



ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD

THE ACCOUNTANCY REGULATIONS

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ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD
SCHEME REGULATIONS

Interpretation

1. These Regulations shall be interpreted and applied subject to and in accordance with the Scheme adopted by the Accountancy Investigation and Discipline Board (now the Accountancy and Actuarial Discipline Board) (the Board) on 13 May 2004 with such amendment or amendments as may from time to time be made thereto (the "Scheme"). In these Regulations "partner" means a partner, member or director in a Member Firm, however that Firm may be constituted.

Effective Date

2. These Regulations, first effective on 13 May 2004, as amended from time to time, shall apply to all investigations and disciplinary proceedings under the Scheme.

Designation of a partner by his Member Firm

3. When a Member Firm:
 - (a) has an obligation to give oral information, explanation or evidence in terms of paragraph 12 of the Scheme; or
 - (b) has a right under paragraph 6(8) , 6(11), or 9(10) of the Scheme which it exercises ;

that obligation shall be performed by and that right may be exercised by a partner designated by such Member Firm. If, for the purposes of (a) above, the Member Firm fails to designate a partner, the Executive Counsel or, where a Tribunal exists, the Tribunal may do so. For the avoidance of doubt, a designated partner is not a Representative for the purposes of the Scheme.

Identification of those under investigation

4. The notice in writing given by the Board to a Participant under paragraph 5(5) or 5(9) of the Scheme shall, to the extent that it is known, identify each Member or Member Firm under investigation .

Notices

5. (a) All notices and other communications required by the Scheme or these Regulations to be made or given to a Member or Member Firm shall be delivered personally to the Member or left at his last known registered address or delivered to a partner in the Member Firm or sent by facsimile or by post:
 - (i) in the case of a Member in practice, subject to paragraph (f) below, to his principal place of business and in the case of a Member not in practice to the address last notified by him to the Participant to which he belongs as his address for communications; and
 - (ii) in the case of a Member Firm, subject to paragraphs (d) to (f) below, to the senior Member partner or equivalent in the case of a partnership or to the managing director or equivalent in the case of a body corporate at its present or last known principal place of business.
- (b) A notice or other communication sent by post shall be given or made by properly addressing and posting a letter containing the same by recorded delivery post. A notice sent by facsimile shall be deemed to have been effected by proof that the facsimile was sent to the correct number.
- (c) The accidental omission to send or deliver a notice or other communication to, or the non-receipt of a notice or other communication by, a Member or Member Firm entitled to receive the same pursuant to the Scheme or these Regulations

shall not invalidate any investigation, appeal, disciplinary or other proceedings as the case may be to which such notice or other communication relates.

- (d) If a Member Firm so requests in writing, all notices and communications directed to that Member Firm may thereafter be addressed to a partner who is a Member designated by such Member Firm to receive them on behalf of the Member Firm.
- (e) If a Member Firm ceases to be a Member Firm, discontinues its business or otherwise ceases to exist, the Executive Counsel or a Tribunal (subject to prior notice to all Members who were partners at the material time in such Member Firm as far as is practical) may designate one of such Members to receive on behalf of all of them, all relevant notices or other communications issued by the Executive Counsel or such Tribunal.
- (f) If a Member or Member Firm so requests in writing, all notices and communications directed to that Member or Member Firm may thereafter be addressed to his or its legal adviser.

Budgets and authority for expenditure

- 6. The Board shall set budgets for all matters related to an investigation, disciplinary proceedings and appeals, as the case may be, including for the remuneration of tribunal members and the relevant travel and subsistence costs of persons connected with any case. For an investigation, the Executive Counsel shall put forward to the Board in writing his recommendation for the budget, following receipt of notice pursuant to paragraph 6(4) of the Scheme. The Board may in its absolute discretion amend an approved budget to such extent as it sees fit.
- 7. The Executive Counsel may, within the budget set by the Board, authorise all disbursements incurred by him in connection with an investigation, disciplinary proceedings or an appeal. The Board shall pay, or provide for the payment of, all disbursements properly incurred and accounted for by the Executive Counsel in accordance with this Regulation.

