

Debt Agreement Practitioners Association

Limited

ACN: 110 819 611

Code of Professional Practice for Registered Debt Agreement Administrators

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Introduction

1. This Code of Professional Practice (the Code) has been implemented in order to:
 - set standards of conduct for Registered Debt Agreement Administrators
 - inform and educate DAPA members regarding the standards of conduct required in the discharge of their professional responsibilities; and
 - provide a gauge against which stakeholders may judge the conduct of Registered Debt Agreement Administrators.

In adopting the Code DAPA members should not only apply the specific terms of the Code but also its intended spirit.

The Code is in three parts:

- Part A- the principles of the Code
- Part B- detailed guidance to assist in applying the principles
- Part C- practice notes that practitioners should adopt

1.1 Interaction with Legislation and Regulation

The Code does not supersede the law. It introduces principles to clarify and give an understanding of the desired behaviour of Registered Debt Agreement Administrators with the intent of creating a system that will protect the integrity of the role of Registered Debt Agreement Administrators and the insolvency profession, as a whole.

1.2 Descriptive wording

The Code introduces three levels of terminology:

- MUST** to describe a mandatory requirement
- SHOULD** to describe recommended behaviours
- MAY** to describe permissible statements

Where a debt agreement administrator decides not to follow recommended behavioural standards then the practitioner will need to be able to justify why the recommended course was not taken and why, in the opinion of the debt agreement administrator the course that was taken was within the spirit and intent of the relevant principle. The practitioner should also:

- record the reasoning used for diverging from the Code;
- the rationale used to determine that the action followed is not proscribed by the Code; and
- be able to explain that the path taken results in an equal or better outcome for stakeholders.

Registered Debt Agreement Administrators are regulated by the Bankruptcy Regulation Branch, a division of the office of The Inspector-General in Bankruptcy (ITSA). The conduct of Registered Debt Agreement Administrators may be subject to review by the Regulation Branch of ITSA, disciplinary tribunals and by the Courts. Additionally Registered Debt Agreement Administrators may come under scrutiny from external community based organisations or the Australian Competition and Consumer Commission.

The Debt Agreement Service is a division of ITSA. Its role is to administer the debt agreement system and ensure compliance with the statutory requirements.

It is anticipated that the Code will be used by the regulatory authority, tribunals and courts to assist them in understanding acceptable practice in the area of debt agreement administration and proper professional standards.

1.3 Professional Codes – other professional associations

Members who are members of other professional associations will no doubt find similar provisions in the codes of those associations. To the extent that the Code imposes a higher standard on members than requirements of other associations, the Code will prevail.

1.4 Application and Purpose of the Code

The Code applies to all members of the DAPA in so far as they conduct or are involved in the administration of debt agreements, formal and informal. The Code therefore applies not only to Registered Debt Agreement Administrators but also to associated brokers working for, on behalf of, or in conjunction with members. These obligations are stated in the Code when it refers to “members”.

- Members must exhibit the highest levels of integrity, objectivity and impartiality in all aspects of administrations and practice management.
- When accepting an appointment the practitioner must at all times during the administration be, and be seen to be, independent.
- Members must communicate with affected parties in a manner that is honest, transparent, clear, succinct and timely to ensure effective understanding of the processes, rights and obligations of the parties.
- Members must act and conduct themselves in a professional manner and maintain their objectivity, independence, integrity and impartiality when competing for work and promoting their business.
- Members must attend to their duties in a timely manner.
- Members must not acquire directly or indirectly any assets of a debtor client.
- Members who, by way of fee entitlement, become a creditor of a participating debtor in a debt agreement must not vote for an amount in excess of the balance of

fees owed at the time of lodgment of that vote.

- When promoting themselves, or their business or when competing for work, members must act with integrity and must not bring the profession into disrepute; and
- Members must implement policies, procedures and systems consistent to affect quality assurance, compliance and complaints management.

1.5. Breach of Code

Any breach of the Code must be dealt with in accordance with the Disciplinary Rules of the Debt Agreement Practitioners Association both in force, and as amended from time to time.

The Profession

- 2.** Registered Debt Agreement Administrators, in Australia, are required to hold valid registration and meet the entry criteria established by law. The registration process is managed by ITSA.

Insolvency generally proves to be difficult for those involved. Every insolvency involves some loss for creditors. An individual may lose employment, lifestyles will invariably change to meet the challenges and the consequent emotional stress often creates a difficult environment.

Insolvency can result in financial and social disorder. The regime of insolvency law seeks to control this disorder, while a process of balancing the respective rights and entitlements to those parties is pursued.

2.1 Debt Agreement Practitioners

- are fiduciaries. They are entrusted with an insolvent's monies and required to deal with those monies in accordance with the law and consistently with the obligations and duties of fiduciaries;
- are appointed to administer debt agreements;
- owe responsibilities to the creditors as a whole, not just to one creditor, and to the client debtor;
- are experienced and qualified professionals who are expected to display high degrees of application and professional competence;
- are subject to regulatory supervision;
- have specific legal obligations under the law;
- are required to exercise high levels of communication and professional judgment;
- operate in circumstances often involving distressed individuals, competing demands, strict deadlines and at times complex financial and factual issues;

- must enquire into a debtor's financial affairs sufficiently so as to give veracity to the Certificate by Debt Agreement Administrator required by the Official Receiver; and
- Must observe both the underlying principles and statutory requirements of privacy particularly as such privacy relates to the affairs of a debtor.

2.2 Skill and Judgment

Insolvency involves the difficult intersection of accounting, business and law. Skills are needed to handle complex situations which may impact quickly on a debtor. Knowledge of commercial law and statutes beyond the scope of bankruptcy legislation is a necessary requirement. Sound commercial judgment and business acumen are required with a view to a positive outcome and by way of a proper return to creditors.

Stakeholders

3. Stakeholders generally have a perspective, expectations and obligations. Often they have competing, mutually exclusive interests. The debt agreement administrator also has legitimate interests but not by way of being a stakeholder.

3.1 Creditors

- are parties to whom a debt is owed by the insolvent in respect of services provided, goods sold, monies loaned or contractual deficiencies;
- are parties whose right to payment is swapped with a right to dividend;
- are generally disadvantaged financially;
- are reliant on the practitioner's skill and experience in having their losses recouped;
- rely on the practitioner to be informed about the administration;
- have some interest in securing a positive outcome; and
- are parties whose dividend payments are the outcome of work done by the practitioner.

