



THE MALTA INSTITUTE OF ACCOUNTANTS BYE-LAWS CHAPTER SIX: DISCIPLINARY PROCEEDINGS

Citation 1. These Bye-Laws may be cited as the Disciplinary Bye-Laws of the Malta Institute of Accountants (MIA).

Definitions 2. "Annual General Meeting" shall have the meaning assigned to it in the Institute's Statute.

"Appeal" shall mean an appeal from the decision of the Disciplinary Committee as provided for in these Bye-Laws.

"Appeals Board" shall mean the Appeals Board set up in accordance with Article 9 of these Bye-Laws.

"Chairperson of the Appeals Board" shall mean a Member of the Appeals Board who is appointed to chair the proceedings in accordance with Article 9 of these Bye-Laws.

"Chairperson of the Disciplinary Committee" shall mean the Chairperson of the Disciplinary Committee appointed in accordance with Article 3 of these Bye-Laws.

"Charge" shall mean a formal notice, drawn up in line with Article 24 of these Bye-Laws, which shall serve the purpose of formalizing a complaint against a defaulting member.

"Chief Executive Officer" or "CEO" shall have the meaning assigned to it in the Institute's Statute.

"Committee Member" shall mean a Member of the Disciplinary Committee set up in accordance with Article 5 of these Bye-Laws.

"Complaint" shall mean a report or information, verbal or in writing, received by the Institute indicating that a Member may have become liable to disciplinary action under these Bye-Laws.

"Complainant" shall mean any person, whether a member of the Institute or a third party, who formally registers a complaint with the Institute in line with Article 12, Article 13 or Article 14 of these Bye-Laws.

"Council" shall have the meaning assigned to it in the Statute.

"Defaulting Member" shall mean a member of the Institute against whom a complaint has been formally registered.



“Deputy Chairperson of the Disciplinary Committee” shall mean the Deputy Chairperson of the Disciplinary Committee appointed in accordance with Article 3 of these Bye-Laws.

“Disciplinary Committee” shall mean the Disciplinary Committee set up in accordance with Article 5 of these Bye-Laws.

“Disciplinary Pool” shall mean the Disciplinary Pool appointed in accordance with Article 4 of these Bye-Laws.

“Institute” shall mean the Malta Institute of Accountants (MIA).

“Investigation” shall mean the inquiry into a Complaint by the Investigating Committee in accordance with Article 20 of these Bye-Laws.

“Member” shall have the meaning assigned to it in the Statute.

“Member of the Appeals Board” shall mean a Member of the Appeals Board set up in accordance with Article 9 below.

“Member of the Appeals Pool” shall mean a Member of the Appeals Pool set up in accordance with Article 8 below.

“Member of the Disciplinary Pool” shall mean a Member of the Disciplinary Pool set up in accordance with Article 4 of these Bye-Laws.

“Money Claim” shall mean any monetary claim which arises as a result of any breach of the Statute or Bye-Laws by a Member of the Institute, whether this claim arises due to non-payment of a subscription, membership, administrative charge, penalty or otherwise. The failure to pay any fee within the time period stipulated by the Institute shall constitute in each instance a separate claim.

“Service” shall mean the delivery of any notice to a Member via email with delivery receipt, or registered mail, or by any other written procedure allowing the CEO to receive confirmation of service.

Provided that, where it results from the delivery receipt that the Member has not been served with the notice, the formal notice shall be affixed to the Institute’s notice board and posted on the Institute’s website’s news section, or on any other publication released by the Institute as the Institute may, from time to time, prescribe, for a period of fifteen (15) days, at the expiry of which the Member shall be deemed to have been served with the notice.

“Statute” shall mean the Statute of the Institute.

