

CODE OF PROFESSIONAL CONDUCT  
FOR  
CHARTERED MARKETER (SA)



## **CHARTERED MARKETER (SA) CODE OF PROFESSIONAL CONDUCT**

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Chartered Marketer (SA) By-Laws

## **1. INTRODUCTION**

### **1.1 Philosophical Background**

1.1.1 The SSETA has identified skills and integrity as the pre-eminent professional attributes of Chartered Marketers. The SSETA is committed, in the interests of the marketing profession as a whole, to enhancing these qualities in all members, by providing appropriate guidance. This Code deals with professional attitudes and behaviour.

1.1.2 This Code is consistent in all material respects with the Code of Ethics issued by the World Marketing Association.

1.1.3 The Code is established on the basis that unless a limitation is specifically stated the objectives and fundamental principles are equally valid for all members, whether they be offering services to the public or employed in industry, commerce, the public sector or education.

### **1.2 Characteristics of a Profession**

A profession is distinguished by certain characteristics including:

Mastery of a particular intellectual skill, acquired by experience and education.

Acceptance of duties to society as a whole in addition to duties to the client or employer.

An outlook which is essentially objective.

Rendering personal services to a high standard of conduct and performance.

### **1.3 The Public Interest**

1.3.1 A distinguishing mark of a profession is acceptance of its responsibility to the public. The marketing profession's public consists of clients, governments, employers, employees, the

business and financial community, and others who rely on the skills, objectivity and integrity of members to maintain the orderly functioning of commerce. This reliance imposes a public interest responsibility on the marketing profession. The public interest is defined as the collective well-being of the community of people and institutions the member serves.

1.3.2 A member's responsibility is not exclusively to satisfy the needs of an individual client or employer. The standards of the marketing profession are heavily determined by the public interest, for example:

marketing executives serve in various management capacities in organisations and contribute to the efficient and effective use of the organisation's resources;

members offering services to the public have a responsibility toward the public interest in advocating proposals that will best meet the needs of the client.

1.3.3 Members have an important role in society. The business community, as well as the government and the public at large rely on members for sound and competent advice on a variety of business matters related to marketing. The attitude and behaviour of members in providing such services have an impact on the economic well-being of their community and country.

1.3.4 Members can remain in this advantageous position only by continuing to provide the public with these services at a level which demonstrates that the public confidence is firmly founded. It is in the best interest of the marketing profession to make known to users of the services provided by members that they are executed at the highest level of performance and in accordance with ethical requirements that strive to ensure such performance.

## **1.4 Objectives of the Marketing Profession**

1.4.1 The Code recognises that the objectives of the marketing profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement set out above. These objectives require four basic needs to be met:

### **Credibility**

In the whole of society there is a need for credibility in information and information systems.

### **Professionalism**

There is a need for individuals who can be clearly identified by clients, employers and other interested parties as professional persons in the marketing field.

### **Quality of Services**

There is a need for assurance that all services obtained from a member are carried out to the highest standards of performance.

### **Confidence**

Users of the services of members should be able to feel confident that there exists a framework of professional ethics, which governs the provision of those services.

## **2. FUNDAMENTAL PRINCIPLES**

In order to achieve the objectives of the marketing profession, members have to observe a number of prerequisites or fundamental principles.

The fundamental principles are:

### **2.1 Integrity**

Integrity is essentially an attitude of mind. Adherence to certain standards of conduct and moral behaviour consistently practised will ensure integrity.

A member should be straightforward and honest in performing professional services.

### **2.2 Objectivity**

Objectivity is essentially the quality of being able to maintain an impartial attitude. It requires a member to be fair and not to allow prejudice or bias or influence of others to override objectivity.

### **2.3 Professional Competence and Due Care**

A member, in agreeing to provide professional services, implies that there is a level of competence necessary to perform those professional services and that the knowledge, skill and

experience of the member will be applied with reasonable care and diligence. Members should therefore refrain from performing any services which they are not competent to carry out unless advice and assistance is obtained to ensure that the services are performed satisfactorily.

A member should perform professional services with due care, competence and diligence and has a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives the advantage of competent professional service based on up-to-date developments in practice, legislation and techniques.

