



MALTA  
INSTITUTE  
OF TAXATION

# MALTA INSTITUTE OF TAXATION

## STATUTE AND BYE-LAWS

**Amended on 19<sup>th</sup> December 2018, following AGM approval**



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## STATUTE

### Name

1. The name of the Institute is “Malta Institute of Taxation” (hereinafter referred to as “the Institute”).

### Office

2. The Office of the Institute shall be situated at 66, Mosta Road, Attard ATD1430, or at any other address in Malta as may be decided from time to time by the Council.

### Statute

3. The Institute is a legal person in terms of the provisions of the Second Schedule of the Civil Code, Chapter 16 of the Laws of Malta.

### Principal Objects

4. The Institute is constituted for the following purposes:
  - a) to advance public education in and promote the study of the principles, administration and practice of taxation;
  - b) to facilitate the exchange of information and views on taxation, and the creation of an informed public opinion on the subject;
  - c) to provide opportunities for the acquisition and dissemination of useful information concerning taxation in Malta, Member States of the European Union and other countries;
  - d) to develop the techniques of taxation, particularly through courses (whether organised and run by the Institute or other bodies) seminars, workshops and similar activities.
  - e) to admit, as members, individuals who satisfy the prescribed eligibility criteria and grant certificates accordingly;
  - f) to encourage and assist suitable persons to join the profession concerned with the administration and practice of taxation, and to provide means of testing the qualifications of such persons for admission to membership of the Institute;
  - g) to co-operate with other professional bodies concerned with allied disciplines;
  - h) to affiliate with international institutions or other groupings concerned with taxation; and
  - i) to advance and protect the professional status and interests of its members.



### **Ancillary Objects**

5. In furtherance of its principle objects the Institute shall have the following ancillary objects and powers:
  - a) to purchase or lease, rent, hold or dispose of any building or other property, movable or immovable;
  - a) to borrow or raise any money that may be required by the Institute with or without security;
  - b) to pay remuneration and reimbursement of out of pocket expenses to employees and providers of services to the Institute;
  - c) to do all such other lawful things as are incidental or conducive to the attainment of the above objects or any of them.

### **Institute non-Profit Making and non-Proprietary**

6. The Institute shall be a non-profit making organisation so that, save for the payment of remuneration and out of pocket expenses in the cases provided for in this statute, no part of the capital, assets, property or income of the Institute shall be available, directly or indirectly, for the personal benefit of any member, including members of the Council. The capital, assets, property and income of the Institute shall be utilised solely for the achievement of the Objects, whether Principal or Ancillary, for which the Institute is constituted.

### **Classes of Membership**

7. The Institute shall have three classes of members:
  - a) Student class,
  - b) Associate class who shall be known as Associate Malta Institute of Taxation and who shall be entitled to use the designation AMIT, and
  - c) Fellows who shall be known as Fellow Malta Institute of Taxation and who shall be entitled to use the designation FMIT.

### **Admission of Members**

8. The rules governing the admission of members shall be as follows:
  - 1) Student Members:

Individuals may be admitted to the Institute as a Student Member where:

    - a) They are full-time students reading Law or Accountancy at the University of Malta or pursuing the ACCA qualification programme, or equivalent, or
    - b) They satisfy such other requirements as may be provided in the Bye-Laws in force at the time of admission.



An individual shall be admitted as a Student member for the duration of their course of studies on such terms as Council may determine. The completion of the course or programme, referred to in (a) or (b) above, shall not automatically confer an entitlement for the Student Member to become an Associate member of the Institute and he/she must apply for Associate membership and must satisfy the criteria for membership as applicable at the time.

2) Associates:

Individuals shall be entitled to be admitted as Associates of the Institute if they satisfy one of the following conditions:

- a) they have satisfied the Institute membership criteria as may from time to time be established by Council; or
- b) they have enrolled in the MIT Course in Taxation, or equivalent, and thereafter upon successful completion; or
- c) they are members of other recognised institutes of taxation: provided that such persons may nonetheless be required to be tested by the Institute as to their proficiency in Maltese taxation; or
- d) they occupy senior posts in Government Departments which are primarily concerned with taxation in Malta; or
- e) they do not qualify for membership as aforesaid but they are lawyers, accountants or other graduates who have written their thesis or dissertation, as the case may be, on a taxation subject or who are proficient in Maltese taxation and have no less than five years' experience as a tax practitioner (advisory or compliance), provided that such persons may nonetheless be required to be tested by the Institute as to their proficiency in Maltese taxation.

3) Fellow Membership:

An associate shall be eligible to be classified as a Fellow of the Institute after having completed a period of five years as an Associate of the Institute. Such Associate shall apply to the Council to be admitted as Fellow and the Council shall accept the application if it is satisfied that the seniority and experience of the member warrants admission as aforesaid: provided that:

- a) no person shall be admitted as Fellow unless he is thirty years of age; and
- b) the period of five years may be shortened or dispensed with by the Council in exceptional cases.

## Rights and Privileges

9. The rights, privileges, obligations and conditions of membership and the manner in which the same may be suspended or determined shall be such as may be prescribed in the bye-laws hereto.



## Constitution

10. The Institute shall have the following organs – Council, a Management Committee and, to the extent practically and financially feasible, a CEO, CTO and a secretariat.
  - 1) The Council

There shall be a Council consisting of members of the Institute appointed in the manner prescribed in the bye-laws of the Institute.
  - 2) The Management Committee
    - a) There shall be a Management Committee which shall be composed of the President, the Vice President, the Secretary and the Treasurer.
    - b) The Management Committee shall be responsible for overseeing the execution and implementation of the Council's strategies, policies and decisions and, in so doing may give direction to the Chief Executive Officer.
    - c) The Management Committee shall have regular meetings as determined by the officers. The rights, privileges and obligations of the Management Committee and its members, and the manner in which the same may be suspended or determined, shall be such as the bye-laws shall prescribe.
  - 3) The Chief Executive Officer
    - a) The Institute shall appoint a Chief Executive Officer who shall be responsible for the operational management of the Institute, including, but not limited to, the implementation and execution of the strategies, decisions taken and policies set by the Council of the Institute.
    - b) He/she shall always act to support the Council and shall follow any decision of the Council and the Management Committee.
    - c) The Chief Executive Officer shall always carry out his duties diligently in the best interests of the Institute.
    - d) The Chief Executive Officer shall report to the Management Committee and to Council as appropriate.
    - e) The Chief Executive Officer shall be a fit and proper person and shall have the qualities required to fulfil his role and commensurate to the obligations incumbent upon him/her.
    - f) The Chief Executive Officer, in its capacity as such, is not entitled to vote at Council meetings.
    - g) The Management Committee may assume the role of the Chief Executive Officer should the post become vacant, until such time that the position is filled.



- 4) The Chief Technical Officer
  - a) The Institute shall appoint a Chief Technical Officer whose responsibilities shall include the co-ordination of the technical initiatives of the Institute and the Institute's submissions to CFE Tax Advisors Europe.
  - b) The Chief Technical Officer shall report to the Management Committee and to Council as appropriate.
  - c) The Chief Technical Officer, in its capacity as such, is not entitled to vote at Council meetings.

### **Management of the Affairs of the Institute**

11. The Council shall have ultimate responsibility for the management of the affairs of the Institute and may exercise all the powers of the Institute except for such matters as are by the statute or by the bye-laws of the Institute reserved to be transacted by or at a General Meeting of the members of the Institute. No motion duly approved at a General Meeting shall invalidate any prior act of the Council which would have been valid if that motion had not been approved.

