

**Existing disciplinary proceedings of the Self-regulatory  
Organizations (“SROs”)**

**Purpose**

To have a better understanding of the existing disciplinary proceedings of the SROs, SROs were invited to prepare a presentation for the Working Group meeting of 3 February 2015.

**Presentation Materials**

2. The presentation materials prepared by the SROs are attached at –

**Annex A** – Insurance Agents Registration Board;

**Annex B** – Hong Kong Confederation of Insurance Brokers; and

**Annex C** – Professional Insurance Brokers Association.

**Financial Services and the Treasury Bureau  
3 February 2015**

## IARB's disciplinary proceedings

### Legal consideration

The IARB adheres closely to due judicial process during case investigation to ensure that both the complainant and the Registered Person being complained of are given the opportunity to make representations. Following the decision in *Liu Pik Han v HKFI Appeals Tribunal and IARB* (11 Jul 2005) HCAL No 50/2005 (the Judgment) where Lam J held that, under Article 10 of the Bill of Rights, a respondent is entitled to and has the right of a fair hearing before any decision is reached, the IARB has informed all Registered Person of his/her right to make representations at an oral hearing and/or to appoint a legal representative to make representations on his/her behalf.

It is highlighted in the Judgment in paras. 33 and 40 that:

*"33. From the authorities, it is clear that there is no absolute rule that a tribunal must give a party an oral hearing in order to satisfy the requirement of Article 10. Where the submissions of the parties do no raise any issue of fact which were of such a nature as to require an oral hearing for their disposition, oral hearing could be dispensed with (see Allan Jacobsson v Sweden (No 2), European Court of Human Rights, Case 8/1997/792/993). However, as observed by Ribeiro PJ, when there are dispute of facts, especially when the resolution of such dispute may hinge on one's impression as to the credibility of a witness or a party, a fair hearing within the meaning of Article 10 involves an oral hearing being held (see Fredin v Sweden (No 2), European Court of Human Rights, Case 20/1993/415/494)."*

*"40. Given the serious nature of the charge, its consequences and the dispute raised by the Applicant as to her state of mind at the time when she made the declarations, I am of the view that it is highly unsatisfactory that the matter was disposed of without any oral hearing. Given the sketchy nature of her written representations, there were many aspects that the Applicant should have been given an opportunity to clarify at an oral hearing. The Board would be in a much better position to assess the credibility of the Applicant in her assertion if an oral hearing is held where she was given the opportunity to give evidence if she so wished."*

### Usual Proceedings

1. In the letter of inquiry, the Registered Person being complained of is informed of his/her right to make representations at an oral hearing and to appoint a legal representative to make representation on his/her behalf.
2. The decision of the IARB is based on the evidence adduced and the representations put forward by the parties involved. In general, the IARB adopts the civil standard of proof (i.e. proof on the balance of probabilities) when determining whether or not the allegations against the Registered Persons are substantiated.
3. Unless an oral hearing is deemed necessary by the IARB or upon the request of the Registered Person, the IARB may make a decision as to whether the Registered Person is fit and proper to act or continue acting as a Registered Person, and to require disciplinary action to be taken against him/her without an oral hearing.
4. The IARB currently has 8 Members (5 non-industry and 3 industry) and 10 Co-opted Members.(7 non-industry and 3 industry). The main duty of the Co-opted Members is to assist the IARB in handling cases involving oral hearings.
5. Once the IARB decides to arrange an oral hearing for a case, a Panel (consisting of three IARB Members and Co-Opted Members, at least one of whom should be an IARB Member) will be formed. The Panel is responsible for attending the oral hearing and the adjudication of the case.
6. The oral hearing is open to the public though the IARB has a discretion as to the overall conduct and nature of the oral hearing.

7. When the IARB or the Panel considers that a complaint is proven, it may take disciplinary action against the Registered Persons involved. Depending on the seriousness and nature of the incident, disciplinary actions vary from the issuance of written reprimand, termination of appointment, or other actions which the IARB or the Panel may think fit.
8. Before determining the necessary disciplinary action, Registered Persons are given the opportunity to make written submission for mitigation.
9. General points of reference of disciplinary actions for common types of misconduct are stated in the "Guidelines on Disciplinary Actions".
10. If a Registered Person is found guilty of misconduct, the IARB will inform the Insurance Authority of the decision and the respective disciplinary action taken against the Registered Person.