3.2 Debtors

- are those individuals who have approached a member for advice in dealing with distressed debt;
- have proposed a debt agreement with affected creditors;
- have been accepted into a debt agreement that has been accepted by affected creditors;
- are indebted to the affected creditors;

- have a responsibility to meet the obligations imposed by a debt agreement including making contributions in a timely manner;
- have duties owed to them by members, including to ensure that they and their property are protected from false or wrongful creditors' claims; and
- Rely on the administrator to be informed of all matters pertaining to the administration.

3.3 Regulators

- have a statutory interest in the proper administration of the legislation;
- have statutory powers of review of the conduct of practitioners; and
- are available to assist debtors and creditors with complaints and concerns.

3.4 The Public – The Public Interest

- have an interest in ensuring that the law is clear and understood, that it is upheld and also that commercial morality is maintained;
- have an expectation that improper conduct will be investigated and reported to the relevant authorities; and
- have an expectation that the insolvency profession is staffed by persons of competence and integrity.

Integrity, Objectivity and Impartiality

4. Members are required to be:

- Straightforward;
- Honest;
- Truthful; and
- Adhere to high moral and ethical principles in the conduct of their practices and appointments.

Members must be objective. This requires members to exercise their judgment free from:

- Bias;
- Conflict of interest; or
- Undue influence of others.

When exercising their judgment members should take care to ensure that they are:

- not influenced by personal feelings or prejudice;
- making decisions based on the known facts;
- have no direct personal interest; and
- not favouring one person or side more than another when applying the law.

Integrity requires members to take care to ensure that all communications, including reports, whether issued personally, or by delegation, verbal or written:

- are free from false or misleading statements;
- are not prepared recklessly;
- do not omit, or obscure information required to be included; and
- preserve confidential information.

Independence

5. The Test of Independence.

Independence has two parts. A practitioner must:

- be independent in fact; and
- be seen or perceived to be independent.

5.1 While members may consider that their personal integrity and skill makes them immune to the influences of conflicts, this is not the test; it is a consequence of the need to preserve the perception of independence.

It is important to recognise that there is likely to be contact between the member and the insolvent, before acceptance of the appointment. Mere contact does not create a threat to independence. What is most important is the nature of the relationship between the practitioner and the various stakeholders including brokers associated with the practitioner.

5.1.1 Possible Conflicts – Real or Perceived?

The mere possibility of a conflict is not a bar to accepting an appointment. The test is whether a reasonable informed person using the information reasonably available at the time, forms the view that a conflict is likely to arise.

The Practitioner must be proactive in anticipating, identifying and uncovering the circumstances that may give rise to a conflict of interest – and not simply wait for the conflict to develop over time.

All stakeholders must be informed, in writing, by a member where a member is involved in a related entity issue. A member who accepts an appointment whilst knowingly dealing with a person who is related to the member either personally or in some business association, directly or indirectly faces the possibility of conflict of interest claims.

5.1.2 Timing

The independence test is to be applied:

- on the facts reasonably available at the time the decision to accept the appointment is made; and
- not retrospectively, with the benefit of hindsight in relation to facts and circumstances that could not reasonably be expected to have been known or discoverable.

5.1.3 Allegations of lack of independence

An allegation of a lack of independence may be made by self-interested parties wishing to improve their position. Claims made:

- by a debtor that no choice of debt agreement administrator was offered;
- by a debtor that the broker and the debt agreement administrator are one and the same, acting in concert; and
- by a creditor that the debt agreement administrator is lenient on insolvents.

The mere existence of an allegation is not evidence of a conflict. When an allegation of lack of independence is made a member must:

- objectively assess any such claim;
- decide accordingly; and
- advise the claimant of the outcome.

5.2 Rationale for the Independence Principal

Independence is critical because of the nature of the role of the practitioner.

Stakeholders need to have confidence in the practitioner's conduct. They need to be able to regard the practitioner as fair, unbiased and not acting from self interest.

5.3 Referrals from other Professionals

Members may accept appointments from other professionals. Networks of referrals between professionals are normal and are acceptable provided the referral and relationship is based on the quality of professional service and expertise. This would undoubtedly have been identified through prior experience.

A member **MUST NOT** accept any referral that contains, or is conditional upon:

- referral commissions, inducements or benefits; or "spotter's" fees; or
- recurring commissions; or
- "understandings" or requirements that work in the Administration will be given to the referrer; or
- any other such arrangements that restrict the proper exercise of the member's judgment and duties.

Communication

6. Effective communication in insolvency is essential due to the:

- legal and commercial complexity of the insolvency processes;
- legal and commercial implications of letters and reports;
- high emotions surrounding financial matters; and
- lack of knowledge and expertise in the insolvency process, and its language and terminology, by many stakeholders.

Accordingly, communications from members should be:

- clear and concise and written in lay terms;
- objective;
- responsive;
- timely; and
- given in a professionally courteous, tone and manner.

Timeliness

7. Statutory Time Limits

To ensure that statutory requirements are met, members should use and maintain checklists or other systems alerting to:

- statutory reports; and
- statutory obligations and notifications.

Practitioners must not withhold submissions to ITSA, of a debtor's documents, beyond the statutory time limits imposed for the purpose of extracting fees from a debtor in respect of:

- Work done by a member prior to acceptance of a debtor's proposal;
- Work done by a member in respect of an application for variation to a debt agreement; and
- Work done in respect of completion, termination or any other matter associated with the duties and obligations of the practitioner.

7.1 Duty to Advise

The practitioner has a duty to inform stakeholders and particularly the insolvent of time limits that impact on them and the consequences of not meeting time frames.

Competition and Promotion

8. Insolvency is a competitive profession and the flow of work to practitioners is dependent upon referrals from other professionals and marketing and advertising lodgments in all available media albeit visual, print or audio.

The standards of competition and promotion that apply in the wider community may not be acceptable in a profession that must be seen to have high levels of integrity and independence.

