

ACTUARIAL SOCIETY
DISCIPLINARY PROCEDURE

1 DEFINITIONS

1.1 For the purposes of this Disciplinary Procedure, the following terms shall, in their capitalised forms, bear the following meanings -

1.1.1 **“AGB”** means the Actuarial Governance Board;

1.1.2 **“Arbitration”** means an arbitration conducted in terms of the Arbitration Act 42 of 1965;

1.1.3 **“Arbitrator(s)”** means the persons appointed to act as arbitrators in terms of clause 10.2;

1.1.4 **“Charge(s)”** means 1 (one) or more charges, of Unacceptable or Unprofessional Conduct, which have been levelled against a Respondent, arising from a Complaint and/or any subsequent Dispute, in accordance with the provisions of this Procedure;

1.1.5 **“Committee”** means the disciplinary committee referred to clause 4.1;

1.1.6 **“Complainant”** means a person who refers a Complaint to the Society in terms of 5.1.

1.1.7 **“Complaint”** means an allegation or accusation, of 1 (one) or more acts of Unacceptable or Unprofessional Conduct, on the part of a Member, which has been referred to the Society for consideration in accordance with this Procedure;

1.1.8 **“Council”** means the Council of the Society;

1.1.9 **“Day”** shall mean calendar day, unless the last day of any time period referred to in this Procedure falls on a Saturday, Sunday or public holiday, in which case the last day shall be deemed to fall on the next working day, following that Saturday, Sunday or public holiday;

1.1.10 **“Dispute”** means a dispute declared in accordance with clause 7.6.2 of this Procedure;

1.1.11 **“Executive Director”** means the person who has been tasked with the relevant responsibilities by Council, at any given point in time;

- 1.1.12 “**Investigator**” means the person or persons appointed in terms of clause 6.1;
- 1.1.13 “**Member**” means a member of the Actuarial Society of South Africa;
- 1.1.14 “**Panels**” means the Panel of Arbitrators, the Panel of Lawyers, and the Panel of Members, and the term “**Panel**” and “**member**” shall bear a corresponding meaning;
- 1.1.15 “**Panel of Arbitrators**” means the persons appointed to sit on the Panel of Arbitrators in accordance with clause 3.1.3 below;
- 1.1.16 “**Panel of Lawyers**” means the persons appointed to sit on the Panel of Lawyers in accordance with clause 3.1.2 below;
- 1.1.17 “**Panel of Members**” means the persons appointed to sit on the Panel of Members in accordance with clause 3.1.1 below;
- 1.1.18 “**Procedure**” means this disciplinary procedure;
- 1.1.19 “**Respondent**” means the Member (and may include a former Member) who is accused of committing Unacceptable or Unprofessional Conduct, whilst still a Member of the Society, in terms of a Complaint;
- 1.1.20 “**Society**” means the Actuarial Society of South Africa;
- 1.1.21 “**Tribunal**” means the tribunal established under clause 9.1; and

2 “**Unprofessional Conduct**” includes, without limiting the generality of that phrase, any failure in a material respect by a Member (whether committed within South Africa or elsewhere) to comply with the standards of behaviour, integrity, competence or professional judgment which the Society might reasonably expect of the Member concerned, having regard *inter alia* to any advice or guidance or statement or memorandum on professional conduct, practice or duties which may be given or published by the Society, and to all other relevant circumstances: provided that conviction within South Africa or elsewhere of an offence involving fraud or dishonesty shall amount to *prima facie* evidence of Unprofessional Conduct.

“**Unacceptable Conduct**” means any failure by a Member (whether committed within South Africa or elsewhere) to comply with the standards of behaviour, integrity, competence or professional judgment which the Society might reasonably expect of the Member concerned, having regard *inter alia* to any advice or guidance or statement or memorandum on professional conduct, practice or duties which may be given or published by the Society, and

to all other relevant circumstances, but which is not sufficiently serious to amount to unprofessional conduct.

3 ESTABLISHMENT OF PANELS

3.1 The Council shall establish 3 (three) Panels, as follows:

3.1.1 Panel of Members

3.1.1.1 The Panel of Members shall consist of not less than 6 (six) actuaries, all being Fellow Members of the Society, who are willing to serve on the Tribunal and/or as Arbitrators, as provided for in clauses 9 and/or 10 below;

3.1.2 Panel of Lawyers

3.1.2.1 The Panel of Lawyers shall consist of not less than 6 (six) legally qualified individuals, who are willing and able to assist the Committee, the Society, the Council, the Tribunal and/or the Arbitrator(s) with the conduct and implementation of disciplinary proceedings, or to serve on the Committee or Tribunal, in accordance with this Procedure and shall include at least:

3.1.2.1.1 3 (three) practising attorneys, with no less than 10 (ten) years of post admission experience;

3.1.2.1.2 2 (two) practising advocates, with no less than 10 (ten) years of post admission experience; and

3.1.2.1.3 1 (one) other person, having relevant legal knowledge, experience and qualifications; and

3.1.3 Panel of Arbitrators

3.1.3.1 The Panel of Arbitrators shall consist of not less than 6 (six) people, having appropriate knowledge, skills and experience in the conduct of arbitration proceedings and who are registered with either the Chartered Institute of Arbitrators or the Association of Arbitrators (Southern Africa),

3.2 Vacancies in 1 (one) or more of these Panels, shall not invalidate any disciplinary proceedings, which are conducted in terms of this Procedure.

3.3 Once a Panel member has been appointed to serve in any capacity whatsoever, in relation to the determination of a Complaint or the resolution of a Dispute, that Panel member shall not be eligible to assist with, or to act in any other capacity whatsoever in

relation to the determination of that Complaint or the resolution of that Dispute, until such time as the Complaint or Dispute, in respect of which he or she was first appointed or provided assistance, has been finalised.

3.4 All persons appointed to serve on these Panels, shall be appointed for a period of 3 (three) years, and their appointments shall lapse automatically following the expiry of such period, provided that any Panel member may be reappointed to either the same or an alternative Panel, following the expiry of the term in respect of which he or she was originally appointed.

3.5 Where a casual vacancy arises in any one of the Panels, the Council shall fill such vacancy, as soon as reasonably possible following the date on which the vacancy arose, having regard to the requirements for the composition of each Panel, as stipulated above.

3.6 Where no member of a Panel :

3.6.1 is able or willing to assist with the conduct of disciplinary proceedings, when called upon to do so in accordance with this Procedure; or

3.6.2 in the opinion of the Council, holds the requisite expertise to deal adequately with the Complaint or Dispute in question,

the Council may appoint a replacement temporary member to the relevant Panel, for the duration of the disciplinary proceedings in question.

4 CONSTITUTION AND APPOINTMENT OF DISCIPLINARY COMMITTEE

4.1 Council shall appoint a Committee, known as the disciplinary committee, to ensure that Complaints are properly investigated and dealt with.

4.2 The Committee shall consist of not less than 5 (five) persons, of whom the majority shall be Fellow Members and at least 2 (two) shall be non-Members. Additional persons appointed in terms of clause 4.5 or 4.8.2 shall not be counted in determining the proportion of Members and non-Members.

4.3 General Powers of the Committee

4.3.1 The Committee members may oversee all disciplinary proceedings established under this Procedure and shall be empowered to make all the decisions and perform all such functions as may be necessary for the purposes of conducting

its duties and fulfilling its responsibilities in accordance with the provisions of this Procedure.

- 4.3.2 In particular, it has the powers to –
- 4.3.2.1 Obtain all necessary and relevant legal advice and/or other expert advice and assistance, which may be required for the purposes of effectively fulfilling its functions, and performing its duties, in accordance with the provisions of this Procedure;
 - 4.3.2.2 At any stage of disciplinary proceedings conducted in terms of this Procedure, extend the scope of a Complaint and/or a Dispute, and level further Charge(s) against a Respondent, provided that the Respondent in question shall be notified of the extension, in writing, and afforded a reasonable opportunity to respond thereto and/or to any such additional Charge(s);
 - 4.3.2.3 At any time, call upon the Respondent to appear at such time and place as it may determine to explain or elucidate or discuss the Complaint;
 - 4.3.2.4 Obtain or receive such further information concerning the matter as it deems necessary to enable proper consideration to be given to the matter;
 - 4.3.2.5 At any time, require copies or originals of any documents relevant to the investigation from any Member or former Member (including, but not limited to the Respondent);
 - 4.3.2.6 At any time, require any further information from any Member or former Member (including the Respondent) relating to the subject matter of the investigation;
 - 4.3.2.7 Where it is of the opinion that two or more complaints referred to it, raise similar issues of fact, direct that the complaints be consolidated and investigated together, and shall inform the complainants and respondent accordingly, and
 - 4.3.2.8 Do all things necessary to ensure that all disciplinary proceedings falling within its duties, functions and powers are dealt with justly, expeditiously and in accordance with the Procedure provided for herein.