### **Exercise of Powers of the Council**

12. All powers which under the provisions of this statute may be exercised by the Council shall be exercised by it in accordance with, and subject to the provisions of the statute and bye-laws of the Institute. The Council may however from time to time make such regulations as it thinks fit for the purpose of putting into effect any provisions of this statute or bye-laws or otherwise for regulating the affairs of the Institute and may rescind or vary or add to any such regulations, provided always that no such regulations shall be in any way inconsistent with the provisions of this statute or of the bye-laws.

### **Power to Make Bye-Laws**

13. The Institute may from time to time by resolution of a General Meeting convened with at least fourteen days notice in writing, make such bye-laws as the Institute may deem fit, and from time to time may rescind or vary any of the bye-laws and make others in their stead, but such bye-laws may not be in any way inconsistent with the provisions of this statute of which they shall be deemed to be an integral part.

### **Validity of Bye-Laws**

14. Unless and until rescinded or varied in accordance with the last preceding clause, the bye-laws appended to this statute shall constitute the by-laws of the Institute.



### **Purposes for which Bye-Laws may be made**

15. The purpose for which the Institute may make bye-laws in the manner hereinbefore set out shall be the furtherance of the objects of the Institute and the better execution of this statute and without prejudice to the generality of the foregoing, bye-laws shall regulate all such matters as are left by the statute to be prescribed by the bye-laws.

### **Power to Amend Statute**

16. Subject to the provisions of Paragraph 2.12, Chapter Two of the Bye-Laws hereof, the Institute may by resolution, of which due notice of intention had previously been given and passed by a majority of not less than two-thirds of the Members present and voting at a General Meeting of the Institute, repeal, replace, amend or add to this statute.

### **Term and Dissolution of Institute**

17. The Institute is constituted for an indefinite term. A motion to dissolve the Institute or to merge it into another body shall require approval by two-thirds of the members present and voting at a General Meeting of the Institute for which due notice in writing has been given. In the case of dissolution of the Institute, its net realizable assets, if any, shall be distributed to an educational establishment or other voluntary organisations or a charity or a body of persons having a purpose similar to that of the Institute, as shall be selected by the then existing Council of the Institute.





# BYE-LAWS

## CHAPTER ONE

### THE COUNCIL

#### Council Members

- 1.01 The Council of the Institute shall be composed of ten members who shall be elected thereto at the Annual General Meeting: so however that, without prejudice to the provisions of bye-law 1.11, the Council may co-opt not more than a further four members. Co-opted members shall be full members of the Council for all purposes of this statute.

The first Administrators, appointed on 28<sup>th</sup> March 1995, were:

Edwin Vella  
Antoine Fiott  
Renald Micallef  
Joseph Galea Musu  
Bernard Scicluna  
Vincent Galea  
Joseph Galea

#### Officers of the Council

- 1.02 The Officers of the Council shall be the President, the Vice-President, the Secretary, the Treasurer and the Assistant Secretary/Treasurer. The President shall be in office for a three year term, and may thereafter, upon expiration of each such three year term, seek re-election, and reconfirmation, for a further three year term. The other officers shall be appointed annually by Council, from among the members who sit thereon.
- a) The President shall be ex-officio Chairman of the Institute, the Council and any Committee of which he is a member. The President shall preside at all meetings thereof and shall be responsible for the orderly dispatch of business.
  - b) The Vice-President shall deputise for the President, when necessary, and shall be ex-officio Chairman of the Ethics and Disciplinary Committee.
  - c) The Secretary shall be charged with executing the business of the Institute and shall, inter alia, be responsible for:



- i. recording the minutes of meetings of the Council and of the General Meetings of the Institute;
  - ii. conserving the records of General Meetings and of the meetings of the Council; and
  - iii. the conservation of the records of the Institute, including the register of members. The Secretary shall be ex-officio Chairman of the Membership Committee.
- d) The Treasurer shall be responsible for the financial affairs and records of the Institute. The Treasurer shall operate the bank accounts of the Institute together with the Assistant Secretary/Treasurer. The Treasurer shall also be ex-officio Chairman of the Finance Committee.
- e) The Assistant Secretary/Treasurer shall deputise for the Secretary as necessary and shall, together with the Treasurer, operate the Institute's bank accounts.

### **Term of Office**

- 1.03 The Council's term of office shall be from one Annual General Meeting to the next.

### **Nomination of Retiring Members**

- 1.04 With the exclusion of the President, being governed by clause 1.02, the longest serving five elected Council Members and all co-opted Council members shall retire at the end of their term and thus be eligible for re-election. Every elected retiring member of the Council shall, unless he has signified to the Council before the Annual General Meeting his intention not to offer himself for re-election, be deemed to be nominated for re-election.

The remaining Council Members will automatically serve another term of one year, without the need to stand for election.

### **Eligibility of Members**

- 1.05 All members of the Institute are eligible for election to the Council. Nominations of candidates for election to the Council, other than those deemed to be nominated under paragraph 4 in this Chapter, shall be made by notice in writing to the Council. This Notice is to be received no later than one week prior to the date of the Annual General Meeting.

### **Notice of Nominations**

- 1.06 The names of the candidates nominated, or deemed to be nominated, under clause 1.04 of this Chapter, shall be advised at the Annual General Meeting. No more than two members of any one firm of accountants, auditors or



lawyers may be appointed as Council Members during the same term of office. Were nominations are received from more than two members from any one firm of accountants, auditors or lawyers, the nominees in question must agree amongst themselves as to which nomination shall be retained.

If more candidates are nominated, including those deemed to be nominated, than there are vacancies to be filled, the Members of the Institute shall at the Annual General Meeting fill the vacancies by election. If no more candidates are nominated, including those deemed to be nominated, than there are vacancies to be filled, such candidates shall at the Annual General Meeting be declared elected to the Council. If sufficient candidates are not elected at an Annual General Meeting to satisfy the minimum number of ten serving Council members, then the resultant vacancies may be filled by the Council.

### **Elections of Members to the Council**

- 1.07 The election of members of the Council at an Annual General Meeting shall be by secret ballot. Each member present at the meeting shall, in person or by proxy, have as many votes as there are vacancies to be filled, but shall not give more than one vote to any one candidate. Those candidates, equal to the number of vacancies to be filled, who receive the most votes shall be elected but if either the candidates to be elected or the order of the candidates who were not elected cannot be determined because of an equality of votes between two or more candidates, a second ballot shall be taken on such candidates. The declaration of the Chairman as to the result of the election shall be final.

### **Vacation of Office**

- 1.08 The office of a member of the Council is vacated:
- a) if he ceases to be a member of the Institute;
  - b) if he is excluded or suspended from membership, or is reprimanded or admonished under the provisions of the by-laws;
  - c) if he is absent from the meetings of the Council for more than fifty percent of Council meetings called during the Council's term: provided that if a member is absent from Malta or in the event of serious indisposition, this rule, at the discretion of the Council, shall not apply.

### **Resignation**

- 1.09 A member of the Council may tender his resignation from office by notice in writing to the Council, and on its acceptance by the Council, but not until then, he shall cease to be a member of the Council.



### **Removal of Member from Council**

- 1.10 The Institute may by a resolution passed by secret ballot at a specially convened General Meeting for this purpose (and for which resolution not less than two-thirds majority of the voting members present are required) remove any member of the Council from office.

