

Asian Institute of Chartered Bankers

Appeal Regulations

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CONTENTS	
1.	Commencement and Purpose
2.	Interpretation
3.	Right of Appeal
4.	Notice of Appeal
5.	Appeal Committee
6.	Hearing of Appeal by Appeal Committee
7.	Notice of Hearing and Documents
8.	Postponement and Adjournment of Hearing
9.	Conduct of the Hearing
10.	Orders of Appeal Committee
11.	Notification of Decision
12.	Fitness Consideration
13.	Publication of Decision
14.	Service of Notices and Documents

1. Commencement and Purpose

- 1.1 These regulations were made by the Council under Article 41(1) of the Institute's Constitution and shall come into effect on 27.09.2017.
- 1.2 These regulations set out the procedures for the hearing by an Appeal Committee of any appeal by an Individual Member against a finding or order of a Disciplinary Committee. In these regulations, any reference to "Member" means Individual Member.

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 Constitution and bye-laws, and:

Appeal Committee means an Appeal Committee appointed by the Disciplinary Panel Chairman under bye-law 63(2).

Appellant means a defendant who appeals against a finding or order of a Disciplinary Committee.

Bye-laws means the bye-laws made or as amended from time to time by the Council under Article 85 of the Constitution.

complaint has the meaning given in bye-law 49(1).

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

Constitution means the Constitution of the Institute, as amended from time to time.

Council means the Council of the Institute.

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

Disciplinary Committee means a Disciplinary Committee appointed by the Disciplinary Panel Chairman under bye-law 58(1).

Disciplinary Panel means the Disciplinary Panel appointed by the Council under bye-law 57.

formal complaint means a complaint referred by the Chief Executive Officer to a Disciplinary Committee under bye-law 53(6).

Institute means the Asian Institute of Chartered Bankers.

legal assessor means an advocate and solicitor appointed to advise the Appeal Committee.

parties mean the presenting officer and the appellant (including the appellant's representative).

presenting officer means the person appointed by the Institute to represent the Institute at any hearing before an Appeal Committee.

Professional Conduct Officer means the staff of the Institute charged with the responsibility of considering and investigating complaints and performing any other functions as may be delegated by the Chief Executive Officer.

3. Right of Appeal

- 3.1 A defendant who wishes to appeal against a finding and/or order of a Disciplinary Committee may, in accordance with bye-law 62(1), give notice of appeal in writing to the Chief Executive Officer ("CEO") within 14 days from the date of the notice of such finding and/or order.

- 3.2 In accordance with bye-law 62(2), an appeal may only be made on one or more of the following grounds:
- (a) the Disciplinary Committee made an error of fact or law, or in the interpretation of bye-laws or regulations of the Institute;
 - (b) there was procedural irregularity or unfairness in the proceedings of the Disciplinary Committee; and
 - (c) one or more of the Disciplinary Committee's orders is disproportionate and/or unreasonable in all the circumstances of the case.
- 3.3 No appeal shall lie solely in respect of a decision under bye-law 69 in relation to publication of the decision and orders of the Disciplinary Committee

4. Notice of Appeal

- 4.1 The notice of appeal under regulation 3.1 shall state:
- (a) whether the appeal is against one or more of the Disciplinary Committee's findings and orders or against one or more of its orders only. An appeal against an order may be made conditionally upon an appeal against a finding of the Disciplinary Committee failing;
 - (b) the grounds on which the appeal is based and the reasons in support of each ground of appeal; and
 - (c) whether the appellant intends to attend and/or be represented at the hearing of the appeal.
- 4.2 The grounds of appeal stated in the notice under regulation 4.1 shall not be amended thereafter except with the leave of the Appeal Committee appointed under regulation 5.1 to hear the appeal.
- 4.3 The CEO shall as soon as practicable provide a copy of the notice of appeal under regulation 4.1 to the Disciplinary Panel Chairman.
- 4.4 An appellant may withdraw a notice of appeal by serving on the CEO notice in writing to that effect.

