

## IBASA DISCIPLINARY POLICY AND PROCEDURES

### 1. DEFINITIONS

**Advisors:** means any business advisor, business coach and mentor in the service of the micro, small and medium enterprises SMME's in South and Southern African sub continent / region including but not limited to business rescue practitioners as recognized by the Companies and Intellectual Properties Commission and by the laws of the Republic of South Africa

**Board:** means the Board of Directors of IBASA;

**MD:** means the CEO or Managing Director or its Assignees of IBASA, who is charged with running the day to day affairs and operations of IBASA;

**Code:** means IBASA's Code of Good Conduct, as determined from time to time;

**Days:** means business days, excluding Saturday, Sunday and those days that fall on an official Public Holiday in South Africa and for the purposes of any calculation of any time period this shall exclude the first day and include the last day.

**Interested Party:** means any member of the public, an organization, an association of persons, member of IBASA or IBASA itself, who reasonably believe that he/she/it possess information or a basis of complaint which may be reasonably indicative of misconduct on the part of a Member and which information or basis of complaint shall for the purposes of this document be referred to as "a/the complaint", and which person may be referred to as "the Complainant";

**IBASA:** means the Institute of Business Advisors of Southern Africa;

**Institute:** means IBASA;

**LOGS:** means Letter of Good Standing which is provided by IBASA, in their sole and unfettered discretion to a Member provided same is in good standing as determined by the Board of Directors of IBASA for membership of IBASA or the renewal thereof;

#### **Member Rules and**

**Regulations:** means the suite of rules, policies, regulations and similar documentation established under or through IBASA's Memorandum of Incorporation or through a decision of the IBASA's Board or executive and shall include, but not be limited to regulations relating to membership, professional designations, member conduct and disciplinary procedures, continuing professional development and the like, as determined from time to time;

**Member:** means a paid up member of IBASA, irrespective of their category of membership, affiliation or professional designation.

#### **Member in**

**good standing:** means a paid up member that has met all the obligations for membership of IBASA as well as their renewal and who has accordingly received a letter of good standing in accordance with the discretion as exercised by IBASA's board of directors;

**Misconduct:** means any instance of failure on the part of a Member to comply with or adhere to, one or more of the provisions of IBASA's Code of Good Conduct, Member Rules and Regulations and / or applicable and prescribed Policies, IBASA's Memorandum of Incorporation, practices and any acceptable conducts or laws, as determined from time to time;

- Panel:** means a panel comprising of three or more individuals in terms of this Policy and Procedure
- Professional Conduct:** means the level of conduct expected from members of IBASA which is required to be that of a highly ethical and professional nature as required by IBASA and / or applicable rules or regulations and which if not adhered to can result in loss of membership of IBASA or may result in IBASA failing to issue a LOGS, members will be evaluated against the standards for that of a reasonable professional in the same position in the industry
- Appeals Panel:** means a panel comprising of three or more individuals from any of the group of persons who did not sit for the initial complaint as identified by the Board;
- Procedures:** means these IBASA's Disciplinary Procedures, as determined from time to time;
- Secretariat:** means the administrative function of the IBASA's overall disciplinary function;
- Company Secretary:** means the Board Company Secretary who will sit in Committee Meeting.

## **2. INTRODUCTION**

- 2.1 This disciplinary policy of IBASA is intended to regulate the conduct of Members and address and resolve instances of misconduct on the part of a Member, in a fair, objective, rational and transparent manner in order to protect and maintain public confidence in IBASA and its Members.
- 2.2 This policy aims to declare and uphold the highest standards of conduct amongst IBASA Members in furtherance of the integrity and status of business advising as a profession.
- 2.3 IBASA Members are required to adhere to the IBASA Code of Good Conduct with regard to their conduct as directors and officers in their professional engagements, and to any rules, regulations and policies as set in place by IBASA regarding their membership to IBASA and a member's professional conduct in general.

