

# **IVAS**

## **DISCIPLINARY RULEBOOK**

# Acknowledgement

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## Definitions and explanations of terms used

- 1. Appeals Panel:** A panel that handles all aspects of appeals placed before it including but not limited to matters originating from the Hearings Panel.
- 2. Appeals Panel Chair:** The individual appointed by the Institute to head the Appeals Panel to hear appeals including all questions and issues arising from hearings originating from the Hearings Panel.
- 3. Associate CVA:** The individual who has passed all 3 levels of the CVA Programme pending certification requirements as specified by the Institute.
- 4. Charge Sheet:** The document notifying the case that the Covered Person has to answer in allegations/complaints made against him/her and containing the substance and essential facts of the allegations/complaints.
- 5. Complainant:** Any person who has laid a complaint by submitted a signed form of complaint to the Institute.
- 6. CVA Programme:** The professional business valuation certification programme that forms part of the requirement for the conferment of the CVA Charter.
- 7. Code:** The Code of Ethical Principles for Professional Valuers advocated by the International Valuation Standards Council.
- 8. Covered Person:** Any CVA Charter holder and individual undergoing an order of suspension of his/her certification suspended through the disciplinary process or believed to be breaching the terms of the CVA designation.
- 9. Governing Documents:** Documents that govern the conduct of Covered Persons, including the Code and Standards, and these Rules.
- 10. Hearings Panel:** A panel whose function and duties include, but are not limited to, reviewing facts and evidence and deciding if charges be preferred in charge sheets, to conduct hearings and issuing its decisions, delivering decisions of its findings based on its total discretion to decide and to mete out penalties and sanctions as it may decide in its complete discretion to be exercised judiciously.
- 11. Hearings Panel Chair:** The individual appointed by the Institute to conduct and lead the Hearings Panel.
- 12. Institute:** Institute of Valuers and Appraisers, Singapore (IVAS) under the Accounting and Corporate Regulatory Authority (ACRA).
- 13. Investigations Panel:** A panel whose function and duties include, but are not limited to, investigating into any complaint laid out and to review the facts and evidence to determine if any matter involving, or appearing to involve, a violation of the Governing Documents by a Covered Person.
- 14. Investigations Panel Chair:** The individual appointed by the Institute to conduct and lead the Investigations Panel.
- 15. Lay Person:** An architect, banker, advocate and solicitor, company director, professional accountant, accredited insurer, qualified actuary, professional engineer, medical practitioner or a person who possesses such other qualifications as may be approved by the Institute.
- 16. Standards:** The International Valuation Standards advocated by the International Valuation Standards Council.

# INTRODUCTION

1. The Institute is a member of the International Valuation Standards Council (IVSC) and adopts the International Valuation Standards (IVS) which “serve as the key guide for valuation professionals globally and will underpin consistency, transparency and confidence in valuations which are key to investment decisions, financial reporting and financial market stability”.<sup>(1)</sup> These Rules form the basic structure for enforcing compliance with the Governing Documents. The Institute applies the presumption that Covered Persons are in compliance with the Governing Documents unless and until the presumption is rebutted, and is committed to providing a fair, efficient, and effective disciplinary process. Throughout the disciplinary process, Covered Persons and their representatives; and members of the Investigations Panel, Hearings Panel and Appeals Panel must follow these rules.

## ROLE AND AUTHORITY OF INVESTIGATIONS PANEL

2. The Investigations Panel is authorized to investigate any matter involving, or appearing to involve, a violation of the Governing Documents by a Covered Person and is authorized to contact any person or entity that it believes may be able to provide relevant information, documents, or assistance in the investigation. The Investigations Panel will decide if any matter that it investigates into be sent to the Hearings Panel.

## ROLE AND AUTHORITY OF HEARINGS PANEL

3. The Hearings Panel reviews the findings of the Investigations Panel and will consider whether the Covered Person had breached or violated the Governing Documents and if it so finds, it will issue a Charge Sheet setting out the charges against the Covered Person. The Hearings Panel may convene a hearing and it may exercise its discretion as to the conduct of the hearings in the manner it considers fit. The Hearings Panel will decide the charges to be preferred based on an assessment of the totality of the evidence presented before it. The Hearings Panel will thereafter issue its findings and recommended sanction(s) to the Covered Person.

## ROLE AND AUTHORITY OF APPEALS PANEL

4. The Appeals Panel looks into appeals received. The Appeals Panel determines whether there was a clear and material error in the findings of fact and conclusion by the Hearings Panel, or a

failure on the part of the Hearings Panel to follow the prescribed procedures for the hearing in accordance with these Rules, that would affect the correctness of the Hearings Panel. The Appeals Panel will also consider whether the sanction(s) imposed were incorrect, excessive or unfair in all circumstances of the case. The Appeals Panel will affirm the Hearings Panel's decision unless the Covered Person's written submission identifies a clear and material error in the findings of fact, or a failure on the part of the Hearings Panel to follow the prescribed procedures for the hearing in accordance with these Rules, or conclusion as to violation(s) made by the Hearings Panel or shows that the sanction(s) imposed by the Hearings Panel was unfair. In assessing sanctions, the decision of the Hearings Panel will be upheld unless it was so clearly unreasonable, given the entirety of the evidence, that it was unfair or unjust.

