

**PERSATUAN INSURAN ANTARABANGSA LABUAN
(THE LABUAN INTERNATIONAL INSURANCE ASSOCIATION)**

**MARKET MISCONDUCT
DISCIPLINARY PROCEDURES
(RULE 11.3 OF THE CONSTITUTION)**

1. **INTERPRETATION**

1.1. In these procedures, unless the context otherwise requires:

- (a) a word appearing in bold in these procedures has the meaning given to it by the **Constitution**, except where there is no corresponding definition in the **Constitution** or where the word is defined in both the Constitution and these procedures, in which case it has the meaning given in these procedures, for the purposes of these procedures only;
- (b) a reference to:
 - (i) a “rule” is a reference to a rule in the **Constitution**.
 - (ii) a “clause” is a reference to a clause in these procedures;
 - (iii) the singular includes the plural and vice versa;
 - (iv) the masculine includes the feminine.

Chairman means the chairman of the **Disciplinary Committee**, as provided for in rule 11.2(c).

Complainant means the person(s) making a **Complaint**.

Complaint means a complaint alleging **Misconduct** against a **Respondent** received by the **Council**.

Constitution means the constitution of the **Association** in force from time to time.

Council means the Council provided for in rule 7 and, in relation to the specific tasks:

- a) contemplated in clauses 5.3, 6.1 (including, without limitation, compiling and maintaining a list of persons eligible to be **Investigators**) and 11.3;
- b) of considering and granting extensions of time under clauses 6.2(e), 9.5(c) and 11.5(b);
- c) of excusing an **Investigator** from the duty to make a finding under clause 6.2(g)
- d) of excusing an **Assessor** from the duty to reach a decision under clause 11.5(c);
- e) of terminating the appointment of any individual member of the **Disciplinary Committee** under clause 7.3;
- f) of forming opinions necessary to exercise the Council’s powers under clauses 6.2(g), 7.3 and 11.5(c),

any office-bearer of the **Association** to whom the Chairman of the Council has assigned, pursuant to rule 7.27, those specific tasks.

Identified Person means a natural person whose conduct in relation to **Insurance Products and Services** is regulated, directly or indirectly, by the laws of the **Territory** against whom a **Complaint** has been made.

LfSA means the Labuan Financial Services Authority;

Matters Relating to a Complaint means the existence of a **Complaint**, the existence and outcome of a disciplinary process relating to a **Complaint**, evidence and other materials in the disciplinary process contemplated by these procedures and all documents produced by the **Parties**, but excludes any matter that is otherwise in the public domain.

Misconduct has the meaning set out in rule 9.6.

Panel means a panel of the **Disciplinary Committee** designated in accordance with clause 8.1.

Party or **Parties** means the **Complainant** and the **Association** and any **Respondent** against whom a **Complaint** has been made.

Respondent means the **Member** and any **Identified Person** against whom a **Complaint** has been made.

Serious Harm means harm to the physical or mental well-being of a natural person, causing a natural person to sustain financial loss or damage to the reputation of a natural person other than as a result of a sanction imposed in accordance with clause 10.1.

2. INTRODUCTION

- 2.1. The **Association** aims to protect policyholders and the good reputation of the **Association** and its **Members** through enforcement of measures to maintain confidence in the quality and integrity of **Insurance Products and Services** provided by **Members**.
- 2.2. **Complaints** are subject to initial screening by an **Investigator**, who may refer any **Complaint** to a panel of the **Disciplinary Committee** for more detailed consideration. The procedural aspects of the activities of any panel of the **Disciplinary Committee** are susceptible to limited review by an **Assessor**, as is the reasonableness of that panel's decision.
- 2.3. These procedures intentionally replicate part of the rules and elaborate upon them, to create a single source of procedural guidance for the administration and resolution of **Complaints**. Where there is any inconsistency between these procedures and the rules, these procedures shall prevail.

3. CONFIDENTIALITY

- 3.1. Except where some form of disclosure is necessary for the purposes of:
 - (a) implementation of these procedures;
 - (b) publishing details of a decision of a **Panel** in accordance with rule 11.14 where a **Complaint** is upheld but not appealed and after the fourteen (14) day period referred to in clause 11.2 has expired;
 - (c) publishing details of a decision of an **Assessor** to uphold the decision of a **Panel** to uphold a **Complaint**;
 - (d) enforcing a decision of a **Panel**;

- (e) complying with a legal duty, or to protect or pursue a legal right or to challenge in bona fide legal proceedings before a state court or other judicial authority,

the **Council**, the **Investigator**, the **Disciplinary Committee** and its panel members, the **Parties** and their representatives (where permitted), experts, witnesses and the **Assessor** shall keep confidential all **Matters Relating to a Complaint**.

