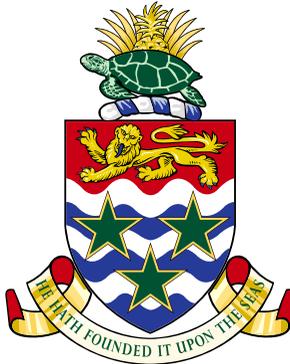


CAYMAN ISLANDS



Accountants Law, 2016 (Law 6 of 2016)

ACCOUNTANTS (DISCIPLINARY) REGULATIONS, 2016

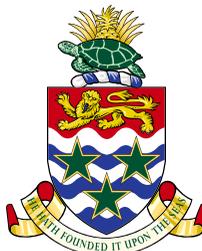
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CAYMAN ISLANDS



Accountants Law, 2016 (Law 6 of 2016)

**ACCOUNTANTS (DISCIPLINARY)
REGULATIONS, 2016**

(SL 63 of 2016)

The Cabinet, in exercise of the powers conferred by sections 21(6) and 30 of the Accountants Law, 2016 [Law 6 of 2016], in consultation with the Council, makes the following Regulations —

Citation

1. These Regulations may be cited as the Accountants (Disciplinary) Regulations, 2016.

Definitions

2. In these Regulations —

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

“**complaint**” means a situation referred to in section 18 of the Law to which section 19 applies;

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

“**notice**” means notice in writing;

“**prima facie case**” means a case that could be referred for disciplinary action under section 20 of the Law; and

“**representative**”, in relation to a defendant, means a person appointed by the defendant, or permitted by the Disciplinary Tribunal, to represent the defendant in proceedings under these Regulations.

Investigation Committee and Disciplinary Tribunal

Conflicts of interest

3. (1) No person shall participate as a member of the Investigation

Committee in the investigation of a complaint made by that person.

(2) No person shall participate as a member of the Investigation Committee and of a Disciplinary Tribunal in relation to the same complaint or matter.

Relevance of codes of practice, rules, etc.

4. In discharging its functions under these Regulations, the Investigation Committee and the Disciplinary Tribunal may have regard to all relevant matters, including any code of practice (whether relating to the ethical, the technical or any aspect of public practice) and any rules or guidance affecting the member concerned.

Quorum for Disciplinary Tribunal

5. At any hearing of the Disciplinary Tribunal, a number of members of the Tribunal that is more than half the total number of the appointed members shall constitute a quorum, provided that a majority of the persons constituting the quorum are not members of the Institute.

Remuneration of Tribunal members

6. The Institute may remunerate (at rates to be determined by the Council), and pay the reasonable expenses of, members of the Disciplinary Tribunal who are not members of the Institute.

Investigation of Complaints

Bringing of complaints

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

(2) Every member shall, where it is in the public interest for the member to do so, report to the Council any facts or matters referred to in paragraph (1) of which the member is aware, and failure to do so may constitute misconduct under section 18(a) of the Law.

(3) As soon as practicable after a complaint is referred by the Council to the Investigation Committee, the Council shall serve on the member against whom



the complaint was made a notice stating that the complaint has been referred to the Committee and the substance of the complaint.

Power of Investigation Committee to call for information, etc.

8. (1) The Investigation Committee may, by notice served on any member, call for such information and explanations, and such books, records and documents, as the Committee considers necessary to enable it to perform its functions under these Regulations and Part 4 of the Law.
- (2) Any member on whom a notice is served under this Regulation shall comply with the notice within the period of fourteen days beginning with the date of service or such longer period as the notice may allow and failure to do so may constitute misconduct under section 18(a) of the Law.

