

# **IFIA Complaints and Disciplinary Procedures**

## **Regulation 4 made by the Council pursuant to Article 37 of the Articles of Association on 29<sup>th</sup> July 2003**

### **Scope of Procedure**

1. These procedures describe the responsibilities, powers and actions to be taken by the IFIA Council, Director General, Secretariat and Members of IFIA in the event of Complaints being made relating to breaches and/or non conformance with IFIA statutes, resolutions, regulations or rules (hereinafter referred to as Complaints) and any subsequent processes relating to remedial action, suspension or termination of membership of a Member and any corresponding appeal processes.
2. Complaints relating to the conduct, performance, activities or decisions of any Member of IFIA, or of IFIA acting through any officer of IFIA or the Secretariat or the Council of IFIA or of any Committee of IFIA or any Members thereof are the subject of these procedures. Such Complaints may include the examination by the Director General of Assurance Reports containing Reportable Conditions pursuant to the IFIA Compliance Code, and Complaints by a third party such as governments or international institutions or potential new Members. These procedures are not applicable to commercial disputes between Members of IFIA and third parties nor are these procedures applicable to disputes between individual servants or agents of IFIA Members and their employers.
3. Complaints may be initiated by any Member of IFIA, any Council Member, Officer or Committee Member of IFIA or any third party as described in Clause 2. Any such person or body initiating a Complaint, other than the Director General or other officer of IFIA, is hereinafter referred to as Complainant. Except for Clauses 5-11 (which apply only to Complaints initiated by Complainants) and except where the context otherwise requires, these procedures apply to all Complaints, including those initiated by the Director General or other officer of IFIA.

### **Administration of Complaints Procedures**

4. Each Member of IFIA shall nominate to IFIA from time to time an individual officer or employee who shall be designated the Complaints Officer for such Member. Such Complaints Officer shall be the conduit for both inwards and outwards Complaints concerning that Member.
5. A Complaint shall be lodged in the first instance with the IFIA Secretariat and the Secretariat will promptly acknowledge receipt in writing to the Complainant.
6. The Complaint shall contain the following information in writing:
  - (a) the names, addresses and contact details in full of the party making the Complaint and of the party or parties against which the Complaint is made (the Respondent).
  - (b) a statement setting out the facts and circumstances of the Complaint against the Respondent specifying all matters of which Complaint is made and identifying

each article or clause of IFIA statutes, resolutions, regulations or rules which is alleged to have been violated.

- (c) the relevant documentation or information relied upon by the Complainant to establish the alleged Complaint.
7. Upon receipt of the Complaint the IFIA Secretariat will ensure that the Complainant has clearly stated and properly documented the Complaint being made and that all relevant claims, supporting documents and statements made by the Complainant or other interested parties are properly authenticated in writing. Such authentication is essential before the Complaint can be considered as a formal Complaint. All issues which the Complainant wishes to raise must be specifically stated in writing.
  8. Following receipt and authentication of the Complaint the IFIA Secretariat shall inform the Director General of the known facts of the case, provided always that the Director General is a disinterested party. In the event that the Director General cannot be said to be a disinterested party then the provisions of Clause 35 hereof shall take effect.
  9. Information received in whatever form by the Secretariat and/or the Director General shall remain confidential to those parties and shall not be revealed to third parties, including other Members of IFIA, until the procedures set out in this document necessitate wider distribution of information.
  10. If the Director General considers, after receiving the relevant information and documentation from the Secretariat, that the matters complained of by the Complainant fall outside the scope of these procedures or that the Complaint is out of time under Clause 36 below, he shall so advise the Complainant. In any other case, he shall proceed with a thorough investigation of the Complaint.
  11. The Director General may call for such additional evidence and information as he may think necessary from the Complainant and when he considers that he has sufficient information he shall advise the Respondent of the receipt and substance of the Complaint and by whom the Complaint has been made and shall send the file received from the Complainant to the Respondent.
  12. If a Complaint is initiated by the Director General he shall send to the Respondent a Statement containing the same details as required by Clause 6(b) above, together with the relevant documentation relied on to establish the alleged Complaint.
  13. Upon being notified of a Complaint the Respondent will be requested to respond promptly with its comments on the Complaint and in any event within fourteen days or such other time limit as the Director General may consider reasonable.
  14. Both parties will cooperate with the Director General in providing information and in the review of relevant files and shall give the Director General access to relevant persons. The Director General may if he thinks fit appoint an auditor or other adviser to assist in the investigation. The Director General in discussion with the Complainant and the Respondent will try to reconcile the parties and settle the matters in issue if he considers this appropriate in the circumstances.