8. The Convener may from time to time be authorised by the Board:

- (a) to engage any person whose services may be required to assist the Convener;
- (b) within such limits as may be prescribed by the Board, to authorise the remuneration of any person referred to in paragraph (a) of this Regulation and authorise other disbursements properly incurred by the Convener in the performance of his duties under the Scheme; and
- (c) to take any other action which the Convener may consider necessary or desirable for the purpose of performing his duties under the Scheme.

The Board shall pay, or provide for the payment of, all disbursements properly incurred and accounted for by the Convener with the authority of the Board.

9. A Tribunal may from time to time be authorised by the Board:

- (a) to engage any person whose services may be required to assist the Tribunal;
- (b) within such limits as may be prescribed by the Board, to authorise the remuneration of any person referred to in paragraph (a) of this Regulation and authorise other disbursements properly incurred by the Tribunal in the conduct of the hearing or appeal (as the case may be); and
- (c) to take any other action which the Tribunal may consider necessary or desirable for the purpose of the hearing or appeal (as the case may be).

The Board shall pay, or provide for the payment of, all disbursements properly incurred and accounted for by the Tribunal with the authority of the Board.

The Executive Counsel Seeking information

10. (a) The Executive Counsel may call upon any Member or Member Firm (including any Member or Member Firm under investigation) to provide promptly to him or to any persons authorised by him, such information as the Executive Counsel considers necessary for the purposes of a preliminary enquiry or an investigation and to co-operate in any other manner required by paragraph 12 of the Scheme.
- (b) The Executive Counsel shall receive from any Member or Member Firm under preliminary enquiry or an investigation or subject to disciplinary proceedings, any information which may be tendered to the Executive Counsel and which, in the opinion of the Executive Counsel, may be material to a preliminary enquiry or an investigation or disciplinary proceedings.
- (c) The Executive Counsel may request or receive from any other person any information which may be material to a preliminary enquiry or an investigation or disciplinary proceedings.
- (d) Information given under paragraph (a) or (c) of this Regulation shall be provided orally and/or in writing as the Executive Counsel shall decide.

Executive Counsel's findings and proposals for action

11. A Formal Complaint delivered to the Board pursuant to paragraph 6(9) of the Scheme shall include or be accompanied by a summary of those facts and circumstances on which the Formal Complaint is based, specifying the manner in which the Executive Counsel alleges that the Member or Member Firm has been guilty of an act or acts of misconduct.
12. If admissions are made by a Member or Member Firm under paragraph 6(11) of the Scheme, the Executive Counsel shall inform the Member or Member Firm of the provisions of paragraphs 6(11) and 6(12) in relation to such admissions.

Tribunals

- 13 (1) A person appointed to the Panel in accordance with paragraph 9 of the Scheme
- (i) may be remunerated on such terms as the Board shall determine from time to time; and
 - (ii) shall, immediately following appointment, provide to the Board a written undertaking that he will not seek or accept appointment as an officer, employee, or member of the governing body of a Participant for the duration of his membership of the Panel or of his participation in a Tribunal (whichever is later).
- (2) A retiring member of the Panel shall be eligible for re-appointment for a further period of three years.
- (3) The Board may appoint a Secretary to each Tribunal, to administer the Tribunal in accordance with the Scheme, the Regulations and the directions of the Tribunal. He may provide information to the Tribunal on procedural matters. He shall not retire with the Tribunal when it deliberates.
- (4) A Tribunal member shall remain on the Tribunal notwithstanding that his term on the Panel has expired provided that his term has not ceased pursuant to regulation 13(5).
- (5) A person's appointment to the Panel shall cease immediately on accepting an appointment contrary to regulation 13(1)(ii), on being declared bankrupt, on being convicted of a relevant criminal act as defined in regulation 13(6), on being deemed by a qualified medical practitioner to be of unsound mind, or on being excluded as a Member or having ceased to be a Member as a result of bankruptcy of one or more AADB Participants.
- (6) Relevant criminal act shall mean a criminal act other than one which in the opinion of the Convener has no material relevance to his fitness to be a member of the Panel whether or not the criminal act was committed and/or the conviction was secured in England and Wales, Scotland, Northern Ireland or the Republic of Ireland.

