



**BY-LAWS RELATING TO THE PROCEDURE FOR
DISCIPLINARY PROCEEDINGS**

SECOND EDITION

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**THE FEDERATION OF INVESTMENT MANAGERS MALAYSIA
(formerly known as Federation of Malaysian Unit Trust Managers)**

BY-LAWS RELATING TO THE PROCEDURE FOR DISCIPLINARY PROCEEDINGS

Introduction

The by-laws relating to the procedure for disciplinary proceedings (“the By-laws”) is made pursuant to Article 63(g) of the Articles of Association of the Federation of Investment Managers Malaysia (“FIMM”). The By-laws shall supersede the existing by-laws applicable to the unit trust industry and shall come into effect from **3 September 2007**.

The By-laws shall address and deal with complaints and grievances arising from any misconduct by the UTMC, IUTA, CUTA or UTC; or non-compliance by the UTMC, IUTA, CUTA or UTC with the provisions of the By-laws, standards and practice notes which includes the Code of Ethics, regulations, guidelines, circulars and directives issued by the FIMM from time to time.

Any complaint of misconduct or non-compliance by the UTMC, IUTA, CUTA or UTC may be lodged by any person in accordance with the By-laws. In the event the complaint has merits, the UTMC, IUTA, CUTA or UTC shall be subjected to disciplinary proceedings conducted by the FIMM.

The By-laws shall also *mutatis mutandis* be applicable to any disciplinary proceedings against the UTMC, IUTA, CUTA and/or the UTC initiated by the FIMM for non-compliance of any of the submission or periodical reporting requirements, guidelines, practice notes or notices issued by the FIMM from time to time.

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1.0 DEFINITIONS AND INTERPRETATIONS

1.1 In the By-laws unless the context otherwise requires:

“Appeal Sub-Committee” or “ASC” shall mean the Appeal Sub-Committee set up in accordance with **clause 4.2** of the By-laws;

“Business Day” shall mean any day from Monday to Friday, excluding Saturdays, Sundays and public holidays declared in Kuala Lumpur. If the following day is a non-business day, the next Business Day shall be the immediate day after the non-business day;

“By-laws” shall mean these by-laws relating to the procedure for disciplinary proceedings issued by the FIMM pursuant to **Article 63(g)** of the **Articles of Association** of the FIMM;

“Chief Executive Officer” in relation to an Ordinary Member shall mean the principal officer of the Ordinary Member for the time being, by whatever name called, whether or not he is a director;

“Code of Ethics” shall mean the Code of Ethics and Standards of Professional Conduct for Unit Trust Industry issued by the FIMM;

“Commission” shall mean the Securities Commission established under the **Securities Commission Act 1993 [Act 498]**;

“Compliance and Disciplinary Committee” or “CDC” shall mean the Compliance and Disciplinary Committee established by the Council;

“Compliance Officer” shall mean the designated person responsible for the company’s compliance with all applicable laws, rules and standards;

“Council” shall mean the Council for the time being of the FIMM appointed in accordance with **Article 48** of the **Articles of Association** of the FIMM;

“CUTA” shall mean Corporate Unit Trust Advisers comprising institutions, corporations or organisations that are registered with the FIMM in accordance with the **Guidelines for Registration of Corporate Unit Trust Advisers (CUTA) for the Marketing and Distribution of Unit Trusts**;

“Disciplinary Sub-Committee” or “DSC” shall mean the Disciplinary Sub-Committee set up in accordance with **clause 4.1** of the By-laws;

“Executive Director” shall mean the Executive Director for the time being of the FIMM or any other person appointed as the principal officer of FIMM appointed in accordance with **Article 98A** of the **Articles of Association** of the FIMM;

“FIMM” shall mean Federation of Investment Managers Malaysia (Company No: 272577 – P) incorporated as a company limited by guarantee under the **Companies Act 1965 [Act 125]** and shall include its successors-in-title and permitted assigns;

“IUTA” shall mean Institutional Unit Trust Advisers comprising financial institutions approved by the Securities Commission and registered with the FIMM to market and distribute unit trust funds;

“month” shall mean a period of thirty (30) days;

“Ordinary Members” shall mean those persons who are granted membership of the FIMM in accordance with **Article 6** of the **Articles of Association** of the FIMM and registered as Ordinary Members in the register of the FIMM;

“UTC” shall mean Unit Trust Consultants who are registered with and authorised by the FIMM to market and/or distribute unit trust funds;

“person” shall mean an individual, corporation, partnership (general or limited), joint venture, trust, estate, limited liability company, Government, or other legal entity or organization;

“Registered Person” shall mean the UTMC, IUTA,, CUTA, UTC or any other person registered with the FIMM to manage unit trust funds and/or market and distribute unit trust funds;

“Secretariat” shall mean any person appointed to perform the duties of a secretariat of the Federation by the Council and includes any person acting in any such capacity by the direction of the Council.;

“Securities Laws” shall have the same meaning as assigned to that expression in the **Securities Commission Act 1993**;

“UTMC” shall mean management companies as defined in the **Securities Commission Act 1993 [Act 498]**;

- 1.2 Reference in the By-laws to any law, guideline, regulation and/or enactment shall include any statutory modification, extension, reenactment or replacement thereof.
- 1.3 Reference in the By-laws to words importing the masculine gender only shall include the feminine and neuter genders and vice versa; and references to words in the singular number only shall include the plural number and vice versa.
- 1.4 Reference to person shall include any individual, sole proprietorship, partnership, joint venture, statutory or governmental body, trust and any other body, organisation, association or group of persons; whether corporate or unincorporated.

