

# **Investigation and Disciplinary Regulations** **2017**

This document contains the Investigation & Disciplinary  
Regulations of the Association of Accounting  
Technicians of Sri Lanka

Association of Accounting Technicians of Sri Lanka

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## **Commencement**

1. These Regulations made by the Governing Council under the Association's Articles of Association are effective from 30<sup>th</sup> June 2017. These Regulations shall be read together with Articles 24A, 24B, 24C, 24D, 58A, 58B, and 66A in particular and with any amendments to the Articles, made from time to time.

**Extracts of Articles 24A, 24B, 24C, 24D, 58A, 58B, and 66A are provided in Annexure A.**

## **Appointment of Committees**

2. The Council shall appoint the following committees:

### 2.1

(a) Conduct and Compliance Committee which shall comprise of three (3) members appointed by the Council who shall serve for a period of two (2) years.

(b) Investigation and Disciplinary Committee comprising of three (3) members as and when the Council deems fit and for a duration decided at such time not exceeding six (6) months per occasion to inquire into and decide on disciplinary matters.

(c) The President and Vice President shall be ex-officio members in terms of the Articles of Association in addition to the number of members stipulated above.

### 2.2

The appointment of members to this Committee shall be in accordance with the following:

(a) At least one (1) member shall be from a professional body of the legal field in order to act as advisor to the members of the committee on evidential, procedural and other such legal matters and need not be a member of the Association.

(b) A chairman shall be appointed from the members, other than the ex-officio members.

(c) A member shall not sit on both committees at any one time

(d) The President and Vice President of the Association shall not vote on any matters deliberated by the relevant committees.

Any member of the abovementioned committees shall disclose any conflict of interest which could reasonably be considered as overriding the objectivity of the committee. Where any conflict of interest exists, such member shall refrain from serving in the Committee for that particular case and a suitable replacement shall be appointed by the Council for the purposes of that particular case.

### **Initiation of Proceedings**

3. The Conduct and Compliance Committee shall adopt both a Complaint based approach and an Information Based approach to investigations.
4. Under the Complaint based approach, any person may make a complaint in writing to the Conduct and Compliance Committee upon which an investigation into the complaint shall be triggered.
5. The Information based approach is triggered when information is received from a reliable source by the Conduct and Compliance Committee or where the Conduct and Compliance Committee already has access to reliable information. In this instance, the Conduct and Compliance Committee shall start investigating based on the information received or available.
6. The Conduct and Compliance Committee shall consider and, where appropriate, begin investigations into any complaint or information regarding any alleged misconduct provided that such complaint is received or such information is acted upon within six (6) months of the alleged misconduct.
7. Where such complaint or information regards any alleged misconduct that took place before a period of six (6) months, the Conduct and Compliance Committee shall forward such complaint or information to the Council whereupon the Council shall decide on whether to direct the Conduct and Compliance Committee to start investigations or not. The Council shall take into account any exceptional circumstances when arriving at this decision.
8. The Council may direct the Conduct and Compliance Committee to begin investigations into any fact or matter concerning the conduct of a Member where the Council is of the opinion that such an investigation is warranted.
9. Where the Conduct and Compliance Committee is satisfied that there is a case to pursue, then the Conduct and Compliance Committee shall refer the case to the Investigation and Disciplinary Committee.

### **Grounds for disciplinary action**

10. An act of misconduct or professional misconduct by a Member shall be grounds for disciplinary action. Misconduct or professional misconduct is defined as a Member having:
  - (a) conducted himself/herself in such a manner as would, in the opinion of the Conduct and Compliance Committee, be seen as unbecoming of the status of a Member of the Association or as damaging to the reputation of the Association.
  - (b) seriously or repeatedly breached the Articles or any rules, regulations or by-laws adopted by the Association, including the Code of Ethics.

In addition to the above, Schedule I contains acts and omissions which, for the time being, constitute misconduct or professional misconduct. The Council may amend Schedule I at any time and shall publish any such amendments.

