

# Compliance

## Operations Report

2010-12



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



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Abbreviations used:

Code	Code of Ethics for Professional Accountants
CPA	Certified public accountant
FRC	Financial Reporting Council
HKICPA / Institute	Hong Kong Institute of Certified Public Accountants
Member	CPA, CPA firm, corporate practice and/or registered student
PAO	Professional Accountants Ordinance (Cap. 50)
PCC	Professional Conduct Committee
RAB	Regulatory Accountability Board



## Introduction

### Regulating CPAs

The Hong Kong Institute of Certified Public Accountants is the licensing body for professional accountants in Hong Kong and is responsible for regulating the conduct of the certified public accountants. As part of its regulatory function, the Institute addresses complaints concerning the ethical and professional conduct of its Members.

Compliance with the Institute's professional standards is a requirement of membership. The complaint process and the disciplinary process are key mechanisms by which the Institute regulates the conduct of its Members with sanctions being imposed for serious breaches.

### Compliance department

The compliance department of the Institute carries out the Institute's function of regulating the ethical and professional conduct of CPAs. The department has been charged with the responsibility of handling complaints, investigations and disciplinary cases.

This is a report on the operations and achievements of the compliance department during the period from January 2010 to December 2012. The report illustrates the nature of cases handled by the compliance department and their outcomes as well as the activities which the department undertakes to support the regulatory function.



## Complaints

### What is a complaint?

Complaints must be in writing, supported by adequate evidence, indicating that a Member has failed to follow professional standards issued by the Institute or committed other improper acts.

### Sources of complaints

#### Other regulators

Complaints may be referred by other regulatory bodies in Hong Kong such as the Financial Reporting Council, Hong Kong Confederation of Insurance Brokers, Hong Kong Stock Exchange, Law Society of Hong Kong, Market Misconduct Tribunal, Official Receiver and Securities and Futures Commission.

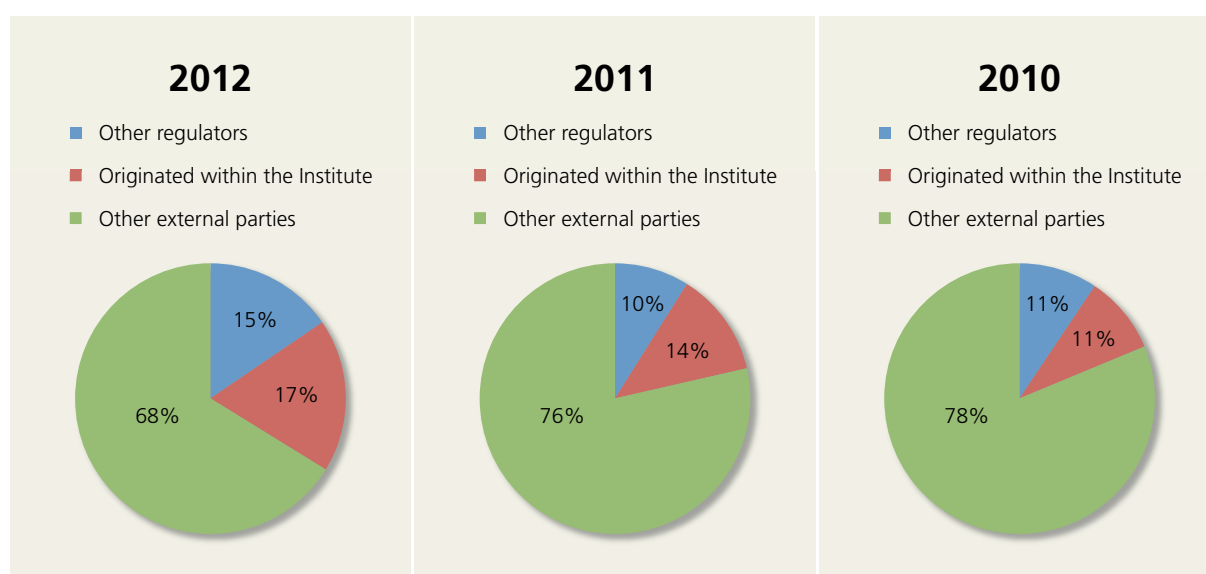
#### Originated within the Institute

Complaints may involve matters which originate within the Institute itself. The Institute monitors the media for Members who are involved in activities which may be in violation of standards and statutes.

#### Other external parties

Complaints may be received from individuals or companies with which Members have business relationships.

### Exhibit 1: Sources of complaints received by the Institute



## Compliance department's role

The compliance department carries out the Institute's function of regulating Members' professional and ethical conduct. Their roles are as follow:

### Fact finding

On receipt of a complaint, the compliance department conducts enquiries into the facts of the matter. Typically, this involves obtaining additional information from the complainant and the Member concerned to better understand the representations and allegations. Relevant supporting documents are a critical component in developing a case.

### Case analysis

The compliance department then carries out an assessment of the adequacy of the supporting evidence to determine if a prima facie case exists, thereby showing that the Member failed to follow the Institute's professional standards or committed improper acts.

### Report recommendation

At the conclusion of the analysis stage, the compliance department submits a report containing findings and conclusions to the Professional Conduct Committee for their consideration in determining the appropriate course of action.

