

**Process Review Panel for
the Financial Reporting Council**

2019 Annual Report

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Chapter 1 : Background

Overview

1.1 The Process Review Panel for the Financial Reporting Council (“the PRP”) is an independent and non-statutory panel established by the Chief Executive of the Hong Kong Special Administrative Region in 2008 to review cases handled by the Financial Reporting Council (“the FRC”), and to consider whether actions taken by the FRC are consistent with its internal procedures and guidelines. The establishment of the PRP reflects the Government’s continuing commitment to enhancing the accountability of the FRC.

1.2 The FRC was established under the Financial Reporting Council Ordinance (Cap. 588) (“the FRCO”) in 2006 as an independent statutory body to investigate auditing and reporting irregularities by auditors of listed entities (i.e. listed corporations and listed collective investment schemes), with the assistance of the statutory Audit Investigation Board (“the AIB”) comprising executives of the FRC, and enquire into non-compliance with accounting requirements by listed entities in Hong Kong, with the assistance of the Financial Reporting Review Committees (“the FRRC”)¹. The FRC plays a key role in upholding the quality of financial reporting, promoting the integrity of the accounting profession, enhancing corporate governance and protecting investors’ interest.

1.3 In order to enhance the independence of the auditor regulatory system by benchmarking against the international standard and practice, the Government introduced a Bill to reform the regulatory regime in January 2018 and the Bill was passed by the Legislative Council in January 2019. Upon the commencement of the new regime on 1 October 2019, the FRC has become an independent auditor oversight body and is vested, in addition to investigation powers, with inspection and disciplinary powers with regard to auditors of public interest entities (“PIE”)². The FRC also performs independent oversight over the performance of the Hong Kong Institute of Certified Public Accountants (“HKICPA”) of its statutory functions of registration, setting continuing professional development requirements and setting standards on professional ethics, auditing and assurance with respect to local PIE

¹ The FRRC members are drawn from the statutory Financial Reporting Review Panel comprising individuals appointed by the Financial Secretary (under the authority delegated by the Chief Executive) from various professions in addition to accountants.

² A PIE means a listed collective investment scheme or a corporation with its equities listed on Hong’s stock market.

auditors. In addition, the FRC is responsible for the recognition of overseas PIE auditors.

Functions of the PRP

1.4 In response to the expanded functions of the FRC, the PRP has revised its terms of reference as follows to effectively review cases handled by the FRC in the areas of inspection, investigation, discipline, oversight and recognition under the new regulatory regime—

- (a) to review and advise the FRC on the adequacy of its internal procedures and operational guidelines governing the actions taken and operational decisions made by the FRC and its staff in the performance of the regulatory functions in relation to the following areas –
 - (i) inspection in relation to PIE engagements completed by PIE auditors;
 - (ii) complaints handling, investigation and enquiry;
 - (iii) disciplinary actions against PIE auditors;
 - (iv) oversight of the performance of the HKICPA of specified functions (i.e. registration, setting requirements for continuing professional development, and setting standards on professional ethics, auditing and assurance) in relation to PIE auditors; and
 - (v) recognition of overseas PIE auditors;
- (b) to receive and consider periodic reports from the FRC on completed or discontinued cases in the areas mentioned in (a) above;
- (c) to receive and consider periodic reports on investigations, enquiries and disciplinary cases lasting more than one year;
- (d) to receive and consider periodic reports from the FRC on complaints against the FRC or its staff;

- (e) to call for files from the FRC to review the handling of cases in the areas mentioned in (a) above to ensure that the actions taken and decisions made are adhered to and are consistent with internal procedures and guidelines and to advise the FRC where appropriate;
- (f) to advise the FRC on such other matters relating to the FRC's performance of statutory functions as the FRC may refer to the PRP or on which the PRP may wish to advise; and
- (g) to submit annual reports to the Secretary for Financial Services and the Treasury which, subject to applicable statutory secrecy provisions and other confidentiality requirements, will be published.

