



**SOUTHERN AFRICAN INSTITUTE FOR
BUSINESS ACCOUNTANTS
DISCIPLINARY PROCEDURE**



1 Introduction

- 1.1 This document sets out the procedure for the lodging of complaints against a member of SAIBA (“a Member”) by the public and the procedure to be followed by SAIBA for investigating and adjudicating such complaints and breaches or contraventions by Members.
- 1.2 This document is binding on Members in terms of SAIBA’s memorandum of incorporation.

2 Duties of Members

- 2.1 All Members must, at all times, adhere to SAIBA’s memorandum of incorporation, the standard and codes of ethics prescribed by SAIBA from time to time as well as the terms and conditions applicable to any recognition, designations, certifications, registrations and licenses conferred or granted by SAIBA (“the Conduct Rules”).
- 2.2 In doing so, Members are required, *inter alia*, to uphold the principles set out in the International Code of Ethics for Professional Accountants published by the International Federation of Accountants (“the International Code”) from time to time. These principles include:
- 2.2.1 acting with integrity in all professional and business relationships;
- 2.2.2 not allowing professional or business judgment to be comprised by bias, conflict of interest or undue influence of others;
- 2.2.3 attaining and maintaining professional knowledge and skills at a sufficient level to provide competent professional service to clients in accordance with current technical and professional standards and relevant legislation;
- 2.2.4 respecting the confidentiality of information disclosed as a result of professional and professional standards; and
- 2.2.5 complying with applicable laws and regulations and not engage in any conduct which Members know, or ought reasonably to know, might bring the profession into disrepute.

3 When is Disciplinary Action Taken?

- 3.1 Not all errors made by Members automatically attract disciplinary action. If a Member has given advice which in hindsight turns out to have been flawed, and as a result of which loss has been suffered, this is primarily a matter for that Member’s professional indemnity insurers. However, disciplinary action may be

appropriate if errors are of such frequency or magnitude as to signify a lack of professional competence.

3.2 SAIBA may take disciplinary action against Members where there is evidence of a failure to observe the standards set out in the International Code.

3.3 It is important to note that:

3.3.1 Fees are regulated in terms of the agreement reached between Members and their clients. SAIBA does not adjudicate fee disputes, including Members' rights to exercise their lien in the event of non-payment by clients.

3.3.2 Lodging a complaint against a Member is not a substitute for seeking damages or other redress through the courts. SAIBA's jurisdiction over Members is regulatory and disciplinary in nature. Therefore, SAIBA cannot order Members to pay compensation to a complainant if a complaint is upheld or provide compensation for any loss suffered.

3.3.3 SAIBA's compliance and/or standards department does not give legal advice. If a complainant feels that he or she may have a claim in law against a Member for losses or damages suffered or costs incurred, such complainant should seek their own legal advice.

4 How to Lodge a Complaint?

4.1 Members and their firms are required to have in place internal procedures for the handling of clients' complaints. These procedures must entail a review by a senior partner of the firm, or by a colleague who has not previously been involved in the matter. Complainants must exhaust these procedures before lodging a complaint with SAIBA, as SAIBA will not accept complaints unless complainants have done so.

4.2 If a complainant has not been able to resolve the matter with the Member or his or her firm directly, the complainant may submit a formal complaint to SAIBA. All complaints submitted to SAIBA in terms of this paragraph must be:

4.2.1 submitted to SAIBA in writing by one of the following methods:

Post: SAIBA Standards
P.O. Box 7905,
Centurion, 0046

Fax: 086 508 2923

E-mail: legal@saiba.org.za

- 4.2.2 submitted under cover of a completed complaint form (https://saiba.org.za/accounts/public/downloads/saiba_complaint_form.pdf) setting out the full details of the complainant and signed by the complainant or a party authorised to represent the complainant; and
- 4.2.3 accompanied by a sworn affidavit deposed to by the complainant setting out the nature of the complaint and all material facts pertaining thereto together with copies of all relevant documents pertaining to the complaint and written confirmation of authority (in the case of submission by a third party on behalf of the complainant).
- 4.3 Complaints which relate to the matters listed in paragraph 3.3 or do not comply with the requirements of paragraph 4.2 will not be investigated by SAIBA and SAIBA will reject the complaint and notify the complainant in writing of the rejection.

5 Other Forms of Complaints

- 5.1 Complaints may also be submitted to SAIBA by other regulatory bodies, such as:
- 5.1.1 the Independent Regulatory Board for Auditors in the event it is discovered that a Member has issued opinions on financial statements for example; and
- 5.1.2 the South African Revenue Service (“SARS”) if a Member did or omitted to do anything with respect to the affairs of a taxpayer, including that person’s affairs, that in the opinion of the official:
- 5.1.2.1 was intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer under any applicable tax legislation;
- 5.1.2.2 by reason of negligence on the part of a Member resulted in the avoidance or undue postponement of the performance of an obligation imposed on the taxpayer under any applicable tax legislation;
- 5.1.2.3 constitutes the contravention of a rule or code of conduct for the profession which may result in disciplinary action being taken against the Member by SAIBA; or
- 5.1.2.4 constitutes conduct under paragraph 5.2 below by a registered tax practitioner.
- 5.2 SARS may also lodge a complaint with SAIBA if a Member who is a registered tax practitioner has, in the opinion of the official:

- 5.2.1 without exercising due diligence prepared or assisted in the preparation, approval or submission of any return, affidavit, or other document relating to matters affecting the application of any tax legislation;
- 5.2.2 unreasonably delayed the finalisation of any matter before SARS;
- 5.2.3 given an opinion contrary to law, recklessly or through gross incompetence, with regard to any matter relating to tax legislation;
- 5.2.4 been grossly negligent with regards to any work performed as a registered tax practitioner;
- 5.2.5 knowingly given false or misleading information in connection with matters affecting the application of tax legislation or participated in such activity; or
- 5.2.6 directly or indirectly attempted to influence a SARS official with regard to any matter relating to tax legislation by the use of threats, false accusations, duress or coercion, or by offering gratification as defined in the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

6 Investigation Process

- 6.1 Subject to paragraph 10.4 below, following receipt of a complaint that complies with the formalities prescribed in paragraph 4.2, SAIBA will send a copy of the complaint, together with any supporting documentation annexed thereto, to the Member concerned. The Member will be afforded 10 (ten) business days to respond to the allegations contained in the complaint in writing. At the same time, SAIBA may request from the complainant any further information which SAIBA may require.
- 6.2 Thereafter, SAIBA will refer the complaint to its external legal advisors for investigation and review.
- 6.3 Upon the conclusion of the investigation of the complaint by SAIBA's legal advisors, a written investigation report will be furnished to SAIBA setting out their findings and recommended disciplinary sanctions to be imposed on the Member or that the matter be closed.
- 6.4 The Member and the complainant will both be informed of the outcome of the investigation and any recommended disciplinary sanctions in writing and afforded a further period of 5 (five) business days to respond thereto.

7 The Disciplinary Committee

- 7.1 The Disciplinary Committee comprises SAIBA's Chief Financial Officer, SAIBA's Membership Manager and SAIBA's Company Secretary.

- 7.2 Should any recommended disciplinary sanctions be disputed by the Member and/or relate to the termination of that Member's membership of SAIBA, the matter will be referred to SAIBA's Disciplinary Committee for review.
- 7.3 The Disciplinary Committee will review the complaint, the investigation and proposed disciplinary sanctions. The Disciplinary Committee shall be entitled to determine the matter on the papers or summons the Member concerned and/or the complainant to a hearing into the complaint should it deem it appropriate to do so.
- 7.4 The Disciplinary Committee shall be entitled to hold hearings by any means it deems appropriate, including electronic communication provided that such electronic communication affords all of the participants the opportunity to participate effectively. If details of any person's tax affairs will be disclosed at such hearing, the hearing may only be attended by persons who, in the opinion of the Disciplinary Committee, are necessary for the proper consideration of the complaint.

8 Outcome and Sanctions

- 8.1 In the event that the Disciplinary Committee finds a Member to have contravened the Conduct Rules, the Disciplinary Committee shall be entitled to impose such sanctions as it, in its sole discretion, deems proportionate to the contravention committed, including:
- 8.1.1 if the Member has not been found guilty of any previous contraventions, issuing a warning and/or requiring the Member to undertake additional continued professional development courses, provided that the contravention is not regarded by the Disciplinary Committee to be serious in nature;
- 8.1.2 notifying all relevant authorities of such contravention;
- 8.1.3 imposing on the Member such fines, penalties, charges or other financial sanctions;
- 8.1.4 if the Member has been found guilty of contravening the Conduct Rules previously or the contravention is, in its sole discretion, sufficiently serious in nature, the termination of that Member's membership; and/or
- 8.1.5 publishing the identity and sanctioning of that Member on SAIBA's website and notifying all other professional bodies thereof.
- 8.2 In addition to paragraph 8.1, in the event that the complaint concerns the conduct of a tax practitioner, SAIBA will notify SARS of such disciplinary proceedings.

9 Appeal

- 9.1 The decision of the Disciplinary Committee shall be final and binding on the Member and the complainant.
- 9.2 The Member and/or the complainant shall have a limited right to appeal any such decision in the following circumstances only:
- 9.2.1 the Member and/or the complaint shall notify SAIBA of its intention to appeal the decision in writing within 5 (five) business days of receipt of the decision, which notice shall include all of the grounds of appeal in sufficient detail;
- 9.2.2 SAIBA will appoint an advocate of its choosing to review the complaint, the investigation and the decision, together with all correspondence exchanged with and documents received from the Member and the complainant and notify the Member and/or the complaint that the decision is under appeal;
- 9.2.3 such advocate's decision shall be final and binding on the Member and the complainant and not subject to further appeal; and
- 9.2.4 all of the costs of such appeal incurred by SAIBA shall be borne and paid for by the appellant and SAIBA shall be entitled to request the appellant to pay such costs upfront as a condition of referring the appeal for adjudication.

10 Confidentiality

- 10.1 As a general rule, SAIBA's disciplinary procedures are not private and confidential. This means that the correspondence and documentation which complainants and Members exchange with SAIBA may be disclosed to or discussed with third parties, including the Member or a complainant, as the case may be. In the event that a complaint is referred to a hearing, subject to paragraph 10.4 below, such hearings may be held in public, which anyone may attend.
- 10.2 There are two important exceptions to the general rule which are set out below.
- 10.3 Members and/or complainants may request that certain documents are treated in strict confidence or even that any hearing or part of it is conducted in private. Please note that hearings are held in private only in certain circumstances. SAIBA will consider the reasonableness of such request and will inform the parties if it is accepted.
- 10.4 SAIBA will preserve the confidentiality of all information as to the affairs of a person conveyed to them by SARS or as may otherwise come to its notice during the investigation of the complaint. SAIBA will not communicate this information to a person other than the person concerned or the Member concerned, unless the disclosure is ordered by a competent court of law.