## Professional Conduct Committee

The PCC is comprised of both CPAs and lay persons. The terms of reference of the PCC allow it to:

- dismiss complaints where the matter is outside the Institute's jurisdiction or where there is inadequate evidence to show a prima facie case of an alleged offence;
- issue a letter of disapproval to adjudicate minor complaints;
- direct any other course of action in relation to dismissed or minor complaints as the PCC may think fit; or
- recommend to Council that matters it considers more serious be referred to the Disciplinary or Investigation Panels.

When deliberating cases, the PCC considers the facts in light of the circumstances of the case and the expectation of the conduct of the Member relative to the relevant professional standards at the time the alleged offence was committed. In making such deliberations, the PCC is mindful of the Institute's commitment to uphold the quality of application of professional standards and good public perception of the profession in Hong Kong.

## Types of Actions

**Non-prima facie case:** A case is dismissed if there is insufficient evidence to show a prima facie case of an alleged offence.

### Dismissed

- Cases dismissed are generally unsubstantiated claims and matters outside the jurisdiction of the Institute. Matters that are commercial in nature, such as fee disputes, disagreements over the scope of services provided by a CPA, and breaches of contracts are outside the scope of the Institute
- In certain cases, if the Member's conduct appears to be less than exemplary but a prima facie case has not been substantiated, the PCC may issue a letter advising the member to exercise due care in the future and have proper regard to the professional obligations incumbent upon the Member as a certified public accountant

**Prima facie case:** When the PCC concludes there is a prima facie case that a Member did not comply with the relevant professional standards of the Institute or committed improper acts, it will consider taking one of the disciplinary actions below.

### Issue of letter of disapproval

- When the matter is of insufficient gravity to warrant further investigation or disciplinary action, the PCC will issue a disapproval letter to the Member setting out the breaches of professional standards or improper acts. The letter will be kept in the Member's records maintained by the Institute and will be taken into account in the future if there is any repetition, similar instance or other wrongful conduct attributable to the professional work of the Member. Public notice of the disapproval letter is not issued

### Referral to Disciplinary Panels

- Where the PCC recommends a referral to the Disciplinary Panels under section 34 of the PAO, the case is set out in writing with an invitation to the Member to make submissions to Council before the case is submitted to Council



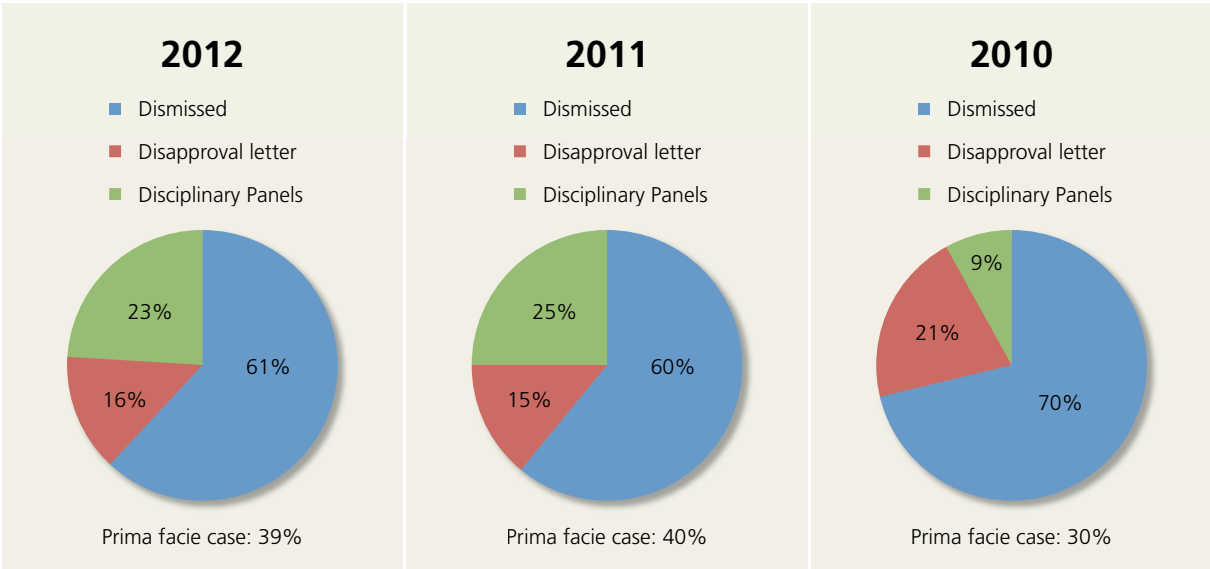
**Statistics**

**Exhibit 2: Complaint caseload**

There has been a significant increase in the number of complaints received.