#### Oral Hearing Procedures

1. Members of the Panel attend the oral hearing
2. All parties be seated
3. Chairman of the Panel introduces the oral hearing procedures
4. IARB Secretary General announces the allegation(s) against the Respondent
5.
  - a) Complainant makes representation on the details of the complaint
  - b) Cross-examined by Respondent and/or his/her legal representative
  - c) Cross-examined by the IARB
6.
  - a) Witness(es) of the Complainant makes representation
  - b) Cross-examined by Respondent and/or his/her legal representative
  - c) Cross-examined by the IARB
7.
  - a) Respondent and/or his/her legal representative make representation
  - b) Cross-examined by the IARB
8.
  - a) Witness(es) of the Respondent makes representation
  - b) Cross-examined by the IARB

*The IARB may vary the procedures as it considers appropriate (including, at the discretion of the IARB, by permitting cross-examination by the complainants or their representative).*

#### Past Statistics

Year -	No. of oral hearings conducted	No. of cases deliberated by the IARB	%
2014	8	340	2.4%
2013	9	490	1.8%
2012	13	432	3.0%
2011	19	425	4.5%
2010	26	417	6.2%
2009	34	304	11.2%
2008	31	324	9.6%
2007	51	369	13.8%
2006	34	243	14.0%
2005	6	139	4.3%

**Presentation on the Disciplinary Procedures  
of The Hong Kong Confederation of Insurance Brokers  
for the Working Group to Facilitate Smooth Transition to an Independent  
Insurance Authority**

(meeting date: 3 February 2015)

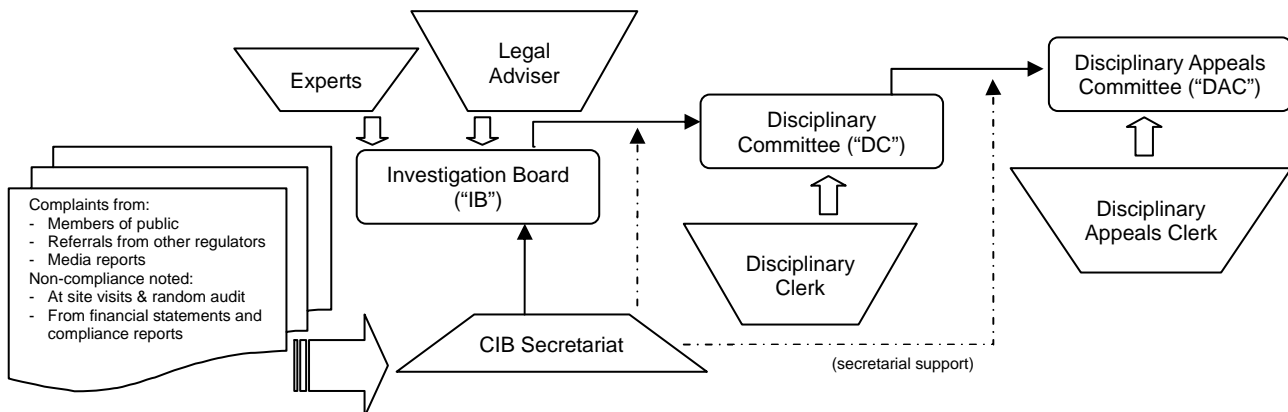
**Complaints or Non-compliance Matters through the CIB Disciplinary  
Process**

**Contents**

1. The organizational structure of CIB disciplinary function
2. Composition of the committees
3. Roles of other parties
4. The usual workflow
5. The Rights of the Subjects
6. When the Subject fails to appear at the Hearing
7. Mitigation
8. Appendix - The Reply Form & Covering Letter

## Complaints or Non-compliance Matters through the CIB Disciplinary Process

### The organizational structure of CIB disciplinary function



### Composition of the committees

#### 1. Investigation Board

- A three-member committee;
- Chaired by an independent person (currently Mr. Jonathan Zhao and Ms. May Chun, both of Ernest & Young, are appointed the Chairman and Deputy Chairman);
- Two selected by the DC Chairman from a panel of not less than 4 persons (appointed by the General Committee), one of whom shall be a General Committee member of CIB (current panelists are Ms. Rebecca Poon, Messrs. Ronald Lai, Ricky So and William Ho)

#### 2. Disciplinary Committee

- A five-member committee, four to form the quorum;
- Chaired by an independent person (currently Mr. Robert Lewington);
- At most two selected by the GC Chairman from a panel of GC members who are not serving on the IB nor the DAC;
- Not more than three also selected by the GC Chairman from a panel of independent persons (current panelists are Messrs. Colin Cohen, Chris Fordham, Graeme Halford, David Smyth, Sidney Sze, Gareth Thomas)

#### 3. Disciplinary Appeals Committee

- A three-member committee;
- Chaired by an independent person (currently Mr. Andrew Mak);
- GC Chairman as the ex-officio member; and
- An independent Member (currently Mr. H Y Mok).

