

ACFE SA DISCIPLINARY PROCEDURE

1. Introduction

- 1.1 The ACFE SA Disciplinary Procedure will be used as a guideline to assess complaints and possible disciplinary action to be taken against ACFE SA members who are in contravention of the Association of Certified Fraud Examiners (“the ACFE”) Code of Ethics and Professional Standards, Bylaws of the ACFE, or any applicable legislation.
- 1.2 All members of the ACFE SA must at all times display responsible, professional, and socially acceptable behaviour in the execution of their duties.
- 1.3 Every member of the ACFE SA must at all times adhere to the ACFE Code of Ethics, Professional Standards and Bylaws of the ACFE, and the applicable legislation in the execution of their duties.
- 1.4 **Primary Responsibility of a CFE regarding his/her CPE points:** The primary responsibility to comply with the minimum CPE requirements as set out in the ACFE Professional standards III Standard of Professional Conduct, section B (2) is the responsibility of the member. All CFEs have the obligation to develop and maintain their professional competence to maintain their CFE designation. Members must maintain a record of their CPE Activities and report the hours completed to the ACFE International, every year as required.
- 1.5 If a member is also registered with any other regulatory or Professional Body, it remains the member’s duty to comply with the ACFE’s Code of Ethics, and Professional Standards as well as the other body’s requirements.

- 1.6 Failure to meet the CPE hour requirements will result in losing your CFE designation and all benefits related to the CFE designation. Take note should you be a CFE NOT in good standing and you use the designation, further steps may be taken against you.
- 1.7 If any member of the ACFE SA fails to adhere to the aforementioned, reasonable steps must be taken by the ACFE SA to protect the profession and ensure adherence to the standards required by the ACFE.
- 1.8 Where it is alleged that a member of the ACFE SA has contravened/not adhered to applicable legislation, the Code of Ethics of the ACFE and/or the ACFE Professional Standards, it is the policy of the ACFE SA to evaluate and deal with such allegation/s in terms of this Policy and Procedure.
- 1.9 If the ACFE SA becomes aware of alleged misconduct from a member's side of the member has contravened/not adhered to the applicable legislation, Code of Ethics of the ACFE and/or ACFE Professional Standards, the ACFE SA will have the right to take the disciplinary action further, even in cases where they have not received a formal complaint. The ACFE SA reserves the right to request all relevant documentation and/or evidence related to the alleged misconduct from the respective parties. The parties (members) from whom the documentation and/or evidence requested will be obligated to give their cooperation in such regard.
- 1.10 The disciplinary action must be substantively as well as procedurally fair (defined below). The outcome of a disciplinary hearing will be considered substantively fair if it is proportional to the offence committed, mitigating and aggravating circumstances were considered, and it was based on the evidence presented at the hearing.
- 1.11 The Board of Directors of the ACFE SA ("the Board") appoints the General Counsel, together with the Disciplinary Committee, consisting of the Board and non-board members. The General Counsel will be the Chairperson of the Disciplinary Committee and the Disciplinary Committee will comprise of at least 3 members. The General Counsel and/or the Disciplinary Committee will have the right within their discretion to appoint a legally qualified person to assist them in the performance of their functions.
- 1.12 The ACFE SA will have the right within their discretion to utilise the services of a legally qualified person to assist the Legal Officer of the ACFE SA and

General Counsel with all complaints received in order to review and determine if the complaint and evidence received are within the scope and jurisdiction of the ACFE SA. If the complaint does not fall within the scope and jurisdiction of the ACFE SA, the complainant will be advised in writing. In the event that the complaint does fall within the scope and jurisdiction of the ACFE SA, the complaint will be dealt with in accordance with this Disciplinary Procedure.

- 1.13 After the complaint and evidence have been reviewed, and if it has been determined that it is in the scope and jurisdiction of the ACFE SA, the complaint will be sent to The Disciplinary Committee together with recommendations.
- 1.14 The Disciplinary Committee will be responsible for the receiving, interpreting and assessing of evidence and complaints against members and will be responsible for taking the final decision on whether to proceed with a matter or not.
- 1.15 The purpose of this document is to define the processes to be used in the discharge of the ACFE SA's responsibilities in respect of complaints received and the required disciplinary action to be taken if any.