## **2.4 Confidentiality**

A member should respect the confidentiality of information acquired during the course of performing professional services and should not use or disclose any such information without proper and specific authority or unless there is a legal or professional right or duty to disclose.

## **2.5 Professional Behaviour**

A member should act in a manner consistent with the good reputation of the profession and refrain from any conduct which might bring discredit to the profession or do harm to others. A member should conduct himself with courtesy and consideration towards clients, third parties, other members, staff, employers and the general public.

## **2.6 Technical Standards**

A member should carry out professional services in accordance with the relevant technical and professional standards. Members have a duty to carry out with care and skill, the instructions of the client or employer in so far as they are compatible with the requirements of integrity, objectivity and, in the case of members offering services to the public, independence. In addition, they should conform with the technical and professional standards promulgated by the SSETA, relevant authorities and relevant legislation.

## **3. STATUS OF THE CODE**

3.1 The objectives as well as the fundamental principles are of a general nature and are not intended to be used to solve a member's ethical problems in a specific case. Therefore, the Code also provides detailed guidance as to the application in practice of the objectives and the fundamental principles with regard to a number of typical situations occurring in the marketing profession.

3.2 If, having consulted this Code, doubt still exists in a member's mind, he should fully discuss the matter with an appropriate and senior member.

3.3 Paragraphs 10 (a) to 10 (j) of the By-laws set out acts and practices which shall be offences and which, if committed by a member, render him liable to penalties. For example, in the By-laws it is stated that "if a member conducts himself in a manner which, in the opinion of the Investigation Committee or the Disciplinary Committee, is discreditable, dishonourable, dishonest, irregular, or unworthy or which is derogatory to the SSETA, or tends to bring the profession of marketing into disrepute", such conduct will be considered an act or practice which shall be an offence. It should be noted that the decision of the Disciplinary Committee is final and there is no appeal against its decision. When forming its opinion the committee will be guided by this Code. It is emphasised that the Code sets out the way the SSETA considers a member should behave in certain circumstances and also sets out those circumstances in which a member should very carefully consider his position before deciding on his course of action. Breach of the Code will indicate only that an offence may have been committed. If a complaint is lodged alleging that a member has breached the Code, such member may well be called upon by the Investigation or Disciplinary Committees to show cause why he considers that the breach, if there was one, did not constitute an offence.

#### **4. JOINT AND VICARIOUS LIABILITY**

4.1 A member may be held responsible for a breach of, or failure to comply with, this Code on the part of all persons who are –

his employees; or

under his supervision; or

his partners; or

fellow shareholders in, or directors or employees of, a company controlled by the member and his partners and offering professional services to the public. (For purposes of this Code a company will be deemed to be controlled by members, if members between them hold directly or indirectly, more than half of the voting rights attached to the shares of the company or directly or indirectly and either alone or together with anyone else are entitled to exercise the *de facto* right to control the manner in which the business of the company is carried on (including, but without limitation, the right to appoint the majority of the persons entitled to exercise control over its management and affairs)); or

fellow members in or employees of a close corporation controlled by the member and his partners and offering professional services to the public. (For purposes of this Code a close corporation will be deemed to be controlled by members, if members between them hold an interest in the corporation which would entitle them to a majority vote at a meeting of members of the corporation, or would otherwise entitle them to exercise the *de facto* right to control the manner in which the business of the corporation is carried on.)

4.2 A member may not, under the guise or through the medium of a partnership, company, close corporation or any other entity, do anything or allow anything to be done which he would not be permitted to do as an individual.

4.3 A member may not permit others to carry out on his behalf, either with or without remuneration, acts which, if carried out by himself, would constitute a contravention of this Code.

## **5. INTEGRITY AND OBJECTIVITY**

5.1 The principles of integrity and objectivity impose the obligation on all members to be fair, honest and free of conflicts of interest, prejudice and bias.

5.2 Members serve in many different capacities and there is an obligation on them to apply these principles, even at the sacrifice of personal advantage, whether they are in commerce, in industry, in academic situations, in the public sector or offering services to the public. Regardless of service or capacity, members should protect the integrity of their professional services, maintain objectivity, and avoid any subordination of their judgement by others.

