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The premier professional community dedicated to corporate renewal and turnaround management

CODE OF CONDUCT

(IN ACCORDANCE WITH THE TURNAROUND
MANAGEMENT ASSOCIATION OF SOUTHERN AFRICA
CHAPTER NPC'S MEMORANDUM OF INCORPORATION)

ADOPTED BY WAY OF A ROUND ROBIN
RESOLUTION ON 01 APRIL 2019

Turnaround Management Association - Southern African Chapter - NPC

An International Affiliate of the Turnaround Management Association

Registration No.: 2005/033371/08

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1. DEFINITIONS

In these Rules:

- 1.1 "Act" means the Companies Act, 71 of 2008 (as amended) and any expression to which a meaning has been assigned in the Act bears, when used in these Rules, the meaning so assigned;
- 1.2 "Affected person" means a shareholder or creditor of a company under Business Rescue, any registered trade union representing employees of the company under Business Rescue; and if any of the employees of the company under Business Rescue are not represented by a registered trade union, each of those employees or their respective representatives (refer to paragraph 1.9 below);
- 1.3 "Association" means the Turnaround Management Association of Southern Africa Chapter NPC, Registration No 2005/033371/08 a non-profit company duly incorporated under the laws of the Republic of South Africa also known as "TMA-SA";
- 1.4 "Caution" is a reminder of the substance of a disciplinary rule allied with the threat of infringement, akin with a warning;
- 1.5 "CIPC" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Act;
- 1.6 "Code" means the Code of Conduct and Disciplinary Code published by the Association;
- 1.7 "Company" means a company as defined in section 1 of the Act or a close corporation in relation to which the Member is acting or has acted as a turnaround professional;
- 1.8 "Contingent fee" means a fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the Turnaround Professional. A fee established by a court or other public authority is not a contingent fee;

- 1.9 "Direct financial interest" means a financial interest:
- (a) Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or
 - (b) Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control, or the ability to influence investment decisions;
- 1.10 "Disciplinary Committee" refers to a standing committee which has been established by the Association to which the Association has assigned its powers to enquire into cases of alleged improper conduct by its members and to impose punishments in respect thereof;
- 1.11 "Days" means Business days unless otherwise stated herein;
- 1.12 "Financial interest" means an interest in equity, or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest;
- 1.13 "Independence" is:
- (a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism;
 - (b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the integrity, objectivity or

professional scepticism of a firm or of a member of the audit or assurance team, has been compromised.

- 1.14 "Indirect financial interest" means a financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control or ability to influence investment decisions;
- 1.15 "Member" means a registered Member or Members of the Association as referred to in this Memorandum;
- 1.16 "Memorandum" means the Association's Memorandum of Incorporation and includes the Schedules, if any, which form part of it;
- 1.17 "Reprimand" means an official written pronouncement of disapproval sent to the perpetrator of an infringement;
- 1.18 "Rules" means the rules prescribed in the Code from time to time;
- 1.19 "SAQA" means the South African Qualifications Authority, a statutory body regulated in terms of the National Qualifications Framework Act No. 67 of 2008;
- 1.20 "SARIPA" means the South African Restructuring and Insolvency Practitioners Association, a non-profit company ("NPC") duly registered with CIPC with registration number 1986/002363/08;
- 1.21 "Turnaround Professional" means a member of the Association:
- (a) Who is registered in terms of the Companies Act as a Business Rescue Practitioner, and who meets the criteria to act as a Business Rescue Practitioner or who was registered as a Business Rescue Practitioner when the alleged improper conduct took place, whether he/she is in the practice of Business Rescue or not;

- (b) Who facilitates or convenes a proposed or actual compromise in terms of section 155 of the Act;
- (c) Who provides advice and/or conducts himself or herself in relation to pending or contemplated turnaround and/or business rescue proceedings or section 155 proceedings other than as a member or representative of any other professional body or association.
- (d) Who provides advice to companies other than through (a) formal business rescue proceedings or (b), a section 155 Compromise.

2. **PREAMBLE**

- 2.1 It is recognised that as no code can comprehensively provide for every possible manifestation of conduct its application and interpretation must be adequately flexible to accommodate unforeseen manifestations of misconduct and/or undesirable conduct. The Code of Conduct and Disciplinary Code of the Association and all provisions must be applied and interpreted in such a manner as to give credence and effect to the objectives, mission, and values of the Association. In particular, in the absence of any rule, the conduct of members and the application and interpretation of the Code must be guided by the values of the Association as set out in the Association's Memorandum.
- 2.2 The substantive provisions of the Code are therefore intended as a guide of the conduct to be adopted by Members and not an exhaustive directive to Members. Members of the Association should be dedicated to the highest standards of professionalism, integrity and competence for those engaged in all matters involving turnaround, crisis management and corporate renewal. Members are to adhere to and uphold the Memorandum, Code, the Act and the Rules of the Association (including practice notes published by the Association).