- 3.2. All meetings held for the purposes of these procedures shall be held in private and shall remain confidential. All persons present during any meeting held for the purposes of these procedures shall, before the start of any meeting, provide the **Investigator**, the **Panel** or the **Assessor**, as the case may be, with a valid copy of their identity card or passport. The **Investigator**, the **Panel** or the **Assessor** may, in their absolute discretion, decline to allow any person to be present during a meeting whose identity has not been validated before the meeting starts and may adjourn any meeting, at any time, to allow the identity of any person who wishes to be present at a meeting to be validated.
- 3.3. The **Investigator's** notes and any written report produced in accordance with clause 6.2(k) shall be confidential to the **Investigator** and the **Disciplinary Committee** and shall not be viewed or copied by any person other than the **Assessor** or any entity except in response to a bona fide subpoena or other lawful process issued by a court or agency of competent jurisdiction.
- 3.4. The **Panel's** written notes produced in accordance with clause 9.5(e) shall be confidential to the **Disciplinary Committee** and shall not be viewed or copied by any person other than the **Assessor** or any entity except in response to a bona fide subpoena or other lawful process issued by a court or agency of competent jurisdiction.
- 3.5. The **Council**, the **Investigator**, the **Disciplinary Committee** and its panel members and the **Assessor** will collect and use personal data about the **Complainant**, any **Identified Person** and any person referred to in **Matters Relating to a Complaint** pursuant to section 6(2)(e) and (f) of the Personal Data Protection Act (Act 709) and only for the purposes of these procedures. Where sensitive personal data is involved, the **Council** will ensure that the explicit consent of the natural person to whom sensitive personal data relates is obtained before such data is used for the purposes of these procedures.

4. **DISCLAIMER**

Neither the **Council**, an **Investigator**, the **Disciplinary Committee** or its panel members or the **Assessor** shall be liable to any party for any act or omission arising from **Matters Relating to a Complaint**, the **Constitution** or these procedures.

5. **FEE**

- 5.1. No **Complainant** may invoke or receive any benefit under these procedures until an administrative fee of USD 100 has been paid to the **Association** in respect of a **Complaint**.
- 5.2. Where a single **Complaint** involves more than one:
 - (a) **Member**, an administrative fee of USD 100 shall be due and paid by the **Complainant** in respect of each **Member**;

- (b) **Complainant**, an administrative fee of USD 100 shall be due and paid in respect of each **Complainant**.
- 5.3. A **Complainant** may withdraw any **Complaint** at any time after paying the fee referred to in clause 5.1 by written notice to the **Council**, but shall not be entitled to a refund of that fee. Upon receipt of a notice of withdrawal, the **Council** shall ensure that no further steps be taken in relation to the **Complaint** and direct the **Investigator** (if an **Investigator** has been designated), the **Chairman** and any **Panel** (if a **Panel** has been designated), accordingly.
- 5.4. Payment of a fee referred to in this clause 5 by or on behalf of a **Complainant** shall be deemed to be acceptance by that **Complainant** that these procedures apply to his **Complaint**.
- 5.5. Membership of the **Association** at the time a **Complaint** is received by the **Council** in accordance with clause 6.1 shall be deemed to be acceptance by the **Respondent** that these procedures apply to the **Complaint**.

6. INVESTIGATION OF MISCONDUCT

- 6.1. Upon receipt of a **Complaint** by the **Council** or (if the **Complaint** is made by the **Council** upon a resolution having been made by the **Council** to make a **Complaint**), the **Council** shall:
 - (a) designate an **Investigator**, drawn from a list compiled and maintained by the **Council** of persons eligible to be **Investigators**, to impartially investigate that **Complaint** and make one of the findings listed in clause 6.2(f) within three (3) weeks of being designated;
 - (b) notify the **LFSA** of the existence and nature of the **Complaint** and the identities of the **Respondent** against whom the **Complaint** has been made;
 - (c) notify the **Respondent** of the existence of the **Complaint** and provide the **Respondent** with a copy of the **Complaint**.
- 6.2. The **Investigator** designated in accordance with clause 6.1(a):
 - (a) shall not be a member of the **Council**, nor of any committee of the **Council**, constituted under the **Constitution** or otherwise;
 - (b) shall not have or be perceived to have, in relation to the **Complaint** the **Investigator** has been designated to investigate:
 - (i) a direct financial interest in the subject matter of that **Complaint**; or
 - (ii) a personal or business relationship of any description (other than membership of the **Association**) with a **Respondent** against whom that **Complaint** has been made;
 - (c) shall be an officer of a **Member** whose membership of the Chartered Insurance Institute (CII), the Australian and New Zealand Institute of Insurance and Finance (ANZIIF) or any other professional body of good repute recognised by the **Association**, has continued in good standing for an uninterrupted period of not less than 10 years;
 - (d) shall invite the **Parties** to separately attend such number of meetings by telephone, in person or by video conference as may be necessary for the **Investigator** to:
 - (i) hear and receive all **Matters Relating to a Complaint** the **Parties** may wish to present or produce to the **Investigator**;

