

Attachment 1

MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

DISCIPLINARY RULES

Made by Decision of the Board

27 May 2003

**Showing amendments approved by the Board up to and including amendments
made to 30 November 2007.**

MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

DISCIPLINARY RULES

SECTION 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Rules, unless the contrary intention appears:

“**AMC**” means an Accredited Mortgage Consultant as defined in the Constitution;

“**Applicant**” means a person who has lodged an application with the Association to be accepted as a Member;

“**Association**” means Mortgage & Finance Association of Australia ACN 006 085 552;

“**Board**” means the Board of the Association as defined in the Constitution;

“**Business Day**” means any day not being a Saturday, Sunday or a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done under these Rules;

“**CMC**” means a Certified Mortgage Consultant as defined in the Constitution;

“**Chairperson**” means the Chairperson of the Tribunal as constituted in respect of a particular proceeding;

“**Commercial Dispute**” means a dispute between members where the substantial basis of the dispute relates to their respective business interests and may include monetary claims such as entitlement to remuneration or the sharing of commissions. **NOTE:** the Tribunal should not enter into nor comment on the Commercial Dispute, but may deal with any disciplinary issue arising from that dispute and if the conduct is found to be in breach, then the Tribunal should have regard to whether it is a Commercial Dispute when contemplating any penalty and, for example, may not find misconduct unless there were adverse effects on a member of the public.

“**Constitution**” means the Constitution of the Association as amended from time to time;

“**Complainant**” means the person or organisation making a complaint against a Member.

“**Corporation**” means corporation as defined in the Corporations Act 2001 of the Commonwealth;

“**COSL or COS Limited**” means the service for complaint and dispute handling established by Credit Industry Ombudsman Service Limited or its successor in title;

“**COSL Rules**” means the Credit Ombudsman Service Rules made by COSL Limited;

“**COSL Referral**” means a complaint referred to the Association pursuant to the COSL Rules in connection with a complaint made by a consumer about the conduct of a Member and which

complaint specifically calls for the suspension of a Member's membership or the expulsion from membership of a Member or other disciplinary action permitted under the Rules.

“Credit Industry Ombudsman” means the Credit Industry Ombudsman appointed pursuant to the Constitution of COS Limited and the COSL Rules;

“Investigating Officer” means a person appointed pursuant to sub-rule 2.1.1;

“Investigation Report” a report on investigation(s) made by the Investigating Officer pursuant to Rule 2.4.1;

“Member” means a Member of the Association as defined in the Constitution;

“Membership Secretary” means the person appointed to that position by the Association from time to time;

“Misconduct” means Misconduct by a Member as defined in the Constitution or as prescribed from time to time by the Board for the purposes of the Constitution and further for the purpose of avoidance of any doubt whatsoever Misconduct means any Misconduct involving:

- (a) fraud or dishonesty, which is misleading and deceptive and conduct which shows gross negligence;
- (b) a refusal or neglecting or failure to comply with a provision of the Constitution, the MFAA Code of Practice, the COSL Rules, or the Disciplinary Rules;
- (c) misrepresentation of material facts in relation to an application for Membership of the Association;
- (d) misrepresentation of material facts in relation to accreditation as an Accredited Mortgage Consultant, Certified Mortgage Consultant or other accreditation that the Board may prescribe from time to time;
- (e) misrepresentation of material facts concerning professional development points
- (e) misrepresentation of material facts in relation to any borrower, guarantor, proposed borrower or proposed guarantor;
- (f) unreasonably failing or refusing to provide information to the Investigating Officer;
- (g) whether or not any Misconduct referred to in paragraphs (a) to (f) is involved, any of the following acts or omissions amount to Misconduct namely Misconduct:
 - (i) which indicates a failure to understand or practice the principles of honesty and fair dealing in relation to other participants in the Mortgage & Finance Industry, to Regulatory Authorities, to the Association, to Customers, or to the public; or
 - (ii) which indicates a substantial or consistent failure to reach reasonable standards of efficiency and competence in the conduct of business in the Mortgage & Finance Industry; or
 - (iii) which is prejudicial to the reputation or interests of the Association; or
 - (iv) which is prescribed by the Board being a failure, without reasonable excuse, proof of which shall lie on the Member, to comply with a decision

or any penalty or order of the Tribunal as to a penalty imposed on the Member; or

- (v) which is unethical conduct or conduct unbecoming a member; or
- (vi) which the Board may in addition from time to time prescribe as Misconduct for the purposes of this Constitution.;

“Non-active AMC” means a person whose Membership of the Association has been suspended pursuant to Rule 5.1.1 or 5.1.2 and includes any similar designation as prescribed by the Board from time to time;

“Notice of Allegation” a written notice provided by the Investigating Officer to the Tribunal and the Member concerned by which an Allegation of Misconduct is made;

“Notice of Alleged Misconduct” a written notice provided by the Investigating Officer to the Member concerned by which an Allegation of Misconduct is made;

“Officer” means officer as defined in the Corporations Act 2001 of the Commonwealth;

“Respondent” means the person or organisation against which an allegation of Misconduct has been made;

“Rules” means these Disciplinary Rules as amended from time to time;

“State Council” means a State Council of the Association as defined in the Constitution;

“Suspension Order” means an order of the Tribunal to suspend membership;

“Tribunal” means the MFAA Tribunal established pursuant to clause 14.1.1 of the Constitution and Rule 4.1.1;

“Tribunal Secretary” means the person appointed to that position from time to time by the Association.

