

DISCIPLINARY RULES

OF

**THE MORTGAGE ORIGINATION REGULATORY COUNCIL OF
SOUTH AFRICA
("THE ASSOCIATION")**



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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Rules, unless the contrary intention appears:

“AMC” means a person who has been admitted to membership of the Association as an Accredited Mortgage Consultant, and who is currently a member so designated;

“Applicant” means a person who has lodged an application with the Association to be accepted as a Member;

“Association” means the Mortgage Origination Regulatory Council of South Africa;

“Business Day” means any day other than a Saturday, Sunday or a gazetted national public holiday in the Republic of South Africa;

“Chairperson” means the Chairperson of the Tribunal as constituted in respect of a particular proceeding;

“Code of Practice” means the Code of Practice promulgated by the Association as in force from time to time;

“Constitution” means the Constitution of the Association as amended from time to time;

“Complainant” means the person or organisation making a complaint against a Member;

“Constituting Documents” means the Constitution, Code of Practice, Internal Dispute Resolution Procedures, Ombudsman's Rules and these Rules;

“Consumer” means a person who deals with a Member whether as a borrower, applicant, guarantor, prospective borrower or prospective guarantor, or who in any other way seeks the services of a Member in the ordinary course of that Member's business;

“Corporate Member” means a Member entered into the register of members of MORCSA as a corporate member;

“Deputy Chairperson” means the Deputy Chairperson of the Tribunal as constituted in respect of a particular proceeding;

“Exco” means the National Executive Committee of the Association as constituted from time to time;

“Internal Dispute Resolution Procedures” means the Internal Dispute Resolution Procedures promulgated by the Association, and as amended by the Exco from time to time;

“Investigating Officer” means a person appointed pursuant to sub-rule 0;

“Investigation Report” a report on investigation(s) made by the Investigating Officer pursuant to Rule 0;

“MCAA” means a person who has been admitted to membership of the Association as a Mortgage Consultant Awaiting Accreditation, and who is currently a member so designated;

“Member” means any member of the Association entered into the National Register;

“Membership Secretary” means the person appointed to that position by the Association from time to time;

“Misconduct” means Misconduct as defined from time to time in the Constitution;

“National Register” means the register of all Members maintained by the Association;

“Nominated Representative” means a natural person appointed by a Corporate Member to be that Member's representative at specified meetings as provided for in the Constitution;

“Non-active Member” means a person whose membership of the Association has been suspended pursuant to Rule 5;

“Notice of Alleged Misconduct” means a written notice provided by the Investigating Officer to the Member concerned and, where necessary in terms of these Rules, to the Tribunal by which an allegation of Misconduct is made;

“Ombudsman” means the person for the time being appointed to and occupying the position of Ombudsman pursuant to the Constitution, which position shall be known as the Ombudsman's Office;

“Ombudsman's Referral” means a complaint referred to the Tribunal by the Ombudsman pursuant to the Ombudsman's Rules in connection with information at the disposal of the Ombudsman's Office, for the purpose of investigation by the

Investigating Officer and any other disciplinary action permitted under these Rules;

“Ombudsman's Rules” means the Ombudsman Rules, as amended from time to time;

“Rules” means these disciplinary rules as amended from time to time;

“Suspension Order” means an order of the Tribunal to suspend the membership of a Member or Members, as contemplated in Rule 2.3 below;

“Tribunal” means the Association Disciplinary Tribunal established pursuant to the Constitution and Rule 0;

“Tribunal Secretary” means the person appointed to that position from time to time by the Exco.

1.2 Interpretation

In the interpretation of the Rules:

headings are disregarded;

words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;

singular includes plural and vice versa and words importing any gender include all other genders;

all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force;

where the Rules require a notice to be served on a Member, the notice is to be regarded as having been given by the Association and received by the Member:

1.2.1.1 if by delivery in person, when delivered to the Member;

1.2.1.2 if by post, 5 Business Days from and including the date of postage to the Member's address entered in the Register; or

1.2.1.3 if by facsimile transmission, whether or not legibly received, when transmitted to the Member's fax number entered in the Register and the Association's facsimile machine confirms receipt; but if the delivery

or receipt is on a day which is not a Business Day or is after 17h00 (Member's time), it is regarded as having been received at 09h00 on the following Business Day;

- 1.3 if there is an inconsistency between the provisions of the Rules and the Constitution then the provisions of the Constitution shall prevail and be duly and properly adhered to.

2. INVESTIGATIONS, INCLUDING OF COMPLAINTS

2.1 Investigation of complaints

Appointment of Investigating Officer

- 2.1.1.1 The Exco must appoint one or more persons to the position of Investigating Officer, but the person(s) so appointed may be an individual(s) or a juristic entity(ies). Each individual person appointed to the position of Investigating Officer, or if the Investigating Officer is not a natural person, each individual appointed or engaged to assist the Investigating Officer must have suitable investigative, legal, accounting and / or auditing qualifications and / or experience to the satisfaction of the Exco and shall not be a Member of the Association. The powers of an Investigating Officer may be exercised by each person so appointed.

- 2.1.1.2 The role of the Investigating Officer is to investigate complaints and suspected breaches of the Constituting Documents, and to investigate referrals and applications concerning membership in accordance with these Rules, and where required, to assist the Tribunal in proceedings coming before the Tribunal.