- (ii) to enable the **Investigator** to request that the **Parties** present or produce specific oral or documentary evidence to the **Investigator**;
- (iii) to make one of the findings listed in clause 6.2(f);

The **Parties** shall not be entitled to legal representation during any such meeting, nor may any legal representative attend any such meeting. To the extent that a **Party** is not a natural person, that **Party** shall be represented by one or more individuals at any meeting with the **Investigator**, provided always that such individuals(s) shall not have held a practising certificate (or its equivalent) as a lawyer in any jurisdiction during the six (6) months preceding the date of any meeting. An **Investigator** shall make and keep, in any form of his choosing, a recording of any meeting or telephone call arranged pursuant to this clause 6.2(d).

- (e) may request from the **Council** further time to investigate and make findings in relation to a **Complaint** if he or she reasonably considers that the three (3) week period provided for in clause 6.1(a) is insufficient, provided always that the aggregate of period(s) specified by the **Council** in accordance with this clause 6.2(e) shall not exceed eight (8) weeks, calculated to start from the date upon which either a **Complaint** is first received by the **Council** or (if the **Complaint** is made by the **Council**) the **Council** resolves to make a **Complaint**.
- (f) is authorised to reach one of the following findings after concluding the investigation of a **Complaint**:
 - (i) that the **Complaint** has not been made in good faith and shall be rejected or (if the **Complaint** has been made by the **Council**) withdrawn;
 - (ii) that there is no prima facie case to answer and that the **Complaint** shall be rejected or (if the **Complaint** has been made by the **Council**) withdrawn;
 - (iii) that there is a prima facie case to answer but the **Complaint** is, or appears to be, the subject of, or substantially related to, current or probable proceedings before the courts or before any other professional, regulatory or other tribunal and that the **Complaint** shall be stayed until such proceedings have been concluded; or
 - (iv) that there is a prima facie case to answer and the **Complaint** shall be referred to the **Disciplinary Committee**.
- (g) shall not be entitled to conclude an investigation without making one of the findings listed in clause 6.2(f), except where the **Council** excuses the **Investigator** from the duty to make a finding by reason of the **Investigator**:
 - (i) being guilty of any misconduct which, in the reasonable opinion of the **Council**, can be said to be, and is, detrimental to the interests and reputation of the **Association**;
 - (ii) becoming bankrupt;
 - (iii) being guilty of fraud or dishonesty;
 - (iv) being habitually neglectful of his duties as an Investigator;
 - (v) becoming incapacitated through ill health;
 - (vi) being, in the reasonable opinion of the **Council**, unable or unwilling to perform his duties as an Investigator for any other reason.

Where an **Investigator** is excused by the **Council** from concluding an investigation without making one of the findings listed in clause 6.2(f), the **Council** shall designate a replacement **Investigator** in accordance with clause 6.1(a) and the three (3) week period referred to in clause 6.1(a) shall re-start from the date the replacement **Investigator** is designated. The written notes of the **Investigator** being replaced, and any recordings of meetings and telephone calls made and kept in accordance with clause 6.2(d), shall be provided to the **Chairman** and to the replacement **Investigator**, but not to the **Council**;

- (h) shall have absolute discretion over the weight he gives to evidence presented to him during the course of his investigation and over his findings. Except in relation to one of the findings listed in clauses 6.2(f)(i) or 6.2(f)(ii), which the **Complainant** may appeal to the **Disciplinary Committee** by giving written notice of appeal to the **Chairman**, within fourteen (14) days of receipt of notification of the **Investigator's** finding:
 - (i) all findings by the **Investigator** shall be immediately binding upon the **Council** and the **Parties**;
 - (ii) neither the **Council** nor the **Parties** shall have any right of recourse or appeal against any such findings.
- (i) shall keep under periodic review (at not more than three month intervals) whether the reason a stay imposed in accordance with clause 6.2(f)(iii) continues to apply. In the event that the **Investigator** resolves that a reason no longer applies or that the reason for a stay continues to apply but (in his absolute discretion) is no longer valid, he or she shall immediately inform the **Chairman** of that conclusion.
- (j) shall, at the conclusion of his investigation, communicate in writing one of the findings listed in clause 6.2(f) to the **Chairman**.
- (k) shall make written notes of his investigation sufficient to produce a written report. The written notes produced in accordance with this clause 6.2(k) shall record, at a minimum:
 - (i) the full name(s), address(es) and contact details of all of the **Parties**;
 - (ii) a detailed chronology of events leading to the **Complaint** being made;
 - (iii) such additional details of the **Misconduct** alleged in the **Complaint** as are relevant and necessary for a **Panel** to properly understand the nature and seriousness of the **Complaint**;
 - (iv) the **Investigator's** opinion of the credibility of each of the relevant **Parties** and the reliability of the responses given by those **Parties** to the **Investigator** during his investigation, including whether specific oral or documentary evidence was presented or produced by a **Party** in response to a request by the **Investigator** that it be presented or produced;
 - (v) a description of the investigation undertaken by the **Investigator**, including the dates and times of all meetings and telephone calls with any of the relevant **Parties**;
 - (vi) detailed notes of all meetings and telephone calls with any of the **Parties**, to the extent that a record of such meetings and telephone calls is not made and kept in accordance with clause 6.2(d);
 - (vii) reasons for the **Investigator** making one of the findings listed in clause 6.2(f), including the reasons for attaching weight (or not attaching weight, as the case may be) to evidence presented to him during his investigation;