### **Vacancies in the Council**

- 1.11 In the event of any vacancy occurring in the Council between Annual General Meetings, the Council shall fill the vacancy from amongst such candidates who were not elected to the Council at the last Annual General Meeting, inviting first the member who obtained the highest number of votes. If this is not possible, or if all such candidates do not accept the Council's invitation, the Council may fill the vacancy from amongst the members of the Institute.

### **Indemnification of Council Members**

- 1.12 The members of the Council shall be indemnified by the Institute against all losses and expenses incurred by them in or on the discharge of their duties, except such as may result from their own wilful default. No member shall be liable for any misdemeanour of any other member of the Council or for joining in any receipt or document or for any act of conformity or for any loss or expense happening to the Institute unless the same happens from his own wilful default. The Council may effect insurance to indemnify the members of the Council and Committees and the officers and staff of the Institute against all such costs, charges, losses, expenses and liabilities, and apply the proceeds of any insurance for their benefit.

### **Representation**

- 1.13 The legal and judicial representation of the Institute shall vest in the Secretary.

### **Life President**

- 1.14 A member who has served as President of the Institute for at least three years shall be eligible for appointment as Life President. The appointment of a Life President shall be made by means of a resolution of the Council.
- 1.15 A Life President shall be a member and officer of the Council in addition to the members and officers appointed in accordance with the preceding paragraphs of this Chapter. The provisions of the Statute and of the By-Laws shall apply to a Life President as they do to members of the Council, except



that paragraphs 3, 8, 10 and 11 of this Chapter shall not apply to a Life President.

- 1.16 The references in the Statute and in the Bye-Laws to the President shall not be construed as references to a Life President.



## CHAPTER TWO

### PROCEEDINGS AND POWERS OF THE COUNCIL

#### Meetings of Council

- 2.01 Meetings of the Council shall be held at least once every three months at the office of the Institute or at such other place as it may determine.

#### Calling of Meetings

- 2.02 A meeting of the Council may at any time be called by the President or in his absence the Vice-President or on request in writing by two members of the Council to the Secretary.

#### Notice of Meetings

- 2.03 Notice in writing of a meeting of the Council shall be sent to each member of the Council at least seven clear days before such meeting. The notice is to contain, where possible, a statement of the business to be transacted at such meeting. The non-receipt of such notice, however, by any member of the Council shall not invalidate the proceedings of such meeting.

#### Chairman of Meetings

- 2.04 At all meetings of the Council the President or in his absence the Vice-president shall act as Chairman. In the absence of both, the Chairman shall be elected by those present.

#### Voting

- 2.05 Every decision taken at a Council Meeting shall be determined by a majority of votes of the members present. Every Council member shall have one vote, but in the case of equality of votes, the Chairman shall have a casting vote in addition to his original vote.

#### Adjournment of Meetings

- 2.06 Subject to the provisions of these by-laws, the Chairman may, with the consent



of the meeting, adjourn a Council meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place, unless all members of the Council are present and agree to consider fresh business. No notice need be given of an adjourned meeting unless it is so directed in the resolution for adjournment.

### **Quorum**

- 2.07 The quorum for meetings of the Council shall be a number of members in excess of fifty per cent of the number of Council members.

### **Election of Officers**

- 2.08 At the first meeting of the Council after every Annual General Meeting of the Institute the members of the Council shall elect the officers of the Institute. The officers shall hold office until the first meeting of the Council held after the next Annual General Meeting. Any vacancies in any of these offices shall be filled at the next meeting of the Council.

### **Minutes of Meetings**

- 2.09 Minutes shall be recorded of all resolutions and proceedings of meetings of the Council and of Committees thereof, except in the case of Committees appointed for a specific purpose, who shall not report in full to the Council; and every minute signed by the Chairman of the meeting to which it is related, or by the Chairman of a subsequent meeting shall be sufficient evidence of the facts stated therein.

### **Investment of Funds**

- 2.10 All funds of the Institute, not needed immediately for the ordinary business of the Institute, may be invested by the Council in the name of the Institute in any securities approved by the Council from time to time.

### **Borrowing Powers**

- 2.11 The Council may, from time to time, borrow funds for the purposes of the Institute, with or without giving security, and may pay interest thereon.

### **List of Members**

- 2.12 The Secretary, assisted by the administrative staff of the Institute, shall maintain a list of members of the Institute, showing such particulars as may be required and permitted in terms of the relevant law, together with such



other details as the Council may deem advisable. The list of Members shall be kept at the registered office of the Institute and shall be available for inspection by members of the Council and such other persons as may be authorised to do so by law or by the Court.

### **Appointment of Committees**

- 2.13 Subject to the provisions of the statute, the Council may appoint Committees, whether on a permanent or ad hoc basis. Each Committee shall have as Chairman a member of the Institute. Proceedings of any such Committee shall, mutatis mutandis, be in a manner similar to proceedings of the Council. Save as otherwise expressly provided by these bye-laws, not all the members of any such Committee need be a member of the Council or of the Institute. No resolution of any Committee shall be binding upon the Institute unless the resolution is subsequently ratified by the Council. Committees shall report to and be responsible to the Management Committee and Council.
- 2.14 Without in any way limiting the generality of the foregoing, the Council shall set up Committees as follows:
- a) Membership Committee
  - b) Ethics and Disciplinary Committee
  - c) Finance Committee
  - d) Technical Committee
  - e) Education Committee.

### **Employees and Providers of Services**

- 2.15 The Council shall be empowered to employ or engage the services of any person or company whose work, service or expertise are required by the Institute for the attainment of any of the Objects, whether Principal or Ancillary for which the Institute is constituted, and to remunerate such person or company accordingly: Provided always that no member of the Council shall be entitled to any remuneration in his capacity as member thereof, but may be paid reimbursement of out of pocket expenses.

### **Accounts**

- 2.16 The Council shall cause accounts to be kept with respect to:
- a) all sums of money received and expended by the Institute and the matters in respect of which the receipt and expenditure takes place;
  - b) all sales and purchases of goods and services by the Institute;
  - c) all assets and liabilities of the Institute.





Proper accounts shall not be deemed to be kept, if such accounts as are necessary to give a true and fair view of the state of the Institute's affairs are not kept.

### **Inspection of Accounts**

- 2.17 The accounts of the Institute shall be kept in such place as the Council shall determine and shall be open to inspection by members of the Council. The Council shall have power to determine to what extent and at what times and places and under what conditions or regulations the accounts shall be open to the inspection of members not being members of the Council.

### **Presentation of Accounts**

- 2.18 At least once in every year the Council shall lay before the Institute in General Meeting an income and expenditure account for the previous calendar year, together with a balance sheet made up as at the end of the said year. Every such account and balance sheet shall be accompanied by reports of the Council and the Auditors, and copies of such account, balance sheet and reports and of any other documents annexed or attached thereto or accompanying the same shall be distributed to members at the General Meeting.

### **Bona Fide Acts**

- 2.19 All bona fide acts performed by members of the Council or of any Committee of the Council acting individually or collectively for and on behalf of the Council or Committee shall, notwithstanding that it may afterwards be shown that there was some defect in their appointment, be as valid as if every such member had been qualified to act.

### **Resolutions in Writing**

- 2.20 A resolution in writing signed by all members for the time being of the Council or of a Committee of the Council shall be as valid and effectual as if it had been passed at a meeting duly convened of the Council or such Committee.

### **Code of Conduct and Ethics**

- 2.21 There shall be a Code of Conduct and Ethics for the guidance of Members of the Institute, and any breach of any provision thereof shall be regarded as a breach of this statute. The current code is attached hereto. Disciplinary proceedings shall not be limited to breaches of the said Code.