Lodging of Complaints

- 2.1.1.3 A complaint received by the Association and / or the Tribunal from any public or private source or person, including but not limited to any Member, the Ombudsman, or the Exco, in relation to conduct of a Member, must be referred directly to an Investigating Officer. A complaint may be received and acted upon regardless of whether the Complainant is identified in the complaint.

2.1.1.4 If a complaint is referred to the Investigating Officer by the Ombudsman, or by the Association through the Exco, the Investigating Officer must conduct an investigation into the complaint.

2.1.1.5 Subject to Rule 2.1.1.4, the Investigating Officer must not conduct an investigation, including an investigation in his or her own motion, whether the investigation arises from or will arise from a complaint or at the motion of the Investigating Officer:

unless he or she is of the opinion on a bona fide basis that a Member may have engaged in conduct amounting to Misconduct;

if he or she is of the opinion that it is more appropriate that the complaint be dealt with by a Court (which includes a prosecuting authority) or another independent complaints, disciplinary, conciliation, or arbitration body or procedure;

if the Complainant is not alleging that a Member has engaged in conduct amounting to Misconduct,

if the act or omission giving rise to the complaint occurred before the date of commencement of these Rules;

if the subject matter of the particular complaint was comprised in a complaint by the same person (or any one or more of them) previously considered by the Investigating Officer or the Disciplinary Tribunal unless the Investigating Officer is of the opinion that relevant new evidence is available;

if the Investigating Officer is of the opinion, following consultation with the Chairperson, that the complaint is frivolous or vexatious or is being pursued by the Complainant in a frivolous or vexatious manner or for an improper purpose;

if the Complainant solely seeks compensation or reimbursement;

if the substance of the matter is a commercial dispute between Members.

Subject to Rule 0, the Investigating Officer must, before deciding to conduct an investigation, require that the Complainant, if identifiable, provides a complaint in written form and particulars of the Complainant's identity and, where in the Investigating Officer's opinion it is necessary so to do to afford procedural

fairness to the Member who is the subject of the complaint, the Complainant's written consent to the disclosure of his, her or its identity.

In all cases, the Investigating Officer will keep the identity of the Complainant confidential except where the Complainant has consented in writing to the disclosure of his, her or its identity.

Rule 2.1.1.5 does not prevent the Investigating Officer from conducting an investigation or from referring a matter to the Tribunal on the initiative of the Investigating Officer where there has been no complaint, but where the Investigating Officer is of the opinion on a bona fide basis that a Member may have committed Misconduct.

Where the Investigating Officer is of the opinion that disclosure of the identity of the Complainant is necessary to afford procedural fairness to the Member who is the subject of the complaint, but the Complainant refuses to provide such written consent, and the Investigating Officer is not able to substantiate the subject matter of the complaint by independent means, without reference to the identity of the Complainant, the Investigating Officer must not take any further action in relation to the complaint other than to advise the Complainant that no further action will be taken in relation to the complaint.

2.2 Powers of Investigating Officer

The Investigating Officer may use all lawful means to conduct the investigation of a complaint and may conduct the investigation in any manner, using commonly accepted investigative techniques that the Investigating Officer considers fit.

The Investigating Officer may inspect the National Register and other records, including those of the Association, for the purpose of undertaking his, her or its duties as an Investigating Officer.

The Investigating Officer may require a Member to produce to the Investigating Officer documents (including records kept in electronic form) within the possession, custody or control of the Member, by way of notice in writing to the Member specifying particular documents or categories of documents, provided that the documents or categories so required to be produced must in the Investigating Officer's reasonable opinion be potentially relevant to the subject matter of a current investigation being conducted by the Investigating Officer. A Member who receives such a notice must produce the documents required to the Investigating Officer within 15 Business Days

from receipt of the notice, or such other longer time as is agreed in writing with the Investigating Officer. Failure to do so in a timely manner may result in further action being taken by the Tribunal for Misconduct pursuant to Rule 0.

The Investigating Officer may require a Member who is a natural person to attend on him or her for the purpose of being interviewed, by way of written notice in writing to the Member specifying the date, time and place of the interview and notifying the Member that he or she may have a legal representative present at the interview. A Member who receives such a notice must attend the interview and must answer all questions asked of him or her in the interview. Failure to do so in may result in further action being taken by the Tribunal for Misconduct pursuant to Rule 0.

The Investigating Officer may issue a notice in writing to a Member that is a Corporate Member requiring that the Member make available for interview the Nominated Representative of the Member, or requesting that the Member make available for interview any employee of the Member that has been involved in the conduct forming the subject matter of the complaint as specified in the notice, provided that the Nominated Representative of the Member shall be allowed to be present during any said interview. The Member must upon receiving such a notice cause the specified Nominated Representative and/or the said employee, as the case may be, to attend the interview, and must use its best efforts to ensure that each employee specified attends the interview. Failure to do so in a timely manner may result in further action being taken by the Tribunal for Misconduct pursuant to Rule 0. Any such notice issued by the Investigating Officer in relation to an employee other than the Nominated Representative must include a notification to the Member that:

2.2.1.1 the Investigating Officer does not have the power to compel the employee specified in the notice to be interviewed; and

2.2.1.2 any employee who agrees to be interviewed may have a legal representative present at the interview.