5.3 Relationships or interests, whether direct or indirect, which could adversely influence, impair or threaten his capacity to act with integrity and objectivity should be avoided. A member should not accept or provide gifts or similar favours which could impair his integrity or objectivity.

5.4 Members will be exposed to situations which involve the possibility of pressures being exerted on them. These pressures may impair their integrity and objectivity. It is impracticable to define and prescribe all such situations where these possible pressures exist, but reasonableness should prevail in identifying relationships that are likely to, or appear to impair a member's integrity and objectivity.

## **6. CONFLICTS OF INTEREST**

6.1 A member should be and appear to be free of any influence, interest or relationship, whether direct or indirect which might be regarded, whatever its actual effect, as being incompatible with integrity or objectivity.

6.2 A member should be constantly alert to the possibility of a conflict of interest.

6.3 A member should consider the facts and circumstances before deciding whether or not his integrity and objectivity would be impaired by accepting an engagement or continuing in an employment position.

6.4 Such conflicts may arise in a wide variety of ways, ranging from the relatively trivial dilemma to the extreme case of fraud and similar illegal activities. It is not possible to attempt to itemise a comprehensive checklist of potential cases where conflicts of interest might occur.

6.5 It should be noted that an honest difference of opinion between a member and another party is not in itself an ethical issue.

6.6 It is recognised, however, that there can be particular factors which occur when the responsibilities of a member may conflict with internal or external demands of one type or another. Hence:

There may be the danger of pressure from an overbearing supervisor, manager, director or partner; or when there are family or personal relationships which can give rise to the possibility of pressures being exerted upon him. Indeed, relationships or interests which could adversely influence, impair or threaten a member's integrity should be discouraged.

A member may be asked to act contrary to technical or professional standards.

A question of divided loyalty as between the member's superior and the required professional standards of conduct could occur.

Conflict could arise when false, misrepresenting, or misleading statements or information are released or published which may be to the advantage of the employer or client and which may or may not benefit the member, as a result of such publication.

6.7 Where a member has reason to believe that his or his employee's involvement in an assignment would possibly cause a conflict of interest, he should immediately disclose this fact.

6.8 Where it is clear that a material conflict of interest exists, a member should decline to act.

6.9 Where a member considers that it would be possible to act objectively, the engagement may be accepted provided:

the nature of the conflict is fully explained to each party for whom the member will be acting;  
and

the parties agree in writing that the member may act.

6.10 In applying standards of ethical conduct, members may encounter problems in identifying unethical behaviour or in resolving an ethical conflict. When faced with significant ethical issues, members not offering services to the public should follow the established policies of the employing organisation to seek a resolution of such conflict. If those policies do not resolve the ethical conflict, the following should be considered:

Review the conflict problem with the immediate superior. If the problem is not resolved with the immediate superior and the member determines to go to the next higher managerial level, the immediate superior should be notified of the decision. If it appears that the superior is involved in the problem, the member should raise the issue with the next higher level of management.

When the immediate superior is the Chief Executive Officer (or equivalent) the next higher reviewing level may be the Executive Committee, SSETA of Directors, Non-Executive Directors, Trustees, Partners' Management Committee or shareholders.

Seek counseling and advice on a confidential basis with an independent advisor or appropriate and senior member to obtain an understanding of possible courses of action.

If the ethical conflict still exists after fully exhausting all levels of internal review, the member, as a last resort, may have no other recourse on significant matters, such as fraud, than to resign from the employing organisation, and to submit a memorandum setting out the reasons for resigning to an appropriate representative of that organisation.

## **7. PROFESSIONAL COMPETENCE**

7.1 A member should not undertake or continue with any professional services which he is not competent to carry out unless competent advice and assistance is obtained so as to enable him to satisfactorily perform such services. If a member does not have the competence to perform a specific part of the professional service, technical advice may be sought from experts such as other members, lawyers, actuaries, engineers, geologists or valuers.

7.2 A member who is employed may be asked to undertake significant tasks for which he has not had sufficient specific training or experience. When undertaking such work the member should not mislead the employer as to the degree of expertise or experience he possesses, and where appropriate, expert advice and assistance should be sought.