### Role of other parties

#### 4. Experts

- Seasoned insurance practitioners in particular field to offer opinion when required by the IB on its investigation into a matter.

#### 5. Legal Adviser

- Usually externally appointed lawyers to give legal advice in the disciplinary investigation and to act as prosecution officer to present the case to DC and DAC at hearings or submissions.

#### 6. Disciplinary Clerk

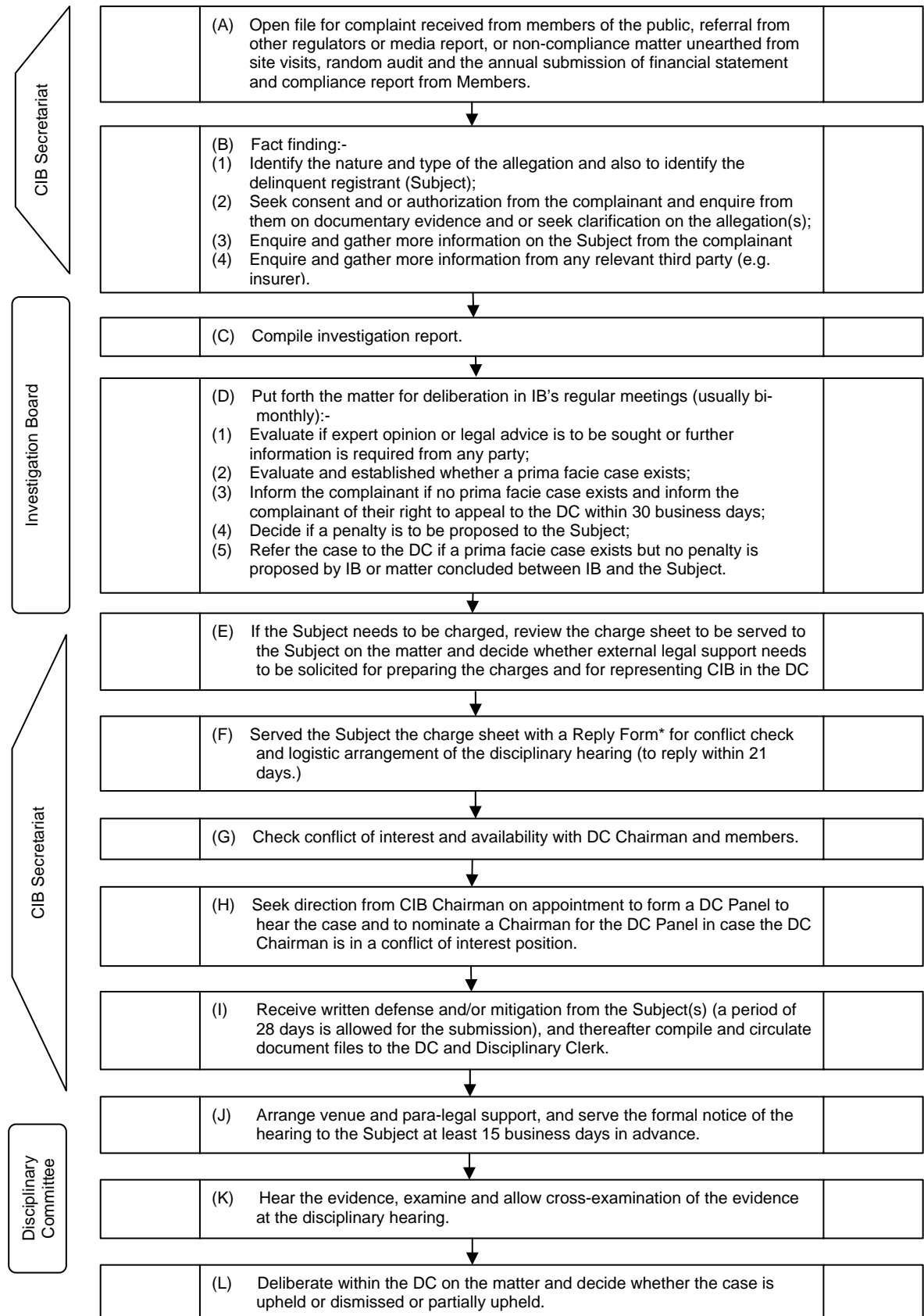
- Externally appointed lawyer to act as secretary of the DC and to provide legal advice to the DC.