1.5 The internal procedures which the PRP would make reference to in reviewing the FRC's cases include guidelines on its statutory functions, working protocols with other regulatory bodies, preservation of secrecy and identity of informers, and relevant legislative provisions.

1.6 The PRP is tasked to review and advise the FRC on its handling of cases, not its internal operation or administrative matters. Therefore, the work of the committees set up under the FRC Council is not subject to direct review by the PRP.

Modus operandi of the PRP

1.7 At its inaugural meeting held in mid-November 2008, the PRP decided that except for the first review cycle that should start from July 2007 (when the FRC became fully operational) until the end of December 2008, all case review cycles thereafter should run on a calendar year basis. Based on the FRC's caseload during the relevant review cycle, the PRP would select cases for review at the end of the cycle.

1.8 With consideration of the expanded scope of review by the PRP under the new regulatory regime, the length of case review cycles and approach for case selection would be adjusted as the PRP proceeds with the review work.

1.9 Members of the PRP are reminded to preserve secrecy in relation to information furnished to them in the course of the PRP's work, and not to disclose such information to other persons. To maintain the independence and impartiality of the PRP, all PRP members would declare

their interests upon the commencement of their terms of appointment and before conducting each case review.

Composition of the PRP

1.10 In 2019, the PRP comprised six members, including the Chairman who is from the legal sector, a member from the accountancy sector, three other members from the field of business management and academia, and the FRC Chairman as an ex-officio member.

1.11 The membership of the PRP in 2019 is at **Annex**.

Follow-up on the PRP's observations made in the 2018 Annual Report

1.12 As per the PRP's request at the last Case Review Session for updates on the progress of the FRC's liaison with the Ministry of Finance ("MoF") of the Central People's Government regarding the Memorandum of Understanding ("MoU") for cross-boundary cooperation, the FRC reported that the MoU was signed in May 2019, based on which the FRC was discussing with the MoF the details of implementation procedures for access to audit working papers kept in the Mainland.

1.13 In its 2018 Annual Report, the PRP opined that the term "immaterial complaint" should be revised for more accurate categorisation of relevant complaint cases. In response, the FRC replaced the terminology for cases assessed by the FRC as not material or vexatious with "pursuable complaint not taken further".

1.14 The PRP was also pleased to learn about the implementation of the new auditor regulatory regime since 1 October 2019. On the understanding that the FRC had been drawing up procedures and guidelines for its statutory functions under the new regime, the PRP took the view that it would be worthwhile to convene a meeting before the next Case Review Session to review and give advice on the FRC's new procedural manuals.