7.3 Whether a member is offering services to the public or engaged in commerce, industry, academic life or the public sector, he has a responsibility to keep himself up-to-date in whatever field of activity he is engaged.

7.4 A member should maintain his professional knowledge and skill. This requires a continuing awareness of developments in the marketing profession including relevant national and international pronouncements on marketing and other relevant regulations and statutory requirements.

7.5 All members should adopt a programme of continuing professional development.

## **8. CONFIDENTIALITY**

8.1 Members have an obligation to respect the confidentiality of information acquired about a client's or employer's affairs. The duty of confidentiality continues even after the end of the relationship between the member and the client or employer.

8.2 Confidentiality should always be observed by a member unless specific authority has been given to disclose information or there is a legal or professional duty to disclose.

8.3 Members have an obligation to ensure that staff under their control and persons from whom advice and assistance is obtained respect the principle of confidentiality.

8.4 Confidentiality is not only a matter of disclosure of information. It also requires that a member acquiring information in the course of performing professional services shall neither use, nor appear to use, that information for personal advantage or for the advantage of a third party.

8.5 A member has access too much confidential information about a client's or employer's affairs not otherwise disclosed to the public. Therefore the member should be relied upon not to make unauthorised disclosures to other persons. This does not apply to disclosure of such information in order properly to discharge the member's responsibility according to the profession's standards, or when required by law.

8.6 The following should be considered in determining the extent to which confidential information may be disclosed.

When disclosure is authorised.

When authorisation to disclose is given by the client or the employer the interests of all the parties including those third parties whose interests might be affected should be considered.

When disclosure is required by law.

Examples of when a member is required by law to disclose confidential information are:

(i) to produce documents or to give evidence in the course of legal proceedings; and to disclose to the appropriate authorities infringements of the law which come to light.

When there is a professional duty or right to disclose:

- (i) to comply with technical standards and ethics requirements - such disclosure is not contrary to this section;
- (ii) to protect the professional interests of a member in legal proceedings;
- (iii) to respond to an inquiry or investigation by the Investigation or Disciplinary Committees.

8.7 Where a member is required to disclose information about a client's or employer's affairs he should advise the client or employer that this is the case. Care should be taken to ensure that no more information than is strictly necessary is made available.

## **9. DISCRIMINATION**

9.1 A member should not practice discrimination against any person based on race, colour, religion, gender, marital status, age or origin. This includes engagement, promotion, dismissal, remuneration, transfer, training and other practices relating to employment.

## **10. PUBLICITY, ADVERTISING AND SOLICITATION**

**10.1 Material prepared for the purposes of publicity, advertising and solicitation should be in good taste both as to content and presentation.**

**10.2 The material should conform to the accepted norms of legality, decency, honesty and truthfulness.**

10.3 Judgement as to what may or may not constitute good taste can only be made in the context of the particular facts on which that judgement is exercised.

10.4 It is possible, however, to give some broad guidance and general examples as to what might, in appropriate circumstances, be regarded as not being in accordance with good taste. Thus material which is likely to give offence to religious beliefs, or is racist, is unacceptable. Other possible examples include the trivialisation of important issues, the deriding of public figures, disparagement of educational attainment and material which makes odious comparisons.

## **11. RESPONSIBILITIES TO COLLEAGUES**

**11.1 A member should conduct himself in a manner, which will promote co-operation and good relations between members and within the profession.**

11.2 The support of a profession by its members and their co-operation with one another are essential elements of professional character. The public confidence and respect, which a member enjoys, is largely the result of the cumulative accomplishments of all members, past and present. It is, therefore, in the member's own interest as well as that of the general public, to support the collective efforts of colleagues through professional societies and organisations and to deal with fellow members in a manner that will not detract from their reputation and well-being.

11.3 While the Code prescribes certain specific actions in the area of relationships with colleagues, it should be understood that these prescriptions do not define the limits of desirable intraprofessional conduct. Such conduct should encompass the professional consideration and courtesies which each member would like to have fellow members extend to him.

11.4 A member should assist his fellow members in complying with this Code and should co-operate with the appropriate disciplinary authorities in applying the Code. To condone serious fault can be as bad as to commit it. It may be even worse, in fact, since some errors may result from ignorance rather than intent and, if let pass without action, will probably be repeated. In situations of this kind the welfare of the profession as a whole should be the guide to a member's action.