## **3. SCOPE AND APPLICATION**

- 3.1 This Policy and its regulations shall be binding on all Members of IBASA as well as persons applying to become members of IBASA.

## **4. THE IBASA DISCIPLINARY FUNCTION**

- 4.1 The Board shall annually designate a group of persons to serve as members of the IBASA's disciplinary panel.
- 4.2 A complaint against a Member of IBASA shall be adjudicated by the Panel which shall cause disciplinary proceedings to be considered and, in appropriate cases

instituted, against any Member who allegedly contravenes or has contravened any provision of IBASA's Code of Conduct, any prescribed Policies and / or Membership Rules and Regulations or applicable laws or standards as may be applicable.

- 4.3 The Panel shall execute their administrative and adjudication functions in a reasonable, procedurally fair, transparent and unbiased manner in accordance with the provision of this policy and procedures and the principles of natural justice and any other applicable laws.
- 4.4 The Panel shall be supported by the Secretariat whose primary role shall be to prepare the transcripts of deliberations of the Panel, administer the exchange of documents between the Complainant, Member and the Panel and keep a full record of a complaint in an appropriate format or medium for a minimum period of 5 (five) years after the date on which the matter ended.

## **5. RECEIPT AND ADJUDICATION OF A COMPLAINT**

- 5.1 An interested party (hereinafter referred to as "the Complainant") shall refer a complaint to IBASA in writing in accordance with IBASA's standard complaint form as found on its website, together with a sworn affidavit, detailing the particulars relating to the complaint and further, as far as possible include any documentation in support of the complaint.
- 5.2 A complaint shall be lodged with the Secretariat of IBASA, by hand delivery, courier delivery or e-mail to the following address (unless notified otherwise by IBASA in writing)

### 5.3 Hand delivery / Courier:

IBASA Disciplinary Secretariat  
101 Old Nederlands Bank  
Building Church Square  
Pretoria

#### 5.3.1 E-mail:

[admin@ibasa.org.za](mailto:admin@ibasa.org.za)

- 5.4 Where IBASA itself is the complainant, the Managing Director, or their nominee, shall assume the role of the Complainant in a particular matter. In such a case, the Managing Director, or their nominee, may not be a member of the Panel adjudicating the particular complaint.
- 5.5 The Secretariat shall invite the Board identified Panel and provide the Panel with the complaint within 10 (ten) days from receipt thereof and IBASA shall investigate a complaint within a reasonable time but not later than 14 (fourteen) days after the receipt of such complaint, unless the circumstances warrant otherwise.
- 5.6 Having considered the complaint, the Panel may request further particulars from the Complainant, to be given in writing and in the form of a supplementary sworn affidavit (statement) concerning any aspect of the complaint the Panel may deem material in the consideration thereof.
- 5.7 Upon receipt of a complaint (and further particulars where these have been furnished), the Panel may:
- 5.7.1 Where it is of the opinion that the complaint does not disclose a *prima facie* case of misconduct, dismiss the complaint and instruct the Secretariat to inform the Complainant accordingly; or

- 5.7.2 Where it is of the opinion that a *prima facie* case of misconduct on the part of the Member concerned is or may be made out, instruct the Secretariat to furnish the Member with a Notice of Complaint (which shall contain the particulars of the complaint, including the Complainant's sworn affidavit and further particulars, where relevant) calling upon the Member to furnish the Panel with an explanation in answer to the complaint, in writing and in the form of a sworn affidavit (answering statement), incorporating any documentation in support of their answer, within 10 (ten) days of receipt of such Notice.
- 5.8 Following the receipt of the Member's answering affidavit, the Secretariat shall furnish a Notice of Response to the Complainant (which shall contain the Member's answering statement), requesting a reply thereto in writing and in the form of a sworn affidavit (replying statement), within 10 (ten) days of receipt of such Notice. The Complainant may elect not to file a replying statement. Should a replying statement not be received within the 10 (ten) day period it will automatically be assumed that the Complainant has elected not to file a reply, and the proceedings will continue on such basis.
- 5.9 Where a replying statement is received, the Member concerned shall be furnished with a copy thereof for their records no later than 5 (five) days after receipt of such replying affidavit.
- 5.10 After having considered the complaint, the Member's answering statement and any replying statement, the Panel shall, on the basis of the papers before it, either:
- 5.10.1 Dismiss the complaint, and provide both the Complainant and Member a Notice of Dismissal notifying the parties of such outcome;
- or
- 5.10.2 Where the Panel is of the opinion that an adequate answer to the complaint has not been given, formulate in writing a charge or charges of misconduct (Notice of Misconduct Charge(s)) and

