

Investigation and Disciplinary Regulations

Version 1

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Glossary

ACCA	Association of Chartered Certified Accountants
AT	Appeals Tribunal
CAPA	The Confederation of Asian and Pacific Accountants
DC	Disciplinary Committee
EAAA	Emirates Association for Accountants and Auditors (the Association)
I&D	Investigation and Discipline
IC	Investigation Committee
IFAC	International Federation of Accountants
MoE	Ministry of Economy
PAO	Professional Accountancy Organization
SMO	Statement of Membership Obligations
UAECA	United Arab Emirates Chartered Accountant
UAE	United Arab Emirates

1. Introduction

A robust investigation and disciplinary process is critical for enforcing and maintaining professional standards and helping to maintain public trust and confidence in the accountancy profession. A lack of a sound process creates risks of manipulation, misrepresentation and fraud, is detrimental to public trust in the accountancy profession and negatively impacts the effectiveness of the Association's actions to implement its mandate.

This document sets out the scope, rights and obligations of parties to the process and procedures of the investigation and discipline process. The I&D process in place has been established with the following processes at its foundation:

- *Transparency and fairness* of I&D process where proceedings and decisions are thoroughly documented, the process is consistent and credible, and accountability before stakeholders is observed;
- *Independence and impartiality* of decisions where decision-making is separated from investigative proceedings, risks of conflict of interest and bias are duly mitigated;
- *Agility* of the I&D process where proceedings and final decision are undertaken within a reasonable timeframe and in an efficient manner whilst maintaining a robust and thorough process;
- *Effectiveness and proportionality* of discipline measures where outcomes are proportionate to the risks posed by the subject of investigation;
- *Acting in the public interest* where the main objective of the I&D system is protection of public interest, maintenance of public confidence in the profession and upholding proper professional standards of conduct.

2. Scope of the Regulations

These Regulations are applicable to all categories of students and members of the Association.

3. Acts of misconduct

The I&D procedures can be initiated where there is reliable and independent evidence and grounds to demonstrate that an Association member or student:

- Is guilty of misconduct, professional incompetence, gross negligence, dishonesty in the discharge of their professional duties;
- Has made false, fraudulent or misleading representations with regards to their professional competence, professional qualifications, audit license or Association membership;
- Is in breach of the Association's Code of Ethics and standards of professional conduct;
- Is in breach of the Association's membership obligations as outlined in the Rulebook;
- Is in breach of standards of professional conduct of a foreign professional accountancy organization of which the subject of the complaint is a member and which is recognized by the Ministry of Economy and pursuant to Resolution 805 of 2018;
- Is in breach of any Laws, Regulations or Decrees of the United Arab Emirates which the complainant believes makes the subject unfit to remain a member or student of the Association;
- Has been convicted of a criminal offense which the complainant believes makes the subject unfit to remain a member or student of the Association;
- Has brought the Association or the accountancy profession in disrepute.

4. Rights and obligations

Members and students are obligated to cooperate in the investigation of complaints with the relevant Association representatives. Cooperation must be observed by members and students under investigation responding promptly to all communications on the matter and providing information and documents when required. Failure to comply fully with such requests for cooperation and the provisions of these Regulations will lead to members and/or students being liable to disciplinary actions.

The Association has the right to collaborate with relevant authorities on investigation and discipline matters such as providing and receiving information related to the subject of the investigation and disciplinary actions. In cases which relate to civil and criminal offences, the Association will refer the case to the higher court.

5. Initiation of Proceedings

The Association adopted two approaches to initiate investigation and disciplinary proceedings:

- a) A complaints-based approach where any person, for examples, a professional client, regulatory agency or a member or student of the Association can file an official complaint against a member or student of the Association.
- b) An information-based approach is complimentary to support the complaint-based approach where an Investigation Committee (IC) of the Association can initiate an investigation process based on information received from reliable sources such as court rulings, civil proceedings, investigation proceedings of another professional body.