11.5 Although the reluctance of a professional to give testimony that may be damaging to a colleague is understandable, the obligation of professional courtesy and fraternal consideration can never excuse lack of complete candour if the member is testifying as an expert witness in a judicial proceeding or properly constituted enquiry.

11.6 A member should not irresponsibly criticise another member.

11.7 It is natural that a member offering services to the public will seek to develop his practice. However, in doing so he should not seek to displace another member in a client

relationship by means which will lessen the effectiveness of technical performance. Further, a member should not act in any way that reflects negatively on fellow members.

11.8 A member should extend the same professional considerations and courtesies to any non-member with whom he may have a professional relationship.

## **12. FEES FOR PROFESSIONAL SERVICES**

12.1 Members who undertake professional services for a client, assume the responsibility to perform such services with integrity and objectivity and in accordance with the appropriate technical standards. That responsibility is discharged by applying the professional skill and knowledge which members have acquired through training and experience. For the professional services rendered, the member is entitled to be fairly remunerated.

12.2 In determining what constitutes fair remuneration a member may take into account the value of the professional service to the client, the customary charge for similar services by other professionals, and any other special circumstances which may exist. No single factor is necessarily the determining factor. Agreeing on an acceptable fee is primarily a matter for negotiation between the member and his client.

## **13. CONFLICT OF LOYALTIES**

13.1 Members in employment owe a duty of loyalty to their employer as well as to their profession and there may be times when the two are in conflict. An employee's normal priority should be to support his organisation's legitimate and ethical objectives and the rules and procedures drawn up in support of them. However, an employee cannot legitimately be required to:

break the law;

breach the rules and standards of his profession;

lie to or mislead (including misleading by keeping silent) clients or potential clients of the employer.

13.2 Differences in view about the correct judgement on professional or ethical matters should normally be raised and resolved within the employee's organisation, initially with the employee's immediate superior and possibly thereafter, where disagreement about a significant ethical issue remains, with higher levels of management or non-executive directors.

13.3 If members in employment cannot resolve any material issue involving a conflict between their employers and their professional requirements they may, after exhausting all other relevant possibilities, have no other recourse but to consider resignation. Employees should state their reasons for doing so to the employer but their duty of confidentiality normally precludes them from communicating the issue to others (unless legally or professionally required to do so).

## **CHARTERED MARKETER (SA)**

### **BY-LAWS**

#### **1. Definitions**

In these by-laws, unless inconsistent with the context:

**SSETA**” means Services Seta

**“Constitution”** means the constitution of the SSETA

**“Member”** shall, unless the contrary intention appears, means Chartered Marketer **“Firm of a Management Chartered Marketer”** means any business entity owned or partly owned by, or which employs a Chartered Marketer

#### **2. Disciplinary Panel and Professional Conduct and Disciplinary Committees**

There shall be appointed by the SSETA in respect of each year

(a) A Disciplinary Panel from which Panel persons will be drawn to hear disciplinary matters in terms of these By-laws. The panel shall comprise sufficient persons to be able to provide the required number of persons to serve on the committees mentioned in (b) below

(b) The following committees which shall carry out the duties and exercise the functions and powers granted to them under these By- laws:

(i) One or more Professional Conduct Committees which shall consist of four members, of whom the chairman shall be appointed by the SSETA, the other members of the Committee being selected from the Disciplinary Panel by the SSETA or any committee or person to whom that function is delegated by the SSETA. Provided that the three members of the Committee comprise of one being a member of the SSETA, one being a person from another profession, having experience of the disciplinary processes of that other profession and the third being a member who is not a member of the SSETA. The quorum for a meeting of the Professional Conduct Committee shall be two, of whom one shall be the chairman. The Committee shall have the right at any time to co-opt any additional persons, who need not be members of the Disciplinary Panel, to the Professional Conduct Committee whenever it deems such additional appointments necessary.

The Disciplinary Panel and the Committees appointed in terms of this By-law shall remain in office and function until the appointment of their successors. Provided that if at that date either of the said Committees has still before it a partly heard case, those members who comprise such Committee shall continue to act as such for the purpose of completing such case only. Any vacancies occurring at any time in the Disciplinary Panel may be filled by the SSETA.

