

CAYMAN ISLANDS



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**THE PUBLIC ACCOUNTANTS LAW, 2004
(LAW 1 OF 2004)**

THE PUBLIC ACCOUNTANTS DISCIPLINARY REGULATIONS, 2006

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CAYMAN ISLANDS

**THE PUBLIC ACCOUNTANTS LAW, 2004
(LAW 1 OF 2004)**

THE PUBLIC ACCOUNTANTS DISCIPLINARY REGULATIONS, 2006

The Governor, in exercise of the powers conferred by sections 21(3) and 30 of the Public Accountants Law, 2004, makes the following regulations -

PART I – PRELIMINARY

1. (1) These Regulations may be cited as the Public Accountants Disciplinary Regulations, 2006. Citation and commencement

(2) These Regulations shall come into force on 2 January, 2007.

2. In these Regulations, unless the context otherwise requires - Definitions

“associate member” means an associate member of the Society as described in section 9(3) of the Law;

“attorney-at-law” means an attorney-at-law admitted to practise as such in the Islands;

“complaint” means –

- (a) a complaint referred to in section 19 of the Law; or
- (b) an opinion of the Council in respect of which, as referred to in section 18 of the Law, section 19 of the Law applies;

“defendant” means a member against whom a complaint has been referred to the Disciplinary Tribunal;

“Disciplinary Tribunal” means a Disciplinary Tribunal established under section 21 of the Law;

“Investigation Committee” means an Investigation Committee established under section 17 of the Law;

“member” means a member of the Society (including an associate member and a student);

“notice” means notice in writing;

“prima facie case” means a prima facie case for disciplinary action under these Regulations; and

“representative”, in relation to a defendant in any proceedings under these Regulations, means –

- (a) an attorney-at-law or member appointed by him to represent him in those proceedings; or
- (b) any person permitted by the Disciplinary Tribunal to represent him in those proceedings.

**PART II – THE INVESTIGATION COMMITTEE AND THE
DISCIPLINARY TRIBUNAL**

Conflicts of interest

3. (1) No person shall participate as a member of the Investigation Committee for the purpose of the investigation of a complaint which he himself made.

(2) No person shall participate as a member of the Disciplinary Tribunal for the purpose of considering a case that was investigated by the Investigation Committee while he was a member of that Committee.

(3) No person may be a member of the Investigation Committee and of the Disciplinary Tribunal at the same time.

Termination or suspension of appointment

4. The Council may terminate a person’s appointment to the Investigation Committee or the Disciplinary Tribunal, as the case may be, on grounds of serious misconduct or incapacity.

Vacancies

5. If a vacancy arises in the membership of the Investigation Committee or the Disciplinary Tribunal, the Council may appoint a suitably qualified person to fill the vacancy.

Quorum

6. At any meeting of the Investigation Committee or at any hearing of the Disciplinary Tribunal, a number of members of the body concerned that is more than half the current total number of its members shall constitute a quorum.

Relevance of codes of practice, rules, etc.

7. In discharging its functions under these Regulations, the Investigation Committee and the Disciplinary Tribunal may have regard to all relevant matters,

including any code of practice (whether relating to the ethical, the technical or any other aspect of public practice), and any rules or guidance affecting the member concerned.

8. The Society may pay remuneration to, and the reasonable expenses of, members of the Disciplinary Tribunal who are not members of the Society.

Remuneration of
Tribunal members

PART III – INVESTIGATION OF COMPLAINTS

9. (1) Any person may, in accordance with section 19 of the Law, bring to the attention of the Council any facts or matters indicating that a member may have become liable to disciplinary action under the Law.

Bringing of complaints

(2) It is the duty of every member, where it is in the public interest for him to do so, to report to the Council any such facts or matters of which he is aware.

(3) As soon as practicable after a complaint is referred by the Council to the Investigation Committee, the Council shall serve on the relevant member a notice stating that the complaint has been referred to the Committee and the terms of the complaint.

(4) The Investigation Committee may appoint an attorney-at-law to assist it on matters of law with regard to a complaint which is under investigation by the Committee.

10. (1) The Investigation Committee shall have power, by notice served on any member, to call for such information and explanations, and such books, records and documents, as the Committee considers necessary to enable it or the Council to perform its functions under these Regulations and Part IV of the Law.

