

[DISCIPLINARY CODE FOR THE BANKING INDUSTRY]<sup>1</sup>

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<sup>1</sup> This code enacts Article 3:17c of the Financial Supervision Act.

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## 1 DEFINITIONS

The following terms will be defined as follows in this code:

<b>General Director</b>	:	the general director to be appointed by the Foundation;
<b>Bank</b>	:	a bank that is a member of the Dutch Banking Association and to which the Code of Conduct of the banking industry applies or an institution that has recognised the application of the Code of Conduct of the banking industry;
<b>Person who has taken the Oath</b>	:	a director, supervisory director or other natural person who has signed a statement as referred to in the Code of Conduct for the banking industry;
<b>Management</b>	:	the Foundation's management;
<b>Involved Bank</b>	:	the Bank for which the Defendant works or worked at the time of the conduct to which the Report or Complaint pertains;
<b>Appeals Commission</b>	:	the Appeals Commission as referred to in Article 4.1.1
<b>Expert</b>	:	anyone who has broad experience in the banking industry;
<b>DSI</b>	:	DSI Foundation;
<b>Code of Conduct for the banking industry</b>	:	the code of conduct adopted by the Dutch Banking Association (NVB) from time to time;
<b>Complaint</b>	:	a written complaint supported by arguments by the General Director in accordance with Article 2.2;
<b>Reporter</b>	:	the one filing a Report;
<b>Report</b>	:	a written report supported by arguments in accordance with Article 2.1.1;
<b>NVB</b>	:	Dutch Banking Association (Nederlandse Vereniging van Banken);
<b>Pre- or In-Employment Screening</b>	:	an investigation into a candidate within the scope of either a possible employment relationship with or a change of position at a Bank, during which investigation data and information of said candidate relevant to the intended position are verified and evaluated before an employment contract is finalised or change of position is effected.
<b>Foundation</b>	:	Foundation of Disciplinary Law for the Banking Industry;

<b>Disciplinary Commission</b>	:	the Disciplinary Commission as referred to in Article 3.1.1;
<b>Disciplinary register</b>	:	the register as referred to in Article <b>Fout!</b>
<b>Verwijzingsbron niet gevonden.;</b>		
<b>Defendant</b>	:	a Person who has taken the Oath against whom a Complaint is filed.

## **2 REPORTING PROCEDURE**

### **2.1 Report**

**2.1.1** Anyone can file a Report with the Foundation. The Report must be signed and contain at least the following:

- the name and address of the Reporter;
- the date;
- the name of the Involved Bank;
- a description of the conduct by the Person who has taken the Oath;
- a sufficiently precise designation of the identity of the Person who has taken the Oath whom this concerns; and
- a substantiation of the claim that the conduct is in violation of the Code of Conduct for the banking industry.

**2.1.2** The General Director confirms the receipt of the Report to the Reporter in writing. The confirmation also contains the notice that the General Director will announce within no more than four weeks whether a Complaint will be brought before the Disciplinary Commission on the basis of the Report unless the General Director requests, providing reasons, that this period be extended.

**2.1.3** The General Director institutes an investigation into each Report that meets the requirements of Article 2.1.1. He or she notifies the Person who has taken the Oath to whose conduct the Report pertains and the Involved Bank in writing. The General Director can decide not to conduct such an investigation if he or she is of the opinion that the Report will obviously not be able to lead to a well-founded Complaint. The General Director notifies the Reporter of this and notifies the Reporter of the authority by virtue of 2.2.7 to request reconsideration in writing from the chairman of the Disciplinary Commission within fourteen days after the date of the notice. The General Director does not have to notify the Person who has taken the Oath and the Involved Bank of the decision not to conduct an investigation. If the General Director does institute an investigation, he or she will notify the Person who has taken the Oath that he or she is not required to answer in respect of his or her investigated actions and omissions.

### **2.2 Decision to file a Complaint**

**2.2.1** The General Director decides whether or not he or she will file a Complaint with the Disciplinary Commission based on the Report.

**2.2.2** The General Director is also authorised to file a Complaint with the Disciplinary Commission independently, after consultation with the chairman of the Board.