5. Appeal Committee

- 5.1 On receipt of a copy of the notice of appeal from the CEO, the Disciplinary Panel Chairman shall, in accordance with bye-laws 63(2) to 63(5), forthwith appoint from among the members of the Disciplinary Panel an Appeal Committee to hear the appeal as follows:
- (a) The Appeal Committee shall consist of not less than three members including a chairman, of whom a majority are Individual Members of the Institute and at least one is a lay person.
 - (b) The Disciplinary Panel Chairman may be a member of the Appeal Committee, in which case he shall be the chairman of the Committee.
 - (c) No member of the Disciplinary Panel shall be appointed to the Appeal Committee if he was a member of the Disciplinary Committee which determined the case at first instance.
- 5.2 The quorum for the hearing of any appeal shall be three members, of whom at least one is a lay person.

- 5.3 In the event that any one member of the Appeal Committee other than the chairman is unable to attend the hearing or any adjourned hearing of the appeal on any particular day of the hearing:
- (a) the remaining members, provided the quorum as set out in regulation 5.2 is present, may proceed or continue with the hearing; but if the appellant or his representative is present, they shall do so only if the appellant or his representative consents;
 - (b) if the remaining members of the Committee do not proceed or continue with the hearing, the hearing shall be adjourned to another date.
- 5.4 In the event that any one member of the Appeal Committee other than the chairman is, during the course of the hearing, unable to continue to attend the hearing, the Chairman shall adjourn the hearing and inform the Disciplinary Panel Chairman who shall thereupon appoint a new Appeal Committee member to replace the Appeal Committee member who is unable to continue to attend the hearing.
- 5.5 Upon the Appeal Committee being convened and at any time before the commencement of the hearing of the appeal, each member of the Appeal Committee must declare any interest in the subject matter of the complaint or with the appellant or the complainant. Where any member of the Appeal Committee has such an interest, the Chairman of the Appeal Committee shall, if necessary, postpone and/or adjourn the hearing and inform the Disciplinary Panel Chairman, who shall thereupon appoint a new Appeal Committee member to replace the Appeal Committee member with such an interest.
- 5.6 If at any time during the course of the hearing of the appeal, the chairman of the Appeal Committee is of the opinion that it is for any reason impracticable for the Committee to complete the hearing, he shall so inform the Disciplinary Panel Chairman, who shall thereupon appoint a new Appeal Committee in accordance with regulation 5.1 to re-hear the appeal.
- 5.7 Where a new Appeal Committee is appointed pursuant to regulation 5.6 or regulation 9.3(a), no member of the previous Appeal Committee may be appointed to the new Committee.
- 5.8 In most cases, it is anticipated that the Appeal Committee will reach a decision via consensus, including on the question of whether an appeal should be allowed and the orders to be made. Where this is not possible, the Chairman may call for a vote and any decision of the Committee shall be taken by simple majority. The Chairman shall, in the case of an equality of votes, have a second or casting vote.
- 5.9 The CEO shall appoint a relevantly experienced staff of the Institute to act as Secretary of the Appeal Committee (“Committee Secretary”). The Committee Secretary may be the same person who functioned as Committee Secretary to the Disciplinary Committee.

6. Hearing of Appeal by Appeal Committee

- 6.1 The Appeal Committee shall, as soon as practicable after its appointment, fix the date and the time for the hearing of the appeal. A notice of the hearing shall be sent to the parties in accordance with regulation 7..
- 6.2 The chairman of the Disciplinary Committee shall provide the Appeal Committee with the written report of the decision of the Disciplinary Committee and a complete record of the disciplinary hearing proceedings before the Disciplinary Committee.

