



# **RULES AND REGULATIONS (ON PROFESSIONAL CONDUCT AND ETHICS)**

Prepared by:  
Chartered Tax Institute of Malaysia  
Disciplinary Committee

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# RULES AND REGULATIONS

## (ON PROFESSIONAL CONDUCT AND ETHICS)

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## **Rule 1    FUNDAMENTAL PRINCIPLES**

The fundamental principles set out below frame, in broad and general terms, the basic guidelines for the professional conduct of members.

- 1.1    In accepting or continuing a professional assignment or occupation a member should always have regard to any factors which might reflect adversely upon his integrity and objectivity in relation to that assignment or occupation.
- 1.2    A member should carry out his professional work with a proper regard for the technical and professional standards expected of him as a member and should not undertake or continue professional work which he is not himself competent to perform unless he obtains such advice and assistance as will enable him competently to carry out his task.
- 1.3    A member should conduct himself with courtesy and consideration towards all with whom he comes into contact in the course of his professional work.
- 1.4    A member should follow the ethical guidance as indicated in the following rules of the Institute, as amended from time to time, and, in circumstances not provided for by that guidance, should conduct himself in a manner consistent with good reputation of the profession and the Institute.
- 1.5    A member should be truthful and honest in all his professional work. In particular, he should not knowingly or recklessly supply information or make any statements which are false or misleading. Similarly, a member should not knowingly fail to supply relevant information.
- 1.6    A member should not undertake within his professional practice business activities which are not compatible with those normally undertaken by tax practitioners.

## **Rule 2 PROFESSIONAL INDEPENDENCE**

- 2.1 (i) A member must, at all times, perform his work objectively, impartially and independently. In order to do so, it is essential that a member remains free from any influence which could impair his independence.
- (ii) Professional independence is largely an attitude of mind which often cannot be measured or defined precisely. Thus, any evaluation of independence will often be made on the basis of ascertainable facts, taken in conjunction with relationships, generally accepted practices and subjective perceptions. As a result, particular care is needed to preserve apparent, as well as actual, independence.
- (iii) If there is any factor which might affect his independence, then a member should take the necessary action to remove it. A client should be advised as soon as it is clear that there is any possible or potential conflict of interest. It will then be for the client to consider whether the member can continue to act or to place any limitations on the scope of the member's work.
- (iv) Most problems can be avoided by being alert to potential conflicts of interest and by not accepting assignments where it seems likely that a conflict of interest could occur.
- 2.2 (i) Financial involvement with a client may affect a member's independence. Such involvement could arise in a number of ways, of which loans to or from a client would be an example.
- (ii) Thus, where a member, or the spouse or minor child of the member, makes a loan to a client, or guarantees a client's borrowing, or accepts a loan from a client or has borrowings guaranteed by a client, then a conflict of interest could occur. Although such loans cannot be prohibited, a member should consider carefully whether it would be in his best interests not to undertake such financial transactions with a client, or if such arrangements are already in force, not to act for that person. If it was decided to act or to continue to act in such circumstances, then a member should fully discuss the possible conflict with the client and/or ensure that the issue is properly documented (e.g. in the engagement letter.)
- (iii) A member should make sure that the foregoing matters do not lead to less favourable service being given to other clients.
- 2.3 (i) A member should not normally act for both parties to a transaction. However, this may present particular difficulties if both the parties are existing clients. The member has an in-built conflict if he shows preference in providing services to one client and not the other and an added conflict if he does not act in the best interest of both.
- (ii) The member has three basic choices:
- (a) To advise both clients of the conflict and to give both the opportunity to consider whether or not they wish him to act or whether they wish to seek alternative advice.
- If both clients are agreeable to him acting he may do so provided there is adequate disclosure of all relevant facts to both parties, so that they may

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formulate proper business judgements and provided that no preference is shown in advising one against the other. In practice this may be difficult but there may be sufficient mutuality of interest between the parties to allow this course to be followed.

- (b) To advise both clients of the conflict and then to act for only one. This presents a conflict of duty owed to the client for whom the member declines to act. However, it is appropriate to follow this approach if it is clear which client first sought advice and information has already been supplied to the member in relation to the particular transaction. To change allegiance after accepting instructions could present a conflict in relation to the use of information already supplied as it would be breach of client confidentiality to release such information, in any form, to another party without express approval of the client providing such information.

