



Disciplinary Regulations



DEFINITIONS

Board:	means the Board of Directors of the IoDSA;
Chief Executive Officer	means the Chief Executive Officer of the IoDSA;
Code:	means the IoDSA's Code of Professional 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;
Interested Party:	means any member of the public, an organisation, an association of persons, Member of the IoDSA or the IoDSA itself, who reasonably believes 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 ";
IoDSA:	means the Institute of Directors in Southern Africa NPC;
Member Rules and Regulations:	means the suite of rules, policies, regulations and similar documentation established under or through IoDSA's Memorandum of Incorporation or through a decision of the IoDSA'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 Member of the IoDSA, irrespective of their category of membership, affiliation or professional designation, but excludes Alumni members;
Member in good standing:	means a member that has met all the obligations for membership renewal;
Misconduct:	means any act or omission, whether intentional or unintentional, which are contrary to one or more of the provisions of the Code or Member Rules and Regulations, as determined from time to time;
Panel:	means a panel comprising three or more individuals from any of the group of persons identified in section 1.1 of these Regulations;
Regulations:	means these IoDSA's Disciplinary Regulations, as determined from time to time;
Secretariat:	means the administrative function of the IoDSA's overall disciplinary function.

INTRODUCTION

The disciplinary processes of the IoDSA are 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 the public, maintain public confidence in the IoDSA and its Members, and to declare and uphold the highest standards of conduct amongst IoDSA Members in furtherance of the integrity and status of directorship as a profession.

IoDSA Members subscribe to the IoDSA Code, regarding their conduct as directors and officers in their professional engagements, and to the IoDSA Member Rules and Regulations, regarding their membership to the IoDSA, in general.

SCOPE AND APPLICATION

These Regulations shall be binding on all Members of the IoDSA.

1. The IoDSA disciplinary function

- 1.1 The Board shall annually designate groups of persons, to serve as members of the IoDSA's disciplinary panel (the Panel). The group shall comprise:
 - (a) Senior IoDSA officers;
 - (b) Members of the IoDSA, in good standing, with experience and expertise commensurate with the adjudication of disciplinary matters;
 - (c) Advisors and/or consultants to the IoDSA; and/or
 - (d) Any such other persons as the Board may determine from time to time.
- 1.2 The designation does not need to be by name and may be done in the form of the identification of an official, function or category of persons exhibiting specific skill, qualification or experience meeting the criteria regarding suitability, as determined by the Board from time to time.
- 1.3 The Board may remove or exclude any person, office or function from the group in section 1.1 above, if it deems it appropriate to do so under the circumstances.
- 1.4 A complaint against a Member of the IoDSA shall be adjudicated by no less than 3 (three) members from one or more of the groups in section 1.1 above, comprising the Panel who shall cause disciplinary proceedings to be considered and, in appropriate cases instituted, against any Member who allegedly contravenes or has contravened any provision of the IoDSA's Code or Member Rules and Regulations.
- 1.5 The Panel shall execute their administrative and adjudication functions in a reasonable, procedurally fair, transparent and unbiased manner in accordance with the provision of these Regulations and the principles of natural justice.
- 1.6 A member of the Panel shall, at the earliest possible opportunity, recuse himself/herself from the Panel should there be any potential or actual personal interest in the matter, bias, prejudice, or conflict of interest on their part in regard to the complaint or the Member.
- 1.7 The Panel shall identify 1 (one) from among their ranks to act as chair of the Panel, for the duration of a specific complaint, and shall decide each matter on the evidence before it upon the balance of probabilities. The decision will be by majority ruling and in the case of a deadlock the chair will have a casting vote. The chair shall communicate the requests and decision(s) of the Panel, through the Secretariat, to the Complainant and the Member.

- 1.8 The Panel shall be supported by the Secretariat whose primary role shall be to identify a Panel, administrate 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.
- 1.9 The Chief Executive Officer shall be the custodian of these Regulations and ensure that:
- (a) appropriate amendments are initiated and submitted to Board for approval, as and when necessary; and
 - (b) determine administrative processes and procedures, from time to time, to give effective execution to these Regulations.

2. Receipt and adjudication of a complaint

- 2.1 An Interested Party (the Complainant) shall refer a complaint to the IoDSA in writing and in the form of a statement, detailing the particulars relating to the complaint and further, as far as possible, include any documentation in support of the complaint.
- 2.2 A complaint shall be lodged with the Secretariat, by hand delivery, courier delivery or e-mail:
- (a) Hand delivery / Courier:

IoDSA Disciplinary Secretariat
144 Katherine Street, Grayston Ridge Office Park, Block B, Floor 1
 - (b) Email:

discipline@iodsa.co.za
- 2.3 Where the IoDSA itself is the complainant, the Chief Executive Officer, or their nominee, shall assume the role of the Complainant in a particular matter. In such case, the Chief Executive Officer, or their nominee, may not be a member of the Panel adjudicating the particular complaint.
- 2.4 The Secretariat shall identify a Panel and provide the Panel with the complaint within 10 (ten) Days from receipt thereof.
- 2.5 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 statement, concerning any aspect of the complaint the Panel may deem material in the consideration thereof.
- 2.6 Upon receipt of a complaint (and further particulars where these have been furnished), the Panel may:
- (a) where it is of the opinion that the complaint does not disclose a *prima facie* case of misconduct, dismiss the complaint and cause the Secretariat to inform the Complainant accordingly; or
 - (b) 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, cause the Secretariat to furnish the Member with a Notice of Complaint (which shall contain the particulars of the complaint, including the Complainant's statement 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 an answering statement, incorporating any documentation in support of their answer, within 10 (ten) Days of receipt of such Notice.

