect the error when they first read the SME-FRS. However, as the error was contained in the standard accounts, thousands of companies' accounts were prepared based on the model accounts and approved by the FRC. The CPAs repeatedly read the companies' accounts and realise that the formula does not make sense.

There are all sorts of errors in the publications of the International Federation of Accountants (IFAC) and other publications approved by the FRC.

The *Small and Medium-sized Entity Financial Reporting Framework* (SME-FRF) and *Financial Reporting Standard* (SME-FRS) are standards of accounting practices issued by the Council of the Hong Kong Institute of Certified Public Accountants pursuant to section 18A of the Professional Accountants Ordinance and the *Company (Accounting Standards (Prescribed Body)) Regulation* issued under sections 357 and 380 of the new Hong Kong Companies Ordinance (Cap. 622) ("new CO"). The new CO came into effect on 3 March 2014. This version of the SME-FRF and SME-FRS takes into account all relevant subsequent amendments to the new CO, up to and including the Companies (Amendment) (No. 2) Ordinance 2018 which comes into effect on 1 February 2019 ("the 2018 Amendment Ordinance").

SME-FRF and SME-FRS should be read in the context of the *Preface to Hong Kong Financial Reporting Standards*. SME-FRS should also be read in the context of the SME-FRF.

Where the SME-FRF and SME-FRS make reference to requirements in the new CO, this is for information purposes only and should not be relied upon to be a complete account of all the requirements of the new CO which may be relevant to a particular entity's circumstances. Nothing in the SME-FRF or SME-FRS should be taken as interpreting or amending the requirements set out in the new CO and if there is a conflict between the SME-FRF or SME-FRS and the new CO, then the new CO will prevail.

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SME LIMITED

ACCOUNTING POLICIES AND EXPLANATORY NOTES TO THE FINANCIAL STATEMENTS

for the year ended 31 December 20X5

Reporting entity

SME Limited is a company incorporated in Hong Kong with limited liability. The company's registered office is located at 9/F, 28 Nowhere Street, Kowloon, Hong Kong. The principal activity of the company is trading of toys. The company has adopted a trade name "Fun Times" for its business.

1. Basis of preparation and accounting policies

The company qualifies for the reporting exemption as a small private company under section 359(1)(a) of the Hong Kong Companies Ordinance (Cap. 622) and is therefore entitled to prepare and present its financial statements in accordance with the Small and Medium-sized Entity Financial Reporting Standard (SME-FRS) issued by the Hong Kong Institute of Certified Public Accountants.

These financial statements comply with the SME-FRS and have been prepared under the accrual basis of accounting and on the basis that the company is a going concern.

The measurement base adopted is the historical cost convention.

The following are the specific accounting policies that are necessary for a proper understanding of the financial statements:

(a) Revenue

Revenue is recognised when it is probable that the economic benefits will flow to the company and when the revenue can be measured reliably, on the following bases:

(i) sale of goods is recognised when the goods are delivered and the risks and rewards of ownership have passed to the customer;

(ii) rental income is recognised on a time proportion basis over the lease terms;

(iii) interest income is recognised on a time proportion basis taking into account the principal outstanding and the interest applicable; and

(iv) dividend income is recognised when the shareholder's right to receive payment is established.

(b) Borrowing costs

Borrowing costs are recognised as an expense in the period in which they are incurred.

(c) Foreign exchange

The reporting currency of the company is Hong Kong Dollars, which is the currency of the primary economic environment in which the company operates.

Foreign currency transactions are converted at the exchange rate applicable at the transaction date. Foreign currency monetary items are translated into Hong Kong Dollars using exchange rates applicable at the end of the reporting period. Gains and losses on foreign exchange are recognised in the income statement.

Annex K Register of PIE Auditors

Details of Registered PIE Auditor

Name:	PANG King Sze
HKICPA Reg. No.:	A18008
First Registration Date:	2 March 2020
Responsible Person:	Details of Engagement Partner (EP) Details of Engagement Quality Control Reviewer (EQCR) Details of Quality Control System Responsible Person (QCSRP)
Registered Office:	Unit A, 15th floor, Aubin House, 171-172 Gloucester Road, Wan Chai, Hong Kong.
Expiry date of the registration:	31 December 2021
Conditions imposed by HKICPA Council, if any:	Nil
Record of the sanctions imposed by Financial Reporting Council (FRC) within the last 5 years, if any:	Nil
Record of the disciplinary order issued by a HKICPA Disciplinary Committee within the last 5 years, if any:	Nil

Definition of Responsible Persons:

Annex L Requirements for Continuing Professional Development

Appendix 1: Learning Outcomes for the Professional Competence of an Engagement Partner

Competence Areas	Learning Outcomes
(a) Audit	(i) Lead the audit through active involvement during all phases of the audit engagement. (ii) Lead the identification and assessment of the risks of material misstatement. (iii) Develop an audit plan that responds to the risks of material misstatement identified. (iv) Evaluate responses to the risks of material misstatement. (v) Conclude on the appropriateness and sufficiency of all relevant audit evidence, including contradictory evidence, to support the audit opinion. (vi) Evaluate whether the audit was performed in accordance with Hong Kong Standards on Auditing or other relevant auditing standards, laws, and regulations applicable to an audit of the financial statements. (vii) Develop an appropriate audit opinion and related auditor's report, including a description of key audit matters as applicable.
(b) Financial accounting and reporting	(i) Evaluate whether an entity has prepared, in all material respects, financial statements in accordance with the applicable financial reporting framework and regulatory requirements. (ii) Evaluate the recognition, measurement, presentation, and disclosure of transactions and events within the financial statements in accordance with the applicable financial reporting framework and regulatory requirements. (iii) Evaluate accounting judgments and estimates, including fair value estimates, made by management. (iv) Evaluate the fair presentation of financial statements relative to the nature of the business, the operating environment, and the entity's ability to continue as a going concern.
(c) Governance and risk management	(i) Evaluate corporate governance structures and risk assessment processes affecting the financial statements of an entity as part of the overall audit strategy.

Competence Areas	Learning Outcomes
(e) Taxation	(i) Evaluate procedures performed to address the risks of material misstatement in the financial statements in respect of taxation, and the effect of the results of these procedures on the overall audit strategy.
(f) Information and communications technologies	(i) Evaluate the information and ICT environment to identify controls that relate to the financial statements to determine the impact on the overall audit strategy.
(g) Business laws and regulations	(i) Evaluate identified or suspected non-compliance with laws and regulations to determine the effect on the overall audit strategy and audit opinion.
(h) Finance and financial management	(i) Evaluate the various sources of financing available to, and financial instruments used by, an entity to determine the impact on the overall audit strategy. (ii) Evaluate an entity's cash flow, budgets, and forecasts, as well as working capital requirements to determine the impact on the overall audit strategy.
(i) Interpersonal and communication	(i) Communicate effectively and appropriately with the engagement team, management, and those charged with governance of the entity. (ii) Evaluate the potential impact of cultural and language differences on the performance of the audit. (iii) Resolve audit issues through effective consultation when necessary.
(j) Personal	(i) Promote lifelong learning. (ii) Act as a role model to the engagement team. (iii) Act in a mentoring or coaching capacity to the engagement team. (iv) Promote reflective activity.
(k) Organizational	(i) Evaluate whether the engagement team, including auditor's experts, collectively has the appropriate objectivity and competence to perform the audit. (ii) Manage audit engagements by providing leadership and project management of engagement teams.

Competence Areas	Learning Outcomes
(l) Commitment to the public interest	(i) Promote audit quality and compliance with professional standards and regulatory requirements with a focus on protecting the public interest.
(m) Professional skepticism and professional judgment	(i) Apply professional judgment in planning and performing an audit and reaching conclusions on which to base an audit opinion. (ii) Promote the importance of the application of professional skepticism during all phases of the audit engagement. (iii) Apply professional skepticism to critically assess audit evidence obtained during the course of an audit and reach well-reasoned conclusions. (iv) Evaluate the impact of individual and organizational bias on the ability to apply professional skepticism. (v) Apply professional judgment to evaluate management's assertions and representations. (vi) Resolve audit issues using critical thinking to consider alternatives and analyze outcomes.
(n) Ethical principles	(i) Promote the importance of compliance with the fundamental principles of ethics[2]. (ii) Evaluate and respond to threats to objectivity and independence that can occur during an audit.

[2] The Fundamental Principles, HKICPA *Code of Ethics for Professional Accountants* (Revised 2018), Chapter A, Part 1, section 110.