**2.2.3** The General Director will not file any Complaint with the Disciplinary Commission if the alleged violation of the Code of Conduct for the banking industry is not sufficiently serious to do so. In his or her evaluation of the seriousness, the General Director takes into consideration such factors as the nature and frequency of the violation of the code of conduct, the responsibilities of the Person who has taken the Oath and the degree of culpability.

**2.2.4** The General Director can decide not to file a Complaint before the Disciplinary Commission if the conduct to which the Report applies:

- took place a long time before the Report, with the guideline being a period of five (5) years after the conduct named in the Report;
- is or has been the subject of handling by a different disciplinary agency by virtue of a different disciplinary law;
- is or has been the subject of evaluation by a legal authority because proceedings were filed;
- is or has already been the subject of handling by the Disciplinary Commission;
- is or has been the subject of handling by a regulatory authority under the Financial Supervision Act;
- is the subject of criminal investigation on orders of the public prosecutor or of prosecution, or if the conduct comprises part of the investigation or prosecution of a criminal act and in respect of that act, a criminal investigation or prosecution is underway on orders of the public prosecutor;
- has already resulted in penalties and/or measures being imposed on the Person who has taken the Oath;
- is already part of the internal complaints or investigation procedures of the Involved Bank; or
- can possibly be referred to a disputes resolution procedure.

**2.2.5** Only if the General Director finds, with due consideration of 2.2.3 and 2.2.4 that he or she has grounds to present a Complaint to the Disciplinary Commission, is he or she authorised to propose an amicable settlement to the Person who has taken the Oath. The General Director follows the policy established for this by the Foundation. An amicable settlement must be documented in writing.

**2.2.6** The General Director notifies in writing the Person who has taken the Oath in respect of whose conduct the Report pertains, the Involved Bank and (if applicable) the Reporter of his or her decision of whether or not to file a Complaint. He or she notifies the Reporter of the authority by virtue of 2.2.7 to request reconsideration in writing from the chairman of the Disciplinary Commission within fourteen days after the date of the notice. However, no

notification need be sent that a Complaint is not to be filed in accordance with the applicability of 2.1.3.

- 2.2.7** The Reporter can submit a written request for reconsideration to the Chairman of the Disciplinary Commission of the decision by the General Director not to submit a Complaint to the Disciplinary Commission based on a Report within fourteen days of the date of the notice. The chairman of the Disciplinary Commission will handle a request for reconsideration within four weeks, with due observance of article 2.2.3 and article 2.2.4. . The Reporter, the Person who has taken the Oath to whose conduct the Report pertains and the Involved Bank are notified in writing of the decision of the Chairman of the Disciplinary Commission.
- 2.2.8** If the Chairman of the Disciplinary Commission reconsiders the decision of the General Director, the General Director submits a Complaint to the Disciplinary Commission after all, within four weeks.

### **3 PROCEDURE BY THE DISCIPLINARY COMMISSION**

#### **3.1 Disciplinary Commission**

- 3.1.1** There is a Disciplinary Commission.

#### **3.2 Task**

- 3.2.1** The Disciplinary Commission is tasked with handling Complaints in the first instance.

#### **3.3 Composition, appointment and discharge**

- 3.3.1** The Disciplinary Commission consists of at least five persons, specifically the Chairman of the Disciplinary Commission and four other members.
- 3.3.2** The Chairman of the Disciplinary Commission must satisfy the requirements for appointment as a judge in a court. The other members of the Disciplinary Commission are Experts. When appointing Experts, consideration is given to the various activities of the Banks.
- 3.3.3** Employees of DSI and NVB, the General Director, members of the Board, members of the board of DSI, members of the supervisory boards of the Banks and members of the board of NVB cannot be members of the Disciplinary Commission. The Chairman of the Disciplinary Commission shall not be connected in any position to a Bank or have been attached to a Bank for a period of one (1) year prior to the appointment unless the independence of the Chairman is adequately assured in the view of the Board.