- (viii) a list of all documents and information produced to the **Investigator** as part of his investigation, together with a note as to whether a **Party** (and, if so, which **Party**) produced a particular document or item of information to the **Investigator**, and on what date. The list required by this clause 6.2(k)(viii) shall be numbered and shall describe each document or item of information with sufficient clarity to enable a **Panel** to identify that document or item of information with a reasonable degree of certainty.
 - (l) shall within seven (7) days of communicating to the **Chairman** one of the findings listed in clause 6.2(f), produce and deliver a written report to the **Chairman**, detailing the basis upon which that finding was made.
- 6.3. No rules of evidence shall apply to any activity described in or contemplated by this clause 6.
- 6.4. All evidence presented or produced to the **Investigator** by one **Party** during an investigation shall be disclosed by the **Investigator** to the other **Party** for the purposes of the investigation, unless, in the opinion of the **Investigator**, disclosure of that evidence to the receiving **Party** would be likely to result in **Serious Harm** to the disclosing **Party** or to any person to whom that evidence relates.
- 6.5. An **Investigator** designated by the **Council** in accordance with this clause 6 shall be entitled to be paid a reasonable fee and/or expenses commensurate with the duties undertaken and such fee and/or expenses shall be fixed by the **Council**.

7. COMPOSITION OF THE DISCIPLINARY COMMITTEE

- 7.1. The **Council** shall appoint and continuously maintain a **Disciplinary Committee** comprising representatives drawn from not less than three (3) and not more than ten (10) **Members**.
- 7.2. Individual members of the **Disciplinary Committee** shall:
- (a) sit for periods of two years or until resignation, whichever is earlier; and
 - (b) be eligible for re-appointment, subject to a maximum tenure of ten years in aggregate; and
 - (c) ensure that the **Disciplinary Committee** has, at all times, a **Chairman** who shall be appointed by a simple majority of the individual members of the **Disciplinary Committee**.
- 7.3. The **Council** may immediately terminate the appointment of any individual member of the **Disciplinary Committee** where that person:
- (a) is guilty of any misconduct which, in the reasonable opinion of the **Council**, can be said to be, and is, detrimental to the interests and reputation of the **Association**;
 - (b) becomes bankrupt;
 - (c) is guilty of fraud or dishonesty;
 - (d) is habitually neglectful of his duties as an individual member of the **Disciplinary Committee**;
 - (e) becomes incapacitated through ill health;
 - (f) is, in the reasonable opinion of the **Council**, unable or unwilling to perform his duties as an individual member of the **Disciplinary Committee** for any other reason.

7.4. If, as a result of:

- (a) a resignation or the expiry of the tenures referred to in clauses 7.2(a) or 7.2(b); or
- (b) the termination of the appointment of any individual member of the **Disciplinary Committee** in accordance with clause 7.3,

membership of the **Disciplinary Committee** is reduced in number, the **Council** may appoint a replacement representative consistently with clause 7.1 and shall always appoint a replacement representative consistently with clause 7.1 to avoid membership of the Disciplinary Committee being reduced to less than three (3) in number.

8. COMPOSITION OF A PANEL OF THE DISCIPLINARY COMMITTEE

8.1. Within five working days of the **Chairman** receiving:

- (a) a notice of appeal in accordance with clause 6.2(h);
- (b) a finding in accordance with clause 6.2(j);
- (c) a communication from an **Investigator** in accordance with clause 6.2(i),

the **Chairman** shall designate a panel comprising three individual members of the **Disciplinary Committee** to consider and review the **Complaint** to which clauses 8.1(a) to 8.1(c) relate. That panel shall consist of:

- (d) one representative of a **Member** holding the same type of licence granted under Part VII of the LFSSA or the LIFSSA as the **Respondent** in the **Complaint** being considered by that panel; and
- (e) two representatives of two **Members** each holding a licence granted under Part VII of the LFSSA or the LIFSSA which is of a different type to the licence described in clause 8.1(d) and of a different type to each other's licence. (For the purposes of this clause 8.1(e), a licence granted under Part VII of the LFSSA or the LIFSSA to carry on or transact general insurance and reinsurance and takāful and retakāful business shall be deemed to be different from a licence to carry on or transact life insurance and reinsurance or family takāful and family retakāful business).