- 1.5 The headings and subheadings to the By-laws are inserted for the purpose of convenience only and shall not be deemed to be a part thereof or be taken into consideration in the interpretation or construction of the By-laws.
- 1.6 Any appendix hereto shall be deemed to form part of the By-laws and be construed in accordance with the same. In case of any inconsistency between the By-laws and the provisions contained in any of the appendices hereto, the provisions of the By-laws shall prevail.

2.0 LODGEMENT OF COMPLAINT

- 2.1 Any person may lodge a formal complaint with the FIMM regarding any allegation of misconduct or non-compliance by a Registered Person and such complaint shall be made in writing.
- 2.2 A formal complaint shall contain the following:-
- (a) The particulars of the complainant, including name, identity card, passport or registration number, correspondence address, contact number, e-mail address (if any);
 - (b) The name and such other relevant particulars of the Registered Person complained against;
 - (c) Adequate and accurate facts of the complaint including the date on which the alleged misconduct or non-compliance took place, circumstances underlying the alleged misconduct or non-compliance, the nature of the alleged misconduct or non-compliance; and
 - (d) A copy of the relevant supporting documents, if any.

3.0 RECEIPT OF COMPLAINT

- 3.1 Upon receipt of a complaint, the Secretariat shall evaluate the allegation made against the Registered Person to determine whether there is merit to the complaint made against the Registered Person. In the event that the complaint does not warrant further investigation, the Secretariat shall inform the complainant of the same and the reason(s) thereof.
- 3.2 Where the Secretariat is of the opinion that the complaint warrants further investigation, the Secretariat shall notify the Registered Person complained against and such notice shall include the particulars of the complaint together with copies of the relevant supporting documents, if any.

- 3.3 The Registered Person shall, within fourteen (14) Business Days from the date of receipt of the notice, submit a written reply to the complaint made against him.
- 3.4 Upon receipt of the reply, the Executive Director shall evaluate the same and has the right to any or any combination of the following:-
- (a) Request for further particulars and/or explanation from the Registered Person.
 - (b) Issue a written reprimand to the Registered Person where the Registered Person admits to the allegation made against him.
 - (c) Impose a fine against the Registered Person, subject to the approval of the CDC or Council, whichever is applicable.
 - (d) Dismiss the complaint where he finds there is no merit to the complaint.
 - (e) Refer the complaint to the CDC where he finds there is merit to the complaint.
- 3.5 (a) In the event that the Executive Director directs the Registered Person for further particulars in accordance with **sub-clause 3.4(a)** herein, upon further evaluation of the reply together with the additional particulars and/or explanation (if any), the Executive Director shall proceed with any or any combination of the provisions in **sub-clauses 3.4(b), 3.4(c), 3.4(d) and 3.4(e)** herein.
- (b) In the event that the Registered Person refuses or fails to respond to the request made by the Executive Director's in sub-clause 3.4(a), the Executive Director shall proceed with any or any combination of the provisions in **sub-clauses 3.4(b), 3.4(c), 3.4(d) and 3.4(e)** herein.
- 3.6 In the event that the Executive Director exercises his right under **sub-clause 3.4(d)** herein, the Executive Director shall notify all parties concerned of his decision and the reason(s) thereof.
- 3.7 Notwithstanding the provisions of **sub-clause 3.4(d)** herein, dismissal of the complaint shall not preclude the Executive Director from reopening the matter if a new or similar allegation of misconduct or non-compliance by the Registered Person is reported **PROVIDED THAT** the Executive Director is satisfied that there is sufficient evidence in support of the new allegation.
- 3.8 In the event that the Executive Director exercises his right under **sub-clause 3.4(e)** herein, the Executive Director shall advise the CDC accordingly, including providing the CDC with a written report of the Executive Director's evaluation and findings of fact pertaining to the complaint and the Executive Director shall notify the Registered Person in accordance with **clauses 5.1 and 5.2** herein.

- 3.9 In the event that the Registered Person fails to reply in accordance with **clause 3.3** herein, the Executive Director shall refer the complaint to the CDC and notify the Registered Person in accordance with **clauses 5.1** and **5.2** herein.
- 3.10 The Registered Person may appeal against the decision of the Executive Director made in accordance with **sub-clause 3.4(c)** herein and such notice of appeal shall be made to the CDC within fourteen (14) Business Days from the receipt of the decision made by the Executive Director. Upon receipt of the appeal by the CDC, the Secretariat shall notify the Registered Person in accordance with **clauses 5.1** and **5.2** herein.

4.0 ESTABLISHMENT OF DSC AND ASC

- 4.1 The CDC shall set up the DSC consisting of seven (7) independent sub-committee members nominated from the following:-
- (a) Compliance Officers of the Ordinary Members;
 - (b) Chief Executive Officers of Ordinary Members; and/or
 - (c) any other person who possesses the relevant experience in financial, commercial or legal matters;

whereby a quorum of three (3) DSC members shall be required for the conduct of any disciplinary proceedings.

- 4.2 The CDC shall set up the ASC consisting of seven (7) independent sub-committee members nominated from the following:-
- (a) Compliance Officers of the Ordinary Members who are not members of the DSC;
 - (b) Chief Executive Officers of Ordinary Members who are not members of the DSC; and/or
 - (c) Any other person who possesses the relevant experience in financial, commercial or legal matters;

whereby a quorum of three (3) ASC members shall be required for the conduct of any appeal proceedings.

- 4.3 The chairman of the disciplinary and appeal proceedings shall be appointed from the Council members and the secretary of the disciplinary and appeal proceedings may be appointed from the Secretariat.