14. The Board shall deliver to the Tribunal appointed in terms of paragraph 7(2) or 8(7)(ii) of the Scheme a copy of the Formal Complaint or notice of appeal and any admissions made under paragraph 6(11) of the Scheme.

15. (a) As soon as practicable after its appointment the Tribunal shall give not less than six weeks' notice (or such lesser period as the Tribunal, Executive Counsel and Member or Member Firm shall agree) to the Member or Member Firm concerned and the Executive Counsel of the time and place appointed for the hearing of the Formal Complaint or appeal. Reasonable notice shall be given of any adjournment or deferment of the time appointed for the hearing or of the time appointed for any further hearing. Either party may seek an adjournment, on reasonable notice in writing being given to the Tribunal and the other party, and, if the Tribunal at its discretion consents, it shall order an adjournment.

- (b) The notice of hearing given under paragraph (a) of this Regulation shall also set out details of the procedure to be followed at any hearing and contain notice of the rights of the Member or Member Firm concerned to be legally represented, and to make representations and written submissions. The notice shall also be accompanied by a copy of the Scheme and Regulations.

Pre-Hearing Directions

16. (a) The pre-hearing directions provided for under paragraph 9(5) of the Scheme may include:
 - (i) Fixture of hearing dates.
 - (ii) The exclusion of the public (including the press) from the hearing in terms of paragraph 9(9) of the Scheme.
 - (iii) The disclosure of documents.
 - (iv) A requirement on any party to give particulars of any relevant matter and the form for such provision.

- (v) Requirements in respect of skeleton arguments or other submissions.
 - (vi) The form in which evidence is to be prepared and supplied for the hearing.
 - (vii) The use of expert witnesses.
 - (viii) The dates by which any directed action shall be taken.
 - (ix) Provisions for default in respect of directions.
- (b) Any party may apply for pre-hearing directions in writing to the Tribunal, with copies to the other parties.
 - (c) Where it is the intention of the Tribunal to dispose of an application for pre-hearing directions or otherwise to give such directions, the Tribunal shall give reasonable notice in writing to all parties and shall invite submissions in such form as the Tribunal shall direct.
 - (d) Oral argument shall not ordinarily be heard before pre-hearing directions are given.
 - (e) Pre-hearing directions shall be signed by the Chairman of the Tribunal and communicated to the parties.
 - (f) Pre-hearing directions shall continue to bind the parties notwithstanding that the composition of the Tribunal may change at or after the commencement of the hearing.
 - (g) Where any party fails to comply with any pre-hearing direction it shall be open to the Tribunal to make any further order or direction, including an order for the payment of costs, as may be just. Any such failure to comply shall be a fact to which the Tribunal may have regard at the hearing and the Tribunal may draw such inference from it as is justified.
 - (h) Nothing in this Regulation shall be taken to limit the powers of the Tribunal, and the Tribunal may revisit any question or matter notwithstanding that it has already been the subject of a pre-hearing direction.

- (i) Any hearing for pre-trial directions may take place before the Chairman of the Tribunal sitting alone.
- (j) Notwithstanding the above, the Chairman may at any time give such directions for the just and expeditious hearing of a Formal Complaint as he thinks fit.

Open Hearings

17. (1) The Tribunal shall give notice in whatever form it may direct publicising the date and place the hearing will be held, irrespective of whether it shall have decided in terms of paragraph 9(9) of the Scheme that the public (including the press) shall be excluded throughout all or part of a hearing, unless, in the opinion of the Tribunal, it would not be in the public interest to do so.
- (2) Notwithstanding that neither of the parties has made any submission for pre-hearing directions prior to the commencement of the hearing requesting that the public should be excluded from it, either may make such a submission, in accordance with paragraph 9(9) of the Scheme, at any time before the conclusion of the proceedings, but the parties shall not be entitled to have reheard any evidence which has already been heard in the presence of the public. Argument on such a submission shall be in private before the Tribunal. If a direction to exclude the public is made after the hearing has commenced in public, the Tribunal shall thereupon give notice in whatever form it directs of the exclusion.
- (3) A hearing is regarded as being conducted in public notwithstanding that no members of the public actually attend it. Notwithstanding that the public are excluded from a hearing by reason of the operation of paragraph 9(9) of the Scheme, any individual may be admitted to the hearing of a Formal Complaint by special direction of the Tribunal.
- (4) Where the respondent to a Formal Complaint requests that the hearing before the Tribunal shall be held in private and another respondent (or respondents) to a Formal Complaint or Complaints to be heard by the same Tribunal either

does not make or opposes such request, the Tribunal, when deciding whether or not to grant the request in accordance with paragraph 9(9) of the Scheme, shall have regard in particular to:

- (i) the views of all parties;
 - (ii) the feasibility and appropriateness of holding separate hearings of the Formal Complaint against those who have requested a hearing in private and those who have not; and
 - (iii) any additional cost likely to be involved by holding separate hearings as aforesaid.
- (5) Notwithstanding a decision that the whole or any part of the hearing shall be in public, the Tribunal may at any time sit in private in accordance with paragraph 9(9) of the Scheme.
- (6) The Tribunal shall normally allow to be present at any session of a hearing:
- (a) the Executive Counsel and any person appearing on his behalf;
 - (b) any Member subject to disciplinary proceedings before the Tribunal;
 - (c) a Representative of any such Member or Member Firm;
 - (d) a solicitor or counsel accompanying any other witness giving evidence before the Tribunal. In respect of any such other witness such solicitor or counsel is permitted to be present for the purpose only of advising the witness he is accompanying;
 - (e) any other person whom the Tribunal in its discretion allows to be present.

Conduct of Disciplinary Proceedings and Appeals

18. The Formal Complaint made against a Member or Member Firm may only be amended or supplemented with the consent of the Disciplinary Tribunal. No objection shall be upheld to any technical fault in the Formal Complaint or the proceedings of the Tribunal provided that in accordance with natural justice the proceedings are fair to the Member or Member Firm.

19.
 - (a) Not later than 4 weeks before the commencement of the hearing of a Formal Complaint, the Executive Counsel shall submit to the Tribunal and the Member or Member Firm concerned a list of the names and addresses of the witnesses he proposes to call together with summaries of their evidence and copies of any documents to be adduced.

 - (b) Not later than 2 weeks before the commencement of a hearing the Member or Member Firm concerned shall submit to the Tribunal and the Executive Counsel a list of the names and addresses of the witnesses he or it proposes to call together with summaries of their evidence and copies of any documents to be adduced.

 - (c) Neither party shall, without the consent of the other or the permission of the Tribunal, call any witness or adduce any document other than those submitted in terms of (a) and (b) of this Regulation.

 - (d) The Member or Member Firm concerned shall be entitled to make submissions to the Tribunal in writing and may elect to submit all or any part of his or its evidence in writing, but nevertheless may be required to appear before the Tribunal.

20. All written submissions shall be delivered to the Tribunal seven days prior to the date fixed for the commencement of the hearing, subject to waiver of this requirement by the Tribunal, with a copy to the Executive Counsel. On receipt of such submissions, copies thereof shall be forwarded to any other Members or Member Firms concerned by the Tribunal.

21. Subject to the Scheme and to these Regulations the conduct and proceedings of the hearing before the Disciplinary Tribunal shall be determined by the Chairman of the Tribunal in consultation with the other members of the Disciplinary Tribunal. The Disciplinary Tribunal may prohibit the production of evidence and calling of witnesses not notified in the pre-hearing disclosure procedure or notified but with insufficient detail for the nature of the evidence concerned to be readily understood, unless it considers that there were good grounds for such non-disclosure or lack of detail. The Disciplinary Tribunal may at its discretion extend the time periods provided for in Regulations 19 and 20.
22. The Tribunal, whether the hearing shall be in public or private, shall arrange for a record to be made of its proceedings and of oral evidence given by witnesses during the hearing, such record to be an electronic recording and a written contemporaneous transcript.
23. The order of the proceedings for the hearing of a Formal Complaint shall, unless the Disciplinary Tribunal otherwise directs, be as follows:
 - (a) submissions by or on behalf of the Executive Counsel;
 - (b) hearing of any witnesses called by or on behalf of the Executive Counsel, followed by cross-examination of such witnesses by or on behalf of the Member/Member Firm concerned, and re-examination by the Executive Counsel of a witness who has been cross-examined;
 - (c) submissions by the Member/Member Firm concerned;
 - (d) hearing of any witnesses called by or on behalf of the Member/Member Firm concerned, followed by cross-examination of such witnesses by or on behalf of the Executive Counsel, and re-examination by the Member/Member Firm of a witness who has been cross-examined;
 - (e) closing submissions by or on behalf of the Executive Counsel;

- (f) closing submissions by the Member/Member Firm concerned.

