



The Maturity Model in Action

INVESTIGATION & DISCIPLINE

Guidance Series
for the development of
Professional Accountancy Organisations

CONTENTS

Preface	5
The Maturity Model	
I&D and the Maturity Model	
The I&D Guide	
Why: The Case for a Strong I&D System	9
What: The Key Components	11
Principles	
Policies	
People	
Processes	
Advanced I&D System Considerations	23
How: Tools, Templates and Examples	29
1: Illustrative Flowchart for the I&D Process	
2: What happens after the complaint is received?	
3: Template Letters	
4: Example Conflict of Interest Guidelines and Declaration	
5: Example Disciplinary Tribunal's Decision Tree Tool	
6: Example Tool for the Disciplinary Tribunal to Consider Mitigating and Aggravating Factors	
7: I&D System Continuous Improvement Scan	

About CAPA

The Confederation of Asian and Pacific Accountants (CAPA) is recognised by the global accountancy profession, represented by the International Federation of Accountants (IFAC), as a regional organisation representing national professional accountancy organisations (PAOs) in Asia Pacific.

The mission of CAPA is to develop, coordinate and advance the accountancy profession in the region by:

- Contributing to the formation and development of strong and sustainable professional accountancy organisations
- Fostering a cohesive accountancy profession within the region
- Promoting the benefits of high-quality financial and performance management and reporting in the public, non-for-profit and private sectors, including international standards in accounting, audit, ethics and accounting education
- Advocating the value of professional accountants in the region and speaking out on public interest issues

About the Guidance Series

The Guidance Series is produced to support the *Maturity Model for the Development of Professional Accountancy Organisations* publication. The series is supported by the Professional Accountancy Organisation Development Committee (PAODC) of CAPA, which is focused on the development of strong and sustainable professional accountancy organisations through the identification, development and sharing of relevant knowledge, tools and guidance.

The Guidance Series and other development materials may be accessed and downloaded from the CAPA website at: www.capa.com.my. Any comments on these publications or related materials should be directed to the CAPA Secretariat: admin@capa.com.my

Endorsement

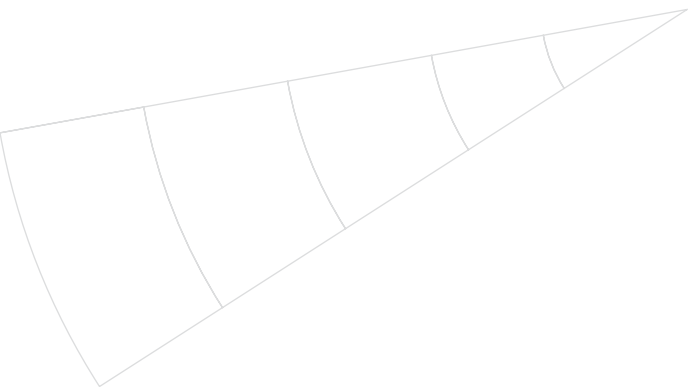
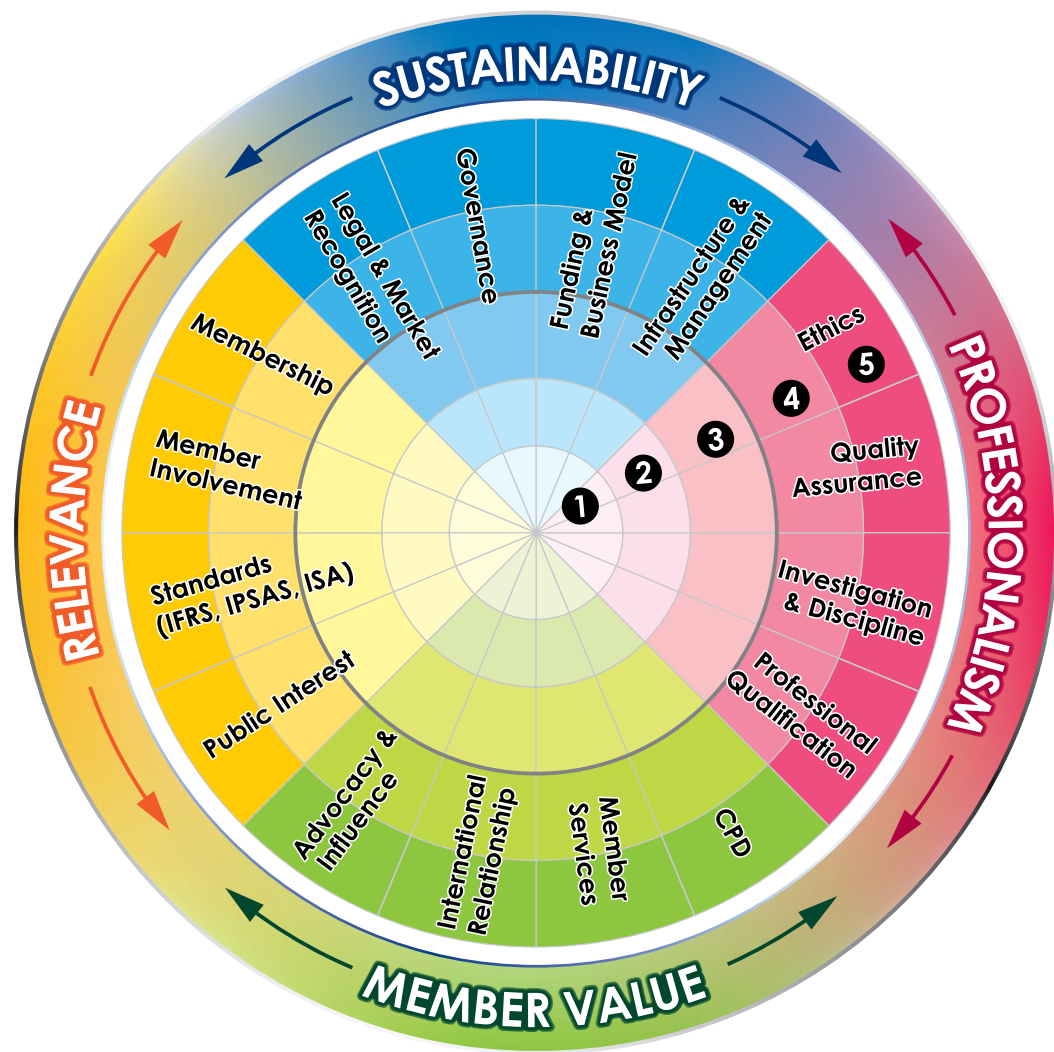
The International Federation of Accountants (IFAC) is the global organisation for the accountancy profession dedicated to serving the public interest by strengthening the profession and contributing to the development of strong international economies.

A key focus area for IFAC is supporting the development of PAOs. Statement of Membership Obligation (SMO) 6, Investigation and Discipline, is an essential element for strong PAOs as recognised by the IFAC Member Compliance Program. IFAC endorses this publication, which it recommends to PAOs around the world that are developing their investigation and disciplinary system.



THE MATURITY MODEL

The Maturity Model¹ is a support tool that allows professional accountancy organisations (PAOs) to take a systematic approach to their organisational development. The Maturity Model’s open approach and user-friendly interface present a clear value proposition that is unique on the international PAO development stage. The Maturity Model helps PAOs make and carry out their commitment to excellence, easily tracking their progress along the way. It provides a holistic, proven and easy-to-scale framework that PAOs can interpret within their own context. This flexibility allows PAOs to decide on their own purpose and pace of improvement efforts.



“ A useful approach may well be to ...
use the ‘PAO maturity model’ ...
to ensure a comprehensive
assessment is completed and that a
properly tailored approach is taken
to capacity development based
on each PAO’s local context. ”
– Current status of the accounting
and auditing profession in
ASEAN countries (September 2014)
The World Bank

The Maturity Model comprises sixteen key success areas (KSAs) across four broad characteristics, which are presented around the outside of the model as *sustainability*, *relevance*, *professionalism* and *member value*. Each of these KSAs is considered important; however, the emphasis may vary based on the organisation concerned. Investigating and discipline (I&D) is included as a key success area.

Characteristic	Key Success Areas	Description
SUSTAINABILITY	Legal & Market Recognition	An acknowledged reason to exist
	Governance	Oversight, direction and control arrangements
	Funding & Business Model	A strategy and plans for long-term viability
	Infrastructure & Management	Appropriate systems, processes and people
RELEVANCE	Membership	Criteria for admission and levels of membership
	Member Involvement	Member needs and views understood
	Standards*	International technical standards adopted and implemented
	Public Interest	Generates benefits for all society
PROFESSIONALISM	Ethics*	Established standards of conduct for professionals
	Quality Assurance*	Standards for delivering services to the public
	Investigation & Discipline*	Maintains standards of membership
	Professional Qualification*	Established required-competency benchmark
MEMBER VALUE	Continuing Professional Development*	Supports member competency
	Member Services	Responds to member needs; provides value
	International Relationships	Internationally connected and continually improving
	Advocacy & Influence	Recognised voice on topics of relevance

* These KSAs link to IFAC’s Statements of Membership Obligations (SMOs)

¹ The ‘Maturity Model for the Development of Professional Accountancy Organisations’ publication can be downloaded at www.capa.com.my

PREFACE

I&D AND THE MATURITY MODEL

Each KSA is accompanied by an attribute table² that assists PAOs in assessing their current level of maturity and considering their desired level for each KSA. The attribute table for I&D is below.

In the attribute tables, five levels of maturity are distinguished. As accountancy organisations mature, they typically pass through each of these development levels, which can be characterised by attributes representing:

- 1. Ad hoc or no practices
- 2. Informal practices
- 3. Good practices
- 4. Strong practices
- 5. Best practices

Organisations are encouraged to attain good practices as a minimum for all KSAs.

“ Achieving best practice for all KSAs may not always be an appropriate goal, given differing contextual or regulatory environments. ”
– CAPA

THE ATTRIBUTE TABLES

Investigation & Discipline - Handling complaints about misconduct appropriately.

