

AUDITOR GENERAL DISCIPLINARY PROCEDURE RULES

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Citation and commencement

1. The Auditor General Disciplinary Procedure Rules 2008 are made by the Board pursuant to the requirements of section 1229 of the Act. The Rules shall take effect from 8 April 2008.

Interpretation

2 (1) In these Rules, unless the context otherwise requires –

“the Act” means the Companies Act 2006;

“Allegation” means an allegation that an Auditor General may be guilty of Relevant Conduct;

“Auditor General” means the Comptroller and Auditor General;

“the Board” means the Professional Oversight Board;

“a Committee” means an Investigating Committee or a Disciplinary Committee;

“Disciplinary Order” means any one or more of the following:

- (i) a Fine of an amount specified by the Disciplinary Committee,
- (ii) a Reprimand, or
- (iii) a recommendation to the Independent Supervisor to consider issuing a Suspension Notice pursuant to section 1234 of the Act; or
- (iv) a report to the Independent Supervisor that the Auditor General has failed to comply with an obligation imposed on him by or by virtue of Part 42 of the Act.

“Facts of the Allegation” means the particulars of the Allegation of Relevant Conduct;

“Independent Supervisor” means the Independent Supervisor appointed pursuant to section 1228 of the Act;

“the Presenter” means the person appointed by the Board to present a case before a Disciplinary Committee;

“the Professional Oversight Board” means the Professional Oversight Board, an operating board of the Financial Reporting Council Limited;

“the Public Accounts Commission” means the Public Accounts Commission appointed by the House of Commons in accordance with Section 2 of the National Audit Act 1983;

“the Registrar” means the person appointed for the time being by the Board to act as the Registrar. The Registrar may or may not be an employee of the Financial Reporting Council;

“Relevant Conduct” means conduct in the course of the performance by an Auditor General of his functions as a statutory auditor and which

- (a) demonstrates a level of competence which falls short of that expected of an Auditor General taking into account the relevant circumstances, or
- (b) which falls short of the standard expected of an Auditor General;

“statutory auditor” means statutory auditor as defined in section 1210(1) of the Act.

- (2) In these Rules, unless the contrary intention appears, words in the singular include the plural and, words in the plural include the singular.
- (3) In these Rules, unless the contrary intention appears, references to
 - (a) numbered sub-paragraphs and paragraphs are references to the Rule in which they appear; and
 - (b) numbered Rules are references to the Rules set out in these Rules.

Investigating Committee Preliminary

- 3 (1) Subject to paragraphs (2) to (4), an Investigating Committee shall investigate all cases referred to the Board in which it is alleged that, or where it appears to the Board that, an Auditor General may be guilty of Relevant Conduct.
- (2) Before making a reference of a case to an Investigating Committee, the Registrar shall determine whether the information received by the Board amounts to an Allegation which should be referred to an Investigating Committee.
- (3) For the purposes of establishing whether any information received is capable of amounting to an Allegation, the Registrar may make such preliminary enquiries as he considers necessary in the circumstances.

- (4) Where the Registrar determines that the information does not amount to an Allegation, the Registrar shall inform the provider of the information that no further action will be taken and that the matter will be closed. The Registrar may also notify the Auditor General of the decision that no further action will be taken and that the matter will be closed.

Notices

- 4 (1) Where the Registrar determines that an Allegation should be referred to an Investigating Committee, the Registrar shall send a Notice of Investigation to the Auditor General by first class post or recorded delivery.
 - (2) The Notice of Investigation shall -
 - (a) set out the matters which amount to an Allegation, enclosing copies of relevant documentation in its possession;
 - (b) inform the Auditor General of the date the Investigating Committee is to meet to consider the case and of the identity of the Members of that Committee;
 - (c) invite the Auditor General to make written representations regarding the matters referred to in sub-paragraph (a) and (b) and provide, normally within 28 days from receipt of the Notice of Investigation, any evidence which the Auditor General wishes to provide; and
 - (d) have annexed to it a copy of these Rules.
 - (3) The Registrar shall send a copy of the Notice of Investigation to the Board.

