

APPEAL

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CONTENTS	Page
Commencement and Purpose	03
Interpretation	03
Rights of Appeal	05
Notice of Appeal	06
Appeal Tribunal	08
Hearing of Appeal by Appeal Tribunal	09
Notice of Hearing and Documents	12
Postponement and Adjournment of Hearing	14
Conduct of the Hearing	14
Orders of Appeal Tribunal	17
Notification of Decision	20
Publication of Decision	21
Service of Notices and Documents	22

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 by an Appeal Tribunal of any appeal, whether from a finding or order of a Disciplinary Tribunal, or from a finding or order of the Board of Examiners.

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.

Appeal Tribunal means an Appeal Tribunal appointed by the Appeal Committee to hear an appeal under Bye-Laws 61(1).

Appellant means, as the case may be, a defendant who appeals against a finding or order of a Disciplinary Tribunal, or an examination candidate who appeals against a finding or order of the Board of Examiners.

Board of Examiners means the Board of Examiners appointed by the Council under Bye-Laws 36.

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

Examination candidate means a person (whether a Member of the Institute or not) undertaking any examination of the Institute.

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-Laws 46.

Legal assessor means a solicitor appointed to advise the Appeal Tribunal.

Respondent means in the case of an appeal against a finding or order of a Disciplinary Tribunal, the Investigation Committee; and in the case of an appeal against a finding or order of the Board of Examiners, the Board of Examiners

3. Rights of Appeal

- 3.1 A defendant against whom any finding or order has been made by the Disciplinary Tribunal may appeal to the Appeal Committee against such finding or order on one or more of the following grounds:
- (a) the Disciplinary Tribunal made an error of fact or law, or in the interpretation of the Institute's bye-laws or regulations;
 - (b) there was procedural irregularity or unfairness in the proceedings of the Disciplinary Tribunal;
 - (c) there is new evidence not previously available, which would have altered one or more of the Disciplinary Tribunal's findings or orders;
 - (d) one or more of the Disciplinary Tribunal's orders is disproportionate and/or unreasonable in all the circumstances of the case.
- 3.2 No appeal shall lie solely on the question of costs ordered by the Disciplinary Tribunal or in respect of a decision (under Bye-Laws 67) in relation to publication of the findings and orders of the Disciplinary Tribunal.
- 3.3 An examination candidate against whom any finding or order has been made by the Board of Examiners may appeal to the Appeal Committee against such finding or order on one or more of the following grounds:
- (a) the Board of Examiners made an error of fact or law, or in the interpretation of the Institute's Bye-Laws or regulations;
 - (b) there was procedural irregularity or unfairness in the proceedings of Board of Examiners;

- (c) there is new evidence not previously available, which would have altered one or more of the Board of Examiners' findings or orders;
- (d) one or more of the Board of Examiners' orders is disproportionate and/or unreasonable in all the circumstances of the case.

4. Notice of Appeal

4.1 A defendant who wishes to appeal against a finding or order of the Disciplinary Tribunal, or an examination candidate who wishes to appeal against a finding or order of the Board of Examiners, may give notice of appeal in writing to the Chief Executive Officer (hereinafter referred to as CEO) within 21 days from the date of the notice of such finding or order (unless a longer period is allowed by the chairman of the Appeal Committee where there is good reason for the appellant having failed to meet the time limit for appeal).

4.2 The notice of appeal shall state:

- (a) whether the appellant intends to attend and/or be represented at the hearing of the appeal;
- (b) in the case of an appeal from a finding or order made by the Disciplinary Tribunal, whether the appellant appeals against one or more of its 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 Tribunal failing;