## RIGHTS AND RESPONSIBILITIES OF A COVERED PERSON

5. The Covered Person who is the subject of a professional conduct investigation or hearing has the responsibility to:
  - 5.1. adhere to the Rules;
  - 5.2. produce accurate and complete copies of all requested documents in the Covered Person's possession or control;
  - 5.3. provide information orally and in writing, as requested by the Institute;
  - 5.4. cooperate fully in the investigation or hearing; and
  - 5.5. keep the Institute advised of current mailing and email addresses.
6. The Covered Person will also have the right to:
  - 6.1. retain and have present, if applicable, an interpreter to assist him or her;
  - 6.2. present documentary evidence and oral testimony;
  - 6.3. call and present oral testimony by witnesses; and
  - 6.4. question any testifying witnesses presented during the hearing.
7. The Covered Person assumes his or her own costs for producing documents and information, translations, interpretation, travel, witness expenses, and other expenses associated with an investigation and/or participation in the hearing.

(1) Source: [www.ivsc.org](http://www.ivsc.org)

## DELIVERY AND RECEIPT OF DOCUMENTS

8. The Institute may provide notices and documents relating to an investigation or hearing to the Covered Person's mailing address and/or email address as shown in the Institute's records.
9. Correspondence and/or documents are considered received by the Covered Person when sent to:
  - 9.1. the mailing and/or email address of the Covered Person shown in the Institute's records; or
  - 9.2. the business mailing and/or email address of the Covered Person identified to the Institute, in writing, by the Covered Person.
10. All references to the timing of delivery and receipt of documents within these Rules are calculated based on calendar days.

## GROUNDINGS FOR DISCIPLINARY ACTION

11. The Covered Person shall be liable to disciplinary action in any of the following cases:
  - 11.1. if it is found that he or she is guilty of misconduct;
  - 11.2. if it is found that he or she had performed work, services or duties or conducted himself or herself in a manner of incompetence, wilful misconduct or gross negligence bringing disrepute including disrepute to the Institute, disciplinary action will ensue if considered just and appropriate by the Institute in exercise of its absolute discretion;
  - 11.3. if he or she has been found guilty in any disciplinary proceedings instituted against him or her by regulators or another professional body;
  - 11.4. if it is found that he or she has contravened the Code and Standards; or
  - 11.5. if he or she has failed to comply with any order of the Hearings Panel or Appeals Panel.
12. For the purpose of Rule 11.1, misconduct includes, but is not confined to, any of the following:
  - 12.1. if the Covered Person is represented to be guilty of any act or omission likely to bring discredit to himself or herself, the Institute or the valuation profession;
  - 12.2. if he or she has been found guilty by a court in Singapore or in any country whose judgments are registerable in Singapore of an offence which would bring discredit to himself or herself, the Institute or the valuation profession; or

12.3. if he or she has been found in any civil proceedings to have acted fraudulently or dishonestly.

13. The Covered Person shall be liable to disciplinary action for acts or omissions which took place during any period when his or her certification status is suspended.
14. The type of sanction imposed will take into account the Covered Person's present status with the Institute. So, for example, if a person commits a violation while he or she is an Associate CVA, but he or she becomes a CVA Charter holder after an investigation or hearing is initiated, the sanction imposed will be that applicable to a Charter holder (e.g., a revocation or suspension of the CVA Charter).

## OUTCOMES OF DISCIPLINARY PROCEEDING

15. Possible disciplinary actions may include the following:
  - 15.1. in the case of a CVA Charter holder:
    - 15.1.1. that his or her name be removed from the register and that he or she shall cease to be a CVA Charter holder;
    - 15.1.2. that his or her registration as a CVA Charter holder be suspended for a specified period;
    - 15.1.3. that he or she be issued a cautionary note or censured;
    - 15.1.4. that he or she undertakes additional continuing professional development;
    - 15.1.5. that no further action be taken on the case; or
    - 15.1.6. such other orders considered appropriate, including, in the case of an order for exclusion from certification, a recommendation that no application for his or her readmission be entertained before the end of a specified period.
16. Where the Covered Person deliberately fails to comply with any order issued, after being given a reasonable period to comply, the Institute, may, if it deems fit, remove his or her name from the register.

## PUBLICATION, DISCLOSURE, AND CONFIDENTIALITY

17. The Institute understands that all investigations and hearing are sensitive in nature and, therefore, will exercise reasonable care to ensure that the pendency, subject matter, status, and records of investigations and hearing conducted according to these Rules remain confidential.

