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IAI Disciplinary Process

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Disclaimers



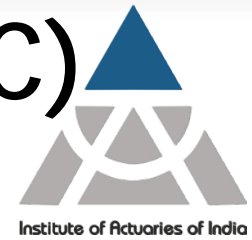
The content of these slides is just to explain the disciplinary procedures of the Institute of Actuaries of India to its members, only for education purpose. In no way these contents should be construed as opinion of the presenter or the Institute on any such matters related with the disciplinary proceedings of any member.

Disciplinary Framework



- The Actuaries Act, 2006 - Sec 26 to 36 of Chapter IV.
- Part I to IV of the Schedule under section 31 of the Act.
- The Actuaries (procedure for enquiry of professional and other misconduct) rules, 2008

Disciplinary Committee (DC)



- Council shall constitute DC consisting of
 - President or Vice President of the Council
 - Two Members of Council elected by the Council
 - Two Members nominated by Central Government
 - ✓ persons of eminence
 - ✓ experience in the field of law, education, economics, business, finance, accountancy or Public administration.

Sec 26

Prosecution Director (PD)



Function of Prosecution Director

- Assist Disciplinary Committee in making inquiries - information or complaint

Sec 27 (1)

- Shall follow such procedure as may be prescribed

Sec 27 (2)

Powers



DC,PD and Council shall have the same Powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of :

- a) Summoning and enforcing the attendance of any person and examining him on oath;
- b) the discovery and production of any document; and
- c) receiving evidence on affidavit

Public Servant



The Chairperson, Presiding Officer, Members and other officers and employees of Authority, Tribunal and Board, and PD shall be deemed to be a Public Servant within the meaning of section 21 of the IPC (45 of 1860)

Sec 54

The Schedule (see section 31)



- Part I – Professional Misconduct in relation to members of the Institute in Practice
- Part II – Professional Misconduct in relation to the members of the Institute in Service
- Part III – Professional Misconduct in relation to members of the Institute generally
- Part IV – Other misconduct in relation to member of the Institute generally

Keep in mind the Professional Conduct Standards

Part 1 - Professional Misconduct - members of the Institute in **Practice**



- Guilty of professional misconduct if:
 - (1) allows any person to practice in his name
 - (5) accepts an assignment as actuary previously held by another actuary without first communicating with him in writing
 - (7) engages in any business or occupation other than the profession of actuaries.....
 - (9) allows a person not a member of the Institute in practice to sign on his behalf...
 - (17) fails to invite attention to any material departure from generally accepted procedure....

Part 2 – Professional Misconduct in relation to the members of the Institute **in Service**



- If being an employee of any company, firm or person:
 - Pays or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him or
 - Accepts any part of the fees, profits or gains by way of commission or gratification or
 - Discloses confidential information acquired in the course of his employment except when required by law

Part 3 – Professional Misconduct in relation to members of the Institute **generally**



- Guilty of professional misconduct if :
 - Includes in any statement etc. to Council - particulars - false
 - Not being a fellow member acts as such
 - Does not supply the information called for or not complying with the requirements asked for by Council or any of its Committees
 - Contravenes Act or Rules
 - Guilty of any other Act or omission as specified by Council

Part 4 - Other misconduct in relation to member of the Institute **generally**



- Member of the Institute whether in practice or not:
 - A. (1) If held guilty by any civil or criminal court for an offence punishable with imprisonment for a term not exceeding six months
 - (2) If in the opinion of Council, he brings disrepute to profession or Institute - may or may not be professional work
 - B. Held guilty by civil or criminal court for an offence punishable with imprisonment for a term exceeding six months

Procedure of Enquiry



Procedure to be followed by PD

- Within 60 days of receipt of the complaint, the PD shall send to the Member/Firm particulars of the acts of commission or omission, or as the case may be, a copy of the complaint.
Rule 8 (1)(a)
- In case of a Firm, a notice shall also be sent, calling upon it to disclose the names of the Members concerned and to send particulars of acts of commission or omission or as the case may be, a copy of complaint, to such Members.
Rule 8(1)(b)

THE ACTUARIES (PROCEDURE FOR ENQUIRY OF PROFESSIONAL AND OTHER MISCONDUCT) RULES, 2008

Format of Complaint



Complaint shall be presented

a) before the Designated Person

b) in prescribed form (in triplicate)

Rule 3 (1)

Format of Complaint [Rule 3 (1)]



Institute of Actuaries of India

1. **Name of the Complainant:**
(with membership number, if Member of the Institute of Actuaries of India)
2. **Name of the Member /firm against whom complaint is being made:**
(with membership number / registration number of the firm, if known)
3. **Latest address of the complainant for communication**
4. **Last available professional address of the Member or the firm against whom the complaint is made**
5. Particulars of **allegation(s)** serially numbered together with corresponding clause / part of the Schedule, 1.....
or 2.
Particulars of **allegation(s)** serially numbered 3.....
together with clause / part of the relevant Schedule(s) 4.....
under which the alleged acts of commission or 5.....
omission or both would fall

Part 4 - Other misconduct in relation to member of the Institute **generally**



6. Particulars of evidence (s) adduced in support of the
.....
allegation (s) made
7. Name(s) of person who have knowledge of the facts
of the case

Date.....
Place.....

