

**For Discussion**

**Bills Committee on  
Financial Reporting Council Bill**

**Functions of the Financial Reporting Council**

**PURPOSE**

At its first meeting held on 19 July 2005, the Bills Committee deliberated, among other things, whether the Financial Reporting Council (FRC) should be purely investigatory. The Administration was requested to provide further assessment on the following issues –

- (a) the investigatory and disciplinary regimes of various professions in Hong Kong;
- (b) the Administration's considerations underpinning the proposal that the FRC should be purely investigatory; and
- (c) the proposed mechanism to ensure a smooth interface between the investigation of the FRC and the disciplinary proceedings of the Hong Kong Institute of Certified Public Accountants (HKICPA) or the actions of other law enforcement agencies.

This paper sets out the required information and the Administration's position.

**INVESTIGATORY AND DISCIPLINARY REGIMES OF VARIOUS  
PROFESSIONS IN HONG KONG**

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2. We set out at **Annex** a table aiming to summarize the investigatory and disciplinary regimes of the professions of certified public accountants, barristers, solicitors, medical practitioners and

architects. Our key **findings** are as follows -

- (a) In relation to **certified public accountants**, there is **at present** a “two-stage” approach in dealing with complaints against HKICPA’s members under the Professional Accountants Ordinance (PAO, Cap. 50). Where the Council of the HKICPA reasonably suspects or believes that an irregularity has occurred, the Council may constitute an Investigation Committee to investigate the case. Subsequent to the completion of investigation, the Council will consider the Investigation Committee’s findings and may refer the case to a Disciplinary Committee to take disciplinary action.

**Upon the establishment of the FRC**, the FRC will investigate auditors’ irregularities involving listed entities, whereas the HKICPA will continue to deal with other cases including those in the non-listed sector. In this light, **the FRC will take the place of the HKICPA’s Investigation Committee in respect of investigation of auditors’ irregularities concerning listed entities**. After completion of the FRC’s investigation, the FRC may refer the case to the HKICPA which may constitute a Disciplinary Committee, the majority of which comprise lay members, to take disciplinary actions. Where necessary, the FRC may also refer cases to other law enforcement agencies for follow-up action.

- (b) For **barristers**, a Barristers Disciplinary Tribunal is constituted under the Legal Practitioners Ordinance (LPO, Cap. 159) to inquire into the misconduct of a barrister. There is no separate investigation agency under the LPO, as a Barristers Disciplinary Tribunal has its own statutory powers to inquire into a case before making any disciplinary decision. Normally the Bar Council will be the applicant in the proceedings of the Tribunal to present the case against the respondent (i.e. the barrister concerned).
- (c) The situation regarding **solicitors** is similar to that of barristers in certain aspects. A Solicitors Disciplinary

Tribunal has statutory powers to inquire into a case against a solicitor and to take disciplinary actions against him. The Law Society or any person may apply for the consideration of a case by the Tribunal and is a party to the proceedings of the Tribunal. Nonetheless, the Council of the Law Society may appoint a statutory “inspector” to assist the Council in relation to the inquiry and investigation by the Solicitors Disciplinary Tribunal.

- (d) In the case of the profession of **medical practitioners**, the Medical Council of Hong Kong<sup>1</sup> is a statutory body to administer, among other things, the investigatory and disciplinary regimes. The Preliminary Investigation Committee is set up, pursuant to the Medical Registration Ordinance (Cap. 161), to make preliminary investigation into a complaint. Subsequent to the preliminary investigation, the Medical Council of Hong Kong may hold an inquiry to consider the findings of the Preliminary Investigation Committee. The Secretary of the Medical Council of Hong Kong will present the case during the inquiry of the Council which possesses disciplinary powers.
- (e) In respect of the profession of **architects**, the Architects Registration Board, established under the Architects Registration Ordinance (Cap. 408), possesses both investigatory and disciplinary powers. Although the Architects Registration Board comprises mostly members appointed by the Council of the Hong Kong Institute of Architects (HKIA), it is a statutory board independent from the HKIA. There is no other separate agency to undertake investigation work in respect of the misconduct of an architect.

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<sup>1</sup> The Medical Council of Hong Kong is an independent statutory body established under the Medical Registration Ordinance (Cap. 161) to register and regulate the professional practice and conduct of medical practitioners in Hong Kong; whereas the Hong Kong Medical Association is a professional medical organization. By virtue of section 3(2)(i) of Cap. 161, among the total 28 members of the Medical Council of Hong Kong, seven are registered medical practitioners who are members of the Hong Kong Medical Association and elected by the Council members of the Association in accordance with the regulations or procedures of the Association.

3. We have the following **observations** in respect of the findings -

- (a) Any comparison of the selected professions in terms of their investigatory and disciplinary regimes should be considered in the proper context. We should be mindful that each profession may have its own unique historical and social backgrounds as well as other specific circumstances that led to the development of the current regimes. Wholesale direct comparison or expectation of uniformity may not be appropriate. In this regard, it should be noted that the auditing profession is the “watchdog” of company’s financial reporting, which underpins investor confidence in the financial markets. There is a strong public interest dimension to ensure effectiveness, transparency and accountability of the regulatory regime for the auditing profession, particularly in the wake of some notable corporate failures in other parts of the world in the past few years.
- (b) With respect to the “investigation” function, we propose that the FRC should be a body independent from any professional accountancy bodies (including the HKICPA) to investigate auditors’ irregularities in relation to listed entities. This can be compared with the Medical Council of Hong Kong and Architects Registration Board, which are independent statutory bodies respectively responsible for, among other things, the investigation of professional misconduct concerning medical practitioners and architects.
- (c) With respect to the “prosecution” function, we propose that the HKICPA should retain its function to “prosecute” (i.e. to present a case against) a certified public accountant in the disciplinary proceedings under the PAO, upon the receipt of investigation findings of the FRC. The FRC may assist the HKICPA in the disciplinary proceedings, for example, by disclosing the evidence obtained during the investigation. Similarly, the Bar Council or the Council of Law Society may also be the party to present a case against a legal practitioner