1.2 Interpretation

In the interpretation of the Rules:

- (a) headings are disregarded;
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (c) singular includes plural and vice versa and words importing any gender include all other genders;
- (d) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force;
- (e) where the Rules require a notice to be served on a Member, the notice is to be regarded as having been given by the Association and received by the Member:
 - (i) if by delivery in person, when delivered to the Member;

- (ii) if by post, 3 Business Days from and including the date of postage to the Member's address entered in the Register; or
- (iii) if by facsimile transmission, whether or not legibly received, when transmitted to the Member's fax number entered in the Register and the Association's facsimile machine confirms receipt;

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (Member's time), it is regarded as having been received at 9.00am on the following Business Day;

- (h) if there is an inconsistency between the provisions of the Rules and the Constitution then the provisions of the Constitution are to prevail

SECTION 2 –

INVESTIGATIONS, INCLUDING OF COMPLAINTS

2.1 Investigation of complaints

- 2.1.1 Appointment of Investigation Officer. The Board must appoint one or more persons to the position of Investigating Officer, but the persons so appointed may be individuals or a company or partnership. Each individual person appointed to the position of Investigating Officer, or if the Investigation Officer is not a natural person, each individual appointed or engaged to assist the Investigation Officer must have legal, accounting or auditing qualifications or experience to the satisfaction of the Board and shall not be a Full Member of MFAA or an AMC or CMC. The powers of an Investigating Officer may be exercised by each person so appointed. The role of the Investigation Officer is to investigate complaints and suspected breaches of the Constitution, the Code of Practice, and to investigate referrals and applications concerning Membership in accordance with these Rules, and where required, to assist the Tribunal, as an impartial friend of the Tribunal, in proceedings coming before the Tribunal.
- 2.1.2 Lodging of Complaints. A complaint received by the Association from any person, including but not limited to any Member, or COSL Limited, or to a State Council or the Board, in relation to conduct of a Member, may be referred directly to an Investigating Officer. A complaint may be received and acted upon regardless of whether the complainant is identified in the complaint.
- 2.1.3 If a complaint is referred to the Investigating Officer by COS Limited, or by the MFAA through a State Council or the Board, ASIC or by another regulatory body, the Investigating Officer must conduct an investigation into the complaint.
- 2.1.4 Subject to Rule 2.1.3, the Investigating Officer must not decide to conduct an investigation, including an investigation in his or her own motion, whether the investigation will arise from a complaint or at the motion of the Investigation Officer:
 - (a) unless he or she is of the opinion on a bona fide basis that a Member may have engaged in conduct amounting to Misconduct;

- (b) if he or she is of the opinion that it is more appropriate that the complaint be dealt with by a Court or another independent complaints, disciplinary, conciliation, or arbitration body or procedure;
- (c) if the complainant seeks any compensation or reimbursement whatsoever and the complainant is not alleging that a Member has engaged in conduct amounting to Misconduct;
- (d) if the act or omission giving rise to the complaint occurred before the date of commencement of the Rules;
- (e) if the subject matter of the particular complaint was comprised in a complaint by the same person (or any one or more of them) previously considered by the Investigating Officer or the Disciplinary Tribunal unless the Investigating Officer is of the opinion that relevant new evidence is available;
- (f) if the Investigating Officer is of the opinion, following consultation with the Chair of the Disciplinary Tribunal, that the complaint is frivolous or vexatious or is being pursued by the complainant in a frivolous or vexatious manner or for an improper purpose;
- (g) if the substance of the matter is a commercial dispute between members.

2.1.5 Subject to Rule 2.1.6, the Investigating Officer must, before deciding to conduct an investigation, require that the complainant, if identifiable, provide a complaint in written form and particulars of the complainant's identity and, where in the Investigating Officer's opinion it is necessary so to do to afford procedural fairness to the Member the subject of the complaint, the complainant's written consent to the disclosure of his, her or its identity.

2.1.6 In all cases, the Investigating Officer will keep the identity of the complainant confidential except where the complainant has consented in writing to the disclosure of his, her or its identity.

2.1.7 Rule 2.1.4 does not prevent the Investigation Officer from conducting an investigation or from referring a matter to the Tribunal on the initiative of the Investigation Officer where there has been no complaint. but the Investigation Officer is of the opinion on a bona fide basis that a Member may have committed Misconduct.

2.1.8 Where the Investigating Officer is of the opinion that disclosure of the identity of the complainant is necessary to afford procedural fairness to the Member the subject of the complaint, but the complainant refuses to provide such written consent, and the Investigating Officer is not able to substantiate the subject matter of the complaint by independent means, without reference to the identity of the complainant, the Investigating Officer must not take any further action in relation to the complaint other than to advise the complainant that no further action will be taken in relation to the complaint.

2.2 Powers of Investigating Officer

2.2.1 The Investigating Officer may use all lawful means to conduct the investigation of a complaint and may conduct the investigation in any manner, using commonly accepted investigative techniques that the Investigating Officer considers fit.

2.2.2 The Investigating Officer may inspect the Association's membership and other records for the purpose of undertaking his, her or its duties as an Investigating Officer.

