



# **CHARTERED TAX INSTITUTE OF MALAYSIA**

## **INVESTIGATION & DISCIPLINARY RULES**

(pursuant to Articles 22, 65 (a) & (g) and 66 of the Association)

### **PART I - INVESTIGATION COMMITTEE**

#### **1. Establishment of Investigation Committee**

- (1) The Council shall appoint a committee, to be known as the Investigation Committee (IC).
- (2) The IC shall consist of three (3) Council members and two (2) Fellow members of the Institute. However, where members of the IC excuse themselves due to a conflict of interest, the Council may appoint one or more Council members or a Fellow member of the Institute to replace them and serve on the IC.
- (3) The Executive Director or, in his/her absence, any other person appointed by the Council shall be the Secretary of IC (the Secretary). The Secretary shall not be counted as one of the members of the IC.
- (4) The quorum for the Meeting of IC shall be any three members.

#### **2. Complaints**

- (1) Any person (the Complainant) may bring to the attention of the Secretary of IC any facts or matters (the Complaint) indicating that a member of the Institute (the Relevant Member) may have become liable to disciplinary action under the Institute's Articles of Association and Rules and Regulations.

- (2) Every complaint against any member shall be presented to the Secretary of IC.
- (3) The Secretary shall, upon receipt of a complaint, and then refer it to the IC provided that the complaint satisfies the requirements of Rule 3.
- (4) Where facts are brought to the knowledge of the Council which indicates that any member has done anything which renders an investigation necessary, the Council may nominate the President or any other Council member to make a formal complaint to the Secretary who shall refer such complaint to the IC.
- (5) The member nominated in writing by the Council under subrule (4) shall not be a member of the IC or the Disciplinary Committee (DC).

### **3. Complaint in Writing**

- (1) Every complaint made pursuant to Rule 2(2) shall be in writing and shall contain
  - (a) the full name, identity card number or passport number or MIT membership number of the complainant;
  - (b) the facts of the complaint;
  - (c) the allegations against the member; and
  - (d) the name of the member and the firm/company of the member.
- (2) Every written complaint under subrule (1) shall be supported by
  - (a) copies of documents, if any, that are relied upon in support of the complaint; and
  - (b) a statutory declaration of the facts alleged by the complainant as may be required by the IC from time to time.

### **4. Investigation**

The IC shall investigate any complaint referred to it under Rules 2(3) and 2(4) and determine whether or not the matter is to be referred to the DC.

## **5. Notice to Member**

(1) Before any complaint is to be investigated, the Chairman of the IC shall cause to be posted or delivered to the member against whom the complaint is made-

- (a) copies of the written complaint, and all statutory declarations of the facts made in support of the complaint, if any, and
- (b) a notice-
  - (i) setting out any other particulars that may be necessary to disclose the reason for the investigation;
  - (ii) inviting the member concerned to give a written explanation within a period of fourteen days from the date the notice is served on him to answer the complaint alleged against him; and
  - (iii) stating whether or not the member concerned wants to be heard by the IC.

(2) The investigation shall only commence after the time specified in the notice has elapsed and the IC shall give the member against whom the complaint was made reasonable opportunity to be heard if he so desires and shall give due consideration to any explanation he may make.

## **6. Powers of the Investigation Committee**

For the purposes of an investigation, the IC may-

- (a) call upon or employ any person to conduct any preliminary inquiry it deems necessary; and
- (b) require the member against whom the complaint was made or any other member who can help with the investigation to produce for inspection any books, documents or papers which are relevant and may be reasonably required by the IC or by the person so employed.

## **7. Refusal by Member is an Offence**

Any member of the Institute who refuses to comply with Rule 6(b) commits an offence and shall in any event be referred to the DC by the IC.

