

# THE FIDUCIARY INSTITUTE OF SOUTH AFRICA

## Disciplinary Regulations

### 1. Definition and Interpretation

1.1 In these Regulations, unless the context clearly indicates otherwise:

1.1.1 "Constitution" shall mean the Constitution of the Fiduciary Institute of South Africa;

1.1.2 Terms and expressions defined and described in the Constitution, shall have the same meaning and description when used in these Regulations;

1.1.3 "Regulations" shall mean the Disciplinary Regulations set forth in this Deed, or as may be amended from time to time;

1.1.4 The interpretation of these Regulations shall be done *mutatis mutandis* in accordance with the interpretation provisions as detailed in the Constitution.

### 2. Disciplinary Committee

2.1. The Executive Committee shall annually, at the first meeting of the term of the new Executive Committee, appoint a Disciplinary Committee ("Disciplinary Committee" or "Committee").

2.2. The Disciplinary Committee may consist of any number but no less than five members of the Institute, of which three at least shall be members of the Executive Committee.

2.3. The Disciplinary Committee shall meet as often as is necessary. The Committee shall appoint a Chairman of the Committee ("the Disciplinary Chairman") at its first meeting.

2.4. The members of the Committee shall hold office until their successors have been successfully appointed at the start of the new term of the Executive Committee.

2.5. Notwithstanding par 2.4, any of the above mentioned persons shall vacate their office if their membership of the Institute is suspended or terminated for any reason.

### **3. Duties and Powers of the Disciplinary Committee**

3.1. The duties of the committee shall be to:

3.1.1. Cause disciplinary proceedings to be instituted against any member who allegedly contravenes or has contravened any provision of the Constitution, the Regulations, the Code of Conduct (“the Code”), or ;

3.1.2. Appoint a tribunal for a disciplinary hearing consisting of at least three members who shall all be Members of the Institute;

3.1.3. Appoint a case-putter to investigate the complaints or charges against the Member or Members and to conduct the disciplinary process before the appointed tribunal on behalf of the Institute;

3.1.4. The powers of the Committee shall be to:

3.1.5. Determine a time and place for a disciplinary hearing;

3.1.6. Arrange for the attendance of all parties involved in such disciplinary hearing;

3.1.7. Make arrangements for all logistical requirements to facilitate such disciplinary hearing;

3.1.8. Require any Member of the Institute, including the Member or Members against whom the charges are laid to attend such disciplinary hearing;

- 3.1.9. Confer the authority to investigate the complaints or charges in order to gather evidence, to the appointed case-putter.

**Procedure in all disciplinary matters.**

**4. Investigation and Evaluation of Information relating to Complaints or Charges against a Member**

- 4.1. Any person who lodges a complaint against a Member shall be requested in writing by the Chairman of the Institute to submit such complaint in the form of an affidavit.

4.2. The Chairman of the Institute:

- 4.2.1. May refer any such affidavit against a Member to an appointed legal practitioner or an appropriately qualified member to obtain an opinion as to the necessity for and prospects of success of disciplinary action against such Member;

- 4.2.2. Shall in all cases where a complaint has been so referred take a decision:

- 4.2.2.1. To refer the complaint against such Member to the Disciplinary Committee; or

- 4.2.2.2. Not to proceed with any further action against such Member;

- 4.2.3. Shall, in all cases where a complaint has been so referred and he has decided not to proceed with disciplinary action against such Member, submit a report to the Executive Committee of the Institute at the first opportunity.

- 4.3. The Chairman of the Institute shall forward any complaint where he has decided to refer the matter to the Disciplinary Committee, to that Committee.

- 4.4. The Chairman of the Institute shall inform the complainant in writing that the matter has been referred to the Disciplinary Committee.
- 4.5. The Disciplinary Committee shall consider all available information about the complaint or charge against a Member of the Institute and take a decision by simple majority whether to proceed with the disciplinary process.
- 4.6. In all cases where the Disciplinary Committee decides not to take any further action, the Disciplinary Chairman shall table a report at the next meeting of the Executive Committee stating reasons furnished by the Disciplinary Committee why no further action has been taken.
- 4.7. In all other cases the Disciplinary Chairman shall cause to communicate the essence of the complaint or charge to the Member involved and request him to respond thereto within twenty-one days, stating that:
  - 4.7.1. Disciplinary steps may follow; and
  - 4.7.2. Any response must be freely and voluntarily made; and
  - 4.7.3. The Member may prefer not to respond; and
  - 4.7.4. Any response may be used in evidence at any future disciplinary hearing.
- 4.8. The Disciplinary Chairman shall cause any response by the Member to be assessed by an appointed legal practitioner or an appropriately qualified member, and submit a recommendation to the Disciplinary Committee who must decide within 10 (ten) days of receipt of the recommendation whether a disciplinary hearing should be arranged;
- 4.9. In all cases where the Disciplinary Committee decides that a disciplinary hearing should be arranged, the Chairman of the Institute shall within ten days of being notified:

4.9.1. Appoint a case putter to conduct the case before the Disciplinary Tribunal (the "Tribunal"); and

4.9.2. Instruct the Disciplinary Committee to appoint a Tribunal.

4.10. In all cases where the Chairman of the Institute decides not to take any further action, he shall table a report at the next meeting of the Executive Committee stating the reasons why no further action has been taken.

## **5. Disciplinary Tribunal**

5.1. The Disciplinary Committee shall nominate at least three Members who are skilled in that activity to act as the Tribunal.

5.2. The Tribunal shall then arrange the disciplinary hearing using the powers conferred upon it in these Regulations, read with the Constitution.

## **6. Disciplinary Hearing**

6.1. The Tribunal shall convene on the day of the hearing, elect a Chairperson, and shall hear the evidence presented by both the case-putter and the accused Member, or his legal representative.

6.2. The Tribunal shall determine the procedure to be followed but must hear the evidence against the accused Member first and then the evidence for the accused Member, and shall allow cross-examination and re-examination by both sides.

6.3. The Members of the Tribunal may ask any witness any question at any time during the course of testimony by that witness to clarify the evidence, and may call or re-call any witness in the interest of establishing the facts on any point that may have come up during the hearing.

- 6.4. The Tribunal shall be entitled to accept as evidence the record of any criminal or civil trial or disciplinary hearing in which the accused Member has been involved dealing with the same events forming the basis for the charges before the Tribunal, on condition that the record must first be proven to be authentic to the satisfaction of the Tribunal.
- 6.5. A full record of the proceedings shall be kept in any appropriate format and/or medium, a copy of which the Secretary of the Institute shall keep for a minimum of three years after the date when the hearing has ended, or in a case where an appeal was heard, the date on which the appeal hearing has ended.
- 6.6. The Tribunal may adjourn the hearing to any time or place which is acceptable to both sides and failing agreement on the time or place of such adjournment, may take any decision about the time or place for the reconvening of the hearing that would be reasonable in the circumstances and fair to both parties.
- 6.7. After hearing all evidence and arguments from both sides, the Tribunal shall hand down its finding on the merits after due deliberation by the members of the Tribunal.
- 6.8. The standard of proof required of the case putter shall be balance of probabilities.
- 6.9. The Tribunal shall, in case of a finding of guilty, hear evidence and arguments on sentence and impose an appropriate sentence after due deliberation. The sentence shall be one or a combination of the following:
  - 6.9.1. An admonishment;
  - 6.9.2. A fine not exceeding ten thousand Rand;
  - 6.9.3. A suspension of membership for a period not exceeding six months;

6.9.4. A termination of membership for a period not exceeding ten years, at the expiry of which the person may re-apply for membership. The application will then be considered in the normal fashion;

6.9.5. A life ban on membership.

6.10. The Tribunal may suspend all or any part of a sentence for any period up to ten years on any condition it deems fit in the circumstances.

6.11. The Tribunal shall notify the Disciplinary Chairman and the Chairman of the Institute in writing of the findings of the Tribunal, and the latter shall in turn notify any interested party in writing as appropriate.

6.12. The Tribunal will then be *functus officio*.

6.13. The Chairman of the Institute shall have the right to:

6.13.1. notify all Members of the Institute of the findings of the Tribunal; and

6.13.2. make the findings of the Tribunal known to local and national news media after the period allowed for the lodging of an appeal has expired and no appeal has been successful.

