

The
Accountancy
and Actuarial
Discipline Board

The Scheme adopted
on 13 May 2004 and amended on
13 September 2007

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ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD

SCHEME

Scheme

- 1(1)** This Scheme is made and adopted by the managing board of The Accountancy Investigation and Discipline Board Limited, now the AADB (the "**Board**") with the agreement in writing of The Financial Reporting Council, with effect on and from the Effective Date.
- 1(2)** To safeguard the public interest by maintaining and enhancing the standards of conduct of Members and of Member Firms, this Scheme provides a system for:-
- (i) the investigation of Members' and of Member Firms' conduct in the course of their professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), including such conduct before they became Members and Member Firms, and
 - (ii) if warranted following such investigation, bringing disciplinary proceedings against Members and Member Firms.
- 1(3)** This Scheme applies to any matter referred to the AADB under paragraph 6(2), or assumed by the AADB under paragraph 6(8) and to all steps and proceedings arising, directly or indirectly, there from or in consequence thereof or in relation thereto.
- 1(4)** Every Member and every Member Firm shall have the obligations in relation to this Scheme set out in paragraphs 13(1) and 13(2).
- 1(5)** This Scheme is governed by, and shall be construed in accordance with, the laws of England and Wales.

Interpretation

2(1) In this Scheme, unless inconsistent with the subject or context:-

act of misconduct means any Member's or Member Firm's conduct in the course of his or its professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member or Member Firm.

adverse finding means a finding by a Disciplinary Tribunal that a Member or Member Firm has committed an act of misconduct or has failed to comply with any of his or its obligations under paragraph 13(2).

AADB means The Accountancy and Actuarial Discipline Board Limited (formerly The Accountancy Investigation and Discipline Board Limited), a company limited by guarantee incorporated in England and Wales, number 5081857.

AADB Participant means a Participant who is participating in this Scheme.

Alternate Executive Counsel means a legally qualified person, appointed to that office by the Nominations Committee of The Financial Reporting Council.

Appeal Tribunal means a tribunal appointed by the Board under paragraph 9(7)(ii), to consider an appeal against a decision of a Disciplinary Tribunal.

Appellant means a Member or Member Firm who or which gives or has given notice of appeal under paragraph 9(1).

conduct includes efficiency and competence, and includes a failure to act as well as a positive act.

Disciplinary Tribunal means a tribunal appointed by the Board under paragraph 8(1).

Effective Date for a Participant, its Members and/or Member Firms, means the earliest date by which both of the following events have occurred:-

- (i) the adoption of the Scheme by the AADB
- (ii) the acceptance or approval of the Scheme in writing by or on behalf of the governing body of that Participant.

employ includes engage the services of, and **employee** shall be construed accordingly.

Executive Counsel:-

- (i) means a legally qualified officer of the AADB, appointed to that office by the Nominations Committee of The Financial Reporting Council; and
- (ii) in relation to any matter where that officer is unable or unwilling to act, because of volume of work, actual or possible conflict of interest or any other reason whatsoever, includes the Alternate Executive Counsel or, where there is more than one Alternate Executive Counsel, the Alternate Executive Counsel designated in relation to any matter by the Board and references in this Scheme to the Executive Counsel shall be interpreted as referring to the Alternate Executive Counsel in those circumstances.

Firm means a body corporate, a partnership, a limited liability partnership or an unincorporated practice of a sole practitioner.

Formal complaint means the formal document prepared by the Executive Counsel and submitted to a Disciplinary Tribunal setting out the grounds (including particulars sufficient to enable such grounds to be properly understood by a Disciplinary Tribunal and the Members or Member Firms concerned) to support any allegation by the Executive Counsel that a Member or Member Firm has committed an act of misconduct.

Former Member means a person who was a Member at the time of the alleged misconduct but has ceased to be a Member.

Former Member Firm means a firm which was a Member Firm at the time of the alleged misconduct but has ceased to be a Member Firm.

JDS means the Joint Disciplinary Scheme established by some of the Participants and which became effective on 21 January 1993 with the objective of promoting the highest possible standards of professional and business conduct, efficiency and competence.

Member means:-

- (i) a member of one or more of the AADB Participants, or
- (ii) other than in sub-paragraph 10(2)(v), any other person who is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the AADB Participants in so far as such provisions relate to the system of discipline and professional conduct, and regulation, operated thereby.

Member Firm means a Firm which is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the AADB Participants in so far as such provisions relate to the systems of discipline and professional conduct, and regulation, operated thereby, or two or more Members working together under a formal agreement.

Panel means the panel appointed pursuant to paragraph 10(1).

Participant means a member of the Consultative Committee of Accountancy Bodies and any other relevant accountancy body with the extension that, if an accountancy body ceases to be a Participant or an AADB Participant at a time when any investigation or proceedings under this Scheme are proceeding, then for the purpose of the application of the provisions of this Scheme to that investigation or proceedings (to its conclusion, up to and including any appeal and the enforcement of any order of a Tribunal), that body shall be regarded and treated as if it remained an AADB Participant.

Regulations means regulations made by the Board, as may be amended from time to time.

Representative means a solicitor, advocate or counsel or a Member or any other person who is engaged or requested to represent a Member or a Member Firm under investigation or before a Tribunal.

The Financial Reporting Council means The Financial Reporting Council Limited, a company limited by guarantee and registered in England No. 2486368, and any other body which takes over the functions of The Financial Reporting Council.

Tribunal means a Disciplinary Tribunal or an Appeal Tribunal (as the context requires) appointed on behalf of the AADB by the Board.