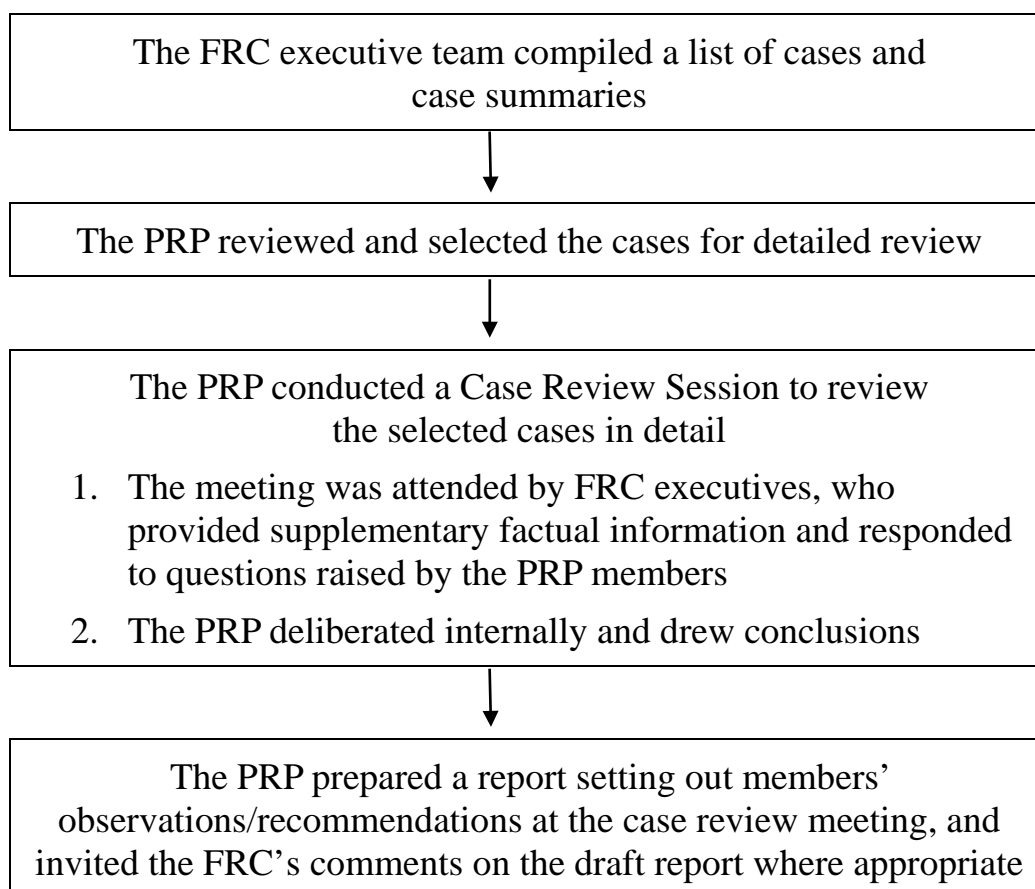
1.15 The PRP noted the follow-up actions taken by the FRC in the light of its observations made in the 2018 Annual Report and had no further question or comment.

Chapter 2 : Work of the PRP in 2019

2.1 This Annual Report covers the work of the PRP in 2019, which reviewed reports from the FRC on cases completed by it during the 11th review cycle (i.e. from January to December 2018).

Case review work flow

2.2 The work flow adopted by the PRP in reviewing the cases is set out below –



Selection of cases for consideration/review

2.3 The FRC executive team advised the PRP that the FRC had completed 117 cases during the 11th review cycle. Other than these 117 cases, there were 20 cases which had lasted for more than one year by the end of the cycle. The PRP was provided with summaries of all the 137 cases for review as follows –

<u>Category</u>	<u>Distribution of cases</u>	<u>Number</u>
(I)	Ongoing investigations/enquiries which had lasted for more than one year	20
(II)	Completed investigations/enquiries	11
(III)	Unsubstantiated cases	26
(IV)	Cases that were referred to other regulatory bodies for follow-up or the FRC taking follow-up action directly with the listed entity/auditor	7
(V)	Completed review of complaints/review of relevant financial statements with ongoing investigations/enquiries	19
(VI)	“Pursuable complaints not taken further” (i.e. complaints that are vexatious, abusive and/or of unreasonably persistent nature)	53
(VII)	Complaints against the FRC or its staff	1
	Total	137

2.4 The PRP reviewed the case summaries of the 137 cases and selected the following six cases for review with an aim of covering a good mix of cases from different categories –

- (a) two ongoing investigation cases which had lasted for more than one year (i.e. selected from Category I);
- (b) a case arising from a review of complaint in which the FRC took follow-up action directly with the auditor (i.e. selected from Category IV);
- (c) a case arising from a review of complaint with an ongoing investigation (i.e. selected from Category V);
- (d) a completed investigation case arising from review of financial statements (i.e. selected from Category II); and

- (e) a case which was referred to other regulatory bodies for follow-up (i.e. selected from Category IV).

The PRP considered that the selection of these six cases reflected a good mix of the cases which fell within the 11th review cycle.

Case Review Session

2.5 After the PRP selected the cases for review, and with the assistance of the FRC executive team, the PRP Secretariat made preparation for the case review meeting which was held on 6th December 2019 to conduct detailed reviews on the selected cases.