- 2.2.3 The Investigating Officer may require a Member to produce to the Investigating Officer documents (including records kept in electronic form) within the possession, custody or control of the Member, by way of notice in writing to the Member specifying particular documents or categories of documents, provided that the documents or categories so required to be produced must in the Investigating Officer's reasonable opinion be potentially relevant to the subject matter of a current investigation being conducted by the Investigating Officer. A Member who receives such a notice must produce the documents required to the Investigating Officer within fifteen (15) Business Days from receipt of the notice, or such other time as is agreed in writing with the Investigating Officer. Failure to do so in a timely manner may result in further action being taken by the Tribunal for Misconduct pursuant to Rule 2.2.7.
- 2.2.4 The Investigating Officer may require a Member who is a natural person to attend on him or her for the purpose of being interviewed, by way of written notice in writing to the Member specifying the date, time and place of the interview and notifying the Member that he or she may have a legal representative present at the interview. A Member who receives such a notice must attend the interview and must answer all questions asked of him or her in the interview. Failure to do so in may result in further action being taken by the Tribunal for Misconduct pursuant to Rule 2.2.7.
- 2.2.5 The Investigating Officer may issue a notice in writing to a Member that is a Corporation requiring that the Member make available for interview any Officer of the Member, or requesting that the Member make available for interview any employee of the Member as specified in the notice. Upon receiving such a notice the Member must cause the Officer specified to attend the interview, and must use its best efforts to ensure that each employee specified attends the interview. Failure to do so in a timely manner may result in further action being taken by the Tribunal for Misconduct pursuant to Rule 2.2.7. Any such notice issued by the Investigating Officer in relation to an employee must include a notification to the Member that:
- (a) the Investigating Officer does not have the power to compel the employee specified in the notice to be interviewed; and
 - (b) any employee who agrees to be interviewed may have a legal representative present at the interview.
- 2.2.6 An interview conducted by the Investigating Officer must be recorded on audio tape, computer disc or other electronic form, and a copy made available to the Member and any other person interviewed as soon as practicable upon request.
- 2.2.7 A Member who refuses to cooperate with the Investigating Officer may be guilty of Misconduct and therefore subject to these Disciplinary Rules.
- 2.2.8 The Investigating Officer may, after time limits for the production of documents and information have expired, finalise the Report to the Tribunal based on the evidence available at that time.

2.3 Power to suspend

- 2.3.1 If at any time in the course of an investigation the Investigating Officer suspects on reasonable grounds that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, or an act by which the MFAA is brought into disrepute, the Investigating Officer may, by notice in writing setting out the reasons, refer the matter to the Chairperson or Deputy Chairperson of the Tribunal with a copy of such notice in turn to be forwarded to the Member concerned by the

Tribunal. The Investigating Officer may recommend that the Tribunal issue a Suspension Order, suspending the Member concerned from membership pending a Tribunal hearing.

- 2.3.1A Notwithstanding any other provision of these Rules, no order for suspension of a Member shall take effect unless and until:
- (a) the Member concerned must be given an opportunity, within the period of two (2) Business Days prior to the date upon which a proposed Suspension Order is to take effect, to make such representations and to provide such information to the Tribunal Member presiding in relation to the Suspension Order and the Chairperson or Deputy Chairperson must consider, but is not bound by, any representations made by the Member; and
 - (b) another member of the Tribunal, not being either the Chairperson or Deputy Chairperson, must sign an endorsement to the suspension order approving the making of it.
- 2.3.1.1 The Chairperson or Deputy Chairperson may upon receipt of a notice pursuant to Rule 2.3.1 from the Investigation Officer make an order suspending the Member from membership of the Association, pending the outcome of the hearing, and subject to Rule 2.3.1A such order for suspension takes effect after the expiration of two (2) Business Days from the making of such suspension order. Notwithstanding any other provision of these Rules, no Suspension Order of a Member shall take effect unless and until another member of the Tribunal, not being either the Chairperson or Deputy Chairperson, has signed an endorsement to the suspension order approving the making of it.
- 2.3.2 A Suspension Order made by the Chairperson or Deputy Chairperson pursuant to Rule 2.3.1.1 will remain in effect until revoked by that person or the Tribunal.
- 2.3.3 A Member who is the subject of a Suspension Order made pursuant to Rule 2.3.1.1 may, by notice in writing to the Secretary to the Tribunal, require that the subject matter of the order be referred to the Tribunal.
- 2.3.4. Where the Secretary to the Tribunal has received a notice from a Member pursuant to Rule 2.3.3, the Secretary must within two (2) Business Days notify, the Chairperson or the Deputy Chairperson, who did not make the Order under Rule 2.3.1.1, and the Secretary must convene the Tribunal as soon as practicable to consider the continuation of or lifting of the suspension.
- 2.3.5 Where either the Chairperson or Deputy Chairperson of the Tribunal has made an order for suspension of a Member pursuant to Rule 2.3.1.1, that person must refer the subject matter of the order to the Tribunal, within five (5) Business Days. That notice must be provided to the Tribunal Secretary and any supporting information as the Chairperson or Deputy Chairperson thinks fit. At the same time the Chairperson or Deputy Chairperson must notify the Member who is the subject of the order that they have done so.
- 2.3.6 Where the Chairperson or Deputy Chairperson has made an order for suspension of a Member and the person who made that order subsequently forms the opinion that he or she no longer has reasonable grounds to suspect that the Member has committed the Misconduct the subject of the notice, and it has not been referred to the Tribunal, that person may by notice in writing to the Member revoke the order for suspension and that revocation will have immediate effect.