UK-connected company means:-

- (a) any company registered in any part of the United Kingdom, listed in any part of the United Kingdom on a recognised investment exchange for the purposes of the Financial Services and Markets Act 2000 or with an established place of business in any part of the United Kingdom;
- (b) any company in the same group (as defined in section 53 of the Companies Act 1989) as such a company; and
- (c) any associate (as defined in section 52 of the Companies Act 1989) of such a company or such a group company.

UK-connected business means:

- (a) any sole-trader, firm, partnership or other organisation constituted under the law of any part of the United Kingdom or with an established place of business in any part of the United Kingdom; and

(b) any associate (as defined in section 52 of the Companies Act 1989) of such a sole-trader, firm or partnership.

2(2) Any reference to a statute includes: that statute as amended from time to time; any statute re-enacting or replacing it; and any statutory instruments, regulations or rules made under that statute or any statute re-enacting or replacing it.

2(3) Words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

Scope of the Scheme

3(1) A Member or Member Firm shall be liable to investigation on the grounds set out in paragraph 5(1) below.

3(2) A Member or Member Firm shall be liable to disciplinary proceedings on the grounds set out in paragraph 5(3) below.

3(3) For the avoidance of doubt, anything said, done or omitted by:-

(i) an employee of a Member Firm within the scope of his employment, actual or ostensible; or

(ii) an agent of the Member Firm within the scope of his authority, actual or ostensible ,

shall be taken as having been said, done or omitted by that Member Firm.

3(4) A Member Firm shall not avoid liability to disciplinary proceedings under this Scheme by reason of having established and operated appropriate working practices and procedures, if its conduct (by reason of the conduct of any partner, director or employee acting with actual or ostensible authority) is found to have fallen short of the standards reasonably to be expected of a Member Firm.

3(5) A Member or Member Firm will be liable to investigation and discipline under this Scheme regardless of whether the act of misconduct took place before or after the Effective Date.

3(6) A Member will be subject to investigation and discipline under this Scheme regardless of whether he was a Member at the time of the act of misconduct:-

(i) if that act of misconduct took place after the Effective Date, even if the rules of the Participant to which the Member belongs provide otherwise; and

(ii) if that act of misconduct took place before the Effective Date, only so far as the Participant's rules at the Effective Date provide for investigation and discipline of an act of misconduct that took place when a Member was not a Member.

3(7) A Former Member or Former Member Firm will be subject to investigation and discipline under this Scheme as if he or it were a Member or Member Firm:

(i) if he or it ceased to be a Member or Member Firm after the Effective Date, even if the rules of the Participant to which the Former Member or Former Member Firm belonged provide otherwise: and

(ii) if he or it ceased to be a Member or Member Firm before the Effective Date, only so far as the Participant's rules at the Effective Date provide for investigation and discipline of an act of misconduct by a Former Member or Former Member Firm.

The Board

4 Without prejudice to the generality of the powers of the Board under the AADB Memorandum and Articles of Association, the Board shall have power:-

- (i) to make such Regulations as the Participants shall agree with the Board for the operation and administration of this Scheme, and thereafter to amend such Regulations from time to time, provided that they are not inconsistent with this Scheme and that there shall have been prior consultation by the Board with the Participants;
- (ii) to provide the Executive Counsel with procedural guidelines concerning the discharge of his duties;
- (iii) to authorise any Tribunal to employ any person whose services may reasonably be required to assist the Tribunal;
- (iv) to authorise the remuneration of the members of any Tribunal and any other persons;
- (v) to delegate to the Chairman of the Board its powers under sub-paragraphs 4(iii) and 4(iv), paragraphs 8(1), 9(4), and sub-paragraph 9(7)(ii); and
- (vi) to do all such other things as the Board considers incidental or conducive to the operation of this Scheme.

Grounds for Investigation and Disciplinary Proceedings

5(1) A Member or Member Firm shall be liable to investigation under this Scheme only where, in the opinion of the Board:-

- (i) (a) the matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and
- (b) the matter needs to be investigated to determine whether there may have been an act of misconduct; or

- (ii) it appears that the Member or Member Firm has failed to comply with any of its obligations under paragraph 13(2) below.

5(2) In deciding whether a matter raises or appears to raise important issues affecting the public interest in the United Kingdom for the purposes of subparagraph 5(1)(i)(a), the Board shall, amongst other things, consider whether it appears to give rise to serious public concern or to damage public confidence in the accountancy profession in the United Kingdom. The Board shall also be entitled to consider all the circumstances of the matter including, but not limited to, its nature, extent, scale and gravity.

5(3) A Member or Member firm shall be liable to disciplinary proceedings under this Scheme if, following an investigation, the Executive Counsel considers that:-

- (i) there are grounds for delivering to the Board a formal complaint under paragraph 7(7) below alleging an act or acts of misconduct by that Member or Member Firm; or
- (ii) there are grounds for submitting to a Disciplinary Tribunal a formal complaint under paragraph 7(7) below alleging that the Member or Member Firm has failed to carry out any of its obligations under paragraph 13(2) below.

5(4) In considering the question of whether the conduct of a Member or Member Firm may have fallen short of the standards reasonably to be expected of him or it, regard shall be had in particular to any law, whether statutory or otherwise, or regulation of any sort, and to any charter, bye-law, rule, regulation or guidance of any of the AADB Participants, which applies to him or it.

Decision to Investigate

6(1) Without prejudice to paragraph 13(3), an investigation under this Scheme may be instituted in either of the circumstances described in paragraphs 6(2) and 6(8).

6(2) Where an AADB Participant:-

- (i) considers that a matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and
- (ii) considers that one or more of its Members or Member Firms may have committed an act of misconduct in relation to that matter; and
- (iii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by an AADB Participant in relation to the conduct in question,

then the AADB Participant shall refer that matter to the AADB and request that the AADB conduct an investigation. Such a request from a Participant shall be published by the Board if it thinks fit. In the event that an AADB Participant is in doubt as to whether a particular matter should be referred to the AADB then the AADB Participant shall consult with the AADB for guidance.