**18.** Exceptions may be made:

- 18.1.** as required by law;
- 18.2.** if the Covered Person has agreed to a waiver of confidentiality;
- 18.3.** to a regulatory organization, governmental entity, or court with jurisdiction over the Covered Person's conduct. In such a case, the regulator, agency, or court may make use of the information in the manner it deems appropriate.

## INVESTIGATIONS

### APPOINTMENT OF THE INVESTIGATIONS PANEL

- 19.** Subject to Rule 21 below, the Institute shall appoint an Investigations Panel where:
  - 19.1.** any complaint is received;
  - 19.2.** facts are brought to the Institute's knowledge which satisfy them that there may be grounds for a complaint or where a matter concerning the professional conduct or integrity of the Covered Person has attracted public concern or significant public attention;
  - 19.3.** the Institute has received any information concerning any improper or dishonourable act or conduct of the Covered Person in accordance with Rule 48; or
  - 19.4.** the Institute has in its discretion decided on the appointment of an Investigations Panel as the situation may require.
- 20.** The Investigations Panel shall be formed within 1 month from the date of receipt of the complaint.
- 21.** The Investigations Panel shall comprise at least 3 persons, all of whom shall be CVA Charter holders.
- 22.** An Investigations Panel shall be appointed in connection with one or more matters or for a fixed period of time as the Institute may think fit.
- 23.** The Institute shall appoint a member of the Investigations Panel to be the chairman of the Investigations Panel.
- 24.** 3 members of the Investigations Panel shall constitute a quorum.
- 25.** No serving IVAS Council members shall be appointed to the Investigations Panel and, if any member of the Investigations Panel is appointed as a IVAS Council member, his or her appointment on the Investigations Panel shall cease with immediate effect.
- 26.** IVAS Committees' members will not be restricted from serving on the Investigations Panel.
- 27.** The members of the Investigations Panel involved in the investigation shall be independent of the relevant parties involved in the complaint.
- 28.** Any decision arising at a meeting of the Investigations Panel shall be determined by a majority of votes. The chairman of the Investigations Panel shall, in the case of equality of votes, have a casting vote.

29. The Institute may at any time revoke the appointment of the Investigations Panel or may remove any member of the Investigations Panel or fill any vacancy in the Investigations Panel.
30. Any decision in writing signed by the chairman and all the members of the Investigations Panel shall be as valid and effectual as if it had been made or reached at a meeting of the Investigations Panel with a quorum present.
31. Each member of the Investigations Panel shall sign a letter of undertaking not to disclose any information obtained in the course of his or her appointment to the Investigations Panel (even after the Investigations Panel has completed its investigation) to any third party except where Rule 18 applies.
32. The Investigations Panel shall meet at such times and places as its chairman may decide, and, subject to these Rules, regulate its own procedure in such manner as it deems fit. The meeting of the Investigations Panel may be conducted in person, by teleconference or video conference or other electronic means.

#### **POWERS OF INVESTIGATIONS PANEL**

33. For the purpose of its investigations, the Investigations Panel may:
  - 33.1. call upon or employ any person to make all manner of investigations it considers necessary;
  - 33.2. require the production for inspection by the Investigations Panel or any person so employed of any valuation reports which may relate to or be connected with the subject-matter of the investigation and, where necessary, make copies thereof;
  - 33.3. require any Covered Person to give all information in relation to any such valuation reports which may be reasonably required by the Investigations Panel or by the person tasked to do so;
  - 33.4. require the Complainant to supply further information and documents relating to the complaint that it considers relevant for the purpose of the investigation; or
  - 33.5. seek further information or technical or other advice as may be appropriate to assist it in the consideration of the complaint. Any such information or advice may be included as evidence in the case.
34. Where in the course of its investigation, the Investigations Panel receives any information or evidence relating to the conduct of the Covered Person concerned which may give rise to separate

proceedings in addition to the matter at hand, the Investigations Panel may, after giving notice to the Covered Person concerned, decide on its own motion to investigate into that matter.

35. Where the Investigations Panel receives or obtains any information or evidence in the course of an investigation relating to the conduct of the Covered Person concerned which discloses an offence under any written law in any jurisdiction, the Investigations Panel shall report this matter to the Institute.
36. The Investigations Panel may appoint a legal adviser to advise the Investigations Panel on all matters of law or procedure arising in the course of its investigation.

#### **POWER TO PROCEED WITH COMPLAINT NOTWITHSTANDING THE COMPLAINANT'S WITHDRAWAL**

37. A Complainant may at any time withdraw a complaint by providing written notice to the Institute. However, if the Institute is of the opinion that the complaint discloses a prima facie case against the Covered Person concerned, it may instruct the Investigations Panel to continue its investigation or refer the matter to the Hearings Panel, despite the withdrawal of the complaint in question.