- (c) in the case of an appeal from a finding or order made by the Board of Examiners, whether the appellant appeals against one or more of its 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 Board of Examiners failing; and
 - (d) the grounds (as set out in regulation 3) on which the appeal is based and the reasons in support of each ground of appeal.
- 4.3 The grounds of appeal stated in the notice under regulation 4.2 shall not be amended thereafter except with the leave of the Appeal Tribunal appointed under regulation 5.1 to hear the appeal.
- 4.4 Where the appellant, in the case of an appeal from a finding or order made by the Board of Examiners, is not a Member of the Institute, he shall be required to give an undertaking in the notice of appeal that he will be bound by Bye-Laws 60 to 64 (in relation to appeals) and any related bye-laws.
- 4.5 A notice of appeal against an order of the Disciplinary Tribunal that the defendant be excluded or suspended from membership shall be of no effect unless all costs ordered by the Disciplinary Tribunal have been paid on or before the giving of the notice of appeal.
- 4.6 The CEO shall as soon as practicable provide a copy of the notice of appeal under regulation 4.2 to the Appeal Committee and the respondent.
- 4.7 An appellant may withdraw a notice of appeal by serving on the CEO notice in writing to that effect.

5. Appeal Tribunal

- 5.1 On receipt of a notice of appeal, the chairman or failing him, the vice chairman of the Appeal Committee shall appoint an Appeal Tribunal to hear the appeal. The Appeal Tribunal shall consists of:
- (a) a chairman, being the chairman or vice-chairman of the Appeal Committee or, if neither of them is available to sit, another member of the Appeal Committee;
 - (b) one member of the Appeal Committee who is a Member of the Institute; and
 - (c) one member of the Appeal Committee who is a legally qualified person.

The chairman of the Appeal Tribunal shall report the findings and decisions of the Tribunal to the Appeal Committee.

- 5.2 The CEO shall appoint a relevantly experienced staff of the Institute to act as Secretary to the Appeal Tribunal (hereinafter referred to as Tribunal Secretary).
- 5.3 In the event that any one member of the Appeal Tribunal other than the chairman is unable to attend the hearing or any adjourned hearing of the appeal, or is during course of the hearing unable to continue to attend:
- (a) the remaining members may proceed with the hearing provided that 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 Tribunal do not proceed or continue with the hearing, the appeal shall be heard or re-heard by a new Appeal Tribunal appointed in accordance with regulation 5.1.

- 5.4 If at any time during the course of the hearing of the appeal, the chairman of the Appeal 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 Appeal Committee who shall thereupon appoint a new Appeal Tribunal in accordance with regulation 5.1 to re-hear the complaint.
- 5.5 In most cases, it is anticipated that the Appeal Tribunal will reach a decision via consensus. 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 5.3(a), the remaining members of the Appeal Tribunal complete the hearing but are unable to agree on a determination of the appeal, the chairman shall so inform the chairman or, failing him, the vice chairman of the Appeal Committee who shall thereupon appoint a new Appeal Tribunal in accordance with regulation 5.1 to re-hear the appeal.
- 5.6 Where a new Appeal Tribunal is appointed pursuant to regulation 5.3(b), 5.4 or 5.5, no member of the previous Appeal Tribunal may be appointed to the new Tribunal.

6. Hearing of Appeal by Appeal Tribunal

- 6.1 The Appeal Tribunal 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 by the Tribunal Secretary to the appellant and the respondent in accordance with regulations 7.1, 7.2 and 7.3.
- 6.2 The CEO shall provide the Appeal Tribunal with:
- (a) all documents and other material which had been placed before the Disciplinary Tribunal or the Board of Examiners (as applicable);

- (b) the transcript of the proceedings before the Disciplinary Tribunal or the Board of Examiners (as applicable);
 - (c) the written record of the decision of the Disciplinary Tribunal or the Board of Examiners (as applicable).
- 6.3 The Appeal Tribunal shall give the appellant the opportunity of being heard before it. The appellant may appear before the Appeal Tribunal in person or be represented by a solicitor or by an Individual Member of the Institute.
- 6.4 The respondent may appoint a solicitor, an Individual Member or a staff of the Institute (hereinafter referred to as representative of the respondent) to appear on its behalf at the hearing of the appeal.
- 6.5 The Appeal Tribunal may allow the appellant and the respondent to make further submissions and introduce additional documentary evidence[that were not before the Disciplinary Tribunal or the Board of Examiners (as applicable)] at the hearing of the appeal provided such submissions and documentary evidence shall have been provided to the Appeal Tribunal in accordance with regulations 7.2 and 7.4.
- 6.6 The Appeal Tribunal may hear any witnesses provided the names of such witnesses shall have been submitted by the appellant and the respondent to the Appeal Tribunal in accordance with regulations 7.2 and 7.4.
- 6.7 The Appeal Tribunal shall appoint a solicitor to act as legal assessor at the hearing of the appeal. The legal assessor shall:
 - (a) act as advisor to the Appeal Tribunal on all procedural and legal matters;