6(3) Upon receipt of a reference pursuant to paragraph 6(2), the Board shall, as soon as is reasonably practicable and ordinarily within two months of the date of the reference, decide whether to accept or decline the reference.

6(4) The decision of the Board to accept or decline the reference shall depend on whether, in its opinion, the criteria at paragraph 5(1), taking account of the considerations in paragraph 5(2), are met in relation to the matter referred.

6(5) Where the Board has decided to accept a reference made pursuant to paragraph 6(2), it shall, within fourteen days thereafter, give notice in writing of its decision to the AADB Participants.

6(6) If, in the opinion of the Board, it is appropriate that the matters that form the subject of the investigation should extend beyond those contained within the reference from the AADB Participant, or that any matters contained within the reference from the AADB Participant should be excluded from the investigation, the Board may decide either to include or exclude any such matters from the investigation as appropriate.

6(7) Where the Board has decided to decline a reference made pursuant to paragraph 6(2) it shall:-

- (i) give its reasons for the decision within fourteen days
- (ii) promptly state in writing its decision and the reasons for it and supply a copy thereof to the relevant AADB Participant; and
- (iii) if it thinks fit publish its decision.

6(8) Where an AADB Participant is conducting an investigation into the conduct of a Member or Member Firm of which the Board is aware or the Board otherwise becomes aware of matters relating to the conduct of a Member or Member Firm, and, in either case, the Board:-

- (i) is of the opinion that the grounds for an investigation under paragraph 5(1), taking account of the considerations in paragraph 5(2), have been met; and
- (ii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by an AADB Participant in relation to the conduct in question,

the Board may, after consultation with any AADB Participant whose Members or Member Firms may be concerned in an investigation, decide that the matter shall be dealt with by the AADB in accordance with this Scheme.

6(9) Where the Board has decided pursuant to paragraph 6(8), that a matter should be dealt with by the AADB it shall give notice in writing of its decision and the reasons for it to the AADB Participants. Upon receipt of such notice, the relevant AADB Participant shall forthwith suspend any investigation relating to the matter on its part.

Investigation

- 7(1)** (i) To assist the Board in exercising its powers under paragraph 6, it, and the Executive Counsel on its behalf, has power to require any AADB Participant to provide to him such documentary information in its possession, or under its control, as the Board or the Executive Counsel, as the case may be, shall reasonably think fit and as the AADB Participant can lawfully provide.
- (ii) The foregoing power of the Board, and the Executive Counsel on its behalf, to require any AADB Participant to provide documentary information shall include the power to call on it:-
- (a) to permit the inspection and taking of copies of the documentary information, and
- (b) to the extent reasonable, to supply copies of such documentary information at its own expense.

For the avoidance of doubt, documentary information includes, without limitation, any books, documents, records, telephone recordings or computer held information of whatsoever kind.

- 7(2)** Where a reference is accepted by the Board under paragraphs 6(3) and 6(4):-
- (i) the scope of the investigation shall be set out within the notice in writing given by the Board referred to at paragraph 6(5);
- (ii) in accordance with paragraph 6(6), such notice shall not be limited by the terms of the reference given by the AADB Participant under paragraph 6(2) and shall include or exclude any matters relating to the matter as the Board shall see fit; and
- (iii) the relevant AADB Participant shall supply to the Board any material which is in the possession, or under the control, of that AADB

Participant which may reasonably be required for the purposes of the investigation and which the AADB Participant can lawfully provide.

7(3) Where the Board decides under paragraph 6(8) that a matter shall be assumed by the AADB to be dealt with in accordance with this Scheme:-

- (i) the scope of the investigation shall be set out within the notice in writing given by the Board as referred to at paragraph 6(9); and
- (ii) the relevant AADB Participant shall supply to the Board any material which is in the possession, or under the control, of that AADB Participant which may reasonably be required for the purposes of the investigation.

7(4) In either case identified at paragraphs 7(2) and 7(3), the Board shall:-

- (i) transmit the notice in writing, together with any further material obtained pursuant to sub-paragraph 7(2)(iii), to the Executive Counsel to be dealt with in accordance with this Scheme, and
- (ii) publish the fact of its decision to investigate unless this would not, in the opinion of the Board, be in the public interest.

7(5) Upon receipt of the documents transmitted pursuant to sub-paragraph 7(4)(i), the Executive Counsel shall conduct an investigation into the matter, and shall enquire into such facts and circumstances as the Executive Counsel considers appropriate for the purposes of conducting the investigation. The Executive Counsel shall have power on behalf of the AADB to engage any person whose services may reasonably be required to assist the Executive Counsel for the purposes of conducting the investigation or subsequent disciplinary or appeal proceedings.

7(6) If, in the course of an investigation, the Executive Counsel discovers facts or circumstances which appear to warrant investigation but to be outside the scope of the investigation that he is conducting then:-

- (i) the Executive Counsel shall report those facts and circumstances to the Board; and
- (ii) the Board, after consultation with the relevant AADB Participant (but within the Board's sole discretion), may direct in writing that the scope of the Executive Counsel's investigation shall include such facts or circumstances and shall inform the AADB Participants and the Members or Member Firms accordingly.

