

COMPLAINTS AND INVESTIGATION

COMPLAINTS AND INVESTIGATION

CONTENTS	Page
Commencement and Purpose	04
Interpretation	04
Making of a Complaint	05
Initial Assessment of Complaint	05
Conciliation	08
Investigation Committee	09
Investigation of Complaint by Investigation Committee	10
Determination of Complaint	12
Referral to Disciplinary Committee	13
Consent Orders	14
No Further Action Taken	17
Stay of Proceedings	17
Publication of Decision	18

Service of Notices and Documents	19
Appendix 1 - Complaint Form	21
Appendix 2 - Notice of Proposed Consent Order	26

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 initial assessment and investigation of any complaints against Individual Members of the Institute except for complaints concerning misconduct in connection with an examination.

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:

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

Council means the Council of the Institute.

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

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

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

Institute means the Asian Institute of Chartered Bankers.

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

3. Making of a Complaint

- 3.1 Any complaint made by a Member or a member of the public, or a complaint initiated by a committee or staff of the Institute, concerning the conduct of an Individual Member shall be made to the Chief Executive Officer (hereinafter referred to as CEO).
- 3.2 All complaints shall be in writing using the complaint form as set out in Appendix 1 (which is available at AICB website) and accompanied by relevant documents which support the complaint.
- 3.3 A complainant may subsequently withdraw a complaint by giving notice in writing to the CEO. However, if the CEO is of the opinion the Member concerned has a case to answer, he may continue to deal with the complaint in accordance with these regulations.

4. Initial Assessment of a Complaint

- 4.1 On receipt of a written complaint, the CEO shall send acknowledgement of receipt to the complainant.
- 4.2 The CEO shall consider the complaint to determine whether:
 - (a) the complaint falls within the jurisdiction of the Institute;

- (b) the matter is currently being considered by a court of law, statutory or regulatory body or professional body;
- (c) the matter is one that should reasonably be dealt with by the Member's employer; or
- (d) the complaint is vexatious or frivolous.

In making such determination, the CEO may require the complainant to provide such further information and/or documents as he considers necessary.

4.3 Pursuant to regulation 4.2 the CEO shall either:

- (a) proceed in accordance with regulations 4.4 if the complaint falls within the jurisdiction of the Institute; or
- (b) take no further action with respect to the complaint:
 - if the complaint is outside the jurisdiction of the Institute (for example the complaint concerns a person who is not a Member of the Institute or the complaint ought to be considered by another professional body or a regulator);
 - if the complaint relates to a matter referred to in regulation 4.2(b) until the conclusion of the processes of the court of law, statutory or regulatory body or professional body, as the case may be; or
 - if the complaint relates to a matter referred to in regulations 4.2(c) or 4.2(d).

- 4.4 If the CEO determines that the complaint falls within the jurisdiction of the Institute, the CEO shall:
- (a) send a copy of the complaint and supporting evidence (if applicable) to the Member concerned; and
 - (b) request the Member to provide his written response to the complaint within 21 days from date that the complaint is sent to him.
- 4.5 If pursuant to regulation 4.4 the CEO determines that there appears to be a case to answer, he shall:
- (a) if he is of the opinion that it is appropriate to do so, attempt to resolve the complaint by conciliation under regulation 5; or
 - (b) refer the complaint to the Investigation Committee.
- 4.6 Where any facts or matters come to the attention of the CEO, for example as a result of being reported in the national press or media, indicating an Individual Member may have become liable to disciplinary action under the Bye-Laws, the CEO shall reduce such facts or matters into a written complaint. The CEO shall:
- (a) send a copy of the complaint to the Member concerned; and
 - (b) request the Member to provide his written response to the complaint within 21 days from date that the complaint is sent to him.
- 4.7 If pursuant to regulation 4.6 the CEO determines that there appears to be a case to answer, he shall refer the complaint to the Investigation Committee.