An interview conducted by the Investigating Officer must be recorded in writing or on audio tape, computer disc, DVD or other electronic form, and a copy made available to the Member and any other person interviewed as soon as practical upon written request by the Member concerned.

A Member who refuses to cooperate with the Investigating Officer may be guilty of Misconduct and therefore subject to action being taken against it in terms of these Rules.

The Investigating Officer may, after time limits for the production of documents and information have expired, finalise the Investigation Report to the Tribunal based on the evidence available at that time.

2.3 Power to suspend

If at any time during the course of an investigation the Investigating Officer suspects on reasonable grounds that a Member has committed, or been directly or indirectly involved in the commission of:

2.3.1.1 an act involving fraud or dishonesty, or

2.3.1.2 an act by which the reputation and standing of the Association is materially adversely affected in South Africa;

the Investigating Officer may, by notice in writing setting out the reasons, refer the matter to the Chairperson or Deputy Chairperson of the Tribunal with a copy of such notice in turn to be forwarded to the Member concerned by the Tribunal. The Investigating Officer may recommend that the Tribunal issue a Suspension Order, suspending the Member concerned from membership pending a Tribunal hearing.

Notwithstanding any other provision of these Rules, no Suspension Order shall take effect unless and until:

2.3.1.3 No later than 2 Business Days prior to the date upon which a proposed Suspension Order is to take effect, a written notice has been served by the Tribunal, or its duly authorised representative, on the Member concerned, giving the Member concerned an opportunity prior to the date upon which a proposed Suspension Order is to take effect, to make such representations and to provide such information to the Tribunal presiding in relation to the Suspension Order and the

Chairperson or Deputy Chairperson must consider, but is not bound by, any representations made by the Member; and

- 2.3.1.4 another member of the Tribunal, not being either the Chairperson or Deputy Chairperson, has signed an endorsement to the Suspension Order approving the making of it.

The Chairperson or Deputy Chairperson may upon receipt of a notice pursuant to Rule 0 from the Investigating Officer make a written order suspending the Member from membership of the Association, pending the outcome of a Tribunal hearing, and subject to Rule 0 such order for suspension takes effect after the expiration of 2 Business Days from the making of such Suspension Order. Notwithstanding any other provision of these Rules, no Suspension Order of a Member shall take effect unless and until another member of the Tribunal, not being either the Chairperson or Deputy Chairperson, has signed an endorsement to the Suspension Order approving the making of it.

A Suspension Order made by the Chairperson or Deputy Chairperson pursuant to Rule 0 will remain in effect until revoked by that person or the Tribunal.

A Member who is the subject of a Suspension Order made pursuant to Rule 0 may, by notice in writing to the Chairperson or Deputy Chairperson or Tribunal Secretary, require that the subject matter of the Suspension Order be referred to the Tribunal.

Where the Tribunal Secretary has received a notice from a Member pursuant to Rule 0, the Tribunal Secretary must within 2 Business Days by notice in writing notify the Chairperson or the Deputy Chairperson, who did not make the Order under Rule 0, and the Tribunal Secretary and failing it the notified Chairperson or Deputy Chairperson must convene the Tribunal as soon as practical to consider the continuation of or lifting of the suspension, in any event within 5 Business Days or such longer period as may be practical for the Member.

Where either the Chairperson or Deputy Chairperson has made a Suspension Order in respect of a Member pursuant to Rule 0, that person must refer by notice in writing the subject matter of the Suspension Order to the Tribunal, within 5 Business Days. That notice must be provided to the Tribunal Secretary and any supporting information as the Chairperson or Deputy Chairperson thinks fit. At the same time the Chairperson or Deputy Chairperson must in writing

notify the Member who is the subject of the Suspension Order that they have done so.

Where the Chairperson or Deputy Chairperson has made an order for suspension of a Member and the person who made that order or the Tribunal subsequently forms the opinion that he or she no longer has reasonable grounds to suspect that the Member has committed the Misconduct which is the subject of the notice, and it has not been referred to the Tribunal, that person and / or the Tribunal may by notice in writing to the Member revoke the order for suspension and that revocation will have immediate effect.

Where a Suspension Order pursuant to Rule 0 has been made in respect of a Member, the Investigating Officer must within 5 Business Days after the making of the Suspension Order prepare a Notice of Alleged Misconduct against that Member pursuant to Rule 0 and serve it within a further 5 Business Days on the Member and such service is deemed as service on the Member for the purposes of this sub Rule when effected by personal service or by registered mail or by post to the Member's address as contained in the National Register.

The Chairperson or Deputy Chairperson, as the case may be, must in each particular case maintain a written record of those Tribunal members who are contacted by them for the purpose of signing the endorsement aforesaid, and of those Tribunal members who so sign.

2.4 Notice of Alleged Misconduct and Investigation Report

Where, upon investigation of a complaint and / or of possible Misconduct, the Investigating Officer considers that a Member may have engaged in Misconduct, the Investigating Officer must prepare a written Notice of Alleged Misconduct which must include particulars of the allegations of any breach of the Constituting Documents that is being made. The Investigating Officer must at the same time prepare a written Investigation Report, containing a detailed report in support of the Notice of Alleged Misconduct. The Investigating Officer must include with the Investigation Report copies of any correspondence received by the Investigating Officer from the Member who is the subject of the Notice of Alleged Misconduct, or any legal or other representative of the Member, and where the complaint was received from a Complainant, then from the Complainant except in a case where the written consent of the Complainant is not required or is not necessary.

