

LEGISLATIVE COUNCIL BRIEF

Financial Reporting Council Ordinance
(Chapter 588)

**REGISTRATION OF DETERMINATIONS AND ORDERS OF
PUBLIC INTEREST ENTITIES AUDITORS REVIEW TRIBUNAL
RULES**

INTRODUCTION

Pursuant to section 37ZJ(b) of the Financial Reporting Council Ordinance (Cap. 588) (“FRCO”), the Chief Justice (“CJ”) has made the **Registration of Determinations and Orders of Public Interest Entities Auditors Review Tribunal Rules** (“the Rules”), at Annex, to provide for matters relating to the registration of determinations or orders of the Public Interest Entities Auditors Review Tribunal (“PIEART”) in the Court of First Instance (“CFI”) pursuant to section 37ZB of the FRCO.

BACKGROUND

2. The Financial Reporting Council (Amendment) Ordinance 2019 (“the Amendment Ordinance”) was enacted by the Legislative Council (“LegCo”) on 30 January 2019 and came into effect on 1 October 2019¹. The Amendment Ordinance enables the Financial Reporting Council (“FRC”) to become a full-fledged and independent oversight body regulating auditors of public interest entities (“PIE”)², and be responsible for the inspection, investigation and disciplinary functions with regard to PIE auditors. The FRC is also responsible for the recognition of overseas PIE auditors. Meanwhile, the Hong Kong Institute of Certified Public Accountants (“HKICPA”) continues to perform the statutory functions of registration, setting requirements for continuing professional development, and prescribing standards on professional ethics, auditing and assurance in

¹ Except for sections 62 and 85 which will separately commence on 1 January 2022. Section 62 provides for the payment of levies to the FRC and related issues. Section 85 sets out the calculation methods of the said levies.

² PIEs refer to corporations with issued shares or stocks listed in Hong Kong or collective investment schemes with interests listed in Hong Kong.

respect of local PIE auditors, subject to oversight by the FRC.

3. Upon the commencement of the Amendment Ordinance, the PIEART was established pursuant to part 3C of the FRCO with jurisdiction to review and make determination on a review of any of the specified decisions as defined in section 2 of the FRCO, including: –

- (a) decisions of the HKICPA relating to registration of local PIE auditors;
- (b) decisions of the FRC relating to recognition of overseas PIE auditors; and
- (c) disciplinary decisions of the FRC.

4. Pursuant to section 37T of the FRCO, the PIEART may determine a review in relation to a specified decision by confirming, varying or setting aside the decision; or remitting the matter in question to the decision authority (i.e. the FRC or the HKICPA as the case may be) with any direction it considers appropriate. In accordance with sections 37Y(1), 37ZA(1) and 11 of Schedule 4A of the FRCO, the PIEART may also issue orders in relation to a review.

5. As at 30 September 2020, no application for review has been received by the PIEART.

JUSTIFICATIONS

6. Section 37ZJ(b) of the FRCO provides that the CJ may make rules providing for matters relating to the registration by the CFI of determinations or orders of the PIEART under section 37ZB. Section 37ZB of the FRCO reads –

- “(1) The Court of First Instance may, on written notice given by the [Public Interest Entities Auditors Review] Tribunal in the way prescribed by rules made by the Chief Justice under section 37ZJ, register a determination or order of the [Public Interest Entities Auditors Review] Tribunal.

- (2) A determination or order so registered is to be regarded, for its enforcement, as a determination or order of the Court of First Instance made within its jurisdiction.”

7. As the notice under section 37ZB(1) is to be given by the PIEART “in the way prescribed by rules made by the Chief Justice under section 37ZJ”, CJ has made the Rules under section 37ZJ(b) of the FRCO to prescribe the way in which a notice is to be given for registration of a determination or order of the PIEART. To provide certainty and facilitate the registration by the Court, the Rules have provided for a prescribed form.

