

**THE BAHAMAS INSTITUTE OF CHARTERED
ACCOUNTANTS (DISCIPLINARY) REGULATIONS**

S.I. 16/2016

(SECTION 33)

[Commencement 24th February, 2016]

PART I - PRELIMINARY

1. These Regulations may be cited as The Bahamas Institute of Chartered Accountants (Disciplinary) Regulations. Citation.

2. In these Regulations, unless the context expressly provides otherwise — Interpretation.

“Act” means The Bahamas Institute of Chartered Accountants Act; Ch. 364.

“complainant” means a person who makes a complaint to the Institute regarding a matter, act or circumstance, in relation to a person to whom these Regulations apply;

“specified person” means —

- (a) in relation to a firm which is a partnership, any partner in that firm;
- (b) in relation to a firm which is a body corporate, any director of that firm.

3. (1) These Regulations shall govern the disciplinary proceedings of — Application.

- (a) a member, associate or student of the Institute and where applicable, a former member, associate or student; and
- (b) a firm of public accountants registered with the Institute.

(2) Any person who carries out any functions with respect to paragraph (1) shall be governed by the Act and these Regulations.

**PART II - PROFESSIONAL MISCONDUCT AND
DISCIPLINARY PROCEEDINGS, ETC.***Professional Misconduct*Professional
misconduct.

4. (1) A person to whom these Regulations apply may be liable to disciplinary proceedings if he —
- (a) is guilty of professional misconduct in accordance with section 19 of the Act;
 - (b) has been subject to disciplinary action by any other body, whether professional or otherwise;
 - (c) has failed to satisfy a judgment debt without reasonable excuse for a period of two months whether or not the debt remains outstanding at the time of the initiation of any proceedings hereunder.
- (2) Where any act or omission results in, or is likely to result in disrepute to the individual, firm, Institute or the accountancy profession and in considering the conduct alleged, regard may be had to the following —
- (a) whether an act or omission, which of itself may not amount to professional misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to professional misconduct; and
 - (b) the nature, extent or degree of the breach of any code of practice or ethics, adopted by the Council.
- (3) The fact that a person to whom these Regulations apply, has pleaded guilty to or been found guilty of an offence involving fraud or dishonesty before a court of competent jurisdiction in The Bahamas or elsewhere, shall be conclusive proof of professional misconduct.
- (4) The Disciplinary Committee may treat the judgment of any court, whether of a civil or criminal jurisdiction, as conclusive evidence of any findings of facts made in the judgment for the purpose of determining whether a person has participated in any type of activity resulting in professional misconduct.

Disciplinary Proceedings

5. A complaint of professional misconduct shall be made in accordance with section 20 of the Act. Complaints.

Investigations Committee

6. (1) Upon — Investigations
Committee.

(a) the receipt of a complaint in respect of a person to whom these Regulations apply; or

(b) the initiation of a disciplinary process by the Council pursuant to section 20(3) of the Act,

the Investigations Committee shall determine whether the complaint ought to be investigated and in so doing shall —

(i) consider the acts and circumstances surrounding the matter;

(ii) take into account any matter in relation to the person against whom the complaint is made which may have been considered by the Investigations Committee previously;

(iii) take into account any additional information brought to its attention by any committee of the Institute;

(iv) notify the person of the complaint made against him and invite him to make representations in person or otherwise;

(v) where necessary, seek legal, technical or other advice as it considers necessary to assist in the investigation.

(2) If any person during the course of an investigation is unable to appear before the Investigations Committee due to illness, he may —

- (a) apply in writing for an adjournment and shall within fourteen days thereof submit medical evidence to support this fact and inform the Committee as to when, if at all, he will be in a position to appear before the Committee; or
- (b) attend the hearing by way of telephone, his personal representative or such other manner as the Council may approve.

7. (1) Where at the conclusion of its investigation, the Investigations Committee determines that — Determination of
Investigations
Committee.

(a) there is no case to answer, the Investigations Committee —

- (i) shall notify the parties and give reasons for its decision; and
 - (ii) shall make no record of the complaint on the file of the person.
- (b) there is a case to answer, the Investigations Committee shall make a record of the complaint on the file of the person and give him an opportunity to be heard and may —
 - (i) with the consent of the person, make an order pursuant to paragraph (2);
 - (ii) refer the matter to the Disciplinary Committee along with —
 - (aa) a copy of the complaint; and
 - (bb) a summary of the facts before the Investigations Committee together with copies of all information and documents produced to the Investigations Committee by any party in relation to the complaint; and
 - (cc) the name of the person nominated to present the case to the Disciplinary Committee (hereinafter referred to as the “case presenter”);
 - (iii) require either party to produce to the Investigations Committee such information and documents relating to the complaint; or
 - (iv) adjourn consideration of the matter to a future date.