3. INTERACTION WITH LEGISLATION

3.1 The Code is not a mere restatement of legislation and regulations, but rather a set of principles and guidelines based on standards of conduct founded in established precedent. Some standards imposed on business rescue turnaround professionals in terms of / by the Code are higher than the existing legal requirements. Where the law is silent or ambiguous, the Code aims / has as objective to introduce principles to clarify understanding of the desired behaviour.

3.2 The objective of the Code is to create a system of professional standards that protects the integrity of the business rescue system and is:

- fair;
- effective;
- practical; and
- readily understood.

3.3 It is anticipated that the Code will be used by affected persons, regulators and courts to assist them in enforcing acceptable rescue practice and proper professional standards.

3.4 At the same time, the Code remains subject to the law and the courts, which may decide not to accept or follow particular requirements or guidance in the Code. In such cases, the Code will be amended to properly reflect the law / prevailing legal position. Also, a turnaround professional may obtain court directions or orders that differ from the requirements or guidelines in the Code.

4. INTERACTION WITH OTHER PROFESSIONAL BODIES

- 4.1 The majority of Turnaround Professionals are also members of other professional associations. The professional conduct requirements of such other professional associations, such as the Independent Regulatory Board of Auditors (“IRBA”) and the South African Institute of Chartered Accountants (“SAICA”), will in many areas be similar to those in this Code. For legal professionals, the rules of the specific provincial Law Society will apply.
- 4.2 Regulators of the Act and related legislation have issued regulatory guidelines, to which practicing Turnaround Professionals must have regard.
- 4.3 To the extent that the Code imposes a higher standard of conduct on Turnaround Professionals than the requirements set by other professional associations or the regulator/s, the Code will prevail.

5. UNDERLYING PRINCIPLES

The Code is based on the following principles: -

- 5.1 The standards enforced by the Association are not the minimum standards prescribed by law but the elevated standards required of each Member by the Association;
- 5.2 The right of the Association to take appropriate disciplinary steps against any Member or office bearer who acts in conflict with the interest and values of the Association and in contravention of the Code;
- 5.3 Members’ inherent right to fair and just disciplinary action;
- 5.4 The emphasis of the disciplinary system is on prevention, justice and rehabilitation in the interest of not only individual Members but the body of Members in general and the occupation of turnaround management;

5.5 Members are to ensure their employees act in accordance with the Code, the Act and Regulations thereto. Members are vicariously liable for the conduct of their employees and agents, however, only intentional or negligent transgressions may attract a sanction other than purely of a corrective nature.

6. THE BUSINESS RESCUE PROFESSION

6.1 Business Rescue Practitioners are fiduciaries. They are entrusted with property of the financially distressed company and are required to deal with this in terms of the law and in accordance with the obligations and duties of fiduciaries. The nature of the Turnaround Professional's fiduciary duty is *sui generis*, or unique.

6.2 The Turnaround Professional: -

- owes fiduciary responsibilities to all the affected persons, but should pay close attention to the interests of creditors, since they influence the outcome of the business rescue proceedings;
- is appointed to manage the business rescue proceedings, to draft and implement a business rescue plan and to deal with and determine the rights and entitlements of all the parties involved;
- should consider and balance the interests of all affected parties in a manner that will optimise the distressed company's chances of rehabilitation; and
- is an officer of the court and should further the administration of justice to the best of his/her ability.
- Members of the Association are expected to perform the same duties and adhere to the same values as directors in terms of the Companies Act. Members are expected to uphold certain fiduciary duties, which include but are not limited to: -

- (a) Duty to exercise care, skill and diligence;
- (b) Duty to not exceed powers;
- (c) Duty to exercise powers for proper purpose;
- (d) Duty to act *bona fide* in the interest of the company and in a manner in which he/she conceives to be for the benefit of the company as a whole;
- (e) Duty to exercise an independent and unfettered discretion;
- (f) Duty not to place themselves in a position of conflict between their personal interest/s and those of the company;
- (g) Duty to account for profits and not make secret or incidental profits;
- (h) Exercise a degree of care, skill and diligence that would reasonably be expected of a person with the required knowledge, skill and experience.

7. MEMBERS' CONDUCT

7.1 Honesty and Integrity

- (a) Integrity implies fair dealings and truthfulness.
- (b) Turnaround Professionals are required to show high levels of integrity by:
 -
 - being straightforward;
 - being honest;
 - being truthful;
 - applying professional scepticism; and

- adhering to high moral and ethical principles in the conduct of their practices and appointments.
- (c) A business rescue Turnaround Professional shall not knowingly be associated with reports, communications or other information which: -
- contains a materially false or misleading statement;
 - contains statements or information furnished recklessly; or
 - omits or obscures information required to be included, where such omission or obscurity would be misleading.
- (d) A Member will not knowingly, negligently or with disregard of the truth, misrepresent their own qualifications, record, capacity, experience or ability or that of any other Member or employee of any Member;
- (e) A Member will use his/her best endeavours to procure compliance by the company with the company's statutory obligations in terms of legislation applicable to the company, including but not limited to the Tax Administration Act 28 of 2011, the Labour Relations Act 67 of 1995 and the Pension Funds Act 24 of 1956.
- (f) A Member will read and familiarise himself/herself with the Code, the MOI and the Practice Notes issued by the Association from time to time.

