

**DISCIPLINARY**

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## 1. Commencement and Purpose

- 1.1 These regulations were made by the Council under Article 87 of the Institute's Articles of Association and shall come into effect on 1 September 2015.
- 1.2 These regulations set out the procedures for the hearing of any formal complaint referred by the Investigation Committee to the Disciplinary Committee.

## 2 Interpretation

- 2.1 In these regulations, unless the context otherwise requires, words and expressions used have the same meanings as defined in the Institute's Articles of Association and Bye-Laws, and:

**Appeal Committee** means the Appeal Committee appointed by the Council under Bye-Laws 46.

**Complainant** means any person who brings a complaint to the attention of the Chief Executive Officer.

**Council** means the Council of the Institute.

**Defendant** means an Individual Member against whom a formal complaint has been referred to the Disciplinary Committee.

**Disciplinary Committee** means the Disciplinary Committee appointed by the Council under Bye-Laws 46.

**Disciplinary record** means any previous disciplinary findings or orders whether made by the Board of Examiners, the Investigation Committee, or by any Disciplinary Tribunal or Appeal Tribunal, to which an Individual Member or other person has been subject.

**Disciplinary Tribunal** means a Disciplinary Tribunal appointed by the Disciplinary Committee to hear a formal complaint under Bye-Laws 56(1).

**Formal complaint** means a complaint referred by the Investigation Committee to the Disciplinary Committee under Bye-Laws 54(3).

**Institute** means the Asian Institute of Chartered Bankers.

**Investigation Committee** means the Investigation Committee appointed by the Council under Bye-Law 46.

**Investigation Committee representative** means the person appointed by the Investigation Committee to represent the Committee before the Disciplinary Tribunal and to present the formal complaint.

**Legal Assessor** means a solicitor appointed to advise the Disciplinary Tribunal.

**Parties** mean the Investigation Committee representative and the defendant (including the defendant's representative).

### 3. Disciplinary Tribunal

- 3.1 On receipt of a formal complaint from the Investigation Committee, the chairman or failing him, the vice chairman of the Disciplinary Committee shall appoint from among its members a Disciplinary Tribunal to hear the complaint. The Disciplinary Tribunal shall comprise three members, of whom two are Members of the Institute and one is a legally qualified person. One of the members of the Tribunal shall be appointed as chairman, who shall report the findings and decisions of the Tribunal to the Disciplinary Committee.

- 3.2 The CEO shall appoint a relevantly experienced staff of the Institute to act as Secretary to the Disciplinary Tribunal (hereinafter referred to as Tribunal Secretary).
- 3.3 In the event that any one member of the Disciplinary Tribunal other than the chairman is unable to attend the hearing or any adjourned hearing of the formal complaint, or is during course of the hearing unable to continue to attend:
- (a) the remaining members may proceed or continue with the hearing provided that if the defendant or his representative is present, they shall do so only if the defendant or his representative consents;
  - (b) if the remaining members of the Tribunal do not proceed or continue with the hearing, the complaint shall be heard or re-heard by a new Disciplinary Tribunal appointed in accordance with regulation 3.1.
- 3.4 If at any time during the course of the hearing of the formal complaint, the chairman of the Disciplinary Tribunal is of the opinion that it is for any reason impracticable for the Tribunal to complete the hearing, he shall so inform the chairman or, failing him, the vice chairman of the Disciplinary Committee who shall thereupon appoint a new Disciplinary Tribunal in accordance with regulation 3.1 to re-hear the complaint.
- 3.5 In most cases, it is anticipated that the Disciplinary Tribunal will reach a decision via consensus, including on the question of whether a complaint or any part of it has been proved, the orders to make against the defendant and any costs to be paid by the defendant to the Institute. Where this is not possible, the chairman may call for a vote and any decision of the Tribunal shall be taken by simple majority. If, in a case falling within

regulation 3.3(a), the remaining members of the Disciplinary Tribunal complete the hearing but are unable to agree on a finding, the chairman shall so inform the chairman or, failing him, the vice chairman of the Disciplinary Committee who shall thereupon appoint a new Disciplinary Tribunal in accordance with regulation 3.1 to re-hear the complaint.

- 3.6 Where a new Disciplinary Tribunal is appointed pursuant to regulation 3.3(b), 3.4 or 3.5, no member of the previous Disciplinary Tribunal may be appointed to the new Tribunal.