- (b) retire with the Appeal Tribunal when it goes into private deliberation;
 - (c) prepare a written record of the Appeal Tribunal's decision in accordance with regulation 6.9; and
 - (d) carry out any other activity commensurate with the role of a legal assessor.
- 6.8 If the appellant does not attend or is not represented at the hearing, the Appeal Tribunal may, if it is satisfied that notice of the hearing has been duly served on the appellant in accordance regulations 7.1, proceed to hear the appeal in his absence.
- 6.9 The proceedings before the Appeal Tribunal shall be tape recorded and transcribed.
- 6.10 A written record of the decision of the Appeal Tribunal shall be prepared by the legal assessor for approval by the chairman of the Tribunal setting out:
- (a) details of the appeal including:
 - the findings and/or orders made by the Disciplinary Tribunal or the Board of Examiners (as applicable) against which the appeal is made;
 - the grounds of appeal and the reasons in support of each ground of appeal;
 - (b) the principal facts established to the satisfaction of the Appeal Tribunal; and
 - (c) the finding of the Appeal Tribunal including the reasons for such finding, and any orders made by the Tribunal.

7. Notice of Hearing and Documents

7.1 The Tribunal Secretary shall serve on the appellant 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 right to attend the hearing and be represented by a solicitor or an Individual Member of the Institute;
- (c) the right to call witnesses to give evidence; and
- (d) the power of the Appeal Tribunal 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 28 days before the date of the hearing provide to the Tribunal Secretary:

- (a) a notice in writing as to whether he will attend and/or be represented at the hearing;
- (b) the names of any witnesses he intends to call;
- (c) a copy of such written submissions and additional documentary evidence which he wishes to bring to the attention of the Appeal Tribunal.

- 7.3 The Tribunal Secretary shall as soon as practicable send to the respondent:
- (a) a copy of the notice of hearing as set out in regulation 7.1 accompanied by the written record of the decision of the Disciplinary Tribunal or the Board of Examiners (as applicable); and
 - (b) copies of the documents as set out in regulation 7.2 upon receipt of the same.
- 7.4 The respondent may no later than 21 days before the date of the hearing provide to the Tribunal Secretary:
- (a) the names of any witnesses it intends to call; and
 - (b) a copy of such written submissions and additional documentary evidence which it wishes to bring to the attention of the Appeal Tribunal.
- 7.5 The Tribunal Secretary shall within 7 days of receipt of the documents as set out in regulation 7.4 send a copy of the same to the appellant.
- 7.6 Failure of the appellant to comply with regulation 7.2 shall not preclude the Appeal Tribunal from proceeding to hear the complaint on the appointed date.

8. Postponement and Adjournment of Hearing

- 8.1 The appellant or the respondent may, in advance of the hearing, make a written application to the Appeal Tribunal for a postponement of the hearing. Such application shall be considered by the chairman of the Appeal Tribunal who may, in his absolute discretion, accede to it if he is of the view that it is justified in all the circumstances.
- 8.2 The Appeal Tribunal may, in its discretion or upon the application by either the appellant or the respondent, adjourn the hearing at any stage during the course of the hearing if the Appeal Tribunal is of the view that it is justified in all the circumstances.
- 8.3 If at any time before or during the course of the hearing, it appears to the Appeal Tribunal that the appellant may be too ill to participate in the appeal process but the appellant does not wish to withdraw his appeal, the Tribunal may postpone or adjourn the hearing until such time when the appellant is fit to participate in the process.
- 8.4 Where a postponement or adjournment of the hearing is granted, the Tribunal Secretary shall as soon as practicable notify the appellant and the respondent in writing of the date, time and place fixed for the adjourned hearing. The constitution of the Appeal Tribunal at any adjourned hearing shall be subject to regulation 5.3.