4.4 **Appointment of Committee members**

4.4.1 The Council shall appoint the members of the Committee, who shall each serve on the Committee for a period of 3 (three) years.

4.4.2 The Committee members shall elect a Chairman, from within their ranks, within a reasonable period of their appointments.

4.4.3 Whenever the Committee members and the Chairman have been appointed, the Executive Director shall advise all Members of their appointments, in writing.

4.4.4 Following the expiration of the 3 (three) year period referred to in clause 4.4.1 above, each Committee member shall retire immediately, subject to:

4.4.4.1 the provisions of clause 4.4.5 below; and

4.4.4.2 their entitlement to retire at an earlier date, at their election.

4.4.5 All Committee members shall be eligible for reappointment, following retirement as provided for above.

4.5 **Appointment of additional members of Committee**

To the extent to which the Committee lacks relevant expertise and/or capacity, the Committee members may appoint appropriate persons to assist them with the investigation and determination of a particular complaint (and/or the resolution of any dispute arising from that complaint), in accordance with the provisions of this Procedure.

4.6 **Casual vacancies**

4.6.1 Any casual vacancies among the members of the Committee may be filled by the Council as soon as possible, following the date on which the vacancy arose.

4.6.2 The appointment of a member of the Committee in terms of clause 4.6.1 shall not invalidate the proceedings notwithstanding that the appointed member was not a member of the Committee from the inception of the disciplinary proceedings in question.

4.7 **Quorum**

The quorum for a meeting of the Committee shall be 3 (three) members of the Committee.

4.8 **Conflict of Interest**

4.8.1 Where a Committee member becomes aware that he or she has a conflict of interest, in relation to a particular Complaint and/or a particular Dispute, that Committee member shall recuse him or herself from further involvement, in the oversight of the investigation of that Complaint and/or the resolution of that Dispute.

4.8.2 The Committee shall be entitled to appoint an additional member, in order to fulfil the functions of the recused Committee member, in relation to that Complaint and/or Dispute only.

5 COMPLAINT PROCEDURE

5.1 Any person, whether natural or juristic, and expressly including the Council, the Committee and the AGB, may refer a Complaint to the Society, in relation to the conduct of one or more Members.

5.2 The Complaint must be submitted in writing.

5.3 Upon receipt of a Complaint, the Executive Director may confer with the Complainant, should it be necessary to clarify the nature and / or formulation of the Complaint. If necessary, the Executive Director may revise or amend the formulation of the Complaint, and shall inform the AGB that a Complaint has been lodged.

5.4 Within 10 (ten) days of receiving notice of the Complaint, or within 10 (ten) days of the revision or amendment to the Complaint, the Executive Director shall:

5.4.1 Confirm referral of the Complaint with the Complainant by furnishing him / her with a copy of the complaint, as revised or amended;

5.4.2 Notify the Respondent that a Complaint has been lodged against him or her;

5.4.3 Provide the Respondent with a copy of the Complaint, and/or such further particulars as may have been received by it, and:

- 5.4.3.1 invite the Respondent to provide a written response to the Complaint, within 14 (fourteen) days of receiving the Complaint, or within such lesser or greater period as it may specify; and
- 5.4.3.2 advise the Respondent that such response may be used in evidence against the Respondent in any subsequent disciplinary proceedings.
- 5.5 The Executive Director shall compile the relevant documentation and refer this to the Committee.

6. INVESTIGATOR

- 6.1 Upon receipt of the Respondent's response to the complaint or the lapse of the period referred to in clause 5.4.3.1, the Committee shall appoint one or more appropriately qualified persons as Investigator(s). The Investigator(s) shall bear the primary responsibility for investigating the Complaint in accordance with the provisions of this Procedure.
- 6.2 Such appointment shall endure for the duration of the disciplinary proceedings in relation to which the person(s) was or were appointed as Investigator(s), subject to such terms as the Committee may determine.

7. INVESTIGATION AND REFERRAL

- 7.1 The Investigator(s) shall conclude the investigation process as soon as reasonably possible, where after the Investigator(s) shall submit a written investigative report of findings and recommendations to the Committee.

7.2 Early Dismissal of Insufficiently Substantiated Complaint

- 7.2.1 The Investigator may recommend that the Committee dismiss a Complaint, either in whole or in part, and whether during the investigation process or prior to its inception if:
 - 7.2.1.1 He is of the opinion that there is insufficient evidence to establish a *prima facie* case of Unprofessional or Unacceptable Conduct against the Respondent;
 - 7.2.1.2 The Complaint is of a trivial or inconsequential nature;

- 7.2.1.3 The Complainant has failed, neglected or refused to cooperate with the reasonable requests of the Investigator and/or to provide the Investigator with necessary information; or
- 7.2.1.4 The Respondent has given an adequate or reasonable explanation of his or her involvement in the matter, which explanation indicates that he or she was not guilty of the Unprofessional or Unacceptable Conduct alleged.
- 7.2.2 The Committee may dismiss the Complaint, in part or in whole, should it be satisfied with the recommendation of the Investigator(s).
- 7.3 Should the Committee dismiss only part of a complaint, it may continue with the investigation of any remaining part thereof, in accordance with the provisions of this Procedure.
- 7.4 Following the dismissal of the Complaint in terms of clause 7.2, the Complaint shall be deemed to have been finalised and the procedures provided for in clause 7.7.3 below, shall apply.
- 7.5 **Admission of guilt**
- 7.5.1 Where the Respondent admits guilt, in relation to the Complaint (or any part thereof), either during the investigation process or prior to the Committee's determination, the Committee may refer the Complaint (or the part thereof in respect of which the Respondent has admitted guilt), if it constitutes unprofessional conduct, to mediation or to a Tribunal, for the determination of an appropriate sanction only.
- 7.5.2 Alternatively, where the Respondent admits guilt in relation to the Complaint (or any part thereof), if it constitutes unacceptable conduct, and agrees to any sanction(s) which the Committee may propose, the Complaint (or the part thereof in respect of which the Respondent has admitted guilt) shall be deemed to have been finalised and the agreed sanction(s) shall be executed in accordance with clause 10.28 below.
- 7.6 **Declare a Dispute and Refer the Complaint to mediation, the Tribunal or Arbitration**
- 7.6.1 Where the Committee is satisfied that there is prima facie evidence that the Respondent is guilty of Unprofessional or Unacceptable Conduct, the Committee may (to the extent appropriate) refer the Complaint to mediation, a Tribunal or

Arbitration, having regard to the nature of the Complaint and/or any other relevant factors.

7.6.2 Following a decision by the Committee to refer the Complaint to mediation, a Tribunal or Arbitration, a dispute (“Dispute”) shall be deemed to have been declared by the Council in relation to the Respondent’s alleged commission of Unprofessional or Unacceptable Conduct. The Dispute shall exist between the Society and the Respondent.

7.7 **Interim Order**

7.7.1 In addition to the Committee’s determination in accordance with clause 7.3 above, the Council may, at its discretion, and following receipt of the Investigator’s report, impose, in appropriate circumstances, an interim order of suspension from membership of the Society on the Respondent.

7.7.2 Prior to imposing such order, the Respondent shall be afforded an opportunity to make representations to the Council as to why an interim order of suspension should not be imposed, which representations shall be taken into consideration prior to the Council making a determination in terms of this clause.

7.7.3 Upon the dismissal of the Complaint in accordance with clause 7.2 above, or upon the finalisation of a Dispute, whether following mediation, Tribunal proceedings or Arbitration, any interim order imposed in terms of this clause shall automatically subside.

7.8 **General considerations**

7.8.1 The Committee shall make a determination in accordance with clause 7.1 or 7.2 above, within a reasonable period following receipt of the Investigator’s investigative report

7.8.2 The Committee shall give notice, in writing, of its determination together with brief reasons therefore, to the Council, the AGB, the Respondent and the Complainant.

7.8.3 Notwithstanding the foregoing provisions, where the Committee has dismissed a Complaint only in part, it may refer any remaining part thereof, which has not been dismissed by it, for determination by mediation, a Tribunal or Arbitration, in accordance with the provisions of clause 7.6.2 above.

7.8.4 Where the Committee elects to refer the Complaint to mediation, a Tribunal or Arbitration, the Complaint shall be deemed to have been referred to such forum, upon receipt of the notification referred to in clause 7.8.2 and the applicable procedures, as provided for below, shall then be adopted.

8. **MEDIATION**

8.1 Should the Complaint be referred to mediation, and the Respondent submits to mediation, the following process shall be adopted:

8.1.1 The Council shall appoint a representative (“the Representative”) to attend the mediation on its behalf, and shall advise the Representative of his or her mandate regarding settlement of the Dispute. The Representative shall not be appointed from any of the Panels.

