

## THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA

### Disciplinary Regulations

#### 1. Definition and Interpretation

- 1.1. In these Regulations, unless specified otherwise or the context clearly indicates otherwise:
  - 1.1.1. **“Appeal Panel”** shall mean a panel appointed and convened under paragraph 7 and 8 for the purpose of hearing the appeal of a Member found guilty in a disciplinary hearing conducted under par 6;
  - 1.1.2. **“Appeal Panel Chairman”** shall mean the person appointed under par 7 to act as chairperson of the Appeal Panel;
  - 1.1.3. **“Case Putter”** shall mean the person appointed in accordance with par 4.9 to conduct the case for the Institute in disciplinary proceedings;
  - 1.1.4. **“Code of Ethics”** or **“Code”** shall mean the Code of Ethics and of Professional and Responsible Conduct of the Institute;
  - 1.1.5. **“Constitution”** shall mean the Constitution of the Fiduciary Institute of Southern Africa;
  - 1.1.6. **“Council”** shall mean the Council of the Institute;
  - 1.1.7. **“Disciplinary Chairman”** shall mean the person appointed to that role by the Committee under par 2;
  - 1.1.8. **“Disciplinary Committee”** or **“Committee”** shall mean the Disciplinary Committee of the Institute as appointed and convened under par 2;
  - 1.1.9. **“Disciplinary Panel”** or **“Panel”** shall mean a panel appointed and convened under par 5 and 6;
  - 1.1.10. **“Institute”** shall mean the Fiduciary Institute of Southern Africa;
  - 1.1.11. **“Member”** shall mean a member as defined in the Constitution, and shall include a past member of the Institute in so far as a complaint against such past member is based on events which occurred during the membership of such a past member;

- 1.1.12. **"Panel Chairman"** shall mean the person appointed under par 5 to act as chairperson of the Disciplinary Panel;
  - 1.1.13. **"Paragraph"** or **"par"**, shall mean a paragraph contained in these Regulations;
  - 1.1.14. **"Regulations"** shall mean the Disciplinary Regulations set forth in this Deed, or as may be amended from time to time;
- 1.2. 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 Council shall annually, at the first meeting of the term of the new Council, appoint a Disciplinary Committee.
- 2.2. The Disciplinary Committee may consist of any number, but no less than three members of the Institute, of which at least one shall be a member of the Council.
- 2.3. The Disciplinary Committee shall meet as often as is necessary. The Committee shall appoint a 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 Council.
- 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 considered and, in appropriate cases, instituted against any member who allegedly contravenes or has contravened any provision of the Constitution, these Regulations or any other regulations of the Institute in force from time to time, or the Code of Ethics;
  - 3.1.2. Appoint a Panel for a disciplinary hearing consisting of at least three members who shall all be Members of the Institute;
  - 3.1.3. Act as custodian of these Regulations and ensure that appropriate amendments are initiated and submitted to Council for approval when necessary.

3.2. The powers of the Committee shall be to:

3.2.1. Investigate, or cause an investigation, into any alleged contravention of any provision of the Constitution, these Regulations or any other regulations of the Institute in force from time to time, or the Code of Ethics. In the course of such investigation the Committee, or any person appointed by it to conduct such investigation, may request and receive information from:

3.2.1.1. Any employer of a Member;

3.2.1.2. Any regulatory authority with jurisdiction over the behaviour of a Member;

3.2.1.3. Any other institute, society, association or other body with which the Member is associated in any way;

3.2.1.4. Any other person;

and disclose and make available any such information to the appointed case putter.

3.2.2. Obtain information from any person about the suitability of any Member to serve as member of a Panel or an Appeal Panel;

3.2.3. Obtain the necessary information and enlist the assistance of suitably qualified persons to facilitate appropriate amendments of these Regulations when necessary;

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

3.2.5. 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 becomes aware that a Member's behaviour:

4.1.1. Is or was in breach of any provision of:

4.1.1.1. the Constitution; or

4.1.1.2. the Code; or

4.1.1.3. any regulations made under the Constitution; or

4.1.2. Is or was contrary to any obligation, duty or requirement under any law in connection with the Member's professional duties;

may lodge a complaint against such Member in writing, addressed to the Chairman of the Institute.

