

Compliance

Process Review Report

In February 2014, 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

Content

Section	Page
General information	2
<ul style="list-style-type: none">• Background• Role and responsibilities• Composition	
Process Review	3 – 5
<ul style="list-style-type: none">• Objective• Benefits• Approach• Case selection• Workflow	
Findings	6 – 9
<ul style="list-style-type: none">• Areas of focus• Complaints<ul style="list-style-type: none">- Facts- Compliance’s responses to Reviewers’ observations• Disciplinary cases<ul style="list-style-type: none">- Facts- Compliance’s responses to Reviewers’ observations	
Recommendations	10
<ul style="list-style-type: none">• Improving case handling processes• Improving the process review	
Appendix 1 Regulatory Accountability Board	11

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 six members including a lay Chairman and lay majority. The Executive Director, Standards and Regulation and the Director, Compliance provide administrative support to the Board. The membership of the RAB is at **Appendix 1**.

Process review

As part of its oversight function, the RAB conducted its second process review of the operations of the compliance department in December 2013. This report explains the work done in the second 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. Three RAB members volunteered to conduct the 2013 process review (Reviewers). The Reviewers reported their 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.

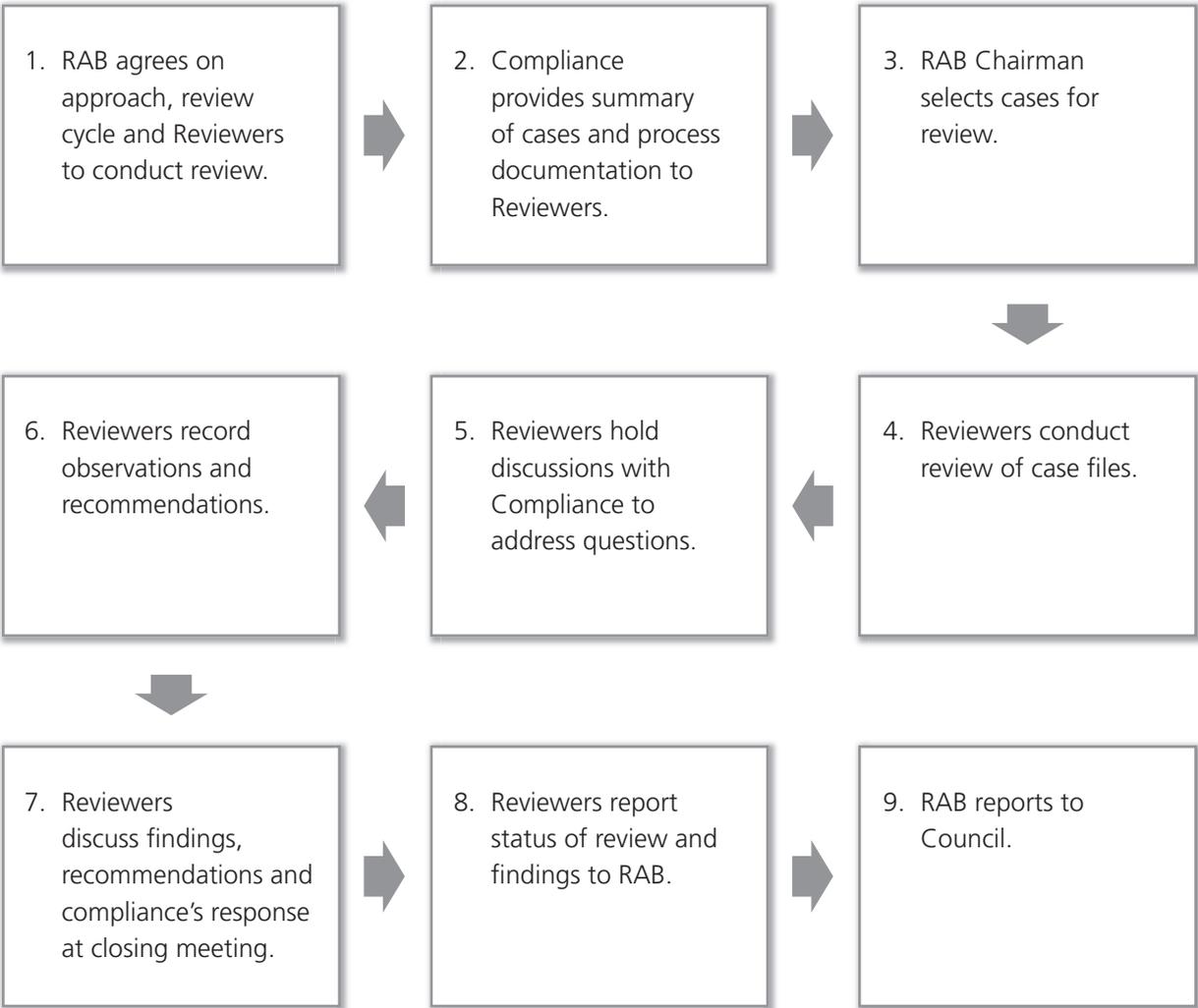
7. Reviewers are obliged to preserve secrecy with regard to any matter coming to their knowledge in conducting the process review, and shall not at any time communicate any such matter to any other persons.

