

Disciplinary Procedure for Members |



“**Accused**” means a Member against whom a Complaint or Charge has been made.

“**Actionable Conduct**” means conduct (whether by act or omission) constituting:

- (i) professional misconduct; and/or
- (ii) unsatisfactory professional conduct; and/or
- (iii) conduct likely to discredit the Association or the profession of Principal Officer, which include:
 - aiding, abetting, counseling, procuring, inducing or attempting to induce another person to engage in or commit conduct described in (i), (ii) or (iii) herein; and/or
 - being involved in, or a party to, conduct described in (i), (ii) or (iii) herein.

Certain conduct will constitute prima facie evidence of **Actionable Conduct** by a member, namely, where a member:

- is or has been convicted of an indictable criminal offence;
- has been found to have acted fraudulently or dishonestly by any court of competent jurisdiction or committee or equivalent professional body to Batseta has been found by any court of competent jurisdiction or committee or equivalent professional body to the Batsetato have engaged in misleading or deceptive conduct;
- has been the subject of an adverse determination by a Regulatory Body in South Africa or elsewhere;
- is not a competent person to serve as a director of a company as set out in Section 69 of the Companies Act, 2008
- has breached a determination of an Investigation or Appeal Committee including but not limited to an enforceable undertaking; or
- failing to disclose, when applying to become a member, that he or she had
- been convicted of an indictable criminal offence;
- been found to have acted fraudulently or dishonestly by any court of competent jurisdiction or equivalent professional body to the Batseta or elsewhere;
- been found by any court of competent jurisdiction or equivalent professional body to the Batseta or elsewhere to have engaged in misleading or deceptive conduct in civil proceedings;

1. been the subject of an adverse determination by a Regulatory Body in South Africa or elsewhere; or
2. been or remains disqualified to act as a director in terms of Section 69 of the Companies Act, 2008.

“Appeal Committee” means the committee referred to in 3c.

“Batseta” means the Batseta Council of Retirement Funds for South Africa

“Charge” means a formal allegation that a Member has been guilty of Actionable Conduct.

“Commencement Date” means the date of the resolution made by Members by which this Scheme was incorporated in the Memorandum of Incorporation.

“Disciplinary Committee” means the Committee referred to in 3b.

“CEO” means the Chief Executive Officer of Batseta.

“Code” means this Disciplinary Code, being an Annexure to the Memorandum of Incorporation of the Association.

“Complainant” means a person who has lodged a Complaint in accordance with this Scheme.

“Complaint” means a statement in writing containing an allegation or representation to the effect that a Member has or may have committed or have been engaged in Actionable Conduct.

“Fiduciary” shall mean a natural person who fulfils a fiduciary duty to the pension fund and its members as required by the Pension Funds Act, 24 of 1956 (“the Pension Funds Act”) and include both the governing and managing fiduciary of a pension fund;

“Investigation Committee” means the Investigation Committee referred to in paragraph 3a.

“Member” means a Member as defined in the Memorandum of Incorporation of Batseta, who has paid the required annual subscription, and an Honorary Member who is exempt from subscription fees.

Professional misconduct includes:

- conduct occurring in connection with the provision of Professional Services that involves a substantial or persistent failure to reach or maintain a reasonable standard of competence or diligence;
- conduct that would justify a finding that a member is not a fit and proper person to engage in the provision of Professional Services and includes, but is not limited to, dishonesty or misleading or deceptive professional conduct; and
- the wilful breaching, subversion or avoidance of a mandatory requirement of any or all of the Memorandum of Incorporation, Code of Professional Conduct, law, directive or relevant requirements imposed under legislation including subordinate standards and rules.

"Unsatisfactory professional conduct" includes:

- conduct in connection with the provision of Professional Services that falls short of the standard of competence and diligence that a member of the public is entitled reasonably to expect of a member; and
- a substantial or persistent breach of or non-compliance with the Memorandum of Incorporation, Code of Conduct, directive or relevant requirements imposed under legislation in a negligent manner.

"Principal Officer" means a natural person appointed as a Principal Officer to a pension fund organisation as described and registered in terms of the Pension Funds Act, Act No. 24 of 1956, as amended.

"Rule" or "rules" refers to any provision in this Code.

2. Purpose

This Scheme sets out the rules and procedures governing the discipline of members and handling of complaints about the professional conduct of members. The conduct of disciplinary proceedings under this Code is not a court procedure and the rules of evidence do not apply. However, the objective is that the proceedings will be conducted in accordance with the rules of natural justice so as to achieve fairness.

A Code of Conduct (Code) has been drawn up by BATSETA in support of its function as a non-statutory professional body in order to enhance and protect the profession of the fiduciaries within the retirement industry.

The purpose of the Code is to require members to adhere to the high standards of conduct, practice and qualifications of a retirement fund fiduciary and thereby supporting the fiduciaries in fulfilling their responsibility to the public.

