



The Taxation Institute of Hong Kong
(the “Institute”)
Disciplinary Proceedings Regulations
(the “Regulations”)

approved by the Council of the Institute on the 20th day of December, 2018 pursuant to Article 41(1) of the Articles of Association of the Institute

General

1. The Regulations are supplementary to Articles 40 to 45 in the Articles of Association of the Institute (the “**Articles**”) relating to disciplinary proceedings. To the extent that there is any inconsistency between the Regulations and the Articles, the Articles shall prevail.
2. Unless otherwise stated, the Regulations are applicable to each of the disciplinary bodies referred to in Article 40(a), (b) and (c) (“**Disciplinary Body**”).
3. The Regulations are subject to changes and modifications from time to time as decided by the Council at its absolute discretion.

Confidentiality, Evidence and Procedure

4. All parties involved in a complaint (the “**Complaint**”) against a member, graduate or student of the Institute (the “**Complaine**”) filed with the Institute by a complainant (the “**Complainant**”) must observe strict confidentiality. The relevant information will only be disclosed to individuals on a need-to-know basis.
5. All proceedings in respect of any Disciplinary Body shall not be open to the public unless the Council, upon application by the Complaine, decides otherwise.
6. The rules of evidence under Hong Kong law shall not be required to be strictly observed by any Disciplinary Body. The principles of fairness and reasonableness must be observed to the maximum extent permitted by the circumstances and the nature of the Complaint involved.
7. Each Disciplinary Body may from time to time hold a plenary meeting (“**Plenary Meeting**”) of all its members to consider and decide by resolutions (“**Resolutions**”) on policy, general or procedural issues. The quorum of a Plenary Meeting shall be three members of the relevant Disciplinary Body.
8. Subject to the Articles, the Regulations and any relevant Resolutions of the Disciplinary Body, the chairman presiding over each case shall decide on procedural issues which may arise from time to time during the conduct of the proceedings including, without limitation, the prescribed period for any notice, response and production of any relevant materials and information, whether as formal evidence or collateral to any purposes of the investigation, hearing or appeal, as the case may be.
9. Legal representation at any stage of the disciplinary proceedings is permitted, but not mandatory.

Qualifications and Appointment of Members to the Disciplinary Bodies

10. The Council shall appoint and maintain a list of persons eligible to be appointed as a member (“**Member**”) of each of the Disciplinary Bodies.

11. Each Member appointed by the Council shall be for a term from time to time fixed by the Council. The requisite qualifications and experience of each Member to be so appointed shall be decided and approved by the Council from time to time.
12. The Council shall appoint a chairman (the “**Chairman**”) for each Disciplinary Body. Unless otherwise decided by the Council or the Chairman, the Chairman shall chair the respective Investigation Group (“**IG**”), the Disciplinary Tribunal (“**DT**”), or Appeal Tribunal (“**AT**”), as the case may be, from time to time.
13. The Council may decide to appoint one or more vice-chairman or vice-chairmen (the “**Vice-Chairman**” or “**Vice-Chairmen**”) to each or any of the Disciplinary Bodies as it may see fit. A Vice-Chairman shall be entitled to exercise any of the powers of the Chairman when the Chairman is unavailable to do so.

Constitution of Disciplinary Bodies

14. Each Disciplinary Body shall be chaired by the Chairman of the respective Disciplinary Body appointed by the Council from time to time, unless the Council or the Chairman so decides otherwise.
15. Each Disciplinary Body shall, in addition to the presiding chairman, comprise at least two other Members appointed by the Council or the Chairman from the list of eligible Members approved by the Council from time to time.
16. Each Disciplinary Body shall comprise an odd number of Members (inclusive of the presiding chairman), with no casting vote given to the presiding chairman. A decision of the Disciplinary Body shall be by a simple majority of votes.
17. Each of the Members comprising the Disciplinary Body must declare that he has no conflict of interest in participating in the relevant proceedings of the Disciplinary Body in respect of any particular Complaint or matter to be dealt with.