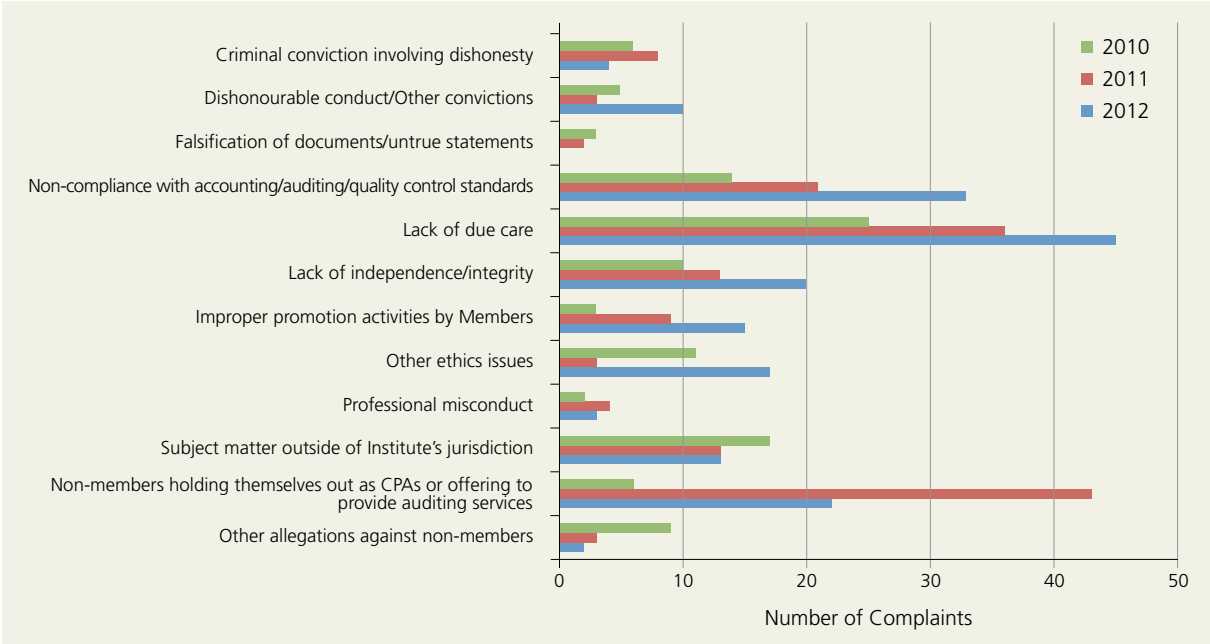
	2012	2011	2010
Caseload	184	158	111
Cases resolved:	105	106	78
• Adjudicated by PCC	79	58	63
• Relating to non-members	24	46	15
• Referred to other regulatory body	2	2	-

**Exhibit 3: Outcome of cases dealt with by the PCC**



**Exhibit 4:** Analysis of the nature of complaints

Generally, the nature of complaints received are under the following categories.



**Exhibit 5:** Most common types of prima facie cases and their outcome:

The most common types of prima facie cases and their outcome are illustrated below. These types of complaints are further described in **Appendix 1**.

Description	Referral to the Disciplinary Panels			Issuance of Letter of Disapproval		
	2012	2011	2010	2012	2011	2010
Criminal conviction involving dishonestly	•	•				
Dishonourable conduct/other convictions	•	•	•			•
Non-compliance with accounting/auditing/quality control standards	•	•	•	•	•	•
Lack of due care	•	•	•	•	•	•
Lack of independence/integrity	•		•		•	
Improper promotional activities by Members	•				•	•

## Section 42 offences

### What is a section 42 offence?

A common type of complaint concerning non-members involves violations of section 42 of the PAO. This type of offence generally involves individuals or companies that have:

- as CPA members, fraudulently represented themselves to be qualified and registered to practise as a CPA (practising); or
- as non-members:
  - knowingly permitted the use in connection with their business, of descriptions “certified public accountant”; and/or
  - used in conjunction with their name the initials “CPA”

### Compliance department’s role

Complaints against non-members are not reported to the PCC. The following procedures have been established to effectively deal with cases concerning possible section 42 offences:

- Review promotional materials of the potential offenders and assess if any section 42 offence might have been committed
- Identify the names and contact details of the directors or shareholders of the associated entities and
  - determine if the names of the directors or shareholders match to the Institute’s Member records; if so
  - issue a warning letter to the unlicensed practice requesting voluntary cooperation in taking corrective action to cease their fraudulent activities
- Report the matter to the police for investigation and undertake regular discussions with the police to determine outcome
- Monitor corrective actions taken by non-members to ensure that the inappropriate descriptions of their business have been removed
- Assess whether any CPAs have been involved in these cases. When CPAs have been involved, they will be dealt with under the complaint process

## Complaint process effectiveness

The Institute is committed to enhancing the effectiveness and efficiency of the complaint process. In 2011, the compliance department reviewed the complaint handling process by analysing performance and comparing the results to other prominent international accountancy bodies. The review indicated that the Institute's complaint handling process is aligned with international standards and meets the following criteria.

- |                                   |  |
|-----------------------------------|--|
| <b>Formality</b>                  | <ul style="list-style-type: none"><li>• A complaint form template is available for use by complainants and complaints are lodged (and acknowledged by the Institute) in writing</li><li>• Assessments conducted by the compliance department are set out in a report submitted to the PCC</li><li>• The PCC considers the assessment reports prepared by compliance department in regular meetings and PCC's decisions are recorded</li></ul>  |
| <b>Impartiality and Fairness</b>  | <ul style="list-style-type: none"><li>• Standardized complaint handling process ensures parties are treated fairly and the same procedures are applied consistently to all complaints</li><li>• Complaints are evaluated by the PCC. Any PCC members having conflicts in a case are withdrawn from the discussion of the case</li></ul>  |
| <b>Transparency and certainty</b> | <ul style="list-style-type: none"><li>• Information regarding the Institute's complaint handling process and the role of the PCC are published on the Institute's website</li><li>• Case statistics and description of nature of complaints are published and updated periodically on the Institute's website</li><li>• The PCC's conclusion for each complaint is communicated in writing to both the complainant and the Members involved</li></ul>  |
| <b>Efficiency</b>                 | <ul style="list-style-type: none"><li>• Prompt action on complaints is important in retaining public trust. The compliance department has spent great effort reducing the time taken to complete cases and manages to complete the majority of complaints within six months</li><li>• The length of time it takes to process a complaint depends on the complexity of the case. Generally, cases which are dismissed by PCC take less time to process because they lack sufficient evidence or are outside the jurisdiction of the Institute. Cases which result in the issuance of a letter of disapproval or recommendation to the Disciplinary Panels are typically more complex and require longer time for processing</li></ul> |



## Disciplinary proceedings

### What is a disciplinary proceeding?

When Council concludes that a complaint is sufficiently serious to warrant the referral of the matter to the Disciplinary Panels, a Disciplinary Committee will be constituted to adjudicate the complaint.