## CHAPTER THREE

### MEMBERS

#### Admission of Members

- 3.01 The admission of members shall be effected by the Council. Every applicant for admission as a member shall satisfy the Council that he has fulfilled the conditions specified by the statute and these bye-laws in such a manner as the Council shall require and shall produce such evidence as the Council may deem necessary. The Council may authorise that persons participating actively in any of the Institute's educational activities shall be automatically admitted to membership during the course of their studies on such terms as may from time to time be determined.

#### Council to Decide as to Facts

- 3.02 The Council shall decide whether any person applying to be admitted as member has or has not fulfilled the conditions for membership specified in these statute and bye-laws.

#### Refusal of Membership

- 3.03 The Council may, in its absolute discretion, refuse to admit any person to membership and shall not be obliged to give any reason for its decision.

#### Particulars to be Supplied

- 3.04 It shall be the duty of each Member to inform the Council of any change of address, place of business or employment. It shall further be the duty of each Member to supply the Council with any information which the Council may reasonably require.

#### Resignation and Re-admission

- 3.05 Any member may tender his resignation from membership by sending notice in writing to the Council. The Council may, by resolution passed at a meeting specially convened for the purpose and for which resolution not less than two thirds of the members of the Council must be present, re-admit to membership any person who has resigned, subject to such terms and conditions as the Council may deem fit.



## **Suspension or Removal from Membership**

3.06 The Council may remove any person from membership:

- a) on account of manifest actions, behaviour or circumstances prejudicial to the interest or good name of the Institute or of its members; or
- b) is convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud or has been guilty of any act or omission irreconcilable with a professional or a member of the Institute; or
- c) is interdicted or incapacitated; or
- d) commits any breach of the Statute, Code of Ethics and/or the Bye-Laws of the Institute and fails to remedy it pursuant to a request made by the Institute; or
- e) fails to pay membership fees after a final intimation has been sent expressly stipulating that should the dues not be settled it would result in the forfeiture of membership.

Provided that, where it appears to the Council that there appear to be prima face grounds to conclude that the circumstances referred to in paragraphs (a), (b) or (d) might subsist, the Council may resolve to suspend the membership of the individual concerned pending the final determination of the matter by Council.

During the period of suspension of membership, the suspended member shall not be required to pay membership fees, and, if such fees would have been paid, would be entitled to receive a pro rata refund relative to the duration of the suspension. Furthermore, a member would be excluded from all the privileges of membership including, but not limited to, making recommendations for applicants seeking Associate membership of the Institute. The suspended member would nonetheless still be expected to continue to observe the requirements of the Institute's Code of Ethics.

In the event of a complaint against or allegation of misconduct on the part of a member brought to the attention of the Institute, the matter shall in the first instance be referred to the Ethics and Disciplinary Committee.

Any person who has been suspended or removed from membership may be restored to full membership when, and if, the Council is of the opinion that the cause or causes which had led to the suspension or removal did not in fact subsist or have been remedied, and subject to such conditions as the Council may stipulate.



## Fees

- 3.07 Subject to the provisions of the next following paragraph, the Council shall have the power to prescribe the nature and amounts of the annual or other subscriptions, entrance fees or payments to be applicable in the case of members or any class or category of members and the date or respective dates on which they shall be payable.

## Membership fee

- 3.08 Until otherwise determined by the General Meeting, there shall be charged:
- a) in relation to Associate members, an annual membership fee of seventy-five Euros (€75); and
  - b) in relation to Student members, an annual membership fee of thirty Euros (30), payable within sixty days from admission to membership or from 1 January of each year, whichever day comes later. Members who are over the age of 65 years shall be exempt from the payment of a membership fee.

When a person is admitted to membership after the last day of June in a given year, the membership fee for that year shall be discounted by 50%.

All MIT graduates, having successfully completed the MIT Course on Taxation, or equivalent, are to have their membership fee, applicable for the year following their graduation, waived.

Members, who are overseas, may voluntarily opt to suspend their membership, for a period of no more than five years, during which period the member would be excluded from all the privileges of membership including, but not limited to, making recommendations for applicants seeking Associate membership of the Institute. The suspended member would nonetheless still be expected to continue to observe the requirements of the Institute's Code of Ethics.



## CHAPTER FOUR

### HONORARY MEMBERS

#### Nomination of Honorary Members

- 4.01 The Council may by resolution passed by two thirds of those present at a meeting of the Council, nominate any person to be Honorary Member of the Institute.

#### Descriptive letters

- 4.02 An Honorary Member may use after his name the designation MIT (Hon.) representing 'Honorary Member of the Malta Institute of Taxation'.

#### Rights and Obligations

- 4.03 An Honorary Member will be subject to the rights, privileges, obligations and conditions of membership as set out in the statute and bye-laws of the Institute subject to the following exceptions:
- a) An Honorary Member shall not be liable to pay any admission or annual membership fees of the Institute.
  - b) An Honorary Member shall not hold out himself proficient to practise the field of taxation and shall not be entitled to any such rights which may automatically vest in members solely by virtue of his honorary membership of the Institute.
  - c) An Honorary Member shall not be eligible for election to the Council of the Institute or be entitled to receive notice of, attend or vote at General Meetings of the Institute.

The restrictions set out in paragraphs (b) and (c) above shall not apply in the case of persons who were members of the Institute prior to their election as Honorary Members.



## CHAPTER FIVE

### MEETINGS OF THE INSTITUTE

#### Annual General Meeting

- 5.01 A General Meeting of the Institute shall be held as the Annual General meeting on such day, time and place as may be determined by the Council, and shall be specified as such in the notice calling it. Not more than fifteen months shall elapse between the date of one Annual General Meeting and the date of the next. The Meeting shall deal with the following business:
- a) considering the approval of the Minutes of the previous General Meeting and the report of the Council on the business of the Institute;
  - b) considering the report by the Auditors;
  - c) considering the Income and Expenditure account and the Balance Sheet of the Institute;
  - d) considering motions presented, if any;
  - e) electing members to the Council;
  - f) appointing the Auditors and either determining their remuneration or authorizing the Council to determine the same; and
  - g) such other business as the Council may think fit and which is appropriate for an Annual General Meeting.

#### Extraordinary General Meetings

- 5.02 General Meetings of the Institute other than Annual General Meetings, which shall be called Extraordinary General Meetings, may from time to time be convened by the Council and shall be so convened, if so required:
- a) by resolution taken by the Council, or
  - b) by written notice to the Secretary which shall be signed by or on behalf of a number of members being not less than ten per cent (10%) of the number of members at that date: the requisition for the meeting shall state the objects for which it has been called, and shall be signed by the requisitionists.

#### Attendance by Proxy

- 5.03 Members may appoint proxies to attend, speak and vote at any General Meeting on their behalf, and a proxy shall have the right to a vote in addition to his own if he is a member of the Institute. A proxy may be given in any normally acceptable form.



### **Advance Notice of Annual General Meetings**

- 5.04 The Secretary shall, not less than six weeks before the date of an Annual General Meeting, send a notice to members informing them of the date of the proposed meeting and inviting them to submit:
- a) nominations for election to the Council; and
  - b) any motions which they wish to bring before the proposed meeting.

### **Consideration of Motions**

- 5.05 The Council shall include any motions put forward by the members in accordance with the preceding bye-law in the notice referred to in paragraph 6 hereof, provided that such motions:
- a) are received by the Secretary not less than three weeks before the date of the Annual General Meeting; and
  - b) relate to matters affecting the Institute or the profession.