8. INDEPENDENCE AND IMPARTIALITY

- 8.1 A Turnaround Professional must not have any other relationship with the company subject to restructuring or rescue proceedings such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship in accordance with section 138 (1)(d) of the Act.

8.2 A Turnaround Professional must be independent in fact, i.e. he/she should act and conduct the business rescue in an independent manner.

8.3 A Turnaround Professional must be objective. This requires him/her to exercise his/her judgment free from:

- bias;
- conflict of interest; and
- undue influence from others.

9. **EXERCISING POWERS FOR A PROPER PURPOSE**

9.1 The Turnaround Professional is expected to exercise his/her powers and functions for a proper purpose. Therefore, the Turnaround Professional may not use his/her powers and functions for any other purpose than that for which he/she has been allocated those powers and functions.

9.2 The purpose for which he/she has been allocated the powers is either to rehabilitate the financially distressed company or to establish better /outcome for creditors and/or shareholders.

9.3 A Turnaround Professional who wishes to determine whether he/she would be using his/her powers for a proper purpose may take the following four-step test:

- Identify the power to be exercised;
- Identify the proper purpose for which the abovementioned power has been allocated;
- Identify the purpose for which the power will be exercised; and
- Consider whether or not the purpose is proper.

9.4 In case of any conflict between the power that the Turnaround Professional wishes to exercise and the purpose for which he/she intends exercising it, he/she should refrain from exercising the power.

9.5 The Turnaround Professional who uses his/her powers for a proper purpose will protect the property of the company and will be mindful of the best interests of the company and other stakeholders in realising such property.

10. **MAINTAINING PROFESSIONAL COMPETENCE**

10.1 A Turnaround Professional's competence is an essential cornerstone in the proper conduct of a turnaround. The Turnaround Professional must maintain his/her knowledge and skills throughout his professional career.

11. **CONDUCT TOWARDS THE ASSOCIATION**

11.1 The Member will cooperate with and abide by the Association's self-regulation efforts, its formal and informal complaint resolution programs, and comply with the Association's Rules and this Code.

11.2 In the case of any disciplinary action taken against any Member, the Member will provide full disclosure of all information relating to the matter and will cooperate fully with the Association.

11.3 The Member will actively participate in the activities of the Association and conduct his business in furtherance of the general objectives and values of the Association. In particular, each Member will: -

- (a) Supply information on the nature of the Member's business, management personnel and registration with statutory regulators entitling the Member to perform the activities associated with

turnaround management and business rescue and all other reasonable information requested by the Association.

- (b) Keep all information required by the Association updated at all times.
- (c) Designate a contact person/s having sufficient responsibility within the organisation to deal with affected persons, client and Association enquiries and complaints and provide information about this contact person/s to the Association.
- (d) Promptly respond to all enquiries and complaints forwarded by the Association or from any other official complaint resolution program adopted by the Association, make a good faith effort to resolve all such complaints under accepted good business practices and the procedural rules for the Association as amended from time to time and comply with the terms of any findings issued in such proceedings.
- (e) Pay its registration and annual subscription fees and any other amounts due and payable to the Association within 30 (thirty) days from date of receipt of an invoice for such amount/s.
- (f) Display the Association's official abbreviated name, logo and website address on the Member's letterhead and website, to the extent that the Member is able to do so;
- (g) Refrain from using the name or logo of the Association for whatever purposes in a manner not specifically authorised by the Association and if a dispute arises between the Association and the Member on the use of the Association name and logo,

immediately cease to use the name and logo of the Association in such manner until the dispute has been resolved.

- (h) Take adequate precautions to distinguish between the Member's personal views and the views of the Association, its subsidiaries and affiliates when communicating with third parties.
- (i) Not communicate, share or distribute any proprietary or confidential information which the Member acquires while performing duties as an Association Member, officer, director, committee member or instructor which could have a detrimental impact upon the business or reputation of this Association, its affiliates, alliances or subsidiaries or any other member of the Association; nor will any Member use any such information described herein to promote the Member's self-interest or business interest.
- (j) Notify the Association of any Member of the Association who they suspect, or know, to be violating the Constitution, Code or any Association directive and explain such violation or suspected violation.
- (k) not discuss or debate the affairs of the Association and/or misconduct or suspected misconduct of any Member in the public domain or with any third party unless specifically authorised to do so.