Aspect	1	2	3	4	5
Awareness and framework	None	Some recognition by members that they should be accountable Plan of action to introduce processes for dealing with complaints	Awareness by public and members of a documented complaints process Necessary allocation of resources Established investigation and discipline procedures in governance documents	Resources and expertise allocated to enable timely investigation and disciplinary action Clear distinction between investigation, disciplinary and appeals functions	Public and member awareness of comprehensive and effective procedures, which are publicly reported
Implementation and reporting	None	Limited disciplinary processes, but without reporting	Member involvement Reporting of outcomes to members	Formal nomination process for appointment to tribunals Appeals process Public reporting of outcomes Members required to self-report disciplinary offences	Independent tribunals comprising appropriate professional and legal expertise Detailed reporting Independent review of cases not proceeding after investigation
SMO compliance	Not active	Considering how to address the requirements of SMO 6	Has a defined plan to address the requirements of SMO 6	Executing and implementing the requirements of SMO 6	Ongoing commitment to continuous improvement in addressing requirements of SMO 6

SMO 6, Investigation and Discipline. Contains detailed requirements for the organisation and operation of investigation and disciplinary systems.

THE I&D GUIDE

This guide is designed for any organisation looking to implement a robust system for I&D that, at a minimum, demonstrates the attributes of good practice. Many leading PAOs have a long history and have evolved and developed over decades, learning and improving continuously. Younger, developing PAOs can take the lead from these more experienced PAOs, following in their footsteps; however, it can still take a number of years to design and implement a sound system of I&D and achieve the desired outcomes. The exact time frame will depend on the starting point, including a basic recognition and acceptance of I&D as a fundamental need for a professional membership organisation. It will also depend on the level of available resources and any legal or regulatory considerations which affect the allocation of responsibilities for I&D-related matters.

This guide provides the “why,” “what” and “how” of I&D. It explains why a strong commitment to I&D is important; highlights the key components of a robust I&D system that complies with international requirements for good practice; and provides some tools, templates and examples to assist with implementation (see pages 29 to 40) including a checklist to quickly scan for improvement opportunities (How 7).

Primarily aimed at PAOs without established or mature I&D systems, this guide focuses on practical guidance to achieve the minimum requirements for a working system. However, in order to recognise that any I&D system will involve ongoing challenges and complexities, and to provide aspirational content, a section on considerations for advanced systems is included.

The terminology used throughout this guide reflects common usage by the global accountancy profession. The use of other terminology may be appropriate in differing contexts and cultures.

“ CAPA’s guidance on I&D systems is very comprehensive and can be recommended for any PAO. ”
– Former President,
Institute of Chartered Accountants
of Sri Lanka

² The attributes included in the attribute tables are not necessarily exhaustive and should be viewed as examples.

WHY: THE CASE FOR A STRONG I&D SYSTEM

MAINTAINING INTEGRITY

“If the will be set on virtue, there will be no practice of wickedness.”³ That statement of Confucius’s ethics can no doubt apply to professional accountants, as ethical behaviour lies at the heart of the accountancy profession. Yet all humans have the potential to stray or make mistakes. PAOs must therefore hold their members to high standards. A strong system of investigation and discipline (I&D) is essential, meting out clear consequences to members of the profession who do not behave in an ethical and professional manner. A just, robust and visible I&D system will also send a clear message to stakeholders: “We do not tolerate anything less than unquestionably ethical behaviour.”

ACHIEVING CREDIBILITY

Leading and respected PAOs understand that a robust and transparent I&D system is essential, as it demonstrates a commitment to ensuring the highest levels of professionalism among their members. In today’s instant-information society, any unprofessional behaviour by members can seriously undermine the trust the public places in that profession. PAOs seeking to build a brand that emanates the excellence of their membership must therefore address all issues related to ethical dilemmas, compliance failures and unacceptable conduct by their members, and they must do so competently and efficiently. Negligence and deliberate breaking of standards must be met with proportional remedies.

To achieve and maintain credibility, it is also paramount that PAOs continuously improve their systems to ensure the excellence of their members and to maintain high standards of professional behaviour.

Organisations which are serious about the quality of their membership are seen as more reliable. PAOs that demonstrate commitment to high standards and to the disciplining of their members who do not meet those standards will stand out in the eyes of regulators, government agencies, donors and the general public. Thus, PAOs can gain the high ground and be seen as respected advocates.

“The establishment and effective operation of an I&D system is one of the core foundations of a professional body. PAOs have a duty to the public to uphold the highest professional and ethical standards and take swift, decisive and transparent action when transgressions occur. This requires clarity of process and clarity of purpose, built on the foundation and principles of natural justice. With strong and mature I&D systems, our profession is more robust, sustainable and respected.”

– Chair, CAPA PAO Development Committee

QUALITY ATTRACTS QUALITY

A strong commitment to the quality of membership enhances sustainability. Professionals prefer to be affiliated with an organisation known for its high-quality members, which requires it to be known for rigorous but fair regulation of those members. Sustainability considerations are particularly important when membership of a PAO is voluntary.

IFAC REQUIREMENTS

IFAC’s *Statement of Membership Obligations*⁴ (SMO) 6: *Investigation and Discipline* requires PAOs to take actions to have a just and effective I&D system in place for their members. PAOs aspiring to IFAC membership and existing members working on strengthening their compliance with SMO 6 should refer to the SMO 6 requirements.

“With heightened expectations from the public, the roles and responsibilities of PAOs have evolved over the years. JICPA has continued to enhance its I&D system to ensure the highest ethical, technical and professional standards of conduct and performance by members so that the integrity of the profession is upheld. In view of the changing environment surrounding the profession, I&D systems need to be continuously improved, and CAPA’s guidance provides thorough and useful information for both developing and more established organisations worldwide.”

– Former President, Japanese Institute of Certified Public Accountants

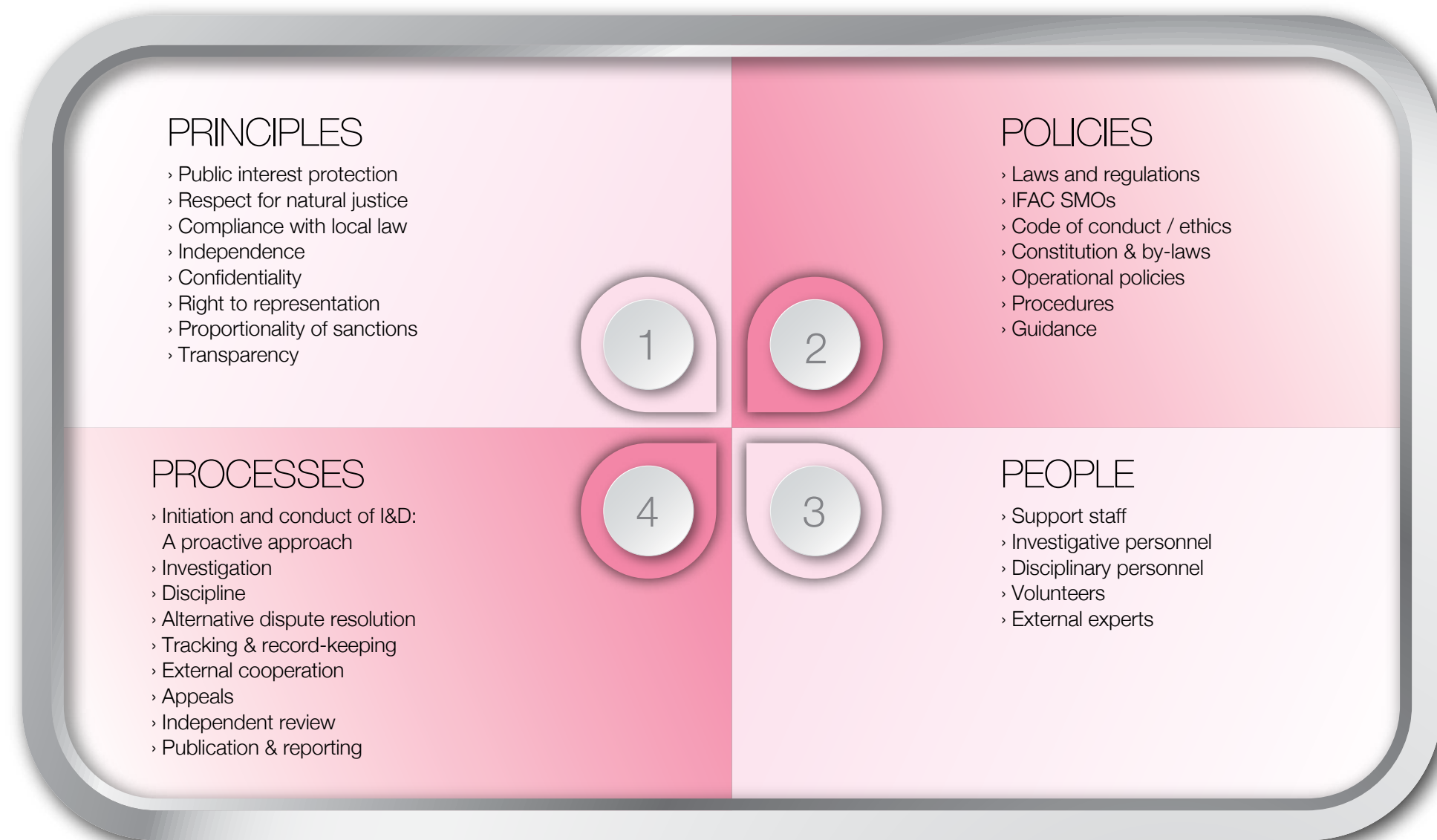
³ Confucius. “The Ethics of Confucius”. Edited by Dawson, Miles M. 48-49. New York: Cosimo Classics, 2005. Originally published by G.P. Putnam & Sons in 1915.

⁴ The IFAC SMOs can be downloaded at <http://www.ifac.org/publicationsresources/statements-membership-obligations-smos-1-7-revised>

WHAT: THE KEY COMPONENTS

Regardless of the size and resources of a PAO, it is possible to design a fit-for-purpose I&D system that produces the desired outcome: maintaining the integrity and quality of its membership. The necessity of ethical behaviour is not a new concept for the accountancy profession; however, it has gained more visibility and importance as a result of certain high-profile cases involving unethical professionals.