### **Notice of General Meetings**

- 5.06 The Secretary shall, not less than seven days before the date of a General Meeting of the Institute, send to each member a notice specifying the date, hour and place of the meeting and the business to be transacted, together with particulars of all motions to be brought before the meeting. The documents to be sent to each member should include Council's Report, the audited accounts for the previous year, the Minutes and the President's address of the previous meeting and the list of all members seeking election to Council. The accidental omission to give notice of a General Meeting to, or the non-receipt of a notice of a general Meeting by any member, or the attendance and voting at any General Meeting of any person subsequently found not to have been entitled so to attend and vote, and any other defect in the convening, calling and conduct of the General Meeting, shall not necessarily invalidate the proceedings thereat.

### **Chairman of Meetings**

- 5.07 All General Meetings of the institute shall be chaired by the President or in his absence the Vice-President. In the absence of both, the Chairman of the meeting will be elected from among the members present.

### **Quorum**

- 5.08 No business shall be transacted at any General Meeting unless a quorum of members is present at the time when the General Meeting proceeds to business. Ten members shall constitute a quorum at a General Meeting. If within half an hour from the time appointed for the meeting a quorum is not



present, the meeting, if convened by the requisition of members, shall be dissolved, but in any other case it shall be adjourned to the same day in the following week, at the same time and place or to such other day, time and place as the Council may determine, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

### **Adjournment of Meetings**

- 5.09 Subject to the provisions of these bye-laws, the Chairman of any General Meeting of the Institute may, with the consent of the meeting, adjourn the said meeting from time to time, but no business shall be transacted at the adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice shall be given of an adjourned meeting, unless it be so directed in the resolution for adjournment.

### **Voting at General Meetings**

- 5.10 At all General Meetings resolutions shall be put to the vote and every member present in person or by proxy shall be entitled to one vote. Voting shall take place by a show of hands except:
- a) in respect of elections of council members, and
  - b) where a poll of all members present has been demanded, by not less than fourteen members, before the vote is taken.

A declaration by the Chairman of the General Meeting that a resolution has been carried, or carried unanimously or by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the book containing the minutes of the General Meeting of the Institute, shall be conclusive evidence of the fact.

### **Equality of Votes**

- 5.11 In the case of an equality of votes, the Chairman of the General Meeting shall have a second or casting vote.

### **Validity of Votes**

- 5.12 No objection shall be taken to the validity of any vote at a General Meeting at which such vote shall be tendered and every vote not disallowed at the General Meeting shall be valid. The Chairman of the General Meeting, assisted by the two members acting as counting assistants during the Annual General Meeting, shall be the sole and absolute judge of the validity of every vote tendered.





### **Minutes of Meeting**

- 5.13 The Council shall cause minutes to be kept of all General Meetings and a record of the minutes signed by the Chairman of the General Meeting or the next following General Meeting shall be conclusive evidence without further proof of the facts therein stated.

### **Non-payment of Subscriptions**

- 5.14 Members who are in arrears with their subscriptions shall not be entitled to attend General Meetings.



## CHAPTER SIX

### AUDIT

#### Appointment of Auditor/s

- 6.01 At least once in every year the accounts of the Institute shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by an Auditor or Auditors to be appointed by the members during the Annual General Meeting. Members of the Council, staff of the Institute or their partners or associates shall not be eligible for appointment as auditors. Every auditor shall be a person holding the warrant of auditor, or a partnership of such persons.

#### Right of Access to Records

- 6.02 The Auditor/s shall have the right to access, at all reasonable times, to the books, records, accounts and vouchers of the Institute, and shall be entitled to require from the officers and staff of the Institute such information and explanations as may be necessary for the performance of their duties.

#### Attendance of General Meetings

- 6.03 The Auditor/s shall be entitled to attend any General Meeting of the Institute and to receive all notices of any communications relating to any such meeting which members are entitled to receive and to be heard at any such meeting which they may attend on any part of the business of the meeting which concerns them as Auditors.

#### Retirement of Auditor/s

- 6.04 The Auditor/s shall retire at the next Annual General Meeting after their appointment, but shall be eligible for re-appointment.

#### Removal of Auditor/s

- 6.05 The Auditor/s may be removed by an extraordinary resolution passed by a majority of votes of members present and voting at an Extraordinary General Meeting convened for the purpose. The members present may appoint another auditor/s in his stead provided that the auditor/s whom it is intended to remove shall be entitled to be heard at the meeting.



## CODE OF CONDUCT AND ETHICS

The following rules are to be followed by members of the Institute to ensure a high level of conduct in the exercise of their profession. The rules also provide a code of professional ethics with a view to preserving the good name of the Institute and of its members, and to ensure professional conduct that is beyond reproach.

These rules have been approved by the members in General Meeting. The commentaries have been added by the Council and will be kept updated from time to time.

### **(1) General Obligations**

Members are, in the interest of the profession, the Institute and the members themselves, in duty bound to maintain high professional and ethical standards in their conduct, including inter-member relations. It is imperative that members maintain high standards of integrity and fair dealing in the rendering of their services. In this context:

- (a) In the conduct of their duties, members are to comply with the applicable provisions of any regulation, code or standard issued by any competent authority.
- (b) Members are to do their utmost to ensure that their services are not carried out or rendered in a manner which would serve the purpose of illicit or illegal activities or purposes, in Malta or abroad, or in any way be detrimental to the interest of Malta, the Institute or the profession.
- (c) Before accepting an engagement, members are to ensure that there are no factors or other circumstances which may reflect badly upon themselves, the Institute or their profession. In particular, members must take steps to find out such facts about a client's circumstances as may reasonably be expected to be relevant to enable them to act properly.

### **Commentary**

Members, like all professionals, exercise their activity primarily to earn a living for themselves and their families. They are however required always to bear in mind the three principal obligations, as summarised above, which their place in Maltese society imposes upon them and which, as members of the Institute, they are presumed to have accepted as binding.



Members of the Institute are subject to the rules of the Institute and to the authority of the Council. The Council represents and crystallises the collective wishes of the members regarding the way in which the exercise of the tax profession in Malta is to be conducted, and it therefore expects and requires all members to grant their full co-operation and to submit themselves to the rules of the Institute, including this Code of Conduct and Ethics.

Members will wish to ascertain that apart from matters of strict legality, client's activities will not be such as to bring themselves, their profession, the Institute or Malta into disrepute. Thus, while it is fairly clear that such activities as money laundering fall under this prohibition, it should be noted that national and international directives on such matters as the crises which from time to time have affected various parts of the world, should also be followed. In respect of such issues, members are bound: (a) to follow these directives, (b) to make appropriate reports to the authorities as are compatible with the obligations of secrecy imposed upon them by law, and (c) to seek the guidance of the council of the Institute as necessary.

## **(2) Professional Independence**

When providing services, members must maintain professional independence and must also nurture an objective approach in their attitude of mind. Members are to act towards their clients and their affairs in the utmost good faith.

### **Commentary**

Given their status, it is not open to members to carry out their activities freely: full cognisance must be given to their functions and this requires that members must be able to maintain a certain degree of independence from clients. Essentially this means that the financial awards arising to a member from any one of his clients, including a group, should not be such as to render a decision to sever relations too great a financial sacrifice.

It is therefore recommended that members should so try to arrange their affairs that not more than twenty per cent (20%) of their receipts on revenue account during any year are accounted for by services rendered to one client, including a group.