#### 7. Disciplinary Appeals Clerk

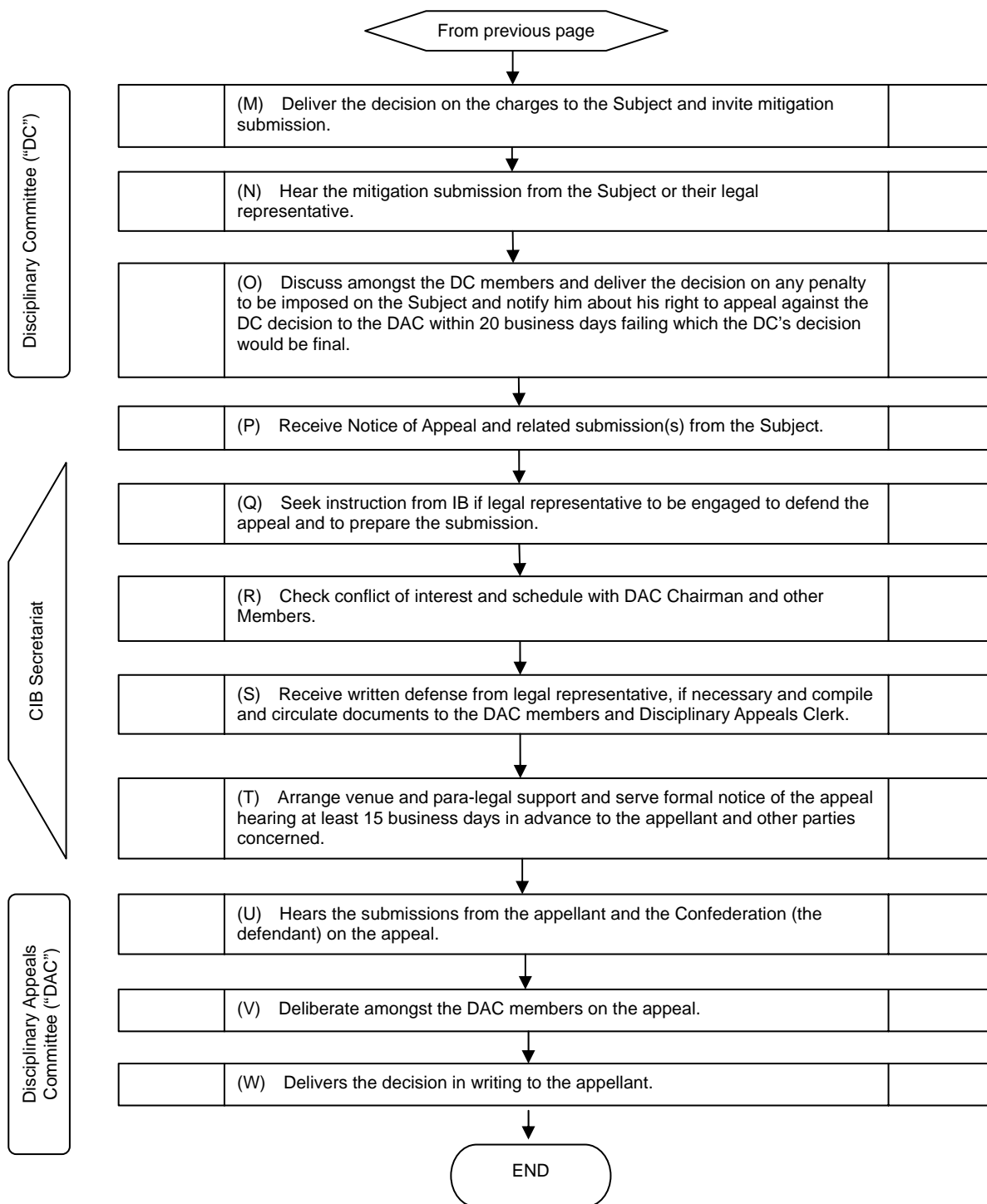
- To act as secretary of the DAC and to provide legal advice to the DAC (to be appointed)

## The usual workflow

Stages:-



Next page



Note:  
See Appendix 1 for the Reply Form together with the covering letter.