5.0 DISCIPLINARY PROCEEDINGS

- 5.1 The DSC shall, pursuant to **clause 3.8, 3.9 or 3.10** herein, commence disciplinary proceedings against the Registered Person not later than one (1) month from the receipt of the complaint from the Executive Director pursuant to **clause 3.8 or 3.9** herein or from the receipt of the notice of appeal pursuant to **clause 3.10** herein (as the case may be).
- 5.2 The Secretariat shall, within fourteen (14) Business Days prior to the disciplinary proceedings, notify the Registered Person of the following:-
- (a) That the DSC shall conduct disciplinary proceedings against him, including the date, time, and place of the disciplinary proceedings and a summary of the complaint, supported by other relevant documents, if any;
 - (b) That the Registered Person shall be given the opportunity to be heard and examine or cross examine witnesses (if any); and
 - (c) That the Registered Person shall be permitted to engage an advocate and solicitor to represent and advise him at the disciplinary proceedings.
- 5.3 The DSC may appoint an advocate and solicitor to be present and advise them at the disciplinary proceedings.
- 5.4 The Registered Person shall within seven (7) Business Days prior to the disciplinary proceedings, notify the DSC on whether the Registered Person intends to be represented by an advocate and solicitor at the disciplinary proceedings.
- 5.5 In the event that the Registered Person is represented by an advocate and solicitor at the disciplinary proceedings but has failed to notify the DSC in accordance with **clause 5.4** herein, the DSC shall exercise its discretion on whether to proceed with or adjourn the disciplinary proceedings to enable it to engage an advocate and solicitor.
- 5.6 In the event that the Registered Person fails to appear before the DSC on the date and at the time and place stipulated for the disciplinary proceedings without any reasonable or lawful excuse and the DSC is satisfied that notice has been given to the Registered Person in accordance with **clauses 5.2 and 17.0** herein, the DSC may proceed to hear the complaint in the absence of the Registered Person.
- 5.7 Evidence to be given before the DSC may be given orally, or where the DSC considers it necessary, under oath or by sworn affidavits.
- 5.8 At the conclusion of the disciplinary proceedings, the DSC shall:-
- (a) Dismiss the complaint, without having to ascribe any reason for the dismissal, if it finds there is insufficient evidence or grounds to support the allegation(s) made against the Registered Person; or

- (b) Impose any or any combination of the penalties specified below if it finds the Registered Person guilty of or the Registered Person admits to the allegation(s) made:-
 - (i) Issue a private or public reprimand.
 - (ii) Impose a fine.
 - (iii) Suspend the membership or registration of the Registered Person (as the case may be).
 - (iv) Terminate the membership or revoke the registration of the Registered Person (as the case may be).

Note: **Appendix A** attached hereto provides the details of the penalties for any misconduct or non-compliance by Registered Persons.

- 5.9 The DSC may, in addition to the penalties set out in clause 5.8(b) herein, make recommendations for a refund or restitution and/or compensation to be paid to the complainant, as they deem fit and reasonable.
- 5.10 The DSC may instruct the Registered Person to pay all costs and expenses incurred (including any professional fees and remunerations of the advocate and solicitor appointed by the DSC) as a result of or incidental to the disciplinary proceedings and such costs and expenses shall be recoverable as a debt due to the FIMM and payable within fourteen (14) Business Days from the date of notice of the same.
- 5.11 The Executive Director or any person authorized by the CDC shall, within seven (7) Business Days from the date of the decision of the DSC, notify the Registered Person of the same and such notice shall:-
 - (a) Where a fine is imposed, stipulate the amount and manner in which payment of the fine shall be made (including the time limit for payment);
 - (b) Where the Registered Person's membership or registration (as the case may be) is suspended, stipulate the period of and date of commencement of the suspension;
 - (c) Where the Registered Person's membership is terminated or registration is revoked (as the case may be), stipulate the date that the termination or revocation shall take effect;
 - (d) Stipulate the amount and manner in which payment of the costs and expenses described in **clause 5.10** herein shall be made (including the time limit for payment), if so instructed;

- (e) Stipulate the amount and manner in which the refund or restitution and/or compensation described in **clause 5.9** herein is to be paid to the complainant, if so recommended; and
 - (f) State the right of appeal given in accordance with **clause 5.12** herein.
- 5.12 The Registered Person may, within fourteen (14) Business Days from the date of receipt of the notice given in accordance with **clause 5.11** herein, submit to the Secretariat an appeal against the decision of the DSC in accordance with **clause 7.1** herein.
- 5.13 In the event that the Registered Person submits an appeal pursuant to **clause 5.12** herein, the Secretariat shall refer the appeal to the ASC together with a written report of the DSC's findings and decision at the conclusion of the disciplinary proceedings conducted against the Registered Person, and the appeal shall, thereby, operate as a stay of the penalty(s) imposed by the DSC from the date of receipt of the appeal from the Secretariat until the disposition of the appeal by the ASC.
- 5.14 In the event that there is no appeal and upon expiry of the period stipulated in **clause 5.12** herein, the decision of the DSC shall be deemed as final and conclusive.

6.0 EFFECTS OF DISCIPLINARY ACTIONS

- 6.1 In the event that the Registered Person's membership or registration (as the case may be) is suspended, the Registered Person shall cease to be a member of or registered with the FIMM. Consequently, the Registered Person shall not enjoy any of the rights and privileges conferred upon him by the FIMM during the period of suspension. Such rights and privileges shall only be restored upon expiry of the suspension period.
- 6.2 Notwithstanding **clause 6.1** herein, the Registered Person shall continue to pay all monies and/or fees that are due and payable during the period of suspension and continue to be subjected to the Memorandum and Articles of Association of the FIMM, Code of Ethics and all applicable rules, regulations, guidelines, directives, circulars and practice notes issued by the FIMM and the Commission from time to time.
- 6.3 In the event that the Registered Person's membership is terminated or registration is revoked (as the case may be), the Registered Person shall continue to pay all monies and/or fees that are due and owing to the FIMM until full settlement of the same.
- 6.4 All fines imposed on the Registered Person by the DSC hereunder shall be recoverable as a debt due to the FIMM and payable by the Registered Person within fourteen (14) Business Days from the date of receipt of the notice in accordance with **clause 5.11** herein.
- 6.5 In the event that the fines remain unpaid upon the expiry of the period stipulated in **clause 6.4** herein, the CDC may, at any time, recommend to the Council the termination

of membership or revocation of registration of the Registered Person (as the case may be) from the FIMM.

