

CHARTERED INSTITUTE FOR BUSINESS ACCOUNTANTS NPC ("CIBA")

DISCIPLINARY PROCEDURE

## 1 Introduction

1.1 This document sets out the procedure for:

1.1.1 the lodging of complaints against a member of CIBA (“a Member”) by the public and the procedure to be followed by CIBA for investigating and adjudicating such complaints and breaches or contraventions by Members; and

1.1.2 the initiation and conduct of disciplinary action by CIBA against Members in terms of CIBA’s memorandum of incorporation, the standard and codes of ethics prescribed by CIBA from time to time as well as the terms and conditions applicable to any recognition, designations, certifications, registrations and licenses conferred or granted by CIBA (“the Conduct Rules”).

1.2 This document is binding on Members in terms of CIBA’s memorandum of incorporation.

## 2 Duties of Members

2.1 All Members must, at all times, adhere to the Conduct Rules.

2.2 In doing so, Members are required, *inter alia*, to uphold the principles set out in the International Code of Ethics for Professional Accountants published by the International Federation of Accountants (“the International Code”) from time to time. These principles include:

2.2.1 acting with integrity in all professional and business relationships;

2.2.2 not allowing professional or business judgment to be comprised by bias, conflict of interest or undue influence of others;

2.2.3 attaining and maintaining professional knowledge and skills at a sufficient level to provide competent professional service to clients in accordance with current technical and professional standards and relevant legislation;

2.2.4 respecting the confidentiality of information disclosed as a result of professional and professional standards; and

2.2.5 complying with applicable laws and regulations and not engage in any conduct which Members know, or ought reasonably to know, might bring the profession into disrepute.

## 3 When is Disciplinary Action Taken?

3.1 Not all errors made by Members automatically attract disciplinary action. If a Member has given advice which in hindsight turns out to have been flawed, and as a result of which loss has been suffered, this is primarily a matter for that Member’s professional indemnity insurers. However,

disciplinary action may be appropriate if errors are of such frequency or magnitude as to signify a lack of professional competence.

3.2 In essence, disciplinary action will be taken either:

3.2.1 where, following an investigation, a complaint lodged against a Member by a member of the public evidences a failure by a Member to observe the standards set out in the International Code; or

3.2.2 in circumstances in which an investigation initiated by CIBA evidences a failure by a Member to comply with the Conduct Rules.

3.3 It is important to note that:

3.3.1 Fees are regulated in terms of the agreement reached between Members and their clients. CIBA does not adjudicate fee disputes, including Members' rights to exercise their lien in the event of non-payment by clients.

3.3.2 CIBA's jurisdiction over a Member is limited to the type of membership held by the Member and/or designations and/or licences issued by CIBA to the Member. For example, if a complaint concerns a Member's conduct as a business rescue practitioner and that Member is regulated by another professional body, CIBA will not have jurisdiction to investigate the complaint and it should instead be lodged with that other professional body. Similarly, if a complaint concerns a Member's conduct as a tax practitioner and that Member is regulated by another recognised controlling body, CIBA will not have jurisdiction to investigate the complaint and it should instead be lodged with that other recognised controlling body.

3.3.3 Lodging a complaint against a Member is not a substitute for seeking damages or other redress through the courts. CIBA's jurisdiction over Members is regulatory and disciplinary in nature. Therefore, CIBA cannot order Members to pay compensation to a complainant if a complaint is upheld or provide compensation for any loss suffered.

3.3.4 CIBA's compliance and/or standards department does not give legal advice. If a complainant feels that he or she may have a claim in law against a Member for losses or damages suffered or costs incurred, such complainant should seek their own legal advice.

## 4 Complaints

### 4.1 How to Lodge a Complaint?

4.1.1 Members and their firms are required to have in place internal procedures for the handling of clients' complaints. These procedures must entail a review by a senior partner of the firm, or by a colleague who has not previously been involved in the matter. Complainants must

exhaust these procedures before lodging a complaint with CIBA, as CIBA will not accept complaints unless complainants have done so.

4.1.2 If a complainant has not been able to resolve the matter with the Member or his or her firm directly, the complainant may submit a formal complaint to CIBA. All complaints submitted to CIBA in terms of this paragraph must be:

4.1.2.1 submitted to CIBA in writing by e-mail to [complaints@saiba.org.za](mailto:complaints@saiba.org.za);

4.1.2.2 submitted under cover of a completed complaint form ([https://saiba.org.za/accounts/public/downloads/saiba\\_complaint\\_form.pdf](https://saiba.org.za/accounts/public/downloads/saiba_complaint_form.pdf)) setting out the full details of the complainant and signed by the complainant or a party authorised to represent the complainant; and

4.1.2.3 accompanied by a sworn affidavit deposed to by the complainant setting out the nature of the complaint and all material facts pertaining thereto together with copies of all relevant documents pertaining to the complaint and written confirmation of authority (in the case of submission by a third party on behalf of the complainant).