Members, in framing their advertisements should do so having regard for the misleading and deceptive advertising provisions of the Trade Practices Act, the ASIC Act, State consumer protection legislation and the Code.¹ The misleading conduct provisions require that a business must not in its business activities engage in any conduct that misleads or deceives or is likely to mislead or deceive consumers. As well as direct advertising, the requirement covers representations made during meetings with customers, over telephone, in brochures, and on websites.

Members should seek their own legal advice on their specific circumstances or advertising.

Members will be held responsible for the form and content of any advertisement, publicity or solicitation:

- a. where expressly or impliedly authorised by the member; and
- b. that is placed or undertaken personally, or by another person on behalf of a member or their business.

8.1 Advertising, publicity and solicitation

Members may promote their business through general and targeted advertising using the full range of media and marketing techniques including through web sites, print, direct mail and brochures but members are required to ensure that advertising will not be misleading, dishonest or deceptive.

It is extremely important that members continually review all advertising and marketing material to ensure that that material complies with relevant legislation. Advertising can be innovative, exciting and competitive; but it must also be honest, balanced and accurate.

The penalties for misleading and deceptive advertising and other practices can be very costly.

Intent

It is important to realise that purpose or intent does not have to be proved to establish a breach of the misleading conduct laws or the Code. It is the likely effect of the representation that counts. Advertising may be found to be misleading or deceptive irrespective of whether a member had any intention to mislead or deceive.

8.2 Call Centres

Members must ensure that follow up communications, including calls by third parties and call centres under the direction of the practitioner, are terminated when the recipient has so requested either directly to the member, or a third party working on behalf of the member. Any continued contact is a breach of this Code.

8.3 Internet

This Code applies equally to advertising on the internet and includes websites operated by or on behalf of the member or the member's business.

8.4 Misleading and Deceptive Conduct

In addition to the general legal prohibitions, members must not:

- make claims in marketing material and then substantially change the arrangement unless there is fully informed consent;
- make negative remarks about fellow practitioners or their businesses as to their competence, professional practices or fees charged;
- claim endorsement of the DAPA except as may be permitted from time to time under the Constitution and Rules;
- claim association to or endorsement of the ITSA;
- create false or unjustified expectations of favourable outcomes;
- imply the ability to influence any court, tribunal, regulatory agency or similar body or official;
- make self-laudatory statements that are not based on verifiable facts or which contain unidentified testimonials or endorsements or contain representations that would be likely to cause a reasonable person to misunderstand or be deceived; and
- abuse, registered names or terms that are trademarks, lawfully registered to other persons or entities.

8.5 Relationship Marketing – Inducements

Members must not provide any inducements to any person or entity;

- with a view to securing the person's own appointment; and
- to securing or preventing the appointment of some other person.

In this context, an inducement is any benefit, whether monetary or not, given by a practitioner, or an employee, agent, consultant or contractor of the practitioner, to a third party which may, in the view of a reasonable person, influence that person's decision to refer, or to make, a formal insolvency appointment.

An inducement does not include:

- Bonus payments to employees structured as a part of their salary package or adjustments to an employee's salary where obtaining referrals of administrations is one of the performance indicators considered;
- Benefits of an insignificant value (when considering the significance of the benefit, regard is to be had to the total benefits provided to the third party);
- Sponsorship of events or publications open to the public, or members of a professional association; and
- Sponsorship of an event, venue, industry body or interest group as a means of a practitioner promoting their business is acceptable on the proviso that that sponsorship does not create any obligations to or by those who are responsible for making appointments or referring engagements.

8.6 No Solicitation

Members must not, directly or indirectly, solicit a debtor or a creditor to nominate a practitioner to replace an incumbent practitioner, as administrator.

Compliance Management

9. Debt agreement administration is a highly regulated profession and compliance with the law, fiduciary obligations and the requirements of this Code is essential.

The cost of compliance is real, but the potential impact of non-compliance on public confidence is unacceptable for the profession and the insolvency regime.

Members must implement systems, policies and procedures to ensure effective compliance management.

Complaints Management

10. The nature of insolvency renders it more vulnerable to complaints. An effective complaints management system provides feedback on the quality of work undertaken and if used effectively it is a useful diagnostic for quality assurance.

An effective complaints management system will also allow for a more effective disposition of:

- complaints arising from a lack of understanding of the insolvency processes;
- vexatious and unwarranted complaints.

The failure to effectively manage complaints may result in their escalation to regulatory authorities that can be costly and time consuming to manage and may damage reputation unnecessarily.

Members must implement documented systems, policies and procedures to ensure that an effective complaints handling procedure is in place and must publish such procedure in any website operated by the member. Additionally members should ensure that such procedure is brought to the attention of a debtor, at or before the time of appointment, by including it in documentation promulgated to the debtor by the member and it should include an advice that.

- The DAPA will accept complaints concerning the activities of members and investigate them;

Members have a responsibility to respond to complaints, in writing, and in a timely manner.

10.1 Media

Members must not respond to the media where a complaint is lodged in respect of a member's activities.

A member, subject to media scrutiny, should immediately inform the DAPA in writing of the nature of any complaint, if known. If the nature of the complaint is not known then the media should be directed to the DAPA without comment.

All and any complaints lodged with the DAPA will be investigated and a member must co-operate fully in any investigation undertaken.

Results of any investigation conducted into a member's activities will be advised to both the member involved and the media source upon completion.

Fees

- 11.** Fees charged or to be charged by a member to a debtor must be declared by the member to the debtor before accepting any appointment and such declaration must be transparent and fully documented so as to ensure that a member's credibility does not come into question.

Members must clearly differentiate in any declaration the fees associated with the following:

- Pre-agreement fees associated with setting up a proposal for a debt agreement;
- Administration fees; and
- Any other fee(s) lawfully charged, present or future, and payable by the debtor.

11.1 Undertakings in return for remuneration

Pre-agreement fees. Members must:

- Give a clear and concise statement, in writing, of how such fees are to be absorbed, identifying each step of the process;

Administration fees. Members must:

- In writing, declare to the debtor the manner in which the fee has been calculated.

A member must include these fees, separately, in statutory documentation ensuring that the full charges, respectively, are declared.