7(7) If, following his investigation, the Executive Counsel considers that any Members or Member Firms concerned appear to have committed an act of misconduct or to have failed to comply with its obligations under paragraph 13(2), then the Executive Counsel shall, subject to paragraphs 7(8) and 7(9), in the order set out below:-

- (a) notify the Members or Member Firms concerned of his findings and the reasons for them and give each Member or Member Firm an opportunity to make written representations to him within such reasonable time as the Executive Counsel shall specify;
- (b) consider whether the written representations provided by the Members or Member Firms concerned have given a satisfactory response to his findings;
- (c) if, in the opinion of the Executive Counsel, the written representations provided have not given a satisfactory response, notify the Board thereof; and
- (d) deliver to the Board a formal complaint against any Member or Member Firm concerned, which may be based on his amended findings having regard to sub-paragraphs 7(7)(b) and 7(7)(c).

- 7(8)** A Member shall be liable to be disciplined under this Scheme only if he is, when a formal complaint is delivered under sub-paragraph 7(7)(d), or was, at the time of any alleged act of misconduct
- (a) a citizen or subject of the United Kingdom; or
 - (b) working in the United Kingdom; or
 - (c) working in a United Kingdom registered audit firm; or
 - (d) working in, involved in providing services to or involved in auditing a UK-connected company or UK-connected business.
- 7(9)** Notwithstanding that the Executive Counsel considers that a Member appears:-
- (i) to have committed an act of misconduct; and
 - (ii) to be within one or more of the four categories listed in paragraph 7(8),
- the Executive Counsel shall take into account the existence and nature of other authorities and bodies outside the United Kingdom to which the Member may be subject for acts of misconduct. If, in consequence, the Executive Counsel is of the opinion that it would be inappropriate for the Member's conduct to be dealt with under the Scheme, the Executive Counsel may decide not to deliver a formal complaint in respect of the Member's conduct.
- 7(10)** (i) A Member or Member Firm may, either voluntarily or at the invitation of the Executive Counsel at any stage (including, for the avoidance of doubt, during the hearing before the Disciplinary or Appeal Tribunal), make an admission in respect of some or all of the alleged acts of misconduct or alleged failures to comply with his or its obligations under paragraph 13(2) and such admission, if accepted by the Executive Counsel, shall constitute proof before a Disciplinary

Tribunal against the Member or Member Firm making the admission of the act of misconduct or failure to comply.

- (ii) Any such admission shall (if made prior to a formal complaint being submitted to the Board by the Executive Counsel) be referred to in any formal complaint delivered by the Executive Counsel to the Board. Such formal complaint must include a statement agreed with the Executive Counsel giving particulars sufficient to enable the admitted act or acts of misconduct or failure to comply to be properly understood.

7(11) (i) If, following his investigation, the Executive Counsel does not deliver a formal complaint under paragraph 7(7) against a Member or Member Firm who or which has been investigated, he shall report that fact to the Board and such report shall include a statement of his reasons therefore. Any such report shall be dated and signed by the Executive Counsel.

- (ii) The Board shall supply a copy of any such report to any Member or Member Firm concerned and each AADB Participant.

7(12) The Board shall publish the outcome of the Executive Counsel's investigation as soon as practicable and in such manner as it thinks fit, unless this would not, in the opinion of the Board, be in the public interest.

Disciplinary Proceedings

8(1) Where the Executive Counsel notifies the Board and delivers to it a formal complaint in accordance with paragraph 7(7), the Board shall serve the formal complaint on the Member or Member Firm concerned and shall, as soon as practicable, appoint a Disciplinary Tribunal to hear the formal complaint in accordance with the provisions of this Scheme.

8(2) Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with any formal complaint shall be in accordance with the Regulations.

- 8(3)** In coming to its decision the Disciplinary Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Disciplinary Tribunal will at all times apply the rules of natural justice.
- 8(4)** After hearing the formal complaint, the Disciplinary Tribunal shall in relation to the Member or Member Firm the subject of the formal complaint, either:-
- (i) make an adverse finding in respect of some or all of the alleged acts of misconduct or failures to comply with the Member's or Member Firm's obligations under paragraph 13(2) forming the subject matter of the formal complaint, or
 - (ii) dismiss the formal complaint.
- 8(5)** Where the Disciplinary Tribunal makes an adverse finding in relation to a Member or Member Firm, then:-
- (i) it may order such sanctions against the Member or Member Firm as are contained within the schedule of sanctions at Appendix 1 to this Scheme as it considers appropriate; but, if the act of misconduct occurred before the Effective Date, only in exceptional circumstances may the Disciplinary Tribunal impose a sanction more severe than could have been imposed under the relevant Participant's rules at the Effective Date;
 - (ii) in addition to the sanctions at Appendix 1 to this Scheme, any order made pursuant to sub-paragraph (i) above, may include an order that the Member or Member Firm be required to pay, in the manner set out in paragraph 12, the whole or part of the costs of, and incidental to, the investigation and the hearing of the formal complaint before the Disciplinary Tribunal. The amount to be paid by the Member or Member Firm is to be determined by the Disciplinary Tribunal provided that, where the Member or Member Firm has made an

admission under paragraph 7(10), no such order for costs may be made in relation to any costs incurred after the date of the admission which relate to the subject matter of the admission; and

(iii) the Tribunal may make no order against the Member or Member Firm, or no order except for the payment of costs, if it considers that to be appropriate in all the circumstances.

8(6) If the Disciplinary Tribunal dismisses the formal complaint it may on the Member's or Member Firm's application having regard to all the circumstances including the conduct of the Member or Member Firm and the Executive Counsel (including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation) at its absolute discretion order the Board to pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the formal complaint being served on the Member or Member Firm.

8(7) Following its decision under paragraph 8(4), the Disciplinary Tribunal shall prepare a report on the Member or Member Firm concerned setting out the Tribunal's decision or decisions and the reasons for it or them and any related order or orders and send the report to the Board which shall then send a copy to the Member or Member Firm concerned and to the AADB Participant.