in the disciplinary proceedings of the respective regime. In the case of solicitors and medical practitioners, an inspector or a designated investigation committee is responsible for the (preliminary) investigation with a view to obtaining evidence and/or assisting another relevant party to perform the “prosecution” function in disciplinary proceedings.

- (d) With respect to the “disciplinary” function, a Disciplinary Committee/Tribunal is constituted, separate from the Council of the respective professional body, to take disciplinary actions, insofar as a certified public accountant, barrister or solicitor is concerned.

#### **WHY THE FRC SHOULD BE PURELY INVESTIGATORY?**

4. There is a suggestion that the FRC should “prosecute” and “sanction” an auditor after investigation of the relevant irregularity of the auditor, with a view to ensuring a smooth interface between the investigation and disciplinary proceedings, and a timely and effective sanction of an auditor responsible for the irregularity. Before the introduction of the Bill into the Legislative Council, we have already duly considered this suggestion and the public view in this regard. **The Administration remains of the view that the FRC should only be an investigatory body.** After an investigation, the FRC should be empowered to refer cases or complaints to the professional bodies concerned (including the HKICPA) or other enforcement agencies for disciplinary or other follow-up action. **The HKICPA also agrees with the Administration’s position in this regard.** Our justifications are set out in detail in paragraphs 5 to 9 below.

5. During the public consultation in September 2003, the majority of respondents opined that the proposed independent investigation board (i.e. the FRC) should carry out only investigatory functions while the HKICPA or any relevant accountancy bodies concerned should retain the disciplinary function. The Administration has built on this premise in developing the Bill. The current FRC proposal has the benefit of preserving the *status quo* of the

“self-regulatory” regime of the profession, while at the same time giving stronger teeth and greater degree of independence to the “investigatory” function.

6. We do **not** agree that the FRC must play the role of **“prosecutor” (i.e. to present a case)** against HKICPA’s members in the disciplinary proceedings under the PAO for the following reasons -

- (a) As regards the regulatory regime of the auditing profession, the fact that the “investigator” and “prosecutor” roles are undertaken by **two separate and independent parties introduces proper checks and balances.** As the establishment of the FRC is to provide for an independent investigation of auditors’ irregularities in relation to listed entities, the FRC should be an impartial and effective “fact-finder” to assist, instead of becoming a party to, subsequent disciplinary proceedings.
  
- (b) **The existing PAO already contains provisions to empower the Registrar of the HKICPA to receive a case from other parties and for the Council of the HKICPA to consider whether to constitute a Disciplinary Committee for the purpose. The HKICPA agrees with the proposed arrangement whereby the Registrar of the HKICPA (instead of the FRC) would undertake the role of “prosecutor” (i.e. to present a case against a certified public accountant) in the Institute’s disciplinary proceedings. The preservation of this arrangement has its importance to signify the “self-regulatory” regime of the profession.** By virtue of section 34(1A) of the PAO, where the Registrar of the HKICPA has reason to believe that a certified public accountant has committed an irregularity, he shall submit the facts to the Council of the HKICPA which may constitute a Disciplinary Committee to take necessary disciplinary actions. When the Registrar of the HKICPA receives a referral from other parties (or in future, the FRC), he may apply section 34(1A) of the PAO accordingly to trigger the disciplinary proceedings and act as a party to the

proceedings. **The proposed arrangement ties in with the existing provisions of the PAO and minimizes any changes to the HKICPA’s own disciplinary regime regarding its members. It will also limit the potential liability of the FRC as disciplinary proceedings including appeals are more likely to entail substantial legal costs.**

- (c) **Not combining the current separate “investigation” and “prosecution” functions does not mean that HKICPA needs to investigate a complaint all over again.** We envisage that, **through the accumulation of experience and effective communication between the FRC and the HKICPA,** the FRC will be able to assist the Registrar of the HKICPA to present the case against the auditor concerned in the disciplinary proceedings. Moreover, as set out in paragraph 10 below, the Bill has installed the necessary framework to ensure a smooth interface between the investigations of the FRC and the disciplinary regime of the HKICPA. We therefore do not consider that there will be operational difficulties in relation to the referral of cases from the FRC to the HKICPA.

7. Neither do we think it appropriate for the FRC to initiate any criminal prosecution. The FRC may refer cases of a criminal nature to various law enforcement agencies (e.g. the Police, or the Independent Commission Against Corruption) for further investigation or other necessary law enforcement action, or for the Department of Justice to consider and undertake prosecution as appropriate.