In this section, we will explore the “four Ps” of a just and effective I&D system.



WHAT: THE KEY COMPONENTS



PRINCIPLES

While the specific organisation of the I&D system may differ among PAOs, effective and fair systems are built upon a bedrock of similar principles. In designing or evaluating an I&D system, consideration needs to be given to such principles, including – but not limited to – those presented below. Globally, the “IFAC SMO 6, Investigation and Discipline” sets the benchmark for I&D systems. The principles presented below are reflected in both that SMO and the practice of mature PAOs. Their aim is to ensure consistent, efficient, effective and fair treatment of all disciplinary matters. These principles should be reflected in I&D policies.

Public Interest Protection

PAOs should be committed to maintaining public confidence in the accountancy profession by promoting the highest ethical and professional standards. A rigorous, effective and fair process is one way to demonstrate this commitment. PAOs should take disciplinary action whenever there is sufficient evidence of a failure to observe the standards expected of their members. This general guideline applies equally to all PAO members and not just to those in public practice.

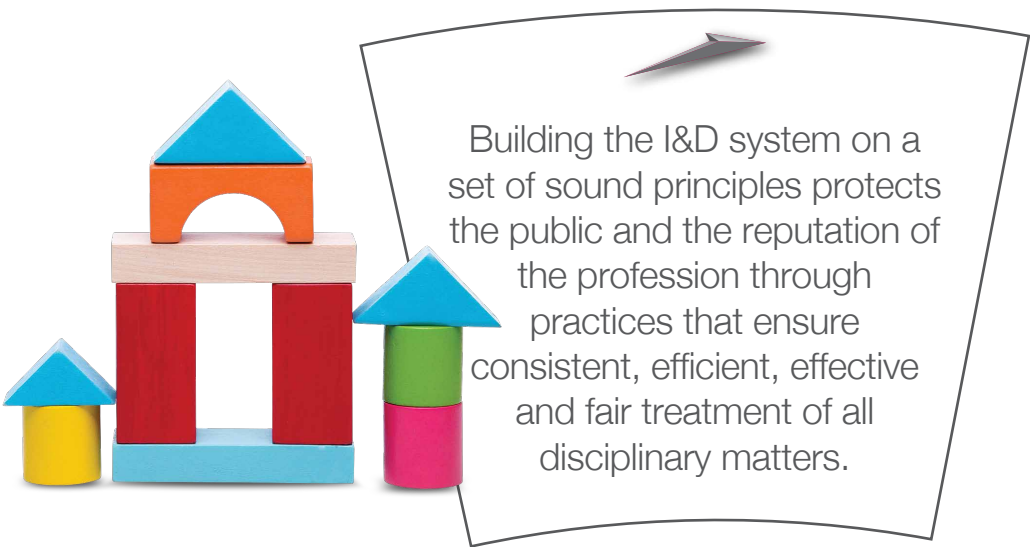
Respect for Natural Justice

Natural justice – the opportunity to be heard by an impartial decision maker – should be at the heart of the I&D system. The rules of natural justice and procedural fairness may vary according to specific national circumstances. Nevertheless, basic principles should include:

- The hearing rule: The accused has a right to be heard before the body taking the decision about the outcome of the case (typically the disciplinary tribunal)
- The no-bias rule: Individuals involved in decision-making should not be prejudiced in the matter under consideration
- The evidence rule: Decisions should be taken based on logical conclusions from evidence presented. (The PAO should provide the member with all the evidence under consideration.)

Compliance with Local Laws

In all cases, I&D policies and procedures should be in compliance with local laws and regulations, but may go further to ensure the I&D system appropriately serves the profession's role and helps secure the public trust. Moreover, in some cases, laws exist that require the reporting of the possible involvement of members in serious offences, or that regulate mutual exchange of information between relevant bodies. PAOs should be aware of such laws and align their internal policies and procedures accordingly.



Independence

At each stage of the process, individuals involved in investigation, disciplinary, appeals, arbitration or review processes should be independent from the matter under consideration. Individuals involved in one part of the process should also be restricted from participating in another part of the proceedings; for example, the investigator should not sit on the disciplinary tribunal.

Confidentiality

Individuals involved in the I&D process should be required to maintain the confidentiality of cases under investigation.

Right to Representation

The member under investigation should be allowed to be accompanied by a lawyer or another qualified professional at all stages of the I&D process.

Proportionality of Sanctions

Sanctions imposed by the disciplinary tribunal should be proportionate to the level of seriousness of the misconduct.

Transparency

The I&D process, in terms of policies and procedures followed, should be transparent. Therefore, the relevant governing, procedural and guidance documents should be publically available, disciplinary hearings should ideally be open to the public, and reports of findings should be published on an unrestricted section of the PAO website.

WHAT: THE KEY COMPONENTS

2

POLICIES

Policies are needed in every organisation. When no formal, documented policies exist, then the leadership, staff and volunteers have no point of reference and no guidance as to how they should make decisions and act. In contrast, organisations with established policies appear proactive and forward-thinking.

Some obvious benefits of established policies include:

- Helping leadership, staff and volunteers to make decisions more efficiently
- Providing instruction on how to perform certain tasks
- Ensuring consistency in addressing all complaints
- Creating confidence and reducing bias in decision-making
- Helping staff and volunteers initiate actions and take responsibility without constant reference to the leadership

Policies relevant to I&D may be considered at two levels: external and internal.

External policies are those imposed on the PAO, such as the legal and regulatory framework of the country as well as international standards that PAOs have the obligation to adopt and implement in their jurisdictions.

Internal policies are those imposed by the PAO, and include those provided in governance documents, terms of reference for committees and tribunals, specific I&D policies supported by handbooks and related guidance.

The determination as to what matters are addressed in either an external or internal policy instrument (e.g. laws and regulations, constitution, by-laws, or operational policies) will usually depend on the local environment and custom, and in the case of internal policies, whether the matter is considered to require approval of members or a governing body.

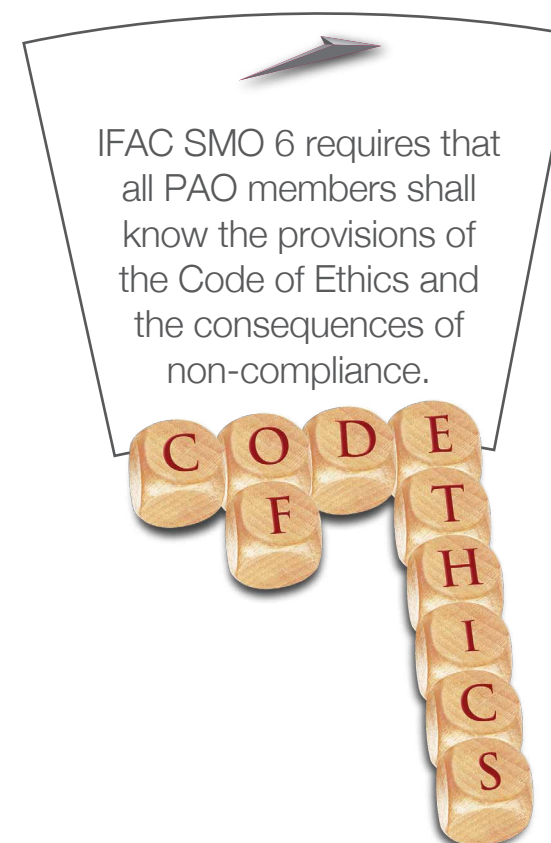
Laws & Regulations

Professional accountants are subject to the relevant legislation of their jurisdiction, and breaking the law can often result in the involvement of law-enforcement authorities. Even if the laws and regulations do not give an explicit mandate to a PAO to discipline its members, the PAO, unless specifically prohibited, should take the opportunity to design and implement an I&D system.

IFAC Statements of Membership Obligations (SMOs)

IFAC's SMOs are used as a framework for the development of a strong and modern accountancy profession. A PAO aspiring to attain, or seeking to maintain, membership of IFAC must meet certain criteria, which include fulfilling the requirements of the SMOs and demonstrating evidence of compliance as required by IFAC's Member Compliance Program. The SMOs guide PAOs in their efforts to adopt and implement international standards and best practices, helping to support a high level of performance by professional accountants.

"SMO 6, Investigation and Discipline," states that "IFAC member bodies shall identify and undertake actions to have a just and effective investigative and disciplinary system in place for their members."⁵



Code of Conduct / Ethics

Accountants, as representatives of a public-interest profession, should be subject to a code of ethics regulating their conduct.⁶ Depending on the jurisdiction, this code of ethics can be promulgated by the relevant regulatory authorities or by the PAO. In either case, it should refer to the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA), the global standard for all PAOs.⁷

Constitution & Bylaws

A PAO's main governing documents should include provisions for the establishment of an I&D system. Unless local legislation specifically prevents the PAO from disciplining its members, such provisions will provide legitimacy for the system and its outcomes.

⁵ Statements of Membership Obligations, International Federation of Accountants, November 2012.

⁶ (ibid.) Statements of Membership Obligations, International Federation of Accountants, November 2012.

⁷ The Code is available for download free of charge from www.ethicsboard.org

WHAT: THE KEY COMPONENTS

Operational Policies

Policies approved by the relevant governing body should provide detail with respect to the establishment of the I&D system, as called for in the constitutions or by-laws. Such policies need to be documented and periodically reviewed in respect to all matters pertinent to people and processes. Importantly, these policies are the place to define the scope of a PAO’s system by clearly stating how the PAO defines misconduct, what can and cannot be complained about and the range of sanctions the PAO may apply.

Several PAOs go to great lengths to protect the public interest and their own brand reputation. For example, some require members to self-report potential misconduct or inform their PAO about potential misconduct by fellow members.

Important Considerations

It is vital that a PAO clearly defines the scope of its I&D system. Key questions about the scope are addressed in the table on the right.

Procedures

The processes involved in the I&D system, discussed in a later part of this section, should be outlined in a set of procedures. These procedures must be aligned with local legislation and the PAO’s governing documents, and should support I&D policies by outlining specific operational steps to be followed by staff and volunteers administering complaints.