Annex M Survey of PIE Auditors

國衛會計師事務所有限公司
Hodgson Impey Cheng Limited

Survey of auditors of listed companies in Hong Kong
May 2018
香港交易所上市公司核数师统计
2018 年 5 月

Ranking 排名	Audit firms	核数师行	Main Board and GEM 主板及 GEM
1	Deloitte Touche Tohmatsu	德勤 • 关黄陈方会计师行	427
2	PricewaterhouseCoopers	罗兵咸永道会计师事务所	399
3	Ernst & Young	安永会计师事务所	322
4	KPMG	毕马威会计师事务所	205
5	BDO Limited	香港立信德豪会计师事务所有限公司	161
6	**HLB Hodgson Impey Cheng Limited**	**国卫会计师事务所有限公司**	**121**
7	SHINEWING (HK) CPA Limited	信永中和(香港)会计师事务所有限公司	62
8 =	ZHONGHUI ANDA CPA Limited	中汇安达会计师事务所有限公司	54
8 =	RSM Hong Kong	中瑞岳华(香港)会计师事务所	54
9	Elite Partners CPA Limited	开元信德会计师事务所有限公司	43
10	Grant Thornton Hong Kong Limited	致同(香港)会计师事务所有限公司	37
11	Crowe Horwath (HK) CPA Limited	国富浩华(香港)会计师事务所有限公司	34
12	Mazars CPA Limited	玛泽会计师事务所有限公司	25
13 =	Moore Stephens CPA Limited	大华马施云会计师事务所有限公司	21
13 =	HLM CPA Limited	恒健会计师行有限公司	21
14	Cheng & Cheng Limited	郑郑会计师事务所有限公司	17
15	Baker Tilly Hong Kong Limited	天职香港会计师事务所有限公司	14
	Others	其他	184
			2,201

Source: *The Internet websites of Hong Kong Exchanges and Clearing Limited*
资料来源： *香港交易及結算所有限公司网页*

Annex N Review of the Listing Rules Relating to Disciplinary Powers and Sanctions

The Hong Kong Institute of Chartered Secretaries

Submission:

Consultation Paper on Review of Listing Rules relating to Disciplinary Powers and Sanctions

The Hong Kong Institute of Chartered Secretaries 香港特許秘書公會
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8 October 2020

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8th Floor, Two Exchange Square
8 Connaught Place
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Dear Sirs

Consultation Paper on Review of Listing Rules relating to Disciplinary Powers and Sanctions (Consultation Paper)

Terms and expressions used in this Submission shall have the meanings set out under the Consultation Paper unless the context requires otherwise.

About HKICS

The Hong Kong Institute of Chartered Secretaries (the Institute) is an independent professional institute representing Chartered Secretaries and Chartered Governance Professionals as governance professionals in Hong Kong and the mainland of China (the Mainland) with over 6,000 members and 3,200 students. The Institute originates from The Chartered Governance Institute, formerly known as The Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with nine (9) divisions and over 30,000 members and 10,000 students internationally. The Institute is also a Founder Member of Corporate Secretaries International Association Limited (CSIA), an international organisation comprising fourteen (14) national member organisations to promote good governance globally.

Secondary Disciplinary Liability Problematic

The proposals under the Consultation Paper relating to the imposition of secondary disciplinary liability on the company secretary are problematic for the reasons set out below.

From the Consultation Paper, secondary disciplinary liability is to be imposed where the company secretary has caused by action or omission or knowingly participated in a contravention of the Listing Rules.

As you are aware, under Section F of the Corporate Governance Code, the company secretary is specifically stated to play a supporting role: *"The company secretary plays an important role in supporting the board by ensuring good information flow within the board and that board policy and procedures are followed*." Further reference is made to paragraph 6.2 of the "Guidance for Boards and Directors" published by the Exchange in July 2018 (the "Guidance"), in which it is stated that company secretaries can generally discharge their duties by providing advice to the Board on corporate governance and compliance matters and facilitating continuous training to the Board in accordance with the rules and regulations.

This supporting and advisory role means that any failure by the board could potentially lead to secondary disciplinary liability on the part of the company secretary where the applicable test is

simply participation in the contravention. Taking the example under paragraph 93(c) of the Consultation Paper, the board secretary (who is presumably the named company secretary) is suggested to have secondary disciplinary liability given their role in the announcement production and authorisation process and presumably as the announcement was issued in their name. It seems to us that this could give rise to a risk of unwarranted findings of secondary disciplinary liability where a company secretary participated in a contravention of the Listing Rules simply by being involved in the announcement production and authorisation process, but may not have been privy to all of the details of the underlying transaction.

We submit that, instead, the correct test for the imposition of secondary disciplinary liability should be whether the company secretary, in discharging his or her roles and responsibilities, has failed to meet the professional standards applicable to him or her. That is a professional disciplinary issue which should be left to our Institute to determine for our members, and other professional institutes to determine for other professionals. We have always maintained that we strongly object to unqualified and non-professional persons being in the position of company secretary of a listed issuer. The role of the Exchange should be to refer appropriate cases to the appropriate professional institute to determine whether the company secretary has failed the applicable professional standards contributing to a breach of the Listing Rules concerned.