Power of Investigation
Committee to call for
information, etc.

(2) It shall be the duty of any member on whom a notice is served under this regulation to comply with it within the period of fourteen days beginning with the date of service or such longer period as the notice may allow.

11. (1) Before making any recommendation under section 20 of the Law, the Investigation Committee –

Conclusion of
investigation

- (a) unless it is satisfied that the member concerned has already been given adequate opportunity to make written representations to the Committee, shall give him such an opportunity; and
- (b) may, if it thinks fit, give him or his representative an opportunity of being heard before the Committee (but shall not be under a duty to do so).

(2) In deciding whether to recommend to the Council that a complaint (in this regulation referred to as the “current complaint”) be referred to the Disciplinary Tribunal, the Investigation Committee may take into account any facts or matters that were the subject matter of any other complaint (in this regulation referred to as a “former complaint”) –

- (a) that was considered by the Committee on any occasion during the preceding six years in relation to the member concerned; and
- (b) in respect of which the Committee found that a prima facie case was disclosed, but did not recommend a referral to the Tribunal,

and if the Committee decides to recommend that the current complaint be referred to the Disciplinary Tribunal, it may also recommend the referral of any such former complaint (and, if there were two or more such former complaints, may recommend referral of some or all of them).

(3) If the Investigation Committee recommends to the Council that a complaint be referred by the Council to the Disciplinary Tribunal, it shall send to the Council and to the defendant a summary of the material facts and matters that were considered by the Committee together with –

- (a) a summary or copy of any written representations made to it by the defendant, and
- (b) if the defendant has appeared before it in person or by a representative, a summary of any oral representations made to it.

(4) If the Investigation Committee finds that a complaint discloses a prima facie case but recommends to the Council that no further action be taken on it, the Council shall serve a notice to that effect on the member concerned.

(5) If, within the period of twenty-eight days beginning with the date of service of a notice under paragraph (4), the member concerned serves notice on the Council that he is unwilling to accept the finding that a prima facie case exists, then, unless on reconsideration the Investigation Committee finds that no prima facie case exists, the Council shall refer the complaint to the Disciplinary Tribunal.

PART IV – DISCIPLINARY PROCEEDINGS

12. (1) On referral to the Disciplinary Tribunal of a complaint, the Tribunal shall appoint –

Proceedings of the
Disciplinary Tribunal

- (a) as Chairman, one of the persons appointed to the Disciplinary Tribunal who is not a member of the Council; and
- (b) as Vice-Chairman, one of the persons appointed to the Disciplinary Tribunal who is a member of the Council.

(2) If any member of the Disciplinary Tribunal –

- (a) is for any reason unable to attend the hearing or any adjourned hearing of the complaint; or
- (b) is in the course of the hearing unable to continue so to attend,

the remaining members of the Tribunal may, while a quorum is present, at their discretion proceed or continue with the hearing; but if the defendant is present or represented at the hearing, they shall do so only if he or his representative consents.

(3) If, in a case falling within paragraph (2), the remaining members of the Disciplinary Tribunal –

- (a) do not proceed or continue with the hearing; or
- (b) complete the hearing but are unable to agree on a finding,

the complaint shall be heard or re-heard by a new sitting of the Tribunal comprising different members from those in the original sitting.

(4) If at any time during the hearing of a complaint the Chairman of the Disciplinary Tribunal is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the hearing to be completed by that sitting of the Tribunal, he shall so inform the Council who shall thereupon direct that the complaint be re-heard by a new sitting of the Tribunal appointed for the purpose.

(5) The Disciplinary Tribunal may appoint an attorney-at-law to act as legal assessor at the hearing of a complaint, and the person so appointed shall advise the Tribunal on matters of law but shall take no other part in its proceedings.

(6) Where a new sitting of the Disciplinary Tribunal is required to be held pursuant to an order made by the Grand Court on appeal under section 27 of the Law, no member of the previous sitting of the Tribunal may be appointed as a

member of the new one; but a person appointed as a legal assessor may continue so to act at any re-hearing of the complaint.

