



Mauritius Institute of
Professional Accountants

INVESTIGATION,

DISCIPLINARY AND APPEAL RULES

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1. Overview

Section 59(1) of the Financial Reporting Act ('FRA') empowers the Mauritius Institute of Professional Accountants ('MIPA') to prepare and issue such rules as it considers appropriate and under section 59(3)(b) of the FRA, the MIPA may issue rules relating to the procedure for instituting disciplinary proceedings.

The Investigation, Disciplinary and Appeal Rules set out the rules that shall apply to all members who shall fail to exercise and maintain professional standards and obligations of a MIPA member and the circumstances and conditions for an appeal against a decision of the Disciplinary Committee.

There is set up for the purposes of these rules an Investigation Committee, a Disciplinary Committee and an Appeal Committee (hereinafter the 'Committees'). Subject to these Rules, the Committees may regulate their proceedings in such manner as they deem fit.

2. Investigative and Disciplinary Powers

The requirements impose on the members the duty to cooperate in the investigation of complaints, and to respond promptly to all communications on the subject. Failure to cooperate may result in the imposition of sanctions by the Disciplinary or Appeal Committees.

Good professional relationships with public authorities or any other investigatory authorities shall also be fostered, to enable the latter to effectively administer the investigative and disciplinary processes.

3. Initiation of Proceedings

MIPA shall adopt both a "complaints-based" and an "information-based" approach for investigative and disciplinary action.

A. Complaints-based Approach:

Action that is complaints-based is triggered by the receipt of a complaint by the MIPA against an individual member or firm. Such complaint may come from a client or regulatory agency or any other stakeholders. The MIPA Investigation Committee shall investigate the matter.

B. Information-based Approach:

This process is in addition to the complaints-based approach in (A) and it offers further public protection. Where information is received from reliable sources that indicates the possibility of misconduct, the Investigation Committee may commence an investigation. The MIPA Investigation Committee may on its own, where it suspects that there might be breaches of codes, standards, rules and requirements, investigate the matter.

4. Composition of the Investigation, Disciplinary and Appeal Committees

a) General Provisions

- i. There will be a pool of 15 potential people appointed by the Board of MIPA, who shall constitute the Committees.
- ii. The Committees will be composed of individuals from different backgrounds, including non-accountants. The pool will consist of:
 - 7 MIPA members in good standing, all of whom have 10 years' proven experience and knowledge in the field of Accountancy;
 - 2 MIPA members in good standing who have at least 15 years' proven experience and knowledge in the field of Accountancy;
 - 3 barristers with at least 10 years standing;
 - 3 public interest persons, all of whom have 10 years' proven experience and knowledge in a field other than Accountancy.
- iii. Each committee comprises of the following members:
 - a. **Legal persons** who sit on the Committees and serve as a Chair and guide for procedural fairness.
 - b. **Accountants** in good standing and registered with the MIPA with no prior adverse findings against them, to serve as the reasonable accountant.
 - c. **Public Interest** persons to ensure fairness in the decision.
- iv. The Committees shall not be subject to the direction or control of the Board or any other person.
- v. No person while serving as a member of the Board of MIPA shall be a member of the Committees.

- vi. All members of the Committees shall be resident in the Republic.
- vii. Members of the Committees shall be appointed for a period of two years and may, subject to re-appointment by the Board, serve for not more than two additional terms.
- viii. No person shall be a member of more than one of the committees and /or any other committees of the MIPA at the same time.
- ix. The chairpersons of the committees shall, in the event of equality of votes have a casting as well as a deliberative vote.

b) The Investigation Committee

Out of the pool of 15 persons, 5 will be selected for the Investigation Committee by MIPA. The Investigation Committee shall be constituted of a balance of professional expertise and outside judgment.

Among the 5 people sitting on the Committee, a Chairperson will be appointed to preside over the proceedings. The Committee shall consist of three MIPA members in good standing who have over 10 years' experience and knowledge in the field of Accountancy and one public interest member. The Chairperson shall be a barrister with at least 10 years standing at the Bar of Mauritius.

