

Asian Institute of Chartered Bankers

Disciplinary Regulations

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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 of any formal complaint against an Individual Member referred by the Chief Executive Officer to 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:

alleged breach means an occurrence of any one or more of the events described in bye-Law 47 in respect of which a formal complaint is made.

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

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 record means any previous disciplinary findings or orders whether made by a Disciplinary Committee or Appeal Committee, to which an Individual Member has been subject.

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 or solicitor appointed to advise the Disciplinary Committee.

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

presenting officer means the person appointed by the Institute to present the formal complaint before a Disciplinary 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. Disciplinary Committee

- 3.1 Upon receipt of a notification from the Chief Executive Officer of a prima facie case to answer against the Member concerned, the Disciplinary Panel Chairman, shall forthwith appoint a Disciplinary Committee from among the members of the Disciplinary Panel to hear the complaint in accordance with bye-laws 58(1) and 58(2). The Disciplinary Committee shall consist of not less than three members including a chairman, of whom majorities are Individual Members of the Institute and at least one is a lay person.
- 3.2 The quorum for a hearing of any formal complaint shall be three members, of whom at least one is a lay person.
- 3.3 In the event that any one member of the Disciplinary Committee other than the chairman is unable to attend the hearing or any adjourned hearing of the formal complaint on any particular date of the hearing:
 - (a) the remaining members, provided the quorum as set out in regulation 3.2 is present, may proceed or continue with the hearing; but 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 Committee do not proceed or continue with the hearing, the hearing shall be adjourned to another date.
- 3.4 In the event that any one member of the Disciplinary 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 Disciplinary Committee member to replace the Disciplinary Committee member who is unable to continue to attend the hearing.
- 3.5 Upon the Disciplinary Committee being convened and at any time before the commencement of the hearing of the formal complaint, each member of the Disciplinary Committee must declare any interest in the subject matter of the complaint or with the complainant or with the defendant. Where any member of the Disciplinary Committee has such an interest, the Chairman of the Disciplinary Committee shall, if necessary, postpone and/or adjourn the hearing and inform the Disciplinary Panel Chairman, who shall thereupon appoint a new Disciplinary Committee member to replace the Disciplinary Committee member with such an interest.
- 3.6 If at any time during the course of the hearing of a formal complaint, the chairman of the Disciplinary 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 Disciplinary Committee in accordance with regulation 3.1 to re-hear the complaint.
- 3.7 Where a new Disciplinary Committee is appointed pursuant to regulation 3.6 or regulation 7.4(a), no member of the previous Disciplinary Committee may be appointed to the new Committee.
- 3.8 In most cases, it is anticipated that the Disciplinary Committee will reach a decision via consensus, including on the question of whether a formal complaint or any part of it has been proved and the orders to make against the defendant. 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.

3.9 The CEO shall appoint a relevantly experienced staff of the Institute to act as Secretary of the Disciplinary Committee (“Committee Secretary”).

4. Hearing of Formal Complaint by Disciplinary Committee

4.1 The Disciplinary Committee shall, as soon as practicable after its appointment, fix the date, time and place of the hearing of the formal complaint. A notice of the hearing shall be sent to the parties in accordance with regulation 5.

4.2 The Disciplinary Committee shall give the defendant the opportunity of:

- (a) attending the hearing of the formal complaint and being heard before the Committee;
- (b) being represented before the Committee by an advocate and solicitor or by an Individual Member of the Institute;
- (c) calling witnesses to give evidence on his behalf;
- (d) adducing documentary evidence;
- (e) cross-examining witnesses called by the Institute; and
- (f) making such submissions as he wishes to the Committee.

4.3 The Institute may appoint the PCO or an advocate and solicitor (“the presenting officer”) to present the formal complaint before the Disciplinary Committee. The presenting officer shall be given the opportunity of:

- (a) calling witnesses to give evidence;
- (b) adducing documentary evidence;
- (c) cross-examining witnesses called by the defendant;
- (d) making such submissions as he wishes to the Committee.

4.4 The Disciplinary Committee may appoint an advocate or solicitor to act as legal assessor at the hearing of the formal complaint. The legal assessor shall:

- (a) act as advisor to the Disciplinary Committee on all procedural and legal matters;
- (b) retire with the Disciplinary 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 Disciplinary Committee.

4.5 If the defendant does not attend or is not represented at the hearing, the Disciplinary 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 defendant in accordance regulation 5.1, proceed to hear the complaint in his absence.