9. Conduct of the Hearing

- 9.1 Subject to these regulations, the Appeal Tribunal 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 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 7.2 and 7.4.
 - (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.
- 9.3 The burden of proof rests with the appellant who shall satisfy the Appeal Tribunal 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 Tribunal and explain the role of the legal assessor and the procedure which will be followed.
- 9.5 The chairman shall invite the legal assessor to read out the decision of the Disciplinary Tribunal or the Board of Examiners (as applicable) and any orders made against the appellant.

- 9.6 The chairman shall then invite the appellant or his representative (hereinafter referred to as appellant) to state the grounds of appeal against the finding(s) and/or order(s) of the Disciplinary Tribunal or of the Board of Examiners (as applicable). The appellant may adduce any evidence in support of the grounds of appeal [which has been provided to the Appeal Tribunal in accordance with regulation 7.2 or agreed by the Appeal Tribunal under regulation 9.2(b)] and call witnesses to give evidence.
- 9.7 The chairman shall invite the representative of the respondent to address the Appeal Tribunal. The representative of the respondent may adduce any evidence [which has been provided to the Appeal Tribunal in accordance with regulation 7.4 or agreed by the Appeal Tribunal under regulation 9.2(b)] and call witnesses to give evidence.
- 9.8 The appellant shall then be invited to respond and adduce any evidence in rebuttal.
- 9.9 Witnesses may be cross-examined by the representative of the respondent and the appellant.
- 9.10 Members of the Appeal Tribunal may at any time ask questions of the representative of the respondent, the appellant or any witness.
- 9.11 The representative of the respondent and the appellant may present closing submissions. The appellant will have the final opportunity to address the Appeal Tribunal.
- 9.12 At the conclusion of the presentation of evidence and submissions, the Appeal Tribunal will retire to consider its decision on the appeal. The standard of proof to be applied by the Tribunal shall be the balance of probabilities.

- 9.13 The Appeal Tribunal will return to announce its decision in respect of the appeal, giving reasons for its decision.
- 9.14 The chairman shall state that a written record of the decision of the Appeal Tribunal shall be sent to the appellant within 14 days.
- 9.15 No objection shall be upheld to any technical fault in the procedure adopted by the Appeal Tribunal provided that the proceedings are fair and the relevant bye-laws and regulations have been complied with.

10. Orders of Appeal Tribunal

- 10.1 In the case of an appeal against one or more of the findings and one or more of the orders of the Disciplinary Tribunal, the Appeal Tribunal may make any one or more of the following orders [pursuant to bye-law 63(3)(a)]:
- (a) affirm, vary or rescind any finding of the Disciplinary Tribunal;
 - (b) affirm, vary or rescind any order of the Disciplinary Tribunal;
 - (c) substitute any other order which the Disciplinary Tribunal might have made;
 - (d) include in any substituted order such terms and conditions, if any, as the Appeal Tribunal considers appropriate including, in the case of an order that a Member be excluded from membership, a recommendation that no application for re-admission may be considered before the end of a specified period;
 - (e) in relation to any finding and/or order that has been rescinded, direct that the complaint be re-heard by a new Disciplinary Tribunal appointed in accordance with regulation 3.1 of the Disciplinary Regulations.

10.2 In the case of an appeal against one or more of the orders, but not the findings, of the Disciplinary Tribunal, the Appeal Tribunal may make any one or more of the following orders [pursuant to Bye-Law 63(3)(a)]

- (a) affirm, vary or rescind any order of the Disciplinary Tribunal;
- (b) substitute any other order which the Disciplinary Tribunal might have made;
- (c) include in any substituted order such terms and conditions, if any, as the Appeal Tribunal considers appropriate including, in the case of an order that a Member be excluded from membership, a recommendation that no application for re-admission may be considered before the end of a specified period;
- (d) in relation to any order that has been rescinded, direct that the complaint be re-heard by a new Disciplinary Tribunal appointed in accordance with regulation 3.1 of the Disciplinary Regulations

10.3 In the case of an appeal against one or more of the findings and one or more of the orders of the Board of Examiners, the Appeal Tribunal may make any one or more of the following orders [pursuant to Bye-Law 63(3)(b)]

- (a) affirm, vary or rescind any finding of the Board of Examiners;
- (b) affirm, vary or rescind any order of the Board of Examiners;
- (c) substitute any other order which the Board of Examiners might have made;

- (d) include in any substituted order such terms and conditions, if any, as the Appeal Tribunal considers appropriate including, in the case of an order that a Member be excluded from membership, a recommendation that no application for re-admission may be considered before the end of a specified period;
- (e) in relation to any finding and/or order that has been rescinded, direct that the matters be reconsidered by the Board of Examiners.