.....
Signature of the Complainant
(Name.....)

VERIFICATION

I,....., the Complainant, do hereby declare that what is stated above is true to the best
of my information and belief.

Verified today theday of.....20.....at.....

Date.....
Place.....

Signature of the Complainant
(Name.....)

If Complaint is filed by or on behalf of



1. Central Government/ State Government

Authorized by

Joint Secretary

Signed by

Under Secretary

Rule 3(3)

2. Statutory Authority (such as IRDA, RBI, SEBI)

Authorized by

Joint Secretary

Signed by

Under Secretary

Rule 3(4)

If Complaint is filed by or on behalf of



3. Company/Body Corporate/a Firm/ Association of Individuals

- a) A Resolution passed by the Board of Directors/ Partners etc.
- b) Specifically authorizing an officer/ a person to make complaint behalf of company

Rule 3(5)

Fee for filing Complaint



- Except in case of Central Govt., any State Govt., or any statutory authority, every complaint shall be accompanied by a fee of Rs. 500/-.

Rule 4(1)

- The fee shall be payable by demand draft in favor of the Institute payable at Mumbai.

Rule 4(2)

- Fee once paid shall not be refunded.

Rule 4(3)

Acknowledgement of Complaint



Complaint shall be *duly* acknowledged by the **Designated Person** with an Acknowledgment number.

Rule 3 (7)

Reference of Complaint to PD



The designated person shall endorse on every complaint

1. the date of receipt of complaint
2. his signature
3. and refer the complaint to the PD

Rule 5(1)

Registration of Complaint



PD should scrutinize the complaint and be satisfied that

1. Form is duly filled in
2. A Fee of Rs.500/- is received
3. The complaint is against a **Member / Firm**
4. If complaint is filed *on behalf* of an entity (other than an individual), whether he has the Rank or Specific Authority
5. The allegations relate to Misconduct of a member.
6. Whether Designated Person has duly acknowledged the complaint and given an Acknowledgement number

If found in order, PD shall register the complaint and give a serial number.

Rule 5 (3)

Defective Complaint



The PD may allow:

1. Rectification in his presence or
2. If not formal, grant such time as he may deem fit for rectification

Declinature of Complaint and Appeal



- If the complainant fails to rectify the defect, the PD may, by order and reasons recorded in writing, decline to register the complaint.

Rule 5 (6)

- Appeal against this order, to be made within 15 days of the order, to Disciplinary Committee

**Rule 5
(7)**

Withdrawal of a Complaint



- PD shall place the Application for withdrawal of a complaint by complainant before the Disciplinary Committee
- Disciplinary Committee may permit withdrawal at any stage.

Rule 6

- Any written information against a Member or a Firm, which is not in prescribed Form shall be treated as Information.

Rule 7(1)

- Informant shall be asked, whether he shall prefer to file a complaint in *prescribed Form* apprising him *that* -
 - a) longer time is taken for disposal of any Information than a complaint*
 - b) informant shall not have the right to be represented during the Enquiry or Hearing*
 - c) the Institute shall not inform the Informant nor entertain any queries at any and every stage.....*

Rule 7 (2)

Information



d) A copy of the final order shall be sent to the informant

**Rule 7
(2)**

- Any anonymous information received shall not be entertained by the Prosecution Director

Rule 7 (3)

- Defendant shall, within 21 days, submit his written statement (WS) to the PD. (PD may allow further 30 days.)

Rule 8 (3)

- Thereafter, PD may send a copy of the WS to the complainant who may submit his rejoinder within 21 days. (PD may allow further 30 days.)

Rule 8 (4)

- PD may also call for additional particulars or documents from –
 - a) the complainant*
 - b) the defendant*
 - c) any party to the complaint*

Presumption



Provided that if no WS is submitted by the defendant, or no rejoinder is filed by the complainant within the time allowed, the PD shall presume that the defendant/complainant have nothing further to state and proceed with further action.

Rule 8 (5)

The PD shall examine

1. the Complaint
2. the written statement
3. the rejoinder and
4. other additional particulars or documents *and* form his *prima facie* opinion, as to whether the *Member* or the *Firm* is guilty or not of any Professional or other misconduct.

**Rule
9(1)**

Prima facie Opinion



- If PD is of prima facie opinion that member/firm is guilty, or not guilty, then in either case, the PD will place his opinion before the DC along with the Complaint, WS, rejoinder and all relevant papers.

Rule 9(2) & 9(5)

- If the DC agrees with the opinion of the PD holding the Member/Firm prima facie guilty, it will proceed further under Ch IV.

Prima facie Opinion



- If DC disagrees with the prima facie opinion of the PD holding the Member/Firm prima facie guilty, it will forward the complaint to the Council to close the complaint or advise the PD to hold further enquiry into the complaint.

Rule 9 (4)

- After making further enquiry as advised, the PD shall submit his report to the DC.

Rule 9 (8)

OR

- If the DC agrees with the prima facie opinion of the PD holding the Member/Firm not guilty, it will refer the matter to the Council for closure.