- 2.3.7 Where an order for suspension pursuant to Rule 2.3.1.1 has been made in respect of a Member, the Investigating Officer must within five (5) Business Days after making the order for suspension prepare a Notice of Alleged Misconduct against that Member pursuant to Rule 2.4.1 and serve it within a further five (5) Business Days on the Member and such service is deemed as service on the Member for the purposes of this sub Rule when effected by personal service or by registered mail or by post to the Member's last known address.
- 2.3.8 The Chairperson or Deputy Chairperson, as the case may be, must in each particular case maintain a record of those Tribunal members who are contacted by them for the purpose of signing the endorsement aforesaid, and of those Tribunal members who so sign.

2.4 Notice of Alleged Misconduct and Investigation Report

- 2.4.1 Where, upon investigation of a complaint, the Investigating Officer considers that a Member may have engaged in Misconduct, the Investigating Officer must prepare a written Notice of Alleged Misconduct which must include particulars of the allegations of any breach of the Constitution or of the Code of Practice or these Rules, as the case may be, that is being made. The Investigating Officer must at the same time prepare a written Investigation Report, containing a detailed report in support of the Notice of Alleged Misconduct.
- 2.4.2 The Investigating Officer must include with the Investigation Report copies of any correspondence received by the Investigating Officer from the Member who is the subject of the Notice of Alleged Misconduct, or any legal or other representative of the Member, and from the complainant except in a case where the written consent of the complainant is not required or is not necessary.
- 2.4.3 The Investigating Officer must provide copies of the Notice of Alleged Misconduct and Investigation Report at the same time to:
- (a) the Member who is the subject of the Notice of Alleged Misconduct; and
 - (b) the Chairperson of the Tribunal
- 2.4.4 Where pursuant to this Rule 2.4 the Investigating Officer may issue a Notice of Alleged Misconduct, , the Investigating Officer may:
- (a) prepare and provide an amended Notice or Notices of Alleged Misconduct; or
 - (b) a further Notice or Notices of Alleged Misconduct; or
 - (c) with the leave of the Tribunal, withdraw a Notice of Alleged Misconduct
- as the case may require, from time to time.
- 2.4.4A The Tribunal Secretary may assist the presiding Chairperson to appoint a Tribunal to deal with that particular proceeding, after receiving either a Notice of Alleged Misconduct pursuant to Rule 2.4.2 or a notice pursuant to Rule 2.3.4 or 2.3.5;
- 2.4.5 Where the MFAA Tribunal is considering an allegation of Misconduct and it appears to the Tribunal, on the basis of the material before it, that the Member may have engaged in a form of Misconduct that is not alleged or that may be alleged in a different and more appropriate manner in order to reflect the nature of the conduct, the Tribunal may direct the Investigation Officer to prepare a fresh Notice of Alleged Misconduct or an additional

or amended Notice of Alleged Misconduct and serve it on the Member. The Tribunal may then proceed to deal with the matter in accordance with these Rules.

SECTION 3 – CANCELLATION OF MEMBERSHIP OR ACCREDITATION AND REFUSED APPLICATIONS FOR MEMBERSHIP OR ACCREDITATION

3.1 Proceedings for cancellation of membership or accreditation

3.1.1 The Membership Secretary may, in his or her absolute discretion, at any time refer to an Investigating Officer a Member who, in the Membership Secretary's opinion:

- (a) does not meet or no longer meets the requirements of membership in the Association; or
- (b) has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided to the Association.

3.1.2 A referral to an Investigating Officer pursuant to Rule 3.1.1 must be made by notice in writing to the Investigating Officer, and the Membership Secretary must provide a copy of the notice to the affected Member.

3.1.3 A referral to the Tribunal pursuant to Rule 3.1.1 must be made by notice in writing to the Tribunal Secretary, and the Membership Secretary must provide a copy of the notice to the affected Member.

3.2 Refused applications for Membership or accreditation

3.2.1 In any case where an application for Membership in the Association has been received from an Applicant but refused by the Association, and the Applicant has notified the Association that he, she or it wishes to appeal from that refusal,, the Membership Secretary must refer the application to the Tribunal.

3.2.2 The Membership Secretary must refer the application refused within five (5) Business Days after the Association has been notified that the Applicant wishes to appeal from the decision to refuse the application.

3.2.3 A referral pursuant to Rule 3.2.1 must be made by notice in writing to the Investigating Officer as the case may be, and the Membership Secretary must provide a copy of the notice to the Applicant.

3.3 Referrals to Investigating Officer

3.3.1 Where an Investigating Officer has received a referral pursuant to Rule 3.1.1 or 3.2.1, the Investigating Officer must conduct an investigation of the relevant circumstances, in pursuance of which investigation the Investigating Officer is invested with the powers set out in Rule 2.2.

3.3.2 The Investigating Officer must complete his or her investigation pursuant to Rule 3.3.1 and prepare a written Investigation Report of his or her findings, ,within 15 Business Days after receiving the referral.

- 3.3.3 The Investigating Officer must provide copies of the Investigation Report at the same time to:
- (a) the Member or Applicant who is the subject of the Investigation Report; and
 - (b) the Tribunal Secretary.
- 3.3.4 The Investigating Officer must include with the Investigation Report copies of any correspondence received by the Investigating Officer from the Member or Applicant who is the subject of the Investigation Report, or any legal or other representative of the Member or Applicant.