### The Rights of the Subjects

1. The Subject shall have the right to be notified of an enquiry and to make written submissions in relation thereto. (Article 26, Steps A3 & I, Reply Form items no. 2&3);
2. The Subject is given the opportunity to appear and be heard before the Disciplinary Committee with adequate prior notice (Article 26A, Step F);
3. The Subject can be legally represented (Articles 26B and 35A(j), Reply Form item no. 5);
4. The Subject is entitled to cross examination at hearing and full disclosure of evidence, i.e. the request for correspondence file which shall contain all correspondence of CIB with any party on the matter under enquiry and all evidence in the hands of CIB (except legal or expert opinions sought by CIB) (Reply Form, item no. 6,7 & 9);
5. The Subject is entitled to be served the notification of the decision of the Disciplinary Committee, or of the Disciplinary Appeals Committee in case of an appeal by the Subject (Articles 34 and 35A(k));
6. Any decision of the Disciplinary Committee, with the exception of those powers exercised by the Disciplinary Committee under Article 32 (i.e. suspension pending investigation), shall be subject to appeal (Article 35(a)).

### When the Subject fails to appear at the Hearing

7. The notice of hearing is served onto the last known address of the Subject;
8. Regardless of whether the Subject has indicated his/her attendance, the hearing will proceed as arranged, i.e. for each and every case, a hearing will be held to offer the opportunity for the Subject to appear before the committee and be heard;
9. The Disciplinary Committee and the Disciplinary Appeals Committee are with full discretion to decide if a hearing is to proceed in the absence of the Subject or to be adjourned to another day, depending on merits of individual cases, e.g. the Subject has suggested himself being under medical treatment but producing no documentary proof of such.

### Mitigation

10. The Subject is given the opportunity to mitigate:-
  - In reply to the Reply Form;
  - At the hearing when he/she is found guilty; or
  - As directed by the Disciplinary Committee and/or Disciplinary Appeals Committee, in writing after the hearing, or at the adjourned hearing on mitigation.



Appendix 1 - The Reply Form & Covering Letter

**TO BE OPENED BY ADDRESSEE ONLY  
BY REGISTERED POST AND ORDINARY POST**

Our Ref: FDyymmxxx/pp

(date)

Subject  
Address

Dear Sir,

**Re: Disciplinary Hearing (DCxx/yyy)**

We write to inform you that the Investigation Board formed under the Disciplinary Committee of the Confederation has determined that a prima facie case has been established in relation to the matter(s) as set out in the complaint sheet as attached (the "**Complaint**").

In accordance with Articles 26 and 28 of the Articles of Association of the Confederation, you, being the Subject of the enquiry by the Disciplinary Committee, are given the opportunity to appear and be heard before the Disciplinary Committee on a date to be fixed (the "**Hearing**"). The Hearing will be conducted in English and held at the office of the Confederation.

We are obliged to inform you that the composition of the Disciplinary Committee is as follows, and to ask you to complete and return the enclosed Reply Form on or before **date (count 21 calender days)** (the "**Due Date**") to facilitate the arrangement of the hearing.

Composition of the Disciplinary Committee

The minimum four-member Disciplinary Committee, to be appointed by the Chairman of the General Committee, shall consist of the Chairman of the Disciplinary Committee, no more than three persons from Disciplinary Panel A, and at most two persons from Disciplinary B. The Chairman of the Disciplinary Committee and the members of the Disciplinary Panel A and Disciplinary Panel B are listed as follows:-

Chairman : (name)

Disciplinary Panel A : (names)

Disciplinary Panel B : (names)

You are reminded not to approach or allow any of your representatives to approach the Chairman of the Disciplinary Committee or any panellist of either the Disciplinary Panel A or the Disciplinary Panel B on the matter(s) to be heard.

Filing for the Hearing

You must return the Reply Form by the Due Date regardless of whether you wish to file a written defence or a plea in mitigation. If you wish to file a written defence or a plea in mitigation, you should do so within 28 calendar days from the date of returning the Reply Form.