- 4.8 If the Member concerned fails to provide any written response within the period of time as set out in regulation 4.4 or 4.6, or such longer period as the CEO may allow, the CEO shall refer the complaint to the Investigation Committee.
- 4.9 If pursuant to regulations 4.4 or 4.6 the CEO is not of the opinion that the Member concerned may have become liable to disciplinary action, he shall dismiss the complaint.
- 4.10 In all cases, the CEO shall as soon as practicable notify the Member concerned and, if there is one, the complainant in writing of his decision in respect of the complaint and the reasons for the decision.
- 4.11 The complainant may, if he is dissatisfied with the decision of the CEO under regulation 4.9, notify the CEO in writing of the same within 21 days from the date of the notification under regulation 4.10. On receipt of such notification, the CEO shall refer the complaint to the Investigation Committee.
- 4.12 The CEO shall report to the Investigation Committee how each complaint has been dealt with after initial assessment.

5. Conciliation

- 5.1 The CEO shall attempt to find a solution to the complaint which is acceptable to both the complainant and the Member concerned.
- 5.2 Generally a complaint may be dealt with by way of conciliation if the CEO determines that the evidence discloses that the complaint involves only a minor breach of the Articles of Association, the Bye-Laws, the Code of Professional Conduct or the applicable regulations.

- 5.3 At the conclusion of the conciliation process:
- (a) if the complaint is resolved as a result of conciliation, the complaint shall be closed; or
 - (b) if the conciliation is unsuccessful, the CEO shall refer the complaint to the Investigation Committee.
- 5.4 The CEO shall as soon as practicable notify the Member concerned and the complainant in writing of the outcome of the conciliation process under regulation 5.3.
- 5.5 The CEO shall report to the Investigation Committee any complaint that has been dealt with by way of conciliation and the outcome of the conciliation process.

6. Investigation Committee

- 6.1 The Investigation Committee shall investigate any complaint which is referred to it by the CEO under regulations 4.5, 4.7, 4.8, 4.11 or 5.3(b).
- 6.2 The quorum for a meeting of the Investigation Committee shall be three members, of whom one is a lay person.
- 6.3 At all meetings of the Investigation Committee, the chairman shall chair the meeting. If the chairman has declared an interest in a particular matter or is otherwise absent, the vice chairman shall chair the meeting. If both the chairman and vice chairman have declared an interest in a particular matter or are otherwise absent, subject to regulation 6.2, the members present shall elect from among their number a chairman to chair the meeting.

- 6.4 The CEO shall appoint a relevantly experienced staff of the Institute to act as Secretary to the Investigation Committee (hereinafter referred to as Committee Secretary).
- 6.5 In most cases, it is anticipated that the Investigation Committee will reach a decision via consensus. Where this is not possible, the chairman of the meeting 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.
- 6.6 Each member of the Investigation Committee must declare any interest in any matter before the Committee and shall withdraw from any discussion and decision on the matter concerned.

7. Investigation of Complaint by Investigation Committee

- 7.1 Where the CEO lays a complaint before the Investigation Committee under regulation 4.5, 4.7, 4.8, 4.11 or 5.3(b), he shall provide the Committee with a copy of the complaint and any information and documents received.
- 7.2 The Investigation Committee shall as soon as practicable after receipt of the complaint referred by the CEO:
- (a) notify the Member concerned in writing of the nature of the complaint;
 - (b) provide the Member with a copy of any information and documents pertinent to the complaint that are before the Committee; and
 - (c) request the Member to provide written explanations with respect to the matters referred to in the complaint within 21 days from the date of such request.

- 7.3 If the Member concerned fails to provide reasonable explanations in writing within the period of time as set out in regulation 7.2, or such longer period as the Investigation Committee may allow, the Committee shall proceed to consider the complaint based on the material laid before it without further communication with the Member.
- 7.4 The Investigation Committee may, if it thinks fit, give the Member concerned an opportunity of being heard before it and allow him to be represented at that time by a solicitor or an Individual Member of the Institute. However, the Committee shall not be under a duty to do so.
- 7.5 The Investigation Committee may at any time request the Member concerned or the complainant to provide further information and such documents in respect of the complaint as the Committee considers necessary. Where such request is made:
- (a) the Member must provide the requested information and documents within 21 days or such longer period as the Investigation Committee may allow; failing which, the Member will be in breach of this regulation, which breach shall be dealt with concurrently with the complaint; and
 - (b) the complainant must provide the requested information and documents within 21 days or such longer period as the Investigation Committee may allow; failing which, the Committee shall proceed to consider the complaint based on the material laid before it without further communication with the complainant.
- 7.6 The Investigation Committee may in its absolute discretion appoint one or more of its members to assist in the investigation of a complaint, in particular, to exercise the powers of the Committee under regulation 7.5 and provide reports to the Committee.