Appointment
of the
Chairperson

3. There shall be a Chairperson and a Deputy Chairperson of the Disciplinary Committee who shall be nominated for appointment by a majority vote of the Council from those Members who have practiced the accountancy



and Deputy
Chairperson
of the
Disciplinary
Committee

profession for a period of not less than fifteen (15) years. The nominated Chairperson and Deputy Chairperson of the Disciplinary Committee shall be appointed to their respective post following a majority vote of the Members present and entitled to vote at the next Annual General Meeting of the Institute, or at an Extraordinary General Meeting of the Institute called for this purpose. The Chairperson and Deputy Chairperson of the Disciplinary Committee so appointed shall hold the position for a term of three (3) years. In the eventuality that the said three (3) year term expires but, due to extraordinary circumstances, it is highly impractical for an Annual General Meeting or an Extraordinary General Meeting to be called, the said term will be extended until the next Annual General Meeting is called. Any Chairperson or Deputy Chairperson of the Disciplinary Committee may only be appointed as the Chairperson and/or the Deputy Chairperson of the Disciplinary Committee for not more than two (2) terms. A Member having served for two (2) terms as Chairperson and/or Deputy Chairperson of the Disciplinary Committee shall not be eligible for nomination to the post of Chairperson and/or Deputy Chairperson of the Disciplinary Committee. Provided further that a Member occupying the position of Member of the Appeals Pool or a Member of the Disciplinary Pool shall not be eligible for nomination to the post of Chairperson or Deputy Chairperson of the Disciplinary Committee.

Appointment
of the
Disciplinary
Pool

4. There shall be a Disciplinary Pool which shall be composed of ten (10) Members who have practiced the accountancy profession for a period of not less than fifteen (15) years. The Disciplinary Pool shall be appointed during the first Council meeting following the appointment of the Chairperson of the Disciplinary Pool by a majority vote of the Council for a term of three (3) years. Members serving in the Disciplinary Pool shall be eligible for reappointment to the Disciplinary Pool for further terms. Provided that a Member occupying the position of Chairperson of the Disciplinary Committee or Deputy Chairperson of the Disciplinary Committee or a Member of the Appeals Pool shall not be eligible for nomination to a post on the Disciplinary Pool.

Constitution
of the
Disciplinary
Committee

5. There shall be a Disciplinary Committee which shall be composed of the Chairperson of the Disciplinary Committee and four (4) Committee Members who shall be appointed by the Chairperson from amongst the Deputy Chairperson of the Disciplinary Committee and the Members of the Disciplinary Pool when the Chairperson of the Disciplinary Committee is presented with a Charge in accordance with these Bye-Laws. For the purposes of establishing a quorum during sittings of the Disciplinary Committee, the presence of the Chairperson and another two (2) Committee Members shall constitute a quorum. The Chairperson shall appoint a new Disciplinary Committee for every Charge presented to the Council and a Disciplinary Committee shall remain so constituted until the disciplinary proceedings before such Disciplinary Committee are concluded, irrespective of the duration of such disciplinary proceedings.
6. A lawyer shall also sit with an appointed Disciplinary Committee. The lawyer shall be appointed by the Council and shall act as Secretary of the



Disciplinary Committee. He shall also have a consultative role, where this is required by the Disciplinary Committee, but shall have no voting rights.

7. Where a seat within an appointed Disciplinary Committee is vacated for any reason whatsoever, the Chairperson shall appoint a replacement from amongst the Members of the Disciplinary Pool. Where the seat so vacated belonged to the Chairperson, or where the Chairperson is, due to a conflict of interest or otherwise, not in a position to chair the Disciplinary Committee, the Deputy Chairperson of the Disciplinary Committee shall take his stead and any reference in the preceding Articles to the Chairperson of the Disciplinary Committee shall be taken to refer to the Deputy Chairperson of the Disciplinary Committee.