Should the Chairperson be absent for any reason on any day the Committee meets, the Committee shall by vote decide who will be assigned the role of the Chairperson.

Three members of the Committee, including the Chairperson, shall constitute a quorum.

The Investigation Committee may co-opt such other persons, or invite such others to the meetings, as may be necessary in order to assist them in their duties.

A member of the MIPA staff shall act as Secretary to the Committee.

c) The Disciplinary Committee

No person sitting on the Investigation Committee in relation to a case may subsequently sit on the Disciplinary Committee appointed to hear the same case. Therefore, out of the remaining 10 persons, 5 will be selected to form part of the Disciplinary Committee.

The Disciplinary Committee shall consist of a Chairperson who shall be a barrister with at least 10 years standing at the Bar of Mauritius, three MIPA Members in good standing who have over 10 years' experience and knowledge in the field of Accountancy and one public interest member. The Chairperson shall be a barrister with at least 10 years standing at the Bar of Mauritius.

Should the Chairperson be absent for any reason on any day the Committee meets, the Committee shall by vote decide who will be assigned the role of the Chairperson.

Three members of the Committee, including the Chairperson, shall constitute a quorum.

The Disciplinary Committee may co-opt such other persons, or invite such others to the meetings, as may be necessary in order to assist them in their duties.

A member of the MIPA staff shall act as Secretary to the Disciplinary Committee.

d) **The Appeal Committee**

The Appeal Committee shall not include a member who is/was involved in the Investigation or Disciplinary proceedings or committee. The appeal process shall include the same procedures as apply to hearings before the Disciplinary Committee. The Appeal Committee shall consist of a Chairperson who shall be a barrister of at least 10 years standing at the Bar of Mauritius, one MIPA member who shall have not less than 15 years' proven experience and knowledge in the field of accountancy, and one public interest person who shall have not less than 10 year's proven experience and knowledge in a field other than accountancy.

A member of the MIPA staff shall act as secretary to the Appeal Committee.

5. Investigation and Disciplinary Framework

The I&D Framework will incorporate the following procedures:

- (1) The breach or the complaint (if there is any) will be considered by the Investigation Committee. **(The Investigative Process)**
- (2) Based on the information gathered, the Investigation Committee will decide whether or not there is sufficient matter to be referred to the Disciplinary Committee. **(The Disciplinary Process)**
- (3) The Disciplinary Committee will then take over the hearing of the case.
- (4) Appeals may be had of the decisions of the Disciplinary Committee. **(The Appeal Process)**

Every person forming part of any Committee or assisting in the investigative, disciplinary and appeal processes shall be independent of:

(a) The subject of the investigation; and

(b) Anyone connected with or interested in the matter under investigation

and shall make a written statement that he is independent from the case or any person connected with or interested in the matter under investigation.

If a conflict of interest arises at the outset, or arises during the investigation or during any of the Committee hearings, the concerned person shall immediately withdraw from the case. The person in conflict, shall then be replaced, as the MIPA may determine, by another person who meets the requirements set out above.

6. The Investigative Process

- (i) The Investigation Committee shall, subject to these Rules, determine its own procedure.
- (ii) The Investigation Committee shall analyse with utmost care any complaint made by any person or authority to ascertain whether there is any cause for concern or any reason for investigation.
- (iii) The Secretary of the Investigation Committee, who shall be a staff member of MIPA, will assist the Investigation Committee in the process of gathering such information as may be relevant. The Investigation Committee will call such parties and request for such information as it deems necessary.
- (iv) The Investigation Committee shall seek to establish the rule, code, standard, or law that is alleged to have been breached or the misconduct that is alleged to have taken place. Misconduct includes any of the following:
 - Criminal activities;
 - Acts or omissions likely to bring the accountancy profession into disrepute;
 - Breaches of the MIPA Rules, breaches of professional standards, including breaches of ethical requirements, for instance, the Code of Ethics;
 - Gross professional negligence;
 - A number of less serious instances of professional negligence that, taken together, may indicate unfitness to exercise practising rights; and
 - Unsatisfactory work.
- (v) The Investigation Committee shall seek to obtain evidence relevant to the allegation. This includes documentary evidence and statements (of witnesses, of the complainant and of the member). Any statement shall be signed by the person giving it to certify that it is true, correct and accurate.