4.2. The Chairman of the Institute:

4.2.1. May refer any such written complaint 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 Council 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:

4.5.1. To proceed with the disciplinary process; or

4.5.2. Not to proceed with the disciplinary process; or

4.5.3. To postpone a decision for not longer than six months on any one occasion, after which a decision shall be taken again under this subparagraph 4.5, pending the finalisation of:

4.5.3.1. Civil litigation between the complainant, or any other party, and the member; or

- 4.5.3.2. Criminal prosecution of the member; or
- 4.5.3.3. A disciplinary hearing by an employer or other membership body; or
- 4.5.3.4. A hearing or other investigative process by any relevant regulator;

related to the complaint.

- 4.6. In all cases where the Disciplinary Committee decides not to take any further action, the Disciplinary Chairman shall submit a report to the next meeting of the Council 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 may 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 which must decide within fourteen days of receipt of the recommendation whether:
  - 4.8.1. No further action should be taken against the Member; or
  - 4.8.2. The complaint should be dealt with by way of a Consent Order; or
  - 4.8.3. 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 fourteen days of being notified:
  - 4.9.1. Appoint a case putter to conduct the Institute's case before the Disciplinary Panel; and
  - 4.9.2. Instruct the Disciplinary Committee to appoint a Panel.

- 4.10. In all cases where the Committee decides that the complaint should be dealt with by way of a Consent Order, the Committee shall within thirty days issue a Consent Order, in writing, which shall consist of:
- 4.10.1. A statement with full reasons why it has come to the conclusion that the Member is, on balance of probabilities, guilty of a transgression of the Constitution, Code, these Regulations or any other Regulations of the Institute; and
  - 4.10.2. A statement of the sanction which it regards as appropriate, and which may be any one, or any combination, of the following:
    - 4.10.2.1. An admonishment;
    - 4.10.2.2. A fine not exceeding ten thousand Rand;
    - 4.10.2.3. A suspension of membership for a period not exceeding six months;
    - 4.10.2.4. A restitution offer, which should be offered to the complainant by the Member and receipt and acceptance or rejection of which by the complainant has to be proved by the Member to the Committee's satisfaction;
    - 4.10.2.5. Any of the above sanctions, suspended for a period of a maximum of five years, on any condition that the Committee deems appropriate in the circumstances; and
  - 4.10.3. A notice:
    - 4.10.3.1. Ordering the Member to accept or reject the Consent Order in writing within twenty-one days; and
    - 4.10.3.2. Notifying the Member that acceptance of the Consent Order will conclude all disciplinary action against the Member on the complaint in question; and
    - 4.10.3.3. Notifying the Member that rejection of the Consent Order, or failure to react to it within the stipulated time, will have the effect that a disciplinary hearing will be convened under par 5 and 6 below.
- 4.11. 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 Council stating the reasons why no further action has been taken.

## 5. Disciplinary Panel

- 5.1. The Disciplinary Committee shall appoint at least three Members who are appropriately qualified, in the opinion of the Committee, to act as the Panel, and appoint one of them to act as Panel Chairman.
- 5.2. The Panel Chairman shall then arrange the disciplinary hearing using the powers conferred in these Regulations, read with the Constitution, and cause notification of the date, time and place of the hearing to be communicated to the accused Member and all other relevant persons.

## 6. Disciplinary Hearing

- 6.1. The Panel shall convene on the day of the hearing and shall hear the evidence presented by both the case putter and the accused Member, or his legal representative.
- 6.2. The Panel 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 Panel 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 Panel 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 Panel, on condition that the record must first be proven to be authentic to the satisfaction of the Panel.
- 6.5. A full record of the proceedings shall be kept in any appropriate format and/or medium, a copy of which the Institute shall keep for a minimum of five 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 Panel 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 Panel shall hand down its finding on the merits after due deliberation by the members of the Panel.

- 6.8. The standard of proof required of the case putter shall be balance of probabilities.
- 6.9. The Panel shall, in case of a finding of guilty, hear evidence and arguments on an appropriate sanction and impose such sanction after due deliberation. The sanction shall be one or a combination of the following:
  - 6.9.1. An admonishment;
  - 6.9.2. A fine not exceeding fifty 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 Panel may suspend all or any part of a sanction for any period up to ten years on any condition it deems fit in the circumstances.
- 6.11. The Panel shall notify the Disciplinary Chairman and the Chairman of the Institute in writing of the findings of the Panel, and the latter shall in turn notify any interested party in writing as appropriate.
- 6.12. The Panel will then be *functus officio*.
- 6.13. The Chairman of the Institute shall:
  - 6.13.1. Notify the complainant of the findings of the Panel;
  - 6.13.2. Notify all Members of the Institute of the findings of the Panel; and
  - 6.13.3. Notify all appropriate regulatory authorities, with jurisdiction over the Member and/or his actions, of the findings of the Panel;
  - 6.13.4. Make the findings of the Panel known to the general public through any appropriate medium after the period allowed for the lodging of an appeal has expired and no appeal has been lodged, provided that the Chairman of the Institute may decide, upon request from and after taking advice from the Panel and/or the Committee, not to make the findings so known, provided further that, if the membership of a Member has been suspended or terminated as a result of the findings of the Panel, that fact shall be published on the website of the Institute.