8(8) (i) Unless the Disciplinary Tribunal shall otherwise decide, an adverse finding in relation to a Member or Member Firm and any order under paragraph 8(5) against a Member or Member Firm shall take effect 29 days after the date on which the finding or order is notified to the Member or Member Firm.

(ii) The Disciplinary Tribunal shall decide the extent to which the order shall apply even if the Member or Member Firm appeals against the order provided that the Tribunal considers that immediate action is necessary in the public interest. To the extent to which the order does not apply, it shall be suspended in the event of a notice of appeal being

lodged under paragraph 9(1). If the person appointed under paragraph 9(4) refuses leave to appeal, the order shall take effect from the date notification of that refusal is sent to the proposed appellant. If the person appointed under paragraph 9(4) grants leave to appeal, the order shall take effect (subject to the relevant Appeal Tribunal decision) from the next working day after the date notification of the relevant Appeal Tribunal decision is sent to the Appellant.

- 8(9)** The Board shall publish the report or reports prepared by the Disciplinary Tribunal as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

Appeals

- 9(1)** If a Disciplinary Tribunal makes an adverse finding in relation to any Member or Member Firm, with or without any order under paragraph 8(5), then subject to paragraph 9(2) the Member or Member Firm may, within 28 days after the date on which the finding and/or order is notified to him or it (provided always that a longer period may be allowed as set in paragraph 9(5) below), give to the Board notice of appeal against the finding and/or order.
- 9(2)** An appeal under paragraph 9(1) against a decision of a Disciplinary Tribunal can be made on the following grounds:-
- (i) that the decision of the Disciplinary Tribunal was perverse or wrong in law; and/or
 - (ii) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal; and/or
 - (iii) that significant and relevant new evidence has come to light which was not previously available to the appellant and could not have become available to it on the making of reasonable enquiry; and/or

- (iv) that the sanction imposed pursuant to paragraph 8(5) was manifestly unreasonable.

9(3) Any notice of appeal shall:-

- (i) be in writing;
- (ii) identify the finding and/or order appealed against; and
- (iii) state the grounds of appeal.

Neither the scope of the appeal nor the grounds so stated shall be amended or changed except with the leave of the Appeal Tribunal appointed to hear the appeal.

9(4) Upon receipt of a notice of appeal, the Board shall as soon as practicable appoint a person to consider whether to give leave to appeal. That person shall be a former member of the judiciary or a Queen's Counsel, and shall not sit on any subsequent Appeal Tribunal in connection with the case.

9(5) If the notice of appeal was not given to the Board within the 28 day period set out in paragraph 9(1), the person appointed under paragraph 9(4) shall refuse leave to appeal unless there are good reasons for giving leave to appeal out of time.

9(6) Unless he has refused leave to appeal under paragraph 9(5), the person appointed under paragraph 9(4) shall give leave to appeal if he is satisfied that there is an arguable case for appeal on one or more of the grounds set out in paragraph 9(2).

9(7) (i) Following his decision to give leave to appeal under paragraph 9(6), or not to give leave to appeal, the person appointed under paragraph 9(4) shall notify the Board of his decision or decisions and the Board shall notify each Member or Member firm concerned and each AADB Participant; and

- (ii) the Board, once in receipt of such notice for leave to appeal, shall, if leave to appeal is given, appoint an Appeal Tribunal.
 - (iii) The order of the relevant Disciplinary Tribunal shall apply if leave to appeal is not given.
- 9(8)** Subject to this Scheme, the procedure adopted by an Appeal Tribunal to deal with any formal complaint or appeal shall be in accordance with the Regulations.
- 9(9)** In coming to its decision the Appeal Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Appeal Tribunal will at all times apply the rules of natural justice.
- 9(10)** An appeal shall be by way of a review only and not by way of a rehearing, providing always that the Appeal Tribunal shall hear evidence adduced pursuant to sub-paragraph 9(2)(iii). Subject to the above, the Appeal Tribunal shall have in relation to an appeal all the powers of the Disciplinary Tribunal as set out in paragraph 8(5).
- 9(11)** On an appeal the Appeal Tribunal shall have power to:-
- (i) affirm, vary or rescind any adverse findings or orders of the Disciplinary Tribunal in relation to or against any Appellant;
 - (ii) substitute in relation to or against such Appellant, any other adverse findings and/or orders which it considers appropriate and which the Disciplinary Tribunal could have made under paragraph 8(5);
 - (iii) save that the Appeal Tribunal shall so exercise its powers under subsections 9(10)(i) and 9(10)(ii) that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the Disciplinary Tribunal.

- (iv) if it is of the view that it is necessary in the interests of justice to do so in the light of the new evidence adduced pursuant to sub-paragraph 9(2)(iii), order that the matter be reheard by the Disciplinary Tribunal which made the relevant adverse findings or orders or failing that by a fresh Disciplinary Tribunal;
- (v) order that any Appellant be required to pay, in the manner set out in paragraph 12 below, the whole or part of the costs of, and incidental, to the appeal, the amount to be so paid to be as determined by the Appeal Tribunal;
- (vi) should it grant the appeal, on the Member's or Member Firm's application having regard to all the circumstances including the conduct of the Member or Member Firm and the Executive Counsel (including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation) at its absolute discretion order the Board to pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the formal complaint being served on the Member or Member Firm.

9(12) Following its decision under paragraph 9(11), the Appeal Tribunal shall prepare a report on the Member, Member Firm, Members or Member Firms concerned setting out the Appeal Tribunal's decision or decisions and any related order or orders and send the report or reports to the Board which shall then send a copy to the Member or Member Firm concerned and to the AADB Participants.

9(13) The decision or decisions of the Appeal Tribunal shall take effect from the date it is announced.