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Disciplinary Rules

SECTION 1 – Definitions and Interpretation

1.1 Definitions

In these Rules, unless the contrary intention appears:

‘Administrator’ means a registered debt agreement administrator pursuant to the Bankruptcy Act 1966 (as amended);

‘Association’ means the Debt Agreement Practitioners Association Limited ACN: 110 819 611;

‘Board’ means the Board of the Association as defined in the Constitution;

‘Broker’ means any person or corporation engaged in the facilitation of debt agreement proposals which are to be administered by an Administrator;

‘Business Day’ means any day not being a Saturday, Sunday or a day which is a public holiday or a bank holiday in the place in which the thing is to be done or may be done under these Rules;

‘Chairperson’ means the Chairperson of the Tribunal as constituted in respect of a particular proceeding;

‘Commercial Dispute’ means a dispute between members where a substantial basis of the dispute relates to their respective business interests;

Note: the Tribunal should not enter into nor comment on the Commercial Dispute, but may deal with any disciplinary issue arising from that dispute and if the conduct is found to be in breach, then the Tribunal should have regard to whether it is a Commercial Dispute when contemplating any penalty and, may not find misconduct unless there were adverse effects on a member of the public

‘Constitution’ means the Constitution of the Association as amended from time to time;

‘Complainant’ means the person or organization making a complaint against a Member;

‘Corporation’ means corporation as defined in the Corporations Act 2001 of the Commonwealth;

“Investigating Officer” means a person appointed by the Board to investigate any complaint;

‘Investigating Report’ a report on investigation(s) made by the Investigating Officer;

‘Member’ means a Member of the Association as defined in the Constitution; but also includes, any Broker or debt agreement facilitator associated with a Member;

‘Misconduct’ means Misconduct by a Member as defined in the Constitution or as prescribed from time to time by the Board for the purposes of the Constitution and further for the purpose of avoidance of any doubt Misconduct means any Misconduct involving:

- fraud or dishonesty, which is misleading and deceptive and conduct which shows gross negligence;
- a refusal or neglecting or failure to comply with a provision of the Constitution, the Code or Disciplinary Rules;
- misrepresentation of material facts in relation to an application for Membership of the Association;
- unreasonably failing or refusing to provide information to the Investigating Officer;
- whether or not any Misconduct hereinbefore mentioned is involved, any of the following acts or omissions amount to Misconduct, namely Misconduct:
 - which indicates a failure to understand or practice the principles of honesty and fair dealing in relation to other participants in the insolvency profession, to Regulatory Authorities, to the Association, to creditors, to debtors or to the public at large; or
 - which indicates a substantial or consistent failure to reach reasonable standards of efficiency and competence in the conduct of the business of debt agreement administration; or
 - which is prejudicial to the reputation or interests of the Association; or
 - which is prescribed by the Board being a failure, without reasonable excuse, proof of which shall lie on the Member, to comply with a decision or any penalty or order of the Tribunal as to a penalty imposed on the Member; or
 - which is unethical conduct or conduct unbecoming a Member; or
 - which the Board may in addition from time to time prescribe as Misconduct for the purposes of the Constitution.

'Notice of Allegation' means a written notice provided by the Investigating Officer to the Tribunal and the Member concerned by which an Allegation of Misconduct is made;

'Notice of Alleged Misconduct' means a written notice provided by the Investigating Officer to the Member concerned by which an Allegation of Misconduct is made;

'Officer' means officer as defined in the Corporations Act 2001 of the Commonwealth;

'Respondent' means the person or organization against which an allegation of Misconduct has been made;

'Rules' means these Disciplinary Rules as amended from time to time;

'Suspension Order' means an order of the Tribunal to suspend membership;

'Tribunal' means the DAPA Tribunal;

'Tribunal Secretary' means the person appointed to that position from time to time by the Association.

1.3 Interpretation

In the interpretation of the Rules:

- a. headings are disregarded;
- b. words importing persons include partnerships, associations, corporations, companies, unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- c. singular includes plural and vice versa and words importing any gender include all other genders;
- d. all reference to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force;
- e. where the Rules require a notice to be served on a Member, the notice is to be regarded as having been given by the Association and received by the Member;
 - if by delivery in person, when delivered to the Member;

- if by post, 3 Business Days from and including the date of postage to the Member's address entered in the Register;
- if by facsimile transmission whether or not legibly received, when transmitted to the Member's facsimile number entered in the Register and the Association's facsimile machine confirms receipt;
- if by email transmission, when transmitted to the Member's email address entered in the Register;

but if the delivery or receipt is on a day that is not a Business Day or is after 4:00pm (Member's time), it is regarded as having been received at 9:00am on the following Business Day.

SECTION 2 – INVESTIGATIONS, INCLUDING OF COMPLAINTS

2.1 Investigation of complaints

- 2.1.1 Appointment of Investigation Officer. The Board must appoint a member of the Committee to the position of Investigating Officer and that person must be a Full Member of the DAPA. The role of the Investigating Officer is to investigate complaints and suspected breaches of the Constitution and/or the Code.
- 2.1.2 Lodging of Complaints. A complaint received by the Association from any person, including but not limited to any Member, the Board or member of the general public, may be referred directly to the Investigating Officer. A complaint may be received and acted upon regardless of whether the complainant is identified in the complaint.
- 2.1.3 If a complaint is referred to the Investigating Officer by any regulatory body, the Investigating Officer must conduct an investigation into the complaint.
- 2.1.4 The Investigating Officer must not decide to conduct an investigation, including an investigation in his or her own motion, whether the investigation will arise from a complaint or at the motion of the Investigation Officer:
- a. unless he or she is of the opinion on a bona fide basis that a Member may have engaged in conduct amounting to Misconduct;
 - b. if he or she is of the opinion that it is more appropriate that the complaint be dealt with by a regulatory authority;