10.4 In the case of an appeal against one or more of the orders, but not the findings, of the Board of Examiners, the Appeal Tribunal may make any one or more of the following orders [pursuant to Bye-Law 63(3)(b)]

- (a) affirm, vary or rescind any order of the Board of Examiners;
- (b) substitute any other order which the Board of Examiners might have made;
- (c) include in any substituted order such terms and conditions, if any, as the Appeal Tribunal considers appropriate including, in the case of an order that a Member be excluded from membership, a recommendation that no application for re-admission may be considered before the end of a specified period;
- (d) in relation to any order that has been rescinded, direct that the matters be reconsidered by the Board of Examiners.

10.5 The Appeal Tribunal may, whether the appeal is successful or not, order the appellant to pay such sum by way of cost to the Institute [pursuant Bye-Law 63(4)]. 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 conduct of the appeal.

10.6 There shall be no further right of appeal to the Institute from the decision of an Appeal Tribunal.

11. Notification of Decision

11.1 The Tribunal Secretary shall no later than 14 days after the hearing give written notice of the decision of the Appeal Tribunal to the appellant. Such notice will be accompanied by a written record of the decision of the Appeal Tribunal, unless in the circumstances, a longer period for the delivery of such record is necessary.

11.2 The notice under regulation 11.1 shall also set out:

- (a) where a fine and/or costs have been imposed, that such fine and/or costs shall be paid within 14 days from the date of the notice unless a longer period for payment is allowed by the Appeal Tribunal; 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 notice.

11.3 An order made by the Appeal Tribunal shall take effect from the date of the notice of the Tribunal's decision under regulation 11.1 unless the Tribunal directs that it shall take effect from some later date as shall be specified in the order of the Tribunal.

11.4 The Tribunal Secretary shall as soon as practicable notify the complainant (where there is one) in writing of the decision of the Appeal Tribunal and any order made against the appellant.

12. Publication of Decision

12.1 Subject to regulation 12.2 and 12.3, where the Appeal 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 the Institute's website and shall:

- (a) state the name of the appellant;
- (b) describe the finding of the Appeal Tribunal and the order or orders made against the appellant; and
- (c) the reasons for the Appeal Tribunal's decision.

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

12.2 If the Appeal Tribunal concludes that, in its opinion, there are exceptional circumstances, the name of the appellant may be omitted from the publication under regulation 12.1. In this respect, embarrassment or detriment to future livelihood, of themselves, would not ordinarily be considered as exceptional circumstances.

12.3 Where the Appeal Tribunal:

- (a) in the case of of an appeal against a finding or order of the Disciplinary Tribunal, makes an order that no further action be taken or decides that the formal complaint has not been proved either in whole or in part; or

- (b) in the case of an appeal against a finding or order of the Board of Examiners, decides that the allegation of misconduct in an examination has not been proved,

the Tribunal shall cause a record of its decision to be published only if the appellant so requests. If such a request is received, the Appeal 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:

- state the name of the appellant unless the Appeal Tribunal considers that there exist exceptional circumstances as set out in regulation 12.2 which justify the omission of the name;
- describe the finding of the Appeal Tribunal with respect to the appeal; and
- state the decision of the Appeal Tribunal and the reasons for its decision.

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 the Register of Examination Candidates (as applicable) or which has been notified by him in writing to the Institute, or by email as provided in regulation 13.4.

13.2 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.

13.3 The appellant may serve any notice or document on the CEO or the Appeal 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 13.5.

13.4 A notice or other document required to be served on the appellant may be sent by email provided the appellant 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.

13.5 The CEO and the Appeal 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 appellant.