8.2. No **Panel** shall include:

- (a) a person who has, or could be perceived to have, a direct financial interest in the subject matter of a **Complaint** to be considered by that **Panel**;
- (b) a person who has, or could be perceived to have, a personal or business relationship of any description (other than membership of the **Association**) with a **Respondent** in a **Complaint** to be considered by that **Panel**;
- (c) a person who has ceased to be an individual member of the **Disciplinary Committee**.

8.3. If, as a result of:

- (a) a resignation or the expiry of the tenures referred to in clauses 7.2(a) or 7.2(b); or
- (b) the termination of the appointment of any individual member of the **Disciplinary Committee** in accordance with clause 7.3,

membership of any **Panel** falls below three (3) in number, the **Panel** shall immediately suspend its business and the **Chairman** shall immediately designate a replacement member to that **Panel** consistently with clauses 8.1 to 8.2(c). Upon the designation of a replacement member to a **Panel** in accordance with this clause 8.3, that **Panel** shall be permitted to continue to conduct its business as if its composition had not changed.

8.4. No **Panel** may conduct any business unless its three individual members are present.

9. **CONSIDERATION OF A COMPLAINT BY A PANEL OF THE DISCIPLINARY COMMITTEE**

9.1. As soon as practicable after receiving the **Investigator's** report in accordance with clause 6.2(l), the **Chairman** shall provide a copy of that report to the **Panel**.

9.2. The **Panel** shall consider the report and, if the **Panel** considers that any aspect of the report needs clarification, invite the **Investigator** to attend such number of meetings with the **Panel** by telephone, in person or by video conference as may be necessary to resolve any points of uncertainty arising from the report to the **Panel's** satisfaction.

9.3. As soon as the **Panel** is satisfied that it properly understands the **Investigator's** report, the **Panel** shall invite the **Parties** to separately attend such number of meetings by telephone, in person or by video conference as may be necessary for the **Panel** to:

- (a) hear and receive all **Matters Relating to a Complaint** the **Parties** may wish to present or produce to the **Panel**;
- (b) to enable the **Panel** to request that the **Parties** produce or present specific oral or documentary evidence to the **Panel**.

The **Parties** shall not be entitled to legal representation during any such meeting, nor may any legal representative attend any such meeting. To the extent that a **Party** is not a natural person, that **Party** shall be represented by one or more individuals at any meeting with the **Panel**, provided always that such individuals(s) shall not have held a practising certificate (or its equivalent) as a lawyer in any jurisdiction during the six (6) months preceding the date of any meeting. A **Panel** shall make and keep, in any form of its choosing, a record of any meeting or telephone call arranged pursuant to this clause 9.3.

9.4. In the event that a **Party** does not attend a meeting or a telephone call to which the **Panel** has invited them, after having been given a reasonable opportunity to do so, or does not take the opportunity to present all relevant **Matters Relating to a Complaint** at or during any such meeting(s) or telephone calls, the **Panel** shall be entitled to proceed regardless and to draw such inferences from the failure to attend or present or produce evidence as it sees fit.

9.5. The **Panel**:

- (a) shall be entitled to hold and adjourn any number of meetings with the **Complainant** and the **Respondent**, in any order, as it deems reasonable and necessary to reach a decision as to whether a **Complaint** ought to be upheld or rejected, provided always that the **Panel** should, initially, aim to complete consideration of any **Complaint** within six (6) weeks of being designated in accordance with clauses 8.1 or 8.3, as the case may be;
- (b) may invite the **Investigator** to attend any meeting referred to in clause 9.5(a) as an observer and may consult with the **Investigator** in private and to the exclusion of the **Parties**, to clarify any matter arising during a meeting. For the avoidance of any doubt, the **Panel** may take the **Investigator's** report and findings into account in its consideration of a **Complaint**, but shall be under no obligation to accept any of the **Investigator's** findings and, in particular, a finding that there is a prima facie case to answer;