- c. if the complainant seeks any compensation or reimbursement whatsoever and the complainant is not alleging that a Member has engaged in conduct amounting to Misconduct;
 - d. if the act or omission giving rise to the complaint occurred before the date of commencement of the Rules;
 - e. if the subject matter of the particular complaint was comprised in a complaint by the same person (or any one or more of them) previously considered by the Investigating Officer or the Disciplinary Tribunal unless the Investigating Officer is of the opinion that relevant new evidence is available;
 - f. if the Investigating Officer is of the opinion, following consultation with the Chair of the Tribunal, that the complaint is frivolous or vexatious or is being pursued by the complainant in a frivolous or vexatious manner or for an improper purpose;
 - g. if the substance of the matter is a commercial dispute between members.
- 2.1.5 The Investigating Officer must, before deciding to conduct an investigation, require that the complainant, if identifiable, provide a complaint in written form and particulars of the complainant's identity and, where in the Investigating Officer's opinion it is necessary to afford procedural fairness to the Member that is the subject of the complaint, the complainant's written consent to the disclosure of his, her or its identity.
- 2.1.6 In all cases, the Investigating Officer will keep the identity of the complainant confidential except where the complainant has consented in writing to the disclosure of his, her or its identity.
- 2.1.7 Where the Investigating Officer is of the opinion that disclosure of the identity of the complainant is necessary to afford procedural fairness to the Member that is the subject of the complaint, but the complainant refuses to provide such written consent, and the Investigating Officer is not able to substantiate the subject matter of the complaint by independent means, without reference to the identity of the complainant, the Investigating Officer must not take any further action in relation to the complaint other than to advise the complainant that no further action will be taken.

2.2 Powers of Investigating Officer

- 2.2.1 The Investigating Officer may use all lawful means to conduct the investigation of a complaint and may conduct the investigation in any manner, using commonly accepted techniques that the Investigating Officer considers fit.
- 2.2.2 The Investigating Officer may inspect the Association's membership and other records for the purpose of understanding his, her or its duties as an Investigating Officer.

- 2.2.3 The Investigating Officer may require a Member to produce to the Investigating Officer documents, including records kept in electronic form, within the possession, custody or control of the Member, by way of notice in writing to the Member specifying particular documents or categories of documents, provided that the documents or categories so required to be produced must in the Investigating Officer's reasonable opinion be potentially relevant to the subject matter of a current investigation being conducted by the Investigating Officer. A Member who receives such a notice must produce the documents required to the Investigating Officer within twenty one (21) Business Days from receipt of the notice, or such other time as is agreed in writing with the Investigating Officer. Failure to do so in a timely manner may result in further action being taken by the Tribunal for Misconduct.
- 2.2.4 The Investigating Officer may require a Member who is a natural person to attend on him or her for the purpose of being interviewed, by way of written notice in writing to the Member specifying the date, time and place of the interview and notifying the Member that he or she may have a legal representative present at the interview. A Member who receives such a notice must attend the interview and must answer all questions asked of him or her in the interview. Failure to do so may result in further action being taken by the Tribunal for Misconduct.
- 2.2.5 The Investigating Officer may issue a notice to a Member that is a Corporation requiring that the Member make available for interview an Officer of the Member, or requesting that the Member make available for interview any employee of the Member as specified in the notice. Upon receiving such a notice the Member must cause the Officer specified to attend the interview and must use its best efforts to ensure that each employee specified attends the interview. Failure to do so may result in further action being taken by the Tribunal for Misconduct. Any such notice issued in relation to an employee must include a notification to the Member that:
- a. the Investigating Officer does not have the power to compel the employee specified in the notice to be interviewed;
 - b. any employee who agrees to be interviewed may have a legal representative present at all times.
- 2.2.6 An interview conducted by an Investigating Officer must be recorded on audio tape, computer disk or other electronic form, and a copy made available to the Member and any other person interviewed as soon as practicable upon request.
- 2.2.7 A Member who refuses to cooperate with the Investigating Officer may be guilty of Misconduct and therefore subject to these Disciplinary Rules.
- 2.2.8 The Investigating Officer may, after time limits for the production of documents and information have expired, finalise the Report to the Tribunal based on the evidence available at that time.

2.3 Power to suspend

- 2.3.1 If at any time in the course of an investigation the Investigating Officer suspects on reasonable grounds that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, or an act by which the DAPA is brought into disrepute, the Investigating Officer may, by notice in writing setting out the reasons, refer the matter to the Chairperson of the Tribunal with a copy of such notice in turn to be forwarded to the Member concerned by the Tribunal. The Investigating Officer may recommend that the Tribunal issue a Suspension Order, suspending the Member concerned from membership pending a Tribunal Hearing.
- 2.3.2 Notwithstanding any other provision of these Rules, no order for suspension of a Member shall take effect unless and until:
- a. the Member concerned must be given an opportunity, within the period of five (5) Business Days prior to the date upon which a proposed Suspension Order is to take effect, to make such representations and to provide such information to the Tribunal Member presiding in relation to the Suspension Order and the Chairperson must consider, but is not bound by, any representations made by the Member; and
 - b. another member of the Tribunal, not being the Chairperson, must sign an endorsement to the Suspension Order approving the making of it; and
 - c. a Suspension Order so made will remain in effect until revoked by that person or the Tribunal.
- 2.3.3 A Member who is the subject of a Suspension Order made pursuant to Rule 2.3.2b may, by notice in writing to the Secretary to the Tribunal, require that the subject matter of the order be referred to the Tribunal.
- 2.3.4 Where the Secretary to the Tribunal has received a notice from a Member pursuant to Rule 2.3.3 the Secretary must within five (5) Business Days notify, the Chairperson, who did not make the Order under Rule 2.3.2b, and the Secretary must convene the Tribunal as soon as practicable to consider the continuation of or lifting of the suspension.

2.4 Notice of Alleged Misconduct and Investigation Report

- 2.4.1 Where, upon investigation of a complaint, the Investigating Officer considers that a Member may have engaged in Misconduct, the Investigating Officer must prepare a written Notice of Alleged Misconduct which must include particulars of the allegations of any breach of the Constitution or of the Code or these Rules, as the case may be, that is being made. The Investigating Officer must at the same time prepare a written Investigation Report, containing a detailed report in support of the Notice of Alleged Misconduct.