Even though a decision is made to act only for the first client and to recommend the other to seek alternative advice in relation to the particular transaction it is still advisable for the member to inform the other client that he is so acting in order to avoid any subsequent suggestion that he may have acted improperly or misused any confidential information concerning that client.

- (c) To act for neither. This is the only way totally to avoid the conflict of interest but may not necessarily be the best course as it may not swerve the interest of anyone concerned. Nevertheless it is the recommended course in situations of doubt.

2.4 A member may frequently be asked by an employer to provide tax or other advice to his employees. It is important for the member to recognize that although the instructions may be given by the employer, the client relationship is with the individual employee. No confidential information pertaining to the employee should be given to the employer without the express approval of the employee (preferably in writing). Where the nature of the assignment is such that there is a requirement for a report to the employer this fact should be made clear in the engagement letter submitted to the individual employee.

2.5 No member shall give any assistance or his services by the use of his name or in any other manner to advance any illegal activity of a client.

2.6 No member shall make, prepare, attest to or certify any statement which he knows to be

- (i) false, incorrect or misleading; or
- (ii) open to misconstruction by reason of any error, omission or suppression of a material fact or otherwise.

**Rule 3 COMPETENCE AND DUE CARE**

- 3.1 Every member must strive continually to improve his technical services and to keep his knowledge up-to-date. He must bring due care and diligence to bear upon the discharge of his duties to clients or employers.
- 3.2 A member must not undertake professional work which he is not competent to perform and, when in doubt, must obtain such advice and assistance as will enable him to carry out the work competently.
- 3.3 A member shall endeavour to enhance his professional competence and comply with the Continuing Professional Development (CPD) guidelines as may be prescribed by the Council from time to time.
- 3.4 A member shall comply with all the standards and guidelines as may be prescribed by the Council from time to time.

## **Rule 4 CONDUCT OF PRACTICE**

- 4.1 (i) Before acting for a new client a member should communicate with his predecessor as required by paragraph 11.5.
- (ii) On accepting instructions a member should normally set out in a letter of engagement to the client his understanding of the scope and nature of the assignment and invite the client to provide confirmation. This exchange of letters serves as the contract between the member and his client. Careful wording is needed to ensure that the scope of the work is fully defined and that the client understands what his adviser has agreed to undertake. Similarly, it is usually appropriate to agree, and set out in writing, the way in which fees will be computed.
- (iii) Wherever practicable, a member should institute an internal review system in his office. The purpose of such a review would be to assist in ensuring that clients' instructions are being observed and that the level of services being provided is competent and appropriate.
- 4.2 (i) Once he has accepted a client's instructions, a member should not cease to act for the client until the relevant work has been completed unless:
- a) the client requires him to do so; or
- b) he has good cause and gives reasonable notice to the client.
- (ii) If, after ceasing to act, a member receives a communication from a successor, he should proceed as set out in paragraph 11.6 below.
- (iii) If a former client asks a member to hand over copies of all relevant papers either to the client or a successor agent, the member should co-operate. In particular, he should bear in mind that, with the exception of those working papers for which the client has not specifically paid, many of the documents on his files will in practice belong to the client. In the event of a dispute, a member who is not himself a lawyer should normally seek legal advice.
- 4.3 (i) A member should ascertain whether any other professional advisers are involved in any project or assignment which a client asks him to undertake, and the scope of their involvement. Subject to obtaining his client's consent, he should ensure that they become aware of the scope of his own involvement, and establish appropriate working relationships with them.
- (ii) Where the member's advice is sought as to the appointment of other suitable professional advisers, he should make recommendations to his client's (or employer's) perceived best interests. This may involve providing several names from which his client (or employer) can choose.
- 4.4 A member should be satisfied that any work which he delegates is undertaken by staff who have been adequately trained to carry out the work involved.
- 4.5 A member should not enter into arrangement with an unlicensed person to endorse his/her tax work.

**Rule 5 MEMBER'S OWN TAX AFFAIRS**

A member's own tax affairs should be kept up to date and all returns, accounts etc timeously lodged. While always important, this is particularly so since dilatoriness or incompetence in one's own affairs could well cause doubts in the minds of tax authorities as to the standard of the member's professional work.