- 3.3.4** The membership of the Disciplinary Commission is irreconcilable with that of the Appeals Commission.
- 3.3.5** The President of the Court of Amsterdam appoints the chairman of the Disciplinary Commission at the request and nomination of the Board. If the President of the Court of Amsterdam does not avail him- or herself of this authority, appointment is effected by the Board. The President of the Court of Amsterdam can discharge the Chairman early at the request of the Board.
- 3.3.6** The Board appoints the other members of the Disciplinary Commission, after consultation with the Chairman of the Disciplinary Commission. The Board can discharge the other members early after consultation with the Chairman for grave reasons.
- 3.3.7** The appointment as member is for a term of three years. Every member can be reappointed three times. If an opening becomes available in the interim, it will be filled within a period of six (6) months in accordance with Articles 3.3.5 and 3.3.6. The person who is appointed to fill a seat that has become open in the interim steps down at the time that the person whose place he or she is taking should have stepped down.
- 3.3.8** A person who has reached the age of seventy (70) years cannot be (re)appointed. A member steps down no later than the last day of the year in which he or she has reached the age of seventy (70). The chairman of the Disciplinary Commission can decide that the member of the Disciplinary Commission who steps down by virtue of the previous sentence keeps his or her position with respect to the Complaints in which he or she has participated but in respect of which no decision has yet been made at the time he or she steps down.
- 3.3.9** Former members of the Disciplinary Commission and other Experts can be appointed as replacement members by the Board. Articles 3.3.2, 3.3.3 and the first full sentence of Article 3.3.7 apply *mutatis mutandis*.
- 3.3.10** The Chairman of the Disciplinary Commission can designate a replacement member to take part in the handling of a specific Complaint in the Disciplinary Commission as referred to in Article 3.6.1 as if he or she were a member.
- 3.3.11** If the Chairman of the Disciplinary Commission is absent or prohibited from attending, the Disciplinary Commission will choose an acting chairman from its midst who does not have to satisfy the appointability requirements of the chairman. If the absence or impediment from attending lasts longer than two (2) months, the Board appoints a chairman for the duration of the absence or impediment with observance of this article. The authorities of this chairman are the same as the authorities of a chairman who is appointed in a regular way.



This chairman steps down at the same time as the appointment of a chairman in accordance with Article 3.3.5.

- 3.3.12** The Board appoints a secretary of the Disciplinary Commission, and, if necessary, a substitute secretary, after consultation with the Chairman of the Disciplinary Commission. After having heard the chairman of the Disciplinary Commission, the Board can discharge the secretary.

### **3.4 Report**

- 3.4.1** After the conclusion of each calendar year, the Disciplinary Commission makes a report to the Board of the disciplinary cases handled that year. The information in this report regarding the personal details of the Defendant and the Involved Bank are anonymised.

- 3.4.2** The Board can publish the report of the Disciplinary Commission.

### **3.5 Confidentiality**

The members of the Disciplinary Commission, the secretary and other who are involved in the handling of a Report or a Complaint, also after termination of their position, are required to observe confidentiality regarding the deliberations of the Disciplinary Commission and regarding all information and data that have been provided in connection with the handling of a Report or a Complaint.

### **3.6 Composition of handling Disciplinary Commission, Challenge**

- 3.6.1** Three or five members take part in handling a Complaint, including the Chairman of the Disciplinary Commission. The Chairman of the Disciplinary Commission appoints the members who are to take part in the handling. The Chairman takes the nature of the Complaint into consideration. Persons who are in any way related to the Complaint cannot take part in the handling of the Complaint.
- 3.6.2** At the request of the General Director, the Chairman of the Disciplinary Commission can decide that the nature of the case lends itself to the handling by the Chairman alone.
- 3.6.3** Insofar as the method of the Disciplinary Commission is not documented in this code or in further rules, this is set by the Chairman of the Disciplinary Commission. No independent recourse is open against the use of this authority by the Chairman.

**3.6.4** The secretary notifies the Defendant of the composition of the Disciplinary Commission that will handle the Complaint and notifies the Defendant of his authority for challenge as referred to in the following articles.

**3.6.5** For ten days after the date of the notification referred to in the previous article, the Defendant is authorised with statement of reasons to notify the Disciplinary Commission in writing that he or she wants to challenge one or more of the members of the Disciplinary Commission.