- 2.4.2 The Investigating Officer must include with the Investigation Report copies of any correspondence received by the Investigating Officer from the Member who is the subject of the Notice of Alleged Misconduct, or any legal or other representative of the Member, and from the complainant except in a case where the written consent of the complainant is required.
- 2.4.3 The Investigating Officer must provide copies of the Notice of Alleged Misconduct and Investigation Report at the same time to:
- a. the Member who is the subject of the Notice of Alleged Misconduct; and
 - b. the Chairperson of the Tribunal.
- 2.4.4 Where pursuant to this Rule 2.3 the Investigating Officer may issue a Notice of Alleged Misconduct; the Investigating Officer may:
- a. prepare and provide an amended Notice of Alleged Misconduct; or
 - b. a further Notice or Notices of Alleged Misconduct; or
 - c. with the leave of the Tribunal, withdraw a Notice of Alleged Misconduct, as the case may require, from time to time.
- 2.4.5 Where the DAPA Tribunal is considering an allegation of Misconduct and it appears to the Tribunal, on the basis of the material facts before it, that the Member may have engaged in a form of Misconduct that is not alleged or that may be alleged in a different and more appropriate manner in order to reflect the nature of the conduct, the Tribunal may direct the Investigating Officer to prepare a fresh Notice of Alleged Misconduct or an additional or amended Notice of Alleged Misconduct and serve it on the Member. The Tribunal may then proceed to deal with the matter in accordance with these Rules.

**SECTION 3 – CANCELLATION OF MEMBERSHIP
And
REFUSED APPLICATIONS FOR MEMBERSHIP**

3.1 Proceedings for cancellation of membership.

3.1.1 The Membership Secretary may, in his or her absolute discretion, at any time refer to an Investigating Officer a Member who, in the Membership Secretary's opinion:

- a. does not meet or no longer meets the requirements of membership in the Association; or
- b. has made a material misrepresentation, whether by way of statement or omission, on an application form or other document provided to the Association.

3.1.2 A referral to an Investigating Officer pursuant to Rule 3.1.1 must be made by notice in writing to the Investigating Officer, and the Membership Secretary must provide a copy of the notice to the affected Member.

3.1.3 A referral to the Tribunal pursuant to Rule 3.1.1 must be made by notice in writing to the Tribunal Secretary, and the Membership Secretary must provide a copy of the notice to the affected Member.

3.2 Refused applications for membership

3.2.1 In any case where an application for membership in the Association has been received from an Applicant but refused by the Association, and the Applicant has notified the Association that he, she or it wishes to appeal from the refusal; the Membership Secretary must refer the application to the Tribunal.

3.2.2 The Membership Secretary must refer the application within five (5) Business Days after the Association has been notified that the Applicant wishes to appeal from the decision to refuse the application.

SECTION 4 – DAPA TRIBUNAL

4.1 Composition of the Tribunal

4.1.1 There will be a Tribunal for the purpose of:

- a. carrying out the functions of the Tribunal pursuant to these Rules and the Tribunal under these Rules may hear and determine any complaints or allegations of Misconduct against any Member relating to any breach of the terms of the Constitution, Code of Professional Practice, Rules or the Disciplinary Rules by any Member; and
- b. carrying out such other functions as are delegated to it by the Board.

4.1.2 The Tribunal will be referred to as the DAPA Tribunal.

4.1.3 The Board must appoint a Chairperson of the Tribunal from members of the Committee.

4.1.4 For the purpose of a hearing, the Tribunal must be comprised by:

- a. the Chairperson;
- b. two (2) persons who are Full Members of the DAPA, selected by the Chairperson; or
- c. where the Chairperson is unable or not prepared to sit on a particular hearing, three (3) persons from the membership register of the DAPA who must be Full Members of the DAPA, selected by the Chairperson of the Committee, one of whom will be designated by the Chairperson of the Committee as Chairperson for the purposes of that particular hearing.

4.2 Proceedings of the Tribunal

4.2.1 The Chairperson of the Tribunal must convene the Tribunal as quickly as is practicable, which may be done in person or by telephone conference link or audiolink as the Chairperson considers fit; and

- a. where an order for suspension is in effect, and whether or not a notice has been received, the Tribunal may make an order that the order for suspension be continued until further order of the Tribunal, or an order that the order for suspension be revoked, without conducting a hearing or receiving evidence or submissions from any party to the proceeding;
- b. in any proceeding, if the Tribunal has reason to suspect that a Member has committed, or been directly or indirectly involved in a commission of, an act involving fraud or dishonesty, the Tribunal may make an order suspending the Member from membership of the Association;
- c. in any proceeding, determine whether the proceeding will be dealt with and determined in the absence of the parties, or whether a hearing will be convened or conducted by the

use of email or chatline.

- 4.2.2 Where the Tribunal has made an order pursuant to 4.2.1 a. or b., the Tribunal may at any time in the proceeding, prior to issuing its final determination, on the motion of a party or on its own motion make an order revoking or varying its original order pursuant to Rule 4.2.1 a. or b.
- 4.2.3 Where the Tribunal has made an order pursuant to Rule 4.2.1. a. or b., in respect of a Member, the Tribunal must immediately notify the Investigating Officer of the order.
- 4.2.4 Where the Tribunal has determined pursuant to Rule 4.2.1 c. that a proceeding will be conducted in the absence of the parties, the Chairperson may notify the Investigating Officer and must notify the Member who is the subject of the proceeding of that determination.
- 4.2.5 Where the Tribunal proposes to deal finally with the matter before it, the Tribunal may do so without notice to the Investigating Officer or to the parties but the Tribunal must not proceed in the matter unless it proposes to determine such Notice of Alleged Misconduct by dismissing it.
- 4.2.6 Where the Tribunal has determined pursuant to Rule 4.2.1 c. that a hearing will be convened in respect of a proceeding, the Chairperson must appoint a date, time and place for the hearing and may give notice in writing of these particulars to the Investigating Officer and must give notice to the Member who is the subject of the Notice of Alleged Misconduct. The period of notice must be not less than twenty one (21) Business Days prior to the date of the hearing.

4.3 Proceedings for cancellation of membership

- 4.3.1 Upon receiving a notice pursuant to Rule 3.1.1, relating to a proceeding against a Member, the Chairperson of the Committee must appoint the Tribunal to deal with that particular proceeding, and provide to each member of the Tribunal all of the documents provided to the Association in connection with the proceeding.
- 4.3.2 The Tribunal must provide to the Member who is the subject of the notice a reasonable opportunity to make written submissions to the Tribunal as to reasons why membership of the Member should not be cancelled. The Tribunal must not hold a hearing in respect of the proceeding and the Member is not entitled to require that a hearing be held unless the Tribunal is satisfied that special circumstances exist justifying the holding of a hearing.
- 4.3.3 If, having considered any submission received by it, the Tribunal is of the opinion that the Member:
 - a. does not meet the requirements of membership in the Association; or
 - b. has made a material misrepresentation, whether by way of statement or omission, on an application form or other document provided to the Association;

the Tribunal may cancel the membership of the Member or may recommend to the Board that the Board cancel the membership as it sees fit.