11. All Members shall be aware of:
  - (a) All provision of the Code of Ethics and other applicable professional standards and rules.
  - (b) The consequences of non-compliance of the Code of Ethics and other applicable professional standards.

#### **Informal Procedure**

12. Where the Complaint or Information relates to, in the opinion of the Council, a minor or single breach of the Code of Ethics of the Association and where such breach does not amount to misconduct or professional misconduct as referred to in paragraph 10, the Association may, where the Council considers it appropriate, adopt the Informal Procedure.
13. Any Member subjected to the Informal Procedure shall be notified in writing by the Conduct and Compliance Committee of the alleged breach of the Code of Ethics and, if the Council considers it appropriate, advised of any steps he/she should take to rectify the breach.
14. Copies of all communications between the Association and any Member subjected to the Informal Procedure, shall be kept and may be taken into account in any future proceedings either in determining whether there are grounds for disciplinary action against a Member or as part of his/her past record in determining the appropriate action for misconduct.

For the avoidance of doubt, the Informal Procedure shall not be construed as part of the Association's formal disciplinary Procedure.

#### **Conciliation**

15. The Conduct and Compliance Committee may also, where it considers appropriate, look to resolve any dispute by conciliation. Where conciliation cannot be achieved, the Association shall proceed in accordance with these Regulations.

#### **Formal Procedure**

16. Where the Association receives a Complaint or acts on Information in accordance with these Regulations, the Formal Procedure shall apply as set out herein.
17. The Conduct and Compliance Committee may begin investigations, by whatever means it may consider appropriate, into a Complaint or on any Information or where it has been directed by the Council in accordance with paragraph 8. However, the Conduct and Compliance Committee shall always provide at least twenty one days' written notice of any investigations to any Member who is to be the subject of any such investigations. The written notice shall be delivered to the relevant Member through recorded delivery at his/her last registered address.
18. Provided that paragraph 17 has been satisfied, the Conduct and Compliance Committee may carry out investigations by whatever means it considers necessary, including but not limited to raising questions directly with the Member concerned.
19. Where the Conduct and Compliance Committee is of the view that a prima facie case exists, the relevant Member shall be notified and required to submit a written response within

Twenty one (21) days of receipt of such notification by the Member. Any such response shall be taken into account in the investigations.

#### **Appointment of Investigation and Disciplinary Committee**

20. Upon receipt of the Member's response under paragraph 19, or even where no such response has been received, the Conduct and Compliance Committee shall report its findings to the Council.
21. Based on the report of the Conduct and Compliance Committee, the Council shall, where it considers appropriate, form an Investigation and Disciplinary Committee in accordance with paragraph 2 and shall direct such committee to investigate the matter further.

The Chief Executive Officer of the Association shall serve as the Secretary to the Investigation and Disciplinary Committee and shall oversee the progress of the process and report the same to the Council. Where the Chief Executive Officer cannot serve as secretary for a particular investigation due to any conflict of interest, the Council shall appoint a suitable senior employee of the Association as the secretary in place of the Chief Executive Officer.

22. Where the Investigation and Disciplinary Committee is satisfied that there is a case to pursue, it shall, with the consent of the Council, commence a hearing into the matter.
23. The Conduct and Compliance Committee shall, on behalf of the Association, present the case before the Investigation and Disciplinary Committee at the hearing. The Conduct and Compliance Committee may retain an Attorney-at-Law in order to make legal submissions in this regard.
24. The Secretary to the Investigation and Disciplinary Committee may, subject to approval from the Council, instruct an Attorney-at-Law to act as legal advisor to the Investigation and Disciplinary Committee in order to be present and advise and assist at any hearing. However, such legal advisor shall have no vote on any matter.