The Investigating Officer must provide copies of the Notice of Alleged Misconduct and Investigation Report at the same time to:

2.4.1.1 the Member who is the subject of the Notice of Alleged Misconduct;
and

2.4.1.2 the Chairperson of the Tribunal

Where, pursuant to this Rule 0, the Investigating Officer may issue a Notice of Alleged Misconduct, the Investigating Officer may:

2.4.1.3 prepare and provide an amended Notice or Notices of Alleged Misconduct; or

2.4.1.4 a further Notice or Notices of Alleged Misconduct; or

2.4.1.5 with the leave of the Tribunal, withdraw a Notice of Alleged Misconduct as the case may require, from time to time.

The Tribunal Secretary may assist the presiding Chairperson to appoint a Tribunal to deal with that particular proceeding, after receiving either a Notice of Alleged Misconduct pursuant to Rule 0 or a notice pursuant to Rule 0, 0 or 0. [Note: What about 0? Or should this even/also apply to all situations?]

Where the Tribunal is considering an allegation of Misconduct and it appears to the Tribunal, on the basis of the material before it, that the Member may have engaged in a form of Misconduct that is not alleged or that may be alleged in a different and more appropriate manner in order to reflect the nature of the conduct, the Tribunal may direct the Investigating Officer to prepare a fresh Notice of Alleged Misconduct or an additional or amended Notice of Alleged Misconduct and serve it on the Member. The Tribunal may then proceed to deal with the matter in accordance with these Rules.

3. CANCELLATION OF MEMBERSHIP OR ACCREDITATION AND REFUSED APPLICATIONS FOR MEMBERSHIP OR ACCREDITATION

3.1 Proceedings for cancellation of membership or accreditation

The Membership Secretary may, in his or her absolute discretion, at any time refer to the Investigating Officer a Member or Applicant, as the case may be, who, in the Membership Secretary's opinion:

- 3.1.1.1 does not meet the requirements of membership of the Association and / or an accreditation of the Association; or
- 3.1.1.2 no longer meets the requirements of membership and / or accreditation of the Association or
- 3.1.1.3 has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided to the Association and the Investigating Officer shall treat a referral pertaining to such possible material misrepresentation according to these Rules as they pertain to Misconduct. [Ian: This should apply even if the Member has been admitted. As such, subsequent numbering and references in clauses below might have to include this rule]

A referral to an Investigating Officer pursuant to Rule 0 must be made by notice in writing, and the Membership Secretary must provide a copy of the notice to the affected Member or Applicant, as the case may be.

3.2 Refused applications for membership

In any case where an application for membership of the Association has been received from an Applicant but refused by the Association, and the Applicant has delivered in writing to the Association an appeal, including the grounds thereof, against that refusal, the Membership Secretary must refer the application and the appeal, including the grounds thereof, to the Investigating Officer within 5 Business Days after receipt by the Association of the written appeal, including the grounds thereof.

A referral pursuant to Rule 0 must be made by notice in writing to the Investigating Officer and the Membership Secretary must provide a copy of the notice to the Applicant.

3.3 Referrals to Investigating Officer

Where an Investigating Officer has received a referral pursuant to Rule 0 or 0, the Investigating Officer must conduct an investigation of the relevant circumstances, in pursuance of which investigation the Investigating Officer is vested with the powers set out in Rule 2.2.

The Investigating Officer must complete his or her investigation pursuant to Rule 0 and prepare a written Investigation Report of his or her findings and recommendations, within 15 Business Days after receiving the referral.

The Investigating Officer must provide copies of the Investigation Report at the same time to:

3.3.1.1 the Member or Applicant who is the subject of the Investigation Report; and

3.3.1.2 the Tribunal Secretary on behalf of the Tribunal.

The Investigating Officer must include with any Investigation Report copies of any correspondence received by the Investigating Officer from the Member or Applicant who is the subject of the Investigation Report, or any legal or other representative of the Member or Applicant.

To the extent that the Tribunal by majority decision supports a finding and recommendation by the Investigating Officer in favour of the Applicant or the Member, as the case may be, pursuant to Rule 3.1.1.1, Rule 3.1.1.2 and / or Rule 0, then the Tribunal Secretary shall by written notice to the affected Member or Applicant and to the Membership Secretary, withdraw any notice issued by the Membership Secretary. To the extent that the Tribunal by majority decision supports a finding and recommendation by the Investigating Officer against the Applicant or the Member, as the case may be, pursuant to Rule 3.1.1.1, Rule 3.1.1.2 and / or Rule 0, then the Tribunal Secretary shall by written notice inform the affected Member or Applicant and the Membership Secretary thereof, and the Membership Secretary shall thereafter by written notice to the affected Member or Applicant, refuse or cancel its Membership of the Association.

4. TRIBUNAL

4.1 Composition of the Tribunal

There will be a Tribunal for the purposes of:

4.1.1.1 carrying out the functions of the Tribunal pursuant to these Rules, including that the Tribunal under these Rules may hear and determine any complaints of allegations of Misconduct against any Member relating to any breach of the terms of the Constituting Documents by any Member; and

4.1.1.2 carrying out such other functions as are delegated to it by the Exco.