#### **NOTICE OF INVESTIGATION**

38. A notice of investigation will be sent to the Covered Person who becomes the subject of an investigation by the Investigations Panel. The notice of investigation will include information as to where the Rules of Procedure can be found.
39. The Covered Person shall, at all times, fully cooperate with the Investigations Panel.

#### **INVESTIGATION**

40. Where the Institute has appointed the Investigations Panel in accordance with Rule 19, the Institute shall lay the complaint, facts, or matter, as the case may be, before the Investigations Panel.
41. The Investigations Panel shall investigate the complaint referred by the Institute for the purpose of determining if there is a prima facie case for it to be referred to the Hearings Panel in accordance with Rule 50.2.

- 42.** The Investigations Panel may, if it deems fit, require that the complaint be supported by one or more statutory declarations<sup>(2)</sup> except that no statutory declaration shall be required if the complaint is made by a public officer<sup>(3)</sup>.
- 43.** Where the Investigations Panel is of the opinion that the information provided in Rule 40 is insufficient for its purposes, the Investigations Panel may require the Complainant or Covered Person concerned to answer any question in writing or to furnish any document or information that it considers relevant within 14 days of the date of request, or such longer period of time as the Investigations Panel deems fit.
- 44.** If the Complainant refuses or fails, without reasonable excuse, to furnish any document or information as may be required by the Investigations Panel under Rule 43, the Investigations Panel may decide to dismiss the complaint at its discretion.
- 45.** The Investigations Panel shall carry out its work expeditiously and may apply to the Institute for an extension of time to be given to the Investigations Panel if the Investigations Panel fails to make a finding within 3 months of its formation.
- 46.** On the completion of its investigation under this section, the Investigations Panel shall,
- 46.1.** if it makes a finding that there is no prima facie case against the Covered Person concerned, dismiss the complaint; or
- 46.2.** if it makes a finding that there is a prima facie case against the Covered Person concerned, frame the relevant allegations and lay the complaint, facts, or matter, as the case may be, and table it to the Institute.
- 47.** Pursuant to Rule 46.1, the Complainant and the Covered Person will be notified in writing that there is no cause for disciplinary action and matters will not proceed any further.
- 48.** The Institute may also, on its own motion, refer any information concerning any improper or dishonourable act or conduct of the Covered Person to the Investigations Panel to investigate the matter.
- 49.** Covered Person and Complainants do not have the right to attend the Investigations Panel meeting unless otherwise invited.

**(2)** A "statutory declaration" is a declaration made as to the truth of a matter or for the purposes of satisfying a statutory or legal requirement. It is made pursuant to and accordance with the provisions of the Oaths and Declarations Act.

**(3)** A "public officer" is a person exercising a public official function and who holds a post in a Ministry or department of the Singapore Government.

## HEARINGS

### APPOINTMENT OF THE HEARINGS PANEL

- 50.** Subject to Rule 51 below, the Institute shall appoint the Hearings Panel where:
- 50.1.** the Investigations Panel has determined that there is a prima facie case for the complaint to be referred to the Hearings Panel under Rule 46.2;
- 50.2.** The Institute has in its discretion decided on the appointment of the Hearings Panel as the situation may require.
- 51.** The Hearings Panel shall be formed within 1 month from the date of confirmation that there is a prima facie case for disciplinary action.
- 52.** The Hearings Panel shall comprise at least 3 persons. There must be at least 1 Lay Person and the rest shall be CVA Charter holders. The Hearings Panel members will formally hear and adjudicate on cases referred to it by the Investigations Panel, and to make decisions on the appropriate penalties or disciplinary action to be meted out, if necessary.
- 53.** The Hearings Panel may be appointed in connection with one or more matters or for a fixed period of time, as the Institute thinks fit.
- 54.** The Institute shall appoint a member of the Hearings Panel, who must be a CVA Charter holder, to be the chairman of the Hearings Panel.
- 55.** 3 members of the Hearings Panel, shall constitute a quorum.
- 56.** No serving IVAS Council members shall be appointed to the Hearings Panel and, if any member of the Hearings Panel is appointed as a IVAS Council member, his or her appointment on the Hearings Panel shall cease with immediate effect.
- 57.** IVAS Committees' members will not be restricted from serving on the Hearings Panel.
- 58.** The members of the Hearings Panel involved in the hearings shall be independent of the relevant parties involved in the complaint. In addition, he or she shall not have been a member of the Investigations Panel previously investigating the same matter.
- 59.** Any decision arising at a meeting of the Hearings Panel shall be determined by a majority of votes. The chairman of the Hearings Panel shall, in the case of an equality of votes, have a casting vote.