#### **Hearing**

25. The Conduct and Compliance Committee shall present a statement to the Investigation and Disciplinary Committee setting out the charges to be investigated. The secretary to the Investigation and Disciplinary Committee shall transmit a copy of such statement to the relevant Member along with notice of the date and location of the hearing. Such notice, along with the statement of charges should be delivered to the Member, at their last registered address, at least fourteen (14) days before the date of the hearing. The notice shall also contain the names of the members of the Investigation and Disciplinary Committee which is to hear the case.
26. Where the hearing is to be held in consequence of a petition or Complaint, the Secretary to the Investigation and Disciplinary Committee shall transmit a copy of the petition or Complaint to the relevant Member alongside the notice delivered in accordance with paragraph 25.

27. The hearing shall be conducted in terms of the general principles of natural justice and in accordance with these Regulations except where to do so would be unjust or unreasonably inconvenient. In any such situation, the Investigation and Disciplinary Committee may, after obtaining the approval of the Council, modify the procedure to the extent deemed necessary with regard to the rules of natural justice.
28. Any Member who is subjected to a hearing shall be given the opportunity of stating his/her defence either in writing or by personal attendance at the hearing. The Member in question shall be permitted to seek legal representation or representation by any other Member provided that at least seven (7) days' written notice of such fact has been delivered by such Member to either the Council, the Conduct and Compliance Committee or the Investigation and Disciplinary Committee.
29. All documents and other such evidence presented or obtained at the hearing or at any stage of the investigations shall be secured and stored with importance given to confidentiality and the protection of the interests of all parties. Furthermore, all hearings shall be recorded on camera unless otherwise determined by the Council.
30. Either at the request of one of the parties to the hearing or of his/her own volition, the chairman of the Investigation and Disciplinary Committee may, after consultation with the legal advisor appointed in accordance with paragraph 24, postpone the hearing at any time if he/she is satisfied that it is in the interest of justice to do so. An application for the postponement of a hearing that has not yet begun may be jointly presented to the Investigation and Disciplinary Committee by all parties to the hearing.
31. In the event of the occurrence of a casual vacancy during a hearing due to the death or resignation of any member of the Investigation and Disciplinary Committee or for any other reason whatsoever, the Council shall appoint a replacement with regard to the provisions of paragraph 2 and the case shall be re-heard.
32. Where the Member under investigation is absent on the day of the hearing, the Investigation and Disciplinary Committee may hear the case ex-parte where the Investigation and Disciplinary Committee is satisfied that notice has been served upon the Member under investigation in accordance with paragraph 25. Furthermore, the Investigation and Disciplinary Committee may also decide to proceed with the hearing where the Member under investigation does not have any representation.
33. The Council shall, from time to time, issue terms of reference for the procedures to be followed by all committees

**Burden and Standard of proof**

34. The burden of proof shall be borne by the Conduct and Compliance Committee.
35. The standard of proof shall be on a balance of probabilities.

**Evidence**

36. The Investigation and Disciplinary Committee shall not be bound by strict rules of evidence.

37. The Investigation and Disciplinary Committee may receive oral, documentary or any other type of evidence which in its opinion is relevant to the hearing. Any such evidence shall be recorded in accordance with paragraph 29.
38. Findings, judgments and convictions of any Sri Lankan court of law shall be conclusive proof of the facts on which such judgments or convictions were based and shall be recorded by the Investigation and Disciplinary Committee.
39. All parties to a hearing shall submit to the Investigations and Disciplinary Committee, copies of all evidence to be relied on by such party at least fourteen (14) days before the date of the hearing. The Investigation and Disciplinary Committee shall, before the date of the hearing, provide copies of any such evidence to the party that the charges are to be proved against.
40. The Investigation and Disciplinary Committee may admit evidence adduced by a party, notwithstanding that such evidence had not been disclosed to the opposing party where:
  - (a) All parties to the hearing consent to the admitting of such evidence.
  - (b) After consultation with the legal advisor, the Committee is satisfied that:
    - (i) such evidence is necessary to ensure the fairness of the hearing and outweighs any prejudice to any party to the hearing
    - (ii) there is a satisfactory reason for the evidence not being previously disclosed
41. In determining the hearing, the Investigation and Disciplinary Committee shall have regard to any relevant guidance, whether ethical or technical, made or approved by the Association at the time of the hearing or before including but not limited to the Code of Professional Conduct and Ethics and the rules and regulation adopted by the Council from time to time. The committee may also consider and take in to account any precedent set by any tribunal or other professional or regulatory body.