12. **IMPROPER CONDUCT AND THE CONSEQUENCES**

Any Turnaround Professional will be guilty of improper conduct if he/she: -

- 12.1 contravenes or violates any provision of the Act, the Code, and/or MOI with which it is his/her duty to comply;
- 12.2 contravenes or violates any provision of any other Act with which it is his/her duty to comply in his/her capacity as a Turnaround Professional to an undertaking or in doing work of a type commonly performed by a Turnaround Professional;
- 12.3 commits any offence involving dishonesty, and in particular (but without prejudice to the generality of the foregoing) theft, fraud, forgery or uttering a forged document, perjury, bribery or corruption;
- 12.4 is dishonest in performing any work or duties devolving upon him/her in relation to: –
- (a) any work of a type commonly performed by a Turnaround Professional; or
 - (b) any office of trust which he/she has undertaken or accepted;
 - (c) without reasonable cause or excuse fails to perform any work or duties commonly performed by a Turnaround Professional with such a degree of care and skill as in the opinion of the Association may reasonably be expected, or fails to perform the work or duties;
 - (d) fails to reply or to deal with appropriately within a reasonable time any correspondence or other communication from the Association or any other person which requires a reply or other response;
 - (e) fails to comply in a timely manner with an order, requirement or request of the Association;

- (f) fails, after demand, to pay any subscription or any fee, levy or other charge payable to the Association;
- (g) without reasonable cause or excuse, contravenes or fails to observe any of the provisions of the Code;
- (h) commits any act or make any statement that is likely to bring the Association into disrepute.

13. **DISCIPLINARY COMMITTEE**

- 13.1 A Disciplinary Committee has jurisdiction to adjudicate all complaints against Members of a breach of the provisions of this Code.
- 13.2 A Disciplinary Committee will be appointed to deal with all cases of alleged misconduct within its jurisdiction. The Disciplinary Committee which is to sit to consider a particular case will be appointed from the wider pool of committee Members by the Chief Executive Officer.
- 13.3 The proceedings of a Disciplinary Committee will not be open to the public.
- 13.4 The Disciplinary Committee will observe the rules of natural justice but will not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before a court of law.
- 13.5 The person against whom a complaint is laid may be represented by any person of his or her choice.
- 13.6 The Disciplinary Committee will also have the assigned powers to undertake investigations, either of its own accord or in respect of complaints lodged by an affected person, of misconduct against any Member.

14. COMPLAINTS, PRESCRIPTION AND THE HEARING PROCEDURE

- 14.1 Every complaint shall be brought on the prescribed notice, which can be found on the Association's website, supported by an affidavit as to the facts upon which the complainant relies.
- 14.2 Any notice or finding given in terms of this Code may be furnished in accordance with Rule 4 or 4A of the High Court Rules.
- 14.3 The cause of the complaint is subject to prescription and any alleged misconduct giving rise to the complaint shall be extinguished after the lapse of the period of 3 (three) years;
- 14.4 Prescription begins to run as soon as all of the facts necessary to support a complaint in law have arisen.
- 14.5 The 3 (three) year period may be extended to no more than 5 (five) years by the Association, on application, provided good reasons are supplied for the delay in bringing the complaint.
- 14.6 The Association will not entertain any complaint against a Member, which complaint is in respect of alleged misconduct prior to becoming a Member or alleged misconduct by a Member not acting in his/her capacity as a Turnaround Professional.
- 14.7 Every complaint shall first be considered by the Chief Executive Officer of the Association who shall conduct a preliminary assessment of the complaint within 30 (thirty) days. The Chief Executive Officer may engage any Member in good standing to assist him/her to conduct such assessment.
- 14.8 The Chief Executive Officer shall, be entitled (but not obliged), having conducted a preliminary assessment, to reject the complaint or a portion thereof on any of the following grounds:

- (a) The complaint pertains to alleged misconduct by the Member before he or she became a Member or by a person who is not a Member of the Association (in which event the complaint must be rejected);
- (b) The complaint pertains to alleged misconduct by a Member who was not acting in his or her capacity as a Turnaround Professional at the time;
- (c) The complaint discloses no *prima facie* case of improper conduct;
- (d) The complaint is made by someone who is not a Member or an affected person of the company in question or the CIPC and/or
- (e) The complaint is frivolous and/or vexatious.

14.9 Should the Chief Executive Officer decide to reject any part of the complaint, he or she shall notify the complainant in writing. No appeal shall lie against the decision to reject a complaint or portion thereof.

14.10 Should the Chief Executive Officer decide to accept the complaint, he or she shall:

- (a) notify the complainant in writing that the complaint has been accepted and that the complainant has the right to prosecute the complaint personally;
- (b) formulate a charge sheet in writing and furnish same to the complainant and the accused Member.
- (c) should the complainant elect not to personally prosecute the Member, the Association may, within its sole and absolute discretion, within 30 (thirty) days, elect to appoint a *pro forma* prosecutor to prosecute the complaint.

- (d) should the Association elect to appoint complainant a *pro forma* prosecutor to prosecute the complaint, it will advise the complainant accordingly and the complainant will be required to participate and take an active role in the prosecution of the complaint.

14.11 Should the complainant elect to personally prosecute the Member, the complainant will have 15 (fifteen) days from the date of making his or her election, to prepare and submit an affidavit to the Association, in support of the charge sheet.

14.12 The Association will submit the complainant's affidavit to the Member, who will have 15 (fifteen) days after receiving the claimant's affidavit to reply in affidavit form to the complaint and submit same to the Association who will forward the reply to the complainant.

14.13 The complainant will have 10 (ten) days to submit his or her replying affidavit to the Association, who will forward it to the Member.