Conclusion of investigation

9. (1) Before making any recommendation under section 20 of the Law, the Investigation Committee —
- (a) shall give the member against whom a complaint is made the opportunity to make written representations to the Committee, unless it is satisfied that the member has already been given adequate opportunity; and
 - (b) may, if it thinks fit, give the member or the member's representative the opportunity of being heard before the Committee.
- (2) In deciding whether to refer the complaint to the Disciplinary Tribunal, the Investigation Committee may take into account any facts or matters that were the subject matter of an earlier complaint against the member —
- (a) that was considered by the Committee at any time during the preceding six years; and
 - (b) in respect of which the Committee found that a *prima facie* case was disclosed, but did not recommend a referral to the Tribunal.
- (3) If the Committee decides to recommend that the complaint be referred to the Disciplinary Tribunal —
- (a) it may also refer to the Tribunal an earlier complaint, the subject matter of which was taken into account under paragraph (2); and (b) it shall send the defendant a summary of the material facts and matters that were considered by the Committee together with —
 - (i) a summary or copy of any written representations made to it by the defendant; and
 - (ii) if the defendant has appeared before it in person or by a representative, a summary of any oral representations made to it.

- (4) If the Investigation Committee finds that a complaint discloses a *prima facie* case but decides that no further action be taken on it, the Committee shall serve a notice to that effect on the member concerned.
- (5) If, within the period of twenty-eight days beginning on the date of service of a notice under paragraph (4), the member concerned serves notice on the Committee that he is unwilling to accept the finding that a *prima facie* case exists then, unless on reconsideration the Investigation Committee finds that no *prima facie* case exists, the Committee shall refer the complaint to the Disciplinary Tribunal.

Proceedings of the Disciplinary Tribunal

Disciplinary Proceedings

10. (1) If, in the course of proceedings of the Disciplinary Tribunal, any member of the Disciplinary Tribunal —
 - (a) is for any reason unable to attend the hearing or any adjourned hearing of the complaint; or
 - (b) unable to continue to attend such hearing,the remaining members of the Tribunal may, subject to paragraph (2), proceed or continue with the hearing.
- (2) The Tribunal may only proceed or continue with the hearing if - (a) there is a quorum present; and
 - (b) where the defendant is present or represented at the hearing, the defendant or the representative consents.
- (3) If the remaining members of the Disciplinary Tribunal do not proceed or continue with the hearing or complete the hearing but are unable to agree on a finding, the complaint shall be heard or re-heard by a new Tribunal consisting of the original Chairman and different members from those in the original Tribunal.
- (4) If at any time during the hearing of a complaint the Chairman of the Disciplinary Tribunal is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the hearing to be completed by that sitting of the Tribunal, the Chairman may direct that the complaint be re-heard by a new Tribunal appointed for the purpose.
- (5) The Disciplinary Tribunal may appoint an attorney-at-law to act as legal assessor at the hearing of a complaint and the person so appointed shall advise the Tribunal on matters of law but shall take no other part in its proceedings.
- (6) Where on an appeal under section 27 of the Law the Grand Court orders a new hearing by a Disciplinary Tribunal —



- (a) no member of the original Tribunal may be appointed as a member of the Tribunal re-hearing the complaint; but
- (b) a person appointed as a legal assessor to the original Tribunal may continue to so act.

Hearing of complaints

- 11.** (1) As soon as practicable after a Disciplinary Tribunal has been constituted to hear a complaint, the Tribunal shall serve on the defendant a notice stating the substance of the complaint and the time and place fixed for the hearing.
- (2) The defendant may appear before the Disciplinary Tribunal in person or by a representative and the Tribunal shall give the defendant or the representative a reasonable opportunity of being heard before it.
- (3) If the defendant does not attend and is not represented at the hearing, despite a notice under paragraph (1) having been served, the Tribunal may hear the complaint in the defendant's absence.
- (4) The Disciplinary Tribunal may at any stage of the proceedings give such directions and order the production of such documents as may be required for the just determination of the complaint.