#### **Order of proceedings**

42. The procedure for the hearing, unless the chairman of the Investigation and Disciplinary Committee in consultation with the Council directs otherwise, shall be as follows:
  - (a) Submissions shall be made by or on behalf of the Conduct and Compliance Committee .
  - (b) Examination of witnesses called by the Conduct and Compliance Committee followed by cross-examination of such witnesses by or on behalf of the Member under investigation.
  - (c) Submissions by or on behalf of the Member under investigation.
  - (d) Examination of witnesses called by or on behalf of the Member under investigation followed by cross-examination of such witnesses by or on behalf of the Conduct and Compliance Committee.
  - (e) Closing submissions by or on behalf the Conduct and Compliance Committee.
  - (f) Closing submissions by or on behalf of the Member under investigation.
43. Members of the Investigation and Disciplinary Committee may themselves question any witnesses, parties or representatives as they think fit.

#### **Finding of facts**

44. Following the hearing, the Investigation and Disciplinary Committee shall, in private, consider whether the charges have been proven, on the balance of probabilities, against the Member under investigation.
45. The Investigation and Disciplinary Committee shall announce its decision and may, where it deems necessary give reasons for its findings.
46. Where no charges have been proved in the opinion of the Investigation and Disciplinary Committee, the action shall be dismissed and all parties to the hearing shall be informed in writing of such fact.

#### **Order of Proceedings following a finding of guilt**

47. Where the Investigation and Disciplinary Committee has found a Member to be guilty of the charges brought against him/her, it shall report its findings to the Council and shall also inform the Council of any further circumstances known to it that might be relevant to any order, regardless of if such circumstances are favourable or unfavourable to the Member under investigation. Furthermore, the Investigation and Disciplinary Committee shall also inform the relevant Member in writing, through recorded delivery, of the fact that he/she has been found guilty of the charges brought against him/her.
48. The Member shall be entitled to address the Council in writing in mitigation of any penalty to be imposed on such Member. This can be done after the Investigation and Disciplinary Committee has announced its decision under paragraph 44.

#### **Decision making process of Investigation and Disciplinary Committee**

49. Any question before the Investigation and Disciplinary Committee shall be determined by a majority vote of the committee members.

#### **Transcript**

50. The proceedings of the hearing shall be recorded and a transcript of such recording shall be provided upon written request to the Member under investigation after the end of the hearing and on payment by that Member of any applicable costs.

#### **Publication of decision**

51. The Council shall publish its decision and a summary of the findings of the Investigation and Disciplinary Committee as soon as practicable in the annual report of the Association.
52. Unless otherwise directed by the Council, the name of the Member subject to the Council's decision and the nature of the charges proved against such Member shall also be published in the annual report.

#### **Service of notices/documents**

53. Any notice or other document, required by these Regulations to be sent to or served upon any person, shall be delivered through recorded delivery.

54. Any notice or document to be sent, as stated in paragraph 53, shall be sent to the last address tendered by the relevant Member for registration with the Association.

**Disciplinary Action**

55. The Council may, following the establishment of grounds for disciplinary action, order any one or more of the following courses of disciplinary action:
- (a) The Member shall be expelled from the Association
  - (b) The Member shall have his/her membership of the Association suspended
  - (c) The Member shall have his/her membership of the Association withdrawn or cancelled
  - (d) The Member shall be reprimanded by the Council
  - (e) The Member shall be fined a sum not exceeding a maximum limit that the Council may set for disciplinary action from time to time.
  - (f) The Member shall be called upon to submit a written undertaking to ensure that steps shall be taken to prevent any repetition of the grounds for disciplinary action by such Member.
  - (g) Where none of the above actions have been taken against a Member despite proof grounds for disciplinary action, such Member may be directed to seek advice regarding his/her future conduct from a person recommended by the Council.

