

Compliance

Process Review Report

In January 2013, the Regulatory Accountability Board (RAB) issued the Process Review Report on the compliance department of the Hong Kong Institute of Certified Public Accountants



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

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General information

Background

The Regulatory Accountability Board (RAB) was established by the Council of the Hong Kong Institute of Certified Public Accountants (Institute) in 2009 as part of the major overhaul of the Institute's governance structure.

Role and responsibilities

The Institute is committed to uphold a regulatory regime that commands public trust and confidence. The role of the RAB is to ensure that the regulation of the professional conduct of members of the Institute is being carried out in accordance with policies and procedures that have been designed with the public interest at the forefront.

To carry out its responsibilities, the RAB will undertake the following functions:

1. Oversee, on behalf of Council, the performance and operations of the compliance department and the Professional Conduct Committee (PCC) of the Institute;
2. Receive and consider periodic status reports from the compliance department through the Executive Director; and
3. Provide its views and advice to Council on the Institute's policies, priorities and resource allocation in respect of the regulation of the professional conduct of its members and member practices.

The RAB meets periodically to assess the performance and operations of the compliance department by considering progress reports of the compliance department which provides information on key activities of the department and providing recommendations to the Council on regulatory related matters.

Composition

The RAB comprises certified public accountants, lay members and representatives of other regulators. The RAB has eight members including a lay Chairman and has a lay majority. The Chairman of the PCC is an ex-officio member and the Executive Director, Standards and Regulation is the secretary. The membership of the RAB is at **Appendix 1**.

Process review

As part of its oversight function, the RAB conducted a process review of the operations of the compliance department during November and December 2012. This report explains the work done in the process review and the findings and recommendations thereon.

Objective

The purpose of the process review is to enhance the RAB's oversight of the compliance department's key operations in case handling by:

- Assessing whether the compliance department adheres to established internal procedures when handling complaints, investigation and disciplinary cases;
- Evaluating the adequacy of internal procedures, the adequacy and appropriateness of information gathered to arrive at a conclusion and the time taken to deal with cases; and
- Identifying areas that require improvements and make recommendations thereon.

Benefits

RAB considered that the benefits of the process review include:

- Assurance that there is independent input to the oversight of the regulatory function of the Institute to ensure that the public interest is protected in case proceedings and outcomes;

- Build confidence in the robustness of the Institute's regulatory system; and
- Contributing to development of effective and efficient processes within the compliance department.

Approach

1. The review involved an evaluation of the case handling processes undertaken to arrive at decisions and did not require re-opening cases and re-appraisals of judgments and conclusions that had previously been made.
2. The review focused on completed cases against members and member practices of the Institute.
3. Four RAB members volunteered to conduct the 2012 process review (Reviewers). The Reviewers will report findings to the RAB.
4. The RAB Chairman, who was one of the Reviewers, selected cases for review based on pre-determined criteria such as public interest and time to completion.
5. For the cases selected, compliance team provided the relevant case files to Reviewers to carry out the detailed review.
6. When making an assessment on the case handling process, Reviewers referred to existing guidance and documentation on due process, statutory provisions, rules and guidelines.

