Dear Sirs

Invitation to comment on the Sanctions Guidelines

We refer to Council’s invitation to comment on the proposed Sanctions Guidelines on how Council would exercise the power to impose a pecuniary penalty under the Financial Reporting Council (Amendment) Ordinance 2019.

We thank you for offering us the opportunity to comment on the proposed Sanctions Guidelines. We set out below our response to the questions set out in the invitation, adopting the same paragraph references and terminology used in Council’s invitation.

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.

We agree with Council’s objectives of imposing sanctions as set out in paragraph 10.

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.

We generally agree with Council’s approach to determining sanctions summarised in paragraph 19. However, we do not believe that “further adjustments” are necessary under paragraph 19(d) since one of the overriding objectives when imposing sanctions for a misconduct already includes the purpose of deterring future misconduct (paragraphs 10(a) and 37(b)). To make further adjustments to achieve the appropriate deterrent effect would seem to have a double penalty effect. Please refer to our response to questions 3 and 5 below in relation to specific factors which we think should/should not be taken into consideration when determining sanctions.

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?

When assessing the nature and seriousness of the misconduct and determining the sanctions to be imposed, we have the following comments in relation to the factors to be taken into consideration as set out in paragraphs 21 to 24, as well as other factors and considerations:

With respect to factors to the considered as set out in paragraph 22 -
a) We suggest adding an additional factor that how long ago the misconduct occurred and the passage of time that has lapsed should be considered. We regard these as relevant because regulated persons should be given the opportunity to properly defend any allegation against them. As such, it would seem unfair when regulated persons may no longer have access to documents or personnel to support their case if the alleged misconduct took place a long time ago.

b) We suggest removing the factor under paragraph 22(f) because “intentional” in our view is the same as “deliberate” under paragraph 22(g).

c) In relation to paragraph 22(i), we suggest that whether the misconduct was ongoing should only be a factor if such ongoing misconduct was known to the regulated persons.

d) We do not agree whether it is likely that the same type of misconduct will recur under paragraph 22(o) should be considered as a factor, because this is a subjective test and a very judgmental issue. It would be difficult to fairly determine what might recur. For the same reasons, we believe “or that such misconduct was likely to occur” should be removed from paragraph 57(c).

With respect to the other considerations -

e) Paragraph 45(a) – we believe the following should expressly not to be considered as aggravating factors when considering whether the amount of the pecuniary penalty should be adjusted:

   i. Inability to cooperate due to legal restrictions, including but not limited to legal professional privilege and legal impediments.

   ii. The conduct of defending an investigation.

f) Paragraph 71 – Whether there has been early disposal of the case is not within the control of the regulated persons. We therefore suggest removing the following words “but there is no formal adjustment of sanction to be applied in cases where there has not been early disposal”.

g) Paragraph 57 – we believe seeking expert opinion should also be included as a mitigating factor.

h) Paragraph 57(e) – we suggest removing “deliberately” as we believe being misled by a third party should in itself be considered as a mitigating factor, without any condition.
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.

We do not agree that financial resources of regulated persons should be taken into consideration when imposing sanctions as there is no direct connection between financial resources and misconduct. There are also potential adverse implications for the industry as it may deter growth and development of Certified Public Accountants firms. This may also encourage smaller firms to take more risk with transgressions because of the smaller sanctions on them.

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.

For the same reasons as those set out in our response to question 4 above, the size; financial strength (eg turnover); revenue; profit per partner, market share, number of audit and non-audit clients (particularly non-audit clients as they have no connection with audits); respective size of those clients; the number of partners and registered responsible persons of PIE auditors, and financial resources; remuneration and future employment prospects of individuals, should also not be considered as a factor when determining sanctions.

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?

There should be more clarity on the following:

a) How sanctions may be assessed on both the PIE auditor and a registered responsible person for the same misconduct. Imposing sanctions on both the PIE auditor and a registered responsible person for the same misconduct may be unfair and potentially counter-productive.

b) How discounts are applied to sanctions for certain types of cooperation, with examples and the likely level of discount, e.g. in percentage terms on pecuniary penalties.

Yours faithfully

[Signature]