THE RULES

8. The Rules at **Annex** prescribe the form and way in which the notice is to be given. The main provisions are explained below –

- (a) Section 1 provides for the commencement date.
- (b) Section 2 provides that for the purpose of giving notice in respect of registering a determination or an order, the PIEART must (i) submit a notice in the form prescribed in the Schedule, and (ii) produce the original of the determination or order (together with a copy of the determination or order), to the Registrar of the High Court.
- (c) The Schedule prescribes the form of the notice.

LEGISLATIVE TIMETABLE

9. The legislative timetable for the Rules is as follows –

Publication in the Gazette	16 October 2020
Tabling before LegCo	21 October 2020

IMPLICATIONS OF THE RULES

10. The Rules are in conformity with the Basic Law, including the provisions concerning human rights. They do not affect the current binding effect of the existing provisions of the FRCO. There are no economic, environment, productivity, family, gender and sustainability implications. The financial and civil service implications for the Judiciary will be ascertained in the light of operational experience, and additional resources, if required, will be sought in accordance with the established mechanism.

PUBLIC CONSULTATION

11. We issued an information paper to the LegCo Panel on Financial Affairs in April 2020. Panel Members did not raise any objections.

PUBLICITY

12. A press release will be issued. A spokesman will be made available to answer enquiries.

ENQUIRIES

13. Enquiries on this brief may be directed to Mr Billy Au, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2528 9016.

Financial Services and the Treasury Bureau
14 October 2020

**Registration of Determinations and Orders of Public
Interest Entities Auditors Review Tribunal Rules**

Schedule

[r. 2(a)]

(Made by the Chief Justice under section 37ZJ(b) of the Financial
Reporting Council Ordinance (Cap. 588))

Form of Notice

1. Commencement

HCMP / 20.....

These Rules come into operation on 14 December 2020.

IN THE HIGH COURT OF THE

2. Registration of determinations and orders

For the purpose of registering a determination or order of the
Tribunal in the Court of First Instance under section 37ZB of the
Ordinance, the Tribunal must—

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

(a) submit a notice in the form prescribed in the Schedule;
and

MISCELLANEOUS PROCEEDINGS NO. OF 20.....

(b) produce the original of the determination or order
(together with a copy of the determination or order),

IN THE MATTER of the Financial
Reporting Council Ordinance (Cap.
588) (*FRCO*)

to the Registrar of the High Court.

and

IN THE MATTER of the
registration of a determination or
order of the Public Interest Entities
Auditors Review Tribunal
(*Tribunal*) under section 37ZB of
the FRCO and rule 2 of the
Registration of Determinations and
Orders of Public Interest Entities
Auditors Review Tribunal Rules

Notice

TAKE NOTICE that the Secretary of the Tribunal of (address of the Tribunal), now applies for registration of a determination / order made by the Tribunal on the day of 20..... against in the Court of First Instance as a determination / order of the Court made within its jurisdiction for its enforcement.

Dated the day of 20.....

.....
Secretary of the Public
Interest Entities Auditors
Review Tribunal

(Back)

HCMP / 20.....

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO. OF 20.....

IN THE MATTER of the Financial
Reporting Council Ordinance (Cap.
588) (*FRCO*)

and

IN THE MATTER of the registration of a determination or order of the Public Interest Entities Auditors Review Tribunal under section 37ZB of the FRCO and rule 2 of the Registration of Determinations and Orders of Public Interest Entities Auditors Review Tribunal Rules

Notice

Dated the day of 20.....

Filed the day of 20.....

Secretary of the Public Interest Entities Auditors
Review Tribunal

Address

Tel. No.

Fax No.

Ref. No.

2020

Chief Justice

Explanatory Note

The Court of First Instance may register a determination or order of the Public Interest Entities Auditors Review Tribunal under section 37ZB of the Financial Reporting Council Ordinance (Cap. 588) after receiving a written notice given by the Tribunal.

2. These Rules prescribe the form and way in which the notice is to be given.