(2) A consent order may be made in accordance with section 21(2) of the Act and shall be published in such manner as the Investigations Committee deems fit unless in exceptional circumstances the Investigations Committee otherwise directs.

(3) Where the Investigations Committee determines not to refer a matter to the Disciplinary Committee, but preferably to place a record of the complaint on the file of a person, the Investigations Committee shall notify the person —

- (a) of its decision and of the facts in respect of which it found that a *prima facie* case has been made out against him;
- (b) that the matter is considered to be one of a disciplinary nature but that no action in respect

thereof shall be taken, except that the matter may subsequently be referred to the Disciplinary Committee in the event of any subsequent matter brought before the Investigations Committee; and

- (c) that he may request within seven days that the matter be referred to the Disciplinary Committee, which upon such request, shall be referred by the Investigations Committee within thirty days thereof.

Disciplinary Committee

8. (1) Where a case is referred to the Disciplinary Committee, the Disciplinary Committee shall —

Referral of matter to Disciplinary Committee.

- (a) determine the date on which the matter is to be heard;
- (b) fix a day for the hearing of the complaint and serve on each party, no later than twenty-one days before the hearing, a notice specifying —
 - (i) the day, time and place of the hearing; and
 - (ii) the complaint that is the subject of the hearing;
- (c) serve on the person whose conduct is being investigated, in addition to the information referred to in paragraph (b) —
 - (i) copies of any further information or documents considered by the Investigations Committee;
 - (ii) a summary of the proceedings held before the Investigations Committee; and
 - (iii) a notice inviting the person whose conduct is being investigated to —
 - (aa) indicate whether he accepts the complaint made, in whole or in part;
 - (bb) indicate whether he shall be represented at the hearing, whether in person or otherwise;
 - (cc) indicate whether he desires to bring to the attention of the Disciplinary Committee any statements in mitigation thereof; and

(dd) submit such other information as the Disciplinary Committee may consider necessary.

(2) Notwithstanding paragraph (1), in exceptional circumstances and in the discretion of the Disciplinary Committee, the Disciplinary Committee may proceed with the hearing of a matter notwithstanding the failure to give twenty-one days notice.

(3) Where further evidence is received in connection with a matter referred to the Disciplinary Committee, the Committee may —

- (a) adjourn the hearing to a future date; or
- (b) refer the matter back to the Investigations Committee for reconsideration of the further evidence received.

Documents.

9. (1) Every party to whom a notice under regulation 9 is given shall serve on the Disciplinary Committee and on every other party to the hearing, not less than fourteen days before the day fixed for the hearing, a list of all the documents on which he intends to rely and copies of each document.

(2) The Disciplinary Committee may in its discretion accept any document that has not met the requirement of paragraph (1).

Determination by
Disciplinary
Committee.

10. On the hearing of a complaint, the Disciplinary Committee shall either dismiss the complaint or make one or more of the orders specified in section 22(10) of the Act.

Disciplinary hearings

Disciplinary
hearings.

11. (1) A hearing by the Disciplinary Committee shall —

- (a) be heard in private, unless the person whose conduct is being investigated requests otherwise; and
- (b) be conducted in accordance with section 22 of the Act.

(2) Where a person is unable to appear before the Disciplinary Committee due to illness, he may —

- (a) apply in writing for an adjournment and shall within fourteen days submit medical evidence in support thereof and provide a statement as to

when, if at all, he will be in a position to participate in the disciplinary process; or

(b) attend the hearing by way of telephone, video link or his personal representative.

(3) At any time during a hearing, the Disciplinary Committee shall have the right to require a person to be examined by an independent registered medical practitioner at the expense of the person.

(4) If any party fails to appear at a hearing in answer to a notice for any reason other than the reason specified in paragraph (2), the Disciplinary Committee may hear the matter in his absence provided that it is satisfied that the person has been properly served in accordance with regulation 8(1)(b).

(5) The case presenter shall prior to the start of the hearing, inform the person whose conduct is being investigated that he shall be entitled to —

(a) be heard before the Disciplinary Committee in person or otherwise;

(b) put questions to the case presenter in relation to the complaint against him;

(c) put forward any statement in mitigation or in response to his case by presenting his defence; and

(d) call witnesses in support of his defence, who may include the complainant, and any such witness may be subject to cross-examination.

(6) The Disciplinary Committee may —

(a) at any time put any question to either party;

(b) call any witness, including the complainant, who may be subject to cross examination;

(c) invite the complainant to comment in relation to the matter.