Constitution

- 5 (1) On receipt of a copy of the Notice of Investigation, an Investigating Committee shall be constituted by the Board from among its members.
 - (2) An Investigating Committee shall consist of 3 or 5 Members.
 - (3) An Investigating Committee shall elect one of its Members to act as the Chair.
 - (4) Where a Member of an Investigating Committee dies, resigns, or is unable to remain a Member in the course of the Committee's

consideration of a case, the Chair may, after consulting with the other Members of the Committee, appoint, in that person's place, such other Member of the Board as the Chair considers fit, who has not participated in the consideration of the case; but the replacement Member shall not sit until that person is fully acquainted with all previous documents before the Committee.

- (5) Where a member of the Board has been appointed to an Investigating Committee immediately before the expiration of his term of appointment, the Investigating Committee Member shall, subject to paragraph (4), continue to be treated as if he or she were a member of the Board for the duration of the consideration of that case by that Investigating Committee.

Meetings

- 6 (1) A duly constituted Investigating Committee shall be convened by the Registrar to investigate a case at such time and place as the Registrar considers appropriate by sending appropriate notices to the Members of the Committee.
- (2) The meetings of an Investigating Committee shall be held in private.

Proceedings

- 7 (1) Subject to paragraphs (2) to (5) and to Rule 8, the Chair shall, at his or her discretion, determine the procedure.
- (2) An Investigating Committee may at any stage require further enquiries to be conducted by the Registrar.
- (3) An Investigating Committee may at any stage adjourn consideration of the case.
- (4) A Registrar requested by an Investigating Committee to undertake further enquiries under paragraph (2) shall present the results of any such enquiries in writing to the Committee and a copy of the results to the Auditor General who will be allowed an opportunity to comment upon the new evidence, documents or material before the Committee makes a decision.
- (5) An Investigating Committee shall consider the available evidence, documents or material including any representations and written evidence submitted by the Auditor General.

Voting and decision making

8. Any matter to be decided by an Investigating Committee shall be put in the form of a motion and shall be decided by a majority of votes. No Member in attendance at a meeting of an Investigating Committee may abstain from voting when any question is put to the vote. In the case of an equality of votes in respect of any motion, that motion will not be carried.

Decision

9 (1) An Investigating Committee shall –

- (a) decide that there is no case for the Auditor General to answer,
- (b) decide that there is a case to answer and refer the case to a Disciplinary Committee, or
- (c) decide that the case should be discontinued on other grounds;

and, in the case of sub-paragraphs (a) and (c), the Committee shall give reasons for its decision.

(2) The Auditor General and the Board shall be informed in writing of the Investigating Committee's decision within 14 days of it reaching that decision.

Disciplinary Committee Constitution

10 (1) Upon receipt of the notice of the Investigating Committee's Decision in accordance with Rule 8(2), the Board shall invite the Chair of the Public Accounts Commission to appoint a Disciplinary Committee from among the Members of the Public Accounts Commission in order to determine the Allegation of Relevant Conduct against an Auditor General.

(2) A Committee shall consist of 3 or 5 Members.

(3) A Committee shall elect one of its Members to act as the Chair.

(4) Where a Committee Member dies, resigns, or is unable to remain a Member in the course of the Disciplinary Committee's hearing of a case, the Chair of the Committee shall, after consulting with the other Members of the Committee, appoint, in that person's place, such other Member of the Public Accounts Commission, as the Chair considers fit, who has not participated in the consideration of the case; but the replacement Member shall not sit until that person is fully acquainted

with all the previous documents before the Committee, including the record of the proceedings.