Rule 9 (6)

Prima facie Opinion

- If the DC disagrees with the opinion of the PD, holding the member/Firm not guilty, it may either proceed under Ch IV, or may advise the PD to further enquire into the matter.

Rule 9 (7)

- After making further enquiry as advised, the PD shall submit his report to the Committee.

Rule 9 (8)

Action by Disciplinary Committee



If DC agrees with the PD that the Member/ Firm is guilty, then DC shall cause to deliver to the **defendant and the complainant**, a copy of

-

1. Prima facie opinion
2. Particulars of documents relied upon by the PD.

Rule 14 (2)

3. call for Written Statement by Defendant within such time as may be specified (may also grant additional time).

Rule 14 (3)

4. Defendant shall send a copy of his Written Statement along with supporting Documents to the PD and the Complainant.

Rule 14(4)

5. and call for Rejoinder from the complainant.

Rule 14 (5)

Hearing by the Disciplinary Committee



The Presiding Officer shall fix the date, hour and place for hearing and send a notice to

1. the PD
2. the Defendant and
3. the Complainant

to appear before the Disciplinary Committee in person to make oral submissions, if any.

Rule 14 (6)

If Defendant does not appear for hearing the DC may proceed exparte.

Rule 14(7)

Hearing by the Disciplinary Committee



- If Defendant pleads guilty, the Disciplinary Committee shall record the statement of the Defendant and submit the report to the Council.

Rule 14 (9)

- If Defendant does not plead guilty, then Disciplinary Committee shall fix a date for examination of witnesses or production of documents, if any.

Rule 14 (10)

- Notice to witnesses to attend or produce any other evidence may be sent, on application by Complainant, Defendant or Prosecution Director.

Rule 14 (11)

Next hearing by the DC



- Disciplinary Committee, shall, **take all such evidence** as may be produced by the complainant, the defendant or the Prosecution Director, including oral examination.
- Disciplinary Committee, may permit **cross examination** of any witness.

Rule 14(12)

- After presentation of evidence by the **PD** is over, the **complainant** shall be given an opportunity to present any additional evidence.

Rule 14(13)

Next hearing by the DC



- The Defendant shall be called upon to adduce his defence and produce his evidence. **Rule 14(14)**
- If Defendant applies to the Disciplinary Committee to issue any notice for compelling any witness for examination/ cross examination/ production of any evidence, the Disciplinary Committee, shall, issue such notice. **Rule 14(15)**
- Witnesses summoned at the request of the complainant /defendant, shall not be eligible for reimbursement of expenses. **Rule 14 (16)**

Next hearing by the DC



- The Defendant shall be called upon to adduce his defence and produce his evidence. **Rule 14(14)**
- If Defendant applies to the Disciplinary Committee to issue any notice for compelling any witness for examination/ cross examination/ production of any evidence, the Disciplinary Committee, shall, issue such notice. **Rule 14(15)**
- Witnesses summoned at the request of the complainant /defendant, shall not be eligible for reimbursement of expenses. **Rule 14 (16)**

Final Arguments



After evidences have been adduced,

1. the PD
2. the Defendant and
3. the Complainant

may present their arguments

Rule 14(17)

Report of the Disciplinary Committee



- After considering
 1. the WS
 2. the Rejoinder
 3. the Documents
 4. Oral submissions by Defendant, complainant, and the PD, the Disciplinary Committee will arrive at a finding whether the Defendant is guilty or not, of any Professional or other misconduct.
- Rule 14(19)**
- The Disciplinary Committee shall submit its report to the Council.
S 26 (2) & Rule (15)

Action by Council on DC's report



- 1) If the Council is satisfied with DC Report - Member is guilty - it shall record its finding - proceed in accordance with the provisions of section 30
- 2) In case Council is not satisfied with DC Report – may refer report again to DC for such further inquiry as may be directed through an order of the Council
- 3) If Council disagrees with findings of DC, it may direct PD or itself make an appeal the Authority

Sec 29

Member to be afforded opportunity of being heard



If the Council is of the opinion that a Member is guilty of a professional or other misconduct mentioned in the schedule, it shall afford to the member a reasonable opportunity of being heard before making any order against him and may take any one or more of the following actions

- a) Reprimand the Member; or
- b) Remove the name of the member from the register permanently or for such period, as it thinks fit;
- c) Impose such fine as it make think fit, which may extend to five lakhs rupees.

Sec 29

Appellate Authority



Constitution of Appellate Authority

- Constituted under sub-section (1) of section 22-A of Chartered Accountants Act, 1949 (38 of 1949) with some modification.

Sec 32

Appeal to Authority

- Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in section 30, may, within ninety days of the date of the date on which the order is communicated to him, prefer an appeal to authority.

Sec 36

Appellate Authority



The Authority may, after calling for the records of any case, revise any order made by the Council under section 30 and may –

- a) confirm, modify or set aside the order;
 - b) Impose any penalty or set aside, reduce or enhance the penalty imposed by the order
 - c) Remit the case to the DC for such further inquiry as the Authority considers proper in the circumstances of the case; or
 - d) Pass such other order as the Authority thinks fit
- Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order

Thank You