Appointment
of the Appeals
Pool

8. There shall also be an Appeals Pool which shall be composed of five (5) Members of the Appeals Pool who shall be nominated for appointment by a majority vote of the Council from those Members who have practiced the accountancy profession for a period of not less than fifteen (15) years. The nominated Appeals Pool shall be appointed to their respective post following a majority vote of the Members present and entitled to vote at the next Annual General Meeting of the Institute or at an Extraordinary General Meeting of the Institute called for this purpose. The Members of the Appeals Pool shall hold the position for a term of three (3) years. In the eventuality that the said three (3) year term expires but, due to extraordinary circumstances, it is highly impractical for an Annual General Meeting or an Extraordinary General Meeting to be called, the said term will be extended until the next Annual General Meeting is called. Members of the Appeals Pool shall be eligible for reappointment for further terms. Provided that a Member occupying the position of Chairperson of the Disciplinary Committee or Deputy Chairperson of the Disciplinary Committee or a Member of the Disciplinary Pool shall not be eligible for nomination to a post on the Appeals Pool.

Constitution
of the Appeals
Board

9. Where an Appeal is filed in terms of these Bye-Laws, three Members of the Appeals Pool shall, by means of a rotation system of the Members of the Appeals Pool, constitute the Appeals Board. A Chairperson of the Appeals Board shall be selected by the Members of the Appeals Board so constituted from amongst the Members of the Appeals Board.
10. Where a seat within an appointed Appeals Board is vacated for any reason whatsoever, the Chairperson shall appoint a replacement from amongst the Deputy Members of the Appeals Board. Where the seat so vacated belonged to the Chairperson, a new Chairperson shall be appointed by the remaining Members of the Appeals Board from the Appeals Pool.

Liability of
members to
disciplinary
action

11. A Member may be liable to disciplinary action under these Bye-Laws in any of the following cases:
 - (i) if in the course of carrying out professional work or otherwise, such Member has committed any act or default likely to bring discredit on the Institute or the profession of accountancy such as:



a. if such Member has committed misconduct by committing any act or default likely to bring discredit or so as to fall significantly short of the standards reasonably expected; or

b. if such Member has demonstrated professional incompetence by performing professional work incompetently to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected;

- (ii) if such Member is charged with any criminal offence punishable by imprisonment by a competent Court or if such Member has been convicted of an indictable offence in a Court of competent jurisdiction;
- (iii) if such Member is suspected to have breached the Institute's Code of Ethics;
- (iv) if such Member is suspected of having breached the Institute's Statute and / or Bye-Laws;
- (v) If such Member has failed to pay any fees, penalties or administrative fines within the time requested by the Institute.

Complaints

- 12. Any person may bring to the attention of the Institute any facts or matters indicating that a Member may have become liable to disciplinary action under these Bye-Laws. Any Complaint shall be directed to and received by the CEO.
- 13. The CEO may further file a Complaint of his/her own motion.
- 14. The Council may bring to the attention of the CEO any facts or matters indicating that a Member may have become liable to disciplinary action under these Bye-Laws, in which case the CEO shall take action in line with these Bye-Laws.
- 15. The CEO shall keep a register wherein he/she shall list all the complaints lodged against Members and the action taken.

Processing of Complaints by CEO

- 16. Upon receiving a Complaint, the CEO shall immediately open a file for its processing and shall then proceed as follows:
 - (i) Where the Complaint is not in writing, the CEO shall ask for the formal confirmation of the same by the Complainant in writing, which confirmation may be received by way of reply by email, fax or other written means together with the signature of the Complainant.
 - (ii) Where the Complaint is a Money Claim, the CEO shall proceed via the summary procedure provided for in these Bye-Laws.



- (iii) Where the Complaint is not a Money Claim, the CEO shall inform Council and shall request Council to appoint two (2) Members to assist in the investigation. The CEO and the two (2) members appointed as aforesaid shall be referred to as the “Investigating Committee”.
- (iv) The Investigating Committee shall investigate the Complaint and, if the Complaint is *prima facie* supported, the CEO shall draft a formal Charge against the Member/Members for an act or omission as laid down in Article 11 above.