## **Rule 6 FORM OF PRACTICE**

- 6.1 (i) The use of a company as a practice medium may be subject to both statutory and professional restraints. It is the responsibility of every member to ensure that he complies with the law and with the regulations of any other professional body to which he belongs.
- (ii) Subject to the above, a member may carry on a tax practice in corporate form. If he does so, he is subject to the same ethical and other requirements as a member practicing as an individual. Any member who is a director of a company may be held responsible for every act of the company. Thus, the rights and duties of such a member are the same as those of a member who is a partner in a firm and the expression ~~%corporate practice+~~ is, for this purpose, synonymous with ~~%firm+~~.
- 6.2 A member may act in association with persons who are not members of the institute. In such cases, each member who is a partner in a firm (or a director of a company) should, to the best of his efforts, ensure that the Institute's Rules and Regulations are observed by the firm, its partners and employees, (or those of the company, where practice is conducted in corporate form).
- 6.3 If an amalgamation of two or more practices will materially affect the manner in which services are provided to clients then the clients who will be affected should normally be notified of the amalgamation after it has been successfully concluded.

***Explanatory Note:***

In the case of an amalgamation, clients would thus have been given the opportunity of deciding whether they wish to continue to retain the services of the newly constituted practice.

- 6.4 In a proposed dissolution of a practice, clients should be notified of the intended dissolution in advance.

**Rule 7 DESCRIPTIONS AND DESIGNATORY LETTERS**

- 7.1 Only a member who is licensed under Section 153 of the Income Tax Act 1967 or under any other written law of Malaysia may, in describing himself as a tax agent, tax consultant or tax adviser, use the designation ~~%~~Approved Tax Agent+.
- 7.2 A member may use in conjunction with the abovementioned designations, other designations or designatory letters to indicate:-
- (i) membership of other professional bodies;
  - (ii) possession of academic degrees or diplomas of institutions of higher learning or any academic post-graduate qualification from institutions of higher learning; or
  - (iii) possession of civil or military honours or decorations.
- 7.3 A member may describe himself as Associate, Chartered Tax Institute of Malaysia (or ACTIM) or Fellow, Chartered Tax Institute of Malaysia (or FCTIM), in accordance to their membership status.
- 7.4 All members who are in public practice are required to apply for a Practising Certificate of the Institute. A member holding such a Practising Certificate may identify himself as a Chartered Tax Practitioner (CTP).

## **Rule 8 CLIENTS' MONIES**

A member in practice is strictly accountable for all clients' monies received by him. Such monies (including any interest earned thereon) should be kept separate from all other monies in his hands and be applied only for the purposes of the client.

***Explanatory Note:***

- (i) Clients' monies should be paid without delay into a separate bank account which may be either a general account or an account in the name of a specific client but which shall in all cases include in its title the words 'client's'. Any such account is referred to herein as a client account.
- (ii) Where a practice receives a cheque or draft which includes both clients' monies and other monies he should cause the same to be credited to a client account. Once the monies have been received into such client account a practice may withdraw from that account such part of the sum received as can properly be transferred to the office account in accordance with the principles set out in paragraph (iv) of this explanatory note.
- (iii) Save as referred to in paragraph (ii) of this explanatory note no monies other than clients' monies should be paid into a client account.
- (iv) Drawings on a client account may be made only:
  - (a) To meet payments due from a client to the practice for professional work done by the practice for that client provided that:-
    - ① the client has been informed in writing, and has not disagreed, that money held or received for him will be so applied; and
    - ② a bill has been rendered.
  - (b) To cover disbursements made on a client's behalf.
  - (c) To or on the instructions of a client.
- (v) Money held by a member as stakeholder should be regarded as clients' money and should be paid into a separate bank account maintained for the purpose or into a client account.
- (vi) Every member in practice should at all times maintain records so as to show clearly the money he has received, held or paid on account of his clients, and the details of any other money dealt with by him through a client account, clearly distinguishing the money of each client from the money of any other client and from his own money.