The Tribunal will be referred to as the “**Association Disciplinary Tribunal**”.

The Chief Executive Officer of the Association will be the Chairperson of the Tribunal.

The Chairperson of the Tribunal must maintain a Tribunal Panel, consisting of a list of at least 3 (three) persons selected by the Exco, each of whom is in the opinion of the Exco a person of good character and of good standing and with experience in the mortgage origination industry, the financial services industry and / or the legal, auditing or accounting professions. Persons selected to be on the Tribunal Panel may be Members, Nominated Representatives, employees of Members, members of Exco but may not be members of the Ombudsman’s Committee.

The Exco will endeavour to ensure that the Tribunal Panel includes persons resident in each of the largest Provinces of South Africa.

For the purposes of a hearing, the Tribunal must be comprised by:

4.1.1.3 At least the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson that may be appointed by the Chairperson for this purpose; and

4.1.1.4 one person from the Tribunal Panel.

In the absence of the Chairperson and the Deputy Chairperson, the person designated by the Tribunal Secretary as Chairperson for the purposes of a particular hearing must be a legal practitioner of at least 5 years standing and who has the right to practice law within South Africa. If the members of the Tribunal Panel do not include such a person the Exco may appoint a suitably qualified person for the period required.

In selecting the composition of the Tribunal for any particular matter, the Tribunal Secretary will endeavour so far as possible to appoint persons who are resident in the same Province as the Member who is the subject of the relevant Notice of Alleged Misconduct. However, where this is impractical the Tribunal Secretary is empowered by these Rules to appoint persons from another Province or Provinces to constitute a Tribunal.

4.2 **Proceedings of the Tribunal**

The Tribunal Secretary must assist the presiding Chairperson to appoint the Tribunal to deal with that particular proceeding, after receiving either a Notice of Alleged Misconduct pursuant to Rule 0 or a notice pursuant to Rule 0 or 0. The Tribunal Secretary must provide all of the documents provided by the Investigating Officer (in connection with the proceeding) to each member of the Tribunal and another copy to the Tribunal Secretary.

The Chairperson of the Tribunal must convene the Tribunal as quickly as is practical, which may be done in person, by telephone, audiovisual link or by using any other technology consented to by all members of the Tribunal members, as the Chairperson considers fit, and:

4.2.1.1 where an order for suspension pursuant is in effect, and whether or not a notice has been received, the Tribunal may make an order that the order for suspension be continued until further order of the Tribunal, or an order that the order for suspension be revoked, without conducting a hearing or receiving evidence or submissions from any party to the proceeding;

4.2.1.2 in any proceeding, if the Tribunal has reason to suspect that a Member has committed, or been directly or indirectly involved in the commission of an act involving fraud or dishonesty [Note: Discuss], the Tribunal may make an order suspending the Member from membership of the Association;

4.2.1.3 in any proceeding, determine whether the proceeding will be dealt with and determined in person, in the absence of the parties, or whether a hearing will be convened or conducted by the use of electronic means.

Where the Tribunal has made an order pursuant to Rule 4.2.1.1 or 4.2.1.2 in respect of a Member:

4.2.1.4 the Tribunal may at any time in the proceeding, prior to issuing its final determination, on the motion of a party or on its own motion make an order revoking or varying its original order pursuant to Rule 4.2.1.1 or 4.2.1.2. and

4.2.1.5 the Tribunal must immediately notify the Investigating Officer of the order and Rule 0 will then apply as if the order had been made by the Investigating Officer.

Where the Tribunal has determined pursuant to Rule 4.2.1.3 that a proceeding will be conducted in the absence of the parties, the Chairperson may notify the Investigating Officer and must notify the Member who is the subject of the proceeding of that determination.

Where the Tribunal proposes to deal finally with the matter before it, the Tribunal may do so without notice to the Investigating Officer or to the parties but the Tribunal must not proceed in this manner unless it proposes to determine such Notice of Alleged Misconduct by dismissing it.

Where the Tribunal has determined pursuant to Rule 4.2.1.3 that a hearing will be convened in respect of a proceeding, the Chairperson must appoint a date, time and place for the hearing and may give notice in writing of these particulars to the Investigating Officer and must give notice to the Member who is the subject of the Notice of Alleged Misconduct. The period of notice must be not less than 14 Business Days prior to the date of the hearing.

Where the Tribunal has determined that a hearing will be convened and has invited the Investigating Officer, the Investigating Officer is to make recommendations to the Tribunal, where invited by the Tribunal to do so.

The Tribunal may adjourn, postpone or reconvene a hearing as it thinks fit, provided that reasonable notice is given to the parties of any change to the hearing date.

4.3 Proceedings for cancellation of membership or accreditation

Upon receiving a notice pursuant to Rule 0, or an Investigation Report pursuant to Rule 0 relating to proceedings against a Member, the Tribunal Secretary must appoint the Tribunal to deal with that particular proceeding, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Association in connection with the proceeding.

The Tribunal must provide to the Member who is the subject of the notice or Investigation Report a reasonable opportunity to make written submissions to the Tribunal as to the reasons why the membership of the Member should not be cancelled. The Tribunal must not hold a hearing in respect of the proceeding and the Member is not entitled to require that a hearing be held unless the Tribunal is satisfied that special circumstances exist justifying the holding of a hearing.