## **7. Appeal Tribunal**

7.1. The convicted Member ("the Appellant) may lodge an appeal against the finding and/or sentence of the Tribunal to an Appeal Tribunal (the "Appeal Tribunal") within fourteen days of the conclusion of the disciplinary hearing by:

7.1.1. Setting out the grounds for the appeal in writing; and

7.1.2. Handing a copy of such document signed by the appellant either to the Chairman of the Tribunal at the conclusion of the disciplinary hearing or to the Chairman of the Institute; or

- 7.1.3. mailing a copy of such document by registered mail and addressed to the Chairman of the Institute to reach the Chairman before the expiry of the period allowed for the lodging of an appeal.
- 7.2. The Chairman of the Institute shall forward the record of the proceedings before the disciplinary Tribunal as well as the grounds for the appeal to the Disciplinary Committee within seven days.
- 7.3. The Disciplinary Committee shall study the record and the grounds for the appeal and allow or disallow an appeal within thirty days of receiving the documentation from the Chairman of the Institute and inform the Chairman in writing accordingly. The Disciplinary Committee shall be entitled to request written reasons for the conviction and/or sentence from the Tribunal. In the case of the Disciplinary Committee disallowing the appeal, the Chairman will notify the appellant accordingly within seven days, and the matter will further be dealt with as if no appeal has been lodged.
- 7.4. The Appeal Tribunal shall be appointed by the Chairman of the Institute and the Chairman of the Disciplinary Committee, acting jointly.
- 7.5. The Appeal Tribunal shall consist of at least five Members who are skilled in that activity of which two shall be Members of the Disciplinary Committee.
- 7.6. The Chairman of the Institute shall appoint a Chairman for the Appeal Tribunal.
- 7.7. The Chairman of the Appeal Tribunal may co-opt a maximum of two experts in any field relating to the charges of which the Member has been found guilty before the Tribunal to assist the Appeal Tribunal in the appeal hearing. Such experts shall have full powers to participate as members of the Appeal Tribunal, but shall have no voting rights with regard to the finding of or sentence imposed by the Appeal Tribunal.

## **8. Appeal Hearing**

### 8.1. The Appeal Tribunal shall:

8.1.1. Convene at a time and place determined by the Chairman of the Appeal Tribunal after consultation between him and the appealing Member or his legal representative;

8.1.2. Hear arguments from both the Member and the Institute, in that order;

8.1.3. Not hear any evidence, except where:

8.1.3.1. New information becomes available and it would be impracticable, in the opinion of the Appeal Tribunal, to refer the matter back to a new disciplinary panel as envisaged by paragraph 8.2.4; and/or

8.1.3.2. A dispute arises as to a point of procedure followed at the disciplinary hearing, and it is not possible to ascertain from the record, in the opinion of the Appeal Tribunal and on a balance of probabilities, the process that the Tribunal followed;

8.1.4. Decide the appeal by due consideration of the record of the original hearing and the arguments presented to it.

### 8.2. The Appeal Tribunal shall, in its sole discretion, have the authority to:

8.2.1. Substitute any finding of the Tribunal at the original hearing with a new finding;

8.2.2. Impose any new appropriate sentence from the competent sentences in paragraph 6.9;

8.2.3. Confirm the finding or findings of the Tribunal;

- 8.2.4. Refer the matter back for a rehearing by a new Tribunal on all or some of the original charges.
- 8.3. At a hearing by a new Tribunal as envisaged in paragraph 8.2.4, the case putter for the Institute shall not be limited to the charges brought before the original Tribunal;
- 8.4. The Appeal Tribunal shall cause a full record of proceedings before it to be kept in any appropriate format or medium, a copy of which the Secretary of the Institute shall keep for a minimum of three years after the appeal hearing has ended;
- 8.5. After handing down it's finding, the Appeal Tribunal will be *functus officio*;
- 8.6. The Chairman of the Institute shall have the right to:
- 8.6.1. Notify all Members of the Institute of the findings of the Appeal Tribunal;  
and
- 8.6.2. Make the findings of the Appeal Tribunal known to local and national news media.

## **9. Advice about Procedure**

- 9.1. Any Tribunal or Appeal Tribunal may, if it in its sole discretion deems it necessary, obtain advice about any procedural aspect not covered by these Regulations. Without derogating from the generality of this provision, the provisions of par 7.7 may be applied *mutatis mutandis*, or the Tribunal may be guided by the provisions of South African statutory or common law relating to criminal or civil procedure, or when applicable, by industrial or labour relations.

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