SECTION 4 – MFAA TRIBUNAL

4.1 Composition of the Tribunal

- 4.1.1 There will be a Tribunal for the purposes of:
- (a) carrying out the functions of the Tribunal pursuant to these Rules and the Tribunal under these Rules may hear and determine any complaints of allegations of Misconduct against any Member relating to any breach of the terms of the Constitution, Mortgage Industry Code of Practice, the COSL Rules or the Disciplinary Rules by any Member; and
 - (b) carrying out such other functions as are delegated to it by the Board.
- 4.1.2 The Tribunal will be referred to as the MFAA Tribunal.
- 4.1.3 The Board must appoint a Chairperson and a Deputy Chairperson of the Tribunal, each of whom is a legal practitioner of at least five years' standing and has the right to practise law within a State or Territory of Australia. Both persons must be appointed on such terms of remuneration as are determined by the Board.
- 4.1.4 The Tribunal Secretary must maintain a Tribunal Panel, consisting of a list of persons selected by the Board, each of whom is in the opinion of the Board a person of good character and of good standing and experience in the mortgage industry. Persons selected to be on the Tribunal Panel may, but need not be, Members of the Board or a State Council, Members or Officers or employees of Members.
- 4.1.5 The Board will endeavour to ensure that the Tribunal Panel includes persons resident in each State and Territories of Australia.
- 4.1.6 For the purposes of a hearing, the Tribunal must be comprised by:
- (a) the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson; and
 - (b) two persons from the Tribunal Panel, selected by the Tribunal Secretary in consultation with the presiding Chairperson;
- or
- (c) where both the Chairperson and Deputy Chairperson are unable or not prepared to sit on a particular hearing, three persons from the Tribunal Panel, selected by

the Tribunal Secretary, one of whom will be designated by the Tribunal Secretary as Chairperson for the purposes of that particular hearing; or

- (d) where the Chairperson determines, in his or her discretion, that it is appropriate to do so having regard to the importance of the matter, the Tribunal may be constituted, by the Chairperson, the Deputy Chairperson and three persons from the Tribunal Panel.

4.1.7 In the absence of the Chairperson and the Deputy Chairperson, the person designated by the Tribunal Secretary as Chairperson for the purposes of a particular hearing must be a legal practitioner of at least five (5) years standing and who has the right to practice law within a State or Territory of Australia. If the members of the Tribunal Panel do not include such a person the Board may appoint a suitably qualified person for the period required.

4.1.8 In selecting the composition of the Tribunal for any particular matter, the Tribunal Secretary will endeavour so far as possible to appoint persons who are resident in the same State as the Member who is the subject of the relevant Notice of Alleged Misconduct. However, where this is impracticable the Tribunal Secretary is empowered by these Rules to appoint persons from another state or states to constitute a Tribunal.

4.2 Proceedings of the Tribunal

4.2.1 The Tribunal Secretary must assist the presiding Chairperson to appoint the Tribunal to deal with that particular proceeding, after receiving either a Notice of Alleged Misconduct pursuant to Rule 2.4.1 or a notice pursuant to Rule 2.3.4 or 2.3.5. The Tribunal Secretary must provide all of the documents provided by the Investigating Officer (in connection with the proceeding) to each member of the Tribunal and another copy to the Tribunal Secretary.

4.2.2 The Chairperson of the Tribunal must convene the Tribunal as quickly as is practicable, which may be done in person or by telephone or audiovisual link as the Chairperson considers fit, and:

- (a) where an order for suspension pursuant is in effect, and whether or not a notice has been received, the Tribunal may make an order that the order for suspension be continued until further order of the Tribunal, or an order that the order for suspension be revoked, without conducting a hearing or receiving evidence or submissions from any party to the proceeding;
- (b) in any proceeding, if the Tribunal has reason to suspect that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, the Tribunal may make an order suspending the Member or Affiliate from membership of the Association;
- (c) in any proceeding, determine whether the proceeding will be dealt with and determined in the absence of the parties, or whether a hearing will be convened or conducted by the use of email.

4.2.3 Where the Tribunal has made an order pursuant to Rule 4.2.2(a) or (b), the Tribunal may at any time in the proceeding, prior to issuing its final determination, on the motion of a party or on its own motion make an order revoking or varying its original order pursuant to Rule 4.2.2(a) or (b).

- 4.2.4 Where the Tribunal has made an order pursuant to Rule 4.2.2(a) or (b) in respect of a Member, the Tribunal must immediately notify the Investigating Officer of the order and Rule 2.3.7 will then apply as if the order had been made by the Investigating Officer.
- 4.2.5 Where the Tribunal has determined pursuant to Rule 4.2.2(c) that a proceeding will be conducted in the absence of the parties, the Chairperson may notify the Investigating Officer and must notify the Member who is the subject of the proceeding of that determination..
- 4.2.5A Where the Tribunal proposes to deal finally with the matter before it, the Tribunal may do so without notice to the Investigation Officer or to the parties but the Tribunal must not proceed in this manner unless it proposes to determine such Notice of Alleged Misconduct by dismissing.
- 4.2.6 Where the Tribunal has determined pursuant to Rule 4.2.2(c) that a hearing will be convened in respect of a proceeding, the Chairperson must appoint a date, time and place for the hearing and may give notice in writing of these particulars to the Investigating Officer] and must give notice to the Member who is the subject of the Notice of Alleged Misconduct. The period of notice must be not less than fourteen (14) Business Days prior to the date of the hearing.
- 4.2.6A Where the Tribunal has determined that a hearing will be convened and has invited the Investigation Officer, the Investigation Officer is to act as an impartial friend of the Tribunal, and may make recommendations to the Tribunal, where invited by the Tribunal to do so.
- 4.2.7 The Tribunal may adjourn, postpone or reconvene a hearing as it thinks fit, provided that reasonable notice is given to the parties of any change to the hearing date.