**3.6.6** A member of the Disciplinary Commission can be challenged on the grounds of facts or circumstances that cause his or her subjectivity in the handling of the Complaint to be the subject of justified doubt. A member can recuse themselves.

**3.6.7** The Disciplinary Commission, with the exception of the one in respect of whom the challenge has been made, decides as quickly as possible on the request for challenge. No independent legal remedy is open against the decision. The secretary notifies the Defendant of this decision and if applicable the name of the one who is to take the place of the challenged member on the Disciplinary Commission.

### **3.7 Handling of the Complaint**

**3.7.1** The Disciplinary Commission decides on a Complaint presented by the General Director to the Disciplinary Commission.

**3.7.2** Before proceeding to handle the Complaint, the Chairman of the Disciplinary Commission can request that the General Director explain the Complaint further in writing. This further explanation is considered to comprise part of the Complaint. Also on the basis of this, the Disciplinary Commission reviews whether the Complaint is admissible. The Disciplinary Commission reviews the admissibility of the Complaint in part based on the following criteria:

- a. a clear description of the (alleged) violation of the Code of Conduct for the banking industry by the Defendant;
- b. a sound substantiation with the written documents pertaining thereto or other evidence; and
- c. whether the (alleged) violation of the Code of Conduct for the banking industry is of sufficiently grave nature as defined by Article 2.2.3.

**3.7.3** The secretary notifies the Defendant in writing of the handling of the Complaint, sending a copy of the Complaint. The Defendant can wage a written defence against the Complaint as referred to in the previous sentence within a month

after the notification, and provide documents pertaining to the case. The Chairman of the Disciplinary Commission can extend this period in response to a request providing reasons by the Defendant. No independent recourse is open against the use of this authority by the Chairman. The secretary sends the General Director a copy of the defence and of the documents submitted by the Defendant.

- 3.7.4** At the request of the General Director or the Defendant, the Chairman of the Disciplinary Commission can decide that the parties submit a reply and rejoinder.
- 3.7.5** The Disciplinary Commission handles the Complaint in a meeting at which the General Director and the Defendant are given the opportunity to verbally explain their positions. The Disciplinary Commission can also ask the General Director and Defendant questions regarding the actual circumstances. The Disciplinary Commission notifies the Defendant and General Director of the date, time and place of its meeting. The meetings of the Disciplinary Commission are not public. The chairman of the Disciplinary Board supervises order at the meeting.
- 3.7.6** The Disciplinary Commission requests the parties that parties come to the meeting mentioned in the previous subsection. In the event of non-appearance of a party, the Disciplinary Commission can call up parties again to appear, at its discretion, or hand down its decision, stating the non-appearance.
- 3.7.7** The General Director is entitled to be represented at the meeting.
- 3.7.8** The Defendant can be assisted if desired.
- 3.7.9** Each party that wants to have a witness or expert heard at the meeting of the Disciplinary Commission must let the Disciplinary Commission know this within the period set by the secretary. If the Disciplinary Commission grants the request, they will notify both parties of this in writing in a timely fashion.
- 3.7.10** The Disciplinary Commission does not take into consideration the documents sent by the parties after the meeting unless it expressly requests at the meeting that these documents be sent.
- 3.7.11** A Defendant cannot withdraw from the handling of a Complaint by virtue of the circumstance that he or she is no longer working or was working at a Bank at the time of the Report or the (handling of the) Complaint.

### **3.8 Proof**

- 3.8.1** The Disciplinary Commission can request all information from the Defendant that they deem necessary. The Disciplinary Commission can decide to hear the Reporter, witnesses and experts and to request that books and documents be brought. The Disciplinary Commission can request an investigation of the relevant books and documents by a certified or forensic accountant it is to designate. Before the Defendant is heard, the Defendant is notified that he or she is not required to answer.
- 3.8.2** The Involved Bank is required to lend all assistance with the investigation by the Disciplinary Commission. If the Involved Bank is of the opinion that it cannot be reasonably demanded of it that it lends certain cooperation or provides information, it notifies the Disciplinary Commission of this, providing reasons, and can consult with the Disciplinary Commission regarding this. The Board can act as an intermediary in this. The Involved Bank does not have to provide any information if it would thereby be acting in violation of laws and regulations.
- 3.8.3** The Disciplinary Commission only uses printed or written documents or other evidence after both parties have been given the opportunity to read them and to respond to them, all in the manner it determines.