- (c) may request from the **Council** further time to deliberate and reach a decision as to whether a **Complaint** ought to be upheld or rejected if it reasonably considers that six (6) weeks is insufficient, provided always that the aggregate of period(s) specified by the **Council** in accordance with this clause 9.5(c) shall not exceed twelve (12) weeks calculated to start from the date upon which the **Panel** was first designated in accordance with clause 8.1;
- (d) shall not be entitled to conclude consideration of a **Complaint** without reaching a decision as to whether that **Complaint** ought to be upheld or rejected. If, after the period(s) referred to in clause 9.5(c), the **Panel** has been unable to reach a decision, the **Chairman** shall:
 - (i) dismiss the **Panel**;
 - (ii) designate a new panel consistently with clauses 8.1 to 8.2(c);
 - (iii) provide a copy of the relevant **Investigator's** report to that new panel, which shall consider that report and the written notes provided for in clause 9.5(e), in accordance with this clause 9;
- (e) shall ensure that written notes are made of all meetings with the **Parties** and a record is made of all relevant **Matters Relating to a Complaint** presented by the **Parties** for the **Panel's** consideration at such meetings. The written notes produced in accordance with this clause 9.5(d)6.2(k)9.5(e) shall record, at a minimum:
 - (i) the full name(s), address(es) and contact details of all of the **Parties** and their representatives;
 - (ii) a detailed chronology of events leading to the **Complaint** being made, noting any differences with the chronology set out in the **Investigator's** report relevant to the **Complaint** being considered;
 - (iii) such additional details of the **Misconduct** alleged in the **Complaint** as are relevant to the **Panel's** decision as to whether the **Complaint** ought to be upheld or rejected;
 - (iv) a description of the investigation undertaken by the **Investigator**, including the dates and times of all meetings and telephone calls with any of the relevant **Parties**;
 - (v) detailed notes of all meetings and telephone calls with any of the **Parties**, to the extent that a record of such meetings or telephone calls is not made and kept in accordance with clause 9.3;
 - (vi) a list of all documents and information considered by the Panel as being relevant to its decision as to whether the **Complaint** ought to be upheld or rejected, together with a note as to whether a **Party** (and, if so, which **Party**) produced a particular document or item of information to the **Panel**, and on what date. The list required by this clause 9.5(e)(vi) shall be numbered and shall describe each document or item of information with sufficient clarity to enable the **Assessor** to identify that document or item of information with a reasonable degree of certainty.
 - (vii) shall, within the period(s) referred to in clause 9.5(c), produce a written and reasoned decision setting out, as a minimum:
 - (I) the **Panel's** decision as to whether the **Complaint** ought to be upheld or rejected;
 - (II) the **Panel's** opinion of the credibility of all of the relevant **Parties** and the reliability of the responses given by those **Parties** during meetings with the **Panel**;

(III) the **Panel's** reasons for attaching weight (or not attaching weight, as the case may be) to evidence presented by the **Parties** during meetings with the **Panel**;

(IV) if the **Panel** decides to uphold a **Complaint**, a direction that one or more of the sanctions described in clause 10.1 be imposed on the **Respondent**.

9.6. No rules of evidence shall apply to any activity described in or contemplated by this Clause 9.

9.7. All evidence presented or produced to the **Panel** by one **Party** during consideration of a **Complaint** shall be disclosed by the **Panel** to the other **Party** for the purposes of the investigation, unless, in the opinion of the **Panel**, disclosure of that evidence to the receiving **Party** would be likely to result in **Serious Harm** to the disclosing **Party** or to any person to whom that evidence relates.

9.8. All questions considered by a **Panel** shall be decided, and all decisions shall be made, by way of a simple majority vote. Each individual member of a **Panel** shall carry an equal vote.

10. **DECISION OF A PANEL OF THE DISCIPLINARY COMMITTEE**

10.1. If a **Complaint** is upheld the **Panel** shall, without prejudice to the **LFSA's** right to take any additional action pursuant to its powers, direct in writing that any one or more of the following sanctions be imposed:

- (a) the **Respondent(s)** be reprimanded;
- (b) all or any of the privileges of membership (but not membership itself) of the **Association** available to the **Respondent(s)** be withdrawn;
- (c) the **Respondent(s)** be fined an amount not exceeding a maximum determined from time to time by the **Council**.

10.2. Where the **Panel** also considers that any of the steps referred to in rule 11.11 may be appropriate, it shall be entitled to convey that opinion privately to the **Council**, who may then convey it to the **LFSA**, but the **Panel** shall not express any such opinion in the decision provided for in clause 9.5(e)(vii).

10.3. If a **Complaint** is upheld the **Panel** shall order:

- (a) that the **Respondent(s)** pay any fine imposed within twenty-one (21) days of the date the order is made; and
- (b) the **Association** to bear its own costs incurred in connection with the **Complaint**; and
- (c) the **Complainant(s)** and **Respondent(s)** shall each bear their own costs incurred in connection with the **Complaint**.

10.4. A decision of the **Panel** shall:

- (a) be notified to the **Parties** in writing within three working days of issue;
- (b) constitute a decision of the **Disciplinary Committee**;
- (c) be immediately binding upon the **Respondent(s)**, subject to an appeal being commenced in accordance with clause 11;

- (d) be immediately binding upon the **Council** (except where liability for a fine is concerned), subject to an appeal being commenced in accordance with clause 11.
- 10.5. If a **Complaint** is upheld but not appealed then, after the fourteen (14) day period referred to in clause 11.2 has expired, the **Disciplinary Committee**:
- (a) shall publish details of the **Panel's** decision (limited to the name of the **Respondent**, the **Misconduct** established and the sanction (if any) to be applied) on the **Association's** website; and
 - (b) may provide details of the **Panel's** decision to other regulatory authorities, consistent with the legal obligations of the **Association**.