2. Definitions

- 2.1 **Procedural fairness:** This is achieved by the correct application of the disciplinary steps and ensuring fairness in the process, towards all involved.
- 2.2 **Substantive fairness:** This is achieved by evaluating member's conduct against the Code of Ethics, Disciplinary Code, ACFE Professional Standards and applicable legislation, thereby ensuring that sanctions are only implemented where contraventions have in fact occurred. Sanctions must be appropriate in relation to the contravention.
- 2.3 **A complaint:** is information or allegation of impropriety concerning a member, alleging one or more of the following:
 - 2.3.1 Contravening any of the articles/items/clauses contained in the ACFE Code of Ethics, ACFE Professional Standards, or ACFE Bylaws. These documents are annexed hereto as addendums;
 - 2.3.2 Conviction of a crime (Moral Turpitude);
 - 2.3.3 Removal from any office/position after a disciplinary process on account of misconduct or any act involving dishonesty;

- 2.3.4 An offence in terms of a member's organisation's rules (the Employer of the member, e.g. Company, Department, etc.) and guidelines in the event that a serious breach of trust has occurred and was proven; and
- 2.3.5 Any form of misconduct whereby the Board is of the opinion that the misconduct has a direct nexus in terms of the good name and reputation of the ACFE SA.
- 2.4 **Board of Directors:** Those members elected to the ACFE SA Board from time to time, including those co-opted to any Board Committee.
- 2.5 **General Counsel:** A portfolio assigned to one of the Directors of the Board who has a legal qualification and is a CFE and/or any other legally qualified person appointed by the Board who meets the necessary criteria, skill and has the required experience in dispute resolution.
- 2.6 **Disciplinary Committee:** This Committee comprises the General Counsel assisted by at least 3 Board members appointed to this Committee and/or suitably-qualified member/s or non-members with relevant legal experience who have been appointed for this purpose.
- 2.7 **ACFE SA Members:** Student, Affiliate, Associate or CFE's and refers to individual membership
- 2.8 **Days:** Calendar day
- 2.9 **Moral turpitude:** Conduct that is considered contrary to community standards, dishonest behaviour or good morals of society.
- 2.10 **CPE:** Continuous Professional Education
- 2.11 ACFE Bylaws: **Addendum A**
- 2.12 ACFE Code of Ethics: **Addendum B**
- 2.13 ACFE Professional Standards: **Addendum C**

3 The Disciplinary Process

Section I: Initiation of Complaint

- 3.1 If a formal complaint is brought by the ACFE or ACFE SA against a Member in any membership category (collectively referred to as "Member/s"), the General Counsel shall initiate the complaint procedure described below. A "formal complaint" must be in the form of a sworn affidavit from an identified

individual alleging conduct which, if proven, would constitute a violation of the ACFE Code of Ethics, ACFE Professional Standards, or Bylaws (collectively referred to as “a violation”). The General Counsel may also initiate a formal complaint on its own authority if it otherwise receives credible evidence that a Member has committed a violation.

- 3.2 **Complaint to the ACFE SA can be lodged via the Report Line, email or registered post.** The ACFE SA’s Legal Officer or Company Secretariat will send the complainant an Acknowledgment letter, requesting the complainant to submit his/her complaint in the form of a sworn affidavit with the supporting documents to support his/her case.
- 3.3 The following disciplinary procedures will apply in handling complaints and cases of alleged misconduct:
 - 3.3.1 Persons wishing to file a complaint against a member of ACFE SA may do so by sending a sworn affidavit setting out their complaint to the attention of the ACFE SA General Council of the Disciplinary Committee of the Board or the Legal Officer /Company Secretariat within 30 (thirty) days of becoming aware of a possible contravention by registered post and/or email.
 - 3.3.2 The Complainant should include a full explanation of the alleged misconduct, supported by any evidence that he or she may have to support the allegations.
 - 3.3.3 Should the complainant wish to lodge a complaint and would like to remain anonymous it can be reported directly to the ACFE SA Legal Officer, such complaint should be put in writing in the form of a statement. In such instances, the Disciplinary Committee will keep the complainant’s identity and personal details anonymous as far as possible and reasonable.
 - 3.3.4 The Legal Officer of the ACFE SA will acknowledge receipt of the complaint and provide copies of the complaint to the members of the Disciplinary Committee within 14 (fourteen) days of receipt of the complaint.
 - 3.3.5 The Disciplinary Committee will consider the complaint and decide if any, what action is required.