Guidance

To help everyone involved understand the relevant procedures and the ways in which they are applied, many PAOs issue additional guidance. Such guidance typically covers every step of the I&D process. It not only helps those involved in the I&D system, but is also a great way to build awareness about the process among members, complainants and the general public.

The “How” section of this publication contains a number of tools, templates and examples sourced from the procedural and guidance documentation of a number of PAOs. They can also be found on the websites of many mature PAOs. The easiest way to find such information is to use a Boolean search by entering key phrases into an internet browser, such as: “PAO’s name” and “conduct” and “disciplinary.”

Examples Of Operational Policies		
What is Misconduct?	What Can and Can't Be Complained About?	What is the Range of Sanctions?
<p>Typically, misconduct includes:</p> <ul style="list-style-type: none">• Conviction in a court of law• Failure to observe professional standards, including ethical requirements• Gross negligence• Other acts or omissions that can bring the profession and PAO into disrepute• Breach of PAO membership requirements• Persistent less-serious offences• Being disciplined by another professional, statutory or regulatory body <p>By clearly defining what type of misconduct falls within the scope of the I&D system, and publishing this information, the number of complaints that are either trivial or fall outside the scope will be reduced.</p>	<p>A complaint can be made if a PAO’s member, possibly including former members within time limits, has not met expected professional or ethical standards and is allegedly guilty of misconduct.</p> <p>When the underlying policies and procedures are publicly available, a potential complainant will be aware of what can be complained about. Publishing template complaint letters can enhance the efficiency of the process. Refer to the “How” section for examples of published procedures and template letters.</p> <p>While all complaints should be considered by a PAO, certain matters rarely provide grounds for disciplinary action. For example:</p> <ul style="list-style-type: none">• Complaints about simple mistakes or minor errors of judgment• Complaints about the level of fees• Complaints which have been affected by the passage of time (for example, the issue occurred more than 10 years prior) <p>In respect to matters for consideration in either a criminal or civil court, the PAO should monitor the external processes and consider if action is required after those proceedings are concluded.</p> <p>Some PAOs clearly state that making a complaint against a member is not a substitute for a legal claim. PAOs typically have no powers to award compensation or require a member to pay compensation. Guidance provided for complainants could recommend seeking legal advice or filing a civil or criminal lawsuit.</p>	<p>In line with the relevant local laws, the I&D system should include a range of sanctions to apply when there is a case to answer and the PAO member is found guilty, including:</p> <ul style="list-style-type: none">• A formal written warning recorded in the PAO’s files• A mild or severe reprimand• An order to undertake additional continuing professional development (CPD)• Suspension or exclusion from membership• Suspension or withdrawal of practicing rights• A financial penalty or fine• Payment of the costs of the investigation <p>Publishing a guide to sanctions promotes consistency of the I&D system and provides the parties to a complaint with a reasonable expectation of what is likely to happen if the complaint is upheld.</p>



WHAT: THE KEY COMPONENTS

3

PEOPLE

Even the best-designed I&D systems remain ineffective without the appropriate infrastructure, resources and expertise to support effective and efficient operations. While smaller or developing PAOs often face challenges in this regard, the information in this guide will support the design or improvement of an I&D system's infrastructure as is suitable to the PAO's environment and capacity level.

Support Staff

A designated staff member or department head should be assigned the responsibility to be the first point of contact for complaints. This will help ensure that all complaints are acknowledged, recorded and addressed in a timely manner. At a minimum, staff should collate the complaints for consideration by the investigation mechanism.

To make the process more efficient, some PAOs maintain a professional-conduct department that performs the initial assessment of the complaint. When resources are limited, the services of an external legal counsel or experienced assessor can be enlisted.

Investigative Personnel

The key role of the investigation mechanism is to assess whether there is a case to answer. There are different ways that PAOs can organise this mechanism, including:

- Maintaining a roster of qualified external investigators to be assigned to each case,
- Establishing an investigative panel that is convened on a regular or as-needed basis, or
- Where resources exist, maintaining an in-house investigation team.

Those involved in investigation should be independent from the matter under review and vested with the powers necessary to effectively perform their duties.

Disciplinary Personnel

When investigation confirms that there is a case to answer, the matter is referred to a disciplinary tribunal. Members of the tribunal should be independent from the case and should not be involved in the prior work of the investigation mechanism. Typically, the tribunal will include legally trained members or external lawyers to ensure proper conduct of the proceedings. The inclusion of public representatives can be seen to strengthen independence and perceived fairness.

Volunteers

Even well-resourced PAOs can use volunteers to staff their I&D system at different levels. All PAOs, and in particular those with fewer resources, should scan their membership for the best person or persons to volunteer in investigative and disciplinary processes. Members who are also lawyers, may be good choices to include in the list of I&D volunteers. Sourcing volunteer public representatives may be challenging, but should be considered.

External Experts

Some aspects of the I&D system can require specialised knowledge. Forensic accountants, prosecutors, judges and academics with expertise in legal matters can be involved on an as-needed basis. Outsourcing some of the I&D tasks to external experts can also be beneficial, not only ensuring that knowledgeable professionals are handling the case, but also helping create both real and perceived independence in handling I&D cases.

4

PROCESSES

Certain operational design aspects, or processes, need to be considered together with policy and people considerations. As with all the other components of the I&D system, the contextual environment (legal, cultural) and capacity constraints will have an impact on the design of fit-for-purpose processes.

Initiation and Conduct of I&D: A Proactive Approach

The I&D process is often initiated⁸ in response to a complaint submitted against a member. However, PAOs should adopt a somewhat more proactive approach. Given that they are acting in the public interest, they should be prepared to investigate any potential misconduct by members as soon as they become aware of it.

Further, a PAO's I&D system is more likely to be highly regarded if it operates in a timely manner. For example, a delay or lack of acknowledgement of a complaint can produce an unnecessary and easy-to-mitigate risk that can adversely affect the reputation of a PAO. Conversely, prompt acknowledgement can create a favourable impression.

Investigation

An initial assessment of a complaint may be performed by staff as this saves time and resources through dismissal of complaints that are clearly trivial or fall outside the scope of the I&D system. If the complaint is not dismissed at this stage, then the purpose of the investigation system is to conduct a full review of the complaint, gather additional evidence and make a decision on the next steps, which may include the following:

- Dismissal of the complaint, when investigation finds no substantial evidence that there is a case to answer
- If the member admits to formal allegations which are not material nor a matter of public interest, then, with the member's consent, the case may be concluded with either:
 - An entry on record,
 - A formal reprimand,
 - A fine and/or payment of cost,
 - An order to take additional CPD training, or
 - Some combination of the above
- Referral of the matter to the disciplinary tribunal
- Referral of the matter to the relevant authorities, if there is public interest involved

In any case, the investigative body should provide a notification of its decision to the complainant and the member under investigation within a specified period once the decision has been made.

Under certain circumstances, the optimal choice may be to settle the case through an alternative dispute-resolution mechanism, which would be appropriate for cases of minor to moderate seriousness (see further details below).

Refer to the "How" section for:

- How 1: Illustrative flowchart for the complete I&D process
- How 2: Example explanation to the public and members of what occurs on receipt of a complaint
- How 3: Example templates for communications to and from complainants and members

⁸ "Refer SMO 6, Investigation and Discipline" for IFAC's requirements regarding "complaint-based" and "information-based" initiation of proceedings.

WHAT: THE KEY COMPONENTS

Discipline

The PAO member in question should be notified of the date of any disciplinary hearing and be entitled to be heard before the tribunal. In addition, they should be permitted to have legal representation, call witnesses and cross-examine any witnesses or evidence presented against them.

The potential decisions of the disciplinary tribunal comprise the following:

- Impose appropriate sanctions if the case against a member has been proved wholly or in part
- Close the case if the case has not been proven
- Order additional investigation if the hearing uncovers information that requires further evidence-gathering

Many PAOs develop and publish specific guidance to be used by disciplinary tribunals in determining appropriate sanctions. Such guidance may include consideration of any aggravating or mitigating factors that may affect the severity of the final sanctions.

Refer to the “How” section for:

- How 4: Example conflict of interest guidelines and declaration
- How 5: Example disciplinary tribunal's decision tree
- How 6: List of potential aggravating and mitigating factors to be considered

Alternative Dispute Resolution

When the nature of the complaint is minor and there is no public interest issue involved, the case can be addressed without the need to deploy the full I&D process. When both parties agree, alternative dispute resolution (ADR) can be used. ADR is a form of conciliation in which the parties to the dispute use experienced advisors or arbiters to attempt to resolve their differences.

Possible outcomes could include:

- Resolved – parties reached the agreement, the file is closed
- Resolved – no supporting evidence found through ADR, the file is closed
- Resolved – the ADR concluded there is no case to answer, the file is closed
- Resolved – the ADR concluded that no further action is required, the file is closed
- Unresolved – return to the investigation department, the file remains open

To make the ADR most efficient, the process could rely on phone interviews or correspondence with the parties involved.

In many countries, specific third-party organisations exist to provide arbitration or mediation services between parties in dispute. Some PAOs have formalised procedures for the use of such organisations. The process itself comes at no cost to a PAO and is often more cost effective for members and their complainants in resolving their disputes than traditional processes.

The advantages of ADR include time (faster dealing with complaints) and cost (less resource-consuming, as there is no need to mobilise the entire I&D mechanism). When adequate resources exist, ADR may be organised as an adjunct to the I&D system.

Tracking and Record Keeping

A PAO should establish a system for tracking the status of complaints. This system will ensure that all of the complaints are addressed, and alert the PAO's leadership of any unreasonable delays in responding to complaints. Records of investigative and disciplinary proceedings should be maintained in a secure manner.

External Cooperation

A PAO's members can often hold membership in another PAO or in other professional organisations. If the local laws permit, all PAOs should have a reciprocal process in place to inform the relevant professional organisations about imposed sanctions. Communication channels should also be maintained with the relevant public authorities.

Appeals

If the disciplinary tribunal finds the case against the PAO member has been proved, the member should have the right to appeal the decision. The appeal mechanism should not involve any individual involved in the investigative, disciplinary or other related processes. The timeframe for submitting appeals should be clearly defined in the PAO's policy documents.