## **8. Proceedings before the Investigation Committee**

- (1) Where the IC finds that there are sufficient grounds for disciplinary proceedings to be taken in respect of the member against whom the complaint was made, it shall be the duty of the Chairman of the IC to:
  - (a) refer the complaint to the DC; and
  - (b) make a report of the investigation and state the findings of fact as well as the charges to the DC.
- (2) If the IC finds that there is insufficient evidence or grounds for disciplinary proceedings to be taken against the member, it shall be the duty of the IC to dismiss the complaint and the parties shall be informed accordingly.
- (3) The IC may dismiss the complaint under subrule (2) without giving any reason for the dismissal

## **9. Procedures of Investigation Committee**

Subject to Articles of Association and the Rules and Regulations of the Institute, the IC shall regulate its own procedures as it deems fit and necessary or desirable for the performance of its duties.

## **PART II - DISCIPLINARY COMMITTEE**

### **10. Establishment of Disciplinary Committee**

- (1) The Council may, pursuant to Article 25 of the Articles of Association, appoint a Disciplinary Committee (DC).
- (2) The DC shall consist of three (3) Council members and two (2) Fellow members of the Institute. However, where members of the DC excuse themselves due to a conflict of interest, the Council may appoint one or more Council members or a Fellow member of the Institute to replace them and serve on the DC.

- (3) The Executive Director or, in his absence, any other person appointed by the Council shall be the Secretary of DC (the Secretary). The Secretary shall not be counted as one of the members of the DC.
- (4) The quorum for the Meeting of DC shall be any three members.

## **11. Report made by Investigation Committee**

If the DC is of the opinion that the report made by the IC is not clear in any particular respect or that further investigation is required, the matter may be referred back to the IC To carry out further investigation and to make a further report.

## **12. Notice to Member**

Upon receiving the report made by the IC, the DC shall cause to be posted or delivered to the member against whom the complaint was made-

- (a) a copy of the report made by the IC and other documents deemed relevant by the DC;
- (b) a notice of the disciplinary hearing informing the member of the date, time and place where the disciplinary hearing against him shall be conducted;
- (c) a notice informing the member that he will be given an opportunity to be heard and to examine or cross examine witnesses; and
- (d) a notice to the member that he may, subject to Rule 13, be permitted to be represented by an advocate and solicitor or by a member of the Institute.

## **13. Absence of Parties before Disciplinary Committee**

If the member against whom the complaint was made fails to appear before the DC on the date, time and place appointed for the disciplinary hearing without any lawful excuse and the DC is satisfied that notice of the disciplinary hearing has been given in accordance with Rule 12(b), the DC may proceed to hear the complaint in his absence.

#### **14. Right to Representation**

- (1) The member against whom the complaint was made shall inform the DC in writing at least seven days before the disciplinary hearing on whether or not he intends to be represented by an advocate and solicitor at such hearing.
- (2) If the member fails to inform the DC in accordance with subrule (1) and is represented by an advocate and solicitor at the disciplinary hearing, the DC shall exercise its discretion as to whether or not to adjourn the hearing to enable the DC to engage an advocate and solicitor pursuant to Rule 15.
- (3) The IC has the right to appoint a representative or an advocate and solicitor to appear on its behalf at the disciplinary hearing.

#### **15. Appointment of Advocate and Solicitor**

The DC may appoint an advocate and solicitor who may be present at any disciplinary hearing to advise the DC.

#### **16. Oral evidence**

Evidence before the DC shall be given orally.

#### **17. Procedures of Disciplinary Committee**

Subject to the provisions of the Articles of Association and the Rules and Regulations of the Institute, the DC shall regulate its own procedures as it deems fit and necessary or desirable for the performance of its duties.

#### **18. Powers of Disciplinary Committee**

- (1) Upon reference of a complaint to the DC pursuant to Rule 8(1) and after due inquiry has been made in accordance with the provisions of these Rules, it is found that any member of the Institute is guilty of unprofessional conduct as charged, the DC shall impose any one or any combination of the disciplinary punishment specified in subrule (3).