9(14) At any time before the date of a report which sets out the decision of an Appeal Tribunal in respect of the appeal of an Appellant in accordance with paragraph 9(12), such Appellant may abandon his or its appeal by notice in writing to the Appeal Tribunal. Thereupon, the Appeal Tribunal shall affirm

under sub-paragraph 8(5)(i) and 8(5)(ii) any adverse findings and/or orders of the Disciplinary Tribunal in relation to or against the Appellant, which are the subject of the appeal and may make an order under sub-paragraph 9(11)(v) in relation to the whole or part of the costs of and incidental to the appeal.

9(15) The Board shall publish the report prepared by the Appeal Tribunal as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

Disciplinary and Appeal Tribunals

10(1) The Board shall maintain a Panel of individuals who are appointed by the Board from time to time and who, in the opinion of the Board, have the appropriate qualifications and experience to sit on a Tribunal. Appointment to the Panel shall be for an initial period of at least three years and the terms of appointment shall be as set out in the Regulations.

10(2) A Tribunal shall be composed as follows:-

- (i) Each Tribunal shall consist of either three or five persons as the Board in its absolute discretion thinks fit.
- (ii) The Chairman of a Disciplinary Tribunal shall be a lawyer (either a former member of the judiciary, a barrister, an advocate or a solicitor). The chairman of an Appeal Tribunal must be a former member of the judiciary or a Queen's Counsel.
- (iii) A three-person Tribunal must comprise in addition to the Chairman:-
 - (a) a layperson (who is neither a lawyer nor an accountant); and
 - (b) an accountant.
- (iv) A five-person Tribunal must include in addition to the Chairman:-

- (a) at least one layperson (who is neither a lawyer or an accountant); and
 - (b) two (but no more than two) accountants.
- (v) Each accountant appointed to a Tribunal shall be a Member with appropriate experience.
- (vi) No serving member of the governing body of, or any officer or employee of, any of the AADB Participants shall be appointed to a Tribunal. However, former members of the governing bodies and former officers or employees of AADB Participants shall not be precluded from appointment.
- (vii) No person who is a member, director or officer of any of The Auditing Practices Board Limited, The Financial Reporting Council Limited, The Accounting Standards Board Limited, The Professional Oversight Board for Accountancy Limited, The Financial Reporting Review Panel Limited or the AADB or a member of the Council of The Financial Reporting Council Limited or a member appointed to any Board of any subsidiary company of The Financial Reporting Council Limited shall be appointed to a Tribunal.
- (viii) No person who has been concerned with the investigation or disciplinary proceedings leading to the adverse finding and/or order which is the subject of the appeal, or with any earlier proceedings relevant thereto, shall be appointed to a Tribunal.

10(3) Subject to sub-paragraphs 10(2)(i) to 10(2)(v) (inclusive), if more than one Disciplinary Tribunal is appointed to hear formal complaints arising out of the same matter, any of the members appointed to one of the Tribunals may be appointed to the other or others.

10(4) Where there are two or more notices of appeal against findings or orders made by the same Disciplinary Tribunal, the Board may appoint the same Appeal

Tribunal to hear some or all of the appeals. Subject to sub-paragraphs 10(2)(i) to 10(2)(v) inclusive, if more than one Appeal Tribunal is appointed to hear appeals against adverse findings and/or orders which are in any way connected or associated, any of the members appointed to one Appeal Tribunal may be appointed to the other or others.

10(5) Subject to the provisions of this Scheme, at any time before the hearing of a formal complaint or an appeal, the Chairman of the relevant Tribunal shall give such pre-hearing directions as are necessary or desirable for securing the just, expeditious and economical disposal of the formal complaint or appeal.

10(6) A session of a hearing shall be postponed if (whether by reason of incapacity or otherwise):-

- (i) the Chairman is unable to be present; or
- (ii) there shall not be present at least three members of the Tribunal; or
- (iii) there shall not be amongst members of the Tribunal present at least one lawyer, one accountant and one layperson who is neither a lawyer nor an accountant.

10(7) If a session of a hearing can and does proceed in the absence of a tribunal member, that member shall not participate in any further sessions or consideration of the matter. If a session is postponed pursuant to paragraph 10(6), or if for any other reasons any of the Tribunal members may not be able to attend any session, and it appears to the members of the Tribunal that the facts resulting in the postponement will not change or may result in an unreasonable delay in the conduct of a hearing, this shall be reported to the Board which shall consider whether in all the circumstances it would be appropriate and consistent with ensuring a fair hearing of the matter to appoint a new Chairman, a new Tribunal member or a new Tribunal (as appropriate). In any such case where the Board decides that it would be appropriate and consistent with ensuring a fair hearing of the matter, it shall appoint a new Chairman, Tribunal member or Tribunal (as appropriate). In the case of the

appointment of a new Tribunal any of the members of the original Tribunal may be appointed to the new Tribunal.

- 10(8)** Any matter to be decided by a Tribunal shall be decided by a majority of votes. In the case of an equality of votes, the Chairman shall have a second vote.
- 10(9)** The Tribunal shall sit in public but shall have an absolute discretion to exclude the public (including the press) from all or part of the hearing to the extent it considers necessary where in the opinion of the Tribunal the circumstances are such that publicity would prejudice the interests of justice.
- 10(10)** The Executive Counsel shall act as complainant (before a Disciplinary Tribunal) or respondent (before an Appeal Tribunal) and shall bring evidence against the Member or Member Firm the subject of the formal complaint or appeal before the Tribunal. Every Tribunal shall give any Member or Member Firm the subject of a formal complaint before it a reasonable opportunity to hear the evidence against him or it, to cross-examine witnesses called by the Executive Counsel, to call witnesses and lead evidence in his or its defence and to make representations orally or in writing to the Tribunal. Any such Member or Member Firm shall be entitled to be represented by a Representative at all hearings of the Tribunal.
- 10(11)** The Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence
- 10(12)** The Tribunal may exclude from a hearing any evidence which, in its opinion, it is necessary to exclude in order to:-
- (i) ensure fairness between the parties; and
 - (ii) preserve the interests of justice.
- 10(13)** If the subject matter of a formal complaint to be heard arises wholly or mainly in Scotland, the Disciplinary Tribunal shall sit in Scotland, the Chairman shall

be a former member of the Scottish judiciary, an advocate or a solicitor qualified in Scotland and each non-accountant member shall be a person residing in Scotland.