8.1.2 The Representative and the Respondent shall agree upon a mediator, with appropriate knowledge, skills and experience in mediation procedures.

8.1.3 Should the Representative and the Respondent fail to so agree, within 10 (ten) days of being called upon to do so, the mediator shall be appointed by the Chairman of an appropriate Bar Council.

8.1.4 The Complainant shall not have a say in the identity of the chosen mediator.

8.1.5 The Representative shall notify the Investigator or Committee and the Respondent, in writing, of the mediator who has been appointed and shall simultaneously advise the mediator of both his or her own contact details and those of the Respondent.

8.1.6 The Representative shall be permitted to reach a settlement with the Respondent, during the mediation process, in accordance with the mandate provided by the Council. The Representative shall not be permitted to make decisions outside of this mandate, in the absence of the express consent of the Council to do so.

8.1.7 The Complainant shall be notified of the fact that mediation is to be conducted but shall not necessarily be invited to participate in the mediation process and/or to attend the mediation proceedings.

8.1.8 No member of the Committee or the Investigator shall be permitted to be present at, or involved in, the mediation proceedings, except with the consent of the parties to the mediation.

- 8.1.9 The Respondent and the Representative shall agree on the process to be followed during the mediation proceedings, failing which the mediator shall have the power to determine the procedure to be followed.
- 8.1.10 Unless otherwise agreed, the mediation shall be administered by the parties to the mediation, themselves.
- 8.1.11 The mediator shall not have the power to make an award, but shall be limited to engaging with the parties with a view to reaching an amicable resolution of the Dispute.
- 8.1.12 Ordinarily, the mediation will be conducted by way of an oral hearing, at which both parties and the mediator are present. However, should it be impracticable to do so, the mediator may conduct the proceedings telephonically, or by video conference, or by facilitating appropriate correspondence between the parties.
- 8.1.13 Should the mediation be conducted by way of an oral hearing, the Representative shall notify the Respondent and the mediator of the date, time and venue for the mediation, and shall make arrangements therefore accordingly.
- 8.2 Should the parties to the mediation reach an amicable agreement in resolution of the Dispute:
- 8.2.1 the Dispute shall be deemed to have been finalised;
- 8.2.2 the mediator shall record the agreement in writing and obtain the Representative's and the Respondent's signatures thereto;
- 8.2.3 the mediator shall inform the Council of the outcome of the mediation proceedings and provide the Council with the original agreement for its records. The Council shall send a copy of the agreement to the Respondent.
- 8.2.4 the Executive Director shall advise both the AGB and the Committee, in writing, of the outcome of the mediation proceedings; and
- 8.2.5 the Executive Director shall advise the Complainant, in writing, that the Dispute has been resolved by way of mediation, but shall not be required to inform the Complainant of the nature of the agreement concluded between the Society and the Respondent, except with the express consent of both the Council and the Respondent to do so.

- 8.3 If, for whatsoever reason, the Dispute remains unresolved upon the expiration of a 30 (thirty) day period, following the appointment of a mediator in accordance with clause 8.1.2 or 8.1.3 above, or such longer period as the parties may agree, the Council shall inform the Committee that the Dispute remains unresolved and the Committee may then, at its discretion, refer the Dispute to either a Tribunal (for the purposes of conducting a formal enquiry into the merits of such Dispute) or to Arbitration, in accordance with the procedures provided for below.
- 8.4 The Committee shall notify the AGB, the Council, the Respondent, and the Complainant of its decision to do so.
- 8.5 The mediation proceedings and any agreements arising therefrom shall remain strictly confidential, unless otherwise agreed between the parties to the mediation, in writing, provided that, in the event of successful mediation proceedings, the Council may notify the public that the Dispute has been resolved by way of mediation.
- 8.6 The costs of the mediation proceedings shall be borne equally by the Respondent and the Society, unless the mediation process is unsuccessful and the Dispute is referred to a Tribunal or to Arbitration, in which case the costs of mediation shall become costs in the cause.

9. **TRIBUNAL PROCEEDINGS**

9.1 **Establishment of a Tribunal**

Upon the referral of a Dispute to Tribunal proceedings, a Tribunal shall be appointed to conduct a formal enquiry into the merits of the Dispute. The Tribunal shall consist of 3 (three) persons, made up as follows:

- 9.1.1 1 (one) lawyer appointed from the Panel of Lawyers, who shall also be the Chairperson of the Tribunal; and
- 9.1.2 2 (two) Members appointed from the Panel of Members.

9.2 **Appointment of Tribunal members**

- 9.2.1 The members of the Tribunal shall be appointed as follows:
- 9.2.1.1 the Respondent shall first appoint a Tribunal member from either the Panel of Lawyers or the Panel of Members;

9.2.1.2 the Committee shall appoint a Tribunal member from either the Panel of Lawyers or the Panel of Members, having regard to the composition of the Tribunal as provided for in clauses 9.1.1 and 9.1.2 above; and

9.2.1.3 the members of the Tribunal appointed in terms of clauses 9.2.1.1 and 9.2.1.2, shall appoint the 3rd (third) member of the Tribunal, having regard to the composition of the Tribunal as provided for in clauses 9.1.1 and 9.1.2 above.

9.2.2 All such appointments shall be concluded within 20 (twenty) days of receiving notice of the referral of the Dispute to the Tribunal, unless it is reasonably impracticable to do so.

9.3 **Casual Vacancies**

9.3.1 Any casual vacancies among the members of the Tribunal shall be filled by the party who appointed the member who vacated the position,, as soon as reasonably possible following the date on which the vacancy arose.

9.3.2 The appointment of a member of the Tribunal in terms of this clause 9.3 shall not ipso facto invalidate the proceedings notwithstanding that the appointed member was not a member of the Tribunal from the inception of the proceedings in question.

9.4 **Quorum and decisions**

The quorum for proceedings before the Tribunal shall be all 3 (three) of its members and any decision of the Tribunal shall be made by a majority of the Tribunal's members.

9.5 **Experts**

9.5.1 The Tribunal may obtain advice or assistance (whether legal or otherwise) in any proceedings before it, from one or more experts, or persons having particular knowledge and skills of which the members of the Tribunal are not possessed, on any matter relevant to the determination of the Dispute before the Tribunal.

9.5.2 Any information (whether legal or otherwise) which is obtained by the Tribunal from an expert in terms of this clause, shall be conveyed to both parties to the proceedings, who may respond thereto.

9.6 **Referral of Dispute to the Tribunal**

9.6.1 The Committee shall, not later than 21 (twenty-one) days following their decision [notification] that the Dispute has been referred to a Tribunal, deliver to the Tribunal and to the Respondent, a Charge Sheet, consisting of:

9.6.1.1 The allegations constituting the Charge(s) against the Respondent;

9.6.1.2 Any relevant submissions of fact and / or law as well as any relevant documents in support thereof;

9.6.1.3 The nature of the sanction which the Investigator / Committee proposes should be imposed upon the Respondent, in the event of a finding that the Respondent is guilty of the Charge(s);

9.6.1.4 True copies of all relevant documents necessary to sustain the above, together with copies of all relevant ethical procedures and/or professional codes upon which the Investigator / Committee may rely; and

9.6.1.5 The documents which the Respondent is called upon to produce, in relation to the Charge(s).

9.6.2 Not later than 21 (twenty-one) days following receipt of the Charge Sheet, the Respondent shall deliver to the Tribunal and to the Committee, a Statement of Defence, responding seriatim to the allegations contained in the Charge Sheet, and attaching copies of all documents requested.

9.6.3 If, following the time period referred to in clause 9.6.2, the Respondent has failed to deliver his or her response to the Charge Sheet, without showing sufficient cause for such failure, the Tribunal may order that the proceedings continue, in accordance with clause 9.8 below, in the absence of the Respondent's response, and may draw such inferences therefrom as may be appropriate.

9.7 **Further Particulars**

9.7.1 Either party to the proceedings may request further particulars, for the purposes of preparing for the Tribunal proceedings, from the other party to the proceedings.

9.7.2 Requests for further particulars must be made within 21 (twenty-one) days of the date on which:

9.7.2.1 In the case of the Respondent, the Respondent receives the Charge Sheet; and

9.7.2.2 In the case of the Committee, the Committee receives the Respondent's Statement of Defence, or on the expiration of the period provided for in clause 9.6.2 above, in the absence of the Respondent's Statement of Defence.

9.7.3 Any such particulars, shall be delivered within 21 (twenty-one) days of the request therefore, to both the other party and the Tribunal.