require the Member to furnish it with the Member's answer to such charge or charges, in writing in the form of a sworn affidavit (statement), within 10 (ten) days of receipt of such Notice.

5.11 Having considered the Member's reply to the Notice of Misconduct Charge(s), or where no answer is received, then on the basis of the papers before it, the Panel may either still dismiss the complaint or find the Member guilty of one or more of the charges.

5.12 The Panel must, in regard to each charge, determine whether sufficient facts have been proved on a balance of probabilities to support the charge(s).

5.13 The Panel may suspend the adjudication of a complaint, at its sole discretion, pending the outcome of ongoing civil or criminal proceedings against a Member where such proceedings concern, in part or in full, the subject matter of the complaint lodged with IBASA against the Member.

5.14 A Member may utilise legal representation to assist him / her in answering a complaint in writing. Notwithstanding a Member's right to utilise legal representation in formulating their defence in writing, the member shall personally, sign and file all of his / her statements. The costs of a Member's legal representation, irrespective of the eventual outcome of the complaint, shall be for the sole and exclusive account of the Member concerned and the Member shall have no claim whatsoever against IBASA or any of its officers, members, agents, Panel, or the Complainant, for the payment of such costs.

5.15 Should the panel on the basis of the written papers exchanged between the parties in the matter find *inter alia* that -

5.15.1 a factual dispute is present which dispute cannot be adjudicated upon without the submission of oral evidence by the parties concerned; and / or

5.15.2 the credibility of a witness is in dispute; and / or



5.15.3 the circumstances warrant the submission of oral evidence as the complaint cannot be adjudicated on the basis of the papers alone;

then and in such circumstances, the Panel, may in its sole discretion, order a formal disciplinary hearing to take place wherein *viva voce* evidence shall be submitted. It shall be within the discretion of IBASA as to whether an independent chairperson should be present to chair such hearing.

5.16 Should the circumstances as per 5.14 above be present the parties shall have the following rights in this regard:

5.16.1 The right to call their own witnesses and show evidence in support of their case;

5.16.2 The right to cross examine witnesses and challenge the credibility of any evidence;

5.16.3 The right to an interpreter should one be required;

5.16.4 The right to plead in mitigation and argue in mitigation of possible sanction;

5.16.5 The right to plead in aggravation and argue in aggravation of possible sanction;

5.16.6 The right to be informed of the outcome of the hearing within 48 hours after the hearing;

5.16.7 Each party shall be entitled to represent themselves and no legal representation shall be allowed at such hearing unless the parties agree otherwise and in writing. Should legal representation be permitted, the costs of such legal representatives shall not be recovered from IBASA and remain the costs as borne by such Member.