(7) In the event that a decision of the Disciplinary Tribunal is not unanimous, a decision of the majority of its members present shall (provided those members present constitute a quorum) be the decision of the Tribunal.

Hearing of complaints

13. (1) As soon as practicable after a complaint is referred by the Council to the Disciplinary Tribunal, the Tribunal shall serve on the defendant a notice stating the terms of the complaint and the time and place fixed for the hearing.

(2) The defendant may appear before the Disciplinary Tribunal in person or by a representative.

(3) The Disciplinary Tribunal shall give the defendant or his representative a reasonable opportunity of being heard before it.

(4) If the defendant does not attend and is not represented at the hearing, then, provided that the Disciplinary Tribunal is satisfied that the notice required by paragraph (1) was served on him, the Tribunal may hear the complaint in his absence.

(5) The Council may appoint the Secretary of the Council or any member of the Society, or may instruct an attorney-at-law, to present the complaint before the Disciplinary Tribunal.

Evidence of certain matters

14. (1) Without prejudice to any other ground on which a member may be adjudged to have committed a criminal offence of the kind referred to in section 18(d) of the Law, the fact that the member –

- (a) has, before a court of competent jurisdiction within or outside the Islands, pleaded guilty to or been found guilty of an indictable or other serious offence; or
- (b) has, before a court of competent jurisdiction outside the Islands, pleaded guilty to or been found guilty of an offence corresponding to one which is an indictable or other serious offence in the Islands,

shall, in proceedings before the Disciplinary Tribunal, be conclusive evidence of the commission by him of such a criminal offence.

(2) Without prejudice to any other ground on which a member of the Society may be adjudged to have breached the standards of professional conduct of an approved institute of which he is a member, the fact that the member has in

proceedings before that institute been the subject of an adverse finding in respect of his conduct shall, in proceedings before the Disciplinary Tribunal, be conclusive evidence of the commission by him of such a breach.

(3) Paragraphs (1) and (2) shall not apply to a finding that has been set aside on appeal or other judicial review or in respect of which any appeal or judicial review is pending.

(4) A finding of fact –

- (a) in any civil or criminal proceedings before a court of competent jurisdiction in the Islands or elsewhere; or
- (b) in any proceedings before, or report by, the Cayman Islands Monetary Authority,

shall for the purposes of these Regulations be prima facie evidence of the facts found.

(5) Nothing in paragraph (4) shall affect the evidentiary status of any report or other document not falling within that paragraph.

15. (1) If the Disciplinary Tribunal appointed to hear a complaint is of the opinion that the complaint has been proved, or may be taken as proved by virtue of a provision of these Regulations, it shall make a finding to that effect; otherwise it shall dismiss the complaint.

Powers of Disciplinary
Tribunal

(2) Without prejudice to the generality of section 21(4)(c) of the Law, the disciplinary action that may be taken against the defendant under section 21(4)(c) of the Law shall include –

- (a) a severe reprimand;
- (b) a reprimand;
- (c) a fine;
- (d) a requirement that the defendant undertake specified training;
- (e) a requirement that the defendant (at his own expense) obtain advice from a specified source and implement the advice obtained; and
- (f) an order –
 - (i) that he shall waive the whole or part of any fee that has been agreed by or invoiced to a client;
 - (ii) that he shall repay to a client the whole or part of any fee that the client has paid; or
 - (iii) that he shall pay to a client the whole or part of any sum of money that has been retained by the defendant in or towards payment of a fee.

(3) An order made by the Disciplinary Tribunal may include such terms and conditions (if any) as the Disciplinary Tribunal considers appropriate, including, in the case of an order for exclusion from membership made against a member, a recommendation that no application for his readmission be entertained before the end of a specified period.

Defendant to be heard
on proposed disciplinary
action

16. Before making any order pursuant to section 21(4)(c) of the Law, the Disciplinary Tribunal –

- (a) if the defendant is present or represented before it, shall give him or his representative an opportunity to make representations to the Disciplinary Tribunal either orally or in writing with regard to the proposed order; or
- (b) if the defendant is neither present nor represented before it, shall –
 - (i) adjourn the hearing for a reasonable period;
 - (ii) serve on him a notice describing the order it proposes to make; and
 - (iii) at the resumed hearing give him or his representative an opportunity to make representations to the Disciplinary Tribunal, either orally or in writing, with regard to the proposed order.