## **Rule 9 FEES**

- 9.1 Professional fees charged by members should be a fair reflection of the value of the work performed for the client, taking into account:-
- (i) The skill and knowledge required for the type of work involved;
  - (ii) The level of training and experience of the persons necessarily engaged in the work;
  - (iii) The time necessarily occupied by each person engaged in the work; and
  - (iv) The degree of responsibility and urgency that the work entails.

***Explanatory Note:***

- (a) In order to carry out the professional service for which he is engaged a practicing member must first consider the instructions of his client in conjunction with any statutory duty relating thereto and then discharge his responsibility by applying to the affairs of his client the professional skill and knowledge which he and his staff have acquired by training and experience. His fees for that service should provide him with appropriate remuneration for the time and skill which he has personally devoted to his client's affairs and the responsibility he has accepted together with reimbursement of and suitable margin of profit on his overhead expenses and the salaries of his staff for whose work he takes responsibility. Fees should therefore normally be computed by reference to the above factors (i) to (iv).
  - (b) It is neither usual nor necessary for bills submitted to clients to be fully detailed but the member's records should be adequate to enable this to be done if required either to satisfy the client or, in the unfortunate and rare event of it becoming necessary to take legal proceedings, to recover unpaid fees.
- 9.2 A member is entitled to charge for his services such fees as he may consider appropriate in connection with the professional services that he undertakes, provided always that no member shall propose to a prospective client unrealistically low professional fees or free services.
- 9.3
- (i) No member shall mislead his clients or the public by charging a fee which does not commensurate with the professional responsibilities and work performed which may result in the lowering or compromising of the professional standards.
  - (ii) Notwithstanding sub-paragraph (i), a member may charge charitable bodies and non-profit organizations low professional fees, provided always that the provision of such services are not used as an inducement to secure professional appointments or engagements which may arise therefrom.
- 9.4 In specific circumstances where a member feels there are genuine grounds to propose a lower fee than another member undertaking the same or similar work (other than non-recurring or specialist work including management consultancy services) care must be taken to ensure that the lower fees is in line with the provisions of paragraph 9.1 and 9.3(i) above. In proposing a fee which is lower than that charged by another member, the member concerned should note that the lower fee proposed is a valid reason for another member to complain to the Institute that in the particular circumstances the acceptance was improper.

***Explanatory Notes:***

The fact that one member may charge a lower fee than another for undertaking the same or similar work is not improper provided care is taken to ensure that the client is not misled:-

- (i) As to the precise range of services that a quoted fee is intended to cover.
- (ii) As to the likely level of future fees for any work undertaken for the client

The member intending to charge a lower fee shall inform the client as to the precise range of services covered by the quoted fee.

- 9.5 Fees should not be charged on a contingency, percentage or similar basis, save where that course is authorised by statute or is generally accepted practice for certain specialist work.

***Explanatory Note:***

Members should be aware that where fees are charged on a contingency basis such fees may be perceived by third parties, in particular the Inland Revenue Board (IRB), as reflecting adversely on the independence of the member. Accordingly, where a contingency fee basis is adopted, the member should take special care to ensure that his conduct meets, and is seen to meet, the required standards of independence and impartiality, and that he cannot be challenged by the IRB on the standard of disclosure adopted in connection with his clients' affairs.

## **Rule 10 CONFIDENTIALITY**

- 10.1 A member shall treat as confidential any information about a client's business affairs acquired in the course of professional work and neither use nor appear to use that information for his personal advantage or for the advantage of a third party.

***Explanatory Note:***

There are many ways in which a member could, if he were so minded, turn to his own personal advantage or to the advantage of a third party, information acquired in the course of his professional duties. A member should not only refrain from misuse of such information but should also refrain from acting in such a manner as might make it appear that he has misused such information.

- 10.2 Notwithstanding paragraph 10.1, a member may disclose or produce such information, documents, or records without the consent of his client:-
- (i) For the purpose of discharging his duties to his client;
  - (ii) In accordance with the provisions of any written law or where disclosure is compelled by process of law;
  - (iii) Where disclosure is reasonably necessary to protect the member's interest.