Provided that in the case of urgent matters and if the circumstances of a particular matter so require the CEO, on consultation with the Officers Meeting as established in terms of the Statute, can proceed to investigate the matter directly, without the need of establishing an Investigating Committee, and subsequently draft a formal Charge against the Defaulting Member for an act or omission as laid down in Article 11.

Provided that the Investigating Committee and/or CEO may, at their own discretion, attempt to resolve the Complaint by mediation or similar non-litigious dispute resolution procedure; and if the attempt is successful, no further action shall be required.

Provided further that where the Investigating Committee decides for whatever reason that a Complaint is not supported, or in the event of any mediation being successful, the CEO shall inform the Council in writing of the facts of the Complaint and the way it was resolved. Notwithstanding the above, the Council may, if it deems necessary after having reviewed the written information provided by the CEO, request the CEO to proceed with the issuance of a Charge.

Summary Procedure for Money Claims

- 17. In the event of a Money Claim the CEO may raise a Complaint which will be subject to this special summary procedure. Upon a Complaint relating to a Money Claim filed by the CEO, the CEO shall serve the Defaulting Member with a formal notice for payment allowing the Defaulting Member fifteen (15) days from the date of service to settle the sums due.
- 18. The Defaulting Member shall have fifteen (15) days from the date of Service within which to reply to the notice of payment by paying in full the requested payment or submitting in writing his/her reasons for failing to pay. Failure to reply and/or effect payment within the set term will result in the CEO referring the matter to the Council. The Council may, in its discretion, impose sanctions in terms of Article 34 of these Bye-Laws.
- 19. Where a Defaulting Member submits written submissions for failing to pay, the CEO shall refer all documentation to the Council who shall then decide on the matter. The decision of the Council shall be final and binding and not subject to appeal and shall be served on the Defaulting Member.



Investigation
of claims by
the
Investigating
Committee

20. In conducting its investigations the Investigating Committee shall gather any information pertinent to the Complaint to which it may have reasonable access.

For the purposes of this Article, the Investigating Committee may request information from any Member or third party.

Provided that, in the case of Members, information may be requested, *inter alia*, by way of interview, access to books, records and documents related to the Complaint and oral submissions from both the Defaulting Member, as well as the Complainant. It shall be the duty of Members and of the Complainant to fully collaborate with the Investigating Committee for these purposes.

21. The CEO shall draw up a report which shall include all pertinent information collected during the course of an Investigation.
22. Reports drawn up in terms of the preceding Article shall be recorded in a register drawn up for the purpose and copies of the reports together with any and all documentation enclosed therewith shall be kept by the CEO for a period of five (5) years.
23. Where the findings of an Investigation of the Investigating Committee necessitate further proceedings, the CEO shall draw up a formal Charge.

Contents and
notice of a
formal charge
against a
Defaulting
Member.

24. The Charge shall be drafted in the form of a letter and shall in all cases include the following details:
- a. the terms of the Complaint,
 - b. a summary of the findings of the Investigating Committee,
 - c. the act or omission attributed to the Defaulting Member in line with Article 11 above
 - d. the term within which the Defaulting Member may reply in writing, which shall in no case be less than fifteen (15) days from the date of Service;
25. The Charge shall be presented to the Chairperson of the Disciplinary Committee and served on the Defaulting Member and the Council.
26. It shall be entirely at the discretion of the Disciplinary Committee so appointed whether to set a hearing or otherwise.

Where a Defaulting Member served with a Charge does not reply within the established term, the Disciplinary Committee may proceed to decide the matter.

27. The Defaulting Member shall always be granted the right to be assisted by a lawyer or other professional of his choice both for written and for oral submission, if a hearing is set.



Conflict of Interest

28. A Committee Member or Appeals Board Member may abstain from sitting where he deems a conflict of interest to exist.

29. Committee Members or Appeals Board Member may, where it appears that another Committee Member or Appeals Board Member, as the case may be, has a conflict of interest, request that such Committee Member or Appeals Board Member abstains from hearing the matter.