15. Where the immediate issues cannot be resolved by direct discussion as above to the satisfaction of both parties the Director General shall offer the parties the option of referring the matter for technical advice or conciliation to an Advisory Committee (“AC”). The AC shall comprise at least three people, one representative nominated by each party and an independent chairman appointed by the President of IFIA. If a Complaint involves more than one Complainant or more than one Respondent each of such bodies shall have the right to nominate one person to the AC.
16. Where the Complaint is against IFIA, its Secretariat, its Director General, its Council or its Committees or any Members thereof, the President will nominate a representative for IFIA.
17. In default of appointment of a representative to the AC by any concerned party within fourteen days of being called upon to make such an appointment by the Director General the President may make such an appointment on behalf of the defaulting party and give notice thereof to the parties. The representative so nominated by the President shall then use his best endeavours in a fair and impartial manner to represent the party on whose behalf he has been nominated.
18. The AC once appointed shall have the same powers as the Director General has under this procedure to enquire into the matter the subject of the Complaint. If the matter cannot be resolved by the Director General or the AC then when the immediate issue has been investigated, the Director General or the AC, as the case may be, shall submit a written report to the President of IFIA as soon as possible and in any event within 60 days. Such report shall contain the recommendations on action(s) to be taken, if any, in relation to the Complaint including any specific action to be taken. If the report of the AC is not unanimous the various views shall be set out in the report and the President shall refer the report to the Council as provided in Clause 21 below.
19. Unless the Director General decides that the Complaint should continue to be investigated, any Complaint which has been lodged by the Complainant may be withdrawn at any time by notice in writing to the Director General or the AC. In the event that the Complainant fails to cooperate with the investigations and processes for a period which the Director General or the AC considers to be unreasonable, the processes may be discontinued on reasonable notice being given in writing to the Complainant.
20. The fees and expenses of the investigations by the Director General or the AC, including the fees and expenses of the Members of the AC, shall be payable by the parties as the Director General or the AC, in their discretion, so order.

#### **Reference of Complaints to the Council and Powers of the Council**

21. Where the steps outlined above do not resolve the Complaint to the satisfaction of both the Complainant and the Respondent, or where the Director General considers reference of the Complaint to the Council is necessary or desirable in the interests of IFIA, the Director General shall refer the report to the Council. The Council shall consider the matter and may consult with other appropriate parties as the Council thinks fit. The Council shall decide upon what action shall be taken, if any, and the method of implementation of any decision. The Council shall not be bound by the

recommendations received following the investigation and shall have power to take such actions as it thinks appropriate. The Council may revise any order on costs made by the Director General or the AC or make a new order on costs as it thinks fit.

### **Remedial Action, Suspension and/or Termination**

22. Where the Council concludes, after consideration of a Complaint, that a Member:
- 22.1 is in disregard or infringement of the statutes, resolutions, regulations or rules of IFIA; or
  - 22.2 has failed to fulfill financial obligations to IFIA; or
  - 22.3 has failed to comply with the provisions of the criteria for membership of IFIA; or
  - 22.4 has failed to comply with any sector specific requirements established by any IFIA Committees and approved by the Council; or
  - 22.5 has conducted itself in a way that is considered by the Council, in its absolute discretion, to be detrimental to the proper conduct of business by a Member of IFIA and which threatens to damage the interests of IFIA as a professional body,
- the Council may, at its discretion:-
- 22.6 issue a warning or reprimand to the Member or request that remedial action be taken within a period specified by the Council.
  - 22.7 suspend IFIA voting rights or other rights of the Member and/or suspend from membership of the Council or of any Committee any representative of that Member.
  - 22.8 withdraw the Member's membership of any IFIA Council, Committee or project team or group.
  - 22.9 suspend the Member from membership of IFIA.
  - 22.10 terminate the Member's membership of IFIA.
23. The duration of any suspension of rights or other disciplinary procedure shall be a matter for the Council to decide in its absolute discretion having regard to the facts and circumstances of each case.
24. Prior to the suspension of any rights or other disciplinary procedure or suspension or termination of membership which is proposed by the Council the Respondent shall be advised of the Council's intention and shall be given thirty days within which to make oral or written representations to the Council and/or to appear before the Council if the Respondent or the Council requests such an appearance.