2.6 The PRP Secretariat had invited all members to declare any potential conflicts of interest before the meeting. At the start of the Case Review Session, the PRP Chairman further reminded members to declare any possible conflict of interest in the cases to be reviewed. No member made such a declaration.

2.7 The PRP's observations in respect of the selected cases and its suggestions to the FRC are set out in the following chapters.

Chapter 3 : The PRP's review of cases handled by the FRC

3.1 On the whole, having considered the six cases reviewed in the 11th cycle, the PRP was of the view that the FRC had followed the internal procedures in handling the cases.

(1) Review of an ongoing investigation case which had lasted for more than one year

Case facts and the FRC's actions

3.2 The case arose from the FRC's financial statements review programme. Having considered the review assessment report completed by the FRC over a 14-month period, the FRC Council approved the initiation of an enquiry and two investigations in relation to the consolidated financial statements of the listed entity concerned and its subsidiaries in November 2014. The enquiry and one of the investigations took another 24 months and 48 months respectively for completion. The outstanding investigation was substantially completed and the investigation report was submitted to the AIB for approval.

The PRP's areas of review

3.3 The PRP focused its review on the long processing time of the case resulted from, as the FRC advised, staff's excessive workload and reallocation of the case among staff. Upon the PRP's enquiry into the current staff resources of the FRC and the considerations behind reallocation of cases, the FRC replied that the size of its investigation team had been maintained at 14 staff with ongoing recruitment over the past few years. When circumstances required reallocation of cases, the FRC would take into account factors including possible conflict of interests, progress of investigation, complexity of the case and team members' experience and specialty.

3.4 The PRP also inquired about the latest position of the outstanding investigation of the case. According to the FRC, all investigation work had been completed while the investigation report was pending approval by the AIB. In view of the vacancy of the Chief Executive Officer ("CEO") post of the FRC who was the Chairman of the AIB, the Government and the FRC were pressing ahead with the recruitment exercise for the post and making arrangements for appointment of an acting CEO to chair the AIB in the meantime.

3.5 Procedure-wise, the PRP picked up on three particular events in the case chronology concerning the submission of progress reports to the Operations Oversight Committee (“OOC”) and the FRC Council, the grant of consent for disclosure of information and the engagement of external lawyer by the FRC respectively. The FRC informed the PRP that, according to its operational manual, it had to submit progress reports to the OOC and the FRC Council on a regular basis regardless of the absence of major developments of the case. The FRC further suggested that this manual would be reviewed under the new regime on which the PRP concurred. With regard to the consent granted in response to the auditor’s request for disclosure of information to certain parties pursuant to section 51 of the FRCO, the FRC confirmed that approval from the delegated authority (i.e. the CEO) had been duly sought. In response to the inquiry about the reasons for consulting outside legal counsel, the FRC advised the PRP that legal vetting of investigation reports by its General Counsel was conducted to ensure that the investigations were duly completed within the FRC’s remit. External legal advice would only be sought when necessary, for instance when the post of in-house legal counsel was vacant.

Conclusion

3.6 Having reviewed the FRC’s handling of the case and in the light of the above clarification, the PRP expressed an understanding of the reasons for the relatively long time taken in the conduct of review, enquiry and investigations. It agreed that the FRC had been handling the case in accordance with its internal procedures.

(2) Review of an ongoing investigation case which had lasted for more than one year

Case facts and the FRC’s actions

3.7 The case arose from the FRC’s financial statements review programme. Having considered the review assessment report completed by the FRC over a 16-month period, the FRC Council approved the initiation of three investigations in November 2016. Two of the investigations took another 26 months and 34 months respectively for completion. The outstanding investigation was substantially completed and the investigation report was submitted to the AIB for approval.