Standard of Proof

- 11 The standard of proof on which a formal complaint, or any part thereof, is to be decided shall be the balance of probabilities. The more serious the allegation the higher the degree of probability that is required.

Payments

- 12 Where a Tribunal makes an order for the payment of a fine and/or costs against a Member or Member Firm, then:-

- (i) in the case of a Member, such monies shall be due from and paid by him even if he ceased to be a Member on or after the date of the report of the Disciplinary Tribunal;
- (ii) in the case of a Member Firm, such monies:-
 - (a) shall be due from the Member Firm concerned; and/or
 - (b) shall be jointly and severally due from, and shall be paid by, those Members who were partners in, members of, directors of or the proprietor of such Member Firm during any part of the time relevant to the adverse finding or thereafter, whether or not they were Members or it was a Member Firm during any part of that time;
 - (c) shall be so due from, and shall be paid by, the Member Firm and the individuals referred to in sub-paragraph 12(ii)(b) even if it ceased to be a Member Firm or they ceased to be Members on or after the date of the report of the Disciplinary Tribunal;

- (iii) in either case, such monies shall be paid to the AADB on behalf of The Financial Reporting Council, and applied in the manner agreed between The Financial Reporting Council and the AADB Participants;
- (iv) in the case of an order of a Disciplinary Tribunal against which no appeal has been made, or which has not been suspended pending an appeal or against which an appeal has been rejected under paragraph 9(5), such fine and/or costs shall be paid not later than 28 days after the date when the order takes effect under sub-paragraph 8(8)(ii) and in the event that such fine and/or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (v) in the case of an order of a Disciplinary Tribunal against which there is an appeal and an order of an Appeal Tribunal, such fine and/or costs (except to the extent that the order of the Disciplinary Tribunal may be varied or rescinded by the Appeal Tribunal) shall be paid not later than 28 days after the date on which the relevant Appeal Tribunal decision is notified under paragraph 9(11) to the Member or Member Firm and in the event that such fine or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (vi) the AADB will endeavour to collect and (if necessary) enforce the payment of fines and/or costs unless it shall at its discretion decide (but only after prior consultation with the relevant Participant) not to seek or continue to seek enforcement of such payment;
- (vii) in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment, the Member concerned shall be excluded as a Member of one or more AADB Participants and in the case of a Member Firm the removal of registration by one or more AADB Participants shall be recommended.

Obligations of Members and Member Firms

13(1) Every Member and every Member Firm shall at all times co-operate fully, and every Member Firm shall use its best endeavours to ensure that every employee of that Member Firm shall co-operate fully, with the Executive Counsel and with any Disciplinary Tribunal or Appeal Tribunal established pursuant to this Scheme. Without prejudice to the generality thereof, such full co-operation shall include complying with any notice served pursuant to paragraph 13(2).

13(2) The Executive Counsel shall have power by notice served on any Member or Member Firm to call on him or it to provide (to the extent that such Member or Member Firm can lawfully do so):-

- (i) to the Executive Counsel or to any person appointed or employed by him or by the Board on behalf of the AADB, information and explanation relevant to any matter under investigation orally and/or in writing as the Executive Counsel shall require, and
- (ii) evidence to a Tribunal orally and/or in writing as the Executive Counsel or the Tribunal shall require.

The foregoing power of the Executive Counsel by notice to call on any Member or Member Firm to provide information and/or explanation and/or evidence shall include the power to call on him or it:-

- (a) to permit the inspection and taking of copies of the books, documents, records, telephone recordings or computer held information of whatsoever kind relevant to the matter under investigation which are in the possession or under the control of such Member or Member Firm, and

- (b) to the extent reasonable, to supply copies of such books, documents, records, telephone recordings or computer held information of whatsoever kind at his or its own expense.

It shall be the duty of any Member or Member Firm on whom a notice is served under this paragraph 13(2) to comply with it within the period of 14 days beginning with the date of service or such longer period as the Executive Counsel may allow.

13(3) If, at any time, the Executive Counsel considers that:-

- (i) there are grounds upon which a Disciplinary Tribunal could make an adverse finding that one or more Members or Member Firms, whether or not they are within the scope of any investigation, have failed to carry out any obligation under paragraph 13(2), and
- (ii) it is appropriate for those grounds, or some of them, to be presented to a Disciplinary Tribunal,

He shall take the steps at sub-paragraphs 7(7)(a) to 7(7)(d). Where a formal complaint under sub-paragraph 7(7)(d) specifies grounds which the Executive Counsel alleges justify an adverse finding by reference to sub-paragraph 5(1)(ii), that formal complaint may be heard by the Disciplinary Tribunal which is hearing or is to hear another formal complaint, where the Board considers that to be appropriate when it appoints a Disciplinary Tribunal to hear the former formal complaint.

Proof of Certain Matters

14(1) The fact that a Member or Member Firm:-

- (i) has, before a Court of competent jurisdiction in the United Kingdom, been convicted of an indictable offence, or

- (ii) has, before a Court outside the United Kingdom, been convicted of an offence which would have constituted an indictable offence in the United Kingdom if the conduct in question had occurred there,

shall for the purposes of this Scheme be conclusive evidence of an act of misconduct by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction.