- 60. The Institute may at any time revoke the appointment of the Hearings Panel or may remove any member of the Hearings Panel or fill any vacancy in the Hearings Panel.
- 61. If, for any reason, prior to the time fixed for a hearing, any member of the Hearings Panel becomes unable to act, the Institute shall co-opt another eligible person to act in his or her place.
- 62. No act done by or under the authority of the Hearings Panel shall be invalid in consequence of any defect that is subsequently discovered in the appointment and/or qualification of any of its members.
- 63. Each member of the Hearings Panel shall sign a letter of undertaking not to disclose any information obtained in the course of his or her appointment to the Hearings Panel (even after the Hearings Panel has completed its hearing) to any third party except where Rule 18 applies.
- 64. The Hearings Panel shall meet at such times and places as its chairman may decide, and subject to these Rules, regulate its own procedure in such manner as it deems fit. The meeting of the Hearings Panel may be conducted in person, by teleconference or video conference or other electronic means.

#### **POWERS OF HEARINGS PANEL**

- 65. The Hearings Panel shall not be bound to act in a formal manner and shall not be bound by the provisions of the Evidence Act (Cap. 97) or by any other law relating to evidence but may inform itself on any other matter in such manner as it deems fit in exercise of its discretion to decide the manner in which the hearing should proceed.
- 66. The Hearings Panel may seek further information or technical or other advice as may be appropriate to assist it in the consideration of the complaint. Any such information or advice may be included as evidence in the case in exercise of its discretion.
- 67. The Hearings Panel may require any Covered Person to attend at a specified time and place and give evidence or produce any such valuation report, document, paper or record.
- 68. The Hearings Panel may appoint a legal adviser to advise the Hearings Panel on all matters of law or procedure arising in the course of its formal inquiry.

#### **MATTERS WHICH HEARINGS PANEL MAY TAKE INTO CONSIDERATION**

- 69. The Hearings Panel may take into account any fact or matter which has been considered by any Investigations Panel on any previous occasion in relation to the Covered Person concerned (in respect of which, no case was referred to the Hearings Panel) and if a case is then referred to the Hearings Panel, then the reference may include all or any of the facts and matters which were on each occasion so considered by any Investigations Panel.
- 70. The Hearings Panel in exercise of its discretionary powers, may decide based on the evidence before it, that the Covered Person is believed to be operating or managing his practice incompetently departing from the Code that should apply, direct the Covered Person to obtain advice as they may decide.
- 71. If the Covered Person fails to seek such advice referred to in Rule 70 when advised to do so, that fact shall be recorded.
- 72. If a Covered Person, if requested, fails to furnish a sufficient and satisfactory reply in writing or fails to attend and/or provide such explanation and/or produce material as required, then such failure shall be deemed to be professional misconduct of the Covered Person having a case to answer within the terms of Rules 11-13 in respect of the matter and the Covered Person shall be liable to be dealt with by the Hearings Panel.
- 73. Where the Hearings Panel receives or obtains any information or evidence in the course of a formal inquiry relating to the conduct of the Covered Person concerned which discloses an offence under any written law in any jurisdiction, the Hearings Panel shall report this matter to the Institute.

#### **HEARINGS PANEL PROCEDURES**

- 74. The Hearings Panel shall review the findings of the Investigations Panel and list the offences for the Charge Sheet within 28 days from the date of the formation of the Hearings Panel.
- 75. The Hearings Panel may request for an extension to finalise the Charge Sheet from the Institute if the Hearings Panel fails to finalise the Charge Sheet within 28 days from the date of the formation of the Hearings Panel.
- 76. If the Hearings Panel, upon consideration of the findings of the Investigation Panel, finds the Covered Person had breached or violated the Governing Documents, the Hearings Panel will issue a Charge Sheet setting out the charges against the Covered Person.

- 77.** The Charge Sheet shall be communicated to the Covered Person in writing or electronically. The Charge Sheet will notify the Covered Person of the findings, conclusion as to violation(s) and recommended sanction(s).

#### **COVERED PERSON'S RESPONSE TO THE CHARGE SHEET**

- 78.** The Covered Person has 28 days from the date of receipt of the Charge Sheet to file for defence for the Hearings Panel's consideration.
- 79.** If the Covered Person fails to respond within the time provided, the findings, conclusion as to violation(s), and recommended sanction(s) in the Charge Sheet will be deemed to be accepted by the Covered Person.
- 80.** The Hearings Panel shall then issue its decision on the case and the outcome of the decision will be tabled to the Institute for approval.
- 81.** If the Covered Person rejects the Charge Sheet, the matter will proceed for a hearing.