9.8 **Procedure to be followed by Tribunal**

9.8.1 Following the expiration of the period referred to in clause 9.6.2 and/or 9.7.2, and when the Charge(s) are to be considered by the Tribunal in terms of a determination of the Committee, the Executive Director shall fix a date, time and place for the hearing and -

9.8.1.1 shall give not less than 20 (twenty) days notice thereof in writing to the Respondent, and the Complainant; and

9.8.1.2 shall notify the members of the Tribunal of such date, time and venue.

9.8.2 If one of the parties, duly notified in terms of this clause, fails to appear at the hearing, without showing adequate cause for such failure, the Tribunal may proceed with the hearing, in that party's absence.

9.8.3 The Tribunal proceedings shall be open to the public, provided that the Tribunal shall be entitled to determine that any aspect of the proceedings shall be heard in camera, having regard to the nature of the evidence to be presented during that aspect of the proceedings, and/or any other relevant factor.

9.8.4 The Respondent may be represented before the Tribunal, or assisted during the Tribunal proceedings, by a person of his or her choice, provided that the name(s) and address(es) of such person(s) shall be communicated to the Committee and to the Tribunal, in writing, at least 7 (seven) days prior to the hearing.

9.8.5 The Committee shall have the power to appoint a *pro forma* prosecutor at any proceedings of the Tribunal, and may nominate 1 (one) or 2 (two) of its members to act on its behalf during the proceedings.

- 9.8.6 All documents or information supplied to the Tribunal by 1 (one) of the parties shall simultaneously be communicated to the other party.
- 9.8.7 When the Tribunal is properly constituted, the Chairman shall read out the Charge(s), unless the Respondent, or his or her representative, agrees to dispense with the reading of the Charge(s).
- 9.8.8 If the Respondent pleads guilty to the Charge(s), and/or if the Complaint has been referred to the Tribunal in accordance with clause 7.6.1 above, the Tribunal may in its discretion find that the Respondent is guilty of the Charge(s) and may impose 1 (one) or more of the penalties listed in clause 9.16.4 below on the Respondent;
- 9.8.9 If the Respondent pleads not guilty to the Charge(s) then the Tribunal shall:
- 9.8.9.1 invite the Committee's representative to address the Tribunal and to call or question any witness, which witness shall be subject to cross-examination by the Respondent or his or her representative and may thereafter be questioned by the members of the Tribunal;
- 9.8.9.2 thereafter invite the Respondent or his or her representative to address the Tribunal and to call or question any witness, which witness shall be subject to cross-examination by the Committee's representative and may thereafter be questioned by the members of the Tribunal;
- 9.8.9.3 after the conclusion of the evidence, call upon the Committee's representative, to address the Tribunal and to present argument on the matter. At the conclusion of the address of the Committee's representative, the Respondent or his or her representative shall be entitled to address the Tribunal and present argument on the matter. The Committee's representative shall not be entitled to reply to such address unless the Respondent or his or her representative has raised any matter of law not previously raised, in which event the Committee's reply shall be confined to such matter of law.
- 9.9 To the extent reasonably practicable, all evidence presented at the hearing shall be presented orally, provided that the parties shall be entitled to submit documentary evidence, where the documents concerned constitute original documents and/or

certified copies of original documents (subject to the right of any party to the proceedings to contest the authenticity of such documentation).

9.10 Affidavit evidence shall be permitted in exceptional circumstances only, and shall be subject to the requirement that the affidavit in question has been properly attested to by the deponent, in accordance with the laws of South Africa.

9.11 The Tribunal shall further have the power to order the production for inspection of any books, documents, exhibits and/or other evidence in the possession of or under the control of the Respondent, or from any other Member, or former Member, if it considers such evidence to be necessary for the effective resolution of the Dispute.

9.12 Notwithstanding the provisions of clauses 9.9 and 9.10 above, the Tribunal shall have the power to admit such further evidence as it deems fit.

9.13 The Tribunal shall have the power to determine the admissibility, relevance, materiality and weight of all evidence presented during the proceedings.

9.14 Where a hearing is being conducted and a person whose evidence may be material has not been called as a witness, the Tribunal may itself call such person as a witness.

9.15 The proceedings of the Tribunal shall be recorded, in such manner as the parties may agree or as the Tribunal may direct.

9.16 **Finding**

9.16.1 Unless otherwise agreed, within 21 (twenty-one) days of the conclusion of the hearing, the Tribunal shall determine, after due consideration of the merits of the Dispute, and on a balance of probabilities, that -

9.16.1.1 the Charge(s) is / are unjustified and that no disciplinary action shall be taken; or

9.16.1.2 the Charge(s) of unprofessional conduct or unacceptable conduct is / are justified, and that the respondent is guilty thereof.

9.16.2 The Tribunal's decision shall be made by a simple majority of its members.

9.16.3 If the Tribunal finds that the Respondent is not, or was not, guilty, the Tribunal may make a finding in which the Respondent is found not guilty, and the Dispute shall be deemed to have been finalised.

- 9.16.4 If the Tribunal finds that the Respondent is guilty, it may by a simple majority direct that -
- 9.16.4.1 the Respondent be admonished; and / or
- 9.16.4.2 the Respondent be required to undergo, at his or her expense, such further period of education, training or practice under suspension (not exceeding 2 (two) years) as the Tribunal may determine; and / or
- 9.16.4.3 any practising certificate or any other authorisation, approval or special designation issued to the Respondent concerned by the Society be withdrawn for such period (not exceeding 2 (two) years) and on such conditions as the Tribunal may determine; and / or
- 9.16.4.4 the Respondent be fined an appropriate amount, payable to the Society; and / or
- 9.16.4.5 the Respondent be suspended from membership of the Society for an appropriate period; and / or
- 9.16.4.6 the Respondent be expelled from the Society; and / or
- 9.16.4.7 (in the case of the Respondent being a former Member who ceased to be a Member before the date on which the Tribunal made its decision, but who was a Member at the time of committing the Unprofessional or Unacceptable Conduct in question) the Respondent be sentenced to temporary, qualified or permanent disqualification from future membership of the Society.
- 9.16.5 Should the Tribunal impose a penalty in terms of clause 9.16.4, it may suspend the coming into effect of the penalty for such time and subject to such conditions as it may determine.
- 9.16.6 Upon reaching its finding, in terms of clause 9.16.1, read with 9.16.4, the Tribunal shall prepare a written report containing the Charge(s), its finding and its reasons for the finding.
- 9.16.7 The Tribunal shall submit a copy of this report to both the Committee and the Respondent.
- 9.16.8 The Tribunal's finding shall be final and shall not be subject to appeal.

- 9.16.9 Upon receipt of the Tribunal's report in terms of this clause, the Committee shall deliver a copy thereof to both the AGB and the Council and shall notify the Complainant, the relevant regulatory authorities and other actuarial organisations to which the Member belonged, of the outcome of the Tribunal proceedings. The Council shall be entitled to publish the outcome of the Tribunal proceedings, as it deems fit.
- 9.16.10 The Council shall record the Tribunal's finding in the minutes of the Council.
- 9.16.11 If, during the Tribunal proceedings, the parties settle the Dispute or any part thereof, the Tribunal may record the settlement in the form of a finding upon the terms agreed.
- 9.16.12 In addition to determining the merits of the Dispute, the Tribunal may make an order as to costs, in accordance with the provisions of clause 9.17 below.
- 9.17 **Costs order**
- 9.17.1 Unless otherwise agreed between the parties in writing, and subject to the provisions of this clause 9.17, a costs order shall be at the discretion of the Tribunal, provided that:
- 9.17.1.1 The Tribunal may apportion the costs between the parties to the extent reasonable, taking into account the principle that the costs shall ordinarily be borne by the unsuccessful party, the, circumstances of the case and/or any other relevant factors;
- 9.17.1.2 Subject to clause 9.17.1.3 below, the costs shall be reasonable in amount, taking into account the complexity of the Dispute, the duration of the Tribunal proceedings and any other relevant factor;
- 9.17.1.3 The Tribunal may only award costs of legal representation on a party and party scale, in accordance with the tariffs provided for in the Uniform Rules of Court, as promulgated in terms of the Supreme Court Act 59 of 1959;
- 9.17.2 In addition to limiting the costs in accordance with clauses 9.17.1.2 and 9.17.1.3 above, and at the reasonable request of one or more of the parties to the proceedings, the Tribunal may direct that the recoverable costs of the Tribunal proceedings, or any part of the proceedings, shall be limited to a certain amount and / or payable in any other appropriate manner.

9.17.3 Should the matter be resolved in accordance with clause 9.16.11 above, or where the Tribunal proceedings are terminated prior to the conclusion thereof, for whatsoever reason, the Tribunal shall fix the costs of the Tribunal proceedings in its finding.