14(2) The fact that a Member or Member Firm has before a Court of competent jurisdiction in the United Kingdom or equivalent jurisdiction outside the United Kingdom been convicted of a summary only offence may be considered by a Tribunal as evidence when determining whether that Member or Member Firm has committed an act of misconduct, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction.

14(3) The fact that a Member or Member Firm:-

- (i) has had an adverse finding made against him or it in respect of his or its conduct in proceedings before a regulatory body performing its functions under the Financial Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986 or the Companies Act 1989; or
- (ii) has had a disqualification order made against him under the Company Directors Disqualification Act 1986,

shall, for the purposes of this Scheme, be conclusive evidence of an act of misconduct by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in, or at the time of, the disciplinary proceedings or disqualification order.

14(4) A finding of fact:-

- (i) in any report of an inspector appointed under the Companies Act 1985;
- (ii) in any civil or criminal proceedings before a Court of competent jurisdiction in the United Kingdom or any court outside the United Kingdom;
- (iii) in any proceedings before, or report by, any of the bodies mentioned in paragraph 14(5);
- (iv) in any proceedings as a result of which an accountant was notified by or on behalf of the Council of the Law Society that he was not qualified to give an accountant's report within the meaning of section 34 (accountant's report) of the Solicitors Act 1974;
- (v) in any proceedings before, or report by, any regulatory, professional or disciplinary body outside the United Kingdom; or
- (vi) in any report or proceedings which, in the opinion of the relevant Tribunal, corresponds or correspond to any report or proceedings referred to in sub-paragraph (i) to (v) (inclusive) above,

shall, for the purposes of this Scheme, be prima facie evidence of the facts found.

14(5) The bodies referred to at sub-paragraph 14(4)(iii) are:-

- (i) The Financial Services Authority;
- (ii) The Financial Services and Markets Tribunal;
- (iii) any recognised self-regulating organisation or recognised professional body within the meaning of the Financial Services Act 1986;

- (iv) The Financial Reporting Review Panel;
- (v) any recognised professional body within the meaning of the Insolvency Act 1986;
- (vi) any recognised supervisory body within the meaning of the Companies Act 1989;
- (vii) Any designated professional body within the meaning of the Financial Services and Markets Act 2000;
- (viii) Any body replacing, additional to or pre-dating a body identified in sub-paragraphs 14(5)(i) to (vii) and performing the same or broadly similar functions, and whose regulatory arrangements are of a similar standing.

14(6) Paragraphs 14(1) to 14(5) (inclusive) are without prejudice to the generality of paragraphs 8(3) and 9(8) and nothing in paragraph 14(4) shall affect the evidential status of any report or other document not referred to in paragraph 14(4).

Legal Representation of Members

15 If a Tribunal concludes that:-

- (i) it is not reasonable to expect a Member to conduct his defence or pursue his appeal without legal representation because for example of the complexities of the issues involved; and
- (ii) the Member has established that he cannot afford (and does not have adequate insurance cover for) legal representation,

the Tribunal may after application require the AADB to meet the reasonable costs of that Member's legal representation at the hearing before the Tribunal

but only if, in all the circumstances, the absence of legal representation would be contrary to the rules of natural justice.

Member Firms

- 16 If a Member Firm ceases to be a Member Firm, discontinues its business or ceases to exist, the rights and the obligations which would otherwise have fallen on such Member Firm may be exercised and shall be discharged respectively by the Members who were partners in, directors or members of such Member Firm at any time from the beginning of the time relevant to the matter under investigation until it ceased to be a Member Firm, discontinued its business or ceased to exist.

Disclosure of Information

- 17 The Regulations may make provision enabling the Board or the Executive Counsel to disclose information and explanation and supply evidence, whether originally oral or in writing, obtained under this Scheme to any regulatory body or prosecuting authority, or any person, body or authority carrying out any role similar to that of regulation or prosecution, in any part of the world. Any such provision shall contain such safeguards as the Board considers appropriate.

Transfers from the JDS

- 18 The Board shall be empowered to accept the transfer to it from the JDS of any matter previously referred to the JDS and thereafter to deal with it under the applicable JDS and related regulations.

Amendment and termination of this Scheme

- 19** This Scheme may be amended by the Board, with the agreement in writing of The Financial Reporting Council and the governing body of each of the AADB Participants, or terminated by the Board by giving notice of not less than six months expiring on 31st December in any year.

Adopted on the
13th day of May 2004 by the AADB.

AADB Scheme Schedule of Sanctions

The following sanctions may be made by a Tribunal as referred to in paragraph 8(5)(i).

Members

Reprimand

Severe Reprimand

Exclusion as a Member of one or more AADB Participants and that the exclusion be for a recommended specified period of time

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment exclusion as a Member of one or more AADB Participants)

Waiver/repayment of client fees

Order that a Member be ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence)

Order that a Member's practising certificate or registration or authorisation or licence be withdrawn (for the practice of any activity requiring such a certificate, registration, authorisation or licence). The Tribunal may recommend that such certificate, registration, authorisation or licence not be reinstated for a specified period of time.

Member Firms

Reprimand

Severe Reprimand

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment the failure shall have the same consequences for each Member who was a sole practitioner in, a partner in, a member (of a limited liability partnership) of, or a director of the firm at the relevant time as it would if the fine or costs had been imposed on him individually)

Waiver/repayment of client fees

Order that a Member Firm be ineligible for a prescribed period for registration or authorisation or a licence (for the practice of any activity requiring such registration, authorisation or licence)

Order that a Member Firm's registration or authorisation or licence be withdrawn (for the practice of any activity requiring such registration, authorisation or licence). The Tribunal may recommend that such registration, authorisation or licence not be reinstated for a specified period of time.