11. **CONSIDERATION OF AN APPEAL BY AN ASSESSOR**

- 11.1. Both a **Complainant** and **Respondent** shall have a right of appeal against a decision of a **Panel**.
- 11.2. Notice of an appeal against a decision of a **Panel** shall be given to the **Council** in writing, within fourteen (14) days of receipt by the appellant of a copy of that decision.
- 11.3. Within seven (7) days of receiving notice of an appeal the **Council** shall appoint an **Assessor** who shall:
- (a) be a senior former judge or former practising lawyer in any jurisdiction;
 - (b) not have or be perceived to have:
 - (i) a direct interest in the subject matter of the appeal the **Assessor** has been designated to consider; or
 - (ii) a relationship of any description with a **Party** named in the decision of a **Panel** being appealed;
 - (c) subject to being able to comply with the time limit(s) provided for in clause 11.5, be entitled to consider and decide any number of appeals concurrently.
- 11.4. The **Assessor** shall consider:
- (a) whether the rules of natural justice and any principles of human rights which, in his opinion, are relevant to the appeal, have been satisfactorily observed by the **Investigator** and/or the **Panel** whose decision is being appealed; and
 - (b) the reasonableness of the **Panel's** decision being appealed in all the circumstances; and
 - (c) whether the **Panel's** decision being appealed should stand or be overturned, or any sanction imposed on the **Respondent** be removed or substituted with a different sanction from amongst those listed in clause 10.1.
- 11.5. When considering the matters listed in clause 11.4, the **Assessor** should, initially, aim to complete his consideration within six (6) weeks of first receiving the written notice of appeal and:

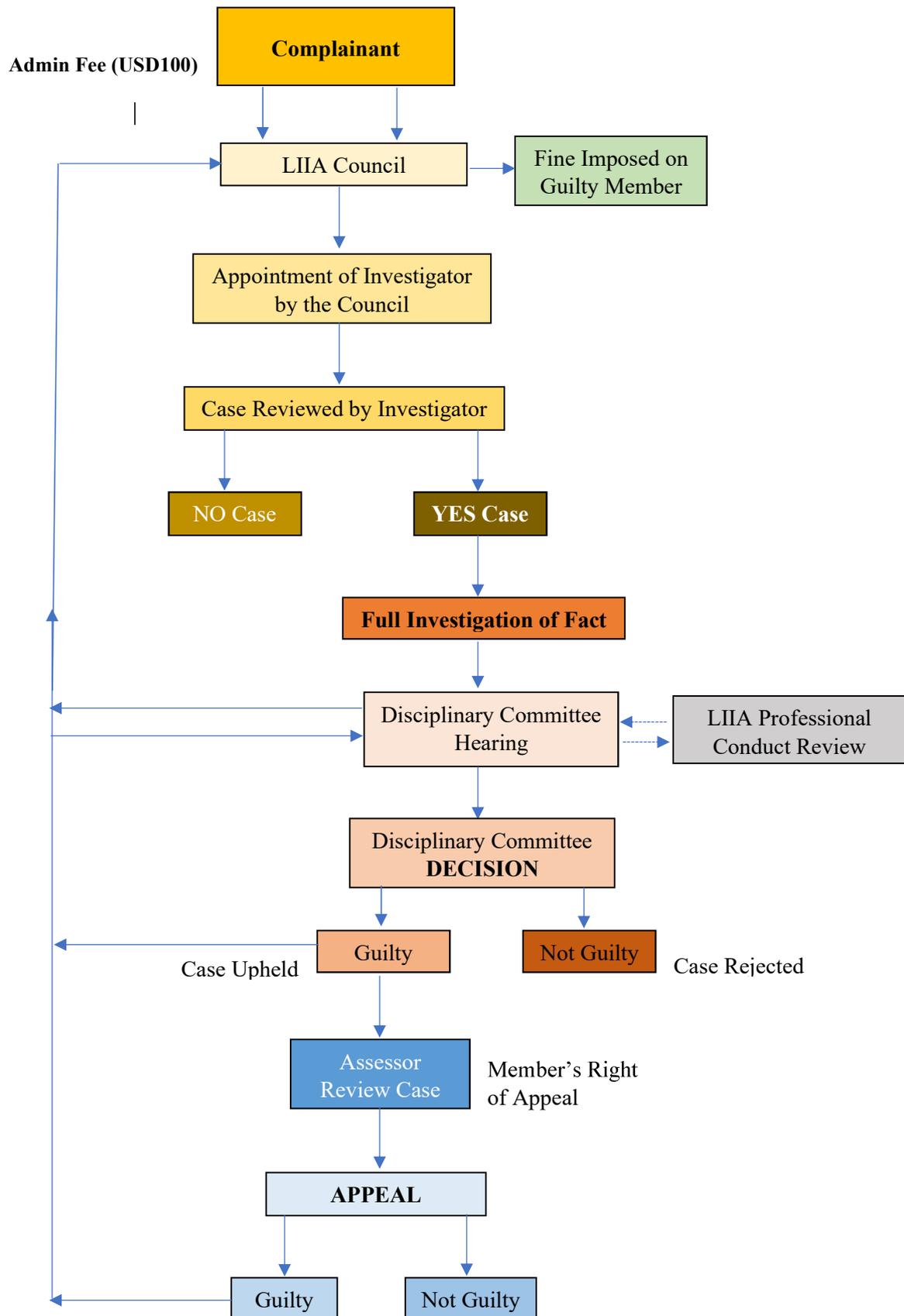
- (a) shall be entitled to invite the parties to an appeal, or the **Panel** whose decision is being appealed (who may be represented by a single individual member of that **Panel**), to any number of meetings by telephone, in person or by video conference, separately or together and in any order as he deems reasonable and necessary to reach a decision on the appeal, but shall in any event invite the appellant to at least one (1) private meeting to hear and receive any submissions the appellant may wish to present or produce to the **Assessor** in support of the appeal. An **Assessor** shall make and keep, in any form of his choosing, a record of any meeting or telephone call arranged pursuant to this clause 11.5(a);
- (b) may request from the **Council** further time to deliberate and reach a decision on the appeal if he reasonably considers that six (6) weeks is insufficient, provided always that the aggregate of period(s) specified by the **Council** in accordance with this clause 11.5(b) shall not exceed twelve (12) weeks calculated to start from the date upon which the **Assessor** first received written notice of the appeal;
- (c) shall not be entitled to conclude an appeal without reaching a decision as to whether the **Panel's** decision being appealed should stand or be overturned, or any sanction imposed on the **Respondent** be removed or substituted with a different sanction from amongst those listed in clause 10.1, except where the **Council** excuses the **Assessor** from the duty to reach a decision by reason of the **Assessor**:
 - (i) being guilty of any misconduct which, in the reasonable opinion of the **Council**, can be said to be, and is, detrimental to the interests and reputation of the **Association**;
 - (ii) becoming bankrupt;
 - (iii) being guilty of fraud or dishonesty;
 - (iv) being habitually neglectful of his duties as an Assessor;
 - (v) becoming incapacitated through ill health;
 - (vi) being, in the reasonable opinion of the **Council**, unable or unwilling to perform his duties as an **Assessor** for any other reason.