The members of the Tribunal may ask questions of any witness or other person appearing before the Tribunal at any time.

A Representative may act on behalf of a Member or Member Firm under this Regulation.

The Disciplinary Tribunal may permit any witness to be recalled.

- 24. Subject to the Scheme and to these Regulations, the conduct and proceedings of an appeal notified under paragraph 8(1) of the Scheme shall be determined by the Chairman of the Appeal Tribunal in consultation with the other members of the Tribunal.
- 25. The order of the proceedings on an appeal shall, unless the Appeal Tribunal otherwise directs, be as follows:-
 - (a) submissions by the Appellant;
 - (b) if permitted by the Appeal Tribunal under Regulation 24, the re-hearing of any witness called before the Disciplinary Tribunal and/or the receipt of fresh evidence followed by cross-examination and re-examination of such witnesses by or on behalf of the Executive Counsel or the Appellant, as the case may be;
 - (c) submissions by or on behalf of the Executive Counsel, including the submission of evidence and the calling of any witnesses; and
 - (d) if requested by the Appellant, closing submissions by the Appellant.

A Representative may act on behalf of an Appellant under this Regulation.

- 26. Any request to the Appeal Tribunal to hear any witness (which shall be only in respect of new evidence) shall be in writing and shall be accompanied by a statement in writing of

the evidence proposed to be given by such witness. If the Appeal Tribunal accedes to the request, the party to the proceedings so requesting shall be responsible for arranging for the attendance of the witness before the Appeal Tribunal, at such time and place as the Appeal Tribunal may appoint.

27. Except as provided in these Regulations, no person who attends a hearing of a Tribunal shall be entitled to address the Tribunal or to ask questions of any witness.
28. The Disciplinary or Appeal Tribunal shall, at an appropriate stage in the proceedings but before making, affirming or amending an order or orders under paragraphs 7(7) or 8(11)(i) of the Scheme, invite representations from the Member or Member Firm concerned in respect of the possible orders that the Tribunal may make, affirm or amend under Appendix 1 to the Scheme. Such representations may be made orally (which may be made by a Representative) and/or in writing. The Member or Member Firm concerned may call witnesses in support of their representations. The representations shall not be directed to the validity of the finding of the Tribunal. The Executive Counsel shall inform the Tribunal of any previous findings made either under this Scheme or by a disciplinary body of a Participant against the Member or Member Firm.
29. If, having reached an adverse finding under paragraph 7(6)(i) of the Scheme, the Tribunal is considering the making of an order in respect of costs under paragraph 7(7)(ii) of the Scheme or on the abandonment of an appeal or at the conclusion of the hearing of the appeal the Appeal Tribunal is considering the making of an order in respect of the costs of the appeal under paragraph 8(11)(iii) of the Scheme, it shall, before making such order, inform such Member or Member Firm or Appellant in writing of the finding and give to the Member or Member Firm reasonable opportunity to make representations in respect of the costs orally (which may be made by a Representative) and/or in writing as the Tribunal may direct.
30. If, having dismissed the Formal Complaint under paragraph 7(6)(ii) of the Scheme, the Tribunal is considering the making of an order in respect of costs under paragraph 7(8) or if, having rescinded the Adverse Finding of the Disciplinary Tribunal, the Appeal Tribunal is considering the making of an order in respect of costs under paragraph 8(12)

of the Scheme, it shall, before making such order, inform the Executive Counsel in writing of the finding and give to the Executive Counsel reasonable opportunity to make representations in respect of the costs orally and/or in writing as the Tribunal may direct.