- (vi) The defendant member will be given a reasonable opportunity to present in such manner as the Investigation Committee may determine, such facts and submission as the member may wish to place before it in relation to the matter being investigated. At this point, the member should be made fully aware of the complaint against them, but is not entitled to any witness statements obtained during the investigation.
- (vii) On completion of the investigation process, the Investigation Committee shall review the evidence and decide whether there appears to be a case to pursue. If the Investigation Committee is satisfied that there is a case to pursue, the matter shall be referred to the Disciplinary Committee (the Referral Decision).
- (viii) The MIPA shall, by way of a Notice of Hearing, notify the defendant member in writing of the Referral Decision within a reasonable time, and in any case, not later than 10 days after the date on which the decision to pursue the case has been taken. The Notice of Hearing shall set out the alleged offences laid against the defendant member, the date and time at which he is summoned to be and appear before the Disciplinary Committee and of his right to be accompanied.
- (ix) Where the Investigation Committee finds that there is no case against the Defendant member, it shall dismiss the matter.
- (x) The investigative process may be placed on hold if the matter being investigated or deliberated comes or is currently before a court or other regulatory authority up to the conclusion or dismissal of the process before the authority. The investigative process may then continue depending on the outcome of the other process.
- (xi) Cases can be handled by the Investigative Committee without the need for a full Committee hearing if the parties agree on an alternative dispute resolution, or if the defendant member admits the offences.
- (xii) A maximum of 3 cases may be heard by the Investigation Committee in one sitting.

7. The Disciplinary Process

- i. Where the Investigation Committee decides that there is a case to pursue, the Disciplinary Committee shall take over. The Investigation Committee shall hand over all the required information and documentation in relation to the investigation to the Disciplinary Committee which shall take over.
- ii. Before the commencing of the disciplinary proceedings, the Chairperson of the Disciplinary Committee will:

- Explain to the Defendant member who the Committee members are and the reason for constituting the Disciplinary Committee.
 - Introduce all present and explain their roles.
 - Explain how the hearing will be conducted.
- iii. Witnesses shall be called individually. Witnesses shall not be present throughout the hearing of the Disciplinary Committee.
- iv. The defendant shall be entitled to speak and give evidence to the Committee on his own behalf, or to be represented.
- v. Where the defendant fails to attend or be represented at the Hearing, the Chairman of the Disciplinary Committee shall:
- (a) require evidence that the defendant has been served with the Notice of Hearing (defined above) or that all reasonable endeavours have been made to inform him of the Hearing; and
 - (b) inquire whether any reasons for the defendant's absence have been communicated to the MIPA Secretariat.
- vi. If satisfied that the Notice has been duly served on the defendant or that all reasonable endeavours have been made to inform him of the Hearing, the Committee may hear and determine the case in the defendant's absence.
- vii. It is permitted to a qualified lawyer or other person chosen by the defendant member to accompany and represent the member at all disciplinary proceedings, and to advise the defendant throughout the disciplinary process.
- viii. If insufficient facts have been found, the case will be dismissed.
- ix. If the allegations have been proved, the Committee may impose any one or more of the following sanctions:
- a) cancellation of registration as a member in practice and withdrawal of practising certificate or certificate of registration;
 - b) suspension of membership from the MIPA for such period of time as is fair, reasonable and proportionate, in all circumstances of the case; and/or
 - c) verbal and written warnings.
- x. The purpose of sanctions is not to be punitive but to protect the public interest. One of the objectives of imposing sanctions is to demonstrate to the public that the profession is

dedicated to maintaining and enhancing standards and, ultimately, removing from the profession those who do not deserve to belong in it.