8. Furthermore, we do **not** propose that the FRC should perform a **disciplinary function**. The retention of the disciplinary function in the HKICPA<sup>2</sup> is consistent with the view that the accountancy profession should, as far as possible, be “self-regulatory”. In this context, the ultimate decision as to whether or not an accountant should be punished

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<sup>2</sup> It is also relevant to point out that, with the commencement of the Professional Accountants (Amendment) Ordinance 2004 in November 2004, the independence and transparency of the disciplinary proceedings of the HKICPA have been substantially enhanced. The majority of the members of a Disciplinary Committee under the HKICPA must now be lay persons, and in general the proceedings of the Committee are open to the public.

for professional misconduct should lie with the HKICPA as the registration and deregistration of certified public accountants are two sides of the same coin. If the HKICPA does not have the power to discipline its members, there is little point in laying down criteria for membership of the HKICPA (i.e. registration), and the whole rationale of having a separate professional body will fall away.

9. As mentioned in paragraph 5 above, the retention of the disciplinary function in the HKICPA was also the majority view of respondents in the public consultation. Since the establishment of the FRC is driven essentially by the need to enhance the effectiveness and independence of the ‘investigatory’ function, we do not see it desirable for the FRC to take over the disciplinary function from the HKICPA altogether.

## **SMOOTH INTERFACE BETWEEN THE INVESTIGATION AND DISCIPLINARY PROCEEDINGS**

10. We share Members’ views that there should be a smooth interface between (i) the investigations of the FRC and (ii) the disciplinary proceedings of the HKICPA and proceedings of other law enforcement agencies. In view of this, the Bill contains a number of provisions to ensure a smooth interface as follows -

- (a) **Definition of “Relevant Irregularity”:** Clause 4 defines “relevant irregularity” subject to investigations by the FRC. The nature of such irregularities is modelled, so far as applicable, on sections 34 and 41A of the PAO which set out the types of irregularities currently subject to investigations by an Investigation Committee constituted by the HKICPA under section 42C of the PAO. The Bill does not propose to create new types of “irregularities” in relation to auditors, with a view to ensuring that the relevant irregularities investigated by the FRC can fall within the jurisdictions of the disciplinary proceedings under the PAO.
- (b) **Referral of Cases and Provision of Assistance:** Clauses 9(f)



and (g) provide that it is within the functions of the FRC to refer to a specified body, or provide assistance to a specified body on the body's investigation or enquiry into or dealing with, any case concerning a relevant irregularity or a relevant non-compliance in relation to a listed entity. Such assistance may include: (i) disclosing<sup>3</sup> the evidence obtained during the investigation to the HKICPA and other law enforcement agencies for the preparation of proceedings; and (ii) attending the relevant proceedings to give evidence.

- (c) **Memorandum of Understanding with HKICPA and Other Parties:** Clause 10(2)(d) provides that the FRC may enter into any memorandum of understanding with other parties. We envisage that the FRC will, where necessary, enter into such memoranda with the HKICPA or other law enforcement agencies in relation to matters about provision of assistance and referral of cases at various stages of FRC's investigation.
- (d) **Admissibility of the Investigation / Enquiry Reports in Proceedings:** Clauses 35(5) and 47(5) provide that, in any proceedings before a court or magistrate or the Market Misconduct Tribunal, or any disciplinary proceedings of the HKICPA, a copy of the Investigation Report by the Audit Investigation Board and the Enquiry Report by a Financial Reporting Review Committee is admissible as evidence of the facts stated in the report.

11. With the provisions highlighted in paragraph 10, we consider that the Bill has installed the necessary framework to enable the FRC to achieve a smooth interface with the HKICPA and other law enforcement agencies in the conduct of an investigation and any necessary follow-up action.

## **Financial Services and the Treasury Bureau September 2005**

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<sup>3</sup> Clauses 51(2) and (3) open the gateway for the disclosure of information by the FRC to the HKICPA and other law enforcement agencies, despite the secrecy provision in clause 51(1).