It is appreciated that while members are building up their practice adherence to this rule may not be possible. This goal must however be aimed at, and it is suggested that if after five years this position has not been achieved, a member should reconsider the situation and should consult the Council of the Institute regarding the future.



The twenty percent rule laid above does not apply to members who are in the process of running down their practice.

The concept of objectivity flows to a great degree from that of independence. Once a member acts in an independent capacity, he will also be able to pursue the affairs of his clients with due objectivity. Members are obliged to further the interests of their clients to the best of their abilities, and irrespective of what sacrifices they may be called upon to make; but a member has his own obligations, and he must at all times be guided accordingly in his relations with the client, even the most remunerative ones. Such objectivity can only be achieved if steps are taken to ascertain financial independence from any and all of the clients.

Adequate professional indemnity insurance cover is considered to be part of a member's arrangements to achieve professional independence. The situation in this respect in Malta is still fluid, but common sense arrangements are recommended as a minimum. When standards in this matter are established by due authority, members will be required to adhere thereto strictly.

### **(3) Competence**

In accepting an engagement, a member must ensure that he is professionally competent to carry out the work which such acceptance may entail and that his staff is adequately experienced in the functions which will be delegated to them in the course of their duties. If the necessary resources are not available, the member must obtain such advice and assistance as would enable him to carry out his functions and duties in a proper and professional manner.

### **Commentary**

Tax work requires a blend of many skills and small, including particularly single person organisations, may find it difficult to carry out the full range of functions competently and in the best interests of clients.

Co-operation among members is therefore advisable, and no member should feel awkward in seeking expert advice or assistance from another member when he does not enjoy the benefit of such expertise. Such a course of action should not be looked upon as an admission of lack of competence on the part of the member who seeks advice; rather it should be considered as a positive attitude towards the profession, as well as proof of a broad-minded approach. Members would do well to ponder on the possible repercussions to their practice that may ensue from the giving of incorrect advice as a result of refusing to seek expert help where such help is called for.



Where a member obtains the advice of another on a consultancy basis on behalf of a client, the second member, or any firm which he or his consultancy organisation is associated, should not, without the consent of the first member, accept from that client within three years of completion of the consultancy assignment, any work which was, at the time the consultancy was first retained in relation to that client's affairs, being carried out by the first member.

The same considerations apply where a member introduces one of his clients to another for the purposes of consultancy.

#### **(4) Continuing Education**

Members are required to up-date and renovate on a continuing basis the technical knowledge and expertise which they must command for the proper exercise of their profession. Members are responsible for ensuring that the same principle is applied to their employees. Members are expected to follow any directives which may be issued by the Council or by any competent authority regarding continuing education.

#### **Commentary**

Details regarding requirements for continuing education are elaborated from time to time. Members are however encouraged to follow the Institute's publications and to attend at its seminars and other meetings.

The Council of the Institute is also available and willing to give general advice to members, especially where the rules comprised in this Code are involved. The Council does not however, accept responsibility for any advice which may be given by any individual member thereof.

#### **(5) Confidentiality**

Strict rules of confidentiality must be adhered to by members and any information acquired in the course of their duties must not be turned to their own advantage or to the advantage of a third party.

#### **Commentary**

This rule covers two important aspects of a member's obligations:

- (a) a general rule of confidentiality regarding client's affairs, and



(b) a rule to the effect that knowledge which comes to him in the course of dealing with client's affairs cannot be made use of to further his own interests or the interests of a third party.

Maltese law in general lays down strict rules regarding confidentiality about a client's affairs. It may be appropriate to note that the law binds not only principals, but also all third parties falling under jurisdiction of the law of Malta, as well as executives and employees. Confidentiality is extended by law to prevent any person bound by secrecy from producing or divulging to any court, tribunal, board, committee of enquiry or other authority any document, information or other matter coming to his notice, or being in his possession or control for any reason whatsoever, and which he is required to treat as secret and confidential under the law.

A member and his employees may however disclose the above information where the consent of the client has been obtained in writing or where there is a clear legal obligation to do so.

In case a member, or any of his employees, is required by a tribunal to disclose information which, in his opinion, appears to run counter to this rule, the tribunal should be requested to minute formally its directive. Thereafter, legal advice should be sought before proceeding further. Reference should also be made to the Institute. It is appreciated that in the course of his work a member may find himself faced with conflicts between loyalty to his principals on the one hand, and his duties as a member of a profession or as a citizen on the other. When faced with such conflict, a member should make disclosure only with proper authority or consent or where there is a professional obligation, a right, a legal requirement or a public duty to do so.

Where a member is in doubt as to whether he has a right or duty he should, if appropriate, initially discuss the matter fully with the Institute. If that is not appropriate, or if he fails to resolve his problem, he should take legal advice.

As regards the second branch of the rule, a member could, if he were so minded, turn to his own advantage or to the advantage of a third party, information acquired in the course of the exercise of his profession. Members should not only refrain from misuse of such information but should also refrain from acting in such a manner as might make it appear that they have misused the information.

These two rules remain binding on members and their employees not only during the continuance of the member's engagement to act for any client, but also indefinitely thereafter.



## **(6) Prompt Execution**

A member who provides service to a client must act promptly in accordance with his instructions and in the spirit of his engagement with client, unless he has been given discretion as to timing, in which case such discretion is to be used in an alert and sensible way. Moreover, a member should account to a client periodically or at intervals as may have been agreed with client regarding services being rendered.

### **Commentary**

In taxation matters it is often a case of “time is of the essence”, brooking no delay. Members must bear in mind that delays in executing their principals’ instructions may leave them open to action for damages.

Prompt execution involves also prompt information. Channels of communication should be kept open between members and their clients. Clients must be kept updated on the progress of work which has been entrusted to a member. Details regarding such matters may be contained in the engagement or services agreement, but members will be particularly careful regarding the safeguarding of confidentiality in conveying information and other messages to their clients through employees.

## **(7) Statements**

When a member releases any written statement or expresses an opinion in the course of his duties, he must ensure that such statement or expression is not misleading about any fact, opinion or opportunity to which it refers.

### **Commentary**

It does not appear that any particular comments are required to be made on this rule beyond what is already contained in the commentaries on the other rules.

## **(8) Fairness**

A member should refrain from making misleading or deceptive representations or practices. In particular, a member should not treat a client’s interest as subordinate to his own or take unfair advantage of a client who has placed reliance or trust in him.





## Commentary

The principles laid down in this rule are subsidiary to those set out in other rules which are fully commented upon. It should, in particular, be noted that reference is again made to conflicts of interest between a member and his clients: conflicts which must never be resolved in favour of the practitioner.

The rule regarding acting in good faith is mandatory upon members and may not be viewed as one being only for guidance. A member must act towards his client in the utmost good faith, and he must advise dissatisfied clients what remedies are available to obtain redress.

## (9) Professional Clearance

If a member resigns or is removed from office, the new practitioner taking over must request the prospective client's permission to communicate with the former adviser. Should such permission be declined, the new practitioner is in duty bound to refuse the appointment. On the other hand, if such permission is granted, the former adviser should be requested to provide all the information available to enable the new practitioner to decide whether or not to accept the appointment. When the former adviser receives such a request from a new practitioner, he should request permission in writing from his former client to discuss his affairs freely with the practitioner from whom the request has been received. If the request is not granted, this fact should be reported to the new adviser who should not accept the appointment. If permission is granted by client, the former adviser is bound to disclose all information required by the new practitioner to enable him to decide whether to accept the engagement.