The PRP's areas of review

3.8 The PRP noted that the reallocation of the case at the review and investigation stages respectively had contributed to the long processing time. It took the view that transfer of cases among case officers/directors was time consuming and should be avoided as far as practicable. On the understanding that the reallocations were initiated due to staff's heavy workload, the PRP asked whether possible conflict of interest was another major factor necessitating transfer of cases. The FRC assured the PRP that continuous efforts were being made in distributing cases appropriately among staff members. As regards the issue of conflict of interest, the FRC informed the PRP that conflict of interest was one of the factors under consideration when assigning cases. That said, it was not a contributing factor to the reallocation of the subject case. A cooling-off period of three years would be introduced under the new regime, allowing larger flexibility in assigning cases to staff members.

3.9 The PRP also focused the review on the long response time taken by the listed company and the auditors as well as the multiple requests for extension of deadline filed by the respondents. In terms of possible measures to ensure timely feedback from respondents, the FRC replied that the long response time was caused by the engagement of external legal advice by respondents at a relatively late stage. The FRC had therefore reminded all firms in its e-newsletter to engage outside counsel as early as possible, if necessary. The FRC supplemented that listed entities and the auditors had legal obligations to give response to the FRC's formal requirements and would be subject to criminal proceedings if they failed to comply. As regards the requests for extension of deadline, the FRC informed the PRP that in this case a request from the auditor for comments on the investigation report was declined with consideration that the auditor had already been consulted on the preliminary findings and the investigation report, which had incorporated the auditor's previous comments, only contained a few further changes for the auditor's further comments. The FRC considered that reasonable time had been given to the auditor for comments.

3.10 The PRP noted that listed entities and auditors were not obligated to respond to the FRC's informal inquiries. It followed up by asking about the FRC's actions in cases which no response was received. The FRC advised that it would evaluate the available information on hand and initiate, if the case warranted and with the FRC Council's approval, investigation of a lower evidential standard on the ground of "circumstances suggesting that there was an auditing/reporting

irregularity”. The FRC could initiate investigation on the basis of “reasonable cause to believe that there was or might be an irregularity” when further information was revealed.

Conclusion

3.11 Having reviewed the FRC’s handling of the case and in the light of the above clarification, the PRP expressed an understanding of the reasons for the relatively long time taken in the conduct of the review and investigations, and agreed that the FRC had been handling the case in accordance with its internal procedures.

(3) Review of a case arising from a review of complaint in which the FRC took follow-up action directly with the auditor

Case facts and the FRC’s actions

3.12 The PRP reviewed a case arising from a complaint received by the FRC in August 2018 concerning suspected accounting non-compliances and auditing irregularities by the auditor of a listed entity. It took the FRC a total of eight and a half months to close the case, of which seven months was spent on handling the complainant’s dissatisfaction with the assessment result and way forward as endorsed by the OOC.

The PRP’s areas of review

3.13 Against the above background, the PRP reviewed the following steps taken by the FRC in handling the case –

- (a) initial screening;
- (b) liaising with the auditor concerned to review the allegations;
- (c) preparation and submission of a complaint assessment report to the OOC;
- (d) follow-up on the complainant’s dissatisfaction with the assessment outcome; and
- (e) closing the case.

3.14 The PRP spotted from the case chronology that the FRC had issued a letter of advice, as approved by the OOC, to the auditor under complaint before informing the complainant of the decision of the OOC and the reasons for such decision. It was of the view that the FRC might in future consider informing the complainant and the party under complaint

of the assessment result preferably at the same time to allow more flexibility for review of the report and follow-up action in cases where a party had comments.

Conclusion

3.15 Having reviewed the FRC's handling of the case, the PRP concluded that the FRC had handled the case in accordance with its internal procedures.

(4) Review of a case arising from a review of complaint with an ongoing investigation

Case facts and the FRC's actions

3.16 The PRP reviewed a complaint case referred by a regulator in April 2017. Upon completion of the assessment over a 10-month period, an enquiry and an investigation were initiated in February 2018. The FRC took 19 months to complete the enquiry. Meanwhile, the investigation involved audit working papers kept in the Mainland and the FRC was liaising with the MoF since the signing of the MoU in May 2019 regarding the detailed procedures for access to the relevant audit working papers.