14.14 The Association will then / thereafter inform the Member and the complainant of the time and place where the disciplinary hearing will take place.

14.15 The Disciplinary Committee may, of its own motion, exercise its powers under these Rules, notwithstanding the absence of any complaint.

14.16 When, upon consideration of the complaint and the accused's explanation in answer thereto or elucidation of the matter, either written or oral, the Disciplinary Committee is satisfied that: -

- (a) the accused has given a reasonable and probable explanation with regard to the conduct imputed to him/her; or
- (b) the conduct imputed to the accused does not constitute improper conduct; or

- (c) there is no reasonable prospect of proving that the accused has been guilty of the conduct imputed to him/her;

it may decide not to proceed further in the matter and will advise, in writing, the complainant and the accused accordingly.

14.17 If the accused admits guilt of the improper conduct imputed to him/her, the Disciplinary Committee will invite the accused to make representations regarding the punishment to be imposed, and will afford him/her a reasonable time within which to make such representations. Thereafter, having considered such representations, the Disciplinary Committee may impose upon the accused any punishment, which it is competent to impose.

14.18 Apart from the procedural aspects contained herein, the Chairperson may determine the procedure to be followed at a hearing whilst ensuring that the proceedings remain procedurally fair and under the principles of natural justice.

14.19 If a charge sheet is found to be defective the Disciplinary Committee may amend it at the hearing so that the hearing may proceed; provided that the accused Member shall be given prior notice of any amendment of the charge sheet.

14.20 After all evidence has been presented, the accused Member may argue his or her own case or have it argued; and if found guilty of any charge or competent conviction, offer evidence in mitigation or have it offered and to address the Disciplinary Committee or have it addressed on the appropriate measure under the Rules under conviction of misconduct.

- (a) All hearings may be recorded electronically and such recording will form part of the record of the hearing.
- (b) The hearing is held in camera with the exception that the complainant and/or any other person showing a material interest

in the proceedings may be allowed access to the proceedings or part thereof as determined by the Chairperson after hearing representations from the party seeking access, the representative of the Association and the Member.

- 14.21 Should any party properly summoned fail to be present at the hearing, including the accused Member, the Disciplinary Committee will have the right either to continue with the hearing in the absence of such party, or, if the accused Member fails to appear, to summarily suspend the accused Member's membership of the Association until the Member appears before it.
- 14.22 Parties summoned or called as a witness to appear before the Disciplinary Committee will be entitled to representation or other assistance.
- 14.23 The Association or the Disciplinary Committee may at any stage subpoena any person or body bound by the Code and these Rules to give evidence or produce any book, paper or document in a hearing before the Disciplinary Committee.
- 14.24 The Association will furthermore issue a subpoena in terms of the High Court Rules, at the request of a party summoned by the Association, provided a sum of money to cover the costs thereby entailed is deposited with the Association prior to the issue of such a subpoena.
- 14.25 A witness subpoenaed to attend a hearing of the Disciplinary Committee who fails to attend, or to remain in attendance at such a hearing until excused by the Disciplinary Committee, will be guilty of improper conduct.
- 14.26 If any witness subject to this Code present at a hearing is required to give evidence at such hearing and refuses to answer any question put to him, or refuses or fails to produce any book, paper or document required to be produced by him, the Disciplinary Committee may in summary manner enquire into such refusal or failure, and unless the person refusing or failing has a just excuse for his refusal or failure, will sentence such

a person to a fine not less than R10,000.00 (ten thousand rand) over and above any other sentence it deems appropriate which may be provided for in the Code and these Rules.

14.27 The *pro forma* prosecutor conducting a prosecution may:

- (a) before the accused pleads to a charge, withdraw that charge, in which event the accused will not be entitled to a verdict of acquittal in respect of that charge;
- (b) at any time after an accused has pleaded to a charge, but before conviction, stop the prosecution in respect of that charge, in which event the Disciplinary Committee hearing the matter will acquit the accused in respect of that charge.

14.28 The *pro forma* prosecutor will read out the charge sheet addressed to the accused and the accused will then be asked by the Chairperson of the Disciplinary Committee to plead "guilty" or "not guilty" to the charges. A plea by the accused that he has already been convicted or acquitted of the offence with which he is being charged may be pleaded together with a plea of "not guilty".

14.29 Where the accused pleads "guilty" to the charges, the Disciplinary Committee will, if satisfied that the accused is guilty of the offence to which he has pleaded "guilty", convict the accused on the accused's plea of "guilty". Nothing in this rule will prevent the *pro forma* prosecutor from presenting evidence on any aspect of the charge, for the purposes of determining an appropriate sentence.

14.30 Where the accused pleads "not guilty" the Disciplinary Committee may, in its discretion, ask the accused whether he/she wishes to make a statement indicating the basis of his/her defence. Where the accused does not make a statement or does so and it is not clear from the statement to what extent the accused denies or admits the issues raised by the plea, the Disciplinary Committee may question the accused in order to

establish which allegations in the charge are in dispute. The Disciplinary Committee may in its discretion, follow an inquisitorial approach and put any question to the accused to clarify any matter raised under this provision, and may enquire from the accused whether an allegation which is not placed in issue by the plea of "not guilty" may be recorded as an admission by the accused of the allegation, and if the accused so contests, such admission will be recorded and will be sufficient proof of such fact.