To increase the efficiency of the process, many PAOs define and publish guidance regarding grounds for appeals. This may include whether the sanction is considered disproportionate to the misconduct, or if some individuals involved in the investigative or disciplinary process were later found to have had a conflict of interest.

Independent Review

"If after the investigation the case is dismissed, the PAO process may avail the complainant the right to request an independent review of the dismissal decision. The independent reviewers are appointed by the PAO. The PAO should maintain a list of independent legal professionals (for example retired judges, or academics) who are familiar with the I&D process, and can be designated as independent reviewers. Since the role of independent reviewers is to demonstrate to the public that the complaints are considered fully and impartially, the appointment of reviewers should follow a transparent due process.

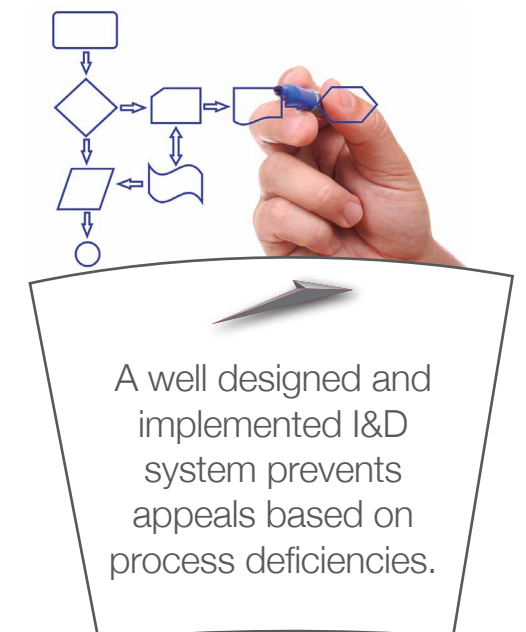
Publication and Reporting

When a member is found guilty of misconduct upon completion of disciplinary proceedings, the PAO should make that information publicly available after the expiration of the appeal period. **“SMO 6, Investigation and Discipline” indicates that, as a minimum requirement, IFAC members should publish summarised reports of I&D proceedings.**

Publication of imposed and uncontested sanctions can achieve a number of aims. It can:

- Promote public confidence in the PAO as an organisation protecting the public interest;
- Provide transparency into the I&D process;
- Act as a deterrent; and
- Inform, alert and educate.

The information that can be published is typically regulated by the relevant jurisdiction's laws and regulations.



ADVANCED I&D SYSTEM CONSIDERATIONS

As noted earlier, **this guide is primarily aimed at PAOs without established or mature I&D systems. It focuses on practical guidance to help PAOs achieve the minimum requirements for a working system.** Once a base system is in place, it will need to be subject to a regular effectiveness review and continuous improvement. The I&D system should grow with the PAO, addressing more complex needs and challenges over time. Some PAOs engage independent experts to benchmark the existing system and suggest best practice improvements.

To provide some aspirational material, the following section includes some examples of matters to consider in moving towards a more advanced I&D system. These matters, while included as “advanced considerations,” may be addressed early on in the process of establishing an I&D system, depending on the specific needs and circumstances of a given PAO.

POLICIES

Duty to Inform, and Self-Reporting

Promoting and abiding by high standards, safeguarding the reputation of the accountancy profession and maintaining public trust in that profession are paramount for PAOs. For some time, therefore, several mature PAOs have encouraged or even required their members not only to assist with investigations, but to inform their PAOs about any facts or matters which may trigger I&D action.

While reporting the misconduct of a colleague or oneself does not come naturally, this duty goes hand-in-hand with being a member of a public interest profession. Maintaining the integrity of, and confidence in, the PAO and the profession is a duty to the PAO and the public at large. Such an approach is not intended to turn members of the profession into investigators, but to ensure that all members actively protect the integrity of the profession. Examples of matters to report include:

- A significant deficiency or serious default
- Any criminal conviction (other than a minor traffic offence)
- Acts of dishonesty or fraud which may have resulted in a finding or other determination in any civil or criminal case
- Any matter which is likely to discredit a member, employer, a PAO or the accountancy profession

Interim Suspensions

To serve the public interest and safeguard the reputation of the profession, a PAO may implement provisions for interim suspension of members who are subject to the I&D process. In consideration of natural justice and the rights of members, such provisions should make clear that an interim suspension may only be used for a very severe allegation or when deemed required from the public interest perspective.

Fitness to Participate in Disciplinary Proceedings

In some cases, members subject to disciplinary proceedings may appear to be suffering from some form of physical or mental impairment which may have contributed to the misconduct, and which may render them unfit to participate properly in disciplinary proceedings.

A fair process should be incorporated into the I&D system for dealing with these members. Otherwise, the findings and sanctions may be subject to challenge by the local courts. A fair process would generally involve the PAO requesting that the member undergo a medical examination. If the mental impairment is considered to affect not only the member’s ability to participate in the proceedings, but also the ability to carry on practicing, suspension would be an appropriate remedy.

Payment of Fines, Fees and Cost of Proceedings

For reasons of transparency and consistency, and to avoid lengthy disputes, the I&D policies and guidance should clearly define financial considerations. This definition may include:

- A schedule of fines and financial penalties setting minimum and maximum levels
- Indicative guidance on levels of fines relative to the types and severity of misconduct
- Guidelines for the recovery of costs incurred during I&D, including the cost of the PAO’s staff and any fees or expenses of members of the I&D bodies, experts or advisors. For instance, some PAOs include disciplinary and appeal costs, but only investigation costs in certain circumstances.
- Payment timelines and the consequences of non-payment

Recovery of costs may be ordered even when no fine has been imposed. Other financial penalties are usually limited to a waiver or repayment of client fees.

Exclusion and Readmission Processes

Advanced I&D systems often specify that powers of exclusion should be available to disciplinary tribunals and outline whether such exclusions should be time-limited (e.g. suspension for a specified time period) or open-ended (expulsion from membership). If the latter, the I&D system should include a process for readmission applications, indicating who should deal with them and specifying whether the tribunal should make a recommendation as to the minimum period of exclusion, as otherwise members could apply to be readmitted shortly after exclusion.

ADVANCED I&D SYSTEM CONSIDERATIONS

PEOPLE

Oversight of I&D in the Public Interest

Some mature PAOs have established separate bodies to oversee the effective functioning of their I&D systems. In addition, such bodies ensure that the functions of disciplining the PAO's members, students and firms, as well as the hearing of appeals, are independent of the PAO and its governing bodies. These oversight bodies include lay (public interest) members whose participation in the I&D process provides scrutiny and protects the public interest. Accordingly, such oversight bodies may have in their remit the responsibility to:

- Appoint members to the disciplinary and appeal bodies to ensure an appropriate mix of professional accountants, lay members and those with legal training
- Approve and initiate regular review of I&D guidance, especially in relation to sanctions and sentencing
- Oversee and monitor the effectiveness and timeliness of investigations, disciplinary hearings and appeals
- Oversee and monitor how the staff are applying any powers delegated to them
- Annually review the expertise and training needs of the people involved in I&D
- Annually report to a PAO governing body on the above matters

Such PAO-organised, self-regulatory oversight is supplementary to any existing arrangements for external, independent oversight of the profession.

Composition and Administration of Committees and Tribunals with Decision-Making Power

A robust I&D system should be specific and open about its decision-making bodies, including:

- How the investigation committees, disciplinary tribunals and appeal panels should be constituted, for example, the appropriate mix of PAO members and lay members
- A process for the selection and approval of all members of a wider disciplinary committee from which members are drawn to form tribunals. No one should be appointed *ad hoc*, and without any form of prior formal approval process, to sit on a tribunal, as this would leave the process open to abuse. A large body of potential and approved tribunal members should be maintained from which each tribunal must be drawn
- The separation of the staff administering the committees and tribunals from those who are investigating complaints, so that there can be no interference with the selection of certain wider committee members for particular cases by those involved in the investigations
- The setting of maximum periods for members to be approved to sit on tribunals, or at the least, a renewal process
- The publication on the PAO's website of the names and backgrounds of those members who are part of the wider committee from which tribunals are drawn
- A policy to determine whether wider committee members are selected for tribunals by strict rotation or by running order determined by their last selection, or whether the committee administrators should be selecting at least one PAO member with some subject-matter expertise in order to assist other members of the tribunal with technical issues

Quorums

Determining a quorum necessary for key decision steps within the I&D system increases the system's efficiency and effectiveness.

For disciplinary and appeals conclusions or rulings, a quorum of three (or more) may be used, of whom at least some (and sometimes a majority) are independent from the PAO and the profession.

A quorum of one (typically a chairperson or a committee member to whom the chairperson delegated the duty) may be appropriate at the investigation stage for decisions to:

- Progress the case to the next stage of the I&D process (for example, a decision to present the case to a disciplinary tribunal)
- Dismiss cases which are insignificant, out of scope of the I&D system or were made in bad faith

While a quorum of one can increase efficiency, its use must be clearly defined and it should not be used to dismiss cases when the public interest is involved. On the other end of the spectrum, requiring a full quorum for I&D proceedings may send a message to the public that the PAO is serious about operating an effective I&D system. However, it can be hard to always ensure a full quorum, and thus the I&D process can be slow or halt altogether for extended periods.

In-house Investigators

Mature PAOs often have an in-house investigation team. Setting up such a team could be less costly than using external investigators and could reduce the number of conflicts and risks to the independence of the investigation. This team would be not be the same as an investigative panel, as it would have day-to-day control over the progress of the investigation.

Appointing Professional and Other Advisors

It is unreasonable to expect that regular members of the I&D bodies will possess all the necessary knowledge and expertise to consider all possible complaints effectively. Therefore, these bodies often have the power to appoint professional advisers, expert witnesses and such other persons as they consider appropriate to assist in any particular proceeding.

Legal Qualifications of Disciplinary Personnel

As required in SMO 6, mature PAOs involve legally qualified personnel in the tribunal hearing. Some bodies cater to this by ensuring that the tribunal chairman is always someone who is legally qualified. Failing that, it is important to ensure fairness, confirm that the proceedings are run in accordance with the law and the obligation to ensure a fair trial and that the tribunal is advised by a legally qualified assessor or advisor.