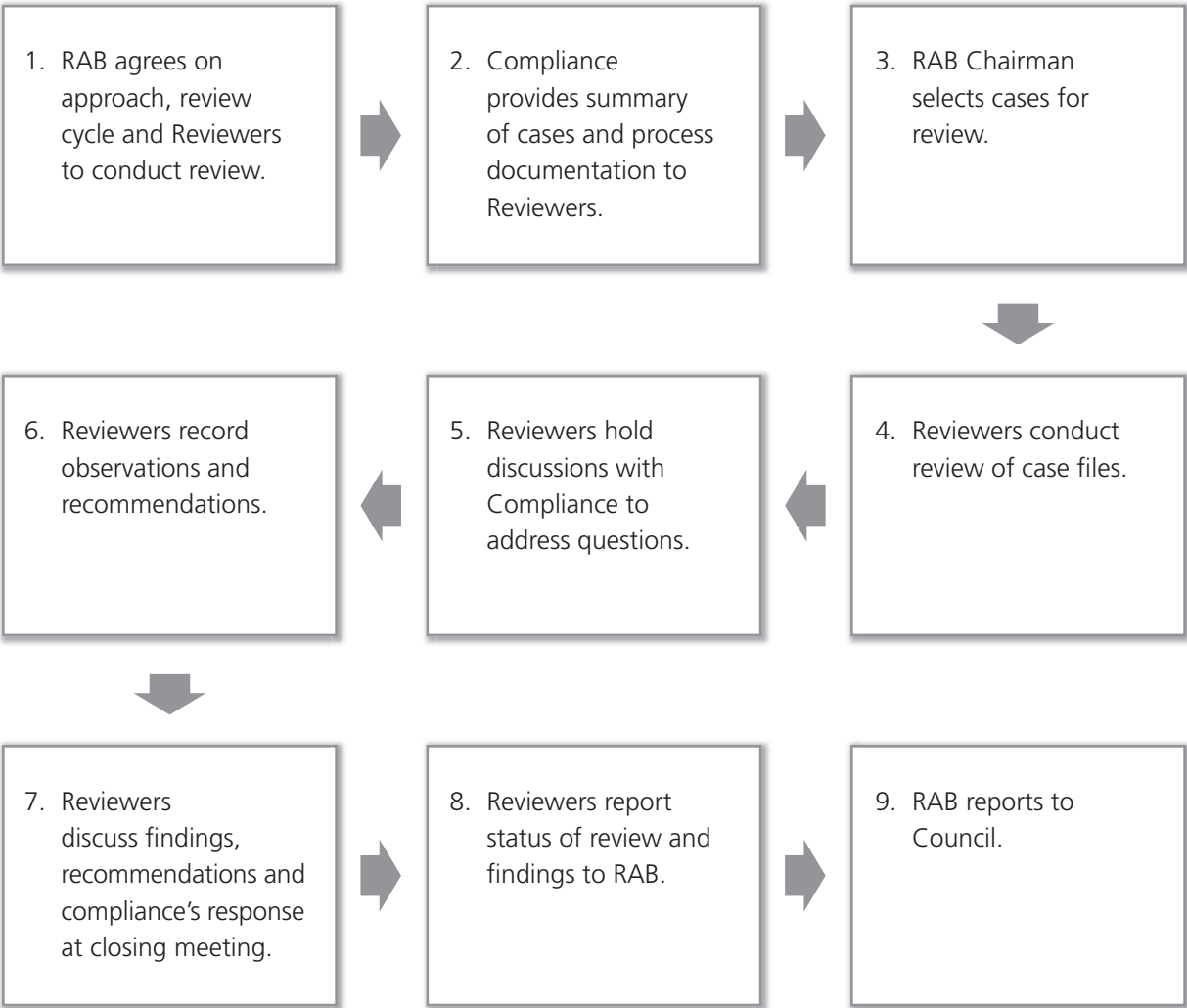
7. Reviewers are obliged to preserve secrecy with regard to any matter coming to their knowledge in conducting the process review, and shall not at any time communicate any such matter to any other persons.

Case selection

1. The RAB determined that the review should focus on recently completed cases and that the first review would cover cases completed in the period from 1 January 2011 to 30 September 2012.
2. In the period subject to review, 121 complaints against members and 20 disciplinary cases were completed.
3. The RAB Chairman selected 18 cases (14 complaint cases and 4 disciplinary cases) based on public interest and time to completion.

* See Appendix 1 for names of Reviewers.

Workflow



Findings

Areas of focus

- Compliance with due process – It was noted that all selected complaint and disciplinary cases were dealt with in accordance with the established internal procedures. No deviations from the due process were noted.
- Timeliness – Unexplained delays were noted in 4 of the complaint and 1 of the disciplinary cases selected for review.
- Quality of case handling – No criticisms were made in respect of the quality of the case handling. The RAB provided some feedbacks which were beneficial to improve the manner in which cases can be handled.