4.6 The proceedings before the Disciplinary Committee shall be audio or video recorded and transcribed.

4.7 A written report of the decision of the Disciplinary Committee shall be prepared by Disciplinary Panel Chairman setting out:

- (a) the formal complaint detailing the alleged breach(es) under consideration;
- (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 Disciplinary Committee;

- (d) the findings of the Disciplinary Committee;
 - (e) the decision of the Disciplinary Committee including the reasons for such decision;
and
 - (f) any order made by the Disciplinary Committee.
- 4.8 The Committee Secretary shall be responsible to maintain a proper and complete record of the disciplinary hearing before the Disciplinary Committee.

5. Notice of Hearing and Documents

- 5.1 The Disciplinary Committee shall give, or shall instruct the Committee Secretary to give, a written notice of the hearing to the defendant no later than 28 days before the date of the hearing. The notice shall specify:
- (a) the date, time and place fixed for the hearing;
 - (b) the alleged breach(es) under consideration;
 - (c) the right to attend the hearing and be represented by an advocate or solicitor or by an Individual Member of the Institute;
 - (d) the right to be heard before the Disciplinary Committee;
 - (e) the right to tender any documentary evidence before the Disciplinary Committee;
 - (f) the right to call witnesses to give evidence and to cross-examine any witnesses called by the Institute; and
 - (g) the power of the Disciplinary Committee to proceed with the hearing in the absence of the defendant.
- 5.2 The notice of hearing as required by regulation 5.1 shall be accompanied by the following documents:
- (a) unless previously provided, a summary of the facts and matters relied on in support of the alleged breach(es) and a copy of any document and/or any other material which will be relied on in presentation of the formal complaint;
 - (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 14 days before the date of the hearing provide to the Committee Secretary:
- (a) a notice in writing stating:
 - (i) whether he intends to attend and/or be represented at the hearing; and
 - (ii) whether he admits any or all of the alleged breaches made;
 - (b) if he denies any or all of the alleged breaches, a statement of defence;
 - (c) if he admits any or all of the alleged breaches, any statement in mitigation;
 - (d) the names of any witnesses he intends to call to give evidence;

- (e) a copy of any witness statement that is signed, dated and contains the name and address of the maker and any other documents which he intends to rely on at the hearing.
- 5.4 The Disciplinary Committee shall notify, or shall instruct the Committee Secretary to notify, the presenting officer in writing no later than 28 days before the date of the hearing:
- (a) of the date, time and place fixed for the hearing;
 - (b) that the presenting officer shall no later than 14 days before the date of the hearing provide to the Committee Secretary:
 - (i) the names of any witnesses the Institute intends to call to give evidence;
 - (ii) a copy of any witness statement that is signed, dated and contains the name and address of the maker and any other documents which will be relied upon at the hearing.
- 5.5 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 information and documents provided under regulation 5.3 to the presenting officer;
 - (b) send a copy of the information and documents provided under regulation 5.4(b) to the defendant.
- 5.6 Failure of the parties to comply with regulation 5.3 or 5.4(b) (as applicable) shall not preclude the Disciplinary Committee from proceeding to hear the complaint on the appointed date.

6. Postponement and Adjournment of Hearing

- 6.1 The chairman of the Disciplinary Committee may, at his discretion or upon the written 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.
- 6.2 The chairman of the Disciplinary Committee may agree to or direct that the hearing be postponed or adjourned where:
- (a) the subject of the complaint is currently before a court of law, regulatory tribunal or professional body; or
 - (b) the defendant is too ill to participate in the disciplinary proceedings or if the defendant is incapacitated.
- 6.3 If the hearing of a formal complaint is postponed or adjourned under regulation 6.2(a), the hearing of the formal complaint shall be reconvened upon the conclusion of the legal processes.
- 6.4. The defendant may, either before or during the course of the hearing of a formal complaint, by written notice to the Disciplinary 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 defendant shall be required within seven days of such request 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 disciplinary proceedings.

- 6.5. If pursuant to regulation 6.4, the chairman of the Disciplinary Committee is satisfied that the defendant is unfit to participate in the disciplinary proceedings or if the Member is incapacitated, the chairman may postpone or adjourn the hearing of the formal complaint until such time when the defendant is fit to participate in the proceedings.
- 6.6. 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.