### **Appeal Against any Council Decision made on a Complaint**

25. Within fourteen days of the notification of any decision of the Council to the Respondent the Respondent may appeal against such a decision as set out hereafter. In the event of such an appeal being lodged the decision of the Council shall be suspended pending the outcome of the appeal.
26. The Council shall not publicise any of its decisions until such fourteen day period shall have expired or until the outcome of any appeal is declared if an appeal has been lodged within the fourteen day period.
27. If a Respondent intends to appeal it must serve on the IFIA Secretariat within fourteen days of the notification of the decision a written notice of appeal stating its objections and the grounds for seeking reconsideration of the decision of the Council. The Secretariat will promptly pass on such notice to the Council.
28. Upon receipt of a notice of appeal the Council will within seven days constitute an independent Review Body (RB) comprised of three persons one of whom shall be nominated by the Council as Chairman of the RB. If the Complainant or the Respondent objects to any of the nominated Members of the RB within seven days of being notified of their names the Council will forthwith request the President of the Law Society for England and Wales to appoint persons to the RB in substitution for those to whom objection has been taken.
29. The RB, once constituted, shall meet with the parties concerned in the matter the subject of the original Complaint and will establish its own procedure for hearing the appeal and reviewing the substance of the Complaint and the decision of the Council. The RB will issue its decision on the matter under appeal within sixty days of the RB being constituted. The RB shall have complete discretion as to its decision and as to any action it may think appropriate in variation of or substitution for the decision of the Council. The RB may at its discretion ask the parties for a deposit on account of fees and expenses before proceeding. The RB shall have complete discretion as to which parties shall bear the fees and expenses of the appeal hearing and of the RB Members. All decisions of the RB shall be final and binding on IFIA and all its Members, including the Complainant and the Respondent.

### **Applicable Law**

30. The law applicable to all matters arising out of or being considered under these rules shall be English law and all processes hereunder shall be conducted in England unless otherwise agreed by the parties.

### **Miscellaneous**

31. When the Complaint is from a third party about the commercial activities of a Member of IFIA, the Secretary will advise the Complainant that IFIA is not responsible for dealing with such Complaints and will refer the Complainant to the IFIA Member concerned. In such a case the Secretary will also advise the Member of the receipt of such a Complaint. Where a Committee has specific third party Complaints procedures in place, which have been approved by the Council, such procedures shall be duly

complied with and followed, for example the exporter Complaints procedure contained in the IFIA PSI Code of Practice which is based on the requirements of the WTO Agreement on Preshipment Inspection.

32. All persons involved shall take all necessary measures to preserve the confidentiality of information obtained during the investigation of the Complaint. In particular, any legitimate request for preservation of anonymity or confidentiality expressed by those making claims or statements in connection with a Complaint shall be respected.
33. The IFIA Secretariat shall maintain a detailed and complete record of the receipt, handling and outcome of every Complaint. The Secretariat shall advise the Council of Complaints received at each Council meeting but will preserve the anonymity of the Complaint until the matter comes before the Council for action.
34. The President of IFIA and the Director General will maintain complete confidentiality concerning all Complaints of which they become aware until such time as other persons need to be advised of a Complaint in accordance with the above procedures.
35. In the event that the President or the Director General or the Secretariat is considered by any party involved in any of the above procedures to be inappropriate to discharge any of the functions set out above by reason of being the subject of the Complaint or, in the case of the President, his company being the subject of the Complaint, or being otherwise disqualified to act by reason of any conflict of interest then the Council shall appoint a suitable person who is not subject to any such involvement or conflict of interest to perform the relevant functions hereunder.

#### **Time limit**

36. In order to be considered under these procedures, any Complaint must be initiated promptly, and the necessary steps as specified in Clauses 5 and 6 (or Clause 12 as the case may be) must be taken no later than one year after the date of the event (or the latest event, if more than one) giving rise to the Complaint. In the case of a Complaint initiated by the Director General in relation to an Assurance Report containing Reportable Conditions pursuant to the IFIA Compliance Code, the period of one year runs from the date when the relevant Assurance Report is received by IFIA.

#### **Entry into force**

37. These procedures enter into force with effect from 31<sup>st</sup> July 2003 and apply to any Complaint initiated (as specified in Clauses 5 and 6 or Clause 12 as the case may be) on or after that date, irrespective of the date of the events giving rise to the Complaint, subject always to the provisions of Clause 36, and provided always that any Complaint which has already been initiated prior to 31<sup>st</sup> July 2003 pursuant to any other procedure may not be the subject of further consideration under these procedures unless so agreed by both the Complainant and the Respondent. Council Regulation no. 3 (IFIA Procedure for the Investigation and Resolution of Complaints, 12<sup>th</sup> October 2001) is superseded by these procedures with effect from 31<sup>st</sup> July 2003 except insofar as it remains applicable to existing Complaints initiated prior to that date.