Involvement of Volunteers from Smaller Firms

While volunteers from large firms play an important role and, because of the resources of these firms, are generally more able to give up time to assist, it is crucially important to have a wide roster of individuals involved in the investigation (if it is outsourced) and in making up tribunals to determine complaints. It is also extremely important that everyone – and those adjudicating in particular – is able to understand the context within which the accountant member was operating at the time of the alleged misconduct. Partners in large firms who are supported by sophisticated electronic systems for checking conflicts and by large risk and compliance teams are often unable to imagine themselves in the position faced by a sole practitioner without any of those support systems.

ADVANCED I&D SYSTEM CONSIDERATIONS

PROCESSES

Timelines for Case Handling

While in each case the detailed timing will depend on the circumstances of the complaint, it is good practice to set time limits for each stage of the I&D process. Typically, the initial decision on whether the case should be investigated should take no more than three months. The investigation, disciplinary and appeals stage should ideally take no more than six months. Complex cases, or cases in which members make appeals, may take considerably longer. The time taken to deal with complaints will also depend on how much enquiry is required and how quickly information can be obtained. Reasonable time limits should also be set for the complainants and for the PAO's members subject to I&D, to provide information, respond to the notice of commencement of investigation, and inform the PAO of a decision to appeal the I&D verdict. To ensure transparency and public awareness, PAOs need to communicate not only the timelines, but also potential circumstances that would affect the length of proceedings.

Greater Use of Conciliation Processes or an Administrative Committee to Filter Complaints

Some mature PAOs are known to have a conciliation process for matters that could potentially lead to disciplinary action, but are considered minor in nature, with no public interest element and both parties agree.

In addition, consideration may be given to an administrative body to filter complaints which are neither minor complaints nor require a formal – and expensive – tribunal. Complaints which are neither rejected nor conciliated are reviewed on paper by a PAO's investigation committee, perhaps with a parity of lay and PAO members, to determine whether there is a prima facie case of misconduct. If so, the committee offers consent orders containing what it considers to be appropriate sanctions and costs, on all matters on which it believes it has sufficient sanctioning powers. For example, the committee could not suspend or exclude a member: that ultimate sanction is reserved for the disciplinary tribunal.

This approach still preserves the right of the member to be heard at an oral hearing, as the sanctions are offered, not imposed. The member can reject the offer and decide to be heard by a tribunal instead.

The advantage of this approach for the PAO is that it offers a much less expensive exercise than the staging of tribunals. The advantage for the complainants and members is that complaints can be dealt with more quickly than would otherwise be the case.

Automatic Disciplinary Action

In some cases, PAO membership may be suspended or terminated without the need for a full disciplinary hearing. In such cases, a qualifying event alone – as clearly defined in the I&D policies – could lead to disciplinary action when the PAO becomes aware of the event. Examples of such events include:

- Serious criminal conviction imposed upon a member
- Suspension or termination of practicing certificate by an external regulator
- Suspension or termination of membership in another professional body

In all cases, affected members should have the right to appeal the automatic sentencing. In addition, the inclusion of automatic sentencing as part of the I&D policy should not prevent the hearing if it is deemed appropriate by the I&D bodies.

Appeals Mechanism

Mature PAOs carefully define the appeals process to determine whether the accountant member is entitled to a full rehearing, including a rerun of the evidence; or whether appeals should be limited to complaints regarding a procedural irregularity in the build-up to, or during, the disciplinary hearing or on a point of law. The latter is usually all that is required to comply with local laws regarding fair process, and always shortens the process and limits the stress which complainants may have to endure in giving their evidence twice. If this limited appeal process is adopted, then it is crucially important – given the grounds – that at least the chairman of the appeals panel be legally qualified.

Independent Review

If an administrative process is adopted in the form of a filter committee (as noted above), then this may reduce the number of references by complainants to an independent reviewer. If the complainant is disputing either an initial rejection of a complaint at the assessment stage or a decision to drop a complaint as a result of further evidence uncovered in an investigation, then a process can be established for the complainant to have the staff's determinations reviewed by the filter committee. This limits appeals to a reviewer of complaints solely when the complainant is only disputing a determination made by a filter committee that there is no case to answer.

It is essential that the I&D process state clearly the consequences that can flow from the conclusions reached by the reviewer of complaints. For example, independent review may result in a recommendation that the case be reconsidered by the investigation committee.

Publication and Reporting

Provision should be made in every I&D system for either a disciplinary tribunal to be held in private (if the system provides for public hearings), a ban on publicity regarding the findings and sanctions, or the accountant member's name to be anonymised when exceptional circumstances exist. This is an important option to preserve, as there are certain, albeit rare, cases in which it will be appropriate and necessary. Such exceptions should be strictly limited to natural justice considerations, however, as public confidence in the system would otherwise be undermined.

HOW: TOOLS, TEMPLATES AND EXAMPLES

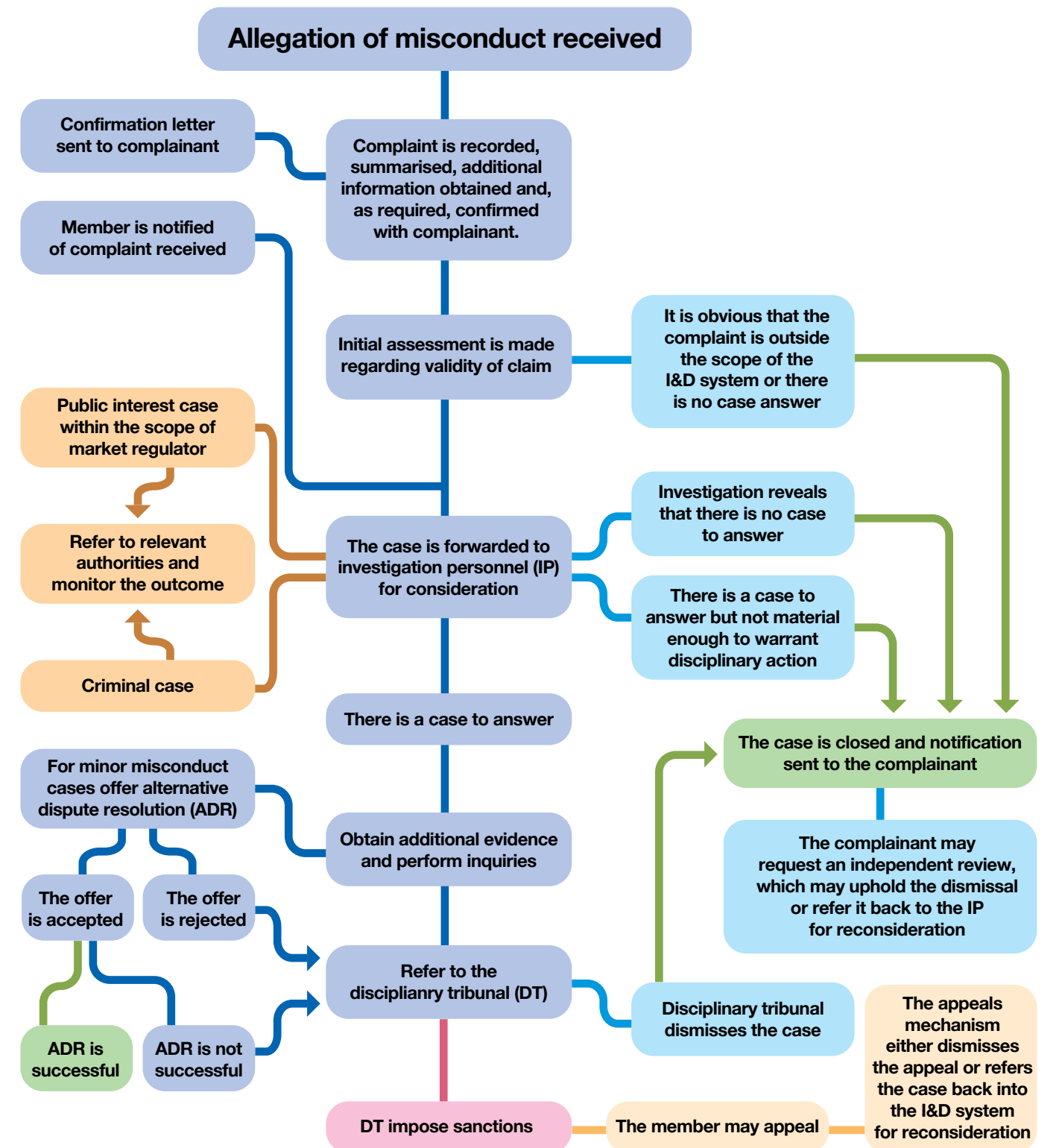
This section provides practical tools, templates and examples to assist in application. The tools are based on good practices amongst PAOs in Asia and beyond.*

Depending on particular circumstances, local laws and regulations, existing governance documents and stages of maturity development, some of the tools presented here may be more or less applicable. In addition, different templates and examples serving the same purpose may be available from other PAOs.

Users of this guide should employ this guide as a starting point, and research and consider alternatives. In applying these tools in any environment, care should be taken to consider local laws and regulations and existing governance documents.

** Specific practices of PAOs reference in this section may have changed since this publication was drafted.*

How 1: Illustrative Flowchart for the I&D Process⁹



⁹ This flowchart is adapted from the Hong Kong Institute of Certified Public Accountants' 'Overview of Disciplinary Process'. <http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/disciplinary/>

HOW: TOOLS, TEMPLATES AND EXAMPLES

How 2: What happens after the complaint is received?¹⁰

A clear and transparent explanation of how the PAO addresses complaints is a great way to build public awareness and confidence in the I&D process.