The PRP's areas of review

3.17 Against the above background, the PRP reviewed the following steps taken by the FRC in handling the case –

- (a) initial screening;
- (b) liaising with the listed entity, the auditor concerned and the regulator to review the allegations;
- (c) preparation and submission of a complaint assessment report to the OOC and the FRC Council;
- (d) initiating a formal enquiry and a formal investigation;
- (e) appointing an FRRC by the Council to conduct the enquiry;
- (f) issuing directions by the FRC Council to the AIB to conduct the investigation;
- (g) preparation and issue of the enquiry report by the FRRC; and
- (h) adoption of the enquiry report by the FRC Council.

3.18 In relation to the enquiry initiated under the case, the PRP noted

that the FRC had requested the auditor concerned to provide response related to legal proceedings and inquired about the rationale behind the request. The FRC advised that in avoidance of potential adverse impact or prejudice caused by the publication of the enquiry report, it was a standard procedure to inquire with the auditor on whether it was undergoing legal proceedings at the time of the publication. In case of affirmative response from the auditor, the publication of the enquiry report would be withheld.

3.19 On the understanding that the investigation arising from the case was ongoing, the PRP sought the FRC's advice on the expected completion date of the investigation. The FRC replied that while the progress of the investigation hinged on the liaison with the MoF for accessing the relevant audit working papers kept in the Mainland, the case was expected to be concluded by the end of 2020.

3.20 In response to the PRP's inquiry about general circumstances which would still require referral of cases to the HKICPA for disciplinary actions under the new regime, the FRC explained that referral would be necessary for cases involving PIE engagements completed before the commencement of the new regime, i.e. 1 October 2019.

Conclusion

3.21 Having reviewed the FRC's handling of the case, the PRP concluded that the FRC had been handling the case in accordance with its internal procedures.

(5) Review of a completed investigation case arising from review of financial statements

Case facts and the FRC's actions

3.22 The case arose from the FRC's financial statements review programme. Having considered the review assessment report completed by the FRC over a 10-month period, the FRC Council approved the initiation of an investigation in November 2015. The investigation took another 28 months for completion.

The PRP's areas of review

3.23 With the above background, the PRP reviewed the following

steps taken by the FRC in handling the case –

- (a) initial screening;
- (b) liaising with the listed entity and the auditor concerned to review the allegations;
- (c) preparation and submission of a complaint assessment report to the OOC and the FRC Council;
- (d) initiating a formal investigation;
- (e) issuing directions by the FRC Council to the AIB to conduct the investigation;
- (f) preparation and issue of the investigation report by the AIB; and
- (g) adoption of the investigation report by the FRC Council.

3.24 The PRP noted from the case chronology the deferral of submission of the investigation report, as endorsed by the OOC, to the FRC Council due to revision of the investigation procedures at the material time. According to the FRC, as the post of in-house legal counsel was vacant, an external legal counsel was engaged to review the procedures with the aim of ensuring close adherence to the FRCO. The PRP questioned if revisions to the investigation procedures had any retrospective effect on the completed investigation work. The FRC responded that the revised procedures had not been applied retrospectively.

Conclusion

3.25 Having reviewed the FRC's handling of the case, the PRP was satisfied that the FRC had handled the case in accordance with its internal procedures.

(6) Review of a case referred to other regulatory bodies for follow-up

Case facts and the FRC's actions

3.26 The case arose from the FRC's financial statements review programme. Having considered the review assessment report completed by the FRC in seven-months' time, the FRC Council approved the referral of the identified auditing irregularities to the HKICPA for consideration if disciplinary actions were warranted in February 2018.

The PRP's areas of review

3.27 With the above background, the PRP reviewed the following steps taken by the FRC in handling the case –

- (a) initial screening;
- (b) liaising with the listed entity and the auditor concerned to review the allegations;
- (c) preparation and submission of a complaint assessment report to the OOC and the FRC Council; and
- (d) referral to the HKICPA for follow-up.