- (2) Where a fact is brought directly to the knowledge of the DC and after due inquiry has been made in accordance with the provisions of these Rules, the DC is satisfied that any member of the Institute has-
- (a) pleaded guilty or been found guilty before a Court of law in Malaysia or in any country whose judgements are remittable in Malaysia of-
    - (i) unprofessional conduct; or
    - (ii) an offence involving fraud or dishonesty;
  - (b) become a bankrupt;
- the DC shall impose any one or any combination of the disciplinary punishment specified in subrule (3).
- (3) For the purpose of subrules (1) and (2), the DC shall have the power to impose any one or any combination of the following disciplinary punishment:
- (a) subject to the provisions of subrule (4), order the name of the member to be removed from the register and he shall cease to be a member of the Institute;
  - (b) subject to the provisions of subrule (4), suspend the member for a period not exceeding three (3) years;
  - (c) order the practising certificate of the member to be cancelled;
  - (d) impose upon the member a fine not exceeding five thousand ringgit;
  - (e) order the member to be admonished, censured or reprimanded;
  - (f) order the member to pay the Institute such sum it deems fit and reasonable in respect of costs and expenses of and incidental to any disciplinary hearing before the DC and any investigation conducted by the IC;
  - (g) order the member to attend a course of instruction approved by the DC for a period of time to be determined by the DC.
- (4) The provisions of paragraph (3)(a) and (3)(b) shall not apply to the member if an offence has been committed before the date of his registration as a member of the Institute and that the Council is aware of his conviction in respect of that offence before the date of the registration.
- (5) No punishment under paragraph (3)(d) shall be imposed if the member has been convicted under any written law by any Court for an offence punishable by imprisonment or fine.
- (6) The DC shall, if requested in writing by the member, review the costs and expenses imposed under paragraph (3)(f) within twenty- one days from the date of receipt of such request and the review shall be final.
- (7) Any decision made by the DC under this rule shall be in writing.

## **19. Commencement of decision**

- (1) Any decision of the DC shall commence upon the expiry of twenty-one days from the date the decision is communicated to the member.

## **20. Suspension period**

- (1) A member of the Institute who is suspended under paragraph 18(3)(b) shall cease to be a member of the Institute and upon expiry of his period of suspension, his rights and privileges as a member of the Institute shall immediately be restored.
- (2) The member shall cease to enjoy any benefits conferred by the Institute to its members during the suspension period.

## **21. Payment of Fees during Period of Suspension**

A member, whose membership has been suspended, shall continue to pay all fees that are due and payable during the period of suspension and be subjected to all the provisions of the Articles of Association and Rules and Regulations of the Institute and other statutory obligations that are applicable during the period.

## **22. Surrender of Certificate**

A member whose name has been removed from the register or whose membership has been suspended shall surrender to the Registrar of the Institute or in his absence, the Executive Director, his certificate of membership, as the case may be, within fourteen days from the date of the notification of such removal or suspension.

## **23. Readmission**

- (1) Any person whose name has been removed from the registrar under Rule 18 may apply to the Council after the expiration of not less than three (3) years of the removal of his name from the register for readmission as a member.

- (2) Upon receiving an application for readmission under subrule (1), the Council shall exercise its discretion in considering the application and the decision of the Council shall be final.

#### **24. Court Order**

The Council may apply to the Court for an order to be imposed on any member who fails to surrender the certificate of membership in accordance with Rule 22.

#### **25. Debt to Institute**

Every monetary penalty imposed and all costs and expenses payable under these Rules shall be recoverable as a debt due to the Institute.

### **PART III - PUBLICATION OF DECISION OR ORDER**

#### **26. Decision of Disciplinary Committee**

- (1) Where the DC exercises its powers under these Rules against a member which results in a punishment being imposed upon the member under Rule 18, and the decision of the DC has taken effect, the Council shall cause the name of the member who committed the offence and the decision of the DC to be published in-
- (a) the official publications of the Institute;
  - (b) any other publications to be determined by the Council.
- (2) In addition to subrule (1), the Council shall inform-
- (a) all relevant government licensing authorities; and
  - (b) any other interested body, corporate or unincorporated,
- of the decision of the DC and the disciplinary punishment imposed upon the member.