Where an **Assessor** is excused by the **Council** from concluding an appeal without reaching a decision as to whether the **Panel's** decision being appealed should stand or be overturned, or any sanction imposed on the **Respondent** be removed or substituted with a different sanction from amongst those listed in clause 10.1, the **Council** shall appoint a replacement **Assessor** consistently with clause 11.3 and the six (6) week period referred to in clause 11.5 shall re-start from the date the replacement **Assessor** is appointed;

- (d) shall, otherwise than is expressly provided for in this clause 11, be entitled to devise his own procedure;
 - (e) shall, within the period(s) referred to in clauses 11.5(b) or 11.5(c), as the case may be, produce a written and reasoned decision setting out the **Assessor's** decision as to whether the **Panel's** decision being appealed should stand or be overturned, or any sanction imposed on the **Respondent** be removed or substituted with a different sanction from amongst those listed in clause 10.1.
- 11.6. The **Association** shall bear its own costs incurred in connection with any appeal. The parties to an appeal shall each bear their own costs incurred in connection with an appeal.
- 11.7. Decisions of the **Assessor** shall be notified to the parties to the appeal in writing within three working days of issue.

- 11.8. There shall be no appeal against a decision of the **Assessor**.
- 11.9. No rules of evidence shall apply to any activity described in or contemplated by this Clause 11 save that if new evidence is put before the **Assessor** by a party to an appeal and the **Assessor** is satisfied that such evidence is relevant to the **Complaint** and could not reasonably have been made available to the **Panel** whose decision is being appealed, the **Assessor** may direct that that **Panel** reconvene to consider the new evidence in accordance with clause 9. Both the **Complainant** and **Respondent** shall have the rights of appeal described in this clause 11 with respect to the outcome of the reconvened **Panel's** decision as to whether the **Complaint** ought to be upheld or rejected.
- 11.10. The parties to an appeal shall not be entitled to legal representation during any meeting with the **Assessor**, nor may any legal representative attend any such meeting. To the extent that a party to an appeal is not a natural person, that party shall be represented by one or more individuals at any meeting with the **Assessor**, provided always that such individual(s) shall not have held a practising certificate (or its equivalent) as a lawyer in any jurisdiction during the six (6) months preceding the date of any meeting.

THE LIA PROFESSIONAL CONDUCT REVIEW PROCESS



THE PROCEDURE FOR THE LIIA PROFESSIONAL CONDUCT REVIEW PROCESS