- 3.3.6 The President of the Board will remain independent of the process so as to provide the alleged transgressor with an avenue of appeal to the President, should this be required.
- 3.3.7 The Disciplinary Committee shall consider and evaluate the complaint and determine if it is within the ACFE SA's scope and jurisdiction in terms of a possible violation of one or more of the articles contained in the Code of Ethics, Bylaws and Professional Standards, conviction of a crime, or removal from any office/position on account of misconduct or dishonest behaviour.
- 3.3.8 A decision not to continue with the complaint must be communicated to the Board and the complainant in writing.
- 3.4 The Disciplinary Committee reserves the right to request the complainant or members for further information. Should the complainant as members refuse and/or neglect to provide the Disciplinary Committee with the further requested information, the Disciplinary Committee reserves the right to initiate steps against the member for obstructing the Disciplinary Committee's responsibility to assess the complaint and to initiate the appropriate disciplinary action and thereby not acting in the best interest of the Profession, and/or to close the complaint due to a lack of supporting documents requested from the complainant.

Section II: Pre-Hearing

- 3.5 A pre-hearing assessment is defined as follows: A complaint will be evaluated and assessed in order to decide if a formal disciplinary hearing is justified, based on the available evidence.
- 3.6 Additional steps may be taken to obtain further information and/or evidence should there be a need to do so as to determine whether there are sufficient grounds for further action.
- 3.7 The General Counsel will evaluate the complaint to determine if it is supported by available evidence. In order to conduct the evaluation, the General Counsel is authorised to:
 - 3.7.1 if required, the General Counsel may appoint one or more qualified independent parties to assist in conducting an assessment of the case reported.

- 3.7.2 require the Complainant to supply additional information;
- 3.7.3 independently seek out information to support or refute the Complainant's allegations;
- 3.7.4 take any other steps deemed necessary to determine if there is credible evidence of a violation.
- 3.8 The General Counsel, in consultation with the Disciplinary Committee, shall have the authority to dismiss the complaint if no credible evidence is found or if the complaint does not fall within the scope and jurisdiction of the ACFE SA. The General Counsel and/or the Disciplinary Committee may take into consideration, but shall not be bound by, any prior ruling, award or order on any matter made by any governmental, regulatory, or professional body. The Disciplinary Committee will, however, be bound by decisions/findings made by the ACFE International.
- 3.9 A Member will not be subjected to a charge of misconduct unless there is *prima facie* proof of misconduct, contraventions or offences.
- 3.10 The Member, who is the subject of the enquiry, shall have the opportunity to provide a response to the Disciplinary Committee pertaining to the complaint in writing within 30 (thirty) days from the notice informing the Member of the complaint lodged against him/her. Should the Member wish to submit a request to extend the 30 day period, the Member will be required to send his/her request to the ACFE SA Disciplinary Chair where after the Chair will consider the request. This extension will be granted based on the merits of the case. Take note each request will be handled on a case to case basis and the Chair will grant the extension should it be deemed reasonable. Should the Member provide his/her response within the given 30 (thirty) days, the Disciplinary Committee or appointed qualified representative assisting with the matter has the right to request further information and/or documentation from the complainant. The complainant will have a further 14 (fourteen) days to provide the additional information/documents requested. Should the complainant refuse and/or neglect to cooperate with the additional requests, clause 3.4 will be implemented.
- 3.11 If the Member does not submit any representation pertaining to the complaint, or if the Notice of Complaint is not answered satisfactorily, or at all, the Committee must initiate a formal hearing to determine and document the facts

pertaining to the complaint, unless the General Counsel finds enough other evidence to dismiss the complaint.

3.12 Upon receipt of the representation from the Member as indicated above, or in the event of failure to provide the same within the specified time limit, the Committee shall decide whether further action is warranted:

3.12.1 If no further action is warranted, the Disciplinary Committee will advise the Board accordingly, and the Chairman of the Disciplinary Committee will advise the Legal officer of the ACFE SA to advise the Complainant and the Member named in the complaint within a reasonable time.

3.12.2 If the General Counsel and Disciplinary Committee determines that there is *prima facie* proof based on the evidence provided by the complainant and the response/lack of response of the violator, or where there is a decision by the Disciplinary Committee to continue with the complaint, such complaint shall be evaluated and assessed by a member of the Committee who shall not act as the Chairman of the disciplinary hearing. The General Counsel shall notify the Member named in the complaint by a Notice of Disciplinary Hearing by registered mail as well as by e-mail (sent to the individual's last addresses known to the ACFE SA). The Notice of Disciplinary Hearing will include details of the complaint, copies of the relevant evidence and supporting documentation.