Evidence of certain matters

- 12.** (1) Without prejudice to any other ground on which a member may be adjudged to have been convicted of a criminal offence of the kind referred to in section 18(g) of the Law, the fact that the member —
- (a) has, before a court of competent jurisdiction within or outside the Islands, pleaded guilty to or been found guilty of an indictable offence or an offence for which a court may impose a sentence of imprisonment; or
 - (b) has, before a court of competent jurisdiction outside the Islands, pleaded guilty to or been found guilty of an offence corresponding to one which is an indictable offence or for which a court may impose a sentence of imprisonment in the Islands,
- shall, in proceedings before the Disciplinary Tribunal, be conclusive evidence of the commission by the member of such a criminal offence.
- (2) Without prejudice to any other ground on which a member of the Institute may be adjudged to have breached the standards of professional conduct of the member's overseas professional accounting institute, or the professional standards as prescribed by the Institute, the fact that the member has in proceedings before either institute been the subject of an adverse finding in respect of the member's conduct shall, in proceedings before the Disciplinary Tribunal, be conclusive evidence of the commission by the member of such a breach.

- (3) Paragraphs (1) and (2) do not apply to a finding that has been set aside on appeal or other judicial review or in respect of which any appeal or judicial review is pending.
- (4) A finding of fact —
 - (a) in any civil or criminal proceedings before a court of competent jurisdiction in the Islands or elsewhere; or
 - (b) in any proceedings before, or report by, the Cayman Islands Monetary Authority,shall for the purposes of these Regulations be *prima facie* evidence of such fact.
- (5) A Disciplinary Tribunal may, for the purposes of this Regulation, act upon such evidence of the making of a finding of fact, a finding of guilt or of an adverse finding as to professional misconduct, as the Tribunal thinks fit.

Powers of Disciplinary Tribunal

- 13.** (1) The Disciplinary Tribunal appointed to hear a complaint shall —
- (a) if it is of the opinion that the complaint has been proved, or may be taken as proved by virtue of Regulation 12, make a finding to that effect; or
 - (b) if it is of the opinion that the complaint has not been proved, dismiss the complaint.
- (2) Without prejudice to the generality of section 21(4) of the Law, the disciplinary action that may be taken against the defendant under that section shall include —
- (a) suspension of membership; (b) a reprimand;
 - (c) a fine;
 - (d) an order that the defendant undertake activities to comply or ensure designated staff comply with the continuing professional development requirement prescribed in Schedule 2 of the *Accountants Law (Application for Membership) Regulations, 2016*;
 - (e) a requirement that relevant firm (at its own expense) implement a remedial plan, assign a reviewer to oversee work, or appoint an independent person to report to the Institute on the relevant firm's compliance; and
 - (f) an order that the member shall —
 - (i) waive the whole or part of any fee that has been agreed by or invoiced to a client;
 - (ii) repay to a client the whole or part of any fee that the client has paid; or



- (iii) pay to a client the whole or part of any sum of money that has been retained by the defendant in or towards payment of a fee.
- (3) An order made by the Disciplinary Tribunal may include such terms and conditions as the Disciplinary Tribunal considers appropriate, including, in the case of an order for exclusion from membership under section 21(4)(a) of the Law, a recommendation that no application for readmission be entertained before the end of a specified period.

Tribunal order respecting provision of assurance services

- 14.** (1) Where a matter in relation to the provision of assurance services by a member is referred to the Disciplinary Tribunal and the Tribunal is satisfied that an order of a disciplinary nature should be made, the Tribunal may order that the member shall —
- (a) terminate one or more agreements with clients to provide such services;
 - (b) refrain from assigning named “practitioner members” or “designated professionals”, as those terms are defined in the Accountants (Quality Assurance) Regulations, to agreements with clients to provide assurance services for a period of time;
 - (c) limit the types of assurance services that the member may provide; or
 - (d) refrain from providing assurance services to new clients for a prescribed period of time.
- (2) Before making an order under paragraph (1), the Tribunal may take account of —
- (a) any condition imposed on a public practice firm under Regulation 14 of the Accountants (Quality Assurance) Regulations, 2016 and the public practice firm’s effort to comply with such condition; and
 - (b) any contractual restrictions imposed on a practitioner member or designated professional by the public practice firm to which the member or professional belongs.
- (3) In this Regulation, the terms “assurance services”, “designated professional” and “practitioner member” have the meanings assigned them in the Accountants (Quality Assurance) Regulations, 2016.