- 5.17 Upon the receipt of any complaint and whilst engaging in its investigation process or at any other time, IBASA reserves its rights to issue or suspend a LOGS to any member of IBASA or to any business advisor including a business rescue practitioner and has the sole discretion whether or not to issue or suspend a LOGS and / or to grant or renew or suspend membership in IBASA accordingly.
- 5.18 Should any provision of this policy, code of good conduct, any other policy, rule, regulation or standard as prescribed by IBASA not be adhered to or complied with, IBASA also reserves its rights and within its discretion not to issue a LOGS and / or to grant or renew membership in IBASA or suspend a member accordingly.
- 5.19 IBASA furthermore reserves its rights to change any requirement for membership or the issuing of a LOGS or continued membership of IBASA to any business advisor including a business rescue practitioner as may be required and in accordance with the law which shall be communicated directly or indirectly through its website or any other means of formal written communication.
- 5.20 Should any member wishing to enforce an alleged right or obligation of IBASA in any court of law or other forum fail to succeed in such enforcement, such member or person shall be liable for any legal costs incurred by IBASA in appointing legal representatives to defend any such legal proceedings on an attorney and own client scale including but not limited to any expenses of any professional regulatory body and or any other out of pocket expenses as incurred by IBASA which legal fees shall not be taxed by IBASA.

## **6. PRECAUTIONARY SUSPENSION OF MEMBERSHIP**

- 6.1 Where IBASA becomes aware of published (irrespective of the medium or form) allegations or reports of possible misconduct on the part of a Member, and where the process in section 5 above has not yet commenced, or has commenced but has not yet been concluded, IBASA may:

- 6.1.1 Make a preliminary inquiry in its discretion as to the nature and extent of the allegations or reports to determine whether the publication of such allegations or reports reasonably poses a potential risk to IBASA's reputation or interests;
  - 6.1.2 Advise the Member in writing that a precautionary suspension of membership is intended and provide the Member with an opportunity to make written representations within 10 (ten) days to IBASA before the precautionary suspension is confirmed;
  - 6.1.3 Where the representations in 6.1.2 above are rejected, confirm the precautionary suspension in writing, and thereafter proceed with the process as outlined in section 5 above at the first reasonable opportunity.
- 6.2 The implementation of a precautionary suspension may not be published as envisaged below, save for a generic confirmation of the precautionary suspension as may be necessary to protect IBASA's reputation and interests as well as the implicated Member.
- 6.3 A precautionary suspension should be uplifted in the event that, and at the earliest opportunity, if it be reasonable to do so.
- 6.4 The decision on the implementation, duration and / or of upliftment, of a precautionary suspension shall vest with IBASA as per the normal IBASA Delegation of Authority applicable from time to time.
- 6.5 The precautionary suspension is not a form sanction as envisaged by section 7.4 below.

## **7. FINDING AND SANCTION**

- 7.1 Where the Panel makes a finding of guilt against a Member on one or more charges, it shall notify the Member accordingly in the form of a Notice of Findings and Sanction, through the Secretariat, and afford the Member an opportunity to place before it, in writing, in the form of a sworn affidavit and within 10 (ten) days of such Notice, mitigating submissions as are relevant to the nature of the finding and the sanction to be imposed.
- 7.2 Upon receipt of any submissions concerning the nature of the sanction to be imposed on the Member, the Panel shall consider the Member's submission(s) before it, and any aggravating circumstances it deems relevant in the circumstances, and impose upon the Member a sanction(s) provided for in these Procedures.
- 7.3 If a Member is dissatisfied with the finding and / or sanction imposed he / she shall have the right to refer the matter for appeal, as provided for herein below.
- 7.4 The sanction shall be one or a combination of the following and shall, in the case of multiple sanctions, run concurrently:
- 7.4.1 A written reprimand, with or without the requirement to issue a written apology to the Complainant and/or IBASA and/or any other relevant party;
  - 7.4.2 An order to successfully complete a skills training program or a competency and/or examination (the cost of which shall be for the Member's account) of IBASA's choosing, within a specified period of time;
  - 7.4.3 A suspension of membership for a period not exceeding 48 months;
  - 7.4.4 Termination of membership for a period not exceeding 10 years, at the expiry of which the Member concerned may re-apply for membership, in accordance with the Member Rules and Regulations;
  - 7.4.5 A life ban on membership.

- 7.4.6 The Panel may suspend or defer all or any part of sanction(s) for any period on any condition that it deems appropriate in the circumstances.