- 7.7 The Investigation Committee may at any time obtain expert advice to assist the Committee in the investigation of the complaint.
- 7.8 The rules of judicial evidence will not apply. The Investigation Committee may at its discretion treat as evidence any testimony whether in written, oral or other forms.
- 7.9 The Committee Secretary shall prepare a summary of:
- (a) the facts and matters which were considered by the Investigation Committee;
 - (b) any written representations made to the Investigation Committee by the Member concerned under regulation 7.2; and
 - (c) any oral representations made to the Investigation Committee by the Member concerned under regulation 7.4.

8. Determination of Complaint

- 8.1 Once the Investigation Committee has completed its investigation, it shall determine whether or not there is a prima facie case to answer against the Member concerned.
- 8.2 A Member shall be considered to have no prima facie case to answer in respect of a complaint if there is insufficient evidence on the balance of probabilities to support the complaint.
- 8.3 If the Investigation Committee determines that there is a prima facie case to answer against the Member concerned, it may [pursuant to Bye-Law 54(3)].

- (a) refer the whole or part of the complaint to the Disciplinary Committee as a formal complaint;
- (b) deal with the whole or part of the complaint by consent order; or
- (c) order that no further action be taken on the complaint or any specified part of it.

8.4 If the Investigation Committee determines that there is no prima facie case to answer against the Member concerned, it shall dismiss the complaint. The Committee shall direct the Committee Secretary:

- (a) to close the file in respect of the complaint; and
- (b) to notify the Member concerned and the complainant in writing of the Committee's decision together with such explanation as it thinks appropriate.

8.5 The Committee Secretary shall prepare a record of the reasons for the decision made by the Investigation Committee under regulations 8.3 and 8.4.

8.6 The Investigation Committee shall report its findings and decision to the Council.

9. Referral to Disciplinary Committee

9.1 In deciding whether to refer a complaint to the Disciplinary Committee, the Investigation Committee shall take into account any facts or matters which were the subject of any complaint considered by it on any previous occasion in relation to the Member concerned.

- 9.2 Where the Investigation Committee refers a formal complaint to the Disciplinary Committee, it shall:
- (a) send to the Disciplinary Committee a summary of the facts and matters which were considered by the Investigation Committee, together with a copy of any documents and other material which it relied on and a summary or copy of any representations made to it by the Member concerned;
 - (b) notify the Member concerned in writing that there is a prima facie case to answer and a formal complaint has been referred to the Disciplinary Committee, and send to him a copy of the formal complaint and the documents referred to in regulation 9.2(a);
 - (c) appoint a solicitor, an Individual Member or a staff of the Institute to represent the Investigation Committee and to present the complaint at the hearing of the Disciplinary Tribunal.
- 9.3 The Investigation Committee shall inform the complainant in writing of the referral.

10. Consent Orders

- 10.1 The Investigation Committee may deal with the complaint by consent order (pursuant to Bye-Law 55) if it is of the opinion that the complaint:
- (a) is capable of being remedied; and
 - (b) does not concern a breach of Bye-Law 45(1)(a) or 45(1)(e).

10.2 If the Investigation Committee decides to make a consent order, it may with the agreement of the Member concerned make any one or more of the following orders [pursuant to Bye-Law 55(2)]:

- (a) that he be reprimanded;
- (b) that he be admonished;
- (c) that he be fined a sum not exceeding RM5,000

10.3 The Investigation Committee may [pursuant to Bye-Law 55(2)] include in the consent order an order that the Member concerned pay a sum by way of costs to the Institute. In determining such sum of costs, the Committee may take account of any or all such fees, costs and expenses incurred by the Institute or the Committee in relation to the complaint.

10.4 The Investigation Committee shall give a written notice to the Member concerned stating that there is a prima facie case to answer against him, describing the action which it proposes to take if the Member agrees, and specifying the order which it will make in that event. The notice shall:

- (a) be in, or substantially in, the form as set out in Appendix 2 to these regulations;
- (b) explain the extent to which the decision of the Investigation Committee would be communicated to others or publicised;
- (c) state that, if the Member concerned does not give his agreement in writing to the terms of the proposed order within 21 days from the date of the notice, a formal complaint shall be referred to the Disciplinary Committee.