Defendant to be heard on proposed disciplinary action

- 15.** Before making an order under section 21(4) of the Law or Regulation 14, the Disciplinary Tribunal shall —
- (a) if the defendant is present or represented before it, give the defendant or the representative an opportunity to make representations to the Disciplinary Tribunal either orally or in writing with regard to the proposed order; or

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

Order to pay Defendant's costs

- 16.** If the Disciplinary Tribunal appointed to hear a complaint dismisses the complaint as unproved, it may order the Institute to pay all or part of the defendant's costs in defending the complaint.

General

Publication of findings and other orders

- 17.** (1) Where the Disciplinary Tribunal makes a finding or order under these Regulations, it shall cause a record of its decision to be published, as soon as practicable, in such manner as it thinks fit.
- (2) Where the Disciplinary Tribunal dismisses a complaint it shall, if the defendant so requests, cause a record of its decision to be published as soon as practicable, in such manner as it thinks fit.
- (3) Unless the Disciplinary Tribunal otherwise directs, the Council shall maintain a record of decisions published under this Regulation and such record —
- (a) shall state the name of the defendant;
 - (b) shall describe the Tribunal's finding and the order or orders (if any) made against the defendant; but
 - (c) need not include the name of any person or body concerned in the complaint other than the defendant.
- (4) The Disciplinary Tribunal shall not publish a record of a decision under this Regulation until —
- (a) the period allowed by section 27 of the Law for giving notice of appeal against the decision has expired;
 - (b) if notice of appeal is given —
 - (i) the appeal is withdrawn or struck out for want of prosecution or for any other reason; or
 - (ii) the appeal is decided against the defendant.
- (5) Notwithstanding paragraphs (2) and (4), the Disciplinary Tribunal may cause a record of its decision to be published at any time —
- (a) if the hearing by the Tribunal was held wholly or partly in public; or



- (b) if in its opinion publication is desirable in view of any statement or comment made in the public domain.

Publicity for the disciplinary process

- 18.** (1) Notwithstanding anything in these Regulations, the Chairmanship panel of the Disciplinary Tribunal may at any time make a public statement about a matter or complaint that in its determination is a matter of public concern respecting —
- (a) any complaint referred to the Tribunal; or
 - (b) any matter relating to or connected with the performance by the Tribunal of its functions under the Law.
- (2) The Chairman of the Disciplinary Tribunal may, subject to any restrictions which the Chairman thinks appropriate, authorise the disclosure, to any of the following persons, of information concerning proceedings brought or to be brought before the Tribunal —
- (a) the complainant;
 - (b) any person who, before the Investigation Committee has completed its investigation, made written representations to the Investigation Committee on any fact or matter subject to the investigation; or
 - (c) the complainant's personal representative, where the complainant dies before the complaint is finally determined.
- (3) A hearing of a complaint may be held in public if the Chairman of the Tribunal has authorized it to be so held and such an authorization may —
- (a) relate to a particular case, to cases of one or more classes, or to cases generally; and
 - (b) be given subject to any restrictions which the Council thinks appropriate.
- (4) Where any hearing is held in public by virtue of an authorization under paragraph (3), the Chairman of the Disciplinary Tribunal may exclude the press and the public from all or part of the proceedings if it appears to the Chairman desirable to do so in the interests of justice or for any other reason deemed sufficient by the Chairman.

Transitional provision

- 19.** (1) Subject to paragraph (2), these Regulations apply in relation to —
- (a) facts or matters that come to the attention of the Council after the date of commencement of these Regulations, whether or not they are facts or matters that occurred or were done at any time before that date; and
 - (b) facts or matters that came to the attention of the Council before the date of commencement of these Regulations but were not laid by it before the Investigation Committee before that date.

- (2) Regulations 12(2) and (4) do not apply in relation to facts or matters that came to the attention of the Council before the date of commencement of these Regulations.

Made in Cabinet the 23rd day of November, 2016.

Kim Bullings
Clerk of the Cabinet