#### **NOTICE OF FORMAL HEARING**

- 82.** Before the Hearings Panel begins a hearing, the Institute shall, within no less than 14 days of the date of the hearing, serve to the Covered Person concerned a written notice of hearing,
- 82.1.** setting out the date, time and place of the hearing;
- 82.2.** enclosing copies of the complaint, facts or matter, as the case may be, and of any statutory declaration that may have been made in support thereof; and
- 82.3.** inviting the Covered Person concerned to indicate whether he or she intends to attend the hearing and be represented and to submit any written explanation he or she may wish to offer within such reasonable period as shall be specified by the Institute in the notice of hearing.
- 83.** Any hearing may be conducted in person, by teleconference or video conference, provided the Covered Person concerned and the chairman of the Hearings Panel so agree on the mode.
- 84.** The Hearings Panel shall allow the time specified in the notice of hearing to elapse and shall give the Covered Person concerned reasonable opportunity to be heard if he or she so desires and shall give due consideration to any explanation he or she may make.

- 85.** In the event that the Institute has not complied with the requirements under Rule 82, the Hearings Panel may, in its absolute discretion, provided that it is satisfied that the Covered Person concerned has received the documents and has not been prejudiced in the conduct of his case, order that the hearing shall proceed.
- 86.** In exceptional circumstances, the Institute may provide the notice of hearing and the relevant documents above to the Covered Person concerned less than 14 days before the date of hearing. At an urgent hearing, the Hearings Panel shall consider at the outset the appropriateness of short notice and may, in its absolute discretion, if it is of the view that it is in the public interest to do so, order that the hearing proceed or be adjourned for such period and under such directions as it sees fit.
- 87.** On application to the Hearings Panel, the Covered Person concerned may request postponement of the hearing, and the Hearings Panel may, in its discretion, grant the application for good cause and postpone hearing to such date as it may determine, or refuse the application.
- 88.** If a Covered Person fails to turn up in the hearing, the Hearings Panel may, at its discretion, proceed with the hearing and make its determination without the Covered Person's participation.

#### **HEARING BEFORE THE HEARINGS PANEL**

- 89.** The Covered Person concerned shall be entitled:
- 89.1.** to be heard before the Hearings Panel;
- 89.2.** to be represented by an advocate and solicitor as he may wish; and
- 89.3.** to call witnesses.
- 90.** If the Covered Person concerned does not attend the hearing as fixed, the Hearings Panel may proceed to hear the case in his or her absence if the notice of the hearing has been given in accordance with Rule 82.
- 91.** All evidence given at the hearing of any matter by the Hearings Panel shall be given orally except that the Hearings Panel, if it deems fit, may require that evidence be supported by a statutory declaration from any person if it considers it necessary for better investigation of the matter.
- 92.** The hearing of a formal inquiry by the Hearings Panel shall not be open to the public.

## HEARINGS PANEL MAY TREAT AS PROVED FACTS ACCEPTED BY THE COURT

93. Where a case of a Covered Person who is liable to disciplinary action under Rule 11.3, 12.2 or 12.3 has been referred to the Hearings Panel, the Hearings Panel shall accept the conviction or facts accepted by the court, as the case may be, as true, final, and conclusive. The Hearing Panel can consider the findings of the regulators, a professional body or a governing body of the relevant disciplinary process.
94. The Hearings Panel shall carry out its work expeditiously and may apply to the Institute for an extension of time to be given to the Hearings Panel if the Hearings Panel fails to make its finding and order within 6 months from the date it commences its inquiry.
95. For the purpose of this Rule, the date of commencement of the inquiry shall be the date of the notice referred to in Rule 82.
96. When an application for an extension of time has been made under Rule 94 or Rule 45, the Institute may grant an extension of time for such period as it deems fit.

## HEARING PROCEDURES

97. All hearing will be conducted in English. Each witness, including the Covered Person, will be asked to swear or affirm that his or her testimony will be truthful.
98. The Covered Person will have the opportunity to present evidence and testimony, present arguments, and respond to the Charge Sheet.
99. The Hearings Panel may also question witnesses during the hearing.
100. The hearing is not bound by any rules of evidence, such as those applicable in courts of law, and may upon request, or at its own discretion, exclude or disregard any documents or oral testimony that it deems unreliable, repetitive, or irrelevant to the proceeding.
101. At the end of the hearing, the Hearings Panel will deliberate outside the presence of the Covered Person and complainant, and Hearings Panel to decide whether the Covered Person committed the alleged violation(s) and, if so, what the appropriate sanction(s) should be, if any.
102. The Hearings Panel must determine whether, based on an assessment of the totality of the evidence presented before it, the alleged violation(s) occurred.

## HEARING DECISION

103. The decision of the Hearings Panel will be based solely on the totality of the evidence and testimony presented at the hearing, and relate only to the allegations identified and communicated to the Covered Person in the Charge Sheet.
104. The decision must be made by at least 3 Panel members of the Hearing.
105. The decision of the Hearings Panel will be determined by a majority vote. The chairman of the Hearings Panel shall, in the case of equality of votes, have a casting vote.
106. The Hearings Panel will determine and issue a written decision setting forth the Hearings Panel's findings of fact, conclusion as to violation(s), and sanction(s), if any.
107. The Hearings Panel's decision will be tabled to the Institute for approval.
108. The hearing decision will be delivered to the Covered Person in writing or electronically within 28 days from date of the hearing following the approval of the Institute.