Once a complaint and supporting evidence is received by the PAO, the following process may take place:

1. The complaint is acknowledged in writing
2. The general manager, professional conduct (GMPC) reviews the complaint and supporting evidence to determine whether the PAO can investigate the matter. Further information may be requested from the complainant
3. At this stage, there are two potential courses:
 - If the PAO cannot investigate, the complainant is informed and the matter is closed
 - If the PAO can investigate, the complaint is assigned to a professional conduct officer (PCO) and copies of the complaint and supporting evidence are sent to the member for a written response
4. Once the member's response is received, it may be sent to the complainant with an option to provide a response. Further clarification may be required from either party
5. When the assigned PCO has made a recommendation on the complaint, it is sent to the GMPC to recommend to the chief executive officer whether or not the member has a case to answer in accordance with the PAO's constitution, by-laws, code of professional conduct or applicable regulations. If a case to answer is determined, charges are prepared and the case is then referred to a formal hearing before a disciplinary tribunal. This tribunal is comprised of members of the PAO and community representatives
6. Alternatively, if there is no case to answer, the matter is closed and both the complainant and the member receive written advice of this outcome
7. The disciplinary tribunal meets with the member, who is entitled to representation – legal or otherwise. If the tribunal finds the member is in breach, a penalty may be imposed against the member
8. The member has a right to appeal against the tribunal's finding through the appeals process
 - If the member appeals, the complainant receives written notification of the tribunal's finding and decision following the outcome of the appeal hearing
 - If the member does not appeal, the complainant receives written notification of the tribunal's finding and decision after the appeal period has expired
9. The findings and decision of the PAO's tribunal are published on the PAO's website without the complainants' name. Penalties that the tribunal can impose include:
 - Forfeiture of membership
 - Suspension of membership
 - A fine
 - A reprimand
 - Cancellation or suspension of any certificate, privilege, right or benefit available to the member
 - Restricting the member from using the PAO designation and/or ordering the member to remove any PAO signage and designation from their advertising materials and office
 - Reducing the member's status and/or removing any specialist designation
 - Requiring the member to undertake additional hours of professional development
 - Reviewing the member's practice

¹⁰ The example is adapted from CPA Australia's approach.

How 3: Template Letters

The following example Template Letters reflect typical communications, from the receipt of a complaint to the conclusion of the investigation. The exact letters required, and their wordings and inclusions, will depend on the specific processes established.

Letters should also comply with local legal and other considerations. In addition, the following should be considered.

- Include appropriate salutations or name of person to whom addressed
- Allow for and use a reference number to clearly and consistently identify the case concerned
- Consider the appropriate person to sign letters from the PAO, and include their name and title
- Be factual, reflect the processes in place, refer to policies as necessary, and avoid superfluous commentary

Form for Complainant to Register Complaint with PAO - Publishing a template of a complaint letter like the one below on a PAO website can further ensure that a complainant is aware of the underlying policies and procedures.

Formal Complaint

I wish to lodge a formal complaint about:

<Complainant to insert details>

I understand from your institute's website that you are required to have in place internal complaint-handling procedures in accordance with your constitution and by-laws and the guidelines published on your website at: **<PAO to insert link to the specific section of its website>**

I also understand that my complaint should be investigated by a person of seniority who has not been directly involved in the matter.

I wish to invoke those procedures and look forward to receiving a prompt acknowledgement of this letter in accordance with the guidelines.

Initial Acknowledgement to Complainant

I am writing to acknowledge <PAO>'s receipt of your complaint form dated <date> and attachments.

Your complaint will be forwarded to a professional conduct officer who may ask you for further information prior to sending a copy of the documents to the member for his/her written comments.

Please note that <PAO> does not have a fidelity fund and is not empowered to compensate those alleging financial loss as a result of the acts or omissions of its members. In addition, <PAO> cannot compel a member to compensate parties for such loss. For these reasons, any recovery may need to be sought via commercial legal action.

Please also note that if your complaint about the member relates to fees charged, under <PAO>'s constitution, we have no power to intervene. If your dispute relates to fees, you must seek independent legal assistance as to alternative remedies available.

<Officer's name> will be in contact with you once we receive a reply from the member.

HOW: TOOLS, TEMPLATES AND EXAMPLES

Initial Notice to Member of Complaint Made

Notice under By-Law <number of the applicable by-laws article>

I am writing to inform you that <PAO>'s general manager professional conduct has received a complaint dated <date> from <complainant's name> regarding your conduct as a member.

The general manager, in accordance with By-Law <number>, has allocated the complaint to me for investigation.

A copy of the complaint is attached for your response.

You are required to provide a sufficient and satisfactory written explanation and copies of any supporting documentation to me, in response to the issues raised in the complaint before <date>.

<PAO> takes complaints about its members seriously. As a member of <PAO> you are bound by its constitution, by-laws, code of professional conduct and applicable regulations.

If <PAO> considers it necessary, a copy of your response may be forwarded to the complainant.

I invite you to contact me by email at <PAO email> or by telephone <number> to discuss the matter.

Notice to Member that Case Closed

Complaint by <name>

I refer to your <letter, facsimile, email> dated <date received> regarding the above matter and advise that <PAO> has concluded its investigation into the complaint about you by the complainant.

<PAO> has determined that, in accordance with its constitution and by-laws, you do not have a case to answer.

Our reasons for closing the file are set out in the enclosed copy of the letter sent to the complainant.

<PAO> now considers the matter closed.

If you require any further information, please contact me by email at <PAO email> or telephone <number>.

Notice to Complainant that Case Closed

I refer to your <letter, facsimile, email> dated <date received> regarding the above matter and advise that <PAO> has concluded its investigation into the complaint.

<PAO> has determined that, in accordance with its constitution and by-laws, there is no case to answer.

Our reasons for closing the file are as follows:

<list the rationale for closing the file.>

<PAO> now considers the matter closed.

If you require any further information, please contact me by email at <PAO email> or telephone <number>.

Notice to Member Indicating Complaint Referred to the Disciplinary Committee

With regards to the complaint referenced above, the investigation process concluded that there is a prima facie case. Consequently, the case is referred to the disciplinary committee.

The disciplinary hearing is scheduled for <date, time>. Should you be unable to attend the hearing, please contact the professional conduct department to schedule an alternative date.

If you wish to be legally represented at the hearing or consider it necessary for any party to be cross-examined, please notify the professional conduct department.

Notice to Member regarding Disciplinary Committee Findings

With regards to the complaint referenced above, the disciplinary committee met on (date, time) at which you attended/did not attend.

The disciplinary committee found that you (insert details of issue/failure and any breach of by-laws or similar) and accordingly the complaint was sustained.

The following penalties and costs are imposed: (list out the penalties). In arriving at the penalty, (insert any relevant matters) were taken into account. You are also required to pay the costs of (PAO name) amounting to (insert amount).

HOW: TOOLS, TEMPLATES AND EXAMPLES

How 4: Example Conflict of Interest Guidelines and Declaration¹¹

The following is an example of guidelines and accompanying declaration of an I&D panel member. Since independence is paramount for the I&D system operation, it is good practice not only to establish such guidelines but also make them publically available. The example is based on a disciplinary panel, however the guidelines can be used for all stages of the I&D process (investigation, disciplinary, appeal)

Conflict of Interest Guidelines

The following Conflict of Interest Guidelines are issued under the provisions of *[enter the Act of Parliament or another regulation that gives the PAO the mandate to operate an I&D system. If no specific regulation exists, enter the relevant articles of the PAO’s constitution or by-laws]*.

This document provides guidance to members of the *[enter the name of the relevant body, for example Disciplinary Panel]* who will be required to complete a Statement of Independence whenever they are approached by the *[enter the name of the body that appoints the panel members for particular cases, for example ‘I&D Oversight Board’]* to serve on a Panel. The declarations in this form are designed to solicit information that might be relevant to a member’s suitability to sit on a particular Panel. It is solely within the discretion of the [I&D Oversight Board] whether any information provided should result in a member not being appointed to that Panel, or whether the information should be disclosed to the parties or on the PAO’s website.

1. It is crucial that members of a disciplinary panel should act, and be seen to be acting, objectively and impartially. They should be free of any conflict of interest or any perceived conflict of interest. They should not be biased or prejudiced and should not be involved in taking decisions where there is a real likelihood that they may be perceived to be biased or prejudiced.
2. A conflict of interest and/or suggestion of bias may arise in the following circumstances. This list should be considered neither prescriptive nor exhaustive.
 - Having a financial interest in any entity connected with a case;
 - Receiving or due to receive a pension from an entity connected with a case;
 - Being a current or former partner, member, director or employee of a network member firm or former network member firm which is the subject of the formal complaint;
 - Being a current or former director, officer or employee of an entity connected with a case;
 - Acting or having acted in a professional capacity in relation to the subject matter of a case;
 - Having a spouse, partner or immediate family member who has one of the interests outlined above;
 - A close personal, business or family relationship with an individual or firm which is the subject of the formal complaint;
 - Previous involvement in a dispute with an individual or firm which is the subject of the formal complaint;
 - Involvement in other legal or disciplinary proceedings connected with a case;
 - A past or continuing professional involvement with any individual, firm or matter connected with a case;
 - Publication of views or comments relating to any individual, firm or matter connected with a case
3. Any information pertaining to these examples must be disclosed to the body responsible for appointing panel members for the particular case.

4. Members will not necessarily be precluded from sitting on a Panel simply because they make disclosures. When considering conflict of interest matters, any doubt should be resolved in favor of disclosure.
5. Some or all of the information provided may need to be disclosed if the member is to be appointed to a Panel. Such disclosure would never be more extensive than that necessary to ensure that there is transparency and to prevent any suggestion of perceived bias or prejudice. This may entail disclosure on the PAO’s website. If the information given (including information about the value of an investment) in answer to any question is so sensitive that a member would wish it not to be disclosed, or would wish to limit the circumstances in which it is disclosed, that should be indicated. The text of any disclosure will normally be checked with the member, but if it is not possible to contact the member and there is no indication of sensitivity the [I&D Oversight Board] will use its discretion and may disclose information declared either to the parties to a formal complaint or on the PAO’s website.