- 10.5 Where the Member concerned gives his written agreement to the terms of the order proposed by the Investigation Committee within the period of time as stated in the notice under regulation 10.4, the Committee shall make the order specified in the notice. The Committee shall inform the complainant in writing of the fact and detail of the order.
- 10.6 A record will be kept of the consent order, which will form a disciplinary record against the Member concerned. The record will be taken into account should the Member concerned be subject to disciplinary action in the future.
- 10.7 Where a fine is imposed by an order made under regulation 10.2, the fine shall be paid within 21 days from the date of such order, unless a longer period for payment is allowed by the Investigation Committee.
- 10.8 Any costs ordered by the Investigation Committee under regulation 10.3 shall also be paid within 21 days from the date of such order, unless a longer period for payment is allowed by the Committee.
- 10.9 If within the period of time as stated in the notice under regulation 10.4, the Member concerned notifies the Investigation Committee in writing that he is unwilling to accept the finding that a prima facie case exists or he does not wish to accept the proposed order, the Committee shall refer the complaint to the Disciplinary Committee. The Investigation Committee shall inform the Member concerned and the complainant in writing of the referral.
- 10.10 Where the Member concerned fails to respond to the notice within the period of time as set out in regulation 10.4, the Investigation Committee shall refer the complaint to the Disciplinary Committee. The Investigation Committee shall inform the Member concerned and the complainant in writing of the referral.

11. No Further Action Taken

- 11.1 Notwithstanding that the Investigation Committee determines that there is a prima facie case to answer against the Member concerned it may, at its discretion, order that no further action be taken on the complaint [pursuant to Bye-Law 54(3)(c)]. Generally the Committee will make such an order where it is of the opinion that the complaint is so insubstantial that it does not warrant further action under regulation 8.3(a) or 8.3(b).
- 11.2 Where the Investigation Committee orders that no further action shall be taken on the complaint, it shall give a notice in writing to that effect to the Member concerned and inform the complainant in writing accordingly.
- 11.3 If within 21 days from the date of the notice given under regulation 11.2 the Member concerned notifies the Investigation Committee in writing that he is unwilling to accept the finding that a prima facie case exists, the Committee shall, unless on reconsideration it finds that no prima facie case exists, refer the complaint to the Disciplinary Committee. The Investigation Committee shall inform the Member concerned and the complainant in writing of the referral.

12. Stay of Proceedings

- 12.1 If at any time during the investigation of a complaint the CEO or Investigation Committee is aware that the subject of the complaint is currently before a court of law, regulatory tribunal or professional body, then further investigation of the complaint may be deferred until the conclusion of their processes.
- 12.2 Where during the course of the investigation of a complaint it appears to the CEO or Investigation Committee that the Member concerned may be too ill to participate in the disciplinary process, further investigation of the complaint may be deferred until the Member is fit to participate in the process.

13. Publication of Decision

13.1 Subject to regulations 13.2 and 13.3, where the Investigation Committee makes an order against the Member concerned under regulation 10.2, it shall direct the CEO to publish, as soon as practicable, a report of its proceedings with respect to the complaint. Unless the Committee in any particular case otherwise directs, the report shall be published in the Institute's journal and on AICB website and shall:

- (a) state the name of the Member against whom the order was made;
- (b) describe the finding and order made against the Member and the reasons for such finding and order; and
- (c) state that the order was made with the Member's agreement.

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

13.2 If the Investigation Committee concludes that, in its opinion, there are exceptional circumstances, the name of the Member concerned may be omitted from the publication under regulation 13.1. In this respect, embarrassment or detriment to future livelihood, of themselves, would not ordinarily be considered as exceptional circumstances.

13.3 Where the Investigation Committee makes an order that no further action be taken under regulation 11.1 or dismisses a complaint, it shall cause a report of its proceedings to be published only if the Member concerned so requests. If such a request is received, the Committee shall direct the CEO to publish, as soon as practicable, a report in the Institute's journal and on AICB website which shall:

- (a) state the name of the Member against whom the complaint was made unless the Committee considers that there exist exceptional circumstances as set out in regulation 13.2 which justify the omission of the name;
- (b) describe the finding of the Committee with respect to the complaint; and
- (c) state the decision of the Committee and the reasons for its decision.

14. Service of Notices and Documents

14.1 Any notice or document required to be served on the Member concerned under these regulations may be sent to him 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 14.5.