4.3 Proceedings for cancellation of membership or accreditation

- 4.3.1 Upon receiving a notice pursuant to Rule 3.1.1, or an Investigation Report pursuant to Rule 3.3.3 relating to proceedings against a Member, the Tribunal Secretary must appoint the Tribunal to deal with that particular proceeding, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Association in connection with the proceeding.
- 4.3.2 The Tribunal must provide to the Member who is the subject of the notice or Investigation Report a reasonable opportunity to make written submissions to the Tribunal as to the reasons why the membership of the Member should not be cancelled. The Tribunal must not hold a hearing in respect of the proceeding and the Member is not entitled to require that a hearing be held unless the Tribunal is satisfied that special circumstances exist justifying the holding of a hearing.
- 4.3.3 If, having considered any submissions received by it, the Tribunal is of the opinion that the Member:
- (i) does not meet the requirements of membership in the Association; or
 - (ii) has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided to the Association;

the Tribunal may cancel the membership of the Member or may recommend to the Board that the Board cancel the membership as it sees fit..

4.4 Proceedings in relation to refused applications

- 4.4.1 Upon receiving a notice pursuant to Rule 3.2.1, or an Investigation Report pursuant to Rule 3.3.3 relating to a refused application by an Applicant, the Tribunal Secretary must assist the presiding Chairperson to appoint the Tribunal to deal with that particular matter, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Membership Secretary or the Investigating Officer in connection with the proceeding.
- 4.4.2 The Tribunal must provide to the Applicant who is the subject of the notice or Investigation Report a reasonable opportunity to make written submissions to the Tribunal as to the reasons why the application by the Applicant for membership in the Association should be allowed. The Tribunal must not hold a hearing in respect of the proceeding and the Applicant is not entitled to require that a hearing be held.
- 4.4.3 After considering any submissions received by it, the Tribunal may affirm the decision to refuse the application by the Applicant for membership in the Association, or revoke that decision and direct the Association to allow the application for membership as the case may be.

4.5 Conduct of hearings

- 4.5.1 A hearing of the Tribunal must be held in private except that:
- (a) the Investigating Officer and the Member as of right (if a natural person), or two (2) representatives of the Member (if the hearing relates to a Member that is a Corporation) are entitled to attend;
 - (b) the Tribunal may allow other representatives of the Association and the Member to attend and make submissions.
- 4.5.2 A party may be legally represented before the Tribunal provided that:
- (a) the presiding Chairperson is advised not less than two (2) Business Days prior to the date set down for the Tribunal hearing of the intention of the particular party to have legal representation, and the name and contact details of each such legal representative, and
 - (b) the Tribunal may, if it is satisfied that legal representation has served or may continue to serve to delay the hearing of the matter, terminate the right of the party to have legal representation in which event the legal representative or representatives must depart the hearing and take no further part in it and the hearing must proceed in the absence of that legal representation.
- 4.5.3 No party may be compelled to appear at a hearing of the Tribunal, but any party to a hearing may provide written submissions and evidence to the Chairperson at least three Business Days before the hearing or at the hearing with the leave of the Tribunal.
- 4.5.4 The Tribunal may make such procedural arrangements as it thinks fit, including directions for the provision of written submissions and evidence and the taking of a transcript of the hearing.
- 4.5.5 The Tribunal must conduct hearings with as little formality and technicality as possible and otherwise may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it.

4.6 General Rules governing the Tribunal

- 4.6.1 The laws and rules of evidence do not apply to proceedings before the Tribunal.
- 4.6.1.1 In considering a matter before it, the Tribunal may take into account details entered into the Register of the Tribunal concerning matters previously dealt with by the Tribunal against a Member, but only for the purposes of considering the orders that the Tribunal may make against a Member, unless the Tribunal determines that the entry in the Register and the facts to which it refers are relevant to establishing whether the Member has engaged in Misconduct and has given the Member an opportunity to address it on that issue.
- 4.6.2 The Tribunal must act expeditiously in hearing and determining all proceedings before it.
- 4.6.3 The Tribunal must act without bias and treat all parties with fairness and in accordance with the rules of natural justice.
- 4.6.4 The Tribunal may obtain legal advice and have legal advisers in attendance at a hearing.
- 4.6.5 The Tribunal may conduct proceedings or other meetings of the Tribunal in person or by other means to engage in conference and make decisions by way of email and other electronic means. The conduct of hearings by the Tribunal does not require Tribunal Members to hear and speak with each other contemporaneously.
- 4.6.6 All determinations and decisions of the Tribunal must be made by simple majority vote of the Members of the Tribunal.
- 4.6.7 All correspondence between a party and the Tribunal may be dealt with on the Tribunal's behalf by the Chairperson or Deputy Chairperson, except where that is delegated to the Secretary to the Tribunal.
- 4.6.8 Where the Tribunal has made a determination pursuant to Rule 4.3.3 or 4.7.2, the Chairperson must notify in writing the Member who is the subject of the proceeding before the Tribunal of the determination, including any finding of Misconduct and any penalty as soon as practicable.
- 4.6.9 Where the Tribunal has made a determination pursuant to Rule 4.4.3, the Chairperson must notify in writing the Membership Secretary and the Applicant who is the subject of the proceeding before the Tribunal of the determination penalty as soon as practicable.
- 4.6.10 The Tribunal is required to issue written reasons for any determination made by it. Any such written reasons must be issued by the Tribunal to all parties to the proceeding, including the Secretary to the Tribunal, within one month after the date on which the determination is made.
- 4.6.11 The Tribunal may proceed to determine any matter before it notwithstanding the failure by the Member who is the subject of the Notice of Alleged Misconduct to make submissions or provide documents or information or to appear at a hearing within the period specified for the purpose by the Tribunal.