If, having considered any submissions received by it, the Tribunal is of the opinion that the Member:

- 4.3.1.1 does not meet the requirements of membership of the Association; or
- 4.3.1.2 has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided to the Association;

the Tribunal may cancel the membership of the Member or may recommend to the Exco that the Exco cancel the membership as it sees fit.

4.4 Proceedings in relation to refused applications

Upon receiving a notice pursuant to Rule 0, or an Investigation Report pursuant to Rule 0 relating to a refused application by an Applicant, the Tribunal Secretary must assist the presiding Chairperson to appoint the Tribunal to deal with that particular matter, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Membership Secretary or the Investigating Officer in connection with the proceeding.

The Tribunal must provide to the Applicant who is the subject of the notice or Investigation Report a reasonable opportunity to make written submissions to the Tribunal as to the reasons why the application by the Applicant for membership of the Association should be allowed. The Tribunal must not hold a hearing in respect of the proceeding and the Applicant is not entitled to require that a hearing be held.

After considering any submissions received by it, the Tribunal may affirm the decision to refuse the application by the Applicant for membership of the Association, or revoke that decision and direct the Association or the Exco, as the case may be, to allow the application for membership as the case may be.

4.5 Conduct of hearings

A hearing of the Tribunal must be held in private except that:

- 4.5.1.1 the Investigating Officer and the Member as of right (if a natural person), or 2 representatives of the Member (if the hearing relates to a Member that is a Corporation) are entitled to attend;

4.5.1.2 the Tribunal may allow other representatives of the Association and the Member to attend and make submissions.

A party may be legally represented before the Tribunal provided that the presiding Chairperson is advised not less than 2 Business Days prior to the date set down for the Tribunal hearing of the intention of the particular party to have legal representation, and the name and contact details of each such legal representative.

No party may be compelled to appear at a hearing of the Tribunal, but any party to a hearing may provide written submissions and evidence to the Chairperson at least 3 Business Days before the hearing or at the hearing with the leave of the Tribunal.

The Tribunal may make such procedural arrangements as it thinks fit, including directions for the provision of written submissions and evidence and the taking of a transcript of the hearing.

The Tribunal must conduct hearings with as little formality and technicality as possible and otherwise may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it.

4.6 **General Rules governing the Tribunal**

The laws and rules of evidence do not apply to proceedings before the Tribunal.

In considering a matter before it, the Tribunal may take into account details entered into the register of the Tribunal concerning matters previously dealt with by the Tribunal against a Member, but only for the purposes of considering the orders that the Tribunal may make against a Member, unless the Tribunal determines that the entry in the register of the Tribunal and the facts to which it refers are relevant to establishing whether the Member has engaged in Misconduct and has given the Member an opportunity to address it on that issue.

The Tribunal must act expeditiously in hearing and determining all proceedings before it.

The Tribunal must act without bias and treat all parties with fairness and in accordance with the rules of natural justice.

The Tribunal may obtain legal advice and have legal advisers in attendance at a hearing.

The Tribunal may conduct proceedings or other meetings of the Tribunal in person or by other means to engage in conference and make decisions by way of email and other electronic means. The conduct of hearings by the Tribunal does not require Tribunal members to hear and speak with each other contemporaneously.

All determinations and decisions of the Tribunal must be made by simple majority vote of the members of the Tribunal.

Each member of the Tribunal, including the Chairperson and Deputy Chairperson, has one vote.

If there is an equality of votes the Chairperson and the Deputy Chairperson shall not have a second or casting vote. [Note: Earlier there is provision that the Chair and Deputy Chair don't have to be present. Should this be so, given the gravity of decisions taken by the Tribunal. I accept the Exco appoints a suitable substitute Chairperson so maybe it is not a concern but we must be sure]

All correspondence between a party and the Tribunal may be dealt with on the Tribunal's behalf by the Chairperson or Deputy Chairperson, except where that is delegated to the Tribunal Secretary .

Where the Tribunal has made a determination pursuant to Rule 0 or 0, the Chairperson must notify in writing the Member who is the subject of the proceeding before the Tribunal of the determination, including any finding of Misconduct and any penalty as soon as practical.

Where the Tribunal has made a determination pursuant to Rule 0, the Chairperson must notify in writing the Membership Secretary and the Applicant who is the subject of the proceeding before the Tribunal of the determination as soon as practical.

The Tribunal is required to issue written reasons for any determination made by it. Any such written reasons must be issued by the Tribunal to all parties to the proceeding, including the Secretary to the Tribunal, within 1 month after the date on which the determination is made.

Where a Member who is the subject of the Notice of Alleged Misconduct fails to make submissions or provide documents or information or to appear at a hearing within the period specified for the purpose by the Tribunal, the Tribunal may proceed to determine the relevant matter before it.

4.7 Powers of the Tribunal

Any act or omission by a Nominated Representative or employee of a Member who is an AMC or an MCAA is deemed for the purposes of these Rules to be an act or omission by the Member.

The Exco may act under the Constitution to suspend, censure or expel any Member irrespective of any determination or other action that has been, is being or may be taken pursuant to these Rules by the Tribunal or at law.