14.2 Any notice or 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 14.5.

14.3 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.

- 14.4 The Member concerned or complainant may serve any notice or document on the CEO or the Investigation Committee by sending the notice or document by pre-paid registered post or courier to the CEO or the Committee Secretary, as the case may be, at office of the Institute, or by email as provided in regulation 14.6.
- 14.5 A notice or other document required to be served on the Member concerned or complainant may be sent by email provided that the Member or complainant has previously indicated in writing to the CEO or the Committee 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 Committee Secretary.
- 14.6 The CEO and Investigation Committee are willing to accept service of any notice or document by email to the email address specified in the CEO's or the Committee's communication to the Member concerned or complainant.

Appendix 1

Complaint Form

This form is used to make a complaint about an Individual Member of AICB. All details must be completed.

If you are completing this form electronically, first save the form to your computer. Print your completed form, sign and send it to the office of the Institute.

1. Your Details

Name	
Organisation (if appropriate)	
Address	
Email	
Phone No.	

2. Who are You Complaining About?

AICB Member's Name	
AICB Member's Address	
Organisation (if appropriate)	
Organisation's Address (if appropriate)	
Nature of Relationship (e.g. client, employer, employee)	

3. Details of Your Complaint

Please explain, as clearly as possible, your complaint. You should set out, in chronological order, the facts or circumstances giving rise to your complaint.

4. List of Supporting Evidence

Please list and attach all relevant documents which support your complaint. If you have not attached any documents, please explain why.

5. Other Information

5.1 Have you taken up your complaint with the AICB Member concerned or the employing organisation prior to lodging this form?

Yes No

If Yes, please give a brief summary of the actions taken and the outcome.

5.2 Are there any court proceedings, whether planned or ongoing, linked to your complaint?

Yes No

If Yes, please give details including the dates of any forthcoming hearings.

5.3 Have you lodged a complaint or referred this matter to any statutory or regulatory body or other professional body?

Yes No

If Yes, please state the body with which the complaint has been lodged and the outcome.

6. CONSENT

I understand and agree that a copy of this complaint and attachments, and any further correspondences and documents I submit during the course of the investigation, may be disclosed to:

- the AICB Member concerned;
- AICB's committees, tribunals and staff involved in the disciplinary process;
- statutory authorities or regulatory bodies as required by law; and
- other relevant third parties.

I understand that my personal data as provided in this form may be processed by AICB in the manner as set forth in AICB's "Personal Data Notice" as provided on AICB website and consent to the processing of my personal data as detailed in the said Notice.

Signature:

Date:

.....

Please send your complaint form and supporting documents to:

Chief Executive Officer
Asian Institute of Chartered Bankers
Wisma IBI
5 Jalan Semantan, Damansara Heights
50490 Kuala Lumpur

Appendix 2

Dear

Notice of Proposed Consent Order

The Investigation Committee at its meeting held on <date of meeting> considered the following complaint against you and the representations made by you:

-
-

The Committee has concluded that there is a prima facie case to answer in respect of the complaint.

The Committee, after considering all the relevant circumstances, is of the opinion that it is appropriate to deal with the complaint under Bye-Law 55 and offer you the opportunity to accept a Consent Order. The Committee is therefore proposing, subject to your agreement, to order that:

- **<One or more of the orders listed in Bye-Law 55(2) as determined by the Committee>**

You are required to notify the Secretary of the Investigation Committee in writing whether you wish to accept the proposed order stated above within twenty-one (21) days from the date of this letter.

If you notify the Secretary that you accept the proposed order, the Committee shall proceed to make the order accordingly. You are advised that:

- the order will form a disciplinary record against you; and
- the order including your name will be published in the Institute's journal

and will be made available to any regulators or any persons on request.

If you notify the Secretary that you do not accept that a prima facie case exists or you do not wish to accept the proposed order, the Committee shall refer a formal complaint to the Disciplinary Committee. You will have the opportunity to attend a hearing before the Disciplinary Committee. However, it is important that you are aware that the Disciplinary Committee has wider powers under the bye-laws than those available to the Investigation Committee.

If you do not respond to this letter within twenty-one (21) days, the Committee shall assume that you do not wish to accept the proposed order and a formal complaint shall be referred to the Disciplinary Committee.

Yours sincerely,

Secretary
Investigation Committee