- (5) Where a Public Accounts Commission Member's tenure of office as a Member of the Public Accounts Commission ceases during the course of the Committee's hearing of a case, the Committee Member shall, subject to paragraph (4), continue to be treated as if he or she were a Member of the Public Accounts Commission for the purposes of membership of the Disciplinary Committee until the Committee has finally determined the case.

Hearings

11. A duly constituted Disciplinary Committee shall be convened by the Registrar to hear a case at such time and place as the Registrar considers appropriate by sending appropriate notices to the Members.

Voting and decision-making

12. Any matter to be decided by a Disciplinary Committee shall be put in the form of a motion and shall be decided by a majority of votes. No Member in attendance at a meeting of an Investigating Committee may abstain from voting when any question is put to the vote. In the case of an equality of votes in respect of any motion, that motion will not be carried.

Notice of Proceedings

13 (1) Where a case has been referred to a Disciplinary Committee by an Investigating Committee, the Registrar shall issue a Notice of Proceedings to the Auditor General by first class post or by recorded delivery.

(2) The Notice of Proceedings shall -

- (a) specify the place and the address where the Committee hearing is to take place and the identity of the Members of the Committee;
- (b) specify the time and date of the hearing, which shall not be less than 56 days after the day the notice was sent to the Auditor General;
- (c) specify the Allegation and the Facts of the Allegation against the Auditor General;
- (d) specify the name and address of the Presenter;

- (e) specify the witnesses, if any, the Presenter proposes to call to give evidence at the hearing and enclose any witness statements which may be available and/or documents the Presenter intends to rely on;
 - (f) have annexed to it any documents which have not previously been sent to the Auditor General; and
 - (g) set out the requirements of Rules 14 and 16.
- (3) The Registrar shall send a copy of the Notice of Proceedings to the Board.

Response to Notice of Proceedings

14. The Auditor General shall, within 21 days of the date of the letter accompanying the Notice of Proceedings, provide the Council with written responses to the following enquiries, namely whether the Auditor General:

- (a) has or knows of any reason why the hearing, or any part of it, shall not be held in public;
- (b) intends to appear in person or to be represented at the hearing and if so, the name and address of his or her representative;
- (c) admits the Facts of the Allegation and, if so, whether the Allegation is admitted; and
- (d) intends to call witnesses, and if so, provide their names.

Representations to the Committee

- 15** (1) The Board shall appoint a Presenter to present a case before a Disciplinary Committee.
- (2) The Auditor General may appear in person or be represented by any person of his or her choice, including a legal representative.

Service and inspection of documents

- 16** (1) Subject to paragraphs (2) and (3), where the Presenter or the Auditor General wish to rely upon any document, including a witness statement, which was not annexed to or enclosed with the Notice of Proceedings under Rule 13 (2) (e) or (f), they shall submit to the Board

and the other party to the proceedings, a copy of the document concerned at least 28 days prior to the hearing.

- (2) The Presenter and the Auditor General or his or her representative shall wherever possible agree a core bundle of relevant documents for the hearing and a copy of this bundle shall be provided to the Board at least 14 days prior to the hearing. Where such a bundle is received a copy shall be sent by the Board to the Members of the Disciplinary Committee at least 7 days prior to the hearing.
- (3) Where it has not been possible to agree a bundle of relevant documents in accordance with paragraph (2) the Board will at least 7 days prior to the hearing send to the Committee and to the Auditor General and the Presenter a bundle of documents comprising -
 - (a) the Notice of Proceedings;
 - (b) any documents which an Investigating Committee has considered;
 - (c) any additional documents served with the Notice of Proceedings;
 - (d) any response from the Auditor General under Rule 14; and
 - (e) any further documents submitted under paragraph (1) of this Rule.
- (4) If either the Auditor General or the Presenter wish to inspect the originals of any documents served in accordance with paragraph (1) or (3) the Board shall make suitable arrangements for the inspection of the evidence to take place at least 7 days before the date of the hearing.
- (5) If the Auditor General or the Presenter wish to rely at the hearing upon any document not served in accordance with this Rule, then that document may only be admitted at the discretion of the Disciplinary Committee.