4.1.3 Sworn affidavits submitted in terms of paragraph 4.1.2.3 must comply with the following formalities:

4.1.3.1 the affidavit must be initialled and signed by the deponent in the presence of a notary public or commissioner of oaths; and

4.1.3.2 the notary public or commissioner of oaths must administer the oath to the deponent and initial and sign the affidavit to confirm that the deponent acknowledges and understands the contents of the affidavit.

This means that:

4.1.3.3 the deponent must initial each page of the affidavit in the bottom right corner, except the signature page of the affidavit which must be signed by the deponent in full; and

4.1.3.4 the notary public or commissioner of oaths must initial each page of the affidavit next to the deponent's initials, except the signature page of the affidavit which must be signed and commissioned in full.

4.1.4 Complaints which relate to the matters listed in paragraph 3.3 or do not comply with the requirements of paragraphs 4.1.2 and 4.1.3 will not be investigated by CIBA and CIBA will reject the complaint and notify the complainant in writing of the rejection.

## 4.2 Other Forms of Complaints

4.2.1 Complaints may also be submitted to CIBA by other regulatory bodies, such as:

4.2.1.1 the Special Investigation Unit in the event that criminal charges of fraud or corruption are brought against a Member;

4.2.1.2 the Independent Regulatory Board for Auditors in the event it is discovered that a Member has issued opinions on financial statements for example; and

4.2.1.3 the South African Revenue Service ("SARS") if a Member did or omitted to do anything with respect to the affairs of a taxpayer, including that person's affairs, that in the opinion of the official:

4.2.1.3.1 was intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer under any applicable tax legislation;

4.2.1.3.2 by reason of negligence on the part of a Member resulted in the avoidance or undue postponement of the performance of an obligation imposed on the taxpayer under any applicable tax legislation;

4.2.1.3.3 constitutes the contravention of a rule or code of conduct for the profession; or

4.2.1.3.4 constitutes conduct under paragraph 4.2.2 below by a registered tax practitioner.

4.2.2 SARS may also lodge a complaint with CIBA if a Member who is a registered tax practitioner has, in the opinion of the official:

4.2.2.1 without exercising due diligence prepared or assisted in the preparation, approval or submission of any return, affidavit, or other document relating to matters affecting the application of any tax legislation;

4.2.2.2 unreasonably delayed the finalisation of any matter before SARS;

4.2.2.3 given an opinion contrary to law, recklessly or through gross incompetence, with regard to any matter relating to tax legislation;

4.2.2.4 been grossly negligent with regards to any work performed as a registered tax practitioner;

4.2.2.5 knowingly given false or misleading information in connection with matters affecting the application of tax legislation or participated in such activity; or

4.2.2.6 directly or indirectly attempted to influence a SARS official with regard to any matter relating to tax legislation by the use of threats, false accusations, duress or coercion, or by offering gratification as defined in the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

#### 4.3 Investigation Process

4.3.1 Subject to paragraph 9.4 below, following receipt of a complaint that complies with the formalities prescribed in paragraph 4.1.2, CIBA will send a copy of the complaint, together with any supporting documentation annexed thereto, to the Member concerned. The Member will be afforded 10 (ten) business days to respond to the allegations contained in the complaint in writing. At the same time, CIBA may request from the complainant any further information which CIBA may require.

4.3.2 Thereafter, CIBA will refer the complaint to its external legal advisors for investigation and review.

4.3.3 Upon the conclusion of the investigation of the complaint by CIBA's legal advisors, the findings and recommended disciplinary sanctions to be imposed on the Member will be furnished to CIBA for its consideration.

4.3.4 The Member and the complainant will both be informed of the outcome of the investigation and any recommended disciplinary sanctions in writing and afforded a further period of 5 (five) business days to respond thereto.

### 5 **Disciplinary Proceedings Initiated by CIBA**

5.1 CIBA may, in the event that it suspects a Member having breached the Conduct Rules, institute disciplinary proceedings against that Member. Examples of such breaches include:

5.1.1 Members falsely claiming to hold a category of membership, designation or licence issued by CIBA;

5.1.2 Members carrying out work for which they do not hold the necessary registrations, designation(s) and/ or specialist licence(s), i.e. a Business Accountant in Practice assisting clients with the filing of tax returns in circumstances in which he is not a registered tax practitioner;

5.1.3 Members failing to comply with applicable continuous professional development requirements;

5.1.4 Members registering for designations or licences despite not meeting the minimum requirements for registration; and

5.1.5 Members making false declarations to CIBA.

5.2 Institution of Proceedings

5.2.1 In the event that CIBA suspects a Member having breached the Conduct Rules, CIBA will send a letter to the Member enclosing any evidence which CIBA may have gathered and requesting the Member's response or any other pertinent information relating to the matter. The Member will be afforded 10 (ten) business days to respond to the allegations contained in the letter.