An investigation may be initiated based on information received from the Ministry of Economy with respect to outcomes of audit quality reviews it has conducted or results of quality review procedures performed by the Association within its mandate.

6. Complaint process

Upon receiving a complaint, the Association is obliged to take action. The complaints received will be reviewed and assessed by an appointed staff member whether they merit an investigation, should be referred for conciliation or dismissed.

- a) Before proceeding with the investigation, the Association will verify that this case is not being investigated by MoE or another regulatory body in the UAE by requesting information in writing directly from MoE or that regulatory body;
- b) If a member or student is also a member or student of a foreign PAO, the Association will verify that the subject of the I&D proceedings is not undergoing investigation and discipline processes under that PAO mandate before proceeding, to avoid duplication;
- c) If the subject of the complaint is undergoing a criminal or civil court proceedings, the Association will monitor the process and review the complaint once the proceedings are concluded to decide if any further action should be undertaken;
- d) Once considerations of MoE, another regulatory body, foreign PAO, criminal or civil court proceedings are made, the appointed staff member will send the complaint to Board with recommendations on whether the complaint should be sent for investigation or conciliation or be dismissed. The Board provides an approval on the case;
- e) If it is decided that the complaint has a case to answer, the complainant and the subject are informed of the decision to refer the case to either investigation or conciliation within **a reasonable number of** days of such decision.

- a) If the complaint is dismissed, the complainant will be notified to the reasons of dismissal via a communication sent to their stated email within **a reasonable number of days** of such decision being made.

The review of the complaint or other relevant information received will be conducted within a **reasonable number of days** of receipt of such complaint or information;

7. Conciliation process

Conciliation may be possible for all or parts of a complaint and in such cases the complaint received may be referred for conciliation after having been reviewed.

Upon referral of a complaint, a conciliator will be appointed which may include a third-party professional arbitration or mediation service provider. The conciliator will inform the complainant and the subject of the case being referred for conciliation, inviting both to participate in the conciliation proceedings within **a reasonable number of days** of the referral for conciliation.

- a) The conciliation proceedings:
 - i. The complainant and the subject must agree to the invitation to participate in the conciliation proceedings within **a reasonable number of days** of receiving the invitation. If one the parties does not agree, the complaint will be referred for investigation;
 - ii. The conciliator may request the parties to submit written statements on the facts of the case. The statements may be sent by each party to the other. Statements may also be collected by the conciliator by phone;
 - iii. The conciliator will use those means of communication that are most appropriate for the expedient resolution of the complaint, including telephone and email, in-person meetings, discussions, and by relaying messages between the parties where appropriate;
 - iv. During the conciliation process the conciliator will consider the subject of complaint and related facts and evidence, options and alternatives to resolution and aim to reach an agreement between the parties through facilitation;
 - v. The complainant and the subject may invite a supporting party with them to the conciliation meeting, including a lawyer where the conciliator thinks it is appropriate;
 - vi. The conciliation process will be conducted in private and the discussion conducted during the conciliation cannot be used in any future disciplinary hearings regarding the particular complaint;
 - vii. The outcome of the conciliation process will be documented in an agreement and signed by both parties. The terms of the agreement may be kept confidential.
- b) The conciliation can be deferred at any time for a specified amount of time based on a request of the subject or by decision of the conciliator.
- a) The conciliation process will be completed within **a reasonable timeframe from the date of** the referral. If the complaint cannot be resolved within the set timeframe, it will be referred to the investigation proceedings.
- b) The following outcomes may be reached as a result of the conciliation process:
 - i. The conciliation process has revealed that there is no case to answer and the case is thus closed;

- ii. The complaint has been resolved by the parties and the case is closed;
 - iii. The conciliation process has revealed that no further actions are required and the case is closed;
 - iv. All or part of the complaint remains unresolved and needs to be referred for investigation.
- c) The costs for the conciliation process will be borne by the complainant and the subject. Legal, technical or other advice may be obtained during conciliation to assist in the conciliation process.