***Explanatory Note:-***

- (a) In the course of his work a member may find himself faced with conflicts between his loyalty to his employers or colleagues on the one hand, and his duties as a member of a profession or as a citizen on the other hand. When faced with conflict a member should make disclosure only with proper authority or where there is a professional obligation, a right, a legal requirement or a public duty to disclose.
- (b) Where a member is in doubt as to whether he has a right or duty to disclose he should, if appropriate, initially discuss the matter fully within the organization in which he works. If that is not appropriate, or if it fails to resolve his problem, he should take legal advice.
- (c) If a member is invited to appear in court as a witness against a client or former client, he should normally refuse until served with a subpoena or other form of witness summons.
- (d) He must answer any questions that are put to him, even though he may thus disclose information obtained in a confidential capacity but he may appeal to the Court for guidance on whether he is obliged to answer particular questions.
- (e) If a member is requested to assist the police, the Inland Revenue Board or other authority by providing information about a client's affairs in connection with enquiries being made, he should first enquire under what statutory authority the information is demanded. Unless he is satisfied that such authority exists he should decline to give any information until he has obtained his client's authority. If the client's authority is not forthcoming and the demand for information is pressed the member should not accede unless so advised by his solicitor. The position is the same whether the enquiries relate to a civil or criminal matter.
- (f) A member may disclose or produce such information, documents, or records without the consent of his client where disclosure is reasonably necessary to enable him to sue for fees, or to defend an action for negligence or otherwise, or to

clear himself of suspicion of a criminal offence, or to resist a penalty under section 114(1) of the Income Tax Act 1967

- 10.3 A member shall not use specific confidential information, acquired by virtue of his position as a tax agent, tax adviser or tax consultant to gain directly or indirectly, an advantage for himself or for any other person.

***Explanatory Note:-***

Information acquired by a member in the course of his duties and to which he would not otherwise have access should not be used for personal advantage nor for the advantage of a third party.

## **Rule 11 CHANGES IN PROFESSIONAL APPOINTMENTS**

- 11.1 No member shall act in relation to another member in any way or manner as to lower the dignity or honour of the profession or to discredit the profession.
- 11.2 A member invited to undertake professional work additional to that already being carried out by another member, who will still continue with his existing duties, should, as a matter of professional courtesy, notify the other member of the work he is undertaking unless the client gives a valid reason as to why such notice should not be given.
- 11.3 The client has an indisputable right to choose his tax agent, tax consultant or tax adviser and to change to others if he so decides.
- 11.4 A member before accepting an appointment as tax agent must, save where the client has not previously had an existing tax agent, request the prospective client's permission to communicate with the existing tax agent. If such permission is refused he should decline the appointment.
- 11.5 No member shall accept appointment as tax agent without communicating with the existing tax agent, if any, who is to be superseded.
- 11.6 The existing tax agent, on receipt of communication referred to in paragraph 11.5 should forthwith reply, preferably in writing, advising whether there are any professional reasons why the proposed tax agent should not accept the appointment.
- 11.7 (i) The existing tax agent should transfer all books and papers of the client which are in or may come into his possession to the new tax agent promptly after the change in appointment has been effected and should advise the client accordingly.
- (ii) The new tax agent will often need to ask his predecessor for information as to the client's affairs, lack of which might prejudice the client's interest. Such information should be promptly given and unless there is good reason to the contrary, such as an unusual amount of work involved, no charge should be made.
- 11.8 Notwithstanding paragraph 11.7, where a legal right of lien exists, a member may exercise that lien in appropriate circumstances. A right of lien will only exist where all four of the following circumstances apply:
- (a) The document retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client;
  - (b) The document must have come into possession of the member by proper means;
  - (c) Work must have been done by the member upon the documents; and
  - (d) The fees for which the lien is exercised must be outstanding in respect of such work and not in respect of other unrelated work.



Accordingly, where a member does work for a company and also for the directors of that company in their private capacities, if the fees for work done for a director in his private capacity are unpaid, no right of lien exists over the company's documents in the light of (a) and (d) above.

Members should consult their solicitors before seeking to exercise a lien in any but the most straightforward of cases. Similarly a client disputing the right of lien of a member might be persuaded to consult his own solicitors. Where the member's right is well founded the advice the client receives may change his attitude both to the lien and the bill.