### Disciplinary Committee

- Five independent persons are selected from two distinct panels; Panel A consists of lay members appointed by the government of HKSAR and Panel B consists of CPAs. The chairman and the majority of each Disciplinary Committee are selected from Panel A
- A Disciplinary Committee deals with complaints arising from allegations of misconduct by our Members pursuant to section 34 of the PAO. Disciplinary proceedings are held in public

### Compliance department's role

- To support legal department in gathering and evaluating information for the disciplinary proceedings
- To act as clerk in providing administrative support to the Disciplinary Committee

### Statistics

#### Exhibit 6: Disciplinary caseload

The increasing trend in the number of complaints received (**Exhibit 2**) has led to the corresponding increase in the number of cases which warranted disciplinary action.

	2012	2011	2010
Caseload	38	26	31
Orders issued	(9)	(12)	(19)

**Publication of disciplinary orders**

- Disciplinary orders are published on the Institute’s website, in the APlus magazine and in the press.
- Information regarding the disciplinary orders is generally published on the website for a period of 5 years from the date of the order.

**Types of Sanctions**

If a Disciplinary Committee finds the complaint against a Member proven, a disciplinary order setting out the sanctions will be issued. Pursuant to section 35 of the PAO, disciplinary powers may include the following.

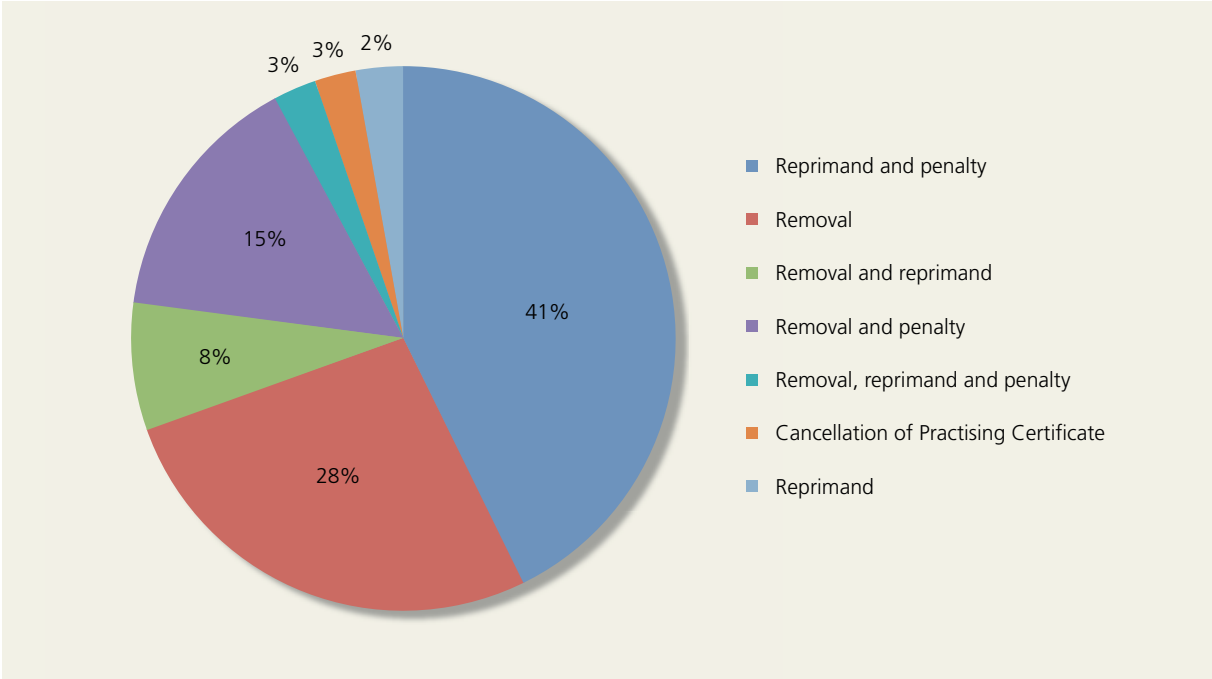
**For individuals/member practices:**

- Temporary or permanent removal from membership
- Temporary or permanent cancellation of a practising certificate
- Reprimand
- Financial penalty
- Payment of costs and expenses of proceedings