9.18 **Conversion of Tribunal proceedings into Arbitration proceedings**

The Tribunal may, either following its finding, or at any stage during the Tribunal proceedings, direct that the proceedings be converted into Arbitration proceedings, where:

9.18.1 The Tribunal, and/or either of the parties to the Dispute, has called for the production of documentation, oral evidence and/or other evidentiary material, which is neither in the possession nor under the control of, nor capable of being attested to by, either of the parties to the Dispute and the only reasonable manner of securing such documentation, oral evidence and/or other evidentiary material, is by way of subpoena; and

9.18.2 The Tribunal, whether following representations from the parties or of its own accord, finds that the production of such documentation, oral evidence and/or evidentiary material, is relevant to the fair determination of the Dispute.

9.19 **Recovery of fines and costs**

Any fine imposed in terms of clause 9.16.4.4 above, or any costs ordered to be paid in terms of clause 9.17, may be recovered from the Respondent in civil proceedings in any court.

9.20 **Corrections to Tribunal's award**

9.20.1 Within 21 (twenty-one) days of receiving the award, either party, following notice thereof to the other party, may ask the Tribunal to:

9.20.1.1 correct in the award, any errors in computation, any clerical or typographical errors, or any errors of similar nature; or

9.20.1.2 clarify any ambiguity or uncertainty in the award; or

9.20.1.3 make an additional award in relation to Charge(s) presented during the proceedings and/or stipulated in the Charge Sheet and/or Statement of Defence, but which have been omitted from the award.

- 9.20.2 The Tribunal may make such corrections, issue such clarifications or determine such additional awards (as referred to in clause 9.20.1 above), of their own initiative, to the extent deemed necessary.
- 9.20.3 All corrections, clarifications and/or additional awards shall be in writing, and shall be communicated to the parties within 30 (thirty) days of delivery of the original award.
- 9.20.4 Notwithstanding the general power of the Tribunal to extend or reduce any time periods provided for in this clause, the Tribunal shall be permitted to extend the time periods referred to in clause 9.20.3 above, only with the written consent of the parties or where the exceptional circumstances of the matter require it.

10. **ARBITRATION**

10.1 **Referral to Arbitration**

- 10.1.1 Any Dispute which is referred to Arbitration, or which forms the subject matter of Tribunal proceedings which have been converted into Arbitration proceedings in terms of clause 9.18 above, shall be determined in accordance with the procedures provided for below.
- 10.1.2 For the purposes of this clause, the term “Arbitrator(s)” shall refer to the Arbitrators appointed in terms of clause 10.2 below, whether only 1 (one) Arbitrator is appointed or 3 (three), and the term “Arbitrator” shall bear a corresponding meaning.

10.2 **Appointment of Arbitrator(s)**

- 10.2.1 The Arbitrator(s) shall be appointed, following receipt of the notice of referral to Arbitration by the Committee, in terms of clause 7.8.2 above.
- 10.2.2 The notice shall specify that there shall be 3 (three) Arbitrator(s), unless a single Arbitrator is appointed by agreement between the parties, from either the Panel of Members or the Panel of Arbitrators, having regard to the nature of the Dispute.
- 10.2.3 Should there be 3 (three) Arbitrators, and subject to the provisions of clause 10.2.2 above, the Arbitrators shall be appointed as follows:
- 10.2.3.1 the Respondent shall first appoint an Arbitrator from either the Panel of Arbitrators or the Panel of Members;

- 10.2.3.2 the Committee shall appoint an Arbitrator from either the Panel of Arbitrators or the Panel of Members; and
- 10.2.3.3 the Arbitrators appointed in terms of clauses 10.2.3.1 and 10.2.3.2 shall appoint the third Arbitrator from the Panel of Arbitrators. It is expressly recorded that the Arbitrator so appointed shall be an arbitrator in the proceedings and shall not be an umpire as envisaged by section 11(1)(b) of the Arbitration Act 42 of 1965;
- 10.2.3.4 provided that where the Respondent appoints an Arbitrator from the Panel of Members, the Committee shall appoint an Arbitrator from the Panel of Arbitrators and where the Respondent appoints an Arbitrator from the Panel of Arbitrators, the Committee shall appoint an Arbitrator from the Panel of Members.
- 10.2.4 All such appointments shall be concluded within 20 (twenty) days of receiving notice of the referral of the Dispute to Arbitration, unless it is reasonably impracticable to do so.
- 10.2.5 Should Tribunal proceedings have been converted into Arbitration proceedings in accordance with clause 9.18, the members of the Tribunal shall automatically become the Arbitrator(s), with the powers and functions attributed to Arbitrator(s) in terms of this clause 10, and the provisions relating to the appointment of Arbitrator(s) as provided for above, shall not apply.

10.3 **Challenge to Arbitrators**

- 10.3.1 A prospective Arbitrator shall disclose to those who approach him or her, in connection with his or her possible appointment, any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An Arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed of those circumstances.
- 10.3.2 Any Arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence.
- 10.3.3 A party who intends to challenge an Arbitrator shall send written notice of his or her challenge, together with brief reasons therefore, to the Arbitrator(s), the Council and the opposing party, within 5 (five) days of the (challenged) Arbitrator's appointment or within 5 (five) days of receiving notification of the circumstances referred to in clause 10.3.1 above.

10.3.4 The opposing party shall be entitled to respond to the challenge within 5 (five) days of receiving notification thereof, whereafter, and subject to the right of the challenged Arbitrator to withdraw of his or her own accord, the Arbitrator(s) shall determine, on the papers, whether the challenge is justified and if so, whether the challenged Arbitrator(s) should withdraw. Where only 1 (one) Arbitrator has been appointed, that Arbitrator may determine whether to uphold the challenge and withdraw, or to dismiss the challenge and proceed.

10.3.5 Should the Arbitrator(s) elect to dismiss the challenge, their decision shall be final. Should they elect to uphold the challenge, the challenged Arbitrator shall withdraw and the parties shall reach agreement on a replacement Arbitrator, failing which the Chairman of an appropriate Bar Council, shall appoint a replacement Arbitrator(s) from either the Panel of Members or the Panel of Arbitrators, having regard to:

10.3.5.1 The nature of the Dispute; and

10.3.5.2 In case of 3 (three) Arbitrators having originally been appointed, the requirement that the Arbitrators include persons from both the Panel of Members and the Panel of Arbitrators.

10.4 **Replacement of an Arbitrator**

In the event:

10.4.1 of the death or resignation of an Arbitrator during the course of the Arbitration proceedings; or

10.4.2 that an Arbitrator fails to act; or

10.4.3 of the de jure or de facto impossibility of the relevant Arbitrator performing his or her functions,

the procedure in respect of the replacement of an Arbitrator as provided for (in the context of replacing a challenged Arbitrator) in clause 10.3 above, shall apply.

10.5 **General principles**

10.5.1 Unless otherwise agreed, the Arbitrator(s) may conduct the Arbitration in a manner they deem appropriate, in accordance with the provisions of this Procedure, and the principles of natural justice.

- 10.5.2 The parties undertake to do everything necessary for the fair, efficient and expeditious conduct of the Arbitration.
- 10.5.3 In the ordinary course, and unless reasonably impracticable to do so, the Arbitration shall be conducted by way of 1 (one) or more oral hearings, at which the parties may present evidence by way of witnesses, including expert witnesses, and/or oral argument. The Arbitrator(s) may, however, and with reference to the circumstances of the Dispute, elect to conduct the proceedings on the basis of documents and/or other evidentiary materials only.
- 10.5.4 All documents or information supplied to the Arbitrator(s) by one of the parties shall simultaneously be communicated to the other party.
- 10.5.5 In addition to the powers specifically provided for in this clause 10, and unless otherwise provided for herein, the Arbitrator(s) shall have the powers to:
- 10.5.5.1 extend or abbreviate, either before or after the expiry thereof, any time periods provided for herein;
 - 10.5.5.2 allow other parties to be joined in the Arbitration proceedings, in accordance with clause 10.6 below;
 - 10.5.5.3 to make an award or ruling on all issues submitted by the parties, for determination by the Arbitrator(s).
 - 10.5.5.4 at any time, make or vary any procedural directives which, in their opinion, will expedite the matter or render it more cost effective and shall, in exercising their powers in terms of this clause, seek to avoid all unnecessary delay and expense, provided that The Arbitrator(s) shall not exercise their powers referred to above, without affording the parties an opportunity to make representations to them on the proposed directive or variation thereof.