31. If, after notice has been given under paragraph 8(1) of the Scheme, neither an Appellant nor his Representative appears at the hearing of the appeal, the Appeal Tribunal may proceed with the hearing or may adjourn the hearing.
32. If there is more than one appeal from a Disciplinary Tribunal, all such appeals shall, unless the Appeal Tribunal otherwise decides, be heard together.
33. At any hearing in private, the Tribunal shall normally allow to be present:
 - (a) any Member subject to disciplinary proceedings or an appeal before the Tribunal;
 - (b) a Representative on behalf of a Member or Member Firm subject to disciplinary proceedings or an appeal;
 - (c) the Executive Counsel and any person appearing on his behalf;
 - (d) a solicitor or counsel accompanying a witness; and
 - (e) any other person whom the Tribunal in its discretion allows to be present.
34. For the purpose of receiving evidence under paragraphs 8(9) and 8(10) of the Scheme, the Appeal Tribunal may, as it thinks fit, receive any new evidence in writing and/or request that a witness attend a hearing.

Transcripts and copies of evidence and representations

35. If so requested by any witness who has given oral evidence to it, the Tribunal shall provide that witness without charge with a transcript of his evidence.

- 36 The Tribunal shall provide a transcript of the proceedings and copies of any documentary evidence given before it to the Executive Counsel and if so requested, to a Member or Member Firm who is a party to the proceedings or to any related proceedings under the Scheme.

Report(s) by the Tribunal

- 37 (a) The signed report shall record the conclusions reached by the Tribunal on the Formal Complaint or appeal and the reasons for any findings under paragraph 7(6) or 8(11) of the Scheme against the Member or Member Firm. A Member Firm shall be identified by the name (or names) under which business was carried on during the period relevant to the finding. The terms of the report shall be agreed by each of the Tribunal members. In the absence of unanimity amongst the members of the Tribunal on the evidence, any inferences to be taken from the evidence or on the conclusions, findings or orders of the Tribunal, dissenting views shall be recorded. Otherwise the report shall state that the Tribunal reached unanimous agreement on the conclusions, findings and orders.
- (b) Any report by the Tribunal under paragraph 7(10) or 8(14) of the Scheme is confidential, unless and until it or parts of it are published under paragraph 7(12) or 8(17) of the Scheme, and prior to such publication no part of it shall be disclosed by the person to whom it is given except for the purposes of the proceedings to his legal advisers and if he is a partner in, or employed by, a Member Firm to partners in that firm.

Retention of documents

38. The record of proceedings referred to in Regulation 22 and other documents relating to such proceedings shall be kept by the Board. All documents relating to investigations, disciplinary proceedings and appeals under the Scheme shall be retained by the Board for not less than six years from the date of conclusion of the investigation, disciplinary proceedings or appeal, as the case may be. All documents not retained shall be destroyed.

Confidentiality of Information

39. (a) Subject to sub-paragraphs (b), (c) and (d) below, information, which comes to the knowledge of the Executive Counsel, the Board, a Disciplinary Tribunal, an Appeal Tribunal or a Member or Member firm in the course of a preliminary enquiry or an investigation or disciplinary proceedings under the Scheme may only be used and disclosed
- (i) in the course of and for the purposes of a preliminary enquiry, an investigation or disciplinary proceedings ;
 - (ii) at a public hearing;
 - (iii) in any notice, report or finding published pursuant to the terms of the Scheme; or
 - (iv) as required by law;
- and shall otherwise be treated as confidential.
- (b) Any disclosure of such information in accordance with regulation 39(a) (i) shall be on terms that it is confidential and no such information shall be disclosed (directly or indirectly) by the person provided with it except:
- (i) to his legal advisers for the purposes of obtaining advice in relation to the preliminary enquiry, investigation or disciplinary proceedings;
 - (ii) if he is a partner in or director of, or employed by, a Member Firm, to the partners in or directors of that firm;
 - (iii) to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the investigation or disciplinary proceedings;
 - (iv) for the purposes of a public hearing; and
 - (v) as required by law.

- (c) Such information may be disclosed by the Executive Counsel or the Board to any regulatory body, any investigation or prosecuting authority, or to any person, body or authority carrying out any role similar to that of regulation, investigation or prosecution in any part of the world.

- (d) This regulation shall not apply to any information which is obtained by the Executive Counsel, the Board, the Disciplinary Tribunal or the Appeal Tribunal which is or comes to be in the public domain or is disclosed at a public hearing or in relation to which confidentiality had been waived.



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