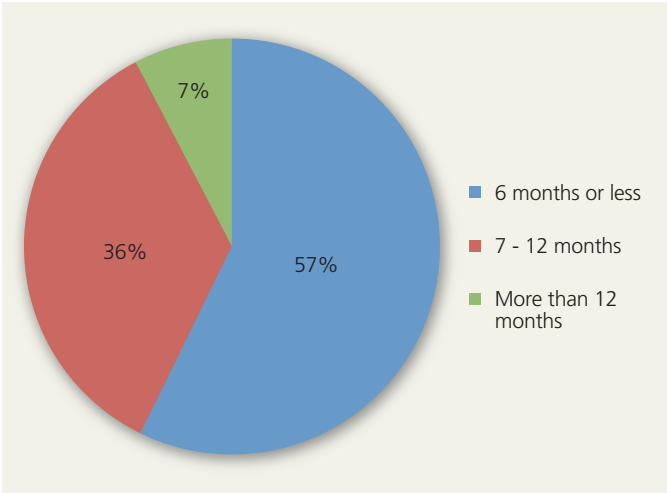
Complaints

Facts

Case completion

Complaints are completed when the PCC has made decisions on the cases based on case assessment reports submitted by the compliance department. In the period subject to review, 9 PCC meetings were held to deal with 121 complaints. On average, 13 to 14 cases were considered by the PCC per meeting.

Completion time



- In general, the department targets to complete cases within 6 months. Longer time is required for complicated cases such as those that require review of working papers and obtaining other expert opinions.
- Average completion time in the period subject to review: **6.6 months**
- **57%** of cases completed within 6 months
- **93%** of cases completed within 12 months

Compliance's responses to Reviewers' observations

Reviewers' observations	Compliance's response
1. In one case, unnecessary and unexplained delays were noted and the work done was almost dis-proportionate to the alleged offence and outcome.	<ul style="list-style-type: none">▪ In view of the sensitive nature of this case, additional time was taken at the beginning stage to assess whether the case should be dealt with by a special task force.▪ The case was reported to the PCC three times because additional information was required. Comprehensive advice was made by the legal team to deal with PCC's concerns before the case was closed.
2. One case was noted to have stemmed from a commercial dispute.	<ul style="list-style-type: none">▪ Sufficient evidence must be obtained to determine if the allegations involved valid professional matter or commercial disputes. Compliance agrees that commercial disputes are outside the Institute's jurisdiction.
3. The evidence provided by the regulatory body was insufficient for the Institute to pursue the case.	<ul style="list-style-type: none">▪ Some of the allegations raised by the regulatory body were dismissed due to insufficient evidence. In view of the gravity of the offence, the remaining allegations were dealt with by issue of a disapproval letter to the respondent.
4. The letter of complaint was received in May 2011 but the complaint was not communicated to the respondent until November 2011.	<ul style="list-style-type: none">▪ The complaint was initially determined to be outside the Institute's jurisdiction as it concerned a company's non-compliance with the Companies Ordinance. After the complainant was informed of the same, he made further allegations against the auditors of the company, at which point the matter was communicated to the CPA.

Reviewers' observations	Compliance's response
<p>5. Cannot ascertain what had been done by case handlers in the interim, save that the case was discussed at internal meetings of the compliance department.</p> <p>The case was dealt with by issue of a warning letter. The wording in the warning letter appeared to be an advice.</p>	<ul style="list-style-type: none"> ▪ This case was initially held pending on conclusion of the ongoing class actions. The compliance department agreed at an internal meeting that the matter concerning class actions was to be dealt with separately as they take a long time to conclude. The remaining allegation was dealt with by issue of a warning letter. ▪ A warning letter is issued when the matter was not of sufficient gravity to warrant further regulatory action. The purpose of the letter is to caution the member to exercise due care and have proper regard to the professional standards expected of him/her as a certified public accountant. ▪ Compliance department will review the wording used in the warning letters.
<p>6. Unclear why after submission was received from respondent, the case required 4 months to process.</p>	<ul style="list-style-type: none"> ▪ A substantial amount of time was taken to review the voluminous information provided by the respondent. Case pertained to failure of a large investment bank.
<p>7. Time taken to deal with this simple and straightforward case was excessive.</p>	<ul style="list-style-type: none"> ▪ The department prioritized its resources to deal with cases which are of high public interest such as those referred by other regulators. This is a straightforward case which concerned minimal public interest and was considered low in priority. ▪ Compliance is looking into alternative procedures to streamline the process for these simple and straightforward cases and resource requirements.