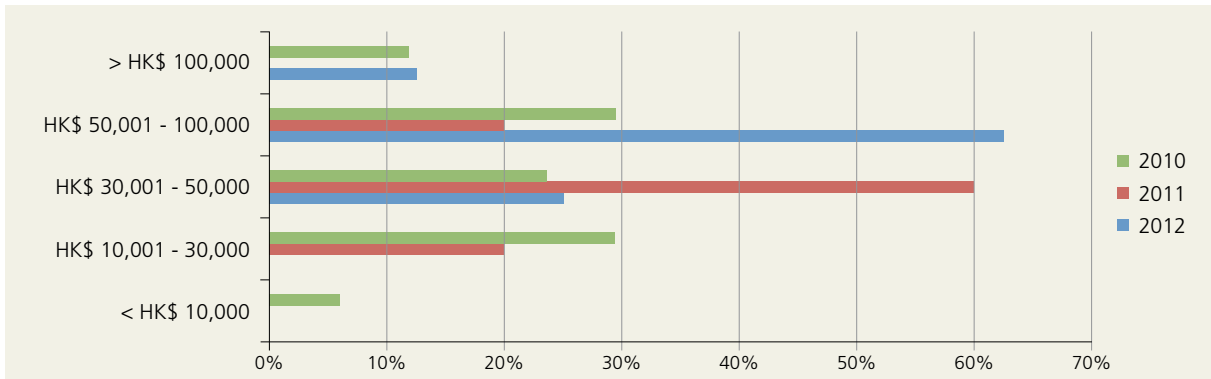
**For registered students:**

- Removal from student register
- Suspension of eligibility to sit examinations
- Reprimand
- Admonishment
- Payment of costs and expenses of proceedings

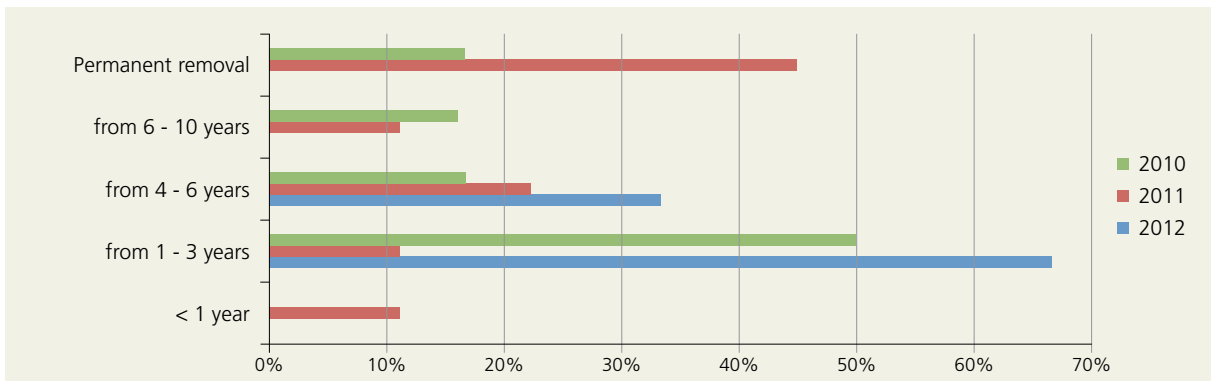
**Exhibit 7:** Sanctions imposed by the Disciplinary Committees for the 3 years ending 2012:



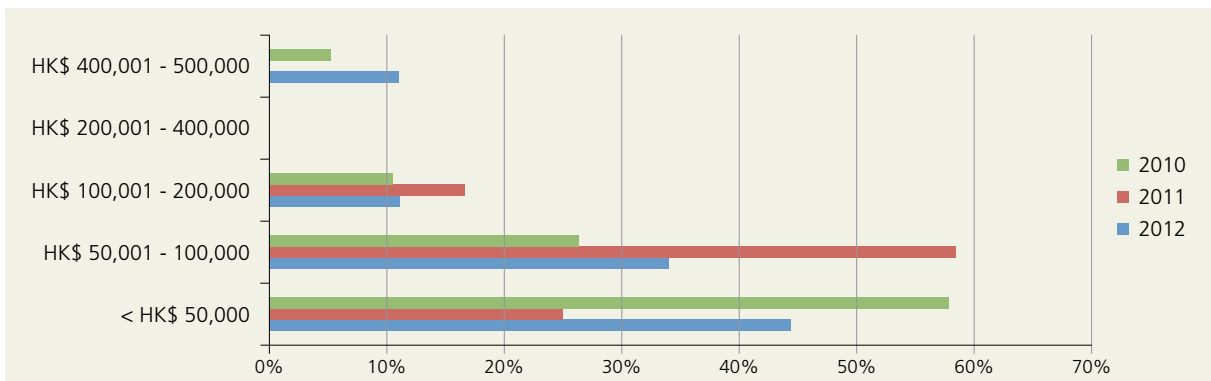
**Exhibit 8:** Level of financial penalties ordered by Disciplinary Committees:



**Exhibit 9:** Period of removal ordered by Disciplinary Committees:



**Exhibit 10:** Level of cost and expenses ordered by Disciplinary Committees:



Generally, higher costs were incurred for contested cases due to the additional time required to present the cases at substantive hearings.

In determining the sanctions, the Disciplinary Committees may take into account the parties' efforts in reducing the process time and costs.



## Investigations

### What is an Investigation Committee?

Council may constitute an Investigation Committee when:

- It becomes aware of a matter which provides a reasonable suspicion or belief that a Member has not followed professional standards issued by the Institute or has committed other improper acts
- The powers of an Investigation Committee are needed to assist the Council in determining if a case should be referred to the Disciplinary Panels

### Investigation Committee

- Five independent persons are selected from two distinct panels; Panel A consists of lay members appointed by the government of HKSAR and Panel B consists of CPAs. The chairman and the majority of each Investigation Committee are from Panel A
- An Investigation Committee investigates the conduct of a Member and reports to Council whether, in its opinion, a prima facie case exists and the Member would have a case to answer

### Compliance department's role

- Provide support to the Investigation Committee in gathering evidence in accordance with the Committee's instructions
- Following the commencement of operations by the Financial Reporting Council (FRC) in July 2007, the responsibility for investigation of matters involving listed entities has been assumed by the FRC. Accordingly, the Institute is only responsible for investigations of non-listed entities and those involving listed entities which commenced before July 2007

### Statistics

#### Exhibit 11: Investigation caseload

There are no new investigation cases in recent years.