10.6 **Multi-party proceedings**

- 10.6.1 Upon the application of either of the parties to the Tribunal or Arbitration, where two or more Disputes (which have been referred to the Tribunal or Arbitration in terms of this Procedure) raise similar issues of law or fact, the Tribunal or Arbitrator(s) may direct that the hearing of the Disputes be conducted together and heard concurrently. Where such an order is made, the Tribunal or Arbitrator(s) presiding over each of the affected Arbitrations, may give directions

(regarding the procedures to be followed by the parties) to the extent to which the interests of fairness, economy and expedition require, including:

- 10.6.1.1 That the documents disclosed by the parties in each Arbitration be made available to the parties in the other Arbitration(s) upon such conditions as the Tribunal or Arbitrator(s) may determine;
- 10.6.1.2 That the evidence given in one Arbitration shall be received and admitted in the other Arbitration, subject to all parties being given a reasonable opportunity to comment upon it and subject to such other conditions as the Arbitrator(s) may determine; and
- 10.6.1.3 That one or more of the Tribunal or Arbitrator(s) presiding over the affected Arbitrations retire(s), having regard to the need for equal representation by the Tribunal or Arbitrator(s) of all parties' elected Tribunal or Arbitrator(s), together with the requirement that the Tribunal or Arbitrator(s) include persons from both the Panel of Members and the Panel of Arbitrators. The parties shall be afforded an opportunity to make representations to the Tribunal or Arbitrator(s) in relation to the retention and/or retirement of such Tribunal or Arbitrator(s), prior to the order provided for in this clause 10.6.1 being made.
- 10.6.2 Where the parties to one or more Disputes agree, in advance of the appointment of the Tribunal or Arbitrator(s) in accordance with clauses 9.1 or 10.1 above, that the Disputes in which they are involved give rise to similar issues of fact or law, and that it would be in the interests of fairness, economy and expedition to consolidate such Disputes, the Executive Director may make such arrangements for the consolidation of the proceedings, as may be appropriate under the circumstances.

10.7 **Arbitration to be open to the public**

The Arbitration shall be open to the public, provided that the Arbitrator(s) shall be entitled to determine that any aspect of the proceedings shall be heard in camera, having regard to the nature of the evidence to be presented during that aspect of the proceedings, and/or any other relevant factor.

10.8 **Representation**

The parties may be represented or assisted by persons of their choice during the Arbitration proceedings, provided that the names and addresses of such persons shall be communicated to the other party and to the Arbitrator(s), in writing, at least 7 (seven) days prior to the Arbitration hearing (if any).

10.9 Place of Arbitration

The place of Arbitration shall be Cape Town, or such other place as the parties may agree, having regard to practical considerations, provided that the Arbitration shall take place in South Africa.

10.10 Administration of Arbitration

Unless otherwise agreed, the Arbitration shall be administered by the parties.

10.11 Language of Arbitration

The Arbitration proceedings shall be conducted in English, unless otherwise agreed by the parties and the Arbitrator(s).

10.12 Security for costs

Unless otherwise agreed, the Arbitrator(s) may, on the application of the Respondent, order the Society to provide reasonable security for the costs of the proceedings and may stay the Arbitration proceedings, pending compliance with such order.

10.13 Charge Sheet

The Committee shall, not later than 21 (twenty-one) days after the appointments of the Arbitrator(s) in terms of clause 10.2 above, deliver to the Arbitrator(s) and to the Respondent, a Charge Sheet, consisting of:

10.13.1 The allegations constituting the Charge(s) against the Respondent;

10.13.2 Any relevant submissions of fact and / or law as well as any relevant documents in support thereof;

10.13.3 The nature of the sanction which the Committee proposes should be imposed upon the Respondent, in the event of a finding that the Respondent is guilty of 1 (one) or more of the Charge(s);

10.13.4 True copies of all relevant documents necessary to sustain the above, together with copies of all relevant ethical procedures and/or professional codes upon which the Committee may rely; and

10.13.5 The documents which the Respondent is called upon to produce, in relation to the Charge(s).

10.14 **Statement of Defence**

Not later than 21 (twenty-one) days following receipt of the Charge Sheet by the Respondent, the Respondent shall deliver to the Arbitrator(s) and to the Committee, a Statement of Defence, responding seriatim to the allegations contained in the Charge Sheet, and attaching copies of all documents requested, failing which the Committee shall be entitled to apply to the Arbitrator(s) for the documents to be subpoenaed.

10.15 **Amendments to the Charge Sheet or Statement of Defence**

During the course of the Arbitration proceedings, the Committee may amend or supplement the Charge Sheet and the Respondent may amend or supplement the Statement of Defence unless the Arbitrator(s) consider it inappropriate to allow such amendment having regard to the delay in making it and/or the prejudice to the other party or any other circumstances.

10.16 **Further Particulars**

10.16.1 Either party to the proceedings may request further particulars, for the purposes of preparing for the arbitration, from the other party to the proceedings.

10.16.2 Requests for further particulars must be made within 21 (twenty-one) days of the date on which:

10.16.2.1 In the case of the Respondent, the Respondent receives the Charge Sheet; and

10.16.2.2 In the case of the Committee, the Committee receives the Respondent's Statement of Defence, or on the expiration of the period provided for in clause 10.14 above, in the absence of the Respondent's Statement of Defence.

10.16.3 Any such particulars, shall be delivered within 21 (twenty-one) days of the request therefore, to both the other party and the Arbitrator(s).

10.17 Preliminary Meeting

- 10.17.1 Prior to the commencement of the hearing (if any), but after the Charge Sheet and the Statement of Defence have been exchanged, the parties may convene, or the Arbitrator(s) may direct the parties to convene, a preliminary meeting, for the purposes of reaching agreement on possible ways of curtailing the duration of the Arbitration proceedings and in particular, on all or any of the following matters:
- 10.17.1.1 The possibility of obtaining admissions of fact;
 - 10.17.1.2 The holding of any further investigation, inspection or examination;
 - 10.17.1.3 The disclosure of documents, including both the ambit thereof and the time periods in which such disclosure will be made;
 - 10.17.1.4 The provision of any further particulars reasonably required for the purposes of the hearing, to the extent to which they have not been provided in accordance with clause 10.16 above;
 - 10.17.1.5 The consolidation of hearings, and/or joinder of other parties;
 - 10.17.1.6 The likely sanctions to be imposed, in the event of a guilty finding;
 - 10.17.1.7 The preparation and handing in at the hearing of copies of all relevant documents in the form of a paginated and indexed bundle, together with copies of the bundle for the Arbitrator(s) and all parties to the proceedings;
 - 10.17.1.8 Preliminary issues of fact or law which may be decided either in advance of, or at the commencement of, the Arbitration hearing;
 - 10.17.1.9 The likely duration of the proceedings;
 - 10.17.1.10 The date and venue for the hearing, if not already determined; and
 - 10.17.1.11 Any other relevant factors which may serve to expedite the resolution of the Arbitration proceedings.
- 10.17.2 At the conclusion of the preliminary meeting, the parties shall draw up, and sign, a minute of the matters on which they have agreed and this shall be handed to the Arbitrator(s) at the commencement of the hearing (if any), failing which, within 10 (ten) days of the date on which the preliminary meeting was held.

10.18 **Jurisdiction**

- 10.18.1 The Arbitrator(s) may decide any dispute regarding the existence, validity, or interpretation of this clause 10 and may rule on their own jurisdiction to act.
- 10.18.2 A party to the Arbitration wishing to challenge the jurisdiction of the Arbitrator(s) or who avers that the Arbitrator(s) are exceeding their jurisdiction shall raise the jurisdictional issue at the first available opportunity, failing which the parties shall be deemed to have consented to the Arbitrator(s)' jurisdiction.
- 10.18.3 Where the Arbitrator(s) have made a jurisdictional ruling pursuant to this clause otherwise than in an award, a party who wishes to contest that ruling in court may do so only after the Arbitrator(s) have issued their award in accordance with clause 10.25 below.
- 10.18.4 This clause 10 shall be regarded as an agreement independent of the other terms of the Procedure. A decision by the Arbitrator(s) that the Procedure is null and void shall not, of itself, result in the invalidity of this clause.

10.19 **Prior Hearing of Law or Fact**

- 10.19.1 The Arbitrator(s) shall, if both parties so agree, or may, on the application of either party, or at the Arbitrator(s)' own discretion, determine any particular issue of law or fact either separately or before other issues are determined, provided that:
 - 10.19.1.1 The hearing of such issue shall proceed and be determined in accordance with conditions agreed between the parties or prescribed by the Arbitrator(s);
 - 10.19.1.2 The onus will be on the party seeking to oppose the separation of the issue of law and/or fact to establish that such separation will not contribute to the expeditious determination of the Dispute and/or that the questions cannot conveniently be decided separately; and
 - 10.19.1.3 The Arbitrator(s) shall not exercise their powers under clause 10.19.1 without affording the parties an opportunity to make representations to them thereon.
- 10.19.2 Unless otherwise agreed, any issue of law or fact to be determined in accordance with the provisions of this clause, may be determined either in advance of the Arbitration hearing (if any) or at the commencement of such hearing, provided

that the time periods provided for in this clause 10, shall not be extended purely for the purposes of determining such issue of law or fact.