#### **4. Hearing of Formal Complaint by Disciplinary Tribunal**

- 4.1 The Disciplinary Tribunal shall, as soon as practicable after its appointment, fix the date and the time for the hearing of the formal complaint. A notice of the hearing shall be sent by the Tribunal Secretary to the parties in accordance with regulations 5.1 to 5.4.
- 4.2 The Disciplinary Tribunal shall give the defendant the opportunity of:
- (a) attending the hearing of the formal complaint and being heard before the Tribunal;
  - (b) being represented before the Tribunal by a solicitor or by an Individual Member of the Institute;
  - (c) calling witnesses to give evidence on his behalf;
  - (d) adducing documentary evidence provided such evidence has been provided to the Tribunal in advance;
  - (e) cross-examining witnesses called by the Investigation Committee; and

(f) making such submissions as he wishes to the Tribunal.

4.3 The Investigation Committee may appoint a solicitor, an Individual Member or a staff of the Institute to present the formal complaint before the Disciplinary Tribunal. The Investigation Committee representative shall be given the opportunity of:

(a) calling witnesses to give evidence;

(b) adducing documentary evidence provided such evidence has been provided to the defendant in advance;

(c) cross-examining witnesses called by the defendant;

(d) making such submissions as he wishes to the Tribunal.

4.4 The Disciplinary Tribunal shall appoint a solicitor to act as legal assessor at the hearing of the formal complaint. The legal assessor shall:

(a) act as advisor to the Disciplinary Tribunal on all procedural and legal matters;

(b) retire with the Disciplinary Tribunal when it goes into private deliberation;

(c) prepare a written record of the Disciplinary Tribunal's decision in accordance with regulation 4.7; and

(d) carry out any other activity commensurate with the role of a legal assessor.

- 4.5 If the defendant does not attend or is not represented at the hearing, the Disciplinary Tribunal may, if it is satisfied that notice of the hearing has been duly served on the defendant in accordance regulation 5.1, proceed to hear the complaint in his absence.
- 4.6 The proceedings before the Disciplinary Tribunal shall be tape-recorded and transcribed.
- 4.7 A written record of the decision of the Disciplinary Tribunal shall be prepared by the legal assessor for approval by the chairman of the Tribunal setting out:
- (a) the terms of the complaint;
  - (b) whether or not the complaint or any part of it was admitted by the defendant;
  - (c) the principal facts established to the satisfaction of the Tribunal; and
  - (d) the finding of the Tribunal including the reasons for such finding, and any orders made by the Tribunal.

## **5. Notice of Hearing and Documents**

- 5.1 The Tribunal Secretary shall serve on the defendant a notice of the hearing no later than 42 days before the date of the hearing. The notice shall state:
- (a) the date, time and place fixed for the hearing;
  - (b) the complaint against the defendant;

- (c) the right to attend the hearing and be represented by a solicitor or an Individual Member of the Institute;
  - (d) the right to call witnesses to give evidence; and
  - (e) the power of the Disciplinary Tribunal to proceed with the hearing in the absence of the defendant.
- 5.2 The following documents shall be enclosed with the notice of hearing required by regulation 5.1:
- (a) unless previously provided, a copy of the formal complaint together with a summary of the complaint setting out the facts and matters relied on in support of the complaint and copies of any documents and other material which the Investigation Committee intends to adduce in evidence;
  - (b) a copy of the Institute's Bye-Laws and regulations pertinent to disciplinary proceedings; and
  - (c) a copy of the Institute's Code of Professional Conduct.
- 5.3 The notice of hearing shall also specify that the defendant shall no later than 28 days before the date of the hearing:
- (a) notify the Tribunal Secretary in writing:
    - whether he intends to attend and/or be represented at the hearing; and
    - whether he accepts the complaint or any part of it (if any);

- (b) provide to the Tribunal Secretary:
- a statement of defence to the complaint including any statements in mitigation;
  - the names of any witnesses he intends to call;
  - copies of any additional documents and other material (not previously provided to the Investigation Committee), which he wishes to bring to the attention of the Disciplinary Tribunal.

5.4 The Tribunal Secretary shall as soon as practicable send to the Investigation Committee:

- (a) a copy of the notice of hearing as set out in regulation 5.1; and
- (b) copies of the documents as set out in regulation 5.3 upon receipt of the same.