- 6.3 The Appeal Committee shall give the appellant the opportunity of being heard before it. The appellant may appear before the Appeal Committee in person or be represented by an advocate or solicitor or by an Individual Member of the Institute.
- 6.4 The Institute shall be represented by the Professional Conduct Officer or an advocate or solicitor appointed by the Institute (“the presenting officer”) at the hearing of the appeal.
- 6.5 On any appeal, the Appeal Committee shall take into consideration the record of the evidence given before, and the documents produced to, the Disciplinary Committee at its hearing of the formal complaint.
- 6.6 The Appeal Committee may appoint an advocate or solicitor to act as legal assessor at the hearing of the appeal. The legal assessor shall:
- (a) act as advisor to the Appeal Committee on all procedural and legal matters;
 - (b) retire with the Appeal Committee when it goes into private deliberation; and
 - (c) carry out any other activity commensurate with the role of a legal assessor.
- The legal assessor shall not form part of the quorum of the Appeal Committee.
- 6.7 If the appellant does not attend or is not represented at the hearing, the Appeal Committee may, if it is satisfied that notice of the hearing including notice of postponed, adjourned or continued hearing has been duly served on the appellant in accordance regulation 7.1, proceed to hear the appeal in his absence.
- 6.8 The proceedings before the Appeal Committee shall be audio or video recorded and transcribed.
- 6.9 A written report of the decision of the Appeal Committee shall be prepared by the chairman of the Appeal Committee setting out:
- (a) details of the appeal including:
 - (i) the findings and/or orders made by the Disciplinary Committee against which the appeal is made;
 - (ii) the grounds of appeal and the reasons in support of each ground of appeal;
 - (b) the decision of the Appeal Committee including the reasons for such decision, and any orders made by the Committee.
- 6.10 The Committee Secretary shall be responsible to maintain a proper and complete record of the appeal hearing before the Appeal Committee.

7. Notice of Hearing and Documents

- 7.1 The Appeal Committee shall give, or shall instruct the Committee Secretary to give, a written notice of the hearing to the appellant no later than 28 days before the date of the hearing. The notice shall state:
- (a) the date, time and place fixed for the hearing;
 - (b) the right to attend the hearing and be represented by an advocate or solicitor or by an Individual Member of the Institute;
 - (c) the right to be heard before the Appeal Committee; and

- (d) the power of the Appeal Committee to proceed with the hearing in the absence of the appellant.
- 7.2 The notice of hearing shall also specify that the appellant shall no later than 14 days before the date of the hearing provide to the Committee Secretary:
- (a) a notice in writing as to whether he will attend and/or be represented at the hearing;
 - (b) a copy of such written submissions which he intends to rely on at the hearing.
- 7.3 The Appeal Committee shall send, or shall instruct the Committee Secretary to send, to the presenting officer no later than 28 days before the date of the hearing:
- (a) a copy of the notice of the hearing as required by regulation 7.1 accompanied by:
 - (i) a copy of the notice of appeal;
 - (ii) a copy of the written report of the Disciplinary Committee;
 - (b) a notification that the presenting officer shall no later than 14 days before the date of the hearing provide to the Committee Secretary:
 - (i) a copy of such written submissions which will be relied upon at the hearing.
- 7.4 The Committee Secretary shall as soon as practicable but not later than 7 days before the date of the hearing:
- (a) send a copy of the submissions provided under regulation 7.2(b) to the presenting officer;
 - (b) send a copy of the submissions provided under regulation 7.3(b) to the appellant.
- 7.5 Failure of the parties to comply with regulation 7.2 or 7.3(b) (as applicable) shall not preclude the Appeal Committee from proceeding to hear the appeal on the appointed date.