## Commentary

The rule as set out is comprehensive and needs few comments on its substance.

It will be observed, however, that it lays the basic groundwork for the smooth transfer of clients from one member to another. Clients are perfectly free to change their advisers, and both the 'old' and the 'new' advisers are bound to help them do so and to co-operate between them to ascertain that the transfer is not being made to avoid the proper scrutiny and control of client's tax affairs. Co-operation is an obligation and can be demanded as of right both by the client and the incoming adviser. Failure to comply within a reasonable time will be viewed by the Institute as a serious breach of this Code.



Before passing information to the new adviser, the former adviser must have received permission from the client to do so, and confirmation about such communication will not amount to breach of confidentiality.

A member invited to undertake work additional to that already being carried out by another, who will still continue with his existing duties, should as a matter of courtesy, notify the other member of the work being undertaken. This notification should not be given if the client advances a valid reason against it. The member undertaking the additional work has the right to expect of the continuing adviser full co-operation in carrying out his assignment.

## **(10) Conflict of Interest**

Members must be vigilant to identify potential conflicts of interest and in the case of such a conflict arising between the interests of two or more clients, the member is obliged to give a full and free explanation to those involved. In such an eventuality, the member must disengage from one or both positions. As a matter of principle, a member should not accept any appointment which gives rise, or could give rise to a conflict of interest. Furthermore, when a member has a material interest in the subject matter of a possible transaction, he must not advise or exercise discretion in relation to that subject matter unless he has disclosed that material interest to the client and has taken steps to ensure that the material interest does not adversely affect the interests of the client.

### **Commentary**

This rule deals with at least two possible aspects of conflicts of interest, namely (a) when there is such a conflict between two clients, and (b) where the interests of the member may clash with the interests of one or more clients. In the latter context, the expression 'member' must be taken to include the member, any linked company, directors and other principal officers, even when the latter may be acting in their personal capacity.

Conflicts of interest between clients should not be extended to mean interest in the same field. For example, building contractors are all interested in basically the same field, but no conflict of interest should arise. On the other hand, if two contractors are competing for the same contract, a potential conflict of interest may arise, as sooner or later the member will be asked to help or give advice to competing clients.



## (11) Safekeeping

A member is obliged to keep safe any property, documents, books and records belonging to his clients and containing any confidential information and is to be responsible for same during the time in which these are in his possession or control. Where a member considers that he has a legal right of lien over such property, documents, books or records, such right should only be exercised after obtaining legal advice.

### Commentary

Clients' documents must be kept safely locked up and only available to the member and his principal employees.

Clients' monies should be paid without delay into a separate bank account, which may be either a general account or an account in the name of a specific client but which shall in all cases include in its title the word 'client'. Any such account is referred to herein as 'a client account'.

Whenever a client account is opened appropriate notice of the nature of the account should be given in clear terms to the bank at which the account is to be opened. If this is done no question will arise of set-off by the bank against the member's other accounts or of sequestration of the amounts held in the client account.

Where a member receives a draft which includes both clients' monies and other monies he should cause the same to be credited in the client account. Once the monies have been received into the account, the member may withdraw from that account such part of the sum received as can properly be transferred to his own funds.

No monies other than clients' monies should be paid into a client account.

Drawings on a client account may be made only:

- (a) To meet payments due from a client for professional work done for that client provided that:
  - i. the client has been informed in writing, and has not disagreed, that money held or received for him will be so applied; and
  - ii. a bill has been served.
- (b) To cover disbursements made on a client's behalf.
- (c) To, or on the instructions of a client.



Interest on client monies is to be dealt with as follows: -

- (a) In the absence of express agreement to the contrary any interest received on a client's monies should be accounted for to the client. If monies belonging to more than one client are held in the same client bank account, any interest arising thereon should be apportioned as appropriate among the clients concerned.
- (b) Where a member receives monies of a client for retention and it is reasonable to anticipate that the monies can profitably be deposited at interest, the member shall so deposit them in a designated client deposit account in respect of which notice shall be given as provided above. It may be appropriate to charge a fee for this service or where the amounts are small to obtain from clients their general authority to deposit monies held for them in client accounts and to take the benefit of any interest for the practice.

Every member should at all times maintain records so as to show clearly the money received, held or paid on account of clients, and the details of any other money dealt with through a client account, clearly distinguishing the money of each client from the money of any other client and from his own money.

A right of lien can exist only where all four of the following circumstances apply:

- (a) the property retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client;
- (b) the property must have come into the possession of the member by proper means;
- (c) work must have been done by the member and a fee note must have been served;
- (d) the fees for which the lien is exercised must be outstanding in respect of the respective property and not in respect of other unrelated matters.

## **(12) Records**

A member must keep proper and full records in relation to all his professional activities.

### **Commentary**

This rule is connected with the immediately preceding one relating to safekeeping.

The obligations laid down in this rule applies to a member: -



(a) in his functions relating to clients; and

(b) in respect of clients.

As regards a member's functions on behalf of his clients, the member must keep sensible records and documents as will enable him to answer any lawful queries made by the authorities, and to account to and satisfy clients.

Where particular documents and records are not owned by the member they generally belong to the client. In order to determine to whom documents and records belong it may be necessary to consider:

(a) the arrangements between member and his client;

(b) the capacity in which member acts in relation to his client; and

(c) the purpose for which the documents and records exist and have been prepared.

The rule is that if an agent brings into existence certain documents whilst servicing a principal, they are the principal's documents and the principal can claim that the agent should hand them over. Some areas of a member's activities involve acting as agent for the client. In such cases the contract is between a principal (the client) and his agent (the member) and the above rule applies.

Whilst documents belong to the client when they are prepared by a member acting as agent, this is not usually so where the member acts as principal.

In such cases the member's working papers belong to him unless the engagement letter or contract between the client and the member requires otherwise. The contract between a member and client may set out expressly the agreed position regarding the ownership of documents and records on which he will work or which are created in the course of that work. The contract may also determine ownership by implication. The ownership of documents and records will therefore vary according to the terms, expressed or implied, of the contract. Where those terms are such that one party owns the documents and records, the nature of the documents and records is irrelevant and it is not necessary to look further.

Letters received by a member from a client belong to him. So also, his copy of any letter written to a client is made solely for his own purposes and also belongs to him. A member's notes of questions and answers between him and the client likewise belong to him.

Ownership of copies of communications between a member and third parties depends on the relationship between him and the client. Where the member is an agent, the copies belong to the client. On the other hand, where the member is acting



as principal, it is probable that it could be held that the copies belong to him. This would include documents which are not the end product of the work, for example:

- (a) documents confirming or otherwise the balance of an account between a third party and the client, such as those in respect of bank balances; and
- (b) other documents which the member has obtained solely for his own use in carrying out his duties as principal, these would normally include correspondence between the member and the client's lawyers.

### **[13] Advertising**

Advertising by members for their services should always be low-key. Promotional material must in no way, explicitly or implicitly, belittle the services offered by other members. Furthermore, promotional material must also seek to promote and enhance the Institute's and its members' image as professionals of repute and integrity.

### **Commentary**

A member must not seek to obtain unfair competitive advantage through official contacts with departments or other authorities. A member should not obtain or seek work in an unprofessional or unethical manner. A member may seek publicity for his services and achievements, but in doing so should have regard to the standards set out above and common sense. In addition to meeting the requirements of the above standards, members should ensure that promotional material is in good taste both as to content and presentation.