5.5 The Investigation Committee shall no later than 21 days before the date of the hearing provide to the Tribunal Secretary the names of any witnesses it intends to call to give evidence and copies of any additional documents which it intends to rely on at the hearing.

5.6 The Tribunal Secretary shall within 7 days of receipt of the documents as set out in regulation 5.5 send a copy of the same to the defendant.

5.7 Failure of the defendant to comply with regulation 5.3 shall not preclude the Disciplinary Tribunal from proceeding to hear the complaint on the appointed date.

## **6. Postponement and Adjournment of Hearing**

- 6.1 The defendant or the Investigation Committee may, in advance of the hearing, make a written application to the Disciplinary Tribunal for a postponement of the hearing. Such application shall be considered by the chairman of the Disciplinary Tribunal who may, in his absolute discretion, accede to it if he is of the view that it is justified in all the circumstances.
- 6.2 The Disciplinary Tribunal may, in its discretion or upon the application by either of the parties, adjourn the hearing at any stage during the course of the hearing if the Tribunal is of the view that it is justified in all the circumstances.
- 6.3 If at any time before or during the course of the hearing, it appears to the Disciplinary Tribunal that the defendant may be too ill to participate in the disciplinary process, the Tribunal may postpone or adjourn the hearing until such time when the defendant is fit to participate in the process.
- 6.4 Where a postponement or adjournment of the hearing is granted, the Tribunal Secretary shall as soon as practicable notify the parties in writing of the date, time and place fixed for the adjourned hearing. The constitution of the Disciplinary Tribunal at any adjourned hearing shall be subject to regulation 3.3.

## **7. Conduct of the Hearing**

- 7.1 Subject to these regulations, the Disciplinary Tribunal shall conduct the hearing in such manner as it considers appropriate having regard to the interests of justice and fairness to the parties.

- 7.2 The Disciplinary Tribunal shall apply the following principles with regard to evidence:
- (a) The Tribunal may admit oral or documentary evidence whether or not such evidence would be admissible in a court of law.
  - (b) The Tribunal may at its discretion consider evidence which has not been provided in accordance with regulations 5.3(b) and 5.5.
  - (c) The finding of fact of:
    - any court of competent jurisdiction in Malaysia or elsewhere;
    - any statutory authority or regulatory body; or
    - any professional body,shall be admissible as prima facie evidence of the fact so found.
- 7.3 At the commencement of the hearing, the chairman shall introduce the members of the Disciplinary Tribunal and explain the role of the legal assessor and the procedure which will be followed.
- 7.4 The chairman shall invite the Investigation Committee representative to read out the formal complaint against the defendant.
- 7.5 The chairman shall then invite the defendant or his representative to state whether the complaint or any part of it is admitted.
- 7.6 Where the defendant is not in attendance and is not represented, the Disciplinary Tribunal shall consider whether he has communicated in any correspondence prior to the hearing that he admits the complaint or any part of it.

- 7.7 Where the complaint or any part of it has been admitted by the defendant, the chairman shall announce that the complaint or such part of it has been found proved.
- 7.8 The Investigation Committee representative shall outline the case against the defendant and present evidence in support of any of the facts and matters set out in the complaint, whether admitted or not admitted by the defendant. The Investigation Committee representative may produce any documents [which have been provided to the defendant in accordance with regulations 5.2 and 5.6, or agreed by the Disciplinary Tribunal under regulation 7.2(b)] and call witnesses to give evidence.
- 7.9 The defendant or his representative (hereinafter referred to as defendant) may ask questions of the Investigation Committee representative in order to clarify the complaint against him.
- 7.10 The defendant shall then be invited to respond to the complaint by presenting his defense. He may produce any documents [which have been provided to the Disciplinary Tribunal in accordance with regulation 5.3(b) or agreed by the Disciplinary Tribunal under regulation 7.2(b)] and call witnesses to give evidence.
- 7.11 Witnesses may be cross-examined by the Investigation Committee representative and the defendant. The Investigation Committee representative may cross-examine the defendant.
- 7.12 Members of the Disciplinary Tribunal may at any time ask questions of the Investigation Committee representative, the defendant or any witness.
- 7.13 The Investigation Committee representative and the defendant may present closing submissions. The defendant will have the final opportunity to address the Disciplinary Tribunal.