8. Investigation process

- a) Upon referral of a complaint or as a result of receiving other relevant information initiating an investigation, an Investigation Committee (IC) will be appointed.
- b) The IC operates in accordance with the provisions of the Investigation Committee Charter.
- c) Prior to investigation commencement, all IC members must complete an independence declaration stating they are independent of the complainant and the subject of the investigation and any other stakeholders interested in the matter of investigation. If a conflict of interest is identified, the Committee member will immediately withdraw from the process and be replaced by another suitable member.
- d) The IC will inform the subject of investigation of the initiation of investigation proceedings and request comments, documents and other information for assessment.
 - i. If the comments provided by the subject are satisfactory, the IC will close the case.
 - ii. If comments provided are not satisfactory, the IC will start an investigation.
- e) The investigation will be conducted considering aspects such as the origin of information, facts of the complaint, whether the breach is systemic or a one-off event, whether the breach is a repeat event and whether previous breaches have not been mitigated, whether the breach present a public concern.
- f) Upon completion of the investigation, the IC can make one of several conclusions:
 - i. If the IC is satisfied that a case is there to pursue based on the evidence assessed, a report of allegations will be drafted and the subject will be invited to provide comments. The case will be then referred to Disciplinary Committee (DC) and the decision will be communicated to the subject and the complainant within a reasonable number of days of such decision.
 - ii. If the investigation identifies that the case is of civil or criminal nature or for another reason outside the Association's mandate, it will be referred to the relevant authority for considerations in accordance with the mandate of that Authority. The decision will be communicated to the subject and the complainant within a reasonable number of days of such decision.
 - iii. If there is no case to pursue, the IC will close the case and communicate the decision to the subject and complainant within a reasonable number of days of such decision.
 - iv. If the IC determines that there is a case to pursue but it would not be in the public interest to refer the case to the DC, the matter will rest on the subject's file for a period of up to 5 years from the date of such decision. The matter may

be taken into account in a case of another complaint filed against the subject within a period of up to 5 years;

- v. The IC will communicate the outcome of its investigation to the Association Board in a form of a report.

The IC may seek assistance and advice of legal, technical or other nature to support with the investigation process and such advice will be included as evidence in the case.

9. Disciplinary process

- a) Upon the case being referred for disciplinary process by an IC, a DC will be appointed where no member of the DC can also be a member of IC for the same case proceedings. A Chair of the DC will be appointed from the DC members.
- b) The DC operates in accordance with the provisions of the Disciplinary Committee Charter.
- c) Prior to disciplinary process commencement, all DC members must complete an independence declaration stating they are independent of the complainant and the subject of the disciplinary proceedings and any other stakeholders interested in the matter. If a conflict of interest is identified, the Committee member will immediately withdraw from the process and be replaced by another suitable member.
- d) A notice of a disciplinary process being initiated will be communicated to the subject within a reasonable number of days of such decision. Any amendments made to the allegations up to the date of the hearing shall be immediately communicated to the subject.
- e) Further enquiries by the IC may be made to prepare for the hearing.
- f) An individual to present the case to the DC at the hearing against the subject will be nominated.
- g) The DC will determine the date, time and the place of the case hearing and communicate the date to the subject 30 days in advance of the hearing date. The communication will also include the facts of the case, rights and obligations of the parties, list of witnesses to be called.
- h) The subject must confirm to the DC within a reasonable number of days whether they will be attending the hearing in person, declare any witnesses they would like to call and provide any additional documentation to support their case and a statement of defence if the allegations are being denied by the subject.
- i) The hearing proceedings:
 - i. Will allow the subject to be heard before the DC or be represented by a representative of their choice;
 - ii. Will allow for the absence of the subject from the hearing and continue as long as the subject has received all of the documents relevant to their case. In the case of subject's absence, the DC will consider any written statements made by the subject;
 - iii. May be adjourned until a later date based on the application filed to the DC by the subject or the person presenting the case against the subject;
 - iv. Will allow the DC to determine the evidence that can be admitted;
 - v. Will allow the DC to find any allegations admitted by the subject as proven;
 - vi. Will be held publicly unless advised otherwise by a legal adviser and may exclude persons from the hearing who may be deemed as disruptive to the

conduct of the hearing. The public notice of the hearing will be made using communication channels that the Association sees fit for the purpose.