56. The Council may also, wherever it considers appropriate, communicate to the relevant Member, its advice as to such Member's future conduct. Where the matter arose out of a Complaint, the complainant shall be informed of any such advice given under this paragraph.

57. All Members shall comply with any and all orders made in accordance with these Regulations.

**Administrative Process**

58. The Secretary to the Investigation and Disciplinary Committee shall be responsible for reporting any delays in the process, to the Council.

59. The Conduct and Compliance Committee shall also submit a report to the Council, on the completion of each hearing, outlining any delays or faults that it perceives in the disciplinary process.

60. All members of the Association involved in the disciplinary process shall maintain confidentiality and shall only reveal information if and when required under these regulations.

61. All records and documents relating to a hearing shall be retained by the Association for at least a period of one (1) year from the date of completion of such hearing.

62. The Association shall take all necessary action to protect the rights of those involved in civil or criminal cases that are related to any investigation or hearing under these Regulations.

**Right of Appeal**

63. Any Member subjected to disciplinary proceedings shall have a right of appeal to the Council. Any such appeal should be submitted to the Council within twenty one (21) days of receipt of disciplinary action from the Investigation and Disciplinary Committee. The Council,

in considering any such appeal, shall have regard to, among other things, whether the hearing had been conducted properly and if the rules of natural justice had been followed.

64. Any appeal submitted after the lapse of twenty one (21) days from the receipt of disciplinary action, shall not be entertained.
65. The Council, in considering an appeal made under paragraph 63, shall appoint an Attorney-at-Law or any member from the legal profession to serve as legal advisor to the Council for the purposes of such appeal. However, such legal advisor shall only function in an advisory capacity and shall not be able to vote on an appeal.

**Liaison with outside parties or bodies**

66. The Association shall ensure that any possible involvements with criminal offences, discovered during investigations or hearings, shall be reported to the relevant authorities.

## **Schedule I**

- A. Professional misconduct shall include where;
- a) A member has, before a court of competent jurisdiction, pleaded guilty to or has been found guilty of an indictable offence (or in such a court outside Sri Lanka has pleaded guilty to or has been found guilty of a comparable offence).
  - b) A member has breached professional standards
  - c) A member has unreasonably refused to cooperate with an investigation carried out in accordance with these Regulations.
  - d) A member in practice (not suffering any relevant incapacity) has failed to renew his/her practicing license before the date of expiry.
  - e) A member (not suffering any relevant incapacity) has repeatedly failed to reply to correspondence from the Association.
  - f) A member has used information acquired in the course of his practice or employment for the advantage of himself or another person without the consent of his prospective client or employer, or former client or employer.
  - g) A member has directly or indirectly been a party to any act which will bring the Association or the profession in to discredit or disrepute.
  - h) A member has given false evidence to the Investigation and Disciplinary Committee.
  - i) A member has supplied false information in any statement, return, form or correspondence to be submitted to the Council.
  - j) A member has not complied with the Money Laundering Regulations from time to time in force.
  - k) A member has misappropriated or misused client or employer money or other asset and has used such money or asset for his/her personal gain.

- B. In the case of A (a) and A (b) above, it shall be a duty of every member to inform the Association without delay of any such event occurring in respect of him/herself. Such failure to inform shall also be construed as conclusive proof of misconduct.