# APPEAL PROCESS

## REQUEST FOR APPEAL AGAINST DECISION OF THE HEARINGS PANEL

- 109.** A Covered Person may lodge a notice of appeal stating the grounds of appeal together with any relevant supporting documents, stating the relevant facts and reasons why the Hearings Panel erred in its findings of fact or conclusion as to violation(s) and/or why the sanction(s) imposed is unfair, with the Institute. The appeal shall be valid only if the notice is lodged before the end of the period of 28 days beginning on the date on which the written or electronic notice of the Hearings Panel's decision was served to him.
- 110.** The Institute shall serve to the Covered Person concerned a record of proceedings of the Investigations Panel and/or Hearings Panel upon the request for an appeal.
- 111.** The record of proceedings may include reports of the Investigations Panel and/or Hearings Panel and documents relied upon by the Investigations Panel and/or Hearings Panel.
- 112.** The record of proceedings may be served in hardcopy and/or electronic form to the Covered Person concerned.
- 113.** The Covered Person concerned may withdraw his notice of appeal by serving the notice of withdrawal on the Institute before the date of the hearing, subject to additional cost orders as the Appeals Panel may determine with regards to any preparation work for the hearing of the appeal.

## RIGHTS OF APPEAL

- 114.** A Covered Person may appeal against a finding or order of the Hearings Panel only on the following grounds:
  - 114.1.** the Hearings Panel erred in law or in the interpretation of these Rules or applicable regulations; or
  - 114.2.** significant fresh evidence is available that was not available to the Covered Person concerned at the time of the hearing and which he could not at that time have been expected with reasonable diligence to have obtained; or
  - 114.3.** there has been a failure on the part of the Hearings Panel to follow the prescribed procedures for the hearing in accordance with these Rules, and the Hearings Panel's decision has been prejudiced by this failure; or
  - 114.4.** an order of exclusion or suspension was manifestly excessive in all the circumstances.

## APPOINTMENT OF THE APPEALS PANEL

- 115.** Subject to Rule 116 below, the Institute shall appoint the Appeals Panel within 28 days from the date of request for an appeal.
- 116.** The Appeals Panel shall comprise at least 3 persons. There must be at least 1 Lay Person in the Appeals Panel.
- 117.** The Institute shall appoint a member of the Appeals Panel who must be a CVA Charter holder to be the chairman of the Appeals Panel.
- 118.** All the members of the Appeals Panel shall be personally present to constitute a quorum for the hearing of an appeal.
- 119.** No serving IVAS Council members shall be appointed to the Appeals Panel and, if any member of the Appeals Panel becomes a Council member, his appointment on the Appeals Panel shall cease with immediate effect.
- 120.** IVAS Committees' members will not be restricted from serving on the Appeals Panel.
- 121.** Any question arising at a meeting of the Appeals Panel shall be determined by a majority of votes. The chairman of the Appeals Panel shall, in the case of an equality of votes, have a casting vote.
- 122.** The members of the Appeals Panel hearing an appeal shall be independent, and shall not have been a member of the Investigations Panel or the Hearings Panel previously investigating or hearing the same case.
- 123.** The Institute may at any time revoke the appointment of the Appeals Panel or may remove any member of the Appeals Panel or fill any vacancy in the Appeals Panel.
- 124.** If for any reason, prior to the time fixed for a hearing, any member of the Appeals Panel becomes unable to act, the Institute shall co-opt another eligible person to act in his place.
- 125.** No act done by or under the authority of the Appeals Panel shall be invalid in consequence of any defect that is subsequently discovered in the appointment and/or qualification of any of its members.
- 126.** Each member of the Appeals Panel shall sign a letter of undertaking not to disclose any information obtained in the course of his appointment to the Appeals Panel (even after the Appeals Panel

has completed its hearing) to any third party except where required to by law or a relevant governmental authority, or where such disclosure is ordered by or authorised by a court of competent jurisdiction.

- 127.** The Appeals Panel shall meet at such times and places as its chairman may decide, and subject to these Rules, regulate its own procedure in such manner as it deems fit.
- 128.** The meeting of the Appeals Panel may be conducted in person, by teleconference or video conference or other electronic means.
- 129.** Covered Person and Complainants do not have the right to attend the Appeals Panel meeting unless otherwise invited.
- 130.** The Appeals Panel must determine whether there was a clear and material error in the findings of fact or conclusion as to violation(s) and/or whether the sanction(s) imposed was unfair.
- 131.** The Appeals Panel will affirm the Hearings Panel's decision unless the Covered Person's written submission identifies a clear and material error in the findings of fact or conclusion as to violation(s) made by the Hearings Panel or shows that the sanction(s) imposed by the Hearings Panel was unfair.
- 132.** In assessing sanctions, the decision of the Hearings Panel will be upheld unless it was deemed to be unreasonable, unfair, or unjust based the entirety of the evidence.