- j) Procedures of the hearing shall be as follows:
- i. Person presenting the case against the subject will open the hearing and present the evidence for all allegations. Witnesses may be called;
 - ii. Subject may clarify the allegations against them with the presenter;
 - iii. The subject will then respond to the evidence presented against them and present their defence. The subject may be cross examined by the presenter of the case and the witnesses may be cross-examined by the subject and the presenter of the case;
 - iv. Closing remarks will be presented by both sides, with the subject presenting last;
 - v. DC may ask questions of both sides at any time and after closing remarks have been made may take time to deliberate the case and issue a verdict;
 - vi. Once the verdict has been reached, the DC will announce its findings for each of the allegations with reasons for reaching such conclusions;
 - vii. The subject will be given a chance to make statements of mitigation in response to allegations that have been proved. In their absence, their written statements shall be referenced;
 - viii. At the conclusion of the hearing the DC will place one or more sanctions on the subject;
 - ix. The decision will be communicated to the subject in writing within a reasonable number of days of the hearing date;
 - x. The decisions and sanctions made by the DC will be made public using the channels EAA sees fit for the purpose.
- k) The decision and sanctions placed upon the subject may be communicated to the MoE with recommendations for any actions if the subject is a licensed auditor under the Federal Law No. 12 of 2014.
- l) The decision and sanctions placed upon the subject who is a member of the UAECA programme shall be communicated to ACCA.
- m) The decision made by the DC is final and cannot be reversed or amended by anyone other than the Appeals Tribunal.
- n) The effective date of the DC decision is from the date of the appeal period expiry which is 30 days from the DC decision.

The DC will seek assistance and advice of legal, technical or other nature throughout the disciplinary process.

10. Sanctions

The DC will consider the least serious allegation first and will place one or more of the following sanctions upon the subject, if the subject is a member of the Association:

- No further action needs to be taken;
- Censure or reprimand of the subject;
- Completion of professional development or another education programme at own expense;

- Revocation of membership in the Association and removal from the register which may be combined with recommendation for no readmission for a specified period of time;
- A payment of **a defined amount** of fine within 30 days of the date of the decision;
- A payment of compensation to the complainant for the inconvenience caused as a result of the breach.

The DC will consider the least serious allegation first and will place one or more of the following sanctions upon the subject, if the subject is a student of the Association:

- No further action needs to be taken;
- Censure or reprimand of the subject;
- Removal from student register and revocation of student status for a specified period of time which may be combined with a recommendation for no readmission for a specified period of time;
- Part or all of the student's professional experience not recognized subject to the student and member admission requirements;
- Suspension from sitting qualification examinations for a specified period of time;
- Voidance of the student's some or all examination results;
- A payment of **a defined amount** of fine within 30 days as of the date of the decision;
- Non-admission to membership.

When imposing sanctions, a principle of proportionality must be adhered to. In deciding so the interests of the public and the subject must be weighed ensuring that public confidence in the profession is protected and proper standards of professional conduct are maintained.

When deciding on the sanctions to be imposed the DC must consider the aggravating and mitigating factors of the breach, personal circumstances of the subject, character references of the subject from third parties and public interest impact.

11. Appeals process

The subject may appeal the decision made by the DC to an Appeals Tribunal (AT).

- a) The AT members must be independent of the previous proceedings and not have participated in either investigation process and disciplinary hearings.
- b) The AT proceedings will be the same as those applied in the disciplinary hearing.
- c) Appeals can be accepted only if
 - i. DC has made an error in the disciplinary process or interpretation of the relevant laws, regulations;
 - ii. Significant new evidence becomes available which was not available at the time of the hearing and was not reasonably expected to be available at the time of the hearing;
 - iii. The disciplinary sanctions were excessive for the nature of misconduct;
- d) The appeal must be filed within 30 days from the DC decision date.