Absence of the Auditor General at a hearing

- 17 (1) Where an Auditor General against whom an Allegation is made does not attend and is not represented at a Committee hearing the Chair shall request evidence that the Notice of Proceedings has been sent to the Auditor General in compliance with Rule 13 (1) and enquire whether any reasons for the Auditor General's absence have been communicated to the Board or the Presenter.

- (2) Where the Committee is not satisfied that Rule 13 (1) has been complied with the Committee shall adjourn the hearing.
- (3) Where the Committee is satisfied that Rule 13 (1) has been complied with, then, after taking into consideration any representations by the Presenter and any written submissions made by or on behalf of the Auditor General and taking advice from the Legal Adviser, the Committee may:
 - (a) proceed with the hearing in the absence of the Auditor General;
or
 - (b) adjourn the hearing
- (4) Where paragraph (2) or (3) (b) apply and the Committee adjourns the hearing to another date, the next Committee convened to hear the case may consist of Members other than those who determined to adjourn the case.

Procedure at hearings

- 18 (1) Subject to paragraphs (2) to (10) and Rule 12 the procedure at the hearing of a Committee shall be determined at the discretion of the Chair.
 - (2) The Chair shall -
 - (i) introduce the Members of the Committee present and confirm the identity of the Auditor General against whom the Allegation is made;
 - (ii) read the Allegation against the Auditor General;
 - (iii) ask the Auditor General whether the Facts of the Allegation are admitted.
 - (4) Where the Auditor General indicates that he admits the Facts of the Allegation, the Chair will ask the parties whether they have agreed a statement of facts for the Committee to consider and if so:
 - (a) the Presenter will be invited to read out the agreed statement of facts; and
 - (b) the Presenter and the Auditor General shall be permitted to make representations to the Committee and may adduce

evidence on the question of whether the Facts of the Allegation that have been agreed amount to Relevant Conduct; and

- (c) the Committee shall, having taken advice from the Legal Adviser, proceed to determine whether they are satisfied that the facts that have been agreed by the parties amount to Relevant Conduct.
- (5) Where the Facts of the Allegation are not admitted or where some material facts remain disputed –
- (a) the Presenter shall be permitted to make an opening statement about the Allegation and the Auditor General shall have the opportunity to reply either in person or through his or her representative;
 - (b) the Presenter and the Auditor General may present relevant written evidence relating to the Facts of the Allegation and whether those Facts amount to Relevant Conduct, and may call witnesses; and
 - (c) the Committee may allow the Presenter and the Auditor General an opportunity to sum up.
- (6) In any case, the Presenter and the Auditor General may present evidence relating to the Auditor General’s history and character and any mitigating circumstances.
- (7) The Committee may adjourn the proceedings at any stage.
- (8) The Committee may determine, at any time, to deliberate in private.
- (9) Subject to the requirements of a fair hearing, in the interests of justice the Committee may amend the Allegation or the Facts of an Allegation, at any stage prior to making its findings of fact.
- (10) Before amending an Allegation or the Facts of an Allegation in accordance with paragraph (9), the Committee shall first consider any representations by the Presenter and by the Auditor General, and take advice from the Legal Adviser.

Witnesses

- 19 (1) Witnesses must take the oath or affirm before giving evidence.

- (2) The Auditor General, the Presenter and the Members of the Committee may question any witness.
- (3) Except as may be determined by the Committee, witnesses may not be present at the hearing until they have completed giving evidence and have been formally released by the Chair.
- (4) Witnesses may be recalled at the discretion of the Committee.