#### **THE HEARING OF AN APPEAL**

- 133.** As soon as practicable after the appointment of the Appeals Panel to hear the appeal, the Institute shall serve to the Covered Person concerned a notice stating the date, time and place fixed for the hearing.
- 134.** The Appeals Panel may appoint a legal adviser who may be present at any inquiry into any matter to advise the Appeals Panel on all matters of law or procedure arising in the course of its formal inquiry.
- 135.** At the hearing, the Covered Person concerned may appear in person or be represented by an advocate and solicitor or an accountant as he may wish, and the Covered Person so represented shall be deemed to be present.
- 136.** Any hearing may be conducted in person, by teleconference or video conference, provided the Covered Person concerned and the chairman of the Appeals Panel so agree on the mode.

**137.** If the Covered Person concerned does not attend the hearing as fixed, the Appeals Panel if it is satisfied that notice of the hearing has been served to him or her, may dismiss the appeal or proceed to hear it in his or her absence.

- 138.** The Hearings Panel which heard the matter giving rise to the appeal may appoint any of its members, or may instruct an advocate and solicitor, to appear on behalf of the Hearings Panel at the hearing of the appeal.
- 139.** The hearing of a formal inquiry by an Appeals Panel shall not be open to the public.

#### **POWERS OF APPEALS PANEL**

- 140.** Where the Covered Person deliberately fails to comply with any order made by the Appeals Panel after being given a reasonable period to comply, the Appeals Panel may, if it deems fit, make a recommendation to the Council that his or her name be removed from the register.
- 141.** The Appeals Panel shall not be bound to act in a formal manner and shall not be bound by the provisions of the Evidence Act (Cap. 97) or by any other law relating to evidence but may inform itself on any other matter in such manner as it deems fit.
- 142.** The Appeals Panel appointed to hear the appeal:
  - 142.1.** shall take into consideration the record of the evidence given before, and the documents produced to, the Hearings Panel which heard the matter;
  - 142.2.** may, if it deems fit, re-hear any witness who gave oral evidence before the Hearings Panel; and
  - 142.3.** may on special grounds (as to which the Appeals Panel shall be the sole judge) receive fresh evidence.

#### **DECISION OF APPEALS PANEL**

- 143.** The Appeals Panel shall:
  - i.** within 28 days from the date of formation of the Appeals Panel; or
  - ii.** within 28 days from the date that the Covered Person submits new evidence against the charges, whichever is later,to deliberate and finalise the decision on the appeal.

- 144.** The Appeals Panel will issue a written decision as to whether there was a clear and material error in the Hearings Panel's findings and whether the sanction imposed by the Hearings Panel is unfair. The Appeals Panel may, at its discretion, impose no sanction, the same sanction imposed by the Hearings Panel, a lesser sanction, or a greater sanction.
- 145.** The decision of the Appeals Panel (even if made in the absence of the Covered Person concerned) is final and not subject to further review and/or appeal under these Rules.
- 146.** The decision shall be tabled to the Institute for approval.
- 147.** Upon the approval from the Institute, the Appeals Panel decision shall be notified in writing or electronically to the Covered Person within 28 days from the date the decision is finalised.

## **PUBLICATION OF FINDINGS AND ORDERS**

- 148.** The Institute shall publish the name of the Covered Person consequent to the decision taken by the Hearings Panel or an Appeals Panel on its website, provided that the CVA Charter of the Covered Person has been revoked.
- 149.** The name of the Covered Person shall not be published under Rule 148 until the expiry of the period allowed under Rule 109 for giving a notice of appeal. For the avoidance of doubt, the Hearings Panel shall, after the time permitted for an appeal to be lodged has expired or after any appeal has been disposed of, cause the findings and order to be published under this Rule 149.
- 150.** If a valid notice of appeal is given under Rule 109, then, unless a notice of withdrawal is served to the Institute, no record of the Hearings Panel's decision shall be published, but a record of the Appeals Panel's decision on the appeal shall be so published.
- 151.** Where the Hearings Panel dismisses a formal complaint, or on an appeal, the Appeals Panel decides that a formal complaint has not been proved (whether in whole or in part), it shall cause a record of its decision to be published if the Covered Person concerned requests.
- 152.** Notwithstanding the above, the Hearings Panel or Appeals Panel may publish its decision at any time, if in its opinion, publication is desirable in view of any statement or comment made in the public domain.
- 153.** No person is entitled, as of right, to a copy of the record of proceedings of any investigation or inquiry by any Investigations Panel, Hearings Panel or Appeals Panel.

Accounting and Corporate Regulatory Authority  
#03-02, Revenue House  
55 Newton Road, Singapore 307987