8. Postponement and Adjournment of Hearing

- 8.1 The chairman of the Appeal Committee may, at his discretion or upon the application of either party, postpone a hearing prior to its commencement or adjourn a hearing at any stage during the course of the hearing if he is of the view that it is justified in all the circumstances.
- 8.2 The chairman of the Appeal Committee may agree to or direct that the hearing be postponed or adjourned where:
- (a) the subject matter of the appeal is currently before a court of law, regulatory tribunal or professional body; or
 - (b) the appellant may be too ill to participate in the appeal proceedings but the appellant does not wish to withdraw his appeal.
- 8.3 If the hearing of an appeal is postponed or adjourned under regulation 8.2(a), the hearing of the appeal shall be reconvened upon the conclusion of the legal processes.
- 8.4. The appellant may, either before or during the course of the hearing of an appeal, by written notice to the Appeal Committee requests that the hearing be postponed or adjourned on the grounds that he is too ill to participate in the proceedings. In such a case, the appellant shall be required within seven days of such notice to submit a current medical report to support his request, including a prognosis and indication as to when, if at all, he will be well enough to participate in the appeal proceedings.
- 8.5. If pursuant to regulation 8.4, the chairman of the Appeal Committee is satisfied that the appellant is unfit to participate in the proceedings or if the appellant is incapacitated, the

chairman may postpone or adjourn the hearing of the appeal until such time when the appellant is fit to participate in the proceedings.

- 8.6. The Committee Secretary shall provide notice of the date, time and place of the postponed or adjourned hearing to the defendant and the presenting officer.

9. Conduct of the Hearing

- 9.1. Subject to the bye-laws and these regulations, the Appeal Committee shall conduct the hearing in such manner as it considers appropriate having regard to the interests of justice and fairness to the parties.

- 9.2. The Appeal Committee may refer to and rely on the finding of fact of:
- (i) any court of competent jurisdiction in Malaysia or elsewhere;
 - (ii) any statutory authority or regulatory body; or
 - (iii) any professional body,

as conclusive evidence of the fact so found, unless the finding is being appealed against in which event the chairman of the Appeal Committee may act in accordance with regulation 8.2(a).

- 9.3. The burden of proof rests with the appellant who shall satisfy the Appeal Committee that the grounds of appeal are made out.

- 9.4. At the commencement of the hearing, the chairman shall introduce the members of the Appeal Committee and explain the role of the legal assessor (if one is appointed) and the Committee Secretary and the procedure which will be followed. The chairman shall then ask the defendant and the presenting officer if they have an objection to any member of the Appeal Committee appointed to hear the complaint or the legal assessor and if so, to set out their grounds for that concern:

a) If the Appeal Committee considers that the objection is valid, the chairman shall adjourn the hearing and inform the Disciplinary Panel Chairman of the objection. The Disciplinary Panel Chairman shall thereupon appoint a new Appeal Committee member to replace the Appeal Committee member against which such an objection was taken or appoint a new Appeal Committee in accordance with regulation 5.1 to hear the complaint.

b) if the Appeal Committee considers that the objection is not valid, the hearing will proceed before the Appeal Committee as originally constituted.

- 9.5. The chairman shall then invite the appellant or his representative (hereinafter referred to as appellant) to make oral submissions.

- 9.6. The chairman shall then invite the presenting officer to make his oral submissions.

- 9.7. The appellant shall then be invited to respond.

- 9.8. Members of the Appeal Committee may at any time ask questions of the presenting officer or the appellant.

- 9.9. At the conclusion of submissions, the Appeal Committee will retire to consider its decision on the appeal. To the extent that the appeal turns on matters of fact, the standard of proof to be applied by the Committee shall be the balance of probabilities.

- 9.10 The Appeal Committee may affirm, vary or rescind the finding(s) and/or order(s) of the Disciplinary Committee as set out in regulation 10.1. The Appeal Committee will return on

the same day or on a day to be fixed to announce its decision in respect of the appeal, giving reasons for its decision.

- 9.11 The Chairman will advise that a written notice of the decision of the Appeal Committee shall be sent to the appellant within 14 days.
- 9.12 No objection shall be upheld to any technical fault in the procedure adopted by the Appeal Committee provided that the proceedings are fair and the relevant bye-laws and regulations have been complied with.

