Sanctions Guidelines

A public consultation issued by the Hong Kong Financial Reporting Council

Comments from ACCA to the Financial Reporting Council

17 April 2019

ACCA is the global body for professional accountants. We aim to offer business relevant, first-choice qualifications to people around the world who seek a rewarding career in accountancy, finance and management.

ACCA has 208,000 members and 503,000 students in 179 countries, and works to help them to develop successful careers in accounting and business, with the skills required by employers. We work through a network of 104 offices and centres and more than 7,300 Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting and conduct relevant research to ensure accountancy continues to grow in reputation and influence.

The expertise of our senior members and in-house technical experts allows ACCA to provide informed opinion on a range of financial, regulatory, public sector and business areas, including: audit, taxation (business and personal); small business; pensions; education; and corporate governance and corporate social responsibility.

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Further information about ACCA’s comments on the matters discussed here can be requested from:

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SUMMARY

ACCA welcomes the opportunity to comment on the proposals issued by the Financial Reporting Council.

In considering our responses we have taken into account the Accountancy Scheme Sanctions Guidance issued by the UK FRC and ACCA’s Guidance for Disciplinary Sanctions, which has been approved by ACCA’s Regulatory Board for use in ACCA’s disciplinary proceedings.

The UK FRC arranged for an independent review of sanctions to be undertaken by a panel chaired by former Court of Appeal Judge Sir Christopher Clarke. Its report of October 2017 made several key recommendations including:

- An increase in fines to £10 million or more for seriously poor audit work by a Big 4 firm.
- Exclusion from the accounting profession for a minimum of 10 years for dishonesty;
- Greater use of non-financial penalties;
- Sanctions that reflect the level of cooperation by respondents

As a result, the UK FRC has, through its Accountancy Scheme, imposed substantial fines on major accountancy firms, together with reprimands and the exclusion of key personnel from their professional bodies. However, a number of observers believe that the sanctions would be more effective if they were imposed in conjunction with restrictions on taking on new PIE clients until the audit firm demonstrates at an FRC inspection that it has made the necessary improvements. A restriction of this type would serve to protect the public as well as provide an incentive to the firm to make the required improvements.

We note that paragraph 33 of the draft guidance refers to the imposition of conditions. We urge the FRC, when imposing pecuniary penalties, to consider whether it is appropriate to also impose conditions.
CONSULTATION QUESTIONS

1. Do you agree with the FRC’s objectives of imposing sanctions as set out in paragraph 10? If not, please state the particular objective(s) that you do not agree with and the reasons for your disagreement.
   Yes

2. Do you agree with the FRC’s approach to determining sanctions summarised in paragraph 19? If not, please explain any alternatives you would propose and the reasons therefor.
   Yes

3. Have we included the sorts of factors (paragraphs 21 to 24) in the Sanctions Guidelines that you would expect the FRC to consider in assessing the nature and seriousness of the misconduct and determining the sanctions to be imposed? Are there any other factors you believe the FRC should take into account when determining the sanctions to be imposed?
   We agree with the factors included to determine the nature and seriousness of the misconduct and determining the sanctions to be imposed. We would encourage the FRC to consider an appropriate combination of financial and non-financial sanctions where appropriate. We have referred in the introduction to the sanction of restricting an audit firm from taking on new PIE clients until it was able to demonstrate to the FRC’s satisfaction that it had made the required improvements to its auditing policies and procedures.

4. Do you agree that the sanctions, including a pecuniary penalty, to be imposed by the FRC should act as an effective deterrent and be proportionate to the misconduct and have regard to all the circumstances of the case, including the financial resources of the regulated persons? If not, what would you propose? Please explain your rationale.
   Yes

5. Do you agree with the factors set out in paragraphs 37 to 43 that the FRC will normally take into consideration when determining the amount of a pecuniary penalty? If not, please explain any alternatives you would propose and the reasons therefor.
   Yes
6. Do you have any other comments on the Sanctions Guidelines that would help the FRC as an independent auditor regulator to protect the investing public and the public interest?

Yes, please see point made in summary recommending the consideration of imposing conditions in conjunction with pecuniary penalties.