I&D Panel Member Statement of Independence

The Panel to which you may be appointed will hear formal complaints arising out of the investigation into the following matters:

and into the conduct of the following individual(s) or firm(s)

After referring to the attached guidance notes, please check one of following two statements:

- ☐ I am independent of each of the parties, and I intend to remain so. There are no circumstances known to me likely to give rise to any doubts as to my impartiality or independence.
- ☐ I consider that I am independent of each of the parties, and I intend to remain so, but I wish to disclose the following circumstances prior to my appointment into the conduct of the following individual(s) or firm(s)

Other than the above, there are no circumstances known to me likely to give rise to any doubts as to my impartiality or independence.

I confirm that if I am appointed to the Panel and if I become aware of any circumstances likely to give rise to any doubts as to my impartiality or independence after the date of this statement and before the (investigation, disciplinary or appeal) hearing is concluded, I shall disclose those circumstances to the [I&D Oversight Board] the other members of the Panel and the parties.

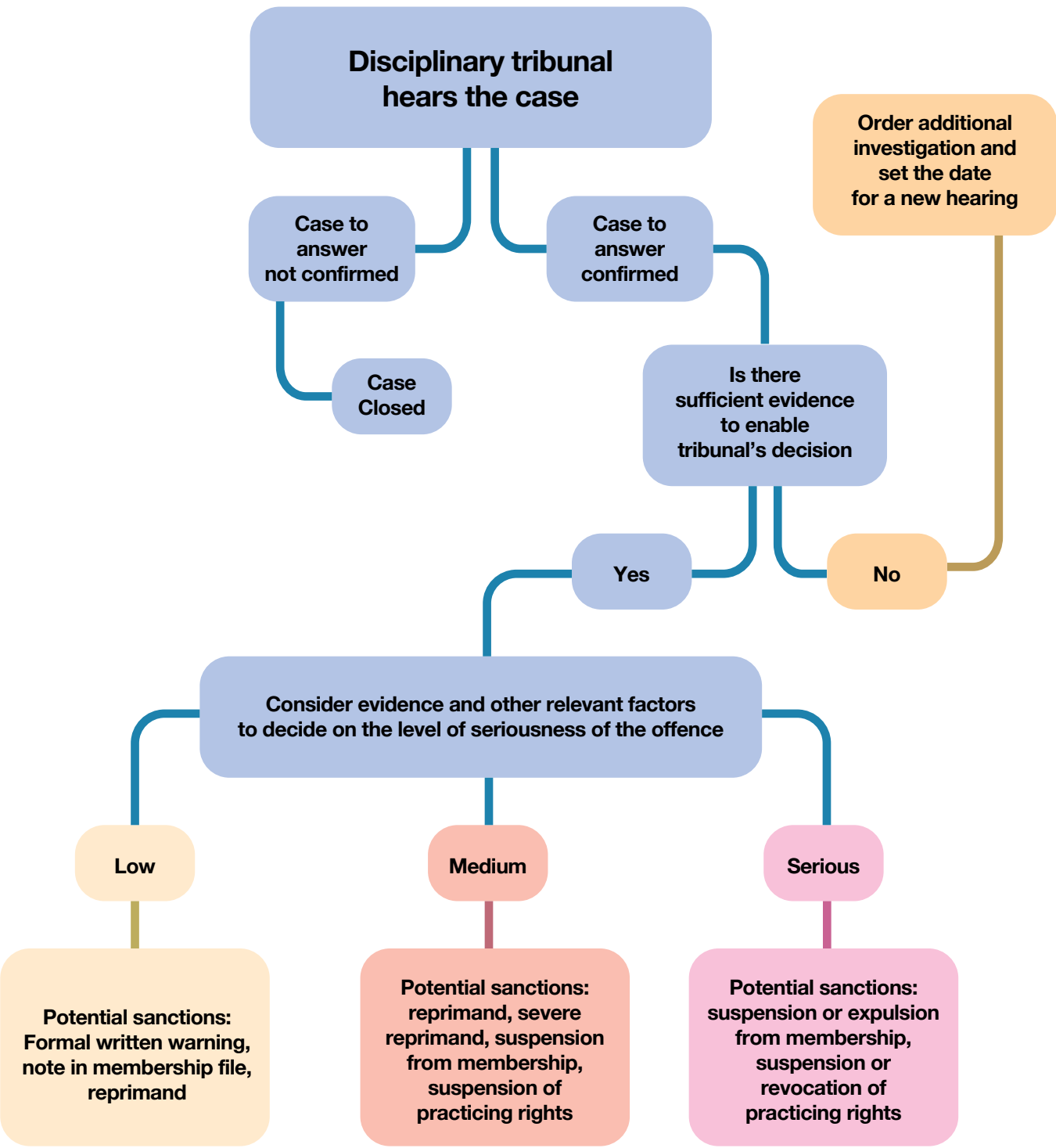
Signed

Date.....

¹¹ This example is based on the practice followed by the UK Financial Reporting Council

HOW: TOOLS, TEMPLATES AND EXAMPLES

How 5: Example Disciplinary Tribunal’s Decision Tree Tool¹²



¹² Based on SMO 6 and review of practice of several PAOs, including the Institute of Chartered Accountants of Scotland (ICAS), Hong Kong Institute of Certified Public Accountants (HKICPA) and Chartered Institute of Public Finance and Accountancy (CIPFA)

How 6: Example Tool for the Disciplinary Tribunal to Consider Mitigating and Aggravating Factors¹³

To assist a disciplinary tribunal in concluding on the level of seriousness of the case heard and, consequently, on the level of sanctions, a list of mitigating and aggravating factors may be used. An aggravating factor is likely to provide increased grounds for concern. A mitigating factor may, to some extent, explain or excuse an offence. The following list of factors is not intended to be exhaustive and may vary according to the circumstances of a specific case.

Mitigating factors	Aggravating factors
<div><input type="checkbox"/> Remedial action taken to address the issues concerned</div> <div><input type="checkbox"/> Follow-up action to prevent a recurrence of the issues concerned</div> <div><input type="checkbox"/> Evidence of good practice in the period of time since the issues occurred</div> <div><input type="checkbox"/> No prior disciplinary sanctions</div> <div><input type="checkbox"/> Little or no public interest impact</div> <div><input type="checkbox"/> Little or no impact on the reputation of the PAO or the accountancy profession</div> <div><input type="checkbox"/> Full cooperation with the PAO over the course of the investigation</div> <div><input type="checkbox"/> Evidence of insight and understanding of the issues concerned</div> <div><input type="checkbox"/> Personal circumstances (for example stress, illness)</div> <div><input type="checkbox"/> Early acceptance/admission of misconduct or incompetence</div> <div><input type="checkbox"/> Self-detection/bringing the issues to the attention of the PAO</div> <div><input type="checkbox"/> Acting on the basis of professional advice</div>	<div><input type="checkbox"/> High public interest impact</div> <div><input type="checkbox"/> Abuse of a position of trust</div> <div><input type="checkbox"/> Failure or refusal to take remedial action to address the issues concerned</div> <div><input type="checkbox"/> No evidence of follow-up action to prevent a reoccurrence of the issues concerned</div> <div><input type="checkbox"/> Prior disciplinary sanctions</div> <div><input type="checkbox"/> Failure to take account of previous directions from the PAO</div> <div><input type="checkbox"/> Damage to the reputation of the PAO or the accountancy profession</div> <div><input type="checkbox"/> Lack of cooperation with the PAO over the course of the investigation</div> <div><input type="checkbox"/> No evidence of insight or understanding of the issues concerned</div> <div><input type="checkbox"/> Refusal to accept the misconduct or incompetence</div> <div><input type="checkbox"/> Concealing or otherwise failing to bring issues to the attention of the PAO</div> <div><input type="checkbox"/> Additional evidence supporting the complaint uncovered</div> <div><input type="checkbox"/> Any benefit obtained by the member as a consequence of misconduct or incompetence</div> <div><input type="checkbox"/> The need for deterrence</div> <div><input type="checkbox"/> Lack of internal system of control</div>

¹³ Based on the Sanction Guidance of the Institute of Chartered Accountants of Scotland (ICAS)

HOW: TOOLS, TEMPLATES AND EXAMPLES

How 7: I&D System Continuous Improvement Scan

PAOs operate within different legal environments and may serve different parts of the accountancy profession. The following continuous improvement scan is not exhaustive, but is designed to assist in making initial notes on the state of health of the I&D system, priorities to address and initial thoughts about timelines for action.

GUIDING QUESTIONS	ASSESSMENT Yes (Y) Partly (P) No (N)	PRIORITY High (H) Low (L) N/A	ACTION TIMELINE Short-term (S) Medium-term (M) Long-term (L)
Our members are required to follow: code of ethics, laws, regulations and other professional standards			
Our governing documents (constitution, by-laws) provide for an I&D system to handle misconduct by members			
We have policies and procedures for the I&D process			
We have guidance on the I&D process for the complainants, members, those responsible for the process			
The policies, procedures and guidance are publically available			
It is clear what we mean by misconduct and what cases can be addressed by our I&D system			
The range of sanctions is clearly defined			
We take steps to make our members and the public aware of the I&D policies and processes			
We have designated in-house or outsourced staff to receive complaints			
We have a mechanism to conduct investigations			
We have a disciplinary tribunal to hear cases			
We have a mechanism to handle appeals			
We have alternate dispute resolution provisions			

GUIDING QUESTIONS	ASSESSMENT Yes (Y) Partly (P) No (N)	PRIORITY High (H) Low (L) N/A	ACTION TIMELINE Short-term (S) Medium-term (M) Long-term (L)
We have a mechanism for independent review of dismissed cases			
We have a mechanism to track and monitor progress of disciplinary cases			
We publish the findings, as appropriate, at least annually			
We have a mechanism to cooperate with authorities			
We have a mechanism to cooperate with other professional organisations			
Individuals involved in investigations, disciplinary decisions, the appeals process, and the review of dismissed cases are independent from the matter under investigation and do not participate in multiple parts of the I&D process			
Our members are entitled to representation			
We have a clear statement that our I&D process is designed to protect public interest			
In our I&D system, the sanctions are proportionate to the gravity of the misconduct			
Our I&D system respects natural justice and confidentiality as appropriate			
Our reporting and disclosure regarding I&D proceedings are in line with local laws and regulations			
At each stage of the process, investigators and members of any tribunal and appeals panel are vested with powers necessary to perform their duties			



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