**Comparison of the Investigatory and Disciplinary Regimes  
of Various Professions in Hong Kong<sup>1</sup>**

	<b>Certified Public Accountants (under Professional Accountants Ordinance)</b>	<b>Auditors and Reporting Accountants of Listed Entities (under Financial Reporting Council Bill)<sup>2</sup></b>	<b>Barristers</b>	<b>Solicitors</b>	<b>Medical Practitioners</b>	<b>Architects</b>
<b>1. Relevant Legislation</b>	<ul style="list-style-type: none"> <li>Professional Accountants Ordinance (Cap. 50)</li> </ul>	<ul style="list-style-type: none"> <li>Professional Accountants Ordinance (Cap. 50), Financial Reporting Council Bill</li> </ul>	<ul style="list-style-type: none"> <li>Legal Practitioners Ordinance (Cap. 159) and Barristers Disciplinary Tribunal Proceedings Rules (Cap. 159P)</li> </ul>	<ul style="list-style-type: none"> <li>Legal Practitioners Ordinance (Cap. 159) and Solicitors Disciplinary Tribunal Proceedings Rules (Cap. 159C)</li> </ul>	<ul style="list-style-type: none"> <li>Medical Registration Ordinance (Cap. 161), Medical Practitioners (Miscellaneous Provisions) Regulation (Cap. 161D), and Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E)</li> </ul>	<ul style="list-style-type: none"> <li>Architects Registration Ordinance (Cap. 408)</li> </ul>
<b>2. Body Responsible for the Investigation in the Professions</b>	<ul style="list-style-type: none"> <li>Investigation Committees of the Hong Kong Institute of Certified Public Accountants (HKICPA)</li> </ul>	<ul style="list-style-type: none"> <li>Financial Reporting Council (FRC)<sup>3</sup></li> </ul>	<ul style="list-style-type: none"> <li>Barristers Disciplinary Tribunals</li> </ul>	<ul style="list-style-type: none"> <li>An inspector appointed by the Council of the Law Society</li> <li>Solicitors Disciplinary Tribunals</li> </ul>	<ul style="list-style-type: none"> <li>The Preliminary Investigation Committee of the Medical Council of Hong Kong (MCHK)</li> </ul>	<ul style="list-style-type: none"> <li>Inquiry Committees of the Architects Registration Board (ARB)<sup>4</sup></li> </ul>
<b>3. Body Responsible for the Disciplinary Actions in the Professions</b>	<ul style="list-style-type: none"> <li>Disciplinary Committees of the HKICPA</li> </ul>	<ul style="list-style-type: none"> <li>Disciplinary Committees of the HKICPA</li> </ul>	<ul style="list-style-type: none"> <li>Barristers Disciplinary Tribunals</li> </ul>	<ul style="list-style-type: none"> <li>Solicitors Disciplinary Tribunals</li> </ul>	<ul style="list-style-type: none"> <li>MCHK</li> </ul>	<ul style="list-style-type: none"> <li>Inquiry Committees of ARB</li> </ul>
<b>4. The Party to Initiate the Investigation of the Conduct of the Professionals</b>	<ul style="list-style-type: none"> <li>Where the Council of the HKICPA, in response to a complaint or otherwise, reasonably suspects or believes that a certified public accountant or a practice unit<sup>5</sup> has committed an irregularity, the Council may constitute an Investigation Committee.</li> </ul>	<ul style="list-style-type: none"> <li>The Financial Reporting Council (FRC) may initiate investigation in response to a complaint or otherwise.</li> </ul>	<ul style="list-style-type: none"> <li>Where the Bar Council considers that the conduct of a barrister should be inquired into as a result of a complaint or otherwise, the Bar Council shall submit the matter to the Tribunal Convenor of the Barristers Disciplinary Tribunal Panel.</li> </ul>	<ul style="list-style-type: none"> <li>Where the Council of the Law Society of Hong Kong considers that the conduct of a solicitor should be inquired into or investigated as a result of a complaint or otherwise, the Council shall submit the matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.</li> </ul>	<ul style="list-style-type: none"> <li>The Secretary of the MCHK shall submit the complaint, information or matter concerning a registered medical practitioner to the Chairman of the Preliminary Investigation Committee for consideration of the case<sup>6</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>The ARB may refer any complaint concerning a disciplinary offence to an Inquiry Committee for decision as to whether or not the registered architect has committed a disciplinary offence.</li> </ul>

<sup>1</sup> Source: This table is compiled with reference to the relevant legislation, in consultation with the Department of Justice and the relevant bureaux concerned.

<sup>2</sup> The FRC will only investigate irregularities in relation to auditors and reporting accountants of listed entities. For other cases (including those in the non-listed sector), the investigation remains to be undertaken by the Investigation Committees of the HKICPA.

<sup>3</sup> The FRC is a statutory body independent from the HKICPA.

<sup>4</sup> The ARB shall consist of 10 members appointed by the Council of the Hong Kong Institute of Architects (HKIA) and, in addition, may include one member appointed by the Chief Executive. The ARB is a statutory board independent from the HKIA.

<sup>5</sup> A practice unit means (a) a firm of certified public accountants (practising) practising accountancy pursuant to Cap.50; (b) a certified public accountant (practising) practising accountancy on his own account pursuant to Cap.50; or (c) a corporate practice registered with the HKICPA.

<sup>6</sup> A case or matter concerning whether the fitness to practise as a registered medical practitioner is impaired by a physical or mental condition of the practitioner may be referred to a Health Committee established by the MCHK for consideration.

	<b>Certified Public Accountants (under Professional Accountants Ordinance)</b>	<b>Auditors and Reporting Accountants of Listed Entities (under Financial Reporting Council Bill)<sup>2</sup></b>	<b>Barristers</b>	<b>Solicitors</b>	<b>Medical Practitioners</b>	<b>Architects</b>
<b>4. The Party to Initiate the Investigation of the Conduct of the Professionals (Cont'd)</b>			<ul style="list-style-type: none"> <li>● If the Bar Council does not submit a matter to the Tribunal Convenor, the <b>Chief Judge</b> may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Bar Council ought to have done so.</li> </ul>	<ul style="list-style-type: none"> <li>● Where the Council does not submit a matter to the Tribunal Convenor, the <b>Chief Judge</b> may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so.</li> </ul>		
<b>5. Separation of the Investigation and Disciplinary Powers</b>	<ul style="list-style-type: none"> <li>● <b>Separation of investigation and disciplinary powers</b> – The Investigation Committees of the HKICPA are responsible for investigation of the complaint, whereas the Disciplinary Committees of the HKICPA are vested with the disciplinary powers.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Separation of investigation and disciplinary powers</b> – The FRC is responsible for investigation of the complaint, whereas the Disciplinary Committees of the HKICPA are vested with the disciplinary powers.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>No separation of the investigation and disciplinary powers</b> which are possessed by a Barristers Disciplinary Tribunal.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Some separation of the investigation and disciplinary powers</b> – The Council of the Law Society may appoint <b>a person as an inspector to assist the Council</b> (a) in determining whether the conduct of any solicitor should be inquired into or investigated; <b>or (b) in relation to an inquiry or investigation by a Solicitors Disciplinary Tribunal.</b> The Solicitors Disciplinary Tribunal shall have power to inquire into and investigate the conduct of any solicitor concerned and make disciplinary order on completion of the investigation.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Separation of the investigation and disciplinary powers</b> - The Preliminary Investigation Committee makes preliminary investigation into complaints and decides whether the case should be referred to the MCHK for inquiry. The disciplinary power rests with the MCHK which may make disciplinary orders after due inquiry into the case.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>No separation of the investigation and disciplinary powers</b> which are possessed by an Inquiry Committee. The decision of the Inquiry Committee is, however, subject to review by a Review Committee.</li> </ul>