Non-Return of the Reply Form

If you do not return the Reply Form by the Due Date, it shall be assumed that you do **NOT**:

- Have any written defence or plea in mitigation in respect of the Complaint,
- Have any conflict of interests with any persons who serve on the Disciplinary Committee,
- Wish to appoint any legal representative to represent you at the Hearing,

- Wish to call the complainant or any other witnesses to attend and give evidence at the Hearing, and
- Require the Confederation to provide any simultaneous interpreter service at the Hearing,
- Request for the correspondence file(s).

and the Hearing shall proceed upon the above basis unless you inform the Confederation otherwise in writing prior to the date of the Hearing.

Even if you do not return the Reply Form to the Confederation by the Due Date, you will still be entitled to be heard, to call witnesses and to make representations yourself or be represented by a legal representative at the Hearing.

The Confederation may appoint an independent Solicitor as the legal representative to represent the Confederation at the Hearing.

#### Notice of the Hearing

Subsequent to the Due Date, the Confederation will proceed to make arrangements for the Hearing and will serve you with written notice of the date and time at least 15 business days before the Hearing.

#### Calling of Witness

Should you wish to call any witnesses to attend and give evidence at the Hearing for the purposes of assisting the Disciplinary Committee's determination of the Complaint then please indicate the name(s) of such person(s) in the Reply Form and return the same to the Confederation by the Due Date. Please note that any person being called as a witness to attend the Hearing may be subject to examination by members of the Disciplinary Committee.

If you wish to call the complainant we will make arrangements for his/her attendance. You will be responsible for arranging the attendance of any other witnesses you wish to call.

FYI, the Disciplinary Committee may call the complainant to attend the hearing if it is necessary, even if you do not ask him/her to attend and be examined. For your information, we may also circulate your written response / submission to the relevant parties to the hearing.

#### Costs

You are informed that if the Disciplinary Committee decides that the complaint, or any part of it is upheld, it may, in addition to imposing any penalty upon you, order that you pay the costs incurred by the Confederation in investigating the complaint and in holding the Hearing. These may include the fees of the Confederation's legal representative, the fees of the Clerk to the Disciplinary Committee, the shorthand writer and any interpreter as well as photocopying and other ancillary disbursements.

#### Correspondence Files

If you would like copies of the correspondence exchanged during the course of the investigation, please indicate your request in the Reply Form enclosed.

If you have any questions about the foregoing, please contact the undersigned.

Thank you for your attention.

Yours faithfully,  
For and on behalf of  
The Hong Kong Confederation of Insurance Brokers

Secretary-General and Registrar

Encl.

1. Complaint Sheet and Reply Form

REPLY FORM

To: The Hong Kong Confederation of Insurance Brokers  
Room 3407, AIA Tower, 183 Electric Road, Fortress Hill, Hong Kong

From: **Subject**

I/We hereby reply to the letter served on me/us dated (date) in relation to the disciplinary hearing on the matters under Case No. **DC xx/yyy**.

\* Please tick the box where appropriate. If neither "Yes" nor "No" is chosen in respect of a particular item then such item shall be considered as a response of "No".

<u>Items</u>	<u>Yes*</u>	<u>No*</u>
1. I/We intend to contest the Complaint.	<input type="checkbox"/>	<input type="checkbox"/>
2. I/We will submit written defence within a period of 28 calendar days.	<input type="checkbox"/>	<input type="checkbox"/>
3. I/We will submit written plea in mitigation within a period of 28 calendar days.	<input type="checkbox"/>	<input type="checkbox"/>
4. I/We consider the following potential member(s) of the Disciplinary Committee is/are, directly or indirectly, materially interested in the matters referred to in the Complaint. A written statement of the conflict of interest is attached for you to take into account when the members of the Disciplinary Committee are appointed.	<input type="checkbox"/>	<input type="checkbox"/>

Name(s) of the person(s):

\_\_\_\_\_

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 5. I/We will appoint legal representative(s) to attend the disciplinary hearing. (Please tick the box whichever appropriate.)<br>Name of the legal representative(s): | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

\_\_\_\_\_

I/We will file with the Confederation the name of the legal representative within a period of 28 calendar days.