7.0. APPEAL PROCEEDINGS

- 7.1 Any appeal submitted by the Registered Person in accordance with **clause 5.12** herein shall be made in writing and addressed to the Secretariat and shall set out the grounds for the appeal. The grounds of appeal may not be amended after submission of the same **EXCEPT** with the leave of the ASC.
- 7.2 Before or upon giving the notice of appeal in accordance with **clauses 5.12** and **7.1** herein, the Registered Person shall pay all costs and expenses as instructed by the DSC in accordance with **clause 5.10** herein (if any), whereby failure to do so shall invalidate the notice of appeal.
- 7.3 Upon receipt of the appeal by the Registered Person from the Secretariat in accordance with **clause 5.13** herein, the ASC shall forthwith evaluate the appeal to determine whether the appeal has merit to be heard. In the event that the ASC finds the appeal does not warrant a hearing, the Secretariat shall forthwith inform the Registered Person of the same without having to ascribe any reason to it.
- 7.4 In the event if such appeal warrants a hearing, the ASC shall, not later than one (1) month after reviewing the appeal application, commence the appeal proceedings. The Secretariat shall, within fourteen (14) Business Days prior to the appeal proceedings, notify the Registered Person of the following:-
- (a) That the ASC shall hear the appeal including the date, time, and place of the appeal proceedings;
 - (b) That the Registered Person shall be given the opportunity to be heard and examine or cross examine witnesses (if any); and
 - (c) That the Registered Person shall be permitted to engage an advocate and solicitor to represent and advise him at the appeal proceedings.
- 7.5 The ASC may appoint an advocate and solicitor to be present and advise them at the appeal proceedings.
- 7.6 The Registered Person shall, within seven (7) Business Days prior to the appeal proceedings, notify the ASC on whether the Registered Person intends to be represented by an advocate and solicitor at the appeal proceedings.
- 7.7 In the event the Registered Person is represented by an advocate and solicitor at the appeal proceedings but has failed to notify the ASC in accordance with **clause 7.6** herein,

the ASC shall exercise its discretion on whether to proceed with or adjourn the appeal proceedings to enable the ASC to engage an advocate and solicitor.

- 7.8 In the event the Registered Person fails to appear before the ASC on the date and at the time and place stipulated for the appeal proceedings without any reasonable or lawful excuse and the ASC is satisfied that notice of the appeal proceedings has been given to the Registered Person in accordance with **clauses 7.4** and **17.0** herein, the ASC shall dismiss the appeal and affirm the decision of the DSC. The Registered Person shall be notified of the same.
- 7.9 Evidence to be given before the ASC may be given orally, or where the ASC considers it necessary, under oath or by sworn affidavits. The ASC may request the Registered Person to produce additional evidence for their consideration.
- 7.10 At the conclusion of the appeal proceedings, the ASC shall:-
- (a) Overrule the decision of the DSC and dismiss the complaint made against the Registered Person by reason of insufficient evidence or grounds for disciplinary action to be taken;
 - (b) Affirm and maintain the decision of the DSC and may make an order for the penalty to commence at a specified date;
 - (c) Impose other or additional penalties; and/or
 - (d) Where a fine is imposed, either increase or decrease the amount of the fine determined by the DSC.

Note: The mode of penalties determined by the ASC shall also be subject to **Appendix A** of the By-laws.

- 7.11 The ASC may instruct the Registered Person to pay all costs and expenses incurred (including any professional fees and remunerations of the advocate and solicitor appointed by the ASC) as a result of or incidental to the appeal proceedings and such costs and expenses shall be recoverable as a debt due to the FIMM and payable within fourteen (14) Business Days from the date of notice of the same by the Registered Person.
- 7.12 The Executive Director or any such person authorized by the CDC shall, within seven (7) Business Days from the date of the decision of the ASC, notify the Registered Person of the same and such notice shall:-
- (a) Where an order is made in accordance with **sub-clause 7.10(b)** herein, stipulate the date of commencement of the penalty;

- (b) Where there is other or additional penalties imposed, specify the same accordingly;
 - (c) Where the fine amount is varied, stipulate the new amount; and
 - (d) Stipulate the amount and manner in which payment of the costs and expenses described in **clause 7.11** herein shall be made (including the time limit for payment), if so instructed.
- 7.13 Where any of fines imposed and/or the costs and expenses which the ASC may have instructed the Registered Person to pay in accordance with the By-laws herein remain unpaid seven (7) Business Days after the expiry of notice to pay the same, the CDC may at any time recommend to the Council for the revocation of the membership of a Registered Person or deregistration of a Registered Person, from the FIMM, as the case may be.
- 7.14 The decision of the ASC made in accordance with the By-laws shall be final and conclusive and no further appeal may be made by the Registered Person to the FIMM.