We further need to add that, for the purposes of the Listing Rules under which the appointment of an external company secretary is permitted, the external company secretary is a service provider and in no different a position from other external parties providing services, including lawyers and accountants. In fact, under paragraph 6.5 of the Guidance for Boards and Directors, the Exchange recognises that an external service provider may not have day-to-day knowledge of the issuer's affairs and that there could well be gaps in communication - particularly in relation to time/price sensitive issues. However, the Consultation Paper does not seem to distinguish between internally employed and externally appointed company secretaries.

Finally, we would submit that, for all persons who are potentially subject to secondary disciplinary liability under the proposals contained within the Consultation Paper, there should be a chance for the issues concerned to be redressed and/or the sanctions to be spent over time, given the potential reputational and livelihood damage to those sanctioned.

Should you have any questions, please feel free to contact [redacted] or [redacted] at [redacted].

Yours sincerely
For and on behalf of
The Hong Kong Institute of Chartered Secretaries

[redacted]

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Annex O Views of Members of Other Organisations on Transfer of Functions to the Government

File Ref.: TC CR T1 22/2/26/3

LEGISLATIVE COUNCIL BRIEF

TRAVEL INDUSTRY BILL

INTRODUCTION

At the meeting of the Executive Council on 28 February 2017, the Council ADVISED and the Chief Executive ORDERED that the Travel Industry Bill (the Bill), at **Annex A**, should be introduced into the Legislative Council (LegCo).

A

JUSTIFICATIONS

2. The travel industry is a pillar industry of Hong Kong, making up about five per cent of our Gross Domestic Product and employing about 270 000 people. The Government has all along attached great importance to the sustainable development of the travel industry. Whilst a majority of travel trade members have been carrying on business properly, there have been shopping-related incidents in the Mainland inbound tourism market, some of which have even involved the injuries and deaths of Mainland visitors, and other types of non-compliance incidents. These incidents have inevitably tarnished the image and reputation of our travel industry, calling for a need to reform the existing regulatory regime underpinned by the Travel Agents Registry (TAR) of the Tourism Commission (responsible for the licensing of travel agents under the Travel Agents Ordinance (TAO) (Chapter 218)) and the Travel Industry Council of Hong Kong (TIC) (responsible for trade self-regulation).

3. Further to the general consensus reached after the public consultation in 2011, the Government announced its decision to reform the existing regulatory regime through establishing an independent statutory body (i.e. the Travel Industry Authority (TIA)) to regulate travel agents, tourist guides and tour escorts in a holistic and impartial manner. The TIA will take up the licensing and trade regulatory roles from the TAR and TIC respectively. We seek to strike a balance when formulating the new regulatory regime by reducing the impact on law-abiding travel trade members on one hand, whilst combating unscrupulous acts to protect the

continuous development and enhance the professionalism of Hong Kong's travel industry, the Bill will empower the SCED to prescribe by subsidiary legislation a certain percentage of the TICF as the maximum funds that the TIA may set aside to establish a new fund called the "Travel Industry Development Fund". Financial support in areas such as training and information technology application may be given to the travel trade. The TIA will determine the scope of the new fund having regard to the views gathered from the trade.

(G) Discharge of Non-regulatory Functions

18. In 2013, we considered the option that the TIC would be engaged to discharge the following non-regulatory functions under the new regime –

(a) to accredit and administer courses and examinations in relation to applications for licences and renewal of licences;

(b) to deal with emergencies involving inbound and outbound tour groups;

(c) to conciliate disputes not involving disciplinary matters against licensees; and

(d) to hold, manage and apply the newly established "Travel Industry Development Fund".

19. As the special resolution supporting that the TIC discharge the functions above was not passed at the TIC's Extraordinary General Meeting in March 2014, the Bill will empower the TIA instead to discharge those functions. As regards the functions in paragraph 18(a) and (b), we envisage that the TIA may engage service providers with suitable experience and expertise to assist in discharging them as necessary. As for the function in paragraph 18(c), the Bill will empower the TIA to refer to an independent panel under the TIA, members of which are to be appointed by the SCED, disputes between consumers and licensees that do not involve disciplinary matters for the panel's handling (e.g. conducting conciliation and, subject to the mutual agreement between both parties, making a binding decision on the disputes). To uphold impartiality, we propose that members of the panel must not come from the TIA, its committees (including the disciplinary committee) or the appeal panel. The above arrangement will allow consumer complaints