4.7 Powers of the Tribunal

- 4.7.1 Any act or omission by an Officer, employee or contractor of a Member is deemed for the purposes of these Rules to be an act or omission by the Member.

4.7.1A The Board may act under the Constitution to suspend, censure or expel any Member irrespective of any determination or other action that has been, is being or may be taken pursuant to these Disciplinary Rules by the Tribunal or at law.

4.7.2 In relation to the Notice of Allegation, the Tribunal may:

1. find the allegations not substantiated and dismiss the matter absolutely;
2. dismiss the charges absolutely or subject to any conditions;
3. find the member guilty of conduct warranting rectification, admonishment or censure or any combination of these sanctions;
4. find the member engaged in conduct amounting to Misconduct but due to exceptional circumstances determine not to impose a sanction, to adjourn the matter on sanction to a date to be fixed, or impose a sanction which is suspended for any period of time to be determined at the discretion of the Tribunal;
5. find the member guilty of Misconduct and impose a sanction.

4.7.3 Subject to Rule 4.7.2 and Rule 4.7.4 if the Tribunal determines that a Member has engaged in Misconduct, the Tribunal may make a determination of Misconduct against the Member and may impose one or more of the following penalties:

- (a) dismiss the matter absolutely or subject to any conditions the Tribunal may impose;
- (b) counsel the Member;
- (c) censure the Member;
- (d) suspend the Member from Membership of the Association, for such period and on such terms or conditions as the Tribunal thinks fit;
- (e) where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Tribunal thinks fit;
- (f) require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct found to have been engaged in;
- (g) pay a financial contribution to the Association to be used as the Tribunal recommends, or in the absence of a recommendation, as the Association determines;
- (h) require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member;
- (i) expel the Member from Membership of the Association;
- (j) adjourn the proceeding subject to compliance with such conditions as to sanctions as the Tribunal may otherwise impose in accordance with this Rule.

4.7.4 Where the Tribunal has determined the Member has engaged in Misconduct but there are in the opinion of the Tribunal mitigating factors amounting to special circumstances in the opinion of the Tribunal the Tribunal may not make any determination of Misconduct against the Member and impose any one or more of the following penalties upon the Member:

- (a) a suspended determination of Misconduct whereby the determination of Misconduct by the Tribunal against the Member is to be suspended for any period of time up to 2 years as the Tribunal deems fit from the date of the imposition of the suspended determination of Misconduct and the suspended determination of Misconduct will be of no effect after any such period of suspension imposed expires. However where the Member within the period of any suspended determination guilty of further engaging in Misconduct the suspended determination of Misconduct penalty shall be of no effect and is to be reconsidered afresh by the Tribunal as to an appropriate penalty at the same time as any further Misconduct is being considered by the Tribunal in relation to penalty;
- (b) an admonishment of the Member without any determination of Misconduct by the Tribunal against the Member
- (c) require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct found to have been engaged in;
- (d) pay a financial contribution to the Association to be used as the Tribunal recommends, or in the absence of a recommendation, as the Association determines;
- (e) require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member;
- (f) The Tribunal may determine that a Member has not acted within the spirit of the Tribunal process and may, in its absolute discretion, decide to recover the MFAA's costs from the Member concerned, after taking into account whether or not the Member:
 - (a) has been recalcitrant;
 - (b) has failed to cooperate, or the Members' behaviour has caused additional costs to be incurred by the MFAA;
 - (c) has obstructed the hearing of the matter; or
 - (d) has failed to comply with requests for information in a timely manner without reasonable excuse.

4.7.5 Prior to taking any action under Rule 4.7.3 or Rule 4.7.4 the Tribunal must provide such reasonable time as the Tribunal determines for the Member to make such representations and to provide such information to the Tribunal as the Member thinks fit in relation to the action proposed to be taken by the Tribunal.

4.8 Effect of Tribunal determinations

- 4.8.1 A determination, decision or order made by the Tribunal pursuant to the Rules has effect from the date on which the Tribunal determines that it will have effect or, if the Tribunal does not specify such a date, immediately from the date on which the order is made.
- 4.8.2 A determination, decision or order made by the Tribunal is final and binding on all parties to the proceeding. Neither the Association, nor any constituent body of the Association other than the Tribunal, has power to vary or overrule a determination, decision or order made by the Tribunal.

4.8.3 The Tribunal may of its own motion and in its absolute discretion reconsider and vary or overrule any decision or order relating to sanctions only made by the Tribunal in respect of any penalty imposed by the Tribunal upon a member under these Rules.

4.9 Notification to persons affected by determination

4.9.1 Where the Tribunal makes a determination, decision or order pursuant to the Rules and the effect of that determination, decision or order is to cause the Member to be suspended or expelled from the Association, the Tribunal:

- (a) may make such ancillary orders concerning AMCs, CMCs or similar designation who are employed by, or contracted to, the Member concerned as the Tribunal thinks fit and every such ancillary order shall bind every such AMC; and
- (b) must as soon as practicable in such form and manner as it thinks fit notify each such AMC, CMC or similar designation of the effect of the determination, and the terms of any ancillary order.