	2012	2011	2010
Caseload	3	3	5
Completed	(1)	-	(2)





## Regulatory Oversight

### Regulatory Accountability Board

The Regulatory Accountability Board (RAB) has been instituted to ensure that the regulatory function of the Institute is being carried out in accordance with strategies and policies determined by Council, and in the public interest.

The RAB's composition consists of CPAs, Hong Kong regulatory representatives and other lay members. To carry out its responsibilities, the RAB undertakes the following functions:

- Oversee, on behalf of Council, the performance and operations of the compliance department and the PCC
- Receive and consider periodic status reports from the compliance department
- 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

As part of its oversight functions, the RAB conducted a process review of the operations of the compliance department in 2012 for the purpose of:

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

Based on a sample of cases selected for review, the results indicated that:

- Cases have been dealt with by the compliance department in accordance with the established internal procedures
- There were no criticisms made in respect of the quality of the case handling
- Undue delays occurred in a small number of the complaint and disciplinary cases

The RAB provided some recommendations for improvement. A report on the process review issued by the RAB in January 2013 is published on the Institute's website at [www.hkicpa.org.hk](http://www.hkicpa.org.hk).



## Other activities

### Enquiries

The compliance department manages enquiries received from external parties requesting information on a variety of issues concerning the regulatory function of the Institute, ethical and professional conduct of Members and other related matters. In the three years from 2010 to 2012, a total of 164 enquiries were handled by the compliance department (2012-64 cases; 2011-43 cases; 2010-57 cases).

### Promoting professional conduct

To promote transparency and better confidence in the Institute's regulatory role, the compliance department periodically updates the statistics of complaint, disciplinary cases and investigations on the Institute's website.

In addition, the compliance department publishes information regarding common or important findings from case handling in the Institute's website and magazine, *A Plus*, to raise Members' awareness on current issues and promote good practice.

Publication ensures transparency of the Institute's regulatory function and acts as a reminder to Members of the importance of complying with the Institute's professional standards.

### Continuous review and monitoring

The compliance department continuously reviews and monitors its processes for case handling to ensure that all relevant issues are given due consideration and dealt with efficiently and effectively.

## Prima facie cases identified during reporting period:

### **Criminal conviction involving dishonesty**

Section 34(1)(a)(ii) of the PAO would apply when a CPA is convicted in Hong Kong or elsewhere of a criminal offence involving dishonesty.

This type of case is generally considered serious and would be referred to Disciplinary Panels for consideration of appropriate sanctions. The Disciplinary Committee is not required to determine whether the CPA was properly convicted; however, they may consider the relevant evidence to assess the gravity of the offence in determining sanctions. Cases under this category included CPAs found guilty of theft and conspiring with others to defraud.

### **Dishonourable conduct**

Dishonourable conduct is defined in section 34(2) of the PAO as an act or omission of a CPA, whether or not in the course of carrying out professional work or as a CPA, which would reasonably be regarded as bringing or likely to bring discredit upon the CPA himself, the Institute or the profession.

Instances of a prima facie case found under this category included convictions of CPAs for offences not involving dishonesty. The following offences were regarded as dishonourable conduct:

- Dealing with proceedings of an indictable offence
- Insider dealings charged under the Securities and Futures Ordinance
- Behaving in a disorderly manner in a public place
- Assaults

Where the courts had ordered a severe penalty on the Members, the PCC regarded the matters as serious and recommended referral to the Disciplinary Panels.

**Non-compliance with accounting/ auditing/ quality control standards**

Section 34(1)(a)(vi) of the PAO would apply when a CPA has failed or neglected to observe, maintain or otherwise apply a professional standard issued by the Institute.

Typical prima facie cases involving non-compliance with professional standards include the following:

- Failure to obtain appropriate and adequate audit evidence in support of audit opinion
- Failure to document sufficient and appropriate audit evidence in working papers to support audit opinion
- Failure to express an appropriate audit opinion on a set of financial statements
- Concurrence with client's inappropriate accounting treatments and/or inadequate financial statements disclosures

Non-compliance of professional standards which are not significant in nature and have low public interest may be considered as a minor case. Minor cases are generally dealt with by issuance of a letter of disapproval instead of being referred to the Disciplinary Panels.

**Lack of due care**

The Code stipulates that the principle of due care imposes the obligation on all professional accountants to act diligently in accordance with applicable technical and professional standards when providing professional services. Section 34(1)(a)(vi) of the PAO would apply when a CPA acts in contravention to this requirement of the Code.

Typical prima facie cases found involving CPAs not performing professional services with an acceptable level of due care include:

- Failure to report on a breach by the insurance broker of the Minimum Requirements of the Insurance Companies Ordinance, Cap. 41 regarding the keeping of separate client accounts and professional indemnity insurance
- Failure to diligently carry out audits of the accounts of solicitors firms and failure to comply with the requirements of the Accountant's Report Rules under the Legal Practitioners Ordinance, Cap. 159A
- Failure to carry out liquidation work with a proper regard for the relevant technical and professional standards

**Lack of independence**

The Code stipulates that the principle of objectivity imposes an obligation on all professional accountants to avoid compromising their professional or business judgment because of bias, conflict of interest or the undue influence of others. Section 34(1)(a)(vi) of the PAO would apply when a CPA acts in contravention to this requirement of the Code.