3.13 If at any time during the evaluation of the complaint, the General Counsel finds compelling evidence that the nature of the alleged actions by the member poses a serious threat to the reputation of the ACFE or to the members of the public, the General Counsel may recommend that the ACFE SA Directors or the ACFE Board of Regents temporarily suspend the member pending the outcome of the disciplinary process. This sanction, if ordered, shall not be published by the ACFE nor the ACFE SA.

3.14 If, because of the identity of the person against whom the complaint was lodged or for any other reason, the General Counsel has a conflict of interest in the case or there is the appearance of a conflict of interest, the General Counsel shall recuse him/herself from the case and may be replaced from the Board by another Member of the Board that has been so authorised and holds suitable qualifications and/or experience, or by an Independent Counsel appointed by

the Board. If an Independent Counsel is appointed, he/she will operate in the same capacity as would the General Counsel under these Disciplinary Procedures.

4. Formal Hearing

- 4.1 If the General Counsel and/or Disciplinary Committee deems it necessary for a formal hearing to be conducted, the Board shall be advised accordingly. The hearing may take place via a video – conference call hearing or will be held at a location and time determined by the General Counsel where all parties will be able to attend. The relevant parties will be informed of the above (The final decision and whether to allow a video conference hearing will be at the discretion of the Disciplinary Chair.) Notice of the hearing shall be communicated to the Member named in the complaint at least **14 (fourteen) days** prior to the hearing by registered mail and/or e-mail.
- 4.2 If the member/s named in the complaint resigns from the ACFE SA, AFTER receiving Notice of the hearing, the resignation will be accepted but the hearing will continue as per the scheduled date, time and location.
- 4.3 Should the Member be unable to attend the hearing at the time appointed by the General Counsel, the General Counsel shall consider a postponement of the hearing based on the merits of the Member’s submissions.
- 4.4 The formal hearing shall be held before a Chairperson who is a member of the ACFE SA and has the appropriate skills and experience, who will be appointed by the Disciplinary Committee. Where appropriate, the Disciplinary Committee may appoint Assessors who will assist the Chairperson and execute their duties in the form of a Disciplinary Panel. The Chairperson and/or members of the Panel may not have been involved in the preliminary assessment of the complaint.
- 4.5 In cases where the Member does not appear at the disciplinary hearing without a valid reason, the disciplinary hearing will be conducted in absentia if the Chairperson is satisfied that the member was adequately notified of the date and time of the disciplinary hearing.
- 4.6 Evidence shall be presented, and the Member may respond to the complaint and question the evidence presented. The Member shall be entitled to scrutinise all

evidence and to cross-examine all witnesses. The Member shall be entitled to submit evidence that will be assessed by the Chairperson.

- 4.7 The Member will have a right to legal representation (**at own cost**), or to be represented by a fellow member of the ACFE SA. Should a member of the Board represent any member in a disciplinary hearing, he/she must recuse themselves from any Board or Committee meetings where the matter is considered or discussed.
- 4.8 The ACFE SA may appoint a suitable legally qualified person to either act as a prosecutor or as Chairperson.
- 4.9 The hearing proceedings will be recorded.

Section III: Finding of the Disciplinary Hearing

- 4.10 The Chairperson/Panel of the disciplinary hearing will prepare a recommendation to the Board within 14 (fourteen) days of completion of the hearing. The recommendation shall include a complete statement of the factual findings and conclusions reached for the Board's action.
- 4.11 The Board shall make a final decision within 14 (fourteen) days of the written report being received.
- 4.12 A copy of the decision shall be sent to the Member named in the complaint. The Complainant will be informed that the matter was concluded and advised of the outcome.
- 4.13 Should the Board find the Member guilty, a formal report outlining the process and findings should be forwarded by the General Counsel to the ACFE Board of Regents.

Section IV: Authority and Action of the Board

- 4.14 As further specified in the Bylaws of the Association, the rights and privileges of all members are subject to qualifications and requirements determined from time-to-time by the ACFE Board of Regents, within its exclusive control and authority. All of the members accept the exclusive control and authority of the Board as a fundamental condition of the rights and privileges of membership.

All disciplinary actions are within the exclusive authority and discretion of the Board.