4.4 Conduct of hearings

4.4.1 A hearing of the Tribunal must be held in private except that:

- a. the Investigating Officer and the Member as of right, if a natural person, or two (2) representatives of the Member, if a corporation, are entitled to attend;
- b. the Tribunal may allow other representatives of the Association and the Member to attend and make submissions.

4.4.2 A party may be legally represented before the Tribunal provided that:

- a. the presiding Chairperson is advised not less than two (2) Business Days prior to the date set down for the Tribunal hearing of the intention of the particular party to have legal representation and the name and contact details of each such legal representative; and
- c. the Tribunal may, if it is satisfied that legal representation has served or may continue to serve to delay the hearing of the matter, terminate the right of the party to have legal representation in which event the legal representative or representatives must depart the hearing and take no further part in it and the hearing must proceed in the absence of that legal representation.

4.4.3 No party may be compelled to appear at a hearing of the Tribunal, but any party to a hearing may provide written submissions and evidence to the Chairperson at least five (5) Business Days before the hearing or at the hearing with leave of the Tribunal.

4.4.4 The Tribunal may make such procedural arrangements as it thinks fit, including directions for the provision of written submissions and evidence and the taking of a transcript of the hearing.

General Rules governing the Tribunal

- 4.4.5 The laws and rules of evidence do not apply to proceedings before the Tribunal.
- 4.5.1.1. In considering a matter before it, the Tribunal may take into account details entered into the Register of the Tribunal concerning matters previously dealt with by the Tribunal against a Member, but only for the purposes of considering the orders that the Tribunal may make against a Member, unless the Tribunal determines that the entry in the Register and the facts to which it refers are relevant to establishing whether the Member has engaged in Misconduct and has given the Member an opportunity to address it on that basis.
- 4.4.6 The Tribunal must act expeditiously in hearing and determining all proceedings before it.
- 4.4.7 The Tribunal must act without bias and treat all parties with fairness and in accordance with the rules of natural justice.
- 4.4.8 The Tribunal may obtain legal advice and have legal advisers in attendance at a hearing.
- 4.4.9 The Tribunal may conduct proceedings or other meetings of the Tribunal in person or by other means to engage in conference and make decisions by way of email and other electronic means. The conduct of hearings by the Tribunal does not require Tribunal Members to hear and speak with each other contemporaneously.
- 4.4.10 All determinations and decisions of the Tribunal must be made by simple majority vote of Members of the Tribunal.
- 4.4.11 All correspondence between a party and the Tribunal may be dealt with on the Tribunal's behalf by the Chairperson, except where that is delegated to the Secretary to the Tribunal.
- 4.4.12 Where the Tribunal has made a determination pursuant to Rule 4.3.3. or 4.7.2, the Chairperson must notify in writing the Member who is the subject of the proceeding before the Tribunal of the determination, including any finding of Misconduct and any penalty as soon as practicable.
- 4.4.13 Where the Tribunal has made a determination pursuant to Rule 4.3.3, the Chairperson, must notify in writing the Membership Secretary and the Applicant who is the subject of the proceeding before the Tribunal of the determination penalty as soon as practicable.
- 4.4.14 The Tribunal is required to issue written reasons for any determination made by it. Any such written reasons must be issued by the Tribunal to all parties to the proceeding, including the Secretary to the Tribunal, within one month after the date on which the determination is made.
- 4.4.15 The Tribunal may proceed to determine any matter before it notwithstanding the failure by the Member who is the subject of the Notice of Alleged Misconduct to make submissions or provide documents or information or to appear at a hearing within the period specified for that purpose by the Tribunal.

Powers of the Tribunal

- 4.4.16 Any act or omission by an Officer, employee or contractor of a Member is deemed for the purposes of these Rules to be an act or omission by the Member.
- 4.6.1a The Board may act under the Constitution to suspend, censure or expel any Member irrespective of any determination or other action that has been, is being or may be taken pursuant to these Disciplinary Rules by the Tribunal or at law.
- 4.4.17 In relation to the Notice of Allegation, the Tribunal may:
- a. find the allegations not substantiated and dismiss the matter absolutely;
 - b. dismiss the charges absolutely or subject to any conditions;
 - c. find the member guilty of conduct warranting rectification, admonishment or censure or any combination of these sanctions;
 - d. find the member engaged in conduct amounting to Misconduct but due to exceptional circumstances determine not to impose a sanction, to adjourn the matter on sanction to a date to be fixed, or impose a sanction which is suspended for any period of time to be determines at the discretion of the Tribunal;
 - e. find the member guilty of Misconduct and impose a sanction.
- 4.4.18 Subject to Rule 4.7.2 if the Tribunal determines that a Member has engaged in Misconduct, the Tribunal may make a determination of Misconduct against the Member and may impose one or more of the following penalties:
- a. dismiss the matter absolutely or subject any conditions the Tribunal may impose;
 - b. counsel the Member;
 - c. censure the Member;
 - d. suspend the Member from Membership of the Association, for such period and on such terms or conditions as the Tribunal thinks fit;
 - e. where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Tribunal thinks fit;
 - f. require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct found to have been engaged in;
 - g. pay a financial contribution to the Association to be used as the Tribunal recommends, or in the absence of a recommendation, as the Association determines;
 - h. require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member;

- i. expel the Member from Membership of the Association;
- j. adjourn the proceeding subject to compliance with such conditions as to sanctions as the Tribunal may otherwise impose in accordance with this Rule.

