

SINGAPORE MEDIATION CENTRE

Disciplinary Rules for Adjudicators

*Published pursuant to section 28(4)(e) of the
Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed)*

1. Filling of Complaint

- 1.1 The Complaint shall be filed within 28 days from the date the Adjudication Determination is made by the Adjudicator or the date of withdrawal of the Adjudication Application by the Claimant. The Complaint shall be made in the form of a Statutory Declaration.
- 1.2 The Complaint should contain full details of the following:
 - (a) the allegation being made;
 - (b) the relevant supporting documents; if any and
 - (c) reasons why the Adjudicator's behaviour or actions are believed to constitute misconduct.
- 1.3 The Complaint, together with any supporting documents, shall be served on the Adjudicator complained against.
- 1.4 The Adjudicator shall file a Response to the Complaint within 14 days of receipt of the Complaint. A copy of the Response shall be served on the Complainant.
- 1.5 The Complainant may file a Reply to points raised in the Response within seven days of receipt of the Response. A copy of the Reply shall be served on the Adjudicator.

2. Communications

- 2.1 The Complaint shall be made in writing with reference to these Rules and addressed to the Executive Director of SMC ("Executive Director") or such officer as the Executive Director may direct.
- 2.2 Any communication thereof shall also be made in writing and shall be addressed to the Executive Director.
- 2.3 Communications may be conveyed by hand, by registered post, by email or by fax.

3. Misconduct

- 3.1 Misconduct is defined as any breach of the **Code of Conduct of Adjudicators** and shall include any failure on the part of an Adjudicator to comply with any direction or order issued by any of the committees or tribunals constituted under these Rules.

4. Professional Conduct Panel

- 4.1 A Professional Conduct Panel ("PCP") shall be established. The panel shall be appointed by the Chairperson of SMC for a term of three years and shall constitute:
 - (a) no more than 20 members who are senior adjudicators¹; and
 - (b) no more than 10 members who are non-adjudicators.

¹ *These are adjudicators who are members of SMC's Construction Adjudicator Accreditation Committee or who have delivered at least 15 determinations either as adjudicator or as review adjudicator.*

4.2 The members of the PCP shall serve on the Preliminary Review Committee (“PRC”), the Disciplinary Investigation Committee (“DIC”) and the Disciplinary Appeals Tribunal (“DAT”) as set out in these Rules.

4.3 The Chairperson of SMC shall appoint the Chairperson of the PCP.

5. Preliminary Review Committee

5.1 Within 14 days of the filing of a Complaint, the Chairperson of the PCP shall constitute a PRC of two persons drawn from members of the PCP, one of whom shall be a senior adjudicator.

5.2 The PRC shall study the Complaint, the Response and the Reply (if any), and in appropriate situations, invite the Complainant and the Adjudicator to resolve the matter by mediation.

5.3 Within 14 days from the expiry of the last day for the Complainant to file a Reply pursuant to paragraph 1.5 hereof, or where there is no Response, within 14 days from the expiry of the last day for the Adjudicator to file a Response pursuant to paragraph 1.4 hereof, or such written extended time as the Chairperson of the PCP may allow, the PRC shall make its recommendation (“**Recommendation**”) with reasons to the Chairperson of the PCP to:

- (a) dismiss the complaint; or
- (b) conduct a full inquiry.

5.4 The PRC shall recommend that the Complaint be dismissed where both members are unanimously of the view that the Complaint is without substance, frivolous or vexatious. If both members are unable to agree as to the course of action to recommend or if they are of the view that a full inquiry should be conducted, the PRC shall recommend that a full inquiry be conducted.

5.5 Both the Complainant and the Adjudicator shall be served a copy of the PRC’s reasoned Recommendation.

5.6 Where a full inquiry is recommended, the Chairperson of the PCP shall within 14 days of the date of the Recommendation, constitute a DIC. Both the Complainant and the Adjudicator shall be notified accordingly.

6. Disciplinary Investigation Committee

6.1 The Chairperson of the PCP shall constitute a DIC of three persons drawn from the PCP, one of whom shall be appointed as Chairperson of the DIC.

6.2 The Chairperson of the DIC shall be a Senior Counsel or a lawyer of at least 15 years standing. The Chairperson and members of the DIC need not be accredited adjudicators, and may serve on the DIC provided he or she:

- (a) has no interest in the adjudication or in the outcome of the disciplinary proceedings; and
- (b) had not served earlier in the PRC relating to the same matter.

