



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

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# Compliance Department Process Preview Report 2019

**Issued by**

**The Regulation Oversight Board**

*of*

**The Hong Kong Institute of Certified Public Accountants**



## A. Introduction

1. The Regulatory Oversight Board ("ROB") ensures that the regulatory function of the Institute is carried out in accordance with strategies and policies determined by Council, and in the public interest. It oversees the performance and outcomes of regulatory activities, and provides advice on policies, priorities and resource allocation in respect of the Institute's regulatory function.
2. The ROB consists of certified public accountants, lay members and representatives from other regulatory bodies, with a lay member serving as Chair. ROB members are listed below.

Ms. Susie HO, Chair	Mr. Dennis HO
Mr. Clement CHAN	Mr. Paul Michael KENNEDY
Ms. Mabel CHAN	Ms. Susanna LAU
Mr. Vincent CHUI	Mr. Keith POGSON
Ms. Ada CHUNG	Mr. Dieter YIH

3. As part of its oversight function, the ROB conducted a process review of the operations of the Compliance Department ("Compliance") in the fall of 2019. The objective of the review is to ensure compliance with due process, timeliness, and quality of case handling within the department. This report highlights the ROB's findings and recommendations, as well as Compliance's responses, including plans for adopting applicable recommendations.
4. At its July 2019 meeting, the ROB endorsed the change in cut-off date for the process review period from 30 September to 30 June, which would align with the Institute's fiscal year-end. As such, the 2019 Process Review covered a total of 81 cases completed during the nine-month period from 1 October 2018 to 30 June 2019. The case mix consisted of 18 disciplinary cases and seven Resolutions by Agreement ("RBA"). The remaining 56 cases were either resolved with a Disapproval Letter or dismissed.
5. From the 81 completed cases, the ROB Chair selected nine for review. Consideration of completion time and case outcomes drove the selection process. The final sample of nine contained three disciplinary cases, three RBA cases, two Disapproval Letter cases, and one dismissal case.
6. After receiving the case files from Compliance, ROB members ("Reviewers") referred to existing guidance on due process, statutory requirements, and applicable rules to conduct the process review. These materials were instrumental in evaluating case handling procedures undertaken, and information reported to the Professional Conduct Committee ("PCC") and Council to assist with decision-making on case outcome.



7. As the review focuses exclusively on process, it did not address the propriety of case judgements and conclusions. That assessment would be beyond the remit of the process review.

## **B. Reviewers' Findings and Compliance's Responses**

### ***(i) Compliance with due process***

8. Reviewers assessed whether Compliance had followed the established complaint handling process.

#### Findings and recommendations

9. All selected cases were handled in accordance with established procedures. One minor deviation from due process was noted. In that case, the conclusion letter to the informant was sent several months after the matter had been concluded, due to oversight.
10. In another case referred by the Financial Reporting Council ("FRC"), the Reviewer considered additional analysis by Compliance was not the best use of the Institute's resources. Given FRC had already conducted an investigation, the Institute seemed to have duplicated the efforts in performing additional analysis when the nature of the complaint and the proposed RBA action suggested the breaches were only moderately serious.

#### Compliance's responses

11. Compliance continues to strive to ensure that due process is followed in all cases. The communication procedures have been updated to ensure the appropriate parties are notified when an RBA or disciplinary order has been published. Compliance will also implement procedures to ensure case handlers consistently communicate relevant information to informants.
12. Under the current complaint handling process, Compliance is required to conduct an independent assessment of the breaches identified by FRC to ensure that a prima facie case exists and the related charges are prosecutable. Cases that are deemed moderately serious are recommended for RBA. An RBA is only executable when its terms have been agreed by both Council and the respondent(s). In the event that either party rejects the proposed RBA, the case would typically be recommended for referral to the disciplinary panels.

### ***(ii) Timeliness***

13. Reviewers examined the amount of time each complaint took as it traveled through the complaint handling process. They assessed whether the time spent was reasonable based on established targets and, if not, whether circumstances justified the delays.