(ii) One or more Disciplinary Committees which shall consist of four members, of whom the chairman shall be appointed by the SSETA, the other members of the Committee being selected from the Disciplinary Panel by the SSETA or any committee or person to whom that function is delegated by the SSETA. Provided that the three members of the Committee comprise of one being a member of the SSETA, one being a person from another profession, having experience of the disciplinary processes of that other profession and the third being a member who is not a member of the SSETA. The quorum for a meeting of the Disciplinary Committee shall be two, of whom one shall be the chairman. The Committee shall have the right at any time to co-opt any additional persons, who need not be members of the Disciplinary Panel, to the Disciplinary Committee whenever it deems such additional appointments necessary.

The Disciplinary Committee and the Committees appointed in terms of this By-law shall remain in office and function until the appointment of their successors. Provided that if at that date either of the said Committees has still before it a partly heard case, those members who comprise such Committee shall continue to act as such for the purpose of completing such case only. Any vacancies occurring at any time in the Disciplinary Panel may be filled by the SSETA.

### **3. Powers and duties of Professional Conduct Committee**

(a) A Professional Conduct Committee shall consider any complaint which is brought to its attention by the Ethics Manager, and which *prima facie* appears to indicate that a member or former member, (hereinafter, for the purposes of By-laws 3,4,and 5 referred to as the accused) may have committed an offence under these By-laws. All complaints addressed to any other person shall be referred by him forthwith to the Ethics Manager.

(b) In any case where the Ethics Manager has *prima facie* evidence that there has been a contravention of these By-laws, he may, with the approval of the chairman of the Professional Conduct Committee, before bringing the matter to the attention of the Professional Conduct Committee, advise the accused in writing of the nature of the complaint and call upon him to furnish his written explanation in answer to the complaint within thirty days after the date of such notice, and at the same time warn him that such explanation may be used in evidence against him.

(c) The Professional Conduct Committee may, of its own motion, exercise its powers under these By-laws notwithstanding the absence of a complaint, in which event the provisions of By-law 3(h) shall apply.

(d) Save where the Professional Conduct Committee otherwise decides, a complaint shall be in the form of an affidavit, detailing in precise terms the specific acts or failure complained of and shall be lodged with the Ethics Manager.

(e) The Professional Conduct Committee may require a complainant to provide on affidavit further particulars on any aspect of the complaint.

(f) The Professional Conduct Committee shall not be obliged to disclose the source of a complaint.

(g) Upon receipt of a complaint the Professional Conduct Committee may, where it is of the opinion that the complaint does not disclose a *prima facie* case of improper conduct or where a complainant has neglected or refused to comply with the requirements of these By-laws, dismiss the complaint and inform the complainant accordingly.

(h) Upon receipt of a complaint the Professional Conduct Committee may, where it is of the opinion that a *prima facie* case has been made for improper conduct on the part of the accused -

(i) except where this has already been done by the Ethics Manager, advise the accused in writing of the particulars of the complaint and call upon him to furnish his written explanation in answer to the complaint within thirty days of such notice, and at the same time warn him that such explanation may be used in evidence against him;

(ii) at any time, and whether or not it has proceeded or also thereafter proceeds under paragraph (i) above, call upon the accused to appear at such time and place as it may determine to explain or elucidate or discuss the matter without prejudice to his rights. Only the Professional Conduct Committee and not the accused, will be entitled to call such a meeting and the accused will not be entitled to be represented at the meeting.

(i) When, upon consideration of the complaint and the accused's explanation in answer thereto or elucidation of the matter, either written or oral, the Professional Conduct Committee is satisfied that:

(i) the accused has given a reasonable explanation with regard to the conduct imputed to him; or

(ii) the conduct imputed to the accused does not constitute improper conduct; or

(iii) there is no reasonable prospect of proving that the accused has been guilty of the conduct imputed to him

(iv) it may decide not to proceed further in the matter and shall advise the complainant and the accused accordingly.