- 7.14 At the conclusion of the presentation of evidence and submissions, the Disciplinary Tribunal will retire to decide whether the complaint or any part of it (which has not been admitted by the defendant) has been proved. The standard of proof to be applied by the Tribunal shall be the balance of probabilities.
- 7.15 The Disciplinary Tribunal will return to announce its finding in respect of the complaint, giving reasons for the finding. If the Tribunal finds that the complaint has not been proved, it shall dismiss the complaint.
- 7.16 Where the Disciplinary Tribunal finds that the complaint has been proved in whole or in part, the chairman of the Tribunal shall require the Investigation Committee representative to provide the Tribunal with details of the defendant's previous disciplinary record, if any.
- 7.17 Before considering what orders to make, the chairman of the Disciplinary Tribunal shall invite the defendant if he is in attendance to make any statement in mitigation. If the defendant is not in attendance, reference will be made to any statement in mitigation that he has previously provided.
- 7.18 The Disciplinary Tribunal will retire to consider what orders, if any, it should make against the defendant as set out in regulation 8.1.
- 7.19 Once a decision has been reached, the Disciplinary Tribunal will return to announce its finding and the order(s) that will be made against the defendant, giving reasons for its decision.
- 7.20 The chairman shall state that a written record of the decision of the Disciplinary Tribunal shall be sent to the defendant within 14 days. The chairman may also advise the defendant of his right of appeal against the decision of the Disciplinary Tribunal under Bye-Law 60.

7.21 No objection shall be upheld to any technical fault in the procedure adopted by the Disciplinary Tribunal provided that the proceedings are fair and the relevant Bye-Laws and regulations have been complied with.

### **8. Orders of Disciplinary Tribunal**

8.1 Upon finding a formal complaint proved in whole or in part, or when a defendant admits a complaint, the Disciplinary Tribunal may make any one or more of the following orders [pursuant to Bye-Law 58(2)] against the defendant as it considers appropriate in all the circumstances:

- (a) that he be excluded from membership;
- (b) that he be suspended from membership for a specified period not exceeding five years;
- (c) that he be reprimanded;
- (d) that he be admonished;
- (e) that he be required to undertake such additional hours of CPD as the Disciplinary Tribunal considers appropriate;
- (f) that he be fined a sum not exceeding RM10,000;
- (g) additionally if the defendant is pursuing any programme of study of the Institute:
  - that he be declared ineligible for a specified period not exceeding two years to sit for such examination or examinations of the Institute (or such part or parts thereof) as shall be specified in the order;

- that he be disqualified from such examination or examinations of the Institute (or such part or parts thereof) as shall be specified in the order, not being an examination (or a part thereof) the result of which has been duly notified to him by the Institute prior to the date of the order.
- 8.2 Where the Disciplinary Tribunal makes an order that the defendant be excluded from membership, it may include the condition [pursuant to Bye-Law 58(3)] that no application for readmission to membership may be considered until the expiration of a specified period, not exceeding five years, from the effective date of the order.
- 8.3 The Disciplinary Tribunal may, notwithstanding its finding that a complaint has been proved in whole or in part, make an order that no further action be taken on the complaint [pursuant to Bye-Law 58(4)] where it is of the opinion that none of the orders set out in regulation 8.1 is appropriate in all the circumstances of the case.
- 8.4 In deciding what orders to make, the Disciplinary Tribunal shall have regard to the past disciplinary record (if any) of the defendant, the seriousness of the offence, the financial sums involved in the wrongdoing (if any), and the issue of consistency and proportionality in sentencing.
- 8.5 Where the complaint has been proved in whole or in part, the Disciplinary Tribunal may order the defendant to pay such sum by way of cost to the Institute [pursuant to Bye-Law 58(5)]. In determining such sum of costs, the Tribunal may take account of any or all such fees, costs and expenses incurred by the Institute or the Tribunal in relation to the proceedings against the defendant.

## 9. Notification of Decision

- 9.1 The Tribunal Secretary shall no later than 14 days after the hearing give written notice of the decision of the Disciplinary Tribunal to the defendant. Such notice will be accompanied by a written record of the decision of the Disciplinary Tribunal, unless in the circumstances, a longer period for the delivery of such record is necessary.
- 9.2 Where the complaint or any part of it has been found proved, the notice shall set out:
- (a) the order(s) made by the Disciplinary Tribunal;
  - (b) the defendant's right of appeal against the finding and/or order of the Disciplinary Tribunal under Bye-Law 60;
  - (c) where a fine and/or costs have been imposed, that such fine and/or costs shall be paid within 14 days from the date the order becomes effective unless a longer period for payment is allowed by the Disciplinary Tribunal; and
  - (d) where an order for exclusion or suspension from membership has been made, that the defendant shall return his certificate of membership to the CEO within 14 days from the date the order becomes effective.
- 9.3 An order made by the Disciplinary Tribunal shall take effect at the end of the period of 21 days from the date of the notice of the Tribunal's decision under regulation 9.1. If within that period the defendant gives notice of appeal against the finding or order made by the Disciplinary Tribunal, then subject to regulation 9.4, the order shall take effect only after the appeal has been determined, in which case it shall only have effect in accordance with the order of the Appeal Committee.