(7) If witnesses are to be called by either party, notice of such shall be given to the other party at least seven days before the hearing and such notice shall provide the name of the witness and a statement as to the evidence the witness is expected to give.

(8) The case presenter and the person, whether in person or by his representative, may present closing submissions.

(9) At the conclusion of a hearing, the Disciplinary Committee shall make a determination in respect of the complaint and in deciding whether a complaint has been proved, the standard of proof to be applied shall be on a balance of probabilities.

Hearings as to
fitness of person.

12. (1) Where the Council is satisfied by a certificate of two registered medical practitioners that the holder of a licence is suffering from an illness which renders him unfit to satisfactorily perform his duties as a public accountant, the Council shall prior to suspending his licence in accordance with section 26(1) of the Act, refer the matter to the Disciplinary Committee to be heard in private.

(2) During the hearing, the Disciplinary Committee shall be entitled to make a determination on the supporting evidence before it in such circumstances where the seriousness of the complaint and the supporting evidence is such that it would be in the public interest to advise the Council to make an order under section 26(1) of the Act.

(3) An order made pursuant to section 26(1) of the Act may be subject to such conditions as the Council may specify and may include that —

- (a) in the event of grave illness or disability of a sole licensee in a firm of accountants and in the absence of a continuity agreement with another licensee or firm or power of attorney directing the continuity of the firm, that another licensee be appointed to manage the affairs of the licensee in accordance with section 31 of the Act;
- (b) in the event of grave illness or disability in the case of a partner in a partnership, that the person takes no part in the client work of the practice.

Miscellaneous

Orders.

13. (1) An order may be made in accordance with sections 21, 22 or 23 of the Act and where an order is made —

- (a) for the removal from the register of the name of a person, section 27 of the Act shall apply;
- (b) to suspend the licence of a licensee, section 25 of the Act shall apply;
- (c) for the payment of a fine, such fine shall —

- (i) not exceed the amount of twenty thousand dollars and shall be paid within twenty-one days from the date of the order, unless the Council directs otherwise;
- (ii) in relation to a firm, be jointly and severally due from, and payable by, the specified persons in relation to that firm;
- (d) for the payment, by any party, of an award of costs or of such sum as the Disciplinary Committee may consider a reasonable contribution towards the costs incurred in connection with the proceedings, the Disciplinary Committee, in considering what sum shall be paid, shall take into account the effect, if any, that the actions of the person had in relation to the conduct of the case and the costs thereof, whether beneficial or otherwise;
- (e) to severely reprimand or admonish a person, such reprimand or admonishment shall be in writing and a record of such shall be placed on the file of that person;
- (f) to severely reprimand or admonish a student, or to remove the name of the student from the register —
 - (i) a period of time may be specified in the order, which shall represent time not to be reckoned as part of the approved accountancy experience of that student for the purposes of the Act;
 - (ii) that student may be declared ineligible for such period, as may be specified in the order, to sit an examination or any part thereof.

(2) Notice of an order made pursuant to paragraph (1) along with the findings of the case shall be forwarded to the person whose conduct is being investigated within fourteen days of the hearing and a written statement of the reasons for the decision shall be given to the person within twenty-one days or such longer period as the respective committee shall deem necessary in the circumstances.

14. (1) The Chairman of the Disciplinary Committee, or any other person whose services have been made available to the Committee, shall take notes of the

Notes of hearing.

hearing and any party to the hearing may inspect those notes.

(2) The Disciplinary Committee shall furnish the Council with notes of the hearing taken under paragraph (1) and its recommendations in respect to the complaint.

Appeals.

15. (1) An appeal against a decision of the Disciplinary Committee shall be made in accordance with section 23 of the Act and shall be made within fourteen days of the date of the order.

(2) An appeal from any decision of the Council or the Appeal Committee shall lie to the Supreme Court and shall be made within fourteen days from the date of the decision of the Council or the Appeal Committee.

(3) Where the time for an appeal has elapsed, the Disciplinary Committee shall publish its order, except that where the Disciplinary Committee determines that no further action is to be taken, the order may only be published on the request of the person.

Notices.

16. (1) Any notice or other document required to be served on a person may be served on him personally or by post, electronic mail or by courier to his registered address or place of business and such notice or other document so sent shall be deemed to have been served within forty-eight hours, excluding Saturdays, Sundays and Public Holidays.

(2) Where a person whose conduct is being investigated has no registered address, any notice or document shall be sent by post or courier to the last known address of such person.

(3) Any notice or document to be served on the Institute shall be sent to the attention of the Secretary at the principal office of the Institute.