7. Conduct of the Hearing

- 7.1 Subject to the bye-laws and these regulations, the Disciplinary Committee 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 Committee shall apply the following principles with regard to evidence:
- (a) The Committee may admit oral or documentary evidence whether or not such evidence would be admissible in a court of law.
 - (b) The Disciplinary 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 such finding of fact is being appealed against in which event the chairman of the Disciplinary Committee may act in according with regulation 6.2(a).
- 7.3 The burden of proof before the Disciplinary Committee rests on the presenting officer.
- 7.4 At the commencement of the hearing, the chairman shall introduce the members of the Disciplinary 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 Disciplinary Committee or legal assessor appointed to hear the complaint and if so, to set out their grounds for that concern:
- a) If the Disciplinary 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 Disciplinary Committee member to replace the Disciplinary Committee member against which such an objection was taken or appoint a new Disciplinary Committee in accordance with regulation 3.1 to hear the complaint.
 - b) if the Disciplinary Committee considers that the objection is not valid, the hearing will proceed before the Disciplinary Committee as originally constituted.
- 7.5 The chairman shall then invite the presenting officer to set out the formal complaint against the defendant.
- 7.6 The presenting officer shall read out the alleged breach (es) in the formal complaint.
- 7.7 The defendant or his representative (hereinafter referred to as defendant) may ask questions of the presenting officer in order to clarify the complaint against him.
- 7.8 The chairman shall invite the defendant to state whether or not he wishes to make any

admission. Where the facts of any alleged breach have been admitted by the defendant, the Chairman shall announce that such facts have been found proven.

- 7.9 If the defendant denies all or any of the alleged breach(es) against him, the chairman shall invite the presenting officer to present evidence in support of the alleged breach (es). The presenting officer may produce any documents (which have been provided to the defendant in accordance with regulations 5.2(a) and 5.5(b), and call witnesses to give evidence.
- The defendant shall then be invited to respond to the alleged breach (es) which he denies by presenting his defense. He may produce any documents (which have been provided to the presenting officer in accordance with regulation 5.5(a) and call witnesses to give evidence.
- 7.10 The Disciplinary Committee may in its discretion allow for any documents to be produced or witnesses to be called, even if prior notice of the same in accordance with regulations 5.3 or 5.4 have not been complied with.
- 7.11 Witnesses may be cross-examined by the presenting officer and the defendant. The presenting officer may cross-examine the defendant.
- 7.12 Members of the Disciplinary Committee may at any time ask questions of the presenting officer, the defendant or any witness.
- 7.13 The presenting officer and the defendant may present closing submissions. The defendant shall have the final opportunity to address the Disciplinary Committee.
- 7.14 At the conclusion of the presentation of evidence and submissions, the Disciplinary Committee, together with the legal assessor (if one is appointed) will retire to determine whether any of the alleged breaches (which has not been admitted by the defendant) has been proven. The standard of proof to be applied by the Committee shall be balance of probabilities.
- 7.15 The Disciplinary Committee will return on the same day or on a day to be fixed to announce its finding(s) in respect of each alleged breach, giving reasons for the finding(s). If the Committee finds that no alleged breach has been proved, it shall dismiss the complaint.
- 7.16 Where the Disciplinary Committee finds that any of the alleged breaches has been proved, the chairman of the Committee shall require the presenting officer to provide the Committee with details of the defendant's previous disciplinary record, if any.
- 7.17 Before considering what orders to make, the chairman of the Disciplinary Committee 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 Committee 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 Committee will return on the same day or on a day to be fixed to announce its order(s) that will be made against the defendant, giving reasons for its decision.
- 7.20 No objection shall be upheld to any technical fault in the procedure adopted by the Disciplinary Committee provided that the proceedings are fair and the relevant bye-laws and regulations have been complied with.

8. Orders of Disciplinary Committee

- 8.1 Upon finding any of the alleged breaches in the formal complaint as proven, or when a defendant admits to an alleged breach, the Disciplinary Committee may make any one or more of the following orders, as provided in bye-law 60(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 two years;
 - (c) that he be reprimanded/ admonished;
 - (d) that he be required to undertake such additional hours of CPD as the Disciplinary Committee considers appropriate;
 - (e) that he be fined a sum not exceeding RM10,000;
 - (f) additionally, if the defendant is undertaking any programme of study or examination of the Institute:
 - (i) that he be dismissed from such programme of study as shall be specified in the order;
 - (ii) 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;
 - (iii) 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;
 - (iv) that the result in such examination (or a part thereof) or assessment be declared void.
- 8.2 Where the Disciplinary Committee makes an order under bye-law 60(2), it may include any the following conditions, as provided in bye-law 60(3), as it considers appropriate:
- (a) in the case of an order that the defendant be excluded from membership, that no application for re-admission may be considered before the end of a specified period, not exceeding five years, from the effective date of the order;
 - (b) the requirement to seek advice from a specified source;
 - (c) the payment to the complainant of any commission the defendant has received or will receive.
- 8.3 The Disciplinary Committee may, in accordance with bye-law 60(4), make an order that no further action be taken on a formal complaint notwithstanding its finding that the complaint is proven in whole or in part, where it is of the opinion that none of the orders under bye-law 60(2) is appropriate in all the circumstances of the case.
- 8.4 In deciding what orders to make, the Disciplinary Committee 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 In accordance with bye-law 60(6), the Disciplinary Committee shall at the conclusion of the hearing, rescind any order for interim suspension of membership made pursuant to bye-law