Powers of Disciplinary
Tribunal where
complaint dismissed

17. If the Disciplinary Tribunal appointed to hear a complaint dismisses the complaint as unproved, it may order the Society to pay to the defendant by way of recompense for his expenses in defending the complaint such sum as the Disciplinary Tribunal may in its absolute discretion determine.

PART V – GENERAL

Publication of findings
and other orders

18. (1) Subject to this regulation, where the Disciplinary Tribunal makes any finding or order under these Regulations, it shall cause a record of its decision to be published, as soon as practicable, in such manner as it thinks fit.

(2) Where the Disciplinary Tribunal dismisses a complaint, it shall cause a record of its decision to be so published if the defendant so requests.

(3) Unless the Disciplinary Tribunal otherwise directs, the Council shall maintain a record of any decision published under this regulation and such record shall state the name of the defendant and describe the finding and the other order or orders (if any) made against him, but need not include the name of any other person or body concerned in the complaint.

(4) The Disciplinary Tribunal shall not cause a record of its decision to be published under this regulation until the period allowed by section 27 of the Law

for giving notice of appeal against the order has expired; and if an effective notice of appeal is given under that section, then, unless the appeal is withdrawn or struck out for want of prosecution or for any other reason, no record of the Tribunal's decision shall be so published.

(5) Notwithstanding paragraphs (2) and (4), the Disciplinary Tribunal may cause a record of its decision to be published at any time if in its opinion publication is desirable in view of any statement or comment made in the public domain.

(6) A restriction imposed by the preceding provisions of this regulation on publication of a record of the decision of the Disciplinary Tribunal shall not apply if the hearing by the Tribunal was held wholly or partly in public.

19. (1) Notwithstanding anything in these Regulations, the Chairman of the Disciplinary Tribunal may at any time make such public statements as he thinks fit concerning –

Publicity for the disciplinary process

- (a) any complaint referred to the Tribunal; or
- (b) any matter relating to or connected with the performance by the Tribunal of its functions under the Law,

being a matter or complaint that in his opinion is or involves a matter of public concern.

- (2) The power to make statements under paragraph (1) may, if the Chairman of the Disciplinary Tribunal is for any reason unavailable, be exercised by the Vice-Chairman of the Disciplinary Tribunal.

(3) The Chairman of the Disciplinary Tribunal may authorise the disclosure of information concerning any proceedings brought or to be brought before the Disciplinary Tribunal to the following persons or any of them –

- (a) the complainant;
- (b) any person who, before the Investigation Committee has under section 20 of the Law completed an investigation, has made written representations to the Council on any fact or matter the subject of the investigation;
- (c) if the complainant, being an individual, dies before the complaint has been finally disposed of under these Regulations, his personal representative.

(4) An authorisation under paragraph (3) may be given subject to any restrictions which the Chairman of the Disciplinary Tribunal thinks appropriate.

(5) A hearing of a complaint may be held in public if the Council has authorised it to be so held; and such an authorisation may –

- (a) relate to a particular case, to cases of one or more classes, or to cases generally; and
- (b) be given subject to any restrictions which the Council thinks appropriate.

(6) Where any hearing is held in public by virtue of an authorisation under paragraph (5), the Chairman of the Disciplinary Tribunal may exclude the press and public from all or part of the proceedings if it appears to him desirable to do so in the interests of justice or for any other reason that seems to him sufficient.

Transitional provisions

20. (1) Subject to this regulation, these Regulations apply in relation to –

- (a) facts or matters that come to the attention of the Council (under section 18 or 19 of the Law or otherwise) after the date of commencement of these Regulations, whether or not they are facts or matters that occurred or were done at any time before that date; and
- (b) facts or matters that came to the attention of the Council before the date of commencement of these Regulations but were not laid by it before the Investigation Committee before that date.

(2) Paragraphs (2) and (4) of regulation 14 shall not apply in relation to facts or matters that came to the attention of the Council before the date of commencement of these Regulations.

Made in Cabinet the 19th day of December, 2006.

Carmena Watler

Clerk of the Cabinet.