6.3 The DIC shall:

- (a) determine the scope of its jurisdiction;
- (b) issue such directions as appropriate for the better conduct of the proceedings;
- (c) decide on any finding of law, fact, evidence or any issue referred in the Complaint, the Response and the Reply (if any);

- (d) operate on the civil burden of proof, namely the balance of probabilities; and
 - (e) conduct a physical hearing unless the DIC considers that the matter may be reasonably conducted without such a hearing.
- 6.4 The DIC shall deliver its reasoned determination (“**DIC Determination**”) to the Chairperson of the PCP within 60 days from the date of its constitution (or such written extended time as the Chairperson of the PCP may allow). The DIC Determination shall be made by majority vote.
- 6.5 Where the DIC determines that the case for misconduct against the Adjudicator has not been made out, the Complaint shall be dismissed.
- 6.6 Where the DIC determines that the case for misconduct against the Adjudicator has been made out, it may determine that one or more of the following courses of action to be taken:
- (a) notify the Adjudicator of the misconduct but take no further action;
 - (b) reprimand or warn the Adjudicator as to his/her future conduct;
 - (c) suspend the Adjudicator from the SMC Register of Adjudicators for a period not exceeding 24 months during which period the Adjudicator shall not be appointed adjudicator to any matter;
 - (d) require the Adjudicator to take such additional training or mentoring as may be prescribed in the DIC Determination; and/or
 - (e) remove the Adjudicator from the SMC Register of Adjudicators.
- 6.7 The Chairperson of the PCP shall serve a copy of the DIC Determination on the Adjudicator and the Complainant within seven days from the date of the DIC Determination.

7. Appeal to the Disciplinary Appeals Tribunal

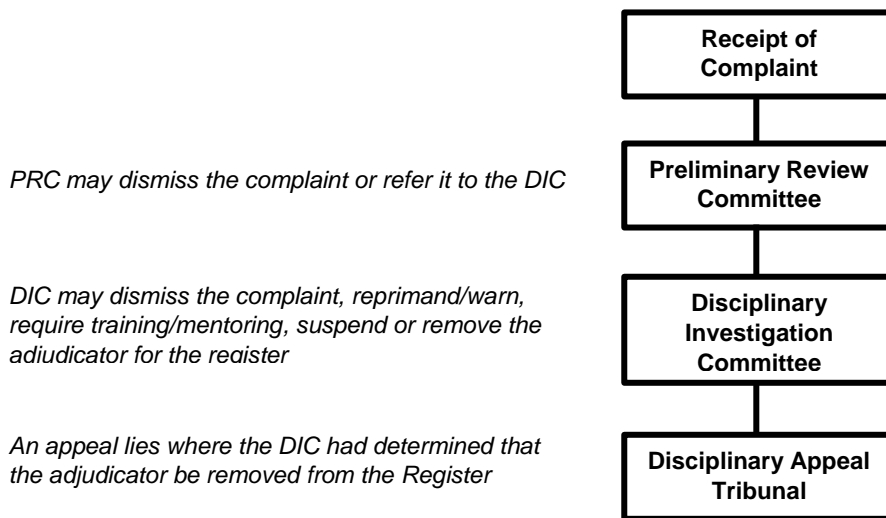
- 7.1 An Adjudicator is entitled to file an appeal against the DIC Determination where it is determined that the Adjudicator shall be removed from the SMC Register of Adjudicators (“**Statement of Appeal**”).
- 7.2 The Statement of Appeal shall be filed with the Chairperson of SMC within 14 days from the date of service of the DIC Determination.
- 7.3 A copy of the Statement of Appeal shall be served on the Complainant who shall be entitled to file a statement in response to the Statement of Appeal (“**Response to the Appeal**”) within 14 days of receipt of the Statement of Appeal. A Response to the Appeal shall be served on the Adjudicator.
- 7.4 Within 14 days from the date of filing of the Statement of Appeal, the Chairperson of the SMC shall constitute a committee of three members to form the DAT. Members of the DAT may be drawn from the SMC Board of Directors or from the PCP. A person may be appointed to serve on the DAT provided that the person:
- (a) has no interest in the adjudication or in the outcome of the disciplinary proceedings; and
 - (b) had not served earlier in the PRC or the DIC relating to the same matter.
- 7.5 Within 30 days from the date when the Response to the Appeal is received by the DAT or from the date when the DAT is informed by the Executive Director that no Response to the Appeal has been filed within the prescribed period, the DAT may:
- (a) dismiss the Appeal;
 - (b) uphold the DIC Determination; or
 - (c) vary, change or otherwise depart from the courses of action determined by the DIC.

- 7.6 A copy of the DAT's reasoned Decision shall be served on the Adjudicator and on the Complainant.
- 7.7 The DAT is entitled to proceed only on the materials properly lodged before the Tribunal and is not obliged to conduct a hearing unless it considers it necessary.

8. Rules of Evidence

- 8.1 The rules of evidence shall not apply to the consideration and determination of matters by the PRC, DIC or the DAT.

9. Overview of the Disciplinary Rules



Issued by:

Singapore Mediation Centre
1 April 2017