5.2.2 Thereafter, CIBA will refer its complaint to its external legal advisors for review.

5.2.3 Upon the conclusion of the review of the complaint, CIBA's legal advisors will provide CIBA with their findings, recommended disciplinary sanctions to be imposed on the Member or recommendation that the matter be closed without sanction.

5.2.4 The Member will be informed of the outcome of the complaint and any proposed disciplinary sanctions in writing and afforded a further period of 5 (five) business days to respond thereto.

**6 The Disciplinary Committee**

6.1 The Disciplinary Committee comprises CIBA's Chief Financial Officer, CIBA's Membership Manager and CIBA's Company Secretary.

6.2 Should any recommended disciplinary sanctions be disputed by the Member and/or relate to the termination of that Member's membership of CIBA, the matter will be referred to the Disciplinary Committee for review, provided that the termination of a Member's membership in the circumstances contemplated in clauses 10.4.2 and 10.4.3 of CIBA's memorandum of incorporation shall not be required to be referred to the Disciplinary Committee unless such termination is disputed by the Member concerned.

6.3 The Disciplinary Committee will review the complaint, the investigation and proposed disciplinary sanctions. The Disciplinary Committee shall be entitled to determine the matter on the papers or summons the Member concerned and/or the complainant to a hearing into the complaint should it deem it appropriate to do so.

6.4 The Disciplinary Committee shall be entitled to hold hearings by any means it deems appropriate, including electronic communication provided that such electronic communication affords all of the participants the opportunity to participate effectively. If details of any person's tax affairs will be disclosed at such hearing, the hearing may only be attended by persons who, in the opinion of the Disciplinary Committee, are necessary for the proper consideration of the complaint.

## **7 Outcome and Sanctions**

- 7.1 In the event that the Disciplinary Committee finds a Member to have contravened the Conduct Rules, the Disciplinary Committee shall be entitled to impose such sanctions as it, in its sole discretion, deems proportionate to the contravention committed, including:
- 7.1.1 if the Member has not been found guilty of any previous contraventions, issuing a warning and/or requiring the Member to undertake additional continued professional development courses, provided that the contravention is not regarded by the Disciplinary Committee to be serious in nature;
- 7.1.2 notifying all relevant authorities of such contravention;
- 7.1.3 imposing on the Member such fines, penalties, charges or other financial sanctions;
- 7.1.4 if the Member has been found guilty of contravening the Conduct Rules previously or the contravention is, in its sole discretion, sufficiently serious in nature, the termination of that Member's membership; and/or
- 7.1.5 publishing the identity and sanctioning of that Member on CIBA's website and notifying all other professional bodies thereof.
- 7.2 In addition to paragraph 7.1, in the event that the complaint concerns the conduct of a tax practitioner, CIBA will notify SARS of the outcome of such disciplinary proceedings.

## **8 Appeal**

- 8.1 The decision of the Disciplinary Committee shall be final and binding on the Member and a complainant.
- 8.2 The Member and/or a complainant shall have a limited right to appeal any such decision in the following circumstances only:
- 8.2.1 the Member and/or a complainant shall notify CIBA of its intention to appeal the decision in writing within 5 (five) business days of receipt of the decision, which notice shall include all of the grounds of appeal in sufficient detail;
- 8.2.2 CIBA will appoint an advocate of its choosing to review the complaint, the investigation and the decision, together with all correspondence exchanged with and documents received from the Member and the complainant and notify the Member and/or the complaint that the decision is under appeal;
- 8.2.3 such advocate's decision shall be final and binding on the Member and the complainant and not subject to further appeal; and

- 8.2.4 all of the costs of such appeal incurred by CIBA shall be borne and paid for by the appellant and CIBA shall be entitled to request the appellant to pay such costs upfront as a condition of referring the appeal for adjudication.

## **9 Confidentiality**

- 9.1 As a general rule, CIBA's disciplinary procedures are not private and confidential. This means that the correspondence and documentation which complainants and Members exchange with CIBA may be disclosed to or discussed with third parties, including the Member or a complainant, as the case may be. In the event that a complaint is referred to a hearing, subject to paragraph 9.4 below, such hearings may be held in public, which anyone may attend.
- 9.2 There are two important exceptions to the general rule which are set out below.
- 9.3 Members and/or complainants may request that certain documents are treated in strict confidence or even that any hearing or part of it is conducted in private. Please note that hearings are held in private only in certain circumstances. CIBA will consider the reasonableness of such request and will inform the parties if it is accepted.
- 9.4 CIBA will preserve the confidentiality of all information as to the affairs of a person conveyed to them by SARS or as may otherwise come to its notice during the investigation of the complaint. CIBA will not communicate this information to a person other than the person concerned or the Member concerned, unless the disclosure is ordered by a competent court of law.