Provided that in such cases, the Committee Member or Appeals Board Member who has been challenged and who refuses to abstain voluntarily, shall abstain following a unanimous vote of the other Committee Members or Appeals Board Members.

Procedure

30. If a hearing is set by the Disciplinary Committee or the Appeals Board and the Defaulting Member, who is duly Served with the Charge, fails to appear within half an hour from the time set for the hearing, the Disciplinary Committee or the Appeals Board may decide the Charge in his absence.

31. The Disciplinary Committee and the Appeals Board have the right to regulate their own procedure and do all that is necessary and / or desirable to enable them to reach a decision on any matter brought before them.

Provided that the Disciplinary Committee and the Appeals Board shall undertake their best endeavours to settle all matters which come before them expeditiously.

32. All decisions by the Disciplinary Committee and the Appeals Board shall be taken by means of a majority vote of the Committee Members or Appeals Board Members hearing or determining the matter.

Provided that where such vote results in a tie, the Chairperson of the Disciplinary Committee or the Chairperson of the Appeals Board shall have the casting vote.



Decision

33. If the Disciplinary Committee or the Appeals Board finds that the Charge has been proven in whole or in part, it shall draw up a decision to this effect. The decision shall be in writing and shall contain the reasons supporting the decision and any sanction which the Disciplinary Committee or the Appeals Board deems appropriate. Likewise, the Disciplinary Committee or the Appeals Board shall draw up a decision in writing in the event it finds the Charge not to be proven.
34. The sanctions which the Disciplinary Committee or the Appeals Board may impose on a Defaulting Member are the following:
 - (i) reprimand and admonition;
 - (ii) suspension for a period determined by the Disciplinary Committee or the Appeals Board, which period may be for an indefinite time pending the verification of a specified act;
 - (iii) fine, penalty or administrative charge;
 - (iv) expulsion from the Institute.
35. The punishments handed down may be cumulative.
36. The CEO shall communicate the decision of the Disciplinary Committee or the Appeals Board to the Defaulting Member and to Council.
37. The CEO shall be responsible for recording all procedures brought before the Disciplinary Committee and the Appeals Board, whether summary or otherwise, and shall keep such records for a period of five (5) years.
38. Every Member whose membership is terminated or suspended shall:
 - a. Be prohibited from using his designatory letters; and
 - b. Not be permitted to vote at any annual or extraordinary General Meeting; and
 - c. Not be eligible for membership benefits; and
 - d. Be subject to pay attendance fees reserved for non-members when attending activities organized by the Institute; and
 - e. Return every certificate of membership held by him/her as issued by the Institute.

Appeals

39. Should the Council or the Defaulting Member feel aggrieved by the decision delivered by the Disciplinary Committee, such aggrieved party may, within twenty (20) days from the date of Service of the decision, deliver in writing to the CEO an Appeal by means of which the appellant requests the reversal or variation of the decision delivered by the Disciplinary Committee, together with the reasons in support of such a request.
40. The CEO shall, following the receipt of the Appeal, refer the matter to the Appeals Board which shall be constituted in terms of Article 9 of these Bye-



Laws and shall serve the other party with a copy of the Appeal. The appealed party may, within twenty (20) days from the date of Service, present a written reply to the CEO.

41. The CEO shall present to the Appeals Board a copy of the Appeal and the relative reply.
42. The Appeals Board shall regulate its own proceedings and shall have the power to set a hearing if it deems it necessary.

Provided that the appellant and the respondent shall not be entitled to bring any new evidence before the Appeals Board and the Appeals Board shall determine the matter on the basis of the evidence produced before the Disciplinary Committee and any submissions made by the appellant and the respondent.

43. The decision delivered by the Appeals Board shall be final and binding.

Superseded