14.31 The accused will be allowed to cross-examine the complainant and any witness giving evidence on behalf of the Association provided the questions are relevant to the matters in issue. At any time the Chairperson and through him, Members of the Disciplinary Committee may question any witness.

14.32 The *pro forma* prosecutor may then call other witnesses in support of the charge/s. The accused will have the right to ask questions of such other witnesses. Such other witnesses may also be questioned by the Members of the Disciplinary Committee.

14.33 At the conclusion of such evidence, the prosecution's case will be closed.

14.34 The accused may then give evidence on his own behalf and in such event, he may be questioned by the complainant or *pro forma* prosecutor as applicable, and the Disciplinary Committee.

14.35 The accused may then call witnesses to each of whom questions may be put by the accused, in which event they may be questioned by the *pro forma* prosecutor or complainant as applicable, and the Disciplinary Committee.

14.36 At the conclusion of such evidence the accused's case will be closed.

14.37 The Disciplinary Committee may if it thinks it is desirable, or on request by the Association or the accused, allow further evidence to be led by either the *pro forma* prosecutor or complainant as the case may be, or by the accused, or by both, after their cases are already closed.

- 14.38 Hearsay evidence will not be allowed and all extraneous matters in the evidence will be excluded, save that audio and video recordings may be used by any party to the proceedings.
- 14.39 After all evidence has been led, the *pro forma* prosecutor will be allowed to address the Disciplinary Committee on the evidence and the legal position, and this will be allowed irrespective of whether the accused has led evidence or not.
- 14.40 Thereafter, the accused will likewise be allowed to address the Disciplinary Committee. The *pro forma* prosecutor may reply on any question, which the accused has raised in his/her address.
- 14.41 Upon the conclusion of the case, the Disciplinary Committee will deliberate *thereon in camera*.
- 14.42 Once a decision has been reached, the parties will be recalled and the Chairperson will announce the verdict.
- 14.43 If the accused is found "not guilty" the session will be declared closed.
- 14.44 If the accused is found "guilty" or the accused has pleaded "guilty", the *pro forma* prosecutor will be entitled to make presentations regarding a suitable sentence to be imposed and the accused will be entitled to address the Disciplinary Committee in mitigation of sentence.
- 14.45 Thereupon, the Disciplinary Committee will deliberate *in camera* upon the sentence to be imposed.
- 14.46 Once a decision has been reached, the parties will be recalled, and the Chairperson will announce the sentence.

15. FINDINGS OF DISCIPLINARY COMMITTEE

15.1 If an accused Member is found not guilty of the misconduct of which the Member was accused, the Member will be notified in writing and if the Member was provisionally suspended, membership will be reinstated with immediate effect.

15.2 Should a Member be found guilty of misconduct, the Disciplinary Committee may impose one or more of the following punishments:

- (a) A caution;
- (b) A reprimand;
- (c) A fine not exceeding R10,000.00 (ten thousand Rand), subject to escalation;
- (d) Suspension from the Association for a period specified by the Disciplinary Committee;
- (e) Expulsion as a Member;
- (f) Publication of the Member's details for a specified period on the Association's website with a recommendation that the Member not receive any further appointments as a Turnaround Professional;
- (g) Report the findings of the Disciplinary Committee to any other SAQA-accredited professional bodies, in addition to "blacklisting" the member as per paragraph 15.2(f) above;
- (h) Report the findings of the Disciplinary Committee to the CIPC or any other regulator.

15.3 If the accused is found guilty, the Disciplinary Committee has the power to claim compensation (including any legal costs incurred by the Association in prosecuting the complaint) and any damage caused to the Association by the Member.

15.4 The Board of the Association has of its own motion the power to review any findings of the Disciplinary Committee and impose any punishment it deems fit or overturn any punishment it deems fit.

15.5 If the Member is fined under paragraph 15.2(c) ("the fine") above and fails to pay the fine and any legal costs awarded against the Member within 30 (thirty) days after the award or taxation of the costs, whichever may be applicable, then the Association shall be entitled to:

15.5.1 recover the fine by civil proceedings in any Court with territorial jurisdiction and the Member hereby consents to same; and/or

15.5.2 impose in addition to the original sentence any of the manners of punishment specified under paragraphs 15.2(d), (f), and (g).

15.6 Proceedings in which a Member is found guilty may be published by the Association and in the event of the Member charged with misconduct requesting so or consenting thereto, proceedings in which the Member is found not guilty may be published by the Association.

16. **APPEALS**

16.1 No appeal shall lie against any finding that a Member is not guilty of a charge of improper conduct.

16.2 A Member found guilty of misconduct by the Committee may, within 15 (fifteen) days after the date on which notice of the decision of the Committee was received, appeal in writing against the decision and/or the punishment imposed, by submitting the full reasons on which the appeal is based to the Administrator of the Association.