5. Sanctions

- 5.1 When the Board receives the recommendation letter from the Disciplinary Committee pursuant to Section III, it will examine the recommendation and decide on the action, if any, to be taken. The procedures for such examination including, without limitation, review of the original case file and the conduct of a further investigation, will be at the discretion of the Board as it may deem appropriate on a case-by-case basis. The Board may order the revocation of membership, suspension for up to two years, probation, public or private reprimand, or any other disciplinary, remedial, or corrective action it deems appropriate. The decision of the Board shall become effective at the time it is made.
- 5.2 **Censure** - This sanction takes the form of a warning or reprimand placed in the ACFE SA's file. The notice shall be in writing and clearly outline the consequences in the event of a repetition of the conduct in question. The period of censure will be within the discretion of the Board, but between 3 (three) and 24 (twenty-four) months.
- 5.3 **Revocation of Membership** - If the severity of the offence warrants more than censure, the individual may be expelled from the Association and may have his/her CFE Designation and International membership revoked, although this will require ratification by the International Board of Review of the ACFE.
- 5.4 **Reporting** – except for the compulsory reporting of suspected crimes to the relevant authorities as required by the Board, the Disciplinary Panel may decide to make such a report if their findings indicate *prima facie* evidence that a crime has been committed.
- 5.5 **Publication** – in the event of a member being expelled from the ACFE SA after following due procedure and after allowing for the appeal of the matter, the name of such an individual will be published in the newsletter of the ACFE SA, without details of the contravention.

6. Appeal Procedure

- 6.1 The decision of the Board is final. Any decision by the Board will be promptly communicated to the Chairman of the Association to be carried out. The General Counsel will notify the Member and the Complainant of the Board's decision without undue delay. Notice of sanctions, other than a private reprimand, will be published in Fraud Magazine once the time for notice to appeal has lapsed, except as provided in paragraph four of Section II.
- 6.2 The appeal process is a separate facet of the disciplinary procedure and will be presented to the President of the Board.
- 6.3 An appeal process will be considered only if the merits of the case allows for such a process to take effect.
- 6.4 The President of the Board will decide whether the merits put forward for an appeal warrants an appeal.
- 6.5 The alleged transgressor shall advise the Chairman in writing within 48 (forty-eight) hours after the sanction was handed down in the initial disciplinary hearing, that an intention to appeal will be brought forward.
- 6.6 The appeal will be heard by the President of the ACFE SA.
- 6.7 Should representation be made to the President to conduct an appeal process for whatever reason, the President is mandated to appoint a competent independent person to chair such an appeal process, if deemed necessary.
- 6.8 If such an appeal has not been filed within 48 (forty-eight) hours, the President may consider condoning such late filing based on the merits.
- 6.9 An appeal will be allowed in the narrow sense, which implies that it is confined to the records of the proceedings *a quo*, but the President may substitute his/her own conclusion based on the merits from that of the lower tribunal.
- 6.10 The President will inform the Appellant of the outcome within 21 (twenty-one) days after finalisation of the appeal process

Section V: Cases not Requiring General Counsel Evaluation or Board of Review Deliberation

- 6.11 If a member is found guilty by a court of competent jurisdiction of a crime punishable by imprisonment of more than 1 (one) year, a felony, or any crime

involving moral turpitude (as that term is defined in Section 5.07 of the ACFE Bylaws), a complaint against that member may be presented directly to the Board without regard for Sections II and III of these procedures, except that the General Counsel shall conduct such evaluation as is necessary to verify that the member was, in fact, found guilty of such a crime. In such circumstance, the Board of Regents may expel the member without a hearing, suspend the member pending an investigation of the complaint, or take any other disciplinary, remedial, or corrective action it deems appropriate.

Section VI: Status Reports

- 6.12 The General Counsel and the Committee shall provide the Board with a written status report at each of the Board's meetings. The report shall include a list of complaints currently pending, including the name of the Member that is referenced in the complaint, the person(s)/entity submitting the complaint, a brief description as to the nature of the complaint, and the current status of the complaint. The Board may request the General Counsel and the Board of Review to provide an interim status report at any time, as deemed necessary.

Section VII: Retention of Records

- 6.13 The General Counsel will retain, in a confidential and secure manner, all pertinent records regarding the complaint. All documents pertaining to disciplinary investigations are the property of the ACFE SA. Other than the publication of the Regents' decision as set forth in Section IV, no disclosure or dissemination of any such documents shall be made except by a specific directive from the Board of Regents or pursuant to an order of legal authority with competent jurisdiction.

Take note - All previous ACFE SA Disciplinary Procedures will be replaced by the above reviewed and amended procedure. This procedure will be effective from February 2019