## **8. APPEAL**

- 8.1 A Member (the Appellant) having been found guilty of a charge or charges may lodge an appeal against the finding and/or sanction of the Panel within 10 (ten) days of the date of the finding by setting out the grounds for appeal in writing in the form of a sworn affidavit and submitting their appeal to the Secretariat its Notice of Appeal.
- 8.2 The Board shall identify a new panel (the Appeals Panel) and Secretariat shall furnish the said Appeals Panel, with the appeal documentation at the first reasonable opportunity, taking cognisance of the timelines in section 8.3 below.
- 8.3 The Appeals Panel shall study the record of the complaint and the grounds for the appeal and allow or disallow an appeal within 10 (ten) days of receiving the Notice of Appeal, and the Secretariat shall cause the Appellant to be informed in writing, accordingly (Notice of Response to Appeal). In the case of the Appeals Panel disallowing the appeal, the matter will be dealt with as if no appeal has been lodged.
- 8.4 No person who was involved in the initial consideration of the complaint may be tasked to consider the appeal thereof.
- 8.5 Where an appeal is allowed, the Appeals Panel shall consider both the record of the initial complaint and the appeal received from the Member concerned, but may not consider new evidence, except where:
- 8.5.1 New information becomes available and it would be impracticable, in the opinion of the Appeals Panel, to refer the matter back to the (initial) Panel; and/or
- 8.5.2 A dispute arises as to a point of procedure followed by the (initial) Panel, and it is not possible to ascertain from the record, in the opinion of the Appeal Panel and on a balance of probabilities, the process that was initially followed.

8.6 The Appeals Panel shall, in its sole discretion, have the authority to:

- 8.6.1 Substitute any finding of the (initial) Panel, with a new finding;
- 8.6.2 Impose any new sanction(s) from the competent sanction(s) in section 7.4;
- 8.6.3 Confirm the finding(s) and/or sanction(s) of the (initial) Panel;
- 8.6.4 Refer the matter back for a rehearing by a new Panel on all or some of the original charges.

8.7 The Appeals Panel shall execute their adjudication function in a reasonable, procedurally fair, transparent and unbiased manner in accordance with the provision of these Procedures and the principles of natural justice.

8.8 The Secretariat shall cause a full record of the appeal to be kept in an appropriate format or medium for a minimum period of 5 years after the date on which the matter ended.

8.9 Nothing in this section shall preclude the Member concerned from approaching a Court for such relief as he/she may believe they may be entitled to in the event that they are aggrieved by the outcome of their appeal.

## **9. PUBLICATION OF FINDINGS**

The findings of the IBASA disciplinary function may be published in such form and manner as it deems appropriate, subject thereto that a finding and sanction(s) may only be published once the period for lodging an appeal has expired and no appeal was received, or in the event that the Members' appeal was unsuccessful.

## **10. EXTERNAL ADVICE**

The Panel or Appeals Panel, as the case may be, may if it deems it necessary acquire appropriate external advice or consultation regarding any matter pertaining to a complaint or any procedural aspect not covered by these Regulations.

## **11. CONTINUITY**

The termination, or voluntary cancellation, of a Member's membership shall in no way derogate from or affect the IBASA disciplinary function's jurisdiction to adjudicate, in the manner set out in these Procedures, a complaint(s) of misconduct against a Member which:

11.1 Arose prior to the date the Member's membership being terminated or voluntarily cancelled; and

11.2 Allegedly occurred while the Member was (still) a member of IBASA; and

11.3 Complaint(s) have not yet been resolved.

## **12. KNOWLEDGE OF THIS CODE & POLICY**

It is the responsibility of every member of IBASA to familiarize him or herself with the contents of the code of good conduct & disciplinary policy and to ensure that the code of good conduct and disciplinary policy and any other policies as imposed by IBASA are properly understood together with the consequences that they incorporate