8.0 DISPOSAL OF MATTERS

- 8.1 The DSC and ASC shall conduct the disciplinary and appeal proceedings respectively as expeditiously as possible in accordance with the provisions of the By-laws so as not to prejudice the rights of any party to the proceedings EXCEPT when such delay is unavoidable.
- 8.2 The DSC and ASC shall prepare a summary report of their findings in the disciplinary and appeal proceedings respectively, for submission and circulation at the succeeding Council meeting or not later than six (6) weeks from the conclusion of the disciplinary or appeal proceedings, whichever is earlier.
- 8.3 Notwithstanding **clause 8.2** herein, any failure to submit the reports and/or minutes shall not invalidate or nullify the disciplinary or appeal proceedings (as the case may be) or the decisions made thereat.

9.0 AMICABLE RESOLUTION

- 9.1 The complainant may, at any time before the conclusion of the disciplinary proceedings, withdraw the complaint made against the Registered Person by issuing a letter of withdrawal to the Executive Director. If the DSC is satisfied that the withdrawal does not prejudice or cause any adverse effect to the reputation and integrity of the unit trust industry, the DSC may, subject to the consent of the complainant, declare that such complaint has been withdrawn and shall cease to take any further action.

9.2 Notwithstanding **clause 9.1** herein, the FIMM shall be empowered under the By-laws to institute disciplinary proceedings against the Registered Person despite the complaint against the Registered Person been withdrawn by the complainant, where the FIMM deems such disciplinary proceedings as fit and appropriate.

10.0 DISCIPLINARY PROCEEDINGS INITIATED BY FIMM

10.1 Notwithstanding **clause 2.0** herein, the FIMM shall be empowered under the By-laws to initiate disciplinary proceedings against any Registered Person for any misconduct or non-compliance with the guidelines, directives, rules, regulations, circulars, standards or practice notes which has come to the attention of the FIMM.

10.2 The FIMM may also initiate disciplinary proceedings against a Registered Person who has failed to comply with the decision of the Secretariat made in accordance with **clause 3.4(b)** or **3.4(c)** herein.

10.3 The provisions of the By-laws shall also, subject to the necessary changes being made, be applicable to any disciplinary proceedings initiated by the FIMM in respect of any non-compliance with any of the submission or periodical reporting requirements or any of the guidelines, directives, rules, regulations, circulars, standards or practice notes issued by the FIMM and the Commission from time to time.

11.0 NOTIFICATION TO COMMISSION

11.1 Without prejudice to the provisions of **clause 14.0** herein, the FIMM may notify the Commission of any disciplinary action taken against any Registered Person in accordance with the By-laws.

11.2 Any decision made or action taken by the FIMM against any Registered Person in accordance with the By-laws shall not preclude the Commission from taking action against the Registered Person pursuant to **Section 11** of the **Securities Industry Act 1983 [Act 280]**.

12.0 PUBLIC NOTIFICATION

12.1 Without prejudice to the provisions of **clause 14.0** herein, the Secretariat may make public the name of any Registered Person against whom disciplinary action has been taken by publishing the same in one (1) widely circulated daily Bahasa Malaysia and English newspaper respectively, issuing circulars to members of the FIMM and/or by any other means they deem fit or expedient.

12.2 The Secretariat may also make public the name of any Registered Person against whom any Court proceeding has been instituted by issuing circulars to members of the FIMM

and/or by any other means they deem fit or expedient, notwithstanding that no official complaint has been lodged with or referred to the FIMM against the Registered Person for any misconduct or non-compliance with the guidelines, directives, rules, regulations, circulars, standards or practice notes.

13.0 EFFECT OF COURT PROCEEDINGS

13.1 The CDC shall have the power under the By-laws to recommend to the Council the termination of membership or revocation of registration of a Registered Person (as the case may be) from the FIMM, in the event that the Registered Person is found guilty of a criminal offence or an offence under the Securities Laws or is declared insolvent or bankrupt by any court of law.

14.0 CONFIDENTIALITY

14.1 Except as otherwise provided by the By-laws, all proceedings conducted pursuant to the By-laws shall be strictly confidential and all records pertaining thereto including records of the Council and Secretariat shall always remain confidential.

14.2 The pendency, subject matter and status of proceedings conducted pursuant to the By-laws may be disclosed in the event:-

- (a) The proceedings are predicated on criminal conviction;
- (b) The affecting party(s) has waived confidentiality; or
- (c) Such disclosure is required by the legal process of a court of law or other relevant authority.

15.0 INDEPENDENT MEMBERS

15.1 “Independent members” who are appointed in accordance with **clauses 4.1 and 4.2** respectively shall mean individual persons who are independent of such Registered Person against whom proceedings are instituted in accordance with the By-laws and/or such independent members are free from any businesses or other relationships with the Registered Person or other persons connected with the Registered Person which could interfere with the exercise of independent judgment or the ability to act impartially by such independent members.

15.2 For the purpose of the By-laws, a person deemed to be connected with a Registered Person shall include:-

- (a) a family member of the Registered Person;

- (b) a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the Registered Person; or
 - (c) a body corporate which is associated with the Registered Person.
- 15.3 A family member of the Registered Person as referred to in **sub-clause 15.2(a)** herein shall include the Registered Person's spouse, parent, child (including adopted child and step child), brother, sister and the spouse of the Registered Person's child, brother or sister.
- 15.4 A body corporate which is associated with the Registered Person as referred to in **sub-clause 15.2(c)** herein shall be:-
- (a) a body corporate which is accustomed or is under an obligation whether, formal or informal, or its directors are accustomed to act in accordance with the directions, instructions or wishes of the Registered Person;
 - (b) in which the Registered Person has a controlling interest;
 - (c) in which the directors or persons connected with the Registered Person are entitled to exercise or control the exercise of not less than fifteen per centum (15%) of the votes attached to voting shares; or
 - (d) a body corporate which is a related corporation.