## **Rule 12 REFERRALS**

No member in public practice who receives an assignment by referral from another member in public practice shall provide any other professional services, which are being handled by the referring member, to the referring member's client without informing the referring member. Where the said professional services are not currently being handled by the referring member, such notification is not necessary.

## **Rule 13 INCAPACITY OR DEATH OF A SOLE PRACTITIONER**

13.1 A member in practice who is a sole practitioner should enter into an arrangement to enable his practice to continue with minimum disruption in the event of his death or incapacity. Provision for continuity in the proper management of a practice may be made in either of the following ways:

- (i) by entering into an agreement with another sole practitioner or firm or with a firm of public accountants;
- (ii) by entering into some other arrangement whereby adequate provision is made.

13.2 Members should ensure that their executors and family will be aware, in the event of death or incapacity, of the arrangement made for the management of the practice.

***Explanatory Note:***

- (a) Unless appropriate arrangements have been made, the continuing incapacity or death of a sole practitioner will cause considerable difficulty and inconvenience to his clients. Furthermore, the resultant interruption of services will diminish the value of the practice and may even lead to its disintegration.
- (b) It is therefore important for a sole practitioner in his own interests no less than in those of his clients to enter into such arrangements with another member or firm as will enable the practice to be carried on with a minimum of disruption in the event of his incapacity or death. Such arrangements should be made as soon as possible and should provide so far as possible for the practice to be continued as a going concern until such time as the sole practitioner recovers or he or his representatives decide to dispose of the practice.
- (c) An arrangement, reciprocal or otherwise, between two sole practitioners may be appropriate. Alternatively, in many cases it will be advantageous for a sole practitioner to enter into an arrangement with a firm.
- (d) Although this arrangement may take the form of an agreement to manage, an arrangement for the sale of the practice on a predetermined basis may, in many cases, be more satisfactory.
- (e) When such arrangements are under consideration, the compatibility of the respective practices, especially in relation to procedures, fees and the general state of the work in both offices, should be borne in mind.

**Rule 14 ACTS DISCREDITABLE TO THE PROFESSION**

~~%~~Acts discreditable to the profession+or ~~%~~unprofessional conduct+includes gross carelessness, neglect and incapacity in the performance of professional duties and impropriety in professional conduct. A member shall not commit any acts discreditable to the profession which shall include, but are not confined to, the following acts:-

- (i) retention of client records after a demand is made for them, provided always that a member may exercise his right of lien over such records in respect of unpaid fees legitimately due to him.
- (ii) willfully making or permitting or directing another to make false and misleading entries in the financial statements or records of an entity.
- (iii) knowingly, in any manner, advising any of his clients in any scheme whereby his client may evade tax.

**Rule 15 TRAINING AND CONTINUING PROFESSIONAL  
DEVELOPMENT**

- 15.1 Due to the significant growth in taxation legislation over the past ten years, and the increased awareness by individuals and businesses of the importance of taxation when considering any financial transaction, it is important that all members keep fully up to date in relation to statute and case law and Revenue practice.

The benefits of continuing professional development are:

- (i) The resultant ability to recognize the areas in which a member is competent to advise;
- (ii) The possible effect of negligence claims when taking evidence as to culpability; and
- (iii) The possible effect on disciplinary proceedings if a complaint is made as to professional expertise.

- 15.2 Members are recommended to achieve the required units of training each year as determined by the Council. Each hour of structured education represents 2 units, and each unstructured hour 1 unit. Structured education covers attendance at lectures and the preparation and the presentation of lectures; unstructured education includes reading. %Unstructured+ continuing professional development should be planned properly. In particular, it should include regular reading of publications, such as the Institute's own journal and reasonable selection of other tax journals and books.

- 15.3 The institute provides a number of talks, seminars and conferences which should form part of a continuing professional development programme.

- 15.4 Whenever possible, individual firms should arrange in-house tax training sessions for students and as continuing professional development. Where this is impracticable, other arrangements ought to be considered, including membership of training consortia or attendance at training sessions organised by other firms.

**Rule 16 PROFESSIONAL INDEMNITY INSURANCE**

- 16.1 All members in public practice shall be covered by professional indemnity insurance, in the manner as required by the guidelines on the issuance of Practising Certificate.
- 16.2 The guidelines on Practising Certificate shall be recommended by the membership committee and endorsed by the Council.