	<b>Certified Public Accountants (under Professional Accountants Ordinance)</b>	<b>Auditors and Reporting Accountants of Listed Entities (under Financial Reporting Council Bill)<sup>2</sup></b>	<b>Barristers</b>	<b>Solicitors</b>	<b>Medical Practitioners</b>	<b>Architects</b>
<b>6. Composition and Functions of the Investigation Committee</b>	<p><b><u>Investigation Panels</u></b></p> <ul style="list-style-type: none"> <li>There are two Investigation Panels – (a) <b>Investigation Panel A</b> shall consist of not less than <b>18 lay persons</b> appointed by the Chief Executive of whom one shall be appointed to be the Investigation Committee Convenor; (b) <b>Investigation Panel B</b> shall consist of not less than <b>12 certified public accountants</b> appointed by the Council of the HKICPA of whom not less than six shall be holders of practising certificates.</li> </ul> <p><b><u>Investigation Committee</u></b></p> <ul style="list-style-type: none"> <li>Where the Council of the HKICPA constitutes an Investigation Committee, the Council shall direct the <b>Investigation Committee Convenor to appoint the chairman and other members of the Investigation Committee.</b></li> <li>An Investigation Committee shall consist of the following 5 members – (a) <b>three members from Investigation Panel A</b>, one of whom shall be the chairman of the Investigation Committee; and (b) <b>two members from Investigation Panel B</b>, one of whom shall be the holder of a practising certificate.</li> </ul>	<p><b><u>The FRC</u></b></p> <ul style="list-style-type: none"> <li>The FRC is to consist of the <b>Registrar of Companies</b> or his representative and the <b>Chief Executive Officer of the FRC</b> as ex-officio members, <b>three members (each nominated by the SFC, HKICPA and HKEx</b> respectively) appointed by the Chief Executive, and <b>four to six other members</b> appointed by the Chief Executive. <b>The majority of the Council members shall be lay persons.</b></li> <li>The FRC may direct the Audit Investigation Board (AIB) to investigate a case concerning the irregularity of an auditor or reporting accountant of a listed entity. The Chairman of the AIB is the Chief Executive Officer of the FRC, who will be supported by the staff of the FRC in the investigation.</li> <li>The <b>FRC is independent from the HKICPA.</b> It may refer the findings of the investigation of a case to the HKICPA.</li> </ul>	<ul style="list-style-type: none"> <li>See items (8) and (11) below for the functions and composition of a Barristers Disciplinary Tribunal.</li> </ul>	<ul style="list-style-type: none"> <li><b>The inspector is appointed by the Council of the Law Society</b> to assist the Council (a) in determining whether the conduct of any solicitor should be inquired into or investigated; or (b) in relation to an inquiry or investigation by the Solicitors Disciplinary Tribunal.</li> <li>See item (11) below for the composition of a Solicitors Disciplinary Tribunal.</li> </ul>	<ul style="list-style-type: none"> <li>The Preliminary Investigation Committee is to consist of (a) a <b>chairman and a deputy chairman elected by the MCHK</b> from among its members; (b) <b>four registered medical practitioners</b>, who are not members of the MCHK, nominated respectively by the Hong Kong Medical Association, the Director of Health, the Hospital Authority and any member of the MCHK; and (c) <b>one lay member</b> of the MCHK.</li> <li>The <b>Preliminary Investigation Committee</b>, may make preliminary investigation and decide whether the case should be referred to the MCHK for inquiry. It may also issue a letter of advice to the registered medical practitioner concerned where no inquiry is held.</li> </ul>	<ul style="list-style-type: none"> <li>See items (8) and (11) below for the functions and composition of an Inquiry Committee.</li> </ul>