In relation to the Notice of Alleged Misconduct, the Tribunal may:

- 4.7.1.1 find the allegations not substantiated and dismiss the matter absolutely;
- 4.7.1.2 dismiss the charges absolutely or subject to any conditions;
- 4.7.1.3 find the Member guilty of conduct warranting rectification, admonishment or censure or any combination of these sanctions;
- 4.7.1.4 find that the Member engaged in conduct amounting to Misconduct but due to exceptional circumstances determine not to impose a sanction, to adjourn the matter on sanction to a date to be fixed, or impose a sanction which is suspended for any period of time to be determined at the discretion of the Tribunal; or
- 4.7.1.5 find the member guilty of Misconduct and impose a sanction.

Subject to Rules 0, 0 and 0 if the Tribunal determines that a Member has engaged in Misconduct, the Tribunal may make a determination of Misconduct against the Member and may impose one or more of the following penalties:

- 4.7.1.6 dismiss the matter absolutely or subject to any conditions the Tribunal may impose;
- 4.7.1.7 counsel the Member;
- 4.7.1.8 censure the Member;
- 4.7.1.9 suspend the Member from Membership of the Association, for such period and on such terms or conditions as the Tribunal thinks fit;

- 4.7.1.10 where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Tribunal thinks fit;
- 4.7.1.11 require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct the Member is found to have been engaged in;
- 4.7.1.12 require the Member to pay a financial contribution to the Association to be used as the Tribunal recommends, or in the absence of a recommendation, as the Association determines;
- 4.7.1.13 require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member;
- 4.7.1.14 expel the Member from membership of the Association; and/or
- 4.7.1.15 adjourn the proceeding subject to compliance with such conditions as to sanctions as the Tribunal may otherwise impose in accordance with these Rules.

Where the Tribunal has determined the Member has engaged in Misconduct but there are in the opinion of the Tribunal mitigating factors amounting to special circumstances in the opinion of the Tribunal, the Tribunal may not make any determination of Misconduct against the Member and may impose any one or more of the following penalties upon the Member:

- 4.7.1.16 a suspended determination of Misconduct whereby the determination of Misconduct by the Tribunal against the Member is to be suspended for any period of time up to 2 years as the Tribunal deems fit from the date of the imposition of the suspended determination of Misconduct and the suspended determination of Misconduct will be of no effect after any such period of suspension imposed expires. However where the Member within the period of any suspended determination engages in conduct amounting to further Misconduct the suspended determination of Misconduct penalty shall be of no effect and is to be reconsidered afresh by the Tribunal as to an appropriate penalty at the same time as any further Misconduct is being considered by the Tribunal in relation to penalty;

- 4.7.1.17 an admonishment of the Member without any determination of Misconduct by the Tribunal against the Member;
- 4.7.1.18 require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct the Member is found to have been engaged in;
- 4.7.1.19 require the Member to pay a financial contribution to the Association to be used as the Tribunal recommends, or in the absence of a recommendation, as the Association determines; and/or
- 4.7.1.20 require the Member to undertake and complete such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member.

The Tribunal may determine that a Member has not acted within the spirit of the Tribunal process and may, in its absolute discretion, decide to recover the Association and/or the Tribunal's costs from the Member concerned, after taking into account whether or not the Member:

- 4.7.1.21 has been recalcitrant;
- 4.7.1.22 has failed to cooperate, or the Members' behaviour has caused additional costs to be incurred by the Association and/or the Tribunal;
- 4.7.1.23 has obstructed the hearing of the matter; or
- 4.7.1.24 has failed to comply with requests for information in a timely manner without reasonable excuse.

Prior to taking any action under Rules 0, 0, 0 or 0, the Tribunal must provide such reasonable time as the Tribunal determines for the Member to make such representations and to provide such information to the Tribunal as the Member thinks fit in relation to the action proposed to be taken by the Tribunal.

4.8 Effect of Tribunal determinations

A determination, decision or order made by the Tribunal pursuant to these Rules has effect from the date on which the Tribunal determines that it will have effect or, if

the Tribunal does not specify such a date, immediately from the date on which the order is made.

A determination, decision or order made by the Tribunal is final and binding on all parties to the proceeding. Neither the Association, nor any constituent body of the Association other than the Tribunal, has power to vary or overrule a determination, decision or order made by the Tribunal.

The Tribunal may of its own motion and in its absolute discretion reconsider and vary or overrule any decision or order relating to sanctions only made by the Tribunal in respect of any penalty imposed by the Tribunal upon a member under these Rules.

4.9 Notification to persons affected by determination

Where the Tribunal makes a determination, decision or order pursuant to the Rules and the effect of that determination, decision or order is to cause the Member to be suspended or expelled from the Association, the Tribunal:

4.9.1.1 may make such ancillary orders concerning Nominated Representatives, AMC's and MCAA's who are employed by the Member concerned, notwithstanding any membership they may have in the Association in their personal capacities, as the Tribunal thinks fit and every such ancillary order shall bind every such Nominated Representatives, AMC and MCAA ; and

4.9.1.2 must as soon as practical in such form and manner as it thinks fit notify each such Nominated Representative, AMC and MCAA of the effect of the determination, and the terms of any ancillary order.

4.10 Publication of determinations

The Tribunal Secretary must maintain a register of all determinations made by the Tribunal or by the Exco pursuant to Rule 0 or 0, and make the register available for inspection by Members. The register must, with respect to each determination, include the name of the Member to whom the determination relates, any findings of Misconduct by the Tribunal and any orders made by the Tribunal including any penalties. The register must also include a copy of the reasons for determination issued by the Tribunal.