10 Orders of Appeal Committee

- 10.1 The Appeal Committee may, in accordance with bye-law 65(2), do any one or more of the following:
 - (a) in the case of an appeal against one or more of the findings and one or more of the orders of the Disciplinary Committee:
 - (i) affirm, vary or rescind any finding of the Disciplinary Committee;
 - (ii) affirm, vary or rescind any order of the Disciplinary Committee;
 - (iii) substitute for any order of the Disciplinary Committee such other order which the Disciplinary Committee might have made on the formal complaint;
 - (b) in the case of an appeal against one or more of the orders, but not the findings, of the Disciplinary Committee:
 - (i) affirm, vary or rescind any order of the Disciplinary Committee;
 - (ii) substitute for any order of the Disciplinary Committee such other order which the Disciplinary Committee might have made on the formal complaint;
 - (c) include in any substituted order such terms and conditions, if any, as the Appeal Committee considers appropriate including, in the case of an order that a Member be excluded from membership, that no application for re-admission may be considered before the end of a specified period;
 - (d) in relation to any finding and/or order that has been rescinded, direct that the matter be re-heard by a new Disciplinary Committee appointed in accordance with bye-law 58(2).
- 10.2 There shall be no further right of appeal to the Institute from a decision of an Appeal Committee.

11 Notification of Decision

- 11.1 The Appeal Committee shall give, or shall instruct the Committee Secretary to give, written notice of the decision of the Committee, the reasons for its decision and of any order made to the appellant no later than 14 days after the hearing.
- 11.2 The notice under regulation 11.1 shall also set out:
 - (a) where any fine has been imposed, that such fine shall be paid within 14 days from the date of the order of the Appeal Committee unless a longer period for payment is allowed by the Appeal Committee; and
 - (b) where an order for exclusion or suspension from membership has been made, that the appellant shall return his certificate of membership to the CEO within 14 days from the date of the order of the Appeal Committee.

- 11.3 In accordance with bye-law 66(2), an order made by the Appeal Committee shall take effect from the date of the order unless the Committee directs that it shall take effect from some later date as shall be specified in the order.
- 11.4 The Appeal Committee shall give, or shall instruct the Committee Secretary to give, as soon as practicable written notice of the decision of the Committee, the reasons for the decision and of any order made, to the Disciplinary Panel Chairman and the CEO.
- 11.5 The Appeal Committee shall notify, or shall instruct the Committee Secretary to notify, the complainant in writing of the Committee's decision and of any order made against the appellant.

12 Publication of Decision

- 12.1 Where the Appeal Committee makes any finding or order including an order that no further action be taken or determines that a formal complaint has not been proved either in whole nor in part, the Appeal Committee may direct the CEO to publish, in the Institute's register of members and/or website its decision and order made in accordance with bye-law 69. The publication may:
- (a) state the name of the appellant;
 - (b) describe the decision of the Appeal Committee;
 - (c) describe the order(s) made against the appellant (if any); and
 - (d) the reasons for the Appeal Committee's decision.

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

13 Service of Notices and Documents

- 13.1 Any notice or other document required to be served on the appellant 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 13.5.
- 13.2 Any notice or other document required to be served on the complainant under these regulations may be sent to him by registered post or courier to the address notified by him in writing to the Institute, or by email as provided in regulation 13.5
- 13.3 The appellant or complainant may send any notice or document required to be served under these regulations by pre-paid registered post or courier to the CEO or the Committee Secretary (as the case may be) at the office of the Institute, or by email as provided in regulation 13.6.
- 13.4 Where a notice or document is sent pursuant to regulation 13.1, 13.2 or 13.3:
- (a) by post or courier, service shall be deemed to have effected on the day after the date it is despatched;
 - (b) by email, service shall be deemed to have effected on the day of its transmission.
- 13.5 A notice or other document required to be served on the appellant or complainant may be sent by email provided the appellant or complainant has previously indicated in writing to the CEO or Committee Secretary (as the case may be) that he is willing to accept service by email and has duly provided his email address.

13.6 The CEO and Committee Secretary are willing to accept service of any notice or document by email to the email address specified in their respective communication to the appellant or complainant.