

Disciplinary Regulation

The Council of the Hong Kong Institute of Patent Attorneys (“the Institute“), whereas it is desirable to adopt provisions governing the disciplinary power to be exercised by the Institute, has adopted this regulation:

Part I - Rules of professional conduct

Article 1 - General professional obligations

1. A member shall exercise his profession conscientiously and in a manner appropriate to its dignity. In particular, he shall not knowingly make any false or misleading statement.
2. A member shall conduct himself in such a manner as not to prejudice the necessary confidence in his profession.

Article 2 - Professional secrecy

A member shall be bound not to disclose information accepted by him in confidence in the exercise of his duties, unless he is released from this obligation.

Article 3 - Special provisions on conduct towards clients

1. A member who is unwilling to accept a call upon his professional services or who withdraws his services shall forthwith inform the client. In the latter case, he shall take appropriate measures to enable the client to avoid detriment.
2. A member shall refuse or withdraw his services if acceptance or continuation would necessitate his dealing with a particular matter on which he has represented or advised another client with opposing interests and the conflict has not been resolved.

Part II - Disciplinary measures

Article 4 - Disciplinary measures

1. A member who fails to comply with the Code of Professional Conduct may incur one of the following penalties:
 - a) a warning,
 - b) a reprimand,
 - c) deletion from the list of member for not more than six months,
 - d) deletion from the list of member for an indefinite period.

2. The penalties provided for in paragraph 1 may also be incurred if a member fails to pay within two months of the due date a subscription fee of his membership..

Part III - Disciplinary Committee

Article 5 - Disciplinary Committee

Infringements of the Code of Professional Conduct may be considered by the Disciplinary Committee of the Institute (“the Disciplinary Committee“).

Article 6 - Powers and responsibilities of the Disciplinary Committee of the Institute

1. The Disciplinary Committee shall consider any alleged breach of the Code of Professional Conduct which may be brought to its notice in writing.

2. After any preparatory inquiries which it may wish to carry out the Disciplinary Committee shall decide either to:

a) dismiss the matter; or

b) issue a warning or reprimand

3. If the Disciplinary Committee does not take a final decision within 9 months of an alleged breach of the Code of Professional Conduct being brought to its notice, it shall within that time limit submit a report on the state of the proceedings to the President of the Institute (“the President“).

4. On receiving the report or on expiry of the time limit referred to in paragraph 3, the President of the Institute shall either:

a) extend the time limit for consideration of the matter by Disciplinary Committee; or

b) dismiss the matter.

5. The President may grant no more than two extensions, totalling not more than 6 months, under paragraph 4a.

Article 7 - Independence of members of the Disciplinary Committee

The members of the Disciplinary Committee shall be independent in the performance of their duties and in particular shall not be bound by any instructions in reaching their decisions.

Part IV - Procedure

Article 8 - Right to be heard

Before taking any decision which might prejudice the interests of the member concerned the Disciplinary Committee shall give him an opportunity to comment. The President shall be given an opportunity to comment before any final decision is taken.

Article 9 - Oral proceedings

1. Oral proceedings shall take place either at the instance of the Disciplinary Committee if it considers this to be expedient or at the request of the member concerned.

2. The members of the Disciplinary Committee shall be present at any oral proceedings conducted by the Disciplinary Committee . A person appointed to take the minutes shall also be present.

Article 10 - Persons entitled to attend oral proceedings

The President and the member concerned shall be entitled to be present throughout oral proceedings. The President may nominate another person to attend on his/her behalf.

Article 11 - Preparatory inquiries

Prior to taking a decision, the Disciplinary Committee may entrust to one of the legally qualified members the task of conducting preparatory inquiries.

Article 12 - Exclusion and objection

(1) Members of the Disciplinary Committee may not take part in any disciplinary matter if they have any personal interest therein.

(2) If, for the reason mentioned in [paragraph 1](#), or for any other reason, a member of the Disciplinary Committee considers that he/she should not take part in any disciplinary matter, he/she shall inform the Disciplinary Committee accordingly.

(3) Members of the Disciplinary Committee may be objected to by any party for the reasons mentioned in [paragraph 1](#), or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. No objection may be based upon the nationality of members.

(4) The Disciplinary Committee shall decide as to the action to be taken in the cases specified in [paragraphs 2](#) and [3](#) without the participation of the member concerned. For the purposes of taking this decision the member objected to shall be replaced by his alternate.