The Tribunal Secretary must maintain a separate register of all determinations made by the Tribunal pursuant to Rule 0. The register must, with respect to each

determination, include the name of the Applicant to whom the determination relates and the determination made by the Tribunal. The register must also include a copy of the reasons for determination issued by the Tribunal.

The Exco shall, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally the content of, or an extract from or précis of, any determinations by the Tribunal (other than determinations pursuant to Rule 0) and the register maintained pursuant to Rule 0 and of any reasons issued by the Tribunal. All Members by their membership of the Association provide their express consent to the publication of material encompassed within this Rule and waive and release forever any rights they may otherwise have to bring action with respect to such publication, whether by suit in defamation or other cause of action.

The Exco shall, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally a statistical report of Tribunal hearings and or determinations or other statistical data as it sees fit.

Except as provided above, the Exco must not publish or otherwise make available to Members, or other persons or the public generally the content of any determinations by the Tribunal pursuant to Rule 0 or the register maintained pursuant to Rule 0 (collectively the "Application Records"). The Exco must only provide access to the Application Records as follows:

- 4.10.1.1 an Applicant must be given access upon request to that part of the Application Records that relates to the Applicant, but not to any other part of the Application Records;
- 4.10.1.2 the Membership Secretary, the Tribunal Secretary, the Tribunal, an Investigating Officer, and the Exco must be given access upon request to the Application Records;
- 4.10.1.3 as required by law.

4.11 **Keeping Complainant informed**

The Investigating Officer may keep a Complainant informed of progress in handling the complaint provided always that the Investigating Officer must not provide any information to a Complainant in relation to the progress and outcome of the complaint where in the opinion of the Investigating Officer:

to do so would expose the Investigating Officer, the Tribunal Secretary, the Exco or any member of the Exco, the Association or any officer of the Association or members of the Tribunal to liability for civil damages;

to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint and the proceedings of the Tribunal; or

to do so would deny procedural fairness to the Member that is the subject of the complaint.

4.12 Legal proceedings

A Member, including a Member whose membership has been suspended or cancelled, may not bring any legal action or proceeding against the Association, any Member, any member of the Tribunal or any employee or agent of the Association (including without limitation members of the Exco or an Investigating Officer), with respect to the publication or giving of access to any person of material pursuant to Rules 0 or 0, and this Rule may be pleaded as a complete bar to the commencement or continuation of any such proceedings in any jurisdiction.

The Association will indemnify each member of the Tribunal and employee, contractor and agent of the Association and/or the Tribunal against any claim, action or proceeding brought against that person by any other person arising out of or in connection with the conduct of an investigation by an Investigating Officer, a proceeding before the Tribunal or any order, determination or decision made by an Investigating Officer or the Tribunal, and this indemnity will extend to the conduct of the defence of any proceedings and the payment of any costs thereof.

The indemnity provided pursuant to Rule 0 does not extend to actions brought by the Association against any person.

5. NON-ACTIVE MEMBERS

5.1 Suspension of membership of the Association

Where a Member's membership of the Association has been suspended, the Membership Secretary must record the Member's name in the National Register and all other applicable membership records of the Association as a Non-active Member.

Non-active Member's are not entitled to any of the rights or privileges of Member's, and may not hold itself, himself or herself out to any person or to the public generally as a member of the Association.

6. MATTERS REFERRED TO TRIBUNAL BY THE OMBUDSMAN

6.1 Referral of matters by Ombudsman

The Tribunal Secretary must accept and act upon an Ombudsman's Referral in the manner outlined in this Rule 6.

Upon receipt of an Ombudsman's Referral, the Tribunal Secretary must take the following steps as soon as practical after its receipt:

6.1.1.1 acknowledge receipt of the Ombudsman's Referral to the Ombudsman;

6.1.1.2 advise the Complainant of the Ombudsman's Referral to the Tribunal Secretary and of the procedure to be followed in dealing with the complaint;

6.1.1.3 refer any Ombudsman's Referral to the Investigating Officer and every such Ombudsman's Referral shall be dealt with in all respects as if the Ombudsman's Referral were a complaint made under these Rules.

Notwithstanding any other provision of these Rules, the Ombudsman may, of its own volition and irrespective of whether or not:

6.1.1.4 a complaint has been made to it under the Ombudsman's Rules or

6.1.1.5 the subject of the complaint referred by the Ombudsman has been the subject of a complaint by any particular Consumer;

make a complaint in relation to a Member to the Tribunal to be dealt with in accordance with these Rules or may make a complaint in relation to specific conduct or a course of conduct engaged in by the Member.

Notwithstanding any other provision of these Rules, the Investigating Officer and/or the Tribunal may still deal with or operate to hear a matter, as the case may be, even if the Ombudsman is operating in circumstances that the Ombudsman sees it fit to do so in terms of the Ombudsman's Rules, in regard to the same subject matter of a complaint that is before the Investigating Officer or

the Tribunal, as the case may be. [Note: This is to allow for the Tribunal and Investigating Officer to deal with the same set of facts even though the Ombudsman may be hearing a matter – it relates to the key issue we spent time discussing. If this is the principal that we go with, consider if the Ombudsman's Rules should also have a similar provision.