Case selection

1. The RAB determined that the review should focus on cases completed in the second cycle during the period from 1 October 2012 to 30 September 2013.
2. In the period subject to review, 114 complaints against members and 14 disciplinary cases were completed.
3. The RAB Chairman selected 12 cases (8 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 cases were dealt with in accordance with the established internal procedures. No deviations from the due process were noted.
- Timeliness – No undue delays were noted in the 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 feedback which was beneficial to improve the manner in which cases can be handled.

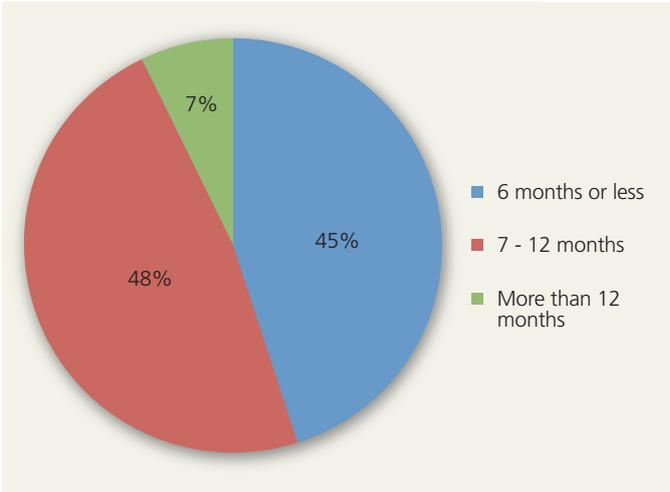
Complaints

Facts

Case completion

Complaints are completed when the PCC has evaluated the case reports submitted by the compliance department and made decisions on the cases. During the period under review, 8 PCC meetings were held to deal with 114 complaints. On average, 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 consideration of expert advice.
- Average completion time in the period subject to review: **7.5 months**
- **45%** 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. Adherence with due process	
a) All cases were handled in accordance with due process	▪ Compliance department adheres to the Institute's established complaint handling process.
2. Timeliness	
a) Delay in one case was due to lack of cooperation by the complainant to provide the necessary information to support its complaint.	▪ Compliance department allows a timeframe for complainants to provide information to substantiate their complaints.
b) Delay in the second case was due to lack of cooperation by the respondent to respond to the Institute's enquiries.	▪ Compliance department issues reminders to respondents to reply to Institute's request for information. If necessary, Council issues lawful direction to request cooperation from respondent. Non-compliance with Council's lawful directions is a disciplinable offence.
c) In one case, there was a period of inaction since the case was passed to another department for advice.	▪ Compliance department will follow up status of inter-departmental exchanges and issue reminders when necessary.
3. Quality of case handling	
a) Documentation in the case file should include rationale for determining the outcome of complaints.	▪ The Professional Conduct Committee of the Institute assesses the information gathered by the compliance department and considers the gravity of case by reference to a set of pre-determined criteria. The Committee's determination of complaints is documented in the minutes of meeting.