	<b>Certified Public Accountants (under Professional Accountants Ordinance)</b>	<b>Auditors and Reporting Accountants of Listed Entities (under Financial Reporting Council Bill)<sup>2</sup></b>	<b>Barristers</b>	<b>Solicitors</b>	<b>Medical Practitioners</b>	<b>Architects</b>
<b>6. Composition and Functions of the Investigation Committee (Cont'd)</b>	<ul style="list-style-type: none"> <li>An <b>Investigation Committee of the HKICPA may exercise its power independent from the Council of the HKICPA.</b> It has the responsibility to inform the Council whether in the Committee's opinion there is a prima facie case against the certified public accountant or a practice unit.</li> </ul>					
<b>7. Powers of the Investigation Committee</b>	<ul style="list-style-type: none"> <li>An Investigation Committee of the HKICPA has the power to require a certified public accountant, a practice unit or any person whom the Committee reasonably believes to have in his possession or under his control any record or other document relevant to the investigation to (a) <b>produce to the Committee the records or other documents as specified,</b> (b) <b>give explanation;</b> and (c) <b>give to the Committee all assistance</b> which he is reasonably able to give.</li> </ul>	<ul style="list-style-type: none"> <li>The <b>FRC</b> shall have powers to require auditors, or reporting accountants of the listed entity or of the entity's relevant undertaking, a listed corporation, the responsible persons of a listed collective investment scheme, a relevant undertaking of the listed entity, an authorized institution, or other relevant persons whom the FRC has reasonable cause to believe to be in possession of relevant records and documents to (a) <b>produce records or documents,</b> (b) <b>attend before the FRC and answer questions,</b> (c) <b>respond to any written questions,</b> and (d) <b>give other assistance that he is reasonably able to give.</b></li> </ul>	<ul style="list-style-type: none"> <li>See item (12) below regarding the power of a Barristers Disciplinary Tribunal.</li> </ul>	<ul style="list-style-type: none"> <li>The Council of the Law Society may appoint an "inspector" who shall have power to (a) <b>question persons who are, or were at the material time, members or employees of any law firm,</b> or, where authorized by the Council, <b>any other persons</b> whom the inspector considers may be able to assist the Council in inquiry or investigation; or (b) require a solicitor or a person to <b>produce all documents in his possession that</b> the inspector reasonably suspects to be relevant to the inquiry or investigation.</li> <li>See item (12) below regarding the powers of a Solicitors Disciplinary Tribunal.</li> </ul>	<ul style="list-style-type: none"> <li>The chairman or deputy chairman of the Preliminary Investigation Committee may <b>require the complainant to set out the specific allegations</b> in writing and the grounds thereof and to make clarifications about the complaint. The Secretary of the MCHK shall invite the medical practitioner concerned to submit representations to the Committee. After the Committee begins its consideration of the case, the Committee may cause to be made such further investigations or further clarification from the medical practitioner concerned with regard to the case being considered and his written explanation.</li> </ul>	<ul style="list-style-type: none"> <li>See item (12) below regarding the powers of an Inquiry Committee.</li> </ul>

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<b>8. Functions of the Disciplinary Committee</b>	<ul style="list-style-type: none"> <li>● A Disciplinary Committee of the HKICPA <b>has statutory disciplinary powers on its own.</b> Its decision is not subject to the views of the Council of the HKICPA.</li> <li>● If the Disciplinary Committee is satisfied that a complaint is proved, the Disciplinary Committee may <b>make a disciplinary order</b> against the certified public accountant or practice unit concerned.</li> </ul>	<ul style="list-style-type: none"> <li>● Same as that applying to certified public accountants.</li> </ul>	<ul style="list-style-type: none"> <li>● A Barristers Disciplinary Tribunal <b>has statutory inquiry and disciplinary powers on its own.</b> Its decision is not subject to views of the Bar Council.</li> <li>● A <b>Barristers Disciplinary Tribunal</b> may <b>inquire</b> into the conduct of any barrister in respect of whom it is constituted.</li> <li>● On completion of its inquiry, a <b>Barristers Disciplinary Tribunal</b> has <b>disciplinary</b> powers over the barrister concerned.</li> </ul>	<ul style="list-style-type: none"> <li>● A Solicitors Disciplinary Tribunal <b>has statutory inquiry and disciplinary powers on its own.</b> Its decision is not subject to the views of the Council of the Law Society.</li> <li>● A <b>Solicitors Disciplinary Tribunal</b> may <b>inquire</b> into the conduct of the solicitor in respect of whom it is constituted.</li> <li>● On completion of its inquiry, a <b>Solicitors Disciplinary Tribunal</b> has <b>disciplinary</b> powers over the solicitor concerned.</li> </ul>	<ul style="list-style-type: none"> <li>● The functions of the MCHK are to inquire into the evidence presented before it; and to determine whether the facts alleged in any charge before it have been proved to its satisfaction and whether the medical practitioner concerned is guilty of the offence charged. The <b>MCHK may exercise its disciplinary powers</b> after due inquiry into the case.</li> </ul>	<ul style="list-style-type: none"> <li>● An Inquiry Committee <b>has the power to determine whether</b> or not the registered architect against whom the complaint is made has committed a disciplinary offence, subject to review by a Review Committee. Where an Inquiry Committee finds that a registered architect committed a disciplinary offence, on confirmation by a Review Committee of the finding, or on the variation of the finding or any proposed order based on the recommendation of the Review Committee, <b>the Inquiry Committee may make disciplinary orders.</b></li> </ul>
<b>9. Separation of the Investigation and “Prosecution” Function</b>	<ul style="list-style-type: none"> <li>● <b>Some separation of the investigation and “prosecution”</b> – The investigation function rests with the Investigation Committee of the HKICPA. At the disciplinary hearing, <b>the complainant, the Registrar of the HKICPA or a member of an Investigation Committee,</b> or their representative, is to <b>“prosecute”</b> (i.e. present the case against the certified public accountant or the practice unit whose conduct is the subject of the disciplinary proceedings).</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Separation of the investigation and “prosecution”</b> – The investigation function rests with the FRC. At the disciplinary hearing, <b>the Registrar of the HKICPA,</b> or his representative, is to <b>“prosecute”</b> (i.e. present the case against the certified public accountant or the practice unit whose conduct is the subject of the disciplinary proceedings).</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Separation of the investigation and “prosecution”</b> – A <b>Barristers Disciplinary Tribunal</b> is to <b>inquire</b> into the misconduct and the <b>Bar Council</b> (or in case of a submission by the Chief Judge, the person appointed by the Chief Judge as the applicant for the purpose of the inquiry) is to <b>“prosecute”</b>.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Separation of the investigation and “prosecution”</b> – An <b>Inspector</b> and a Solicitors Disciplinary Tribunal are to <b>inquire</b> into the misconduct; and the <b>Law Society</b> or an <b>applicant</b> who makes the application for the Solicitors Disciplinary Tribunal to consider a complaint regarding the conduct of a solicitor is to <b>“prosecute”</b>.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Separation of the investigation and “prosecution”</b> – The <b>Preliminary Investigation Committee</b> is responsible for investigation. The <b>Secretary of the MCHK</b> is to <b>“prosecute”</b> in the inquiry held by the MCHK (i.e. to present the case against the medical practitioner concerned and adduce evidence in support of the case).</li> </ul>	<ul style="list-style-type: none"> <li>● There is no “prosecution” in the proceedings before the Inquiry Committee tasked to determine whether or not a registered architect has committed a disciplinary offence.</li> </ul>