16.0 GUIDELINES FOR IMPOSITION OF PENALTIES

- 16.1 The DSC and ASC shall, for the purpose of the By-laws make reference to the **Guidelines for Imposition of Penalties under the By-laws Relating to the Procedure for Disciplinary Proceedings** issued by the FIMM pursuant to this **clause 16.0** and annexed hereto as **Appendix A** when determining the mode of penalties to be imposed on a Registered Person.

17.0 NOTICES

- 17.1 Any notice to be given under the By-laws shall be in writing and be delivered personally or by post or facsimile transmission to:-
- (a) in respect of the Registered Persons, the last addresses and facsimile numbers made available to and contained in the records of the Secretariat; or such other addresses made known to the Secretariat from time to time; and

- (b) in respect of the FIMM,

**Federation of Investment Managers Malaysia
19-07-3, 7th Floor, PNB Damansara
No. 19, Lorong Dungun, Damansara Heights
50490 Kuala Lumpur
Facsimile No.: 603-2093 2700**

17.2 Proof of posting or delivery of any notice shall be deemed to be proof of receipt of the same and the date of receipt of such notice shall be deemed to be:-

- (a) in the case of personal delivery, on the day of delivery **PROVIDED THAT** delivery is made on a Business Day;
- (b) in the case of posting, on the third (3rd) Business Day after posting; and
- (c) in the case of a facsimile transmission, at the time the transmission report is received by the sender which purports to confirm that the addressee has received such facsimile by showing that the addressee has received such facsimile in full and without error **PROVIDED THAT** such transmission is made on a Business Day.

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GUIDELINES FOR IMPOSITION OF PENALTIES UNDER THE BY-LAWS RELATING TO THE PROCEDURE FOR DISCIPLINARY PROCEEDINGS

Introduction

These guidelines are made pursuant to *clause 16.0* of the *By-laws Relating to the Procedure for Disciplinary Proceedings* (hereinafter referred to as the “By-laws”) as a guide for the Disciplinary Sub-Committee (DSC) and Appeal Sub-Committee (ASC) in deciding on the mode of penalty to be imposed on the Registered Person who is found guilty of misconduct or non-compliance with the provisions of the By-laws, standards and practice notes which includes the Code of Ethics, regulations, guidelines, circulars and directives issued by the Federation of Investment Managers Malaysia (FIMM) from time to time (hereinafter referred to as “these Guidelines”).

When considering the mode of penalty to be imposed, the DSC and ASC shall consider all the circumstances of the particular complaint. In essence, the imposition of a penalty should protect the public by deterring the Registered Person from committing any further misconduct or act of non-compliance.

It is emphasized that these Guidelines are not exhaustive and that the DSC and ASC may also consider other circumstances not provided in these Guidelines whenever the DSC or ASC considers it appropriate.

1.0 Definitions and Interpretations

1.1 In these Guidelines, unless otherwise stated, the following words and expressions shall have the following meanings:-

“Appeal Sub-Committee” or “ASC” shall mean the Appeal Sub-Committee set up under the **By-laws Relating to the Procedure for Disciplinary Proceedings** (hereinafter referred to as the “By-laws”) to conduct appeal proceedings;

“CUTA” shall mean Corporate Unit Trust Advisers comprising institutions, corporations or organisations that are registered with the FIMM in accordance with the **Guidelines for Registration of Corporate Unit Trust Advisers (CUTA) for the Marketing and Distribution of Unit Trusts**;

“Disciplinary Sub-Committee” or “DSC” shall mean the Disciplinary Sub-Committee set up under the By-laws to conduct disciplinary proceedings;

“FIMM” shall mean Federation of Investment Managers Malaysia (Company No: 272577 – P), a company limited by guarantee as incorporated under the **Companies Act 1965 [Act 125]** and shall include its successors-in-title and permitted assigns;

“Guidelines” shall mean these **Guidelines for Penalty Imposition under the By-laws Relating to the Procedure for Disciplinary Proceedings**;

“IUTA” shall mean Institutional Unit Trust Advisers comprising financial institutions approved by the Securities Commission and registered with the FIMM in accordance with the **Guidelines for Registration of Institutional Unit Trust Advisers (IUTA) for the Marketing and Distribution of Unit Trusts**;

“UTC” shall mean Unit Trust Consultants who are registered with and authorised by the FIMM to market and/or distribute unit trust funds;

“Registered Person” shall mean the UTMC, IUTA, UTC or CUTA;

“unit trust fund” shall have the same meaning as that assigned to that expression “unit trust scheme” or “scheme” in the **Securities Commission Act 1993**;

“UTMC” shall mean management companies as defined in the **Securities Commission Act 1993 [Act 498]**;

1.2 Reference to any law, guideline, regulation and/or enactment shall include any statutory modification, extension, reenactment or replacement thereof;

1.3 Reference to words importing the masculine gender only shall include the feminine and neuter genders and vice versa;

- 1.4 References to words in the singular number only shall include the plural number and vice versa; and
- 1.5 Reference to person shall include any individual, sole proprietorship, partnership, joint venture, statutory or governmental body, trust and any other body, organisation, association or group of persons; whether corporate or unincorporated.