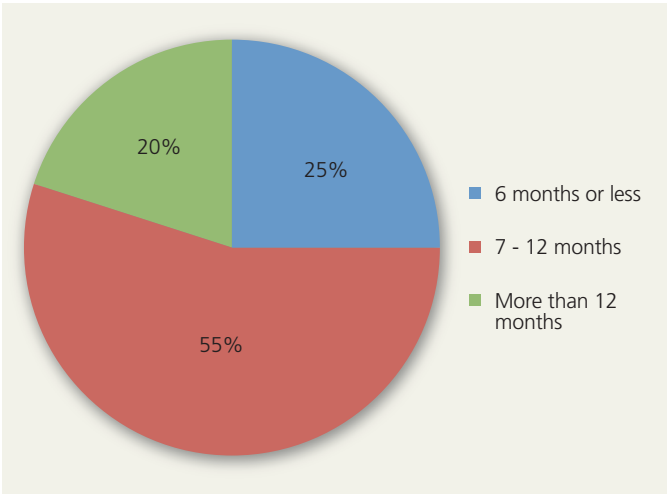
Disciplinary cases

Facts

Case completion

Disciplinary cases are dealt with by the Disciplinary Committees. The compliance department works with the legal team to carry out disciplinary proceedings as the Complainant. Disciplinary cases are completed when Reasons and Orders are issued by the Disciplinary Committees.

Completion time



- Average completion time in the period subject to review: **11.5 months**.
- Out of the 20 completed cases, 16 (**80%**) were completed within 12 months.
- All of the 4 disciplinary cases reviewed were completed over 12 months.

Compliance’s responses to Reviewers’ observations:

Reviewers’ observations	Compliance’s response
1. One case was noted to have unacceptably long and unexplained delays. The case took 32 months to complete.	<ul style="list-style-type: none"> ▪ The Disciplinary Committee acceded to respondent’s requests for extensions of time at various stages of the proceedings. ▪ Delay was also caused by the difficulty in conducting hearings due to Disciplinary Committee members’ availability.
2. Lengthy process drawn out by respondent in one case. The case took 26 months to complete.	<ul style="list-style-type: none"> ▪ The respondent in this case applied for stay of disciplinary proceedings due to the ongoing court proceedings and police investigation against him. Upon objection by the Institute, the Disciplinary Committee rejected respondent’s application. ▪ Delay was also caused by difficulty in scheduling hearings due to the availability of the Respondent and the Disciplinary Committee members.

Recommendations

Improving case handling processes

1. Better time management:

- Set time targets.
- Adopt a more proactive approach to ensure control over the disciplinary case progress.
- More timely issue of reminders to Disciplinary Committees.

Compliance's response:

To improve timing of case handling by:

- Looking into alternative procedure to streamline the process for simple and straight forward cases.
- Establishing "Mission Timetable" to set time targets for various stages of completion.
- Monitoring closely progress of disciplinary cases and issuing timely reminders to Disciplinary Committees for cases with lack of progress.

2. Improve file documentation:

- Document reasons for delay, if any.
- Include file notes to show sequence of events to enable reviewer to readily assess the information regarding stages of the case handling process.

Compliance's response:

To improve file documentation:

- Steps have already been implemented by Compliance to improve file documentation and include file indexing system.
- Eliminate unnecessary documentation in files.

3. Consider how other regulators could better provide stronger evidence for the Institute to pursue the complaints.

Compliance's response:

Increase communication with other regulators to ensure appropriate information is provided to the Institute to support their complaints.

Improving the process review

1. Include notes in case files to show sequence of events/process to enable reviewer to readily assess the information regarding stages of the case handling process.
2. Provide case summaries to allow reviewers to get familiar with the case before the review.

Compliance's response:

Compliance team thanks the Reviewers for the above recommendations for improving process review procedures and will adopt them in future reviews.

Regulatory Accountability Board 2012 Composition

Chairman

Mr. Gordon W.E. JONES, B.B.S.*

Members

Mr. Ambrose CHEUNG Wing-sum, JP

Mr. Anthony CHOW Wing-kin, SBS, JP*

Mr. Mark Francis DICKENS, JP*

Mr. Andrew FUNG Hau-chung, JP

Mr. Wilson FUNG Ying-wai

Mr. Charles Ramsay GRIEVE*

Mr. Jack CHOW Siu-lui, ex-officio Member (Chair, Professional Conduct Committee)

** Process Review members*

Secretary

Mr. Chris JOY, Executive Director, Standards & Regulation

Representatives of compliance department

Mrs. Linda BIEK, Director, Compliance

Ms. Elaine CHUNG, Associate Director, Compliance