#### Findings and recommendations

14. In general, results showed adherence to process and procedures designed to ensure timeliness.
15. For two of the disciplinary cases reviewed, Reviewers noted that the involvement of a Legal Liaison, who was tasked with preparing complaint letters but was not the case handler, resulted in inefficiencies in the process.
16. Also, submission of one case to Council with a recommendation for referral to the disciplinary panels seemed to take longer than necessary. The complaint letter was eventually re-drafted by the Legal Department as it had decided to take an approach that differed from the AIB Report.
17. Reviewers made the following recommendations in relation to timeliness:
  - (a) to automate the issuance of acknowledgement letters to expedite the process;
  - (b) to provide an update to the informant/complainant on progress when the processing of the case is being delayed;
  - (c) to initiate enquiries with the preparers of financial statements and company's directors stemming from FRC cases once a prima facie case is identified; and
  - (d) to interact with Legal Department at an earlier stage to ensure complaint letters are being prepared in an efficient manner.

#### Compliance's responses

18. Reviewers noted during the process review that the issue relating to the role of Legal Liaison had been rectified. Recognizing the procedural inefficiencies, this role was phased out in July 2018. Case handlers are now tasked with the responsibility of preparing complaint letters and supporting Legal Department in the disciplinary proceedings until the matter has been concluded.
19. To address Reviewers' recommendations, Compliance will:
  - (a) take steps to automate the issuance of acknowledgement letters as an administrative process; and
  - (b) initiate enquiries with financial statements preparers and board members at an earlier stage.



20. Compliance will continue to seek ways to streamline the processing of FRC cases referred to the Institute. One such proposal is to accelerate RBA cases at the investigation stage via targeted checklist procedures. It is anticipated that the processing time of these moderately serious cases would be expedited by adopting a precise, risk-based approach that would secure respondents' acceptance of an RBA on a "without prejudice" basis. This would minimize the time spent on building a case for the purpose of prosecution as the risk of prosecution would be minimal. In the unlikely event that the RBA is rejected, traditional steps would be taken to develop a complaint letter and obtain Rule 5 submissions. Therefore, only cases which will be recommended for referral to the disciplinary panels would require analysis by the Legal Department, freeing up resources for both departments to be spent on projects with higher risk.
21. Further, Compliance continues to work with the Legal Department to enhance procedures and protocols with the objective of improving efficiency in managing the disciplinary process.

***(iii) Quality of case handling***

22. Reviewers assessed whether allegations raised by informants/complainants were identified and addressed. For dismissed cases, Reviewers assessed whether reasons for dismissing complaints were adequately explained.

Findings and recommendations

23. Reviewers did not identify any findings that would indicate a lack of quality in case handling.
24. In general, results were properly communicated to the relevant parties. However, Compliance is encouraged to provide more customized responses to informants/complainants explaining reasons for case dismissal.
25. For one of the dismissed cases, the Reviewer considered that unsubstantiated allegations pertaining to the respondent's investment services could be more thoroughly addressed in the PCC Report. The Reviewer also suggested that the conclusion letter to the respondent should have conveyed the message that the respondent fell short of the expectations of a professional accountant.
26. With respect to the case noted in paragraph 10 above, given no material misstatements were identified, the Reviewer questioned the value of issuing the associated press release more than ten years after the relevant audits. Further, it is considered that case assessment could be enhanced by forming a subjective view on the materiality of the accounting issue to assist in assessing the gravity of the case.



Compliance's responses

27. Compliance noted the recommendations and will provide more substantive content in conclusion letters, as warranted.
28. In response to paragraph 25, Compliance's focus of investigation was whether the conduct of the respondent led to any breaches of professional standards. Certain matters, such as fee arrangements and details of the underlying transaction, were included in the PCC Report for information but were outside the scope of the case assessment. As such, the respondent's standard of performance in relation to these matters was not highlighted in the PCC Report or the conclusion letter to the respondent.
29. In response to paragraph 26, the Institute's RBA policy requires publication of all regulatory actions. This is an important step as FRC publicizes information about investigations that have been forwarded to the Institute. To promote transparency, the Institute would be expected to report disciplinary or regulatory actions to the public. This process also mirrors that of publicizing disciplinary orders and promotes consistency. Compliance noted that forming a subjective view on the materiality of an accounting issue assists in assessing the impact of allegations relating to the financial statements, and is part of the pre-determined criteria Compliance follows in assessing the gravity of the case. Other considerations include whether the offence is an isolated or repeated case, the significance of the breach, the impact on the reputation of the profession, and the extent of public interest.

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