16.3 Upon receipt of a Notice of Appeal, the Chief Executive Officer will appoint a Disciplinary Appeal Committee comprising not less than 3 (three) Association Members in good standing of not less than 5 (five) years with the *proviso* that as far as reasonably possible at least 1 (one) Member of the Disciplinary Appeal Committee should be a person with a formal education in law.

- (a) In conducting an appeal in terms of this paragraph, the parties are entitled at their own expense to legal representation.
- (b) When a party appeals against a decision of the Committee in terms of subparagraph (1), the disciplinary measures applied by the Committee in terms of paragraph 15.2 remain in force until the outcome of the appeal has been announced.
- (c) A copy of the notification of an appeal will be delivered to the Chair of the Disciplinary Appeal Committee upon receipt. The non-appealing party to the disciplinary hearing may respond to the grounds of the appeal within a 10 (ten) days by providing a copy of the response to the Administrator of the Association. Arrangements will then be made for the Disciplinary Appeal Committee's hearing of the appeal, which should commence within 20 (twenty) days of the receipt of the notification of appeal.
- (d) The appeal is considered exclusively in terms of the record kept during the investigation / disciplinary proceedings, together with any documents presented to the appeal committee during the course of the investigation, except where the appeal committee, considering the grounds of appeal, may grant leave for the submission of oral evidence or where the appeal rests on an allegation of a fundamental irregularity which may have taken place during the proceedings and not be evident from the record.

- (e) After considering the appeal, the Disciplinary Appeal Committee may uphold the appeal in its entirety or partially and set aside or amend the findings of the Disciplinary Committee, including to impose a more severe sanction should such be appropriate, or reject the appeal and confirm the decision partially or in its entirety, subject to paragraph 16.3(h) below.
- (f) The appeal committee may, before reaching a final decision on the appeal, refer any question regarding the hearing back to the Disciplinary Committee or a newly constituted Disciplinary Committee and require a report on it or it may investigate the matter further and come to a decision.
- (g) If the Disciplinary Appeal Committee finds that fundamental irregularities have taken place during the proceedings of the relevant Disciplinary Committee, it must rescind the decisions of the Disciplinary Committee. The matter is then referred back to the Association who will appoint a new Disciplinary Committee, constituted of Members who did not serve in the original Disciplinary Committee, and who will then consider the relevant case anew.
- (h) In the event that the Disciplinary Appeal Committee considers that a more severe sanction may be imposed upon a Member, it is obliged to notify the Member in advance that an increased sanction is being considered and the Member shall be entitled to furnish written representations to the Disciplinary Appeal Committee within 3 (three) days as to why the sanction should not be increased on appeal.

- (i) The decision of the Disciplinary Appeal Committee is final and the Association need not ratify measures taken by this committee.

16.4 The Board of the Association has of its own motion the power to review any findings of the Disciplinary Appeal Committee and impose any punishment it deems fit or overturn any punishment it deems fit.

17. EXTENSION OF TIME PERIODS

17.1 The periods referred to in these rules of procedure may be extended by the Association or where a Member is charged, the Disciplinary Committee or where an Appeal has been lodged, by the Disciplinary Appeal Committee, should they be of the opinion that there are sound reasons for such an extension.

18. SAFEKEEPING OF RECORDS

The Association must retain records of any disciplinary proceedings for a minimum of 5 (five) years after conclusion of the Disciplinary hearing.

19. COMMENCEMENT AND RETROSPECTIVITY OF THIS CODE

This Amended Code shall become binding upon approval by the Board and publication on the Association's website.

1. Annexure A: Form of notification

FORM OF NOTIFICATION

To

You are notified that a hearing in terms of the Code of Conduct and Disciplinary Code, will be held at on 20..... at by the Disciplinary Committee when the following charge which has been preferred against you, will be considered:

.....
.....

You are hereby notified that you are entitled to appear at such hearing by yourself or to be represented there at by some other person duly authorised by you, in writing, on your behalf and that you may produce evidence, call and examine witnesses on your behalf and cross-examine other witnesses.

You are required to furnish the basis of your defence to the charges by but should you desire that your letter dated

..... constitute your explanation or defence, please notify me to that effect as soon as possible and by not later than.....

You are hereby warned that any written answer which you may make to the charge may be used in evidence against you.

You are hereby advised that your record of previous convictions (if any) by the Disciplinary Committee or any committee thereof, will be taken into consideration in determining the sentence to be imposed on you, should you be found guilty of the charge set out above.

If you fail to appear, the Disciplinary Committee may consider and deal with the charge/s in your absence in accordance with the rules of the *Disciplinary code*.