- xi. In deciding what sanction to be imposed on the defendant member in any situation, the Disciplinary Committee shall weigh the interests of the member and the public interest. The sanction in each case must demonstrate a considered and proportionate balance between:
 - a) The public interest;
 - b) The interests of the accountancy profession as a whole;
 - c) The interests of the particular member in the case;
 - d) The seriousness of the case;
 - e) The financial sums involved in the wrongdoing;
 - f) The Defendant's financial means;
 - g) The issue of proportionality;
 - h) The mitigating and aggravating factors in the case;
 - i) The maintenance of proper standards of professional conduct;
 - j) The maintenance of public confidence in the profession;
 - k) Any bad faith/motive behind the making of the complaint against the member; and
 - l) Such other matters as the Committee may deem important.
- xii. Reasons shall be given in writing for any decision of the Disciplinary Committee within a reasonable time and, in any case, not later than 10 days after the day the decision has been taken.

8. The Appeal Process

- i. The Defendant member has the right to appeal against the decision of the Disciplinary Committee and any imposed sanction(s). The Appeal should be directed to the Appeal Committee as soon as the Defendant member signifies his intention to appeal. The member must signify to the Disciplinary Committee and to the MIPA of his intention to appeal within 14 days after being notified of the decision of the Disciplinary Committee.
- ii. Pending the decision of the Appeal Committee, any order made by the Disciplinary Committee against the Defendant member may be suspended.
- iii. The appeal shall be dealt with by the Appeal Committee as soon as possible, not later than 14 working days after receiving the appeal request.
- iv. The decision of whether or not to accede to the appeal request vests exclusively with the Appeal Committee, whose decision shall be binding and irrevocable. Should the member still feel aggrieved, they are free to seek legal redress before the appropriate court.

- v. The Defendant member shall be informed, in writing, of the date, time and place of the Appeal Committee if the appeal request is being entertained.
- vi. The Chairperson on the Appeal Committee shall introduce all those present and explain their role.
- vii. The member's written reasons for requesting the appeal shall be read out.
- viii. The purpose of the hearing and the way it will be carried out shall be explained.
- ix. The Appeal Committee can uphold the decision of the Disciplinary Committee, overturn it or replace it with a decision of its own, if it becomes apparent that the decision reached was not reasonable (decision is unfair or sanction is disproportionate) or if the disciplinary procedure was not adequately followed.
- x. Reasons shall be given in writing for any decision reached by the Appeal Committee within 7 days of the hearing.

9. Other Matters

- i. The MIPA shall delegate a staff member to assist the Committees in the discharge of their functions and will provide such administrative support as may be required.
- ii. The MIPA will make available relevant copies of details of relevant evidence, any relevant papers and witness statements to the member at least one week before the Disciplinary Committee.
- iii. One week preparation for the case shall be considered as sufficient time granted to the member to prepare their case.
- iv. If the member or the member's chosen representative cannot attend any hearing, the member shall contact the MIPA with the least delay possible to notify it of same. An alternative date shall be agreed by the parties within a 5-day period, subject to the approval of the Committee members.

10. Document Retention Policies

Proper records shall be kept by the Committees concerning the investigations, hearings and deliberations made by each Committee. Such records may serve as precedents for future cases and ensure a high degree of consistency in the manner the cases are dealt with by the Committees. Persistent offenders may also be identified, and reliable statistics produced.

As recommended by the International Federation of Accountants (IFAC), records should be retained long enough to ensure that relevant information is available to protect the public interest and the members altogether. Such records may be maintained in electronic or paper format.

11. Publishing of Reports/Decisions on the MIPA Website

The MIPA shall ensure that the public is aware that the Committees exist where they entertain complaints against members. Any member of the public who wishes to raise any issue concerning any MIPA member shall know where and how to do it.

Bearing in mind that reports of the investigative and disciplinary proceedings may serve as a valuable educational tool, the MIPA reserves the right to publish the findings of the Committees on its website after these Committees have given their decisions. Case reports may be published to educate the members and the public in general of the consequences of misconduct.

As per the IFAC Statement of Membership Obligations (SMO) 6, an annual report may be prepared and made available to the public summarising the results of investigative and disciplinary proceedings. Copies of the report shall also be made available, upon request, to the appropriate public authority. Where the relevant bodies need a court order to be able to obtain such information from the MIPA, the MIPA will give the report only after the court order having been issued.