4.4.19 Where the Tribunal has determined the Member has engaged in Misconduct but there are in the opinion of the Tribunal mitigating factors amounting to special circumstances, the Tribunal may not make any determination of Misconduct against the Member and may impose any one or more of the following penalties upon the Member:

- a. a suspended determination of Misconduct whereby the determination of Misconduct by the Tribunal against the Member is to be suspended for any period of time up to 2 years as the Tribunal deems fit from the date of the imposition of the suspended determination of Misconduct and the suspended determination of Misconduct will be of no effect after any such period of suspension imposed expires. However where the Member within the period of any suspended determination is guilty of further engaging in Misconduct the suspended determination of Misconduct penalty shall be of no effect and is to be reconsidered afresh by the Tribunal as to an appropriate penalty at the same time as any further Misconduct is being considered by the Tribunal in relation to penalty.
- b. an admonishment of the Member without any determination of Misconduct by the Tribunal against the Member;
- c. require the Member to take such steps as the Tribunal may determine to correct the effects of the Misconduct found to have been engaged in;
- d. pay a financial contribution to the Association to be used as the Tribunal recommends, or in the absence of a recommendation, as the Association determines;
- e. require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member;
- f. The Tribunal may determine that a Member has not acted within the spirit of the Tribunal process and may, in its absolute discretion, decide to recover the DAPA's costs from the Member concerned, after taking into account whether or not the Member:
 - (i) has been recalcitrant
 - (ii) has failed to cooperate, or the Member's behaviour has caused additional costs to be incurred by the DAPA;
 - (iii) has obstructed the hearing of the matter; or
 - (iv) has failed to comply with requests for information in a timely manner without reasonable excuse.

4.4.20 Prior to taking any action under Rule 4.6.3 or Rule 4.6.4 (FIX REFERENCES) the Tribunal must provide such reasonable time as the Tribunal determines for the Member to make such representations and to provide such information to the Tribunal as the Member thinks fit in relation to the action proposed to be taken by the Tribunal.

4.5 Effect of Tribunal determinations

4.5.1 A determination, decision or order made by the Tribunal pursuant to the Rules has effect from the date on which the Tribunal determines that it will have effect or, if the Tribunal does not specify such a date, immediately from the date on which the order is made.

4.5.2 A determination, decision or order made by the Tribunal is final and binding on all parties to the proceeding. Neither the Association, nor any constituent body of the Association other than the Tribunal, has power to vary or overrule a determination decision or order made by the Tribunal.

4.5.3 The Tribunal may of its own motion and in its absolute discretion reconsider and vary or overrule any decision or order relating to sanction only made by the Tribunal in respect of any penalty imposed by the Tribunal upon a Member under these Rules.

4.6 Notification to persons affected by determination

Where the Tribunal makes a determination, decision or order pursuant to the Rules and the effect of that determination, decision or order is to cause the Member to be suspended or expelled from the Association, the Tribunal:

- a. may make such ancillary orders concerning members who are employed by, or contracted to, the Member concerned as the Tribunal thinks fit and every such ancillary order shall bind every such Member; and
- b. must as soon as practicable in such form and manner as it thinks fit notify each of the parties concerned of the determination, and the terms of any ancillary order.

4.7 Publication of determinations

4.7.1 The Tribunal Secretary must maintain a register of all determinations made by the Tribunal or by the Board pursuant to Rule 4.3.3 or 4.7.2, and make the register available for inspection by Members. The register must, with respect to each determination, include the name of the Member to whom the determination relates, any findings of Misconduct by the Tribunal and any orders made by the Tribunal including any penalties. The register must also include a copy of the reasons for determinations issued by the Tribunal.

4.7.2 The Association shall, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally the content of, or an extract from or précis of, any determinations by the Tribunal.

4.7.3 The Association shall, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally, a statistical report of Tribunal hearings and or determinations or other statistical data as it sees fit.

4.8 Keeping Complainant informed

- 4.8.1 The Investigating Officer may keep a complainant informed of progress in handling the complaint provided always that the Investigating Officer must not provide any information to a complainant in relation to the progress and outcome of the complaint where in the opinion of the Investigating Officer:
- a. to do so would expose the Investigating Officer, the Tribunal Secretary, the Association or any Officer of the Association or Members of the Tribunal to liability for civil damages;
 - b. to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint and the proceedings of the Tribunal; or
 - c. to do so would deny procedural fairness to the Member, the subject of the complaint.

4.9 Legal proceedings

- 4.9.1 A Member, including a Member whose membership has been suspended or cancelled, may not bring any legal action or proceeding against the Association, any member of the Tribunal or any employee or agent of the Association, including without limitation members of the Board or an Investigating Officer, with respect to the publication or giving of access to any person of material pursuant to Rules 4.9.1 or 4.9.2, and this Rule may be pleaded as a complete bar to the commencement or continuation of any such proceedings in any jurisdiction.
- 4.9.2 The Association will indemnify each member of the Tribunal and employee, contractor and agent of the Association against any claim, action or proceeding brought against that person by any other person arising out of or in connection with the conduct of an investigation by an Investigating Officer, a proceeding before the Tribunal or any order, determination or decision made by an Investigating Officer or the Tribunal, and this indemnity will extend to the conduct of the defence of any proceedings and the payment of any costs thereof.
- 4.9.3 The indemnity provided pursuant to Rule 4.9.2 does not extend to actions brought by the Association against any person.

SECTION 5 – NON ACTIVE MEMBERS

5.1 Automatic suspension of membership of the Association

- 5.1.1 Where a Member's membership of the Association has been suspended, the Membership Secretary must record the Member's name in the membership records of the Association as a Non Active Member.
- 5.1.2 A Non Active Member is not entitled to any of the rights or privileges of a Member, and may not hold himself or herself out to any person or to the public generally as a Member of the Association.

SECTION 6 – MATTERS REFERRED TO TRIBUNAL BY REGULATORY AUTHORITIES

6.1 Referral of matters by Regulation Branch, Insolvency Trustee Service

- 6.1.1 The Tribunal Secretary must accept and act upon a referral made by Regulation Branch, ITSA in the manner outlined in Rule 6.
- 6.1.2 Upon receipt of an ITSA referral, the Tribunal Secretary must take the following steps as soon as practicable after its receipt:
- a. acknowledge the referral, in writing;
 - b. advise the complainant of the ITSA referral to the Tribunal Secretary and of the procedure to be followed in dealing with the complaint;
 - c. refer any ITSA Referral to the Investigating Officer and every such ITSA Referral shall be dealt with in all respects as if the ITSA referral were a complaint made under the Rules.