(j) If on receipt of the accused's explanation the Professional Conduct Committee is not satisfied therewith, or if no explanation is forthcoming the Professional Conduct Committee shall have full power to caution or reprimand the accused, or to impose a fine on the accused of not more than half the maximum amount that the Disciplinary Committee may impose in terms of the provisions of By-law 4 (g) (iii), or to prefer a formal complaint against the accused to the Disciplinary Committee. Provided that where the Professional Conduct Committee imposes a fine in terms of this By-law, it may suspend the payment of the fine or any part thereof on such conditions as it may determine.

(k) If the Professional Conduct Committee has cautioned, reprimanded or fined such accused, the accused shall have the right to demand, within a period of 21 days after his being notified in writing of the imposition of such caution, reprimand or fine, that the matter be referred to the Disciplinary Committee, which shall deal with the matter anew as a formal complaint and shall, if it finds the accused guilty of the conduct complained of be entitled to impose a sentence more severe than that imposed by the Professional Conduct Committee.

(l) If the Professional Conduct Committee considers the offence to be so serious that it might warrant the imposition of a fine greater than half the maximum amount that the Disciplinary Committee may impose (as determined by the SSETA from time to time) or suspension or exclusion from membership, the matter shall be referred to the Disciplinary Committee to be dealt with in terms of By-law 4.

(m) The Ethics Manager may request a member or employee of the SSETA to present the formal complaint of the Professional Conduct Committee or may instruct an attorney to present, or to brief counsel to present, such complaint.

#### **4. Powers and duties of Disciplinary Committee**

(a) The Disciplinary Committee, on receipt of a formal complaint in pursuance of By-law .3 or otherwise shall give the accused notice of its intention to consider the complaint, specifying the time and place of the enquiry. The Disciplinary Committee shall give such accused an opportunity of being heard before it and shall, if the accused so desires, permit such accused to be represented before it by counsel or by an attorney or by a member.

(b) Should the accused against whom any complaint is preferred neglect or fail to attend before the Disciplinary Committee at the time and place indicated in the notice issued in terms of By-law 4(a), the Disciplinary Committee shall be entitled to proceed with its consideration of the complaint in his absence.

(c) All evidence given at the hearing of a complaint by the Disciplinary Committee shall be *viva voce* unless the Disciplinary Committee resolves that any documents received in connection with the matter, shall be admitted as evidence in the proceedings. If such documents are admitted in evidence this will nevertheless not prevent any further evidence from being admitted in the proceedings. The Disciplinary Committee shall also be entitled to obtain affidavits from any persons if it considers them necessary for the better investigation of the complaint.

(d) The Disciplinary Committee shall also have the power to order the production for inspection of any books, documents and papers in the possession of or under the control of the accused against whom the complaint has been made, or from any other member if it considers such books, documents and papers necessary for the better investigation of the complaint.

(e) Where a hearing is being conducted and any person whose evidence may be material has not been called as a witness, the Disciplinary Committee may call such person as a witness.

(f) The Chairman of the Disciplinary Committee shall be permitted to engage the services of an attorney or counsel at any stage of a hearing of the Disciplinary Committee to advise him on points of law and procedure.

(g) If the Disciplinary Committee is of the opinion that the accused is guilty of a punishable offence, it shall make a finding to that effect and thereupon it shall have full power to order that the accused concerned be -

- (i) cautioned;
- (ii) reprimanded;
- (iii) fined up to a maximum amount to be determined by the SSETA from time to time;
- (iv) suspended from membership, for a period not exceeding 5 years;
- (v) excluded from membership

Provided that where the Disciplinary Committee imposes a fine in terms of By-law 4 (g) (iii) it may suspend the payment of the fine or any part thereof on such conditions as it may determine; and where the Disciplinary Committee imposes a punishment in terms of By-law 4(g)(iv) or 4(g)(v) it may suspend the coming into effect of the punishment on such conditions as it may determine.

(h) Any such fine may be recovered from the accused in civil proceedings in any court.

(i) The Disciplinary Committee shall have the power to order any accused upon whom any punishment is imposed under these Bylaws to pay such reasonable costs as the SSETA may have incurred in connection with the investigation or hearing by the Disciplinary Committee, or

such part of those costs as the Disciplinary Committee may consider just. Such costs may be recovered from the accused in civil proceedings in any court.