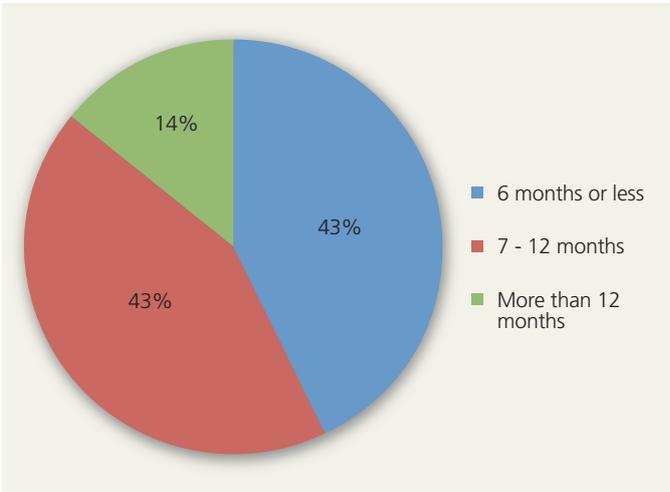
Disciplinary cases

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. A disciplinary case is completed when the Order and Reasons for Decision is issued by the Disciplinary Committee.

Completion time



- Average completion time in the period subject to review: **8 months**. (Note: From date of Constitution of Disciplinary Committees.)
- Out of the 14 cases completed during the 2nd review cycle, 12 (**86%**) were completed within 12 months.
- Of the 4 disciplinary cases selected for review 2 were completed over 12 months.

Compliance's responses to Reviewers' observations:

Reviewers' observations	Compliance's response
1. Compliance with due process	
a) All cases were handled in accordance with due process.	▪ Compliance department adheres to the Institute's disciplinary process.
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2. Timeliness	
a) In one case, the delay was caused by the respondents' request for extensions of time for submissions. Once the dates for substantive hearings were fixed, the Disciplinary Committee operated efficiently.	▪ Disciplinary Committees have been reminded to adhere to procedural timetables. The Institute, in acting as the Complainant, makes objections against time extensions if they are unreasonable.
b) Repeated reminders were noted to have been issued by the compliance department to the Disciplinary Committee	▪ The compliance department issues requests to Disciplinary Committees to expedite proceedings in cases where inactivity is noted.
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3. Quality of case handling	
a) The Disciplinary Committee was given adequate support.	▪ An independent team from the compliance department acts as Clerk to the Disciplinary Committee to provide administrative support.
b) Documentation in case file should include information based on which the Disciplinary Committee issued its sanctions.	▪ Disciplinary Committees are provided with a list of relevant precedent cases for reference. The Disciplinary Committees are given Sentencing Guidelines. The rationale for sanctions is typically included in the Reasons for Decisions issued by the Disciplinary Committees.
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Recommendations

Improving case handling processes

1. Improve communication with other regulatory bodies:

- Requesting the regulator to give consent to release information to the respondent in all future referrals to save time on subsequent requests.

Compliance's response:

- In December 2012, compliance requested the regulator to express consent to release information to respondent in its complaint referral letter.

2. Improve file documentation:

- There is room for improvement in respect of documentation of actions taken place apart from written correspondence, email, formal meetings.

Compliance's response:

- As part of its reporting, compliance prepares a list of processes undertaken by the department for case handling. For periods of inaction, the department will improve file documentation to include further details on informal communication.

3. Assess criteria for referral of cases for disciplinary actions:

- Disciplinary proceedings are expensive and time consuming. The disciplinary system seems well-established and there are adequate checks-and-balances in the compliance department.
- No recommendation for major changes of the disciplinary mechanism. Instead, a mechanism for dealing with moderate cases should be developed.

Compliance's response:

- The Institute will consider alternative resolutions to deal with potential disciplinary cases. In addition, application guidance has been refined to enhance the consideration of case severity.

Improving the process review

1. Information required to check against the handling process could be better organized to enable the reviewer to assess the work done by case handler to come to the conclusion.

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 2013 Composition

Chairman

Mr. TAM Wing Pong*

Members

Mr. CHOW, Anthony, SBS, JP*

Ms. BROWN, Melissa

Mr. FUNG, Wilson*

Ms. LIEW, Cecilia

Mr. POGSON, Keith

** 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