67 in relation to the complaint under consideration.

9. Notification of Decision

- 9.1 The Disciplinary Committee shall give, or shall instruct the Committee Secretary to give, written notice of the finding(s) and of any order made by the Committee to the defendant no later than 14 days after the hearing. Such notice will include the reasons for the decision of the Disciplinary Committee.
- 9.2 Where a formal complaint or any part of it is proven, the notice under regulation 9.1 shall set out:
- (a) The findings in respect of each alleged breach;
 - (b) the order(s) made by the Disciplinary Committee;
 - (c) the defendant's right of appeal against any finding and/or order of the Disciplinary Committee under bye-law 62;
 - (d) where any fine has been imposed, that such fine shall be paid within 14 days from the date the order becomes effective unless a longer period for payment is allowed by the Disciplinary Committee; and
 - (e) 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 In accordance with bye-law 61(2), an order made by the Disciplinary Committee shall, unless the Committee otherwise directs, take effect at the end of the period of 14 days from the date of the order. If within that period, the defendant gives notice of appeal against the finding or order made by the Disciplinary Committee, then subject to bye-law 61(3), 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 Bye-law 61(3) provides that 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 Committee shall take effect at the end of the period of 14 days from the date on which the notice of withdrawal is served on the CEO. In such a case, any fine ordered by the Disciplinary Committee shall be paid within 14 days from the date the order becomes effective as aforesaid.
- 9.5 The Disciplinary Committee shall give, or shall instruct the Committee Secretary to give, as soon as practicable written notice of the decision of the Disciplinary Committee, the reasons for the decision and of any order made against the defendant, to the Disciplinary Panel Chairman and the CEO.
- 9.6 Subject to regulation 9.7, the Disciplinary 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 defendant.
- 9.7 The Disciplinary Committee shall not make such a notification under regulation 9.6 until the period allowed under bye-law 62(1) for giving notice of appeal against any finding or order of the Disciplinary Committee has expired and no notice of appeal has been given by the defendant.

10. Interim Orders

- 10.1 Where the hearing of a formal complaint has been adjourned under regulation 6.2(a), the

Disciplinary Committee may consider whether to make an order for suspension of membership on an interim basis against the defendant in accordance with the provisions of bye-law 67.

11. Publication of Decision

- 11.1. Where the Disciplinary Committee makes any finding or order, including an interim order or dismisses a complaint, the Disciplinary Committee may direct the CEO to publish in the Institute's register of members and/or on the Institute's website, its decision and any order made in accordance with bye-law 69. The publication may:-
- (a) state the name of the defendant;
 - (b) describe the finding of the Disciplinary Committee
 - (c) describe the order(s) made against the defendant (if any); and
 - (d) the reasons for the Disciplinary Committee's decision.

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

- 11.2. Save for an order for interim suspension of membership made under bye-law 67 (which takes effect immediately), the Disciplinary Committee shall not cause its decision and any order made to be published as set out in regulation 11.1 until the period allowed for giving notice of appeal against the finding or order of the Disciplinary Committee under bye-law 62(1) has expired. Where a notice of appeal is given in accordance with bye-law 62(1), the Disciplinary Committee's decision and order shall not be published unless the appeal is subsequently abandoned, but the Appeal Committee's decision and any order made on the appeal may be so published.

12. Service of Notices and Documents

- 12.1. 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 12.5.
- 12.2. 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 12.5.
- 12.3. The defendant 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 12.6.
- 12.4. Where a notice or document is sent pursuant to regulation 12.1, 12.2 or 12.3:
- (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.
- 12.5. A notice or other document required to be served on the defendant or complainant may be sent by email provided the defendant 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.

12.6. 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 defendant or complainant.