- 9.4 If, before the appeal has been determined, the defendant by notice in writing to the CEO withdraws his notice of appeal, the order of the Disciplinary Tribunal shall take effect at the end of the period of 14 days from the date of the notice of withdrawal. In such a case, any fines and/or costs which would have been due for payment before the end of that period if there had been no appeal [as set out in regulations 9.2(c)] shall become due at the end of that period.
- 9.5 The Tribunal Secretary shall as soon as practicable notify the complainant (where there is one) in writing of the decision of the Disciplinary Tribunal and any order made against the defendant.

## 10. Publication of Decision

- 10.1 Subject to regulations 10.2, 10.3 and 10.4, where the Disciplinary Tribunal makes any finding and order, it shall direct the CEO to publish, as soon as practicable, a record of its decision. Unless the Tribunal in any particular case otherwise directs, a record of its decision shall be published in the Institute's journal and on AICB website and shall:
- (a) state the name of the defendant;
  - (b) describe the finding of the Disciplinary Tribunal and the order or orders made against the defendant; and
  - (c) the reasons for the Disciplinary Tribunal's decision.

The publication need not include the name of any other person or body concerned in the complaint.

- 10.2 If the Disciplinary Tribunal concludes that, in its opinion, there are exceptional circumstances, the name of the defendant may be omitted from the publication under regulation 10.1. In this respect, embarrassment or detriment to future livelihood, of themselves, would not ordinarily be considered as exceptional circumstances.
- 10.3 Where the Disciplinary Tribunal makes an order that no further action be taken under regulation 8.3 or dismisses a formal complaint, it shall cause a record of its decision to be published only if the defendant so requests. If such a request is received, the Disciplinary Tribunal shall direct the CEO to publish, as soon as practicable, a record of its decision in the Institute's journal and on AICB website which shall:
- (a) state the name of the defendant unless the Disciplinary Tribunal considers that there exist exceptional circumstances as set out in regulation 10.2 which justify the omission of the name;
  - (b) describe the finding of the Disciplinary Tribunal with respect to the complaint; and
  - (c) state the decision of the Disciplinary Tribunal and the reasons for its decision.
- 10.4 The Disciplinary Tribunal shall not cause a record of its decision to be published as set out in regulation 10.1 until the period allowed for giving notice of appeal against a finding or order of the Disciplinary Tribunal under Bye-Law 60 has expired. Where a notice of appeal is given in accordance with Bye-Law 60, no record of the Disciplinary Tribunal's decision shall be published unless the appeal is subsequently abandoned, but a record of the Appeal Tribunal's decision on the appeal shall be so published.

## 11. Service of Notices and Documents

- 11.1 Any notice or other document required to be served on the defendant under these regulations may be sent by registered post or courier to his address as entered in the Register of Members or which has been notified by him in writing to the Institute, or by email as provided in regulation 11.4.
- 11.2 Where a notice or document is sent:
- (a) by post or courier, service shall be deemed to have effected within 48 hours after it is despatched; and
  - (b) by email, service shall be deemed to have effected within 24 hours after it is sent.
- 11.3 The defendant may serve any notice or document on the CEO or the Disciplinary Tribunal by sending the notice or documents by pre-paid registered post or courier to the CEO or the Tribunal Secretary, as the case may be, at the office of the Institute, or by email as provided in regulation 11.5.
- 11.4 A notice or other document required to be served on the defendant may be sent by email provided the defendant has previously indicated in writing to the CEO or the Tribunal Secretary, as the case may be, that he is willing to accept service by email and has provided his email address to the CEO or the Tribunal Secretary.
- 11.5 The CEO and the Disciplinary Tribunal are willing to accept service of any notice or document by email to the email address specified in the CEO's or the Tribunal's communication to the defendant.