2.0 Misconduct or Non-compliance

- 2.1 The non-compliance or misconduct of the Registered Person may be in the following manner:-

Type of Misconduct/Non-compliance	Type of Penalty	Level of severity
Non-compliance of any guidelines issued by the FIMM	(1) Written reprimand either: (i) private; or (ii) public	1 – 2
Non-compliance of any By-laws or any other regulations issued by the FIMM	(1) Written reprimand either:- (i) private; or (ii) public (2) Fine based on level of severity of non-compliance (3) Suspension of membership/registration (4) Termination of membership/revocation of registration (5) Any combination of the above	1 – 7
Non-compliance of standards and practice notes which includes the Code of Ethics issued by the FIMM	(1) Written reprimand either:- (i) private; or (ii) public (2) Fine based on level of severity of non-compliance (3) Suspension of membership/registration (4) Termination of membership/revocation of registration (5) Any combination of the above	1 – 7

Type of Misconduct/Non-compliance	Type of Penalty	Level of severity
Non-compliance of directives issued by the FIMM from time to time	(1) Written reprimand either: (i) private; or (ii) public (2) Fine based on level of severity of non-compliance (3) Suspension of membership/registration (4) Termination of membership/revocation of registration (5) Any combination of the above	1 – 7

Examples of Misconduct or Non-compliance

Level of the Non-Compliance	Description
Minor	Failure by the Registered Person to comply with any rules or regulations, etc. issued by the FIMM. <u>Example:</u> Failure to pay the annual subscription fees within the stipulated timeframe.
Major	Non-compliance or breach of any rules and regulations issued by the FIMM which: (a) involves a third party; (b) has caused monetary loss of not more than RM50,000.00; and/or (c) has tarnished the image of the industry. <u>Example:</u> (i) Failure to ensure informed decision making by the potential clients. (ii) Usage of unapproved advertisements or promotional materials.

Level of the Non-Compliance	Description
Serious	<p>Non-compliance or breach of any rules and regulations issued by the FIMM which:</p> <ul style="list-style-type: none"> (a) involves a third party; (b) has caused monetary loss exceeding RM50,00.00 and/or (c) has tarnished the image of the industry. <p><u>Example:</u></p> <ul style="list-style-type: none"> (i) Breach of confidentiality. (ii) Failure to act with due care and diligence.

3.0 Considerations

3.1 The DSC and ASC may have regard to the following considerations when determining the degree of penalty for any misconduct or non-compliance with the provisions of the by-laws, regulations, directives and/or standards and practice notes issued by the FIMM from time to time:-

- (a) whether the act of misconduct or non-compliance causes damage to the integrity of the unit trust industry and to what extent;
- (b) whether the act of misconduct or non-compliance causes loss to or imposes costs on the FIMM, the complainant and/or the investing public and to what extent;
- (c) whether the act of misconduct or non-compliance generates a benefit to the Registered Person and/or parties related to the Registered Person and to what extent;
- (d) whether the act of misconduct or non-compliance only results in a technical breach of the by-laws, regulations, directives and/or standards and practice notes issued by the FIMM.
- (e) whether the misconduct or non-compliance was intentional, reckless or negligent, including whether prior advice was sought by the Registered Person on the lawfulness or acceptability of his conduct from the relevant parties or authorities;
- (f) the duration and frequency of the misconduct or non-compliance;

- (g) whether the misconduct or non-compliance is widespread in the unit trust industry (and if so, for how long) or there are reasonable grounds for believing it to be so widespread;
- (h) whether the misconduct or non-compliance was engaged in by the Registered Person alone or as part of a group and the role the Registered Person played in that group;
- (i) whether a breach of fiduciary duty was involved;
- (j) whether the misconduct or non-compliance reveals serious or systematic weaknesses, or both, in respect of the management systems or internal controls in relation to all or part of the Registered Person's business;
- (k) whether the FIMM has issued any guidance in relation to the misconduct or non-compliance in question.

3.2 In addition to the considerations in item 3.1 above, the DSC and ASC may also take into account the following:-

- (a) Other circumstances of the Registered Person
 - Where a fine is imposed, the fine should not have the likely effect of putting the Registered Person in financial jeopardy. However, if the Registered Person takes deliberate steps to create the false appearance that a fine will place him in financial jeopardy, e.g. by transferring assets to third parties, this should also be taken into account by the DSC and ASC.
 - Whether the Registered Person brings his misconduct or non-compliance to the FIMM's attention. In reviewing this, the DSC and ASC should consider whether the Registered Person informs the FIMM of all the misconduct or non-compliance of which he is aware or only part, and the time and manner in which the disclosure is made and the reasons for the disclosure.
 - The degree of cooperation with the FIMM and other relevant authorities or regulatory bodies.
 - Any remedial steps taken since the misconduct or non-compliance was identified, including any steps taken to identify whether the clients or others have suffered any loss or incurred any damages and any steps taken to sufficiently compensate those clients or others, any disciplinary action taken against the Registered Person and any steps taken by the Registered Person to ensure that similar misconduct or non-compliance does not occur in future.
 - The previous disciplinary record of the Registered Person, including any previous similar misconduct or non-compliance for which the Registered

Person has been disciplined or any previous good conduct by the Registered Person.

- The Registered Person's experience in the unit trust industry and position within his company.

(b) Other relevant factors

- What actions the FIMM has taken in previous similar cases – in general, similar cases should be treated consistently.
- Any punishment imposed or regulatory action taken or likely to be taken by other relevant authorities or regulatory bodies.

4.0 Imposition of Fines

4.1 Where a fine is to be imposed, the amount shall be determined in accordance with the level of severity as tabulated below:-

Non-compliance/Misconduct	Degree of Misconduct/Non-compliance	Maximum Fine Not Exceeding (RM)
Level 1 – 2	Minor	5,000
Level 3 – 5	Major	50,000
Level 6 – 7	Serious	500,000

GUIDELINES FOR IMPOSITION OF PENALTIES BY THE EXECUTIVE DIRECTOR UNDER THE BY-LAWS RELATING TO THE PROCEDURE FOR DISCIPLINARY PROCEEDINGS

1. Introduction

These guidelines are made pursuant to **clauses 3.4(b) and 3.4(c)** of the **By-laws Relating to the Procedure for Disciplinary Proceedings** (hereinafter referred to as the “By-laws”) as a guide for the Executive Director when imposing penalties against the Registered Person, thus, enabling the Executive Director to dispose matters regarding non-compliances as expeditiously and efficiently possible.