## **Schedule II**

### **Definitions**

In these Regulations, the following words, phrases and abbreviations shall, except where a contrary intention appears, have the following meaning:

Articles	Articles of Association of the Association of Accounting Technicians of Sri Lanka
Association	The Association of Accounting Technicians of Sri Lanka
Council	The Governing Council for the time being of the Association
Regulations	The Investigation & Disciplinary Regulations of the Association of Accounting Technicians of Sri Lanka
Member	A student, Member (MAAT), Senior Member (SAT) or Fellow Member (FMAAT) of the Association
Order of the Association	A formal record of disciplinary action taken against a member
Complaint	A complaint under the Complaint based approach as stated in paragraph 4
Information	Information acted upon under the Information based approach as stated in paragraph 5
Informal Procedure	The Informal Procedure of responding to complaints or information as stated in paragraph 12
Formal Procedure	The Formal Procedure of responding to complaints or information as stated in paragraph 16

## **Annexure A**

### **EXTRACT OF THE ASSOCIATION'S ARTICLES OF ASSOCIATION**

#### **DISCIPLINARY POWERS**

Article 24 A. Without prejudice to the powers of the Council under the preceding Article if, in the opinion of the Council (or of any Committee of the Council to which the Council shall have delegated its powers under this Article) any Member shall have conducted himself in such a manner as would in the opinion of the Council prejudice his status as a Member of the Association or reflect adversely on the reputation of the Association or shall have acted in breach of these presents of rules, regulations or by-laws from time to time made hereunder, the Council or any such Committee shall have power:-

- (I) to require the Member to give a written undertaking to refrain from continuing of repeating the conduct which constitutes a contravention, or
- (II) to reprimand the Member, or
- (III) to suspend the Member for such period and on such terms and conditions as the Council or any such Committee may determine, or
- (IV) to expel the Member from the Association.

B. A Member who has been suspended shall not be entitled to exercise any of the rights of Membership during the period of suspension, but any suspension shall be without prejudice to the rights and powers of the Council or any such Committee to take disciplinary action against the Member during the period of the suspension as if the suspended Member remained a Member and was subject to the provisions of these presents.

C. Before any disciplinary action against a Member is taken under this Article, the Member shall be notified in writing by recorded delivery at his last registered address of the grounds of complaint against him at least twenty one days before the meeting which is to deal with the matter, and shall be given the opportunity of stating his defense or any matters in mitigation either in writing or by personal attendance at the meeting. Legal representation or representation by any other Member of the Association shall be permitted, but at least seven days' notice that the Member proposes to be so represented must be given by such Member to the Association in writing delivered at the Office.

D. Any Member against whom disciplinary action has been taken under this Article by any Committee of the Council to which the Council may have delegated its powers under this Article

shall have a right of appeal to the Council, before which on the hearing of any appeal, the Member shall have the same rights of stating his defense or matters in mitigation and the same rights of representations as are respectively conferred by paragraph (C) of this Article. The decision of the Council shall be conclusive.

Article 58 A The business of the Association shall be managed by the Council which may exercise all such powers of the Association, and do on behalf of the Association all such acts as may be exercised and done by the Association and as are not by Statute or by these presents required to be exercised or done by the Association in General Meeting, subject nevertheless to any regulations of these presents, to the provisions of the Statutes and to such regulations, being no inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Association in General Meeting but no regulation made by the Association in General Meeting shall invalidate any prior act of the Council which would have been valid if such regulations had not been made.

B Without prejudice to the generality of the foregoing the Council may make and from time to time alter, revoke or add to rules, regulations and bye-laws (not being inconsistent with any provisions of these presents) relating to the Association and its affairs as from time to time the Council may decide.

Article 66A The Council may delegate any of their powers to Committees consisting of such members of the Council as they think fit, and any Committee so formed shall, in the execution of the powers so delegated, conform to any regulations imposed on it by the Council. The meetings and proceedings of any such Committee shall be governed by the provisions of these presents for regulating the meetings and proceedings of the Council so far as applicable and so far as the same shall not be superseded by any regulations made by the Council as aforesaid. Any such Committee may by resolution co-opt as a member of the Committee any person who is considered suitable for such period as the Committee may decide.