10.20 Evidence and hearings

- 10.20.1 The Arbitrator(s) shall commence the Arbitration and shall proceed without unnecessary delay to establish the facts by such fair means as may be appropriate.
- 10.20.2 Each party shall have the burden of proving, on a balance of probabilities, the facts relied upon to support the Charge(s), in case of the Committee, and the Defence, in case of the Respondent.
- 10.20.3 The Arbitrator(s) may, if they consider it appropriate, require a party to deliver to them and to the other party, within such period of time as they deem fit, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in the Charge Sheet or the Statement of Defence, whichever is applicable.
- 10.20.4 At any time either during or before the Arbitration proceedings, the Arbitrator(s) may require the parties to produce such books, documents, exhibits or other evidence within such period of time as the Arbitrator(s) determine, if they consider such evidence to be necessary for the effective resolution of the Dispute.
- 10.20.5 In the event of an oral hearing, the Arbitrator(s) shall give the parties adequate notice of the date, time and place thereof, provided that the parties shall be advised of these details no less than 20 (twenty) days prior to the date on which the hearing is to be conducted, unless reasonably impracticable to do so.
- 10.20.6 If witnesses are to be heard, at least 15 (fifteen) days prior to the hearing, each party shall communicate to the Arbitrator(s) and to the other party, the names and addresses of the witnesses whom the party intends to call, the subject upon, and the languages in which such witnesses shall give their testimony.
- 10.20.7 In case of expert witnesses only, the parties shall, in addition to the information referred to in clause 10.20.6 above, provide summaries of the expert witnesses' opinions and their reasons therefore to both the other party to the proceedings and to the Arbitrator(s), at least 10 (ten) days prior to the hearing of the expert witnesses' testimonies.

- 10.20.8 To the extent to which oral statements produced, by one or more of the parties, are not recorded in English (or in any other language upon which the parties and the Arbitrator(s) may have agreed), the party relying on the statement shall make arrangements for the oral statement to be translated into English or such other language as has been agreed.
- 10.20.9 The parties shall make arrangements for all oral evidence presented at the Arbitration proceedings, if any, to be recorded, in such manner and to such extent as the parties may agree, failing which, in such manner and to such extent as the Arbitrator(s) may direct. Copies of all written evidence presented at the hearing shall be retained by the Arbitrator(s), and shall form part of the record of the proceedings, together with all and any oral evidence.
- 10.20.10 The Arbitrator(s) may require the retirement of any witness (including the Complainant) or witnesses during the testimony of the other witnesses. The Arbitrator(s) shall be free to determine the manner in which the witnesses are examined, and shall have the power to question witnesses of their own accord, to the extent deemed necessary and appropriate under the circumstances.
- 10.20.11 Evidence of witnesses may also be presented in the form of written statements, duly attested to in accordance with the requirements for legally recognised affidavits under South African law.
- 10.20.12 The Arbitrator(s) shall determine the admissibility, relevance, materiality and weight of all evidence presented during the proceedings.
- 10.20.13 The Arbitrator(s) shall, unless the parties otherwise agree, be entitled to rely on their own expert knowledge and experience, to the extent applicable, provided that they shall communicate such knowledge and experience to the parties and afford the parties an opportunity to respond thereto.
- 10.20.14 Nothing in this clause shall be construed as detracting from the rights of all parties to the proceedings, to subpoena such documents as they may require, for the purposes of presenting their case.
- 10.21 **Experts**
- 10.21.1 In addition to the entitlement of the parties to present the evidence of expert witnesses at the hearing, in accordance with clause 10.20 above, the Arbitrator(s) shall have the power to appoint one or more experts to report to them, in writing, on specific issues to be determined by the Arbitrator(s).

10.21.2 The parties shall cooperate with the expert(s) to the extent reasonable, and shall provide the expert(s) with any relevant information, documentation or goods, which may be required by the expert(s).

10.21.3 Upon receipt of an expert's report, the Arbitrator(s) shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinions on the report. In doing so, the parties shall be entitled to examine any document on which the expert has relied in the report.

10.21.4 At the request of either party, and to the extent reasonably practicable, the expert(s), after delivery of a report, may be called to testify at the Arbitration proceedings, where the parties shall have the opportunity to be present and to interrogate the expert(s).

10.22 **Default**

10.22.1 If, within the time periods referred to above, the Respondent has failed to deliver his or her Statement of Defence, without showing sufficient cause for such failure, the Arbitrator(s) may order that the proceedings continue, in the absence of the Respondent's Statement of Defence, and may draw such inferences therefrom as may be appropriate.

10.22.2 If one of the parties, duly notified in terms of this Arbitration clause, fails to appear at the hearing, without showing sufficient cause for such failure, the Arbitrator(s) may proceed with the Arbitration, in that party's absence.

10.23 **Closure of hearing**

10.23.1 Following the conduct of the Arbitration and the presentation of evidence, if any, the Arbitrator(s) may inquire of the parties whether they have any further evidence to adduce, or witnesses to be heard, or submissions to make and, if there are none, they may declare the hearings closed.

10.23.2 The Arbitrator(s) may, if they consider it necessary owing to exceptional circumstances, decide, on their own motion or on the application of the parties, to reopen the hearings at any time before the award is made.

10.24 **Waiver of rules**

A party who knows that any provision or requirement of the Procedure has not been complied with, and yet proceeds with the Arbitration without promptly stating his or her

objection to such non-compliance, shall be deemed to have waived his or her right to object.

10.25 The award

10.25.1 Unless otherwise agreed, within a reasonable period following the conclusion of the hearing, or the submission of the last document to the Arbitrator(s) in the event that there is no hearing, the Arbitrator(s) shall determine, after due consideration of the merits of the Dispute, and on a balance of probabilities, that -

10.25.1.1 the Charge(s) is / are unjustified and that no disciplinary action shall be taken; or

10.25.1.2 the Charge(s) of unprofessional conduct or unacceptable conduct is / are justified, and that the respondent is guilty thereof.

10.25.2 Where 3 (three) Arbitrators have been appointed to hear the Dispute, any award or decision shall be made by a simple majority of the 3 (three) Arbitrators, and where only 1 (one) Arbitrator has been appointed, any award or decision may be made by that single Arbitrator.

10.25.3 If the Arbitrator(s) find that the Respondent is not, or was not, guilty of 1 (one) or more of the Charge(s) as alleged, they may make an award in which the Respondent is found not guilty and the Dispute shall be deemed to have been finalised.

10.25.4 If the Arbitrator(s) determine that the Respondent is guilty of 1 (one) or more of the Charge(s), they may make an award and impose such sanction(s) upon the Respondent, in accordance with the provisions of clauses 9.16.4 and 9.16.5 above, as they deem fit.

10.25.5 Upon making their award in terms of this clause 10.25, the Arbitrator(s) shall prepare a written award containing the Charge(s), the Arbitrator(s)' decision and their reasons for the decision.

10.25.6 An award shall be signed by the Arbitrator(s) and shall contain the date on which and the place where the award was made.

10.25.7 The Arbitrator(s) shall submit a copy of its award to both the Committee and the Respondent.

10.25.8 The award shall be final and shall not be subject to appeal.

10.25.9 Upon receipt of the Arbitrator(s)' award in terms of clause 10.25.7, the Committee shall deliver a copy thereof to both the AGB and the Council and shall notify the Complainant, the relevant regulatory authorities and actuarial organisations the Member belongs or belonged to of the outcome of the Arbitration proceedings.

10.25.10 The Council shall record the Arbitrator(s)' award in the minutes of the Council.

10.25.11 In addition to making a final award in accordance with this clause 10.25, the Arbitrator(s) shall be entitled to make interim, interlocutory or partial awards, which awards shall be made within 20 (twenty) days of the date on which the Arbitrator(s) receive the parties' final submissions and/or documents in relation to the request for such interim, interlocutory or partial award.

10.26 **Applicable Law**

The Arbitrator(s) shall apply the law of South Africa, together with any other terms of reference upon which the parties have agreed, when determining an appropriate award.

10.27 **Consent award**

If, during the Arbitration proceedings, the parties settle the Dispute or any part thereof, the Arbitrator(s) may record the settlement in the form of an award upon the terms agreed.

10.28 **Admission of guilt**

10.28.1 Should the Respondent admit guilt prior to the conclusion of the Arbitration proceedings, the Arbitrator(s) may either issue an order for the termination of the proceedings and impose such sanction (subject to the provisions of clause 9.16.4 above) as they deem fit, or request that further evidence be led and/or submissions made, as may be necessary for the Arbitrator(s) to make a determination on an appropriate sanction (subject to the provisions of clause 9.16.4 above).