### **[14] Fees**

A member may charge such fees as he considers appropriate for the work and services undertaken to be performed. Such fees must not be unfair in their incidence or unreasonable in their amount, having regard to all relevant circumstances. A member must not seek to compare the fees he charges with those charged by other practitioners, whether members or not, and whether in an implicit or explicit manner. Moreover, when quoting fees, a member must not adopt misleading statements which may in any way be interpreted as inducing possible clients to assume that fees will be lower than those eventually charged.



## Commentary

Each member is free, within the general principles laid down by this rule, to construct his own fee structure in accordance with his own policy, but each client should be clearly and fully advised on what his liability will be.

Whilst reiterating its intention not to in any way interfere in the fee structure to be adopted by each member, the Institute feels it should urge members not to charge what could be seen to be excessive fees for what may be a relatively straightforward job. The Institute draws the attention of all members to the real possibility of outpricing oneself.

A member is entitled to change his fee structure from time to time. This gives rise to no problems regarding new clients, but adequate notice should be given to already existing clients to enable them to make alternative arrangements if they should so desire.

Subject to what is stated herein, a member is entitled to charge for his services such fees as he may consider appropriate in connection with the work undertaken. That is to say, subject to what herein set out and to the rules of common sense, fees may be determined according to normal market standards and exigencies.

The fact that a practitioner may charge a lower fee than another for undertaking the same or similar work is acceptable provided care is taken to ensure that the client is not misled:

- (a) as to the precise range of services that a quoted fee is intended to cover, and
- (b) as to the likely level of future fees for any work undertaken for the client.

If, in the course of an investigation into allegations of unsatisfactory work, there is evidence of work having been obtained or retained through quoting a fee that is not economic in terms of the time needed and the seniority of staff necessary to perform that work at a satisfactory professional standard, that factor is likely to be taken into account in considering a member's compliance with the rules of this Code.

Fees should normally be determined by reference to:

- (a) the skill and knowledge required for the type of work involved;
- (b) the seniority of the persons necessarily engaged on the work;
- (c) the time necessarily occupied by each person engaged on the work;
- (d) the nature of the responsibility which the work entails.

For much of the work involved it would therefore be appropriate to set charges on the basis of appropriate rates per hour or per day for the time spent by each person



engaged on it. It is for each member to decide upon such rates, and these will vary according to the nature of the service given.

Reference is made above to the seniority of the persons necessarily engaged on the work and the time necessarily put by each person. The word 'necessarily' is important. Moreover the work should be planned and controlled in such a way that time is not spent unnecessarily on detailed work which could be replaced by the use of more suitable methods.

The forgoing relate to fees distinct from reimbursement of expenses. Out-of-pocket expenses, attributable directly to the work done for a particular client would normally be charged to that client in addition to the professional fees. A small mark-up or service charged is also acceptable.

If, at any time, a competent authority sets a scale of fees and charges, this must obviously be scrupulously adhered to.

### **(15) Force Majeure**

If any circumstances arise which, in the opinion of a member, makes it impossible or impracticable for him to comply with any obligation imposed by or under these Rules, such member must immediately inform the Institute of the facts and reasons thereof. In these circumstances, the member may be required by the Institute to take steps as, in its discretion, it considers to be required or appropriate.

### **Commentary**

Contracts exist to be adhered to, but insisting on the fulfilment of every obligation assumed thereunder despite third party happenings totally outside the control of the contracting parties may not make such sense financially, economically or otherwise. Force Majeure may therefore be claimed in these circumstances, usually suspending the obligation until the lawful impediment is removed, whereupon the obligations again become operative.

What may be deemed to be covered by Force Majeure will vary from one case to another, but the following is taken from an actual international commercial contract:

"The following shall constitute Force Majeure: act of war, invasion, blockade, hostilities, embargo or other enemy action, revolution, rebellion, terrorist attacks, civil commotion, riots, insurrections, earthquake, flood, fire, storm, epidemics, and any other natural physical disaster, labour disturbances, strikes or other causes, whether similar or dissimilar to the foregoing, reasonably beyond the control of either party: provided however, that inability to obtain equipment, supplies or finance





shall not constitute Force Majeure unless the cause thereof is itself Force Majeure”.

Force Majeure arises under these rules solely in connection with the application of the rules themselves. Even so, relations between members and their clients may end up before the Institute to adjudicate and members may desire to put forward Force Majeure in extenuation of what clients complain of.

In both cases, the Institute will obviously give due weight to possible Force Majeure, but members are advised that the burden of proving Force Majeure lies on them in each and every case, and that in each case the Institute will have to be convinced that Force Majeure really exists beyond all reasonable doubts.

## **(16) Members in Employment**

These rules also apply, *mutatis mutandis*, to members who are in employment, full regard being had to the circumstances of each case and the nature of employment.

### **Commentary**

Members who are in employment may fall under three categories: -

- (a) employed with other members;
- (b) employed in private commercial or industrial undertakings;
- (c) employed in the public service.

This Code of Conduct and Ethics may not always be applicable, or even relevant, in such cases. These members should, however, without in any way infringing upon the rules which are binding upon them in terms of their contract and conditions of service, apply the underlying principles of this Code as best as they can in the context in which they work.

## **(17) Disciplinary Procedures**

A member will be subject to such disciplinary procedures and other rules which the Council of the Institute may decide to introduce from time to time. The current disciplinary procedures are set out in the Schedule hereto.



## Schedule

# MALTA INSTITUTE OF TAXATION

## DISCIPLINARY PROCEDURE

Any complaint against or allegation of misconduct on the part of a member coming to the attention of the Malta Institute of Taxation (MIT) shall in the first instance be referred to the Ethics and Disciplinary Committee and will be dealt with in terms of the MIT's statute.

If the Ethics and Disciplinary Committee (EDC) find prima facie reasons for proceeding with the case, it shall advise the member against whom a complaint or allegation has been made accordingly, and the said member shall have the right to make submissions thereon to the EDC.

The EDC may require a member:-

- i. to attend before it and to give oral evidence and answer questions, and
- ii. to produce all documents, information or other material relevant to the complaint or allegations before it.

The complainant and the member will have the opportunity of making oral and written submissions before the EDC.

On concluding an investigation, the EDC shall have the power to decide about a complaint and, in the case of proven misconduct, may impose disciplinary penalties and sanctions which it may deem fit in the circumstances, and in accordance with the MIT's statute.

If in the opinion of the EDC following the investigation of a complaint, there is no evidence of misconduct, the Secretary shall inform the parties accordingly in writing.

Any party aggrieved by a decision of the EDC may, within 10 working days of the service of such finding or order, give written notice of appeal to the MIT Council, which notice shall be covered by a deposit of €125.

The appellant shall file a statement with the MIT Council within 20 working days from giving notice of appeal: -

- (a) setting out the decision of the EDC being appealed;
- (b) the grounds of appeal;



(c) the remedy sought from the Council.

The MIT Council shall conduct the hearing in such manner as it considers most suitable for the disposal of the appeal proceedings. An appeal shall reach a decision by way of re-hearing on documents, except where leave is given to present such fresh evidence.

Following the hearing of the appeal, the MIT Council shall reach a decision on the case and will be entitled to confirm, vary or reverse the decision appealed against. The Council shall forthwith notify the appellant in writing of its decision and of any order made by it, together with the reasons thereof.

The decision of the MIT Council shall be final.

Nothing herein contained shall prevent an appeal to the Council from being withdrawn before it delivers a final decision.

No person shall participate in any disciplinary procedure against a member if such person has an interest in the matter or circumstances leading to the procedure.