4.10 Publication of determinations

4.10.1 The Tribunal Secretary must maintain a register of all determinations made by the Tribunal or by the Board pursuant to Rule 4.3.3 or 4.7.2, and make the register available for inspection by Members. The register must, with respect to each determination, include the name of the Member to whom the determination relates, any findings of Misconduct by the Tribunal and any orders made by the Tribunal including any penalties. The register must also include a copy of the reasons for determination issued by the Tribunal.

4.10.2 The Tribunal Secretary must maintain a separate register of all determinations made by the Tribunal pursuant to Rule 4.4.3. The register must, with respect to each determination, include the name of the Applicant to whom the determination relates and the determination made by the Tribunal. The register must also include a copy of the reasons for determination issued by the Tribunal.

4.10.3 The Association shall, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally the content of, or an extract from or precis of, any determinations by the Tribunal (other than determinations pursuant to Rule 4.4.3) and the register maintained pursuant to Rule 4.10.1 and of any reasons issued by the Tribunal. All Members by this Rule provide their express consent to the publication of material encompassed within this Rule and waive and release forever any rights they may otherwise have to bring action with respect to such publication, whether by suit in defamation or other cause of action.

4.10.4 The Association shall, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally a statistical report of Tribunal hearings and or determinations or other statistical data as it sees fit.

4.10.5 Except as provided above, the Association must not publish or otherwise make available to Members, or other persons or the public generally the content of any determinations by the Tribunal pursuant to Rule 4.4.3 or the register maintained pursuant to Rule 4.10.2 (collectively the "Application Records"). The Association must only provide access to the Application Records as follows:

- (a) an Applicant must be given access upon request to that part of the Application Records that relates to the Applicant, but not to any other part of the Application Records;

- (b) the Membership Secretary, the Tribunal Secretary, the Tribunal, an Investigating Officer, the Board and a state Council must be given access upon request to the Application Records;
- (c) as required by law.

4.11 Keeping Complainant informed

4.11.1 The Investigating Officer may keep a complainant informed of progress in handling the complaint provided always that the Investigating Officer must not provide any information to a complainant in relation to the progress and outcome of the complaint where in the opinion of the Investigating Officer:

- (a) to do so would expose the Investigating Officer, the Tribunal Secretary, the Association or any Officer of the Association or Members of the Tribunal to liability for civil damages;
- (b) to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint and the proceedings of the Tribunal; or
- (c) to do so would deny procedural fairness to the Member, the subject of the complaint.

4.12 Legal proceedings

4.12.1 A Member, including a Member whose membership has been suspended or cancelled, may not bring any legal action or proceeding against the Association, any member of the Tribunal or any employee or agent of the Association (including without limitation members of the Board, State Councillors of the Association or an Investigating Officer), with respect to the publication or giving of access to any person of material pursuant to Rules 4.10.1 or 4.10.2, and this Rule may be pleaded as a complete bar to the commencement or continuation of any such proceedings in any jurisdiction.

4.12.2 The Association will indemnify each member of the Tribunal and employee, contractor and agent of the Association against any claim, action or proceeding brought against that person by any other person arising out of or in connection with the conduct of an investigation by an Investigating Officer, a proceeding before the Tribunal or any order, determination or decision made by an Investigating Officer or the Tribunal, and this indemnity will extend to the conduct of the defence of any proceedings and the payment of any costs thereof.

4.12.3 The indemnity provided pursuant to Rule 4.12.2 does not extend to actions brought by the Association against any person.

SECTION 5 – NON-ACTIVE AMCs OR OTHER SIMILAR DESIGNATION

5.1 Automatic suspension of membership of the Association

5.1.1 Where an AMC's membership of the Association has been suspended, the Membership Secretary must record the AMC's name in the membership records of the Association as a Non-active AMC.

- 5.1.2 A Non-active AMC is not entitled to any of the rights or privileges of an AMC, and may not hold himself or herself out to any person or to the public generally as an AMC or as a Member of the Association.

SECTION 6 – MATTERS REFERRED TO TRIBUNAL BY CREDIT OMBUDSMAN SERVICE LIMITED

6.1 Referral of matters by Credit Ombudsman

- 6.1.1 The Tribunal Secretary must accept and act upon a COSL Referral in the manner outlined in Rule 6.
- 6.1.2 Upon receipt of a COSL Referral, the Tribunal Secretary must take the following steps as soon as practicable after its receipt:
- (a) acknowledge the COSL Referral to the Scheme Manager;
 - (b) advise the complainant of the COSL Referral to the Tribunal Secretary and of the procedure to be followed in dealing with the complaint;
 - (c) refer any COSL Referral to the Investigating Officer and every such COSL Referral shall be dealt with in all respects as if the COSL Referral were a complaint made under the Rules.
- 6.1.3 Notwithstanding any other provision of these Rules, COS Limited may, of its own volition and irrespective of whether or not:
- (a) a complaint has been made to it under the COSL Rules or
 - (b) the subject of the complaint by COSL has been the subject of a complaint by any particular consumer or consumers;
- make a complaint in relation to a Member to the Association to be dealt with in accordance with these Rules or may make a complaint in relation to specific conduct or a course of conduct engaged in by the Member.
- 6.1.4 Notwithstanding any other provision of these Rules, the Tribunal may still operate even if the COS is operating if it sees fit to do so.