Prima facie cases were found in the following instances:

- The CPA was found to have material interests in his audit client. The threat to independence or conflict of interest on the CPA's part was considered so significant that the CPA was in a position which he could influence the decision-making of the audit client. The CPA was therefore considered to lack objectivity and independence of his audit client
- The CPA was engaged as the provisional liquidator of an insolvent company during a period in which he had a material professional relationship with the company such that the CPA's objectivity was likely to be compromised

**Lack of integrity**

The Code stipulates that the principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Members behaving in contravention of this requirement would be subject to a complaint under section 34(1)(a)(vi) of the PAO.

A prima facie case was found involving a CPA having allowed misleading information to be made in a declaration form.

**Improper promotional activities**

The Code provides requirements for practice promotion activities, including all forms of publicity and advertising. Members in breach of these requirements would be subject to a complaint under section 34(1)(a)(vi) of the PAO, as they relate to the Code.

Prima facie cases were found when the CPAs had included misleading information on their businesses' websites. The misleading information had the effect that the companies, which were not registered with the Institute, were qualified to offer auditing services when they were not.

## Section 34 of the PAO

### Disciplinary provisions

- (1) A complaint that-
  - (a) a certified public accountant-
    - (i) has been convicted of any offence under Part V (Perjury) of the Crimes Ordinance (Cap 200);
    - (ia) has been convicted of any offence under section 31 of the Financial Reporting Council Ordinance (Cap 588);
    - (ib) has been punished by the Court of First Instance under section 32(2)(b) of the Financial Reporting Council Ordinance (Cap 588) for failing to comply with a requirement imposed under section 25, 26, 27 or 28 of that Ordinance or for being involved in the failure;
    - (ic) has been punished by the Court of First Instance under section 45(2)(b) of the Financial Reporting Council Ordinance (Cap 588) for failing to comply with a requirement imposed under section 43 of that Ordinance or for being involved in the failure;
    - (ii) has been convicted in Hong Kong or elsewhere of any offence involving dishonesty;
    - (iii) whether as a certified public accountant or not-
      - (A) falsified or caused to be falsified any document;
      - (B) made any statement which is material and which he knows to be false or does not believe to be true, in respect of any document;
    - (iv) has been negligent in the conduct of his profession;
    - (v) without reasonable excuse, failed or neglected to comply with any direction issued under section 32F(2) and with which he was required by the Practice Review Committee to comply;
    - (vi) failed or neglected to observe, maintain or otherwise apply a professional standard;
    - (vii) without reasonable excuse, failed or neglected to comply with any requirement made under section 42D in relation to him by an Investigation Committee;
    - (viii) has been guilty of professional misconduct;
    - (ix) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the Council;
    - (x) was guilty of dishonourable conduct;
    - (xi) while a director of a corporate practice, rendered any service as, or purporting to be, a director of a company whose name did not appear in Part II of the register at the time when the service was rendered; or
    - (xii) being such a director, practised accountancy as such a director at a time when the corporate practice was covered by professional indemnity insurance either not at all or not to the extent required by this Ordinance;

- (b) a corporate practice-
  - (i) or any of its directors-
    - (A) falsified or caused to be falsified any document;
    - (B) made any statement which is material and which any of its directors knows to be false or does not believe to be true, in respect of any document;
  - (ii) failed to comply with a requirement referred to in section 28D(6)(a) or (7) or ceased or failed to comply with any requirement of section 28D(2)(b) or (c) applying to it;
  - (iii) rendered any service under a company name other than the name which then appeared in relation to the practice in the register;
  - (iv) being such a practice, practised accountancy without being covered by professional indemnity insurance at all or to the extent required by this Ordinance; or
  - (v) did or omitted to do something which, were the practice an individual certified public accountant, would reasonably be regarded as being dishonourable conduct by an individual,

shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels.

(1AAA) If the Council decides not to refer the complaint to the Disciplinary Panels, the complainant who is aggrieved by the Council's decision may request the Council to refer the complaint to the Disciplinary Panels, whereupon the Council shall, unless it is of the opinion that no prima facie case has been shown for the complaint, or that the complaint is frivolous or vexatious, refer the complaint to the Disciplinary Panels.

(1AA) The provisions of subparagraphs (ia), (ib), (ic), (iv), (v), (vi), (vii), (viii) and (ix) of paragraph (a) of subsection (1) shall apply mutatis mutandis in relation to a corporate practice and accordingly, in addition to those specified in subsection (1)(b), a complaint under subsection (1) may be made against such a practice on any 1 or more of the grounds specified in those subparagraphs as so applied.

(1A) Where the Registrar has reason to believe that subsection (1)(a) or (b), or subsection (1)(a) as applied by subsection (1AA), applies to a certified public accountant or a corporate practice, he shall submit the facts to the Council which may, in its discretion, refer the complaint to the Disciplinary Panels.

(2) For the purposes of subsection (1)(a)(x) and (b)(v), "dishonourable conduct" (不名譽的行為) means an act or omission of a certified public accountant, whether or not in the course of carrying out professional work or as a certified public accountant, which would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession.