2. Scope of Authority

The Executive Director may impose penalties in cases:-

- (a) involving non-compliance by the Registered Person with daily operational requirements as provided in the standards and practice notes, regulations, guidelines, circulars and directives issued by the FIMM;
- (b) involving non-contentious issues or non-compliance by the Registered Person with periodical reports imposed by the FIMM; and
- (c) where the Registered Person admits to committing an act of non-compliance as provided in the By-laws.

3. Types of Penalties Imposed by the Executive Director

3.1 Pursuant to **clauses 3.4(b) and 3.4(c)** of the By-laws, the Executive Director may impose any or a combination of the following penalties:-

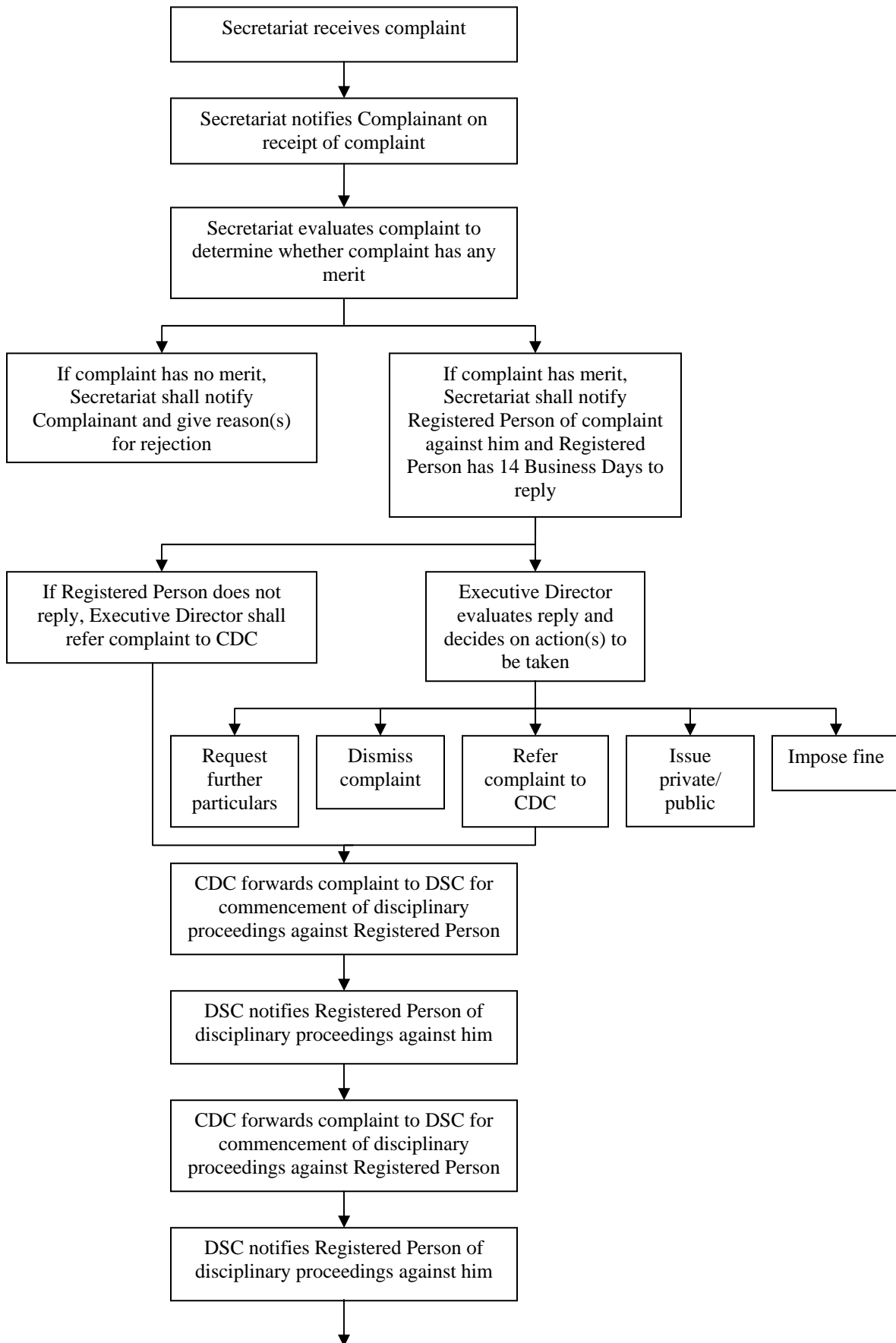
- (a) issue a private or public reprimand; and/or
- (b) impose a fine not exceeding RM1,000.00, subject to the approval of the Compliance and Disciplinary Committee.

3.2 Notwithstanding **item 3.1** above, any fine to be imposed on an Ordinary Member of the FIMM shall be subject to the prior approval of the Council. For this purpose, “Ordinary Member” shall have the same meaning as provided in **clause 1.1** of the By-laws.

4. **General Guide**

The Executive Director shall also refer to the **Guidelines for Imposition of Penalties under the By-laws Relating to the Procedure for Disciplinary Proceedings** in determining the type of penalty to be imposed against the Registered Person.

DISCIPLINARY PROCEEDINGS FLOWCHART



DISCIPLINARY PROCEEDINGS FLOWCHART