The details of the Appeals proceedings are outlined in the Appeals Regulations.

12. Costs

The DC may ask the subject to compensate the Association for the costs incurred in conducting the case proceedings. The DC may ask the subject to compensate the costs the complainant incurred to bring the complaint to the attention of the Association.

The DC may also ask the Association to compensate the subject for the costs incurred in connection with the case if none of the allegations have been proved. The amounts of compensation will be decided by the DC.

13. Communication

All communications shall take place either in written form and be delivered by Emirates Post or a courier with confirmation of receipt to the addresses specified by the subject and the Association, or via electronic means such as email.

14. Timeframe

It is expected that a maximum sufficient period of time for the I&D proceedings to take place excluding cases giving rise to civil or criminal proceedings which are escalated to a higher court and shall adhere to the timeframes of the relevant court should not exceed 12 months.

15. Confidentiality

All information exchanged during the proceedings will be confidential. Considerations of relevant laws and public interest will be made when releasing any information relating to investigation, hearings and decisions made by the DC. All participants of the investigation and disciplinary process will confirm their compliance with confidentiality requirements where this is applicable.

16. Documentation

All proceedings will be thoroughly documented. Case documentation will be stored in a secure manner in order to protect the data and interests of all parties.

- a) Hard copy information will be stored in designated areas with physical access limited only to those involved with the investigation and disciplinary process.
- b) Soft copy information will be stored in password protected folders on the Association's server with access limited only to those involved in the I&D process and specific cases.
- c) Retention period of the case documentation will amount to a reasonable number of years and shall be in accordance with the legislation of the United Arab Emirates.

17. Reporting

To ensure that the purpose and objectives of the investigation and discipline procedures are achieved, the Association will publish on an annual basis the investigation and disciplinary cases heard during the previous calendar year. The publication will be made for all cases investigated and heard during the year for which the appeals period has expired.

The information will be published in accordance with data privacy and confidentiality laws of the United Arab Emirates.

18. Independent review of complaints

The complainant has the right to request an independent review of the complaints and investigation proceedings. The aim of such independent review is to assess the available case information and decide whether the complaint review and Investigation Committee reached a reasonable decision based on complete information.

The request must be addressed to the Association Board in writing within a reasonable number of days of the DC decision on the case. When such request is received, the Association Board will:

- a) Inform the subject of the investigation that an independent review of the case file has been requested by the complainant and that the allegations may need to be re-examined depending on the outcome of the independent review;
- b) Appoint an independent reviewer with sufficient knowledge of the process and legal expertise to perform the review from a pool of experts;
- c) Provide the independent reviewer access to case file information and documents.

The independent review will assess whether there has been a failure by the IC to investigate any relevant events raised by the complainant, to follow-up any relevant line of enquiry which could have produced evidence leading to a different disciplinary action, or to follow the investigation procedure as set out in the Investigation and Disciplinary Regulations which is likely to have led to prejudice, bias or another circumstance impacting the outcome of the investigation.

The reviewer will prepare a report to the Association Board as a result of the review. If there are no concerns identified, this will be stated in the report, the fact will be communicated to the complainant and the case will be closed.

If one or more failures are identified, this will be included into the report and the IC will be required to remedy the failures. Once the failures are remediated, the IC will:

- a) Review of the results of an earlier investigation conducted and update the report outlining the allegations against the subject with consideration of any additional evidence and corrective actions undertaken as part of remediation;
 - a. If the allegations have not changed, the IC will close the case and inform the complainant and the subject of the investigation of the fact;
 - b. If the allegations are amended, the IC will refer the case with the updated information to the Disciplinary Committee for re-consideration. DC will deal with the case in accordance with standard disciplinary procedures as outlined in Section 9 above.

19. Review of implementation and effectiveness

To ensure that it functions as intended, the investigation and discipline regulations will be reviewed at least annually to identify areas for improvement. Based on the review actions will be taken by the Association to ensure that any gaps identified are remediated and improvements that could be made are implemented as soon as it is deemed viable.