- 2.7 Following the receipt of the Member's answering statement, 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 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.
- 2.8 Where a replying statement is received, the Member concerned shall be furnished with a copy thereof for their records.
- 2.9 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:
- (a) dismiss the complaint, and provide both the Complainant and Member a Notice of Dismissal notifying the parties of such outcome; or
 - (b) 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 statement, within a stipulated time.
- 2.10 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 in terms of clause 2.9(a) above or find the member guilty of one or more of the charges.
- 2.11 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).
- 2.12 The Panel may suspend the adjudication of a complaint, in 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 the IoDSA against the Member.
- 2.13 A Member may utilise legal representation to assist him/her in answering a complaint. Notwithstanding a Member's right to utilise legal representation in formulating their defense, 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 the IoDSA or any of its officers, members, agents, Panel, or the Complainant, for the payment of such costs.

3. Precautionary suspension of membership

- 3.1 Where the IoDSA 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 2 above has not yet commenced, or has commenced but has not yet been concluded, the IoDSA Chief Executive Officer may:
- (a) 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 the IoDSA's reputation or business interests;
 - (b) 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 the IoDSA before the precautionary suspension is confirmed;

- (c) were the representations in (b) above are rejected, confirm the precautionary suspension in writing, and thereafter proceed with the process as outlined in section 2 above at the first reasonable opportunity.
- 3.2 The implementation of a precautionary suspension may not be published as envisaged in section 6 below, save for a generic confirmation of the precautionary suspension as may be necessary to protect the IoDSA's reputation and business interest.
- 3.3 A precautionary suspension should be uplifted in the event that, and at the earliest opportunity, if it be reasonable to do so.
- 3.4 The decision on the implementation, duration and/or or upliftment, of a precautionary suspension shall vest with the IoDSA as per the normal IoDSA Delegation of Authority applicable from time to time.
- 3.5 The precautionary suspension is not a form sanction as envisaged by section 4.4 below.

4. Finding and sanction

- 4.1 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 Finding and Sanction, through the Secretariat, and afford the Member an opportunity to place before it, in writing 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.
- 4.2 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 Regulations.
- 4.3 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 in section 5 below.
- 4.4 The sanction shall be one or a combination of the following and shall, in the case of multiple sanctions, run concurrently:
 - (a) a written admonishment or reprimand, with or without the requirement to issue a written apology to the Complainant and/or the IoDSA and/or any other relevant party;
 - (b) a suspension of membership for a period not exceeding 48 (forty eight) months;
 - (c) an order to successfully complete a competency or ethics related course and/or examination (the cost of which shall be for the Member's account) of the IoDSA's choosing, within a specified period of time;
 - (d) an order to successfully complete personal or professional coaching or counselling (or similar remedial intervention) of the IoDSA's choosing, within a specified period of time (the cost of which shall be for the Member's account);
 - (e) termination of membership for a period not exceeding 10 (ten) years, at the expiry of which the Member concerned may re-apply for membership, in accordance with the Member Rules and Regulations;
 - (f) a life ban on membership;
 - (g) revocation of the designation awarded to the Member in the case of (b), (e) or (f) above.
- 4.5 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.

5. Appeal

- 5.1 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 and submitting their appeal to the Secretariat, as provided for in 2.2 above (Notice of Appeal).
- 5.2 The Secretariat shall identify and furnish a new panel (the Appeal Panel), comprising of no less than three persons as set out in 1.1 above, with the appeal documentation at the first reasonable opportunity, taking cognisance of the timelines in 5.3 below.
- 5.3 The Appeal Panel shall study the record of the complaint and the grounds for the appeal and allow or disallow an appeal within 20 (twenty) 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 Appeal Panel disallowing the appeal, the matter will be dealt with as if no appeal has been lodged.
- 5.4 No person who was involved in the initial consideration of the complaint, may be tasked to consider the appeal thereof.
- 5.5 Where an appeal is allowed, the Appeal 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:
 - (a) new information becomes available and it would be impracticable, in the opinion of the Appeal Panel, to refer the matter back to the (initial) Panel; and/or
 - (b) 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.
- 5.6 The Appeal Panel shall, in its sole discretion, have the authority to:
 - (a) substitute any finding of the (initial) Panel, with a new finding;
 - (b) impose any new sanction(s) from the competent sanction(s) in section 4.4;
 - (c) confirm the finding(s) and/or sanction(s) of the (initial) Panel; and/or
 - (c) refer the matter back for a rehearing by a new Panel on all or some of the original charges.
- 5.7 The Appeal Panel shall execute their adjudication function in a reasonable, procedurally fair, transparent and unbiased manner in accordance with the provision of these Regulations and the principles of natural justice.
- 5.8 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 (five) years after the date on which the matter ended.
- 5.9 Nothing in this section 5, 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.

6. Publication of findings

The findings of the IoDSA disciplinary function may be published in such form and manner as the Board determines from time to time, 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 Member's appeal was unsuccessful, and the timing or content of the publication may not adversely affect the rights of those involved in related civil or criminal matters. Subject to the aforementioned, the findings may be communicated to other professional associations, regulators or similar forums as the Board deems appropriate.

7. External advice

The Panel or Appeal 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. The cost associated with such advice shall be borne by the IoDSA.

8. Continuity

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

- (a) arose prior to the date the Member's membership being terminated or voluntarily cancelled;
- (b) allegedly occurred while the Member was (still) a member of the IoDSA; and
- (c) which complaint(s) have not yet been resolved.

ⁱ Disciplinary Regulations approved on 30 April 2019; Implementation immediate