## 7. Appeal Panel

- 7.1. Any member found guilty in a disciplinary hearing may lodge an application to appeal against the finding of and/or sanction imposed by the Panel to an Appeal Panel 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 Panel 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 Panel 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, shall be entitled to request written reasons for the finding and/or sanction from the Panel, which the Panel Chairman shall supply to the Committee within twenty-one days, and shall:
  - 7.3.1. allow or disallow an appeal within thirty days of receiving the last of the documentation from the Chairman of the Institute and from the Panel Chairman; and
  - 7.3.2. inform the Chairman of the Institute in writing accordingly.
- 7.4. In the case of the Disciplinary Committee disallowing the appeal, the Chairman shall notify the appellant accordingly within seven days, and the matter will further be dealt with as if no appeal has been lodged.
- 7.5. In the case of the Disciplinary Committee allowing the appeal, the Appeal Panel shall be appointed by the Chairman of the Institute and the Chairman of the Disciplinary Committee, acting jointly, and the Chairman of the Institute shall notify the appellant accordingly within seven days.
- 7.6. The Appeal Panel shall consist of at least five Members who are appropriately qualified and shall:
  - 7.6.1. Include at least two members of the Council;

7.6.2. Not include any member of the Panel in the disciplinary hearing leading to the appeal.

7.7. The Chairman of the Institute shall appoint an Appeal Panel Chairman.

7.8. The Appeal Panel Chairman 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 Panel to assist the Appeal Panel in the appeal hearing. Such experts shall have full powers to participate as members of the Appeal Panel, but shall have no voting rights with regard to the finding of or penalty imposed by the Appeal Panel.

## 8. Appeal Hearing

8.1. The Appeal Panel shall:

8.1.1. Convene at a time and place determined by the Appeal Panel Chairman 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 Panel, 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 Panel and on a balance of probabilities, the process that the Panel 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 Panel shall, in its sole discretion, have the authority to:

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

8.2.2. Impose any new appropriate sanction from the competent sanctions in paragraph 6.9;

8.2.3. Confirm the finding or findings of the Panel;

- 8.2.4. Refer the matter back for a rehearing by a new Panel on all or some of the original charges.
- 8.3. At a hearing by a new Panel as envisaged in paragraph 8.2.4, the case putter for the Institute shall not be limited to the charges brought before the original Panel;
- 8.4. The Appeal Panel shall cause a full record of proceedings before it to be kept in any appropriate format or medium, a copy of which the Institute shall keep for a minimum of five years after the appeal hearing has ended;
- 8.5. After handing down its finding, the Appeal Panel will be *functus officio*;
- 8.6. The Chairman of the Institute shall:
  - 8.6.1. Notify the complainant of the findings of the Appeal Panel;
  - 8.6.2. Notify all Members of the Institute of the findings of the Appeal Panel;
  - 8.6.3. Notify all appropriate regulatory authorities, with jurisdiction over the Member and/or his actions, of the findings of the Panel;
  - 8.6.4. Make the findings of the Panel known to the general public through any appropriate medium, provided that the Chairman of the Institute may decide, upon request from and after taking advice from the Appeal Panel and / or the Committee, not to make the findings so known, provided further that, if the membership of a Member has been suspended or terminated as a result of the findings of the Appeal Panel, that fact shall be published on the website of the Institute.

## 9. Advice about Procedure

- 9.1. Any Panel or Appeal Panel 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 7.8 may be applied *mutatis mutandis*, or the Panel 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.

## 10. Effective Date and Amendment

- 10.1. These Regulations become effective immediately upon approval by the Council and the Chairman of the Institute shall communicate them to all Members as soon as is practical.

10.2. These Regulations may be amended or repealed by a majority decision of the Council and any amendments or replacement Regulations shall be dealt with in accordance with this paragraph 10.



Ronel Williams  
Chairperson  
11 July 2017