3.28 The PRP inquired about the FRC's considerations behind when granting extension of deadline for reply to respondents, such as the extension from 23 August 2017 to 13 September 2017 as per the listed entity's request made on 10 August 2017. The FRC explained that the nature of the FRC's requirement and the total response time allowed after the extension would be taken into account when handling request for deadline extension. The FRC granted extension to the listed entity in this case as the requested deadline fell within the normal response time at a maximum of six weeks.

Conclusion

3.29 Having reviewed the FRC's handling of the case, the PRP was satisfied that the FRC had handled the case in accordance with its internal procedures.

(7) Pursuable complaints not taken further

3.30 The PRP observed in the case lists for selection of review cases that a considerable number of complaints which were vexatious, abusive and/or of unreasonably persistent nature had been lodged against a single auditor. In response to the PRP's inquiry about the background and the FRC's follow-up action, the FRC advised that the complaints concerning the single auditor were suspected to be made by the same complainant. The complaints were not followed up further by the FRC in view of the immateriality of the misstatements involved. Nevertheless, the FRC approached the auditor in question for the latter's follow-up as appropriate and noted that no further complaints of the same nature from the complainant was lodged in 2019.

3.31 The PRP was satisfied with the FRC's explanation on the complaints and the FRC's handling of the matter.

Chapter 4 : Observations and way forward

4.1 On the six cases selected for review during the 11th review cycle, the PRP concluded that the FRC had handled the cases in accordance with its internal procedures. Arising from the discussion on the selected cases, the PRP opined that resources and staffing issues (such as internal transfer) were a major contributing factor to the long processing time of some cases. The PRP was pleased to note the FRC's efforts in staff recruitment in the recent years to improve the efficiency in case handling as well as to deliver the expanded regulatory functions under the new auditor regulatory regime.

4.2 The PRP had made the following requests to the FRC –

- (a) to review the existing mechanism of submitting regular progress reports to the OOC or the FRC Council on cases and explore the feasibility of only reporting on cases when there were major developments;
- (b) to provide the PRP with the new procedural manuals for its regulatory functions under the new regime for the PRP's review and advice at the next meeting scheduled for mid-2020 tentatively; and
- (c) to keep the PRP informed of the progress of its recruitment exercise, including that of the new CEO.

4.3 The FRC thanked the PRP for their comments and undertook to take actions in response to the PRP's observations and requests above.

4.4 The PRP will continue its work on the review of cases handled by the FRC to ensure that the FRC adheres to its internal procedures consistently. For 2020, the PRP will also review the internal procedures drawn up by the FRC for its regulatory functions under the new regime.

4.5 Comments on the work of the PRP can be referred to the Secretariat of the PRP for the FRC by post (Address: Secretariat of the PRP for the FRC, 15th Floor, Queensway Government Offices, 66 Queensway,

Hong Kong) or by email (email address: frcprp@fstb.gov.hk)³.

³ For enquiries or complaints not relating to the process review work of the FRC, they should be made to the FRC directly –

By post : 24th Floor, Hopewell Centre, 183 Queen’s Road East, Hong Kong
By telephone : (852) 2810 6321
By fax : (852) 2810 6320
By email : general@frc.org.hk or complaints@frc.org.hk

Chapter 5 : Acknowledgement

5.1 The PRP would like to express its gratitude to the FRC for its assistance in facilitating the review work, and its cooperation in responding to the PRP's enquiries and recommendations in the past year.

**Secretariat of the Process Review Panel
for the Financial Reporting Council
April 2020**

**Process Review Panel
for the Financial Reporting Council**

2019 Membership

Chairman

Dr. Anthony CHOW, SBS, JP

Members

Ms. Florence CHAN

Prof. CK LOW

Ms. Edith SHIH

Mr. KK TSE

Dr. Kelvin WONG, JP (ex-officio member)

(With Secretariat support provided by
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