Initiation of an Investigation

18. If a Complaint is received by the Institute in respect of any one or more of the matters described in Article 42(1), the Chairman of the IG shall consider whether any IG should be established in respect of the Complaint received.
19. The Institute will generally only handle a Complaint with the complainant’s name and contact details, unless an anonymous complaint is of a serious nature or relates to possible commission of a criminal offence. Limited efforts will be devoted to investigate the validity of any anonymous Complaint.
20. If the Complaint relates to any pending or current legal action or criminal proceedings, no investigation will be carried out in respect of such a Complaint so as to avoid any potential conflict with or hindrance on the relevant legal action or proceedings.

Investigation Group

21. If the Chairman of the IG decides that there is a prima facie case against any Complainee, the Chairman shall form an IG for the Complaint as soon as practicable.
22. The IG shall give a written notice to the Complainee setting out the Complaint against him and inviting him to give a written reply (“**Reply**”) within 21 days or such longer period as the IG may see fit.
23. The IG may request further information from the Complainant or the Complainee as it shall decide.

24. Upon receipt of the Reply or the expiry of the time for Reply, the IG shall decide whether the Complaint shall be referred to the DT. If the IG shall decide that the Complaint shall be so referred, the IG shall prepare and submit a written report (“**IG Report**”) with a charge sheet (“**Charge Sheet**”) comprising the specific charge (“**Charge**”) regarding the Complaint to the DT.
25. If the IG’s decision is that no further action is required, such a decision may be reviewed by the Council. If the Council disagrees with the decision of the IG, it may refer the matter to the Chairman of the IG who may form a different IG comprising Members different from the previous IG which has made the decision on the matter.

Disciplinary Tribunal

26. Upon receipt of the IG Report in accordance with Article 42(2), the Chairman of the DT shall form a DT and proceed to consider the matter in accordance with Article 43 unless the DT finds that there is no prima facie case against the Complainee or the Charge Sheet shall be returned to the IG for amendments.
27. The DT shall give a written notice of hearing to the Complainee advising him the time, place and date of hearing, serving on him the IG Report and the Charge Sheet setting out the Charge against him and inviting him to give his explanation at the hearing in person and/or in writing. Any written submission by the Complainee shall be filed with the DT at least 21 days before the scheduled hearing date.
28. At the DT hearing, both the IG and the Complainee are entitled but not obliged to be present in person with or without legal representation. The DT shall be entitled to make decisions on the Complaint based on the documents submitted by the parties if one party or both parties has or have chosen not to be present at the DT hearing.
29. The decision of the DT shall not be subject to any review by the Council and may be appealed by either the Complainee or IG to the AT.

Appeal Tribunal

30. If an appeal is submitted to the AT in accordance with Article 45, the Chairman of the AT shall form an AT to consider the appeal submitted and proceed to follow the procedures set out in Article 45.
31. Subject to the jurisdiction of the courts in Hong Kong, the decision of the AT in respect of the specific matter under appeal shall be final and conclusive, and shall not be overturned by anybody including the Council.

Record Keeping

32. All records of the Complaints, resolutions, documents, investigation reports, decisions, appeals, etc. should be filed and kept by the Council, including any Complaints which are not substantiated. Reference to those records may be made in relevant future cases.
33. All records shall be kept for 7 years after the Complaint is withdrawn, resolved, or the investigation is completed. If no other Complaint comes up against the same Complainee during the 7-year period after the Complaint is resolved, the relevant records of the Complaint shall be destroyed. The 7-year limitation does not apply to the keeping by the Institute of the decisions made in each Complaint for future reference.
34. The provisions of the Personal Data (Privacy) Ordinance shall be observed in maintaining records relating to Complaints. The guidelines and practice requirements recommended or issued by the Privacy Commission shall be observed in relation to the record keeping procedure which shall be reviewed from time to time by the Council.