Article 13 - Legal representation

The member may be assisted at any stage of the proceedings by any legal practitioner qualified in Hong Kong

Article 14 - Obligation to supply information

Where proceedings against a member are pending before the Disciplinary Committee, the member shall supply all necessary information and, on request, submit his files to the Disciplinary Committee, except in so far as this would be in conflict with his obligation to professional secrecy.

Article 15` - Access to files

1. Subject to paragraph 2, the person appointed under Article 13 shall be entitled to inspect all files and evidence and to receive copies of all documents.

2. The right of access referred to in paragraph 1 may be refused if the Disciplinary Committee is satisfied that this would entail a serious risk of prejudicing the Disciplinary Committee's preparatory inquiries. This limitation shall be set aside in good time for the person appointed under Article 13 to be able to comment before the Disciplinary Committee takes a decision on the merits.

Article 16 - Confidentiality

Proceedings before Disciplinary Committee shall not be public. Their deliberations shall be confidential.

Article 17 - Decisions

1. A decision of the Disciplinary Committee shall state the reasons on which it is based and shall be given in writing. It shall be notified to the member and the President.

2. Such decision shall not be subject to appeal.

Article 18 - Revision of decisions

1. An application for the revision of a final decision may be made only on discovery of a fact which is of such a nature as to be a decisive factor in favour of the member which, when the decision was taken, was unknown to the Disciplinary Committee which last dealt with the matter and to the member.

2. The application shall identify the decision to which it relates and shall also contain particulars of the facts and evidence showing that the conditions laid down in paragraph 1 have been fulfilled.

3. The Council of the Institute shall decide on the admissibility of the application for revision. If it decides that the application is admissible, the application shall be referred for further decision on the merits to the Disciplinary Committee which last dealt with the matter.

Article 19 - Supplementary provisions

1. The decisions of the Disciplinary Committee may only be based on grounds or evidence on which the member concerned has had an opportunity to present his comments.

2. In proceedings before it, the Disciplinary Committee shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the member.

3. In any proceedings before the Disciplinary Committee the means of giving or obtaining evidence shall include the following:

(a) hearing the member;

- (b) requests for information;
- (c) the production of documents;
- (d) hearing the witnesses;
- (e) inspection;
- (f) sworn statements in writing.

4. If the Disciplinary Committee considers it necessary for the member, a witness or an expert to give evidence orally, it shall issue a request to the person concerned to appear before it.

5. In the absence of procedural provisions in this Regulation, the Disciplinary Committee shall take into account the principles of procedural law generally recognised in Hong Kong.

6. The Disciplinary Committee shall adopt their own additional rules of procedure. These shall require the approval of the Council of the Institute.

Part V - Miscellaneous

Article 20 - Period of limitation

1. Proceedings in respect of a failure to comply with professional obligations shall be barred after a period of five years. The period of limitation shall begin on the date of such failure.
2. The period of limitation shall be interrupted by any procedural step taken in respect of such failure by the Disciplinary Committee or one of its members against the member concerned. Each interruption shall cause the period of limitation to begin again.

Part VI - Costs and enforcement

Article 21 - Costs of proceedings

1. Proceedings before the Disciplinary Committee shall be free of charge; only costs necessarily incurred for the purpose of the proceedings shall be recoverable.
2. If the matter is not dismissed, the final decision may stipulate, having regard to special circumstances, that the costs necessarily incurred by the Institute shall be borne, in whole or in part, by the member concerned. On the other hand, if the matter is dismissed, the final decision may stipulate that the costs necessarily incurred by the member shall be borne in whole or in part by the Institute.
3. The Disciplinary Committee shall fix, in a separate decision, the amount of costs to be refunded. Such decisions shall not be subject to appeal.

Article 22 - Enforcement

1. Failure on the part of a member to refund any costs due from him shall be deemed to be a breach of the Code of Professional Conduct.

2. A final decision of the Disciplinary Committee to delete a member from the list of membership shall take immediate effect .

Part VII - Final provisions

Article 23 - Amendment of this Regulation

Amendments to this Regulation shall be adopted by the Council of the Institute by a two-thirds majority resolution.

Article 24 - Entry into force

This regulation shall enter into force on 28 February 2011.