

## **Memorandum on Revised SAICA By-laws and Disciplinary Code**

### **Background**

SAICA has spent several months engaging with legal advisors and the SAICA Social and Ethics Committee in order to revise the SAICA By-laws.

The By-laws relating to disciplinary processes are now contained in a Disciplinary Code, which is an annexure to the SAICA By-laws. The Board approved the revised SAICA By-laws in April 2020, with the effective date being **1 June 2020**.

Note that the list of enhancements below is not exhaustive and we encourage members to read the full version of the revised by-laws on the Governance website.

### **Enhancements to the Current Disciplinary Process:**

The revised Disciplinary Code enhances the disciplinary process in the following ways:

- **Widening of Definition of “good standing”:**  
In order to be considered in “good standing”, members are required to be financially up to date with all amounts owing to SAICA; must be compliant with CPD requirements and with no pending actions to remove or suspend the member; associate; Accounting Technician or Trainee. A member; associate; Accounting Technician or Trainee who is suspended will not be considered to be in good standing.
- **Member responsibility to update contact details with SAICA:**  
Members; Associates; Accounting Technicians and Trainees are required update their e-mail and physical addresses with SAICA. As at 1 June 2020, these contact details in SAICA’s possession will be deemed to be the members correct contact details unless subsequently changed thereafter by the member, associates; Accounting Technicians or Trainees and SAICA is entitled to serve notices at these contact details (By-law 17.1).
- **Age of admission reduced to 18:**  
The age for application for admission has been reduced from 21 (twenty-one) to 18 (eighteen) years old. (At By-law 24 for Chartered Accountants; By-law 30 for AGA’s and By-law 36.5 for Accounting Technicians).
- **Designated Disciplinary Officer:**  
Specific provision is made in the By-laws for the role, functions and powers of the Project Director: Legal and Discipline (“the Designated Disciplinary Officer”).

- Disciplinary mechanisms to cater for serious cases of misconduct and lesser offences:

The Disciplinary Code now differentiates between more serious cases of punishable conduct and lesser offences and provides for disciplinary mechanisms to deal with both types of misconduct. The Designated Disciplinary Officer plays a central role in the process, especially in respect of finalising of the lesser offences.

Paragraph 9 of the Disciplinary Code provides for schedules of offences for which the Board has determined appropriate fines and for which offences a Respondent may elect to accept an admission of guilt fine/sanction. The transitional provision of the By-laws also allows for Respondents in complaints lodged prior 1 June 2020, to by consent, accept an admission of guilt fine/sanction.

The Respondent is invited to make written submissions to the PCC and, where appropriate, the PCC will suspend portions of the fine/sanction taking into account factors such as the experience level of the Respondent and whether or not this is the first offence committed by the Respondent.

Where an admission of guilt is not accepted for any offence under Schedules 1A; 2A; 3A; 1B; 2B; or 3B the PCC will convene a hearing to consider the matter and the Respondent will be invited to attend without legal representation. The finding of the PCC will be final and the Respondent will not be entitled to have the matter heard anew by the Disciplinary Committee (DC).

Paragraph 10 of the Disciplinary Code provides that all offences falling outside of Schedules 1A; 2A; 3A; 1B; 2B; or 3B will be referred to the Disciplinary Committee to convene a formal hearing. The Respondent will be called upon to provide a written explanation and is entitled to have legal representation at the Disciplinary Committee hearing, which will be open to the public.

SAICA and the Respondent to a hearing before the DC may enter into without prejudice settlement discussions prior to the commencement of the DC hearing. Any settlement agreement will need to be submitted to the DC for approval as a settlement order.

Paragraph 8.1.4 of the Code provides for expedient finalisation of complaints where the Designated Disciplinary Officer is of the view that the complaint does not provide evidence of punishable conduct. Subject to approval by the Advisory Committee of the PCC, these types of complaints will be closed but such case may be re-opened at a later stage upon SAICA receiving the required evidence of punishable conduct.

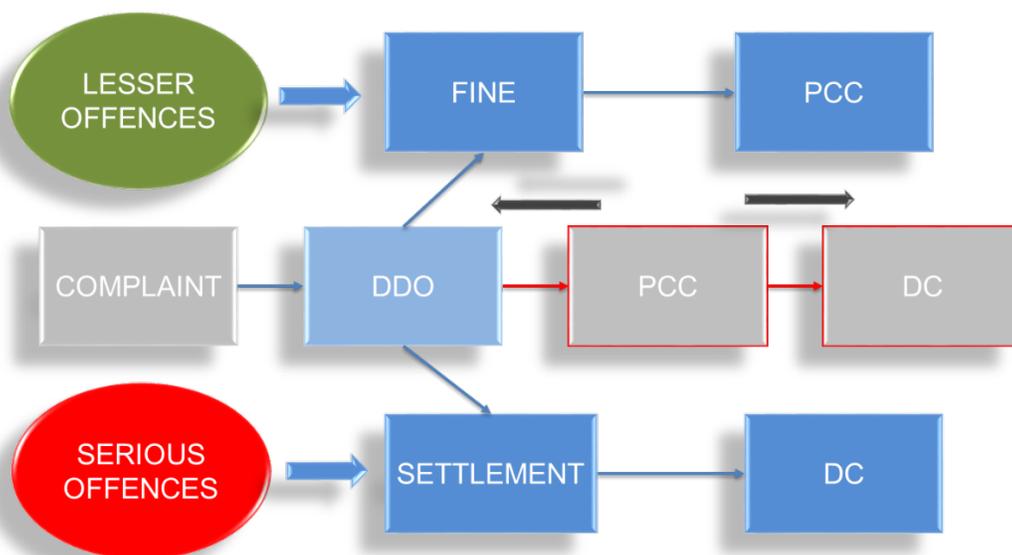
- Publication of guilty findings:

The discretion currently conferred on the Chairperson of the PCC and DC to decide whether to order publication of disciplinary findings has been removed and the revised By-laws require publication in **all** matters where a PCC or DC has found a Respondent guilty of a punishable conduct. SAICA will publish the name of the Respondent; a description of the offence and the sanctions imposed.

- Fit and Proper Inquiries and Sequestration related matters heard by the PCC:  
 The PCC is now empowered to convene hearings to consider whether or not an individual is Fit and Proper to be allowed admission to SAICA or to consider whether a current member; AGA; Accounting Technician or Trainee is Fit and Proper to remain at SAICA.  
 Further, the PCC will convene a Fit and Proper hearing where the IRBA has made a Finding against a registered auditor/former registered auditor who is a SAICA member, in order for the PCC to determine whether the member is still Fit and Proper to remain a member of SAICA in light of the Finding made by the IRBA.

The PCC may now also consider disqualification of members; associates or accounting technicians who have been sequestered.
- Cancellations by the Board:  
 The By-laws outline specific conditions under which the Board may cancel membership, associateship or Traineeship (By-law 26 for Chartered Accountants; By-law 32 for AGA's and By-law 38 for Accounting Technicians) and the Board is entitled to consider court judgements as the basis for this disqualification.
- Recovery of Costs in Disciplinary Committee hearings:  
 The revised By-laws provide for the recovery in full of costs incurred by SAICA against members found are guilty before the Disciplinary Committee.

*Refer to Diagram 1 above for illustrative purposes and to highlight the improvements to the process flow:*



*Diagram 1*

**The Project Director: Legal and Discipline**  
**SAICA Legal and Governance**  
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