	<b>Certified Public Accountants (under Professional Accountants Ordinance)</b>	<b>Auditors and Reporting Accountants of Listed Entities (under Financial Reporting Council Bill)<sup>2</sup></b>	<b>Barristers</b>	<b>Solicitors</b>	<b>Medical Practitioners</b>	<b>Architects</b>
<b>10. The “Prosecution” Process in the Disciplinary Proceedings</b>	<ul style="list-style-type: none"> <li>At the disciplinary hearing, <b>the complainant, the Registrar of the HKICPA or a member of an Investigation Committee</b>, or their representative, is to present the case against the certified public accountant or the practice unit whose conduct is the subject of the disciplinary proceedings.</li> <li>The <b>respondent</b> is the <b>certified public accountant or practice unit</b> in respect of whom the committee is constituted.</li> </ul>	<ul style="list-style-type: none"> <li>At the disciplinary hearing, <b>the Registrar of the HKICPA</b>, or his representative, is to present the case against the certified public accountant or the practice unit whose conduct is the subject of the disciplinary proceedings.</li> <li>The FRC may give assistance to the Registrar of the HKICPA who will “prosecute” the certified public accountant or a practice unit concerned during the disciplinary proceedings.</li> <li>The <b>respondent</b> is the <b>certified public accountant or practice unit</b> in respect of whom the committee is constituted.</li> </ul>	<ul style="list-style-type: none"> <li>The <b>Bar Council</b>, (or in case of a submission by the Chief Judge, the person appointed by the Chief Judge as the applicant for the purpose of the inquiry) shall be the <b>applicant</b> in the disciplinary proceedings.</li> <li>The <b>respondent</b> is the <b>barrister</b> in respect of whom the Tribunal is constituted.</li> </ul>	<ul style="list-style-type: none"> <li>The <b>Law Society</b> or an <b>applicant</b> who makes the application to the Solicitors Disciplinary Tribunal shall present the case against the solicitor concerned in the disciplinary proceedings.</li> <li>The <b>respondent</b> is any <b>solicitor</b> against whom the tribunal is constituted.</li> </ul>	<ul style="list-style-type: none"> <li>The <b>Secretary of the MCHK</b> is to <b>present the case against the medical practitioner concerned</b> and adduce evidence in support of the case in an inquiry held by the MCHK<sup>7</sup>.</li> <li>The <b>defendant</b> in an inquiry held by the MCHK is the <b>registered medical practitioner charged</b> with an offence.</li> </ul>	<ul style="list-style-type: none"> <li>See item (9) above. There is no “prosecution” in the proceedings.</li> </ul>

<sup>7</sup> On the application of the Chairman of the MCHK, the Secretary for Justice may appoint a legal officer with the meaning of the Legal Officers Ordinance (Cap.87) to carry out the duties of the Secretary of the MCHK in respect of an inquiry by the MCHK.