(3) A person who was a member of the Practice Review Committee at any time when a complaint was made by it under section 32D(5) shall not take part as a member of a Disciplinary Committee in any proceedings relating to such complaint.

## Section 42 of the PAO

### Offences and penalties

- (1) Subject to this section, any person who-
  - (a) being summoned to attend as a witness or to produce a document or other thing under section 36(1)(b), refuses or fails to do so or to answer any question put to him by the Disciplinary Committee;
  - (b) fraudulently procures himself or any other person to be registered by means of any misleading, false or fraudulent representation or statement, either oral or in writing;
  - (c) makes or causes to be made any falsification in the register or in any matter relating to the register;
  - (d) personates or represents himself as being the person referred to in any certificate or document presented to the Council or the Disciplinary Committee;
  - (e) falsely pretends to be qualified to practise as a certified public accountant (practising);
  - (f) falsely takes or uses any name, initials, title, addition or description implying that he is qualified to be registered as a certified public accountant or to practise as a certified public accountant (practising);
  - (g) not being a certified public accountant, either directly or indirectly, practises as a certified public accountant (practising);
  - (h) not being a certified public accountant-
    - (i) knowingly permits the use of or uses in connection with his business, trade, calling or profession the description "professional accountant", "certified public accountant" or "certified accountant", or the characters "專業會計師", "會計師" or "註冊會計師", or any written words, initials or abbreviations of words intended to cause, or which may reasonably cause, any person to believe that the person using the same is a certified public accountant; or
    - (ii) uses after or in conjunction with his name the initials "CPA";
  - (ha) being a company which is not a corporate practice-
    - (i) provides, offers to provide or holds itself out as providing any professional service which only a person who is a certified public accountant (practising) may lawfully provide; or
    - (ii) advertises or represents itself as qualified to practise as a certified public accountant (practising) or permits itself to be so advertised or represented; or
    - (iii) uses in conjunction with its name the description "certified public accountant (practising)" or "public accountant" or uses after or otherwise in conjunction with its name the initials "CPA (practising)" or "PA" or the characters "執業會計師", "註冊核數師", "核數師" or "審計師", or permits the use of or uses such description, initials or characters in connection with its business;



- (i) not being a certified public accountant holding a practising certificate or not being a practice unit the firm name of which is registered under section 28A-
  - (i) advertises, publishes or represents himself as qualified to practise as a certified public accountant (practising) or knowingly permits himself to be so advertised, published or represented; or
  - (ii) takes or uses in conjunction with his name, or any name which he may have assumed or by which he may describe himself, the description “certified public accountant (practising)” or “public accountant” or uses after or in conjunction with his name the initials “CPA (practising)” or “PA” or the characters “執業會計師”, “註冊核數師”, “核數師” or “審計師”, or knowingly permits the use of or uses such description, initials or characters in connection with his business, trade, calling or profession;
- (ia) being a certified public accountant who does not hold a practising certificate, carries on a business, trade or profession in a name or style
  - (i) otherwise than his own name without any addition as registered under section 22(2); and
  - (ii) which includes the description “certified public accountant”, the initials “CPA” or the characters “會計師”;
- (j) being a corporate practice, fails to comply with any condition attached to the practice’s registration by virtue of section 28D(6)(c) or (9)(c)(i);
- (k) signs a client’s audit report which he is not qualified to sign at the time of signing or signs in the manner described in section 28D(11)(b)(iii);
- (l) being a certified public accountant (practising), a firm of certified public accountants (practising) or a corporate practice, fails to notify the Registrar of a change of location of its registered office as required by section 31(3),

shall be guilty of an offence and shall be liable on conviction as follows-

- (i) in the case of an individual, to a fine of \$20000 and to imprisonment for 12 months, except where the offence is a failure described in paragraph (l) in which case he shall be liable to a fine of \$5000; and
- (ii) in the case of a firm of certified public accountants (practising) or in the case of a company (including a corporate practice) registered or formerly or never registered in the register, to a fine of \$20000 except where the offence is a failure described in paragraph (l) in which case it shall be liable to a fine of \$5000.

(2) Subsection (1) shall not apply in relation to the use by any member of any body or institute of accountants outside Hong Kong, not being a certified public accountant, of any description or initials which he is entitled to use under the constitution of that body or institute if by such use he does not represent that he is a certified public accountant or is entitled to practise as a certified public accountant (practising).

(3) No person shall be required to answer any question or produce any document or other thing which, in the opinion of the Disciplinary Committee, may tend to incriminate him; and a witness shall, in respect of any evidence given by him before the Disciplinary Committee, be entitled to the same privileges to which he would be entitled if he were giving evidence before a court.

(4) (a) Where an offence under this section or section 31(4) has been committed by a corporate practice or other company and it is proved that the act or omission comprising the offence was that of a director or other officer concerned in the management of the practice or other company, the director or other officer shall be guilty of the like offence.

(b) In proceedings for an offence described in paragraph (a) it shall be a defence to satisfy the court that as regards a relevant act or omission the defendant acted in a manner which, having regard to the particular circumstances, was not unreasonable.

(5) A person to whom a permission for the purposes of section 28D relates shall not be guilty of an offence under subsection (l)(h) or (i) by reason only of holding himself out as being a director of a corporate practice.

*This Operations Report is intended for general guidance only. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this Operations Report can be accepted by the Hong Kong Institute of Certified Public Accountants.*