BATSETA undertakes to maintain disciplinary and appeal procedures which are fair, just and equitable. BATSETA will use all reasonable means to ensure that all members are made aware of the standards of acceptable behaviour expected of them.

3. DISCIPLINARY PROCEDURE

a. Preliminary Investigation

When a Complaint against a member of BATSETA is received, it is first evaluated by an Investigation Committee appointed by the CEO from a panel approved by the Board to establish whether an Actionable Conduct has prima facie been committed. The Investigating Committee has the power to pose questions to the Complainant and the Accused. The finding of the Investigation Committee is forwarded to the CEO. If the finding is that no Actionable Conduct has been committed, the Complainant is informed accordingly. If the finding is that Actionable Conduct has prima facie been committed, the process as set out in 3b must be followed.

b. Disciplinary Committee and Hearing

A Disciplinary Committee is appointed by BATSETA when an Investigating Committee has found that a member has prima facie committed Actionable Conduct. BATSETA must appoint a Chairperson of the Committee if more than one person is appointed to the committee. BATSETA also appoints an Initiator who will present the matter to the Disciplinary Committee. The Initiator must formulate the charge or charges against the member and serve such charges on the Accused by hand, or by either registered mail to the address of the Accused, faxing it to the fax number of the Accused or emailing it to the email address of the accused. The Disciplinary Committee must determine a date for a hearing within a reasonable time and inform the Initiator and the Accused of such date.

The Committee determines the procedure to be followed at the meeting subject to the following:

- the rules of natural justice must be observed with the minimum of legal formalities;
- the hearing must be adversarial in nature, unless otherwise agreed to by the parties;
- the Committee must proceed diligently and act impartially;
- the Committee shall not consult, confer or have any other contact with any party or their representatives regarding the case after the hearing has started without the presence or consent of the other party;
- a recording must be made of the proceedings. If a recording was accidentally not made, the proceedings will still be valid and a record must be produced from notes in the event of an appeal.

The Initiator shall have the duty to start at the hearing and have the burden to prove the charge on a balance of probabilities and the Accused shall have the duty to refute the charges after such prima facie evidence on the same basis.

The Initiator shall be entitled to:

- call any witnesses and lead evidence, which may include documents or items;
- cross-examine the Accused if he testifies as well as any witness called to testify on behalf of the Accused and inspect any documents or items produced in evidence and ask questions in regard thereto;
- present argument to the Committee.

The Accused shall in person or through a representative be entitled to:

- give evidence to refute the charges;
- call any witnesses and lead evidence, which may include documents or items;
- cross-examine any witness called to testify on behalf of the Accused and inspect any documents or items produced in evidence and ask questions in regard thereto;
- Present argument to the Committee

The Disciplinary Committee will have the power to:

- put questions, without cross-examining, to the parties and their witnesses;
- request the Initiator, the Accused or his/her representative to address it on any matter or to present argument;
- proceed with the hearing in the absence of the Accused if it can be proved that the Accused was properly notified of the hearing;

- make such interim determinations or rulings as is deemed necessary;
- propose compromise settlements to dispose of certain issues;
- make a finding after consideration of the evidence;
- invite evidence in mitigation or aggravation prior to deciding on the sanction;
- make any advisory recommendations to any party;
- impose a sanction which may be any of the following:
 - a reprimand
 - a written warning
 - a final written warning
 - forfeiture of membership of the BATSETA

The Disciplinary Committee shall within ten days after the conclusion of the hearing inform the CEO of its findings, the sanction imposed if the Accused was found guilty and the reasons in support of the finding and sanction. The CEO shall provide a copy thereof to the Accused and to the Complainant after the time for an appeal has lapsed.

c. *Appeal Committee*

The Accused is entitled to lodge an appeal against the finding and sanction within 21 days after receipt of the copy thereof from the CEO, setting out the reasons for the appeal. BATSETA must then appoint an Appeal Committee and a Chairperson thereof if more than one person is appointed in the Committee. The person/s appointed may not have been involved with the Investigating or Disciplinary Committees. The BATSETA shall only appoint an Initiator for the appeal if the Initiator who acted before the Disciplinary Committee is not available.

The Committee shall determine a date for the hearing within a reasonable time, which date may be amended if due cause is shown. The appeal will be heard on the arguments advanced by or on behalf of the Accused and the Initiator, having regard to the record of proceedings and the reasons for the finding and sanction and should not entail a rehearing de novo.

The Committee shall have the power to confirm or set aside any finding or sanction and make a new finding and/or impose a new sanction.

The manner and rules for the conduct of the appeal hearing will be similar to that of the Disciplinary Committee.

The Appeal Committee shall submit its decision and reasons therefore to the CEO within ten days after the conclusion of the appeal hearing. The CEO shall provide a copy thereof to the Accused and the Complainant.

d. *Forms*

BATSETA will have the right to prescribe forms for any processes for which this code makes provision.