(j) Notice of the finding and the decision of the Disciplinary Committee shall be given forthwith to the accused concerned.

(k) Any person who has been excluded from membership, in terms of By-law 4 (g) (v) shall not be entitled to apply for re-admission as a member, until the expiry of a period of 10 years reckoned from the date of such exclusion, provided however that the SSETA may reduce this period by up to 5 years in any case.

(l) Hearings shall be conducted by the Disciplinary Committee at a venue determined by the Ethics Manager.

## **5. Record and publication of findings and decisions**

(a) All findings and decisions of the Professional Conduct and Disciplinary Committees shall take effect when made and shall be reported to the SSETA who shall cause the same to be duly recorded. Provided that where the matter has been referred to the Disciplinary Committee at the request of the accused in terms of By-law 3 (k) that penalty shall not take effect until the Disciplinary Committee has dealt with the matter.

(b) (i) Where the Professional Conduct Committee or the Disciplinary Committee has imposed

a penalty on an accused, the relevant Committee shall be entitled to direct that there be publication of the name of the accused, and if the Committee so directs, also the name of his firm, a brief description of the offence and the penalty imposed, in such manner and to such persons as the Committee shall decide. Provided that the Committee shall not be entitled to direct that publication be made without first advising the accused thereof and giving him an opportunity of being heard on the question before the Committee.

(ii) Where the Professional Conduct Committee or the Disciplinary Committee has found an accused not guilty of the complaint, no publication of that fact may take place unless the accused has requested the relevant Committee to direct that publication should take place. If the accused does so request that publication should take place then the relevant Committee shall direct (unless it is of the view that there are exceptional circumstances which would justify its not so directing) that there be publication, in such manner and to such persons as that Committee shall decide, of the name of the accused, a brief description of the alleged offence and the finding of the relevant Committee. The Committee may also in its discretion direct that the name of the firm of the accused be published.

**6. Power to make rules**

The SSETA shall have power to make such rules (not inconsistent with the Constitution and By-laws) as it may consider necessary for the performance of the respective functions of the Professional Conduct Committee and the Disciplinary Committee.

**7. Rules or Code of Professional Conduct**

The SSETA shall have the power to prescribe, from time to time, Rules or a Code of Professional Conduct, applicable to members.

**8. Amendment of By-laws**

The SSETA may, from time to time, amend these By-laws as provided in the Constitution.

**9. Interpretation of By-laws**

The headings and sub-headings shall not affect the interpretation of these By-laws.

**10. Punishable offences**

The following acts and practices, whether of commission or of omission, upon the part of any person who is or was a member at the time of the alleged acts or practices, shall be offences and such member or former member found guilty thereof as provided in these By-laws shall be liable to the penalties prescribed in these By-laws. Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct –

- (a) conducting himself with gross negligence in connection with any work performed by him
- (b) accepting directly or indirectly any commission, brokerage or other remuneration in respect of professional or commercial business referred to others as an incident to his service to any client or his employer except with the knowledge and consent of that client or employer
- (c) improperly obtaining or attempting to obtain work;
- (d) soliciting or advertising or canvassing in South Africa (or in any territory outside South Africa designated by the SSETA from time to time) in any manner not permitted by the Rules or Code of Professional Conduct prescribed by the SSETA from time to time;
- (e) willfully refusing or failing to perform or conform with any of the provisions of these By-laws which it is his duty to do;

- (f) committing a breach of any Rule or Code of Professional Conduct prescribed by the SSETA from time to time in terms of By-law 7 or, after having been previously warned by the SSETA or any committee appointed by it, continuing to commit a breach of such Rules or Code of Professional Conduct;
- (g) conducting himself in a manner which, in the opinion of the Professional Conduct Committee or the Disciplinary Committee, is discreditable, dishonourable, dishonest, irregular or unworthy or which is derogatory to the SSETA, or tends to bring the profession of marketing into disrepute;
- (h) failing to answer or deal with appropriately within a reasonable time any correspondence or other communication from the SSETA or any person which requires a reply or other response;
- (i) failing to comply within a reasonable time with an order, requirement or request from the SSETA;
- (j) failing after demand to pay any subscription or any fee, levy or other charge payable to the SSETA.