Functions of the Committee at hearings

- 20 (1) Without prejudice to Rule 18 (6), a Committee shall not, prior to the determination of an Allegation, have available to it, inspect or consider any record of any Disciplinary Order made in relation to the Auditor General.
- (2) Subject to paragraph (1), in considering whether to make a Disciplinary Order in relation to an Auditor General in respect of whom the Disciplinary Committee has found guilty of Relevant Conduct, the Committee may take into account any Disciplinary Order or orders currently in force made in relation to the Auditor General.

Decision

- 21 (1) The Committee, in making its decision in accordance with Rule 12 shall
 - (a) determine whether the Facts of the Allegation are proved;
 - (b) determine whether it is satisfied that the Facts proven amount to Relevant Conduct;
 - (c) if the Facts amount to Relevant Conduct -
 - (i) consider the previous history and character of the Auditor General and any mitigating circumstances;
 - (ii) determine whether to make a Disciplinary Order against the Auditor General, and
 - (iii) specify the terms of any Disciplinary Order.
- (2) The determination of the Committee that an Auditor General has or has not been found guilty of Relevant Conduct, and the determination as to whether to make a Disciplinary Order, together with the terms of such an order, shall be given in public.
- (3) The Committee may give the reasons for any or all its determinations, or for specifying the terms of any Disciplinary Order, in public.

Notification of decision

22 (1) The Registrar shall serve on the Auditor General:

- (i) Notice of the Disciplinary Order within 7 days of the decision of the Disciplinary Committee;
- (ii) the Committee's written decision within 14 days of the decision of the Disciplinary Committee.

(2) The written decision shall include -

- (a) the Allegation and the Facts of the Allegation;
- (b) the findings of fact;
- (c) the terms of any Disciplinary Order; and
- (d) the reasons of the Committee.

Adjournment and resumption of hearing

23 (1) Where a Committee adjourns a hearing of a case indefinitely or for a period of more than three months, and determines to resume the hearing, the Registrar shall send to the Auditor General -

- (a) a notice of resumption of proceedings specifying the date of the hearing which shall not be less than 28 days from the date the notice was given; and
- (b) the notes of the evidence of the adjourned hearing.

Miscellaneous

Convening of Committee meetings

24 (1) The Registrar shall convene the meetings of an Investigating Committee or a Disciplinary Committee on behalf of the Board in accordance with the provisions of these Rules.

(2) Where, before a convened meeting of a Disciplinary Committee sits -

- (a) the Auditor General against whom the Allegation is made submits new or fresh evidence or information to the Board, or the Presenter discovers new or fresh evidence or information, and
- (b) it appears to the Registrar that the new or fresh evidence or information is of such a nature that an Investigating Committee ought to consider it rather than a Disciplinary Committee, the Registrar shall refer the case to an Investigating Committee to investigate the Allegation afresh.

Public or private hearing

- 25 (1) A Disciplinary Committee may exclude the public from a hearing or part of a hearing
- (a) where it appears to the Committee necessary in the interests of justice to exclude the public; or
 - (b) where the Auditor General makes a written request that the hearing should be in private and the Committee do not consider it to be contrary to the public interest to hold the hearing in private.
- (2) Where an application is made for the hearing to be in private, the Committee shall hear the application in private, but shall announce the decision in public.
- (3) The outcome of the hearing shall be announced in public.

Legal Adviser to the Committees

- 26 (1) The Board shall make available to any Committee constituted under these Rules a Legal Adviser.
- (2) Where a Committee requires and is given legal advice, the Committee shall-
- (a) in the case of a Disciplinary Committee, declare, to the Presenter and the Auditor General, the nature of the advice it sought and received; and
 - (b) in the case of an Investigating Committee, make a declaration in relation to the nature of the advice it sought and received in the decision notice given under Rule 9(2);
- (3) The Legal Adviser shall not be a person who has previously addressed the Committee in a case in relation to which the Committee seeks advice in any capacity other than as a Legal Adviser.

Publication of Disciplinary Orders

27. The Board shall publish information relating to Disciplinary Hearings and Orders on its website.