10.28.2 Any order issued or sanction imposed in terms of this clause, shall be communicated to the parties in writing, as if it were an award, and the Arbitrator(s) shall comply with the requirements for issuing an award, in accordance with this Procedure, when issuing such an order or imposing such a sanction.

10.29 **Corrections to the award**

10.29.1 Within 21 (twenty-one) days of receiving the award, either party, following notice thereof to the other party, may ask the Arbitrator(s) to:

10.29.1.1 correct in the award, any errors in computation, any clerical or typographical errors, or any errors of similar nature; or

10.29.1.2 clarify any ambiguity or uncertainty in the award; or

10.29.1.3 make an additional award in relation to Charge(s) presented during the proceedings and/or stipulated in the Charge Sheet and/or Statement of Defence, but which have been omitted from the award.

10.29.2 The Arbitrator(s) may make such corrections, issue such clarifications or determine such additional awards (as referred to in clause 10.29.1 above), of their own initiative, to the extent deemed necessary.

10.29.3 All corrections, clarifications and/or additional awards shall be in writing, and shall be communicated to the parties within 30 (thirty) days of delivery of the original award.

10.29.4 Notwithstanding the general power of the Arbitrator(s) to extend or reduce any time periods provided for in this clause, the Arbitrator(s) shall be permitted to extend the time periods referred to in clause 10.29.1 above, only with the written consent of the parties or where the exceptional circumstances of the matter require it.

10.30 **Costs order**

10.30.1 Unless otherwise agreed between the parties in writing, and subject to the provisions of this clause 10.30, a costs order shall be at the discretion of the Arbitrator(s), provided that:

10.30.1.1 The Arbitrator(s) may apportion the costs between the parties to the extent reasonable, taking into account the principle that the costs shall ordinarily be borne by the unsuccessful party, the circumstances of the case and/or any other relevant factors;

10.30.1.2 Subject to clause 10.30.1.3 below, the costs shall be reasonable in amount, taking into account the complexity of the Dispute, the duration of the Arbitration proceedings and any other relevant factor;

- 10.30.1.3 The Arbitrator(s) may only award costs of legal representation on a party and party scale, in accordance with the tariffs provided for in the Uniform Rules of Court, as promulgated in terms of the Supreme Court Act 59 of 1959;
- 10.30.1.4 In addition to limiting the costs in accordance with clauses 10.30.1.2 and 10.30.1.3 above, and at the reasonable request of one or more of the parties to the proceedings, the Arbitrator(s) may direct that the recoverable costs of the Arbitration proceedings, or any part of the proceedings, shall be limited to a certain amount and/or in any other appropriate manner. Notwithstanding the Arbitrator(s)' discretion in this regard, the costs of administering the proceedings shall always be recoverable in full.
- 10.30.2 When the Arbitrator(s) make a consent award, in terms of clause 10.27 above, or where the Arbitration proceedings are terminated in accordance with clause 10.28 or prior to the conclusion thereof, for whatsoever reason, the Arbitrator(s) shall fix the costs of the Arbitration proceedings in their award, or in terms of a separate award if necessary.
- 10.30.3 The Arbitrator(s) shall not be entitled to charge any additional fees for corrections, clarifications or additional awards made in terms of clause 10.29.3 above.
- 10.30.4 The Arbitrator(s) may direct the costs to be taxed, on terms deemed appropriate.

11. EXECUTION OF TRIBUNAL'S FINDING OR ARBITRATOR(S)' AWARD

- 11.1 Upon receipt of the Tribunal's finding or the Arbitrator(s)' award as provided for above, and if –
- 11.1.1 the Respondent is to be admonished, the Respondent shall be so admonished in writing by the President of the Society; and / or
- 11.1.2 the Respondent is required to undergo a further period of education, training or practice under suspension, the Respondent shall, in a written notice by the President of the Society, be advised thereof and of the terms and conditions relating to the further education, training or practice under supervision; and / or
- 11.1.3 the practising certificate issued to the Respondent by the Society is withdrawn, the Respondent shall, in a written notice by the President, be advised thereof and of the period of and conditions applicable to such withdrawal; and / or

- 11.1.4 the Respondent is ordered to pay a fine, the Respondent shall, in a written notice by the President, be advised thereof and of the terms of payment of the fine; and /or
- 11.1.5 the Respondent is to be suspended, the Respondent shall, in a written notice by the President, be suspended with effect from the date of the relevant determination; and / or
- 11.1.6 the Respondent is to be expelled from the Society, the Respondent shall, in a written notice by the President, be expelled with effect from the date of the relevant determination; and / or
- 11.1.7 the Respondent is sentenced to temporary, qualified or permanent disqualification from future membership of the Society, the Respondent shall, in a written notice by the President, be informed of the penalty and at the same time a note of the penalty and of the details of the determination of the Tribunal or Arbitrator(s)' shall be made in the records of the Society.
- 11.2 The Council shall publish the outcome of the Tribunal and/or Arbitration proceedings, and such further details of the Dispute as may be appropriate, having regard to the nature and circumstances of the Dispute, and to the Tribunal's and/or Arbitrator(s)' recommendations, if any, concerning publication of the award.

12 NON-COOPERATION DURING DISCIPLINARY PROCEEDINGS

- 12.1 Should the Respondent, at any stage of the disciplinary proceedings:
- 12.1.1 fail to cooperate with the reasonable requests of the Committee, Council, or Society; or
- 12.1.2 hinder or frustrate the Committee, the mediator, Tribunal and/or Arbitrator(s) in the conduct of their duties in accordance with the provisions of this Procedure,
- 12.2 the Respondent may be required to provide an explanation for such non-cooperation, and to the extent to which the Respondent's explanation is unsatisfactory to the Committee, the Respondent may be charged with unprofessional or unacceptable conduct (in the form of non-cooperation), which Charge(s) may be determined during the disciplinary proceedings, in respect of which the Respondent's non-cooperation (as provided for in clauses 12.1.1 and/or 12.1.2 above) arose.

13 GENERAL PROCEDURES

13.1 **Regulations and By Laws**

The Council may from time to time make such regulations (not being inconsistent with the Constitution, the By-laws or the rules of natural justice) as it deems necessary for the administration of the disciplinary procedures. Subject to the said regulations the Committee, the Tribunal and the Arbitrator(s) may conduct their business in such manner as they deem suitable for the performance of their functions, in accordance with this Procedure, so as to give the parties a fair hearing.

13.2 **Postponement of disciplinary proceedings**

The Council may, at its discretion, postpone the investigation and/or prosecution of any Complaint and/or Dispute, until such time as it deems fit, where the subject matter of such Complaint and/or Dispute is pending determination in a South African Court of Law.

13.3 **Termination of the proceedings**

If, at any stage of disciplinary proceedings conducted in accordance with this Procedure, the continuation of such proceedings becomes unnecessary or impossible for any reason whatsoever, the body conducting that stage of the procedure, whether it be the Committee, Tribunal, Arbitrator(s) and/or the Council, may suspend and/or terminate the disciplinary proceedings, for such period, and/or in such manner, as it deems appropriate.

13.4 **Time Periods**

Notwithstanding the time periods referred to in this Procedure, the Committee, the Council, the Tribunal and the Arbitrator(s) (to the extent applicable) shall at all times endeavour to conduct the investigation and any subsequent disciplinary proceedings as expeditiously as possible, but shall nevertheless retain the power to extend such time periods, in the event of exceptional circumstances justifying such extension.

13.5 **Jurisdiction over former Members**

The Council, the Committee, mediator(s), the Tribunal and/or the Arbitrator(s) shall have jurisdiction to consider any Complaint, and/or to determine any Dispute, against a Member or former Member of the Society, in respect of conduct which occurred whilst still a Member.

13.6 **Delivery of documents and notices**

Any documents or notices required to be delivered in terms of this Procedure, shall be deemed to have been received, on the day on which they are delivered, if the document or notice is physically delivered to 1 (one) or more of the following addresses:

- 13.6.1 In case of the Respondent, the physical address, facsimile number or email address under which the Respondent has registered his or her membership with the Society, or to the extent applicable, the physical address, facsimile number or email address of his or her representative;
- 13.6.2 In case of the Complainant, the physical address, facsimile number or email address referred to by the Complainant in the Complaint; and
- 13.6.3 In case of the Committee, the Council or the Society at the physical address, facsimile number or email address of such body, as published by the Society from time to time.

14 **TRANSITIONAL PROVISIONS**

- 14.1 This Procedure will come into effect on 1 January 2012.
- 14.2 Every Complaint received or initiated on or after the commencement date referred to in 14.1 will be dealt with in terms of this Procedure. Every Complaint received before the date of commencement will be dealt with in terms of the disciplinary procedure which was in force immediately before the commencement date.