- |  |                          |                          |
|--|--------------------------|--------------------------|
| 6. I/We wish the complainant to attend the Hearing and be examined.                | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. I/We wish to call the following person(s) to attend the Hearing and be examined | <input type="checkbox"/> | <input type="checkbox"/> |

\_\_\_\_\_

- |  |                          |                          |
|--|--------------------------|--------------------------|
| 8. I/We will require interpreter service at the Hearing. | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. I/We request for the correspondence file(s).          | <input type="checkbox"/> | <input type="checkbox"/> |

\_\_\_\_\_  
Signature / Authorized Signature & Company Chop

Dated:

## **PIBA Committee of Disciplinary Matters**

### **Disciplinary Committee (DC)**

- Maximum 15 members
- Present composition
  - 1 Chairman (Independent Person (IP))
  - 5 IPs (will be nominated 1 more)
  - 8 PIBA Executive Committee Members (EC)
- DC Meeting
  - Quorum: 5 / Not less than 40% Independent Person
- DC Hearing
  - Quorum: 3 / Not less than 50% Independent Person

### **Monitoring Sub-committee (MoSC)**

- Under DC
- Present composition
  - 1 Chairman (EC)
  - 3 IPs (will be nominated 1 more)
  - 4 ECs
- Pair up (1 IP + 1 EC) to handling each complaint case

### **Appeal Committee (AC)**

- Minimum 3 members, at least 2 are IPs whom one of them must be a solicitor, barrister or retired judge
- Present composition
  - 1 Chairman (IP) (XXXX)
  - 1 IP (XXXX)
  - 1 EC

## **Complaint Cases handling procedure**

### **Monitoring Stage (MoSC)**

- Commence the investigation if it is the scope of PIBA
- Request the complainant to sign & return the (i) letter of consent & (ii) confidentiality agreement
- Send the complaint letter or email to company member or TR
- Request the respondents to submit a report and related documents
- Send the respondents' report to complainant to comment
- 1 IP + 1 EC will handle if the case is going on
- Make appointment with complainant, TR or company member to obtain additional and clear information
- The appointment would be held by 1 IP + 1 EC. The process would have audio record
- After the investigation
  - a/ Both IP and EC have same decision,
    1. Have prima facie - list out the assertions and justifications as well as the suspected breach(es) in an MoSC report
    2. No prima facie – list out the opinion in the MoSC report
  - b/ IP and EC have difference decision
    1. MoSC Chairman will make the final decision
    2. or appoint the different IP + EC to restart the investigation
- Escalate the case with MoSC report to DC for discussion

### **Disciplinary Stage (DC)**

- Receive explanation from Secretariat case handler, IP & EC
- Discuss the case and make preliminary decision under the rule of majority
- If difference decision with MoSC, restart the investigation from other IP + EC
- For allegation valid case, issue Notice of Disciplinary Proceeding and grant the right of making written submission and the right of appear and to be heard before the final decision is made (DC Hearing)
- Make final decision under the rule of majority after the DC Hearing
- Disciplinary Actions
  1. Expulsion (majority vote of not less than four-fifths of the members of the DC present)
  2. Suspension (same)
  3. Other e.g. fine, written warning, public censure, sanction
- Notify the person affected the direction containing a statement of the DC's reasons
- The Disciplinary Action take effect on the expiration of the time for appealing or the uphold decision from Appeal Committee

### **Appeal Stage (AC)**

- Obtain all information if there is an appeal case
- Hold the AC Hearing, if necessary
- Make final decision, including uphold, vary or quash the decision of DC decision

## **Non-compliance cases handling procedure**

### **Monitoring Stage (MoSC)**

- Most of the cases are handled by Secretariat DC Division since they are straight forward to determine
- The cases are usually referred from Membership Sub-committee (MSC)
- Can be classified as:
  - a. *Failure to submit audited financial statements and/or compliance certificate*
  - b. *Failure to submit renewal PII Policy and/or Premium Receipt*
  - c. *No Chief Executive*
  - d. *Failure to maintain PII with sufficient indemnity*
  - e. *Failure to maintain a minimum NAV and/or paid-up share capital of HK\$100,000*
  - f. *Failure to maintain separate client accounts*
  - g. *Failure to maintain adequate accounting records*
- For a & b, MoSC will grant an allowance period to submit. If over the period, the case will be passed to DC for Disciplinary Proceeding
- For c, d, e, f & g, MoSC will request the member to submit the following:
  1. an explanation letter;
  2. a confirmation letter from a CPA;
  3. supporting documents.

Whether the Non-compliance is rectified or not, the case will pass to DC for Disciplinary Proceeding

- DC and AC procedure are same as Complaint cases