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<b>11. Composition of the Disciplinary Committee</b>	<p><b><u>Disciplinary Panels</u></b></p> <ul style="list-style-type: none"> <li>There are two Disciplinary Panels – (a) <b>Disciplinary Panel A</b> shall consist of not less than <b>18 lay persons</b> appointed by the Chief Executive of whom one shall be appointed to be the Disciplinary Committee Convenor; (b) <b>Disciplinary Panel B</b> shall consist of not less than <b>12 certified public accountants</b> appointed by the Council of the HKICPA of whom not less than six shall be holders of practising certificates.</li> </ul> <p><b><u>Disciplinary Committee</u></b></p> <ul style="list-style-type: none"> <li>Where the Council of the HKICPA constitutes a Disciplinary Committee, the Council shall direct the <b>Disciplinary Committee Convenor to appoint the chairman and other members of the Disciplinary Committee.</b></li> <li>A Disciplinary Committee shall consist of the following 5 members – (a) <b>three members of the Disciplinary Panel A</b>, one of whom shall be the chairman of the Disciplinary Committee; and (b) <b>two members of the Disciplinary Panel B</b>, one of whom shall be the holder of a practising certificate.</li> </ul>	<ul style="list-style-type: none"> <li>Same as that applying to certified public accountants.</li> </ul>	<p><b><u>Barristers Disciplinary Tribunal Panel</u></b></p> <ul style="list-style-type: none"> <li>The Chief Justice is required to appoint a Barristers Disciplinary Tribunal Panel consisting of – (a) <b>no fewer than 6 and no more than 15 practising Senior Counsel</b> of Hong Kong; (b) <b>no fewer than 6 and no more than 20 other practising barristers</b> of at least 7 years’ standing; and (c) <b>no fewer than 5 and no more than 25 lay persons.</b></li> <li>The Chief Justice shall appoint one of the barristers on the Panel as the Tribunal Convenor.</li> </ul> <p><b><u>Barristers Disciplinary Tribunal</u></b></p> <ul style="list-style-type: none"> <li>The Tribunal Convenor of the Barristers Disciplinary Tribunal Panel is required to appoint from the Panel (a) <b>a Senior Counsel</b>; (b) <b>a barrister who is not a Senior Counsel</b>; and (c) <b>a lay person</b>, to constitute a Barristers Disciplinary Tribunal.</li> </ul>	<p><b><u>Solicitors Disciplinary Tribunal Panel</u></b></p> <ul style="list-style-type: none"> <li>The Chief Justice shall appoint a Solicitors Disciplinary Tribunal Panel consisting of – (a) <b>not more than 120 practising solicitors</b> of at least 10 years’ standing; (b) <b>not more than 10 foreign lawyers</b>; and (c) <b>not more than 60 lay persons.</b></li> <li>The Chief Justice shall appoint a solicitor as the Tribunal Convenor.</li> </ul> <p><b><u>Solicitors Disciplinary Tribunal</u></b></p> <ul style="list-style-type: none"> <li>The Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel shall appoint from the Panel <b>two solicitors</b>, and <b>one lay person</b> to constitute a Solicitors Disciplinary Tribunal<sup>8</sup>.</li> </ul>	<p><b><u>The MCHK</u></b></p> <ul style="list-style-type: none"> <li>The MCHK shall consist of (a) <b>ten registered medical practitioners</b>, nominated respectively (two each) by the Director of Health, the University of Hong Kong, the Chinese University of Hong Kong, the Hospital Authority, the Academy of Medicine, and appointed by the Chief Executive; (b) <b>seven registered medical practitioners</b> who are members of the Hong Kong Medical Association, nominated by the Association and elected by the Council members of the Association; (c) <b>seven registered medical practitioners ordinarily resident in Hong Kong</b> elected by all registered medical practitioners; and (d) <b>four lay members</b> appointed by the Chief Executive.</li> <li>At a meeting of the MCHK for the purposes of an inquiry, the quorum shall be either (a) five members of the MCHK or (b) not less than three members of the MCHK and two assessors<sup>9</sup>. At least one of the persons forming the quorum shall be a lay member but the majority being registered medical practitioners.</li> </ul>	<p><b><u>The Inquiry Committee</u></b></p> <ul style="list-style-type: none"> <li>The ARB may establish an <b>Inquiry Committee of not less than three members of the HKIA.</b></li> </ul> <p><b><u>The Review Committee</u></b></p> <ul style="list-style-type: none"> <li>The ARB shall appoint 3 of its members to sit with the Chairman of the ARB to be Review Committee to review the decision of the Inquiry Committee. The ARB shall not appoint a member of the Inquiry Committee to be a member of the Review Committee.</li> </ul>

<sup>8</sup> The Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel shall appoint a foreign lawyer, in addition to the two solicitors and a lay person, if the case is in respect of a foreign lawyer or an employee of a foreign lawyer.

<sup>9</sup> The MCHK shall appoint non-members of the MCHK to form a panel of assessors for the purpose of conducting an inquiry. The Panel is to consist of (a) ten registered medical practitioners, nominated respectively (two each) by the Director of Health, the Hospital Authority, the University of Hong Kong, the Chinese University of Hong Kong and the Academy of Medicine; (b) four lay persons nominated by the Secretary for Health, Welfare and Food.



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<b>12. Powers of the Disciplinary Committee to Require Production of Information or Evidence</b>	<ul style="list-style-type: none"> <li>For the purposes of disciplinary proceedings, a Disciplinary Committee of the HKICPA shall have powers to (a) <b>take evidence on oath</b>; and (b) <b>summon any person to attend the proceedings to give evidence or produce any documents</b> or other things in his possession and <b>examine him as a witness</b>.</li> </ul>	<ul style="list-style-type: none"> <li>Same as that applying to certified public accountants.</li> </ul>	<ul style="list-style-type: none"> <li>For the purpose of conducting an inquiry, a Barristers Disciplinary Tribunal shall have all such powers as are vested in the Court or in any judge in the course of any action or suit in respect of the following matters – (a) <b>enforcing the attendance of witnesses and examining them</b> upon oath or otherwise; (b) <b>compelling the production of documents</b>; (c) <b>punishing persons guilty of contempt</b>; (d) <b>ordering an inspection of any property</b>; and (e) <b>conducting the examination of witnesses</b>.</li> </ul>	<ul style="list-style-type: none"> <li>For the purpose of conducting any inquiry, a Solicitors Disciplinary Tribunal shall have all such powers as are vested in the Court or in any judge in the course of any action or suit in respect of the following matters (a) <b>enforcing the attendance of witnesses and examining them</b> upon oath or otherwise; (b) <b>compelling the production of documents</b>; (c) <b>punishing persons guilty of contempt</b>; (d) <b>ordering an inspection of any property</b>; and (e) <b>conducting the examination of witnesses</b>.</li> </ul>	<ul style="list-style-type: none"> <li>For the purposes of an inquiry, the MCHK shall have the powers to (a) <b>hear, receive and examine evidence on oath</b>; and (b) <b>summon any person to attend the inquiry to give evidence or produce any documents</b> or other things in his possession and <b>examine him as a witness</b>.</li> </ul>	<ul style="list-style-type: none"> <li>An Inquiry Committee shall have powers to (a) <b>hear, receive and examine evidence</b> on oath; (b) <b>summon any person to attend the inquiry to give evidence or produce documents</b> or other things in his possession and <b>examine him as a witness</b>.</li> </ul>