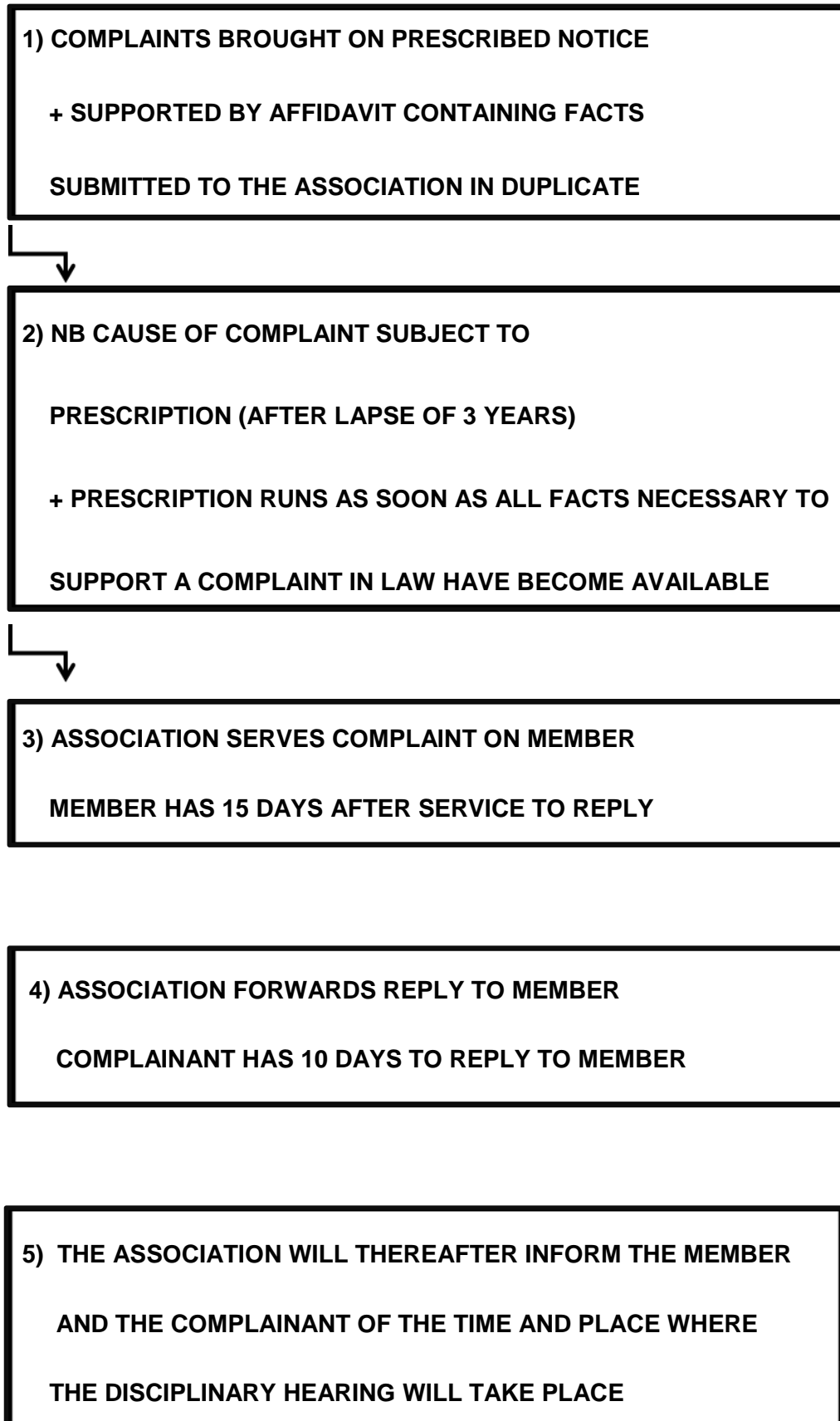
A copy of the *Disciplinary rules* is enclosed.

Given under the hand of the Director thisday of 20.....

.....

Director: Legal TMA – SA

2. DISCIPLINARY PROCESS FLOW CHART



6) THE DISCIPLINARY COMMITTEE:

MAY ON ITS OWN EXERCISE ITS POWERS;

IS NOT OBLIGED TO DISCLOSE ITS SOURCE;

MAY DISMISS THE CLAIM;

WILL ADVISE BOTH PARTIES IN WRITING AS TO ITS DECISION

7) IF THE ACCUSED ADMITS THE CONDUCT, THE ASSOCIATION

WILL INVITE THE ACCUSED TO MAKE A REPRESENTATION

AND PROVIDE HIM/HER WITH REASONABLE TIME TO MAKE A

REPRESENTATION

8) THE CHAIRPERSON WILL DETERMINE

THE HEARING PROCEDURE &

IF THE NEED ARISES THE ASSOCIATION WILL APPOINT AN

APPEAL COMMITTEE COMPRISING OF A MINIMUM OF 3

(THREE) ASSOCIATION MEMBERS AND/OR SENIOR OFFICIALS

9) THE ACCUSED MAY ARGUE HIS/HER OWN CASE OR OBTAIN

LEGAL REPRESENTATION, OFFER EVIDENCE IN MITIGATION,

AND ADDRESS THE COMMITTEE. IF FOUND GUILTY/ NOT

GUILTY – OUTCOME TO BE PUBLISHED BY THE ASSOCIATION