### **3.9 Decision**

- 3.9.1** As quickly as possible, yet no more than one (1) month after the Disciplinary Commission and after the Disciplinary Commission has completed its investigation based on the Complaint, the Disciplinary Commission decides on whether the Complaint is founded. The Chairman of the Disciplinary Commission can decide, providing reasons, to extend this period by a maximum of one (1) month. He will notify the parties of this immediately.
- 3.9.2** If the Disciplinary Commission deems the Complaint founded, he can impose one or more of the following measures on the Defendant, in any case taking into consideration the circumstances stated in Article 2.2.3:
- (i) a measure in the form of training or education that is required;
  - (ii) reprimand;
  - (iii) a fine at a maximum of 25,000 euros to be paid to the Foundation;
  - (iv) orders to not work in a certain position in the banking industry for a maximum period of three (3) years.

- 3.9.3** In the decision, that is documented in writing and supported by reasons, it is stated that it was arrived at with due observance of the provisions of this code. Also stated is the date of the decision, the names of the handling members of the Disciplinary Commission and of the secretary. The decision is signed by the chairman of the Disciplinary Board. The decision thus signed is archived at the office of the Disciplinary Commission for a period of three (3) years.
- 3.9.4** The decision of the Disciplinary Commission is enacted by the Foundation as soon as it has become irrevocable.
- 3.9.5** The secretary immediately sends a copy of the decision by registered letter to the Defendant, the Involved Bank and the General Director. He notifies the Reporter of the decision.
- 3.9.6** Decisions can, without stating names, be published by the Foundation in a manner it determines.

## **4 PROCEDURE IN THE APPEALS COMMISSION**

### **4.1 Appeals Commission**

- 4.1.1** There is an Appeals Commission.

### **4.2 Task**

- 4.2.1** The Appeals Commission is tasked with handling appeals against decisions by the Disciplinary Commission.

### **4.3 Mutatis mutandis provisions**

- 4.3.1** The provisions in the following articles apply mutatis mutandis to the Appeals Commission, insofar as not deviated from in this code:

- Article 3.3 (*Composition, appointment and discharge*), with the exception of Article 3.3.4;
- Article 3.4 (*Report*);
- Article 3.5 (*Confidentiality*);
- Article 3.6 (*Composition of handling Disciplinary Commission, Challenge*);
- Article 3.7.4 to 3.7.11 (*Handling of the complaint*);
- Article 3.8 (*Evidence*);

- Article 3.9 (*Decision*), with the exception of the articles 3.9.1 and 3.9.2.

**4.3.2** Where, in the above-mentioned articles, reference is made to provisions with respect to the Disciplinary Commission:

- (i) "Disciplinary Commission" should be read as: "Appeals Commission";
- (i) "Complaint" should be read as: "appeal" or "notice of appeal" depending on the context.

#### **4.4 Filing of appeal**

**4.4.1** For a month after the date of the decision by the Disciplinary Commission as referred to in Article 3.9.3 both the Defendant and the General Director can file an appeal against the decision with the Appeals Commission by means of a notice of appeal. The notice of appeal states the name and address of the petitioner for appeal and the objections of the petitioner in appeal against the disputed decision. The petitioner in appeal sends a copy of the decision by the Disciplinary Commission he or she is disputing as an annex to the notice of appeal. The General Director will provide the Appeals Commission and the Defendant with the file.

**4.4.2** A notice of appeal is filed in a timely fashion if it is received within the period stated in Article 4.4.1 by the secretary of the Appeals Commission. If it is sent by post, a notice of appeal is submitted in time if it can be demonstrated that it was sent before the end of the period, provided it is not received later than a week after the expiration of the period.

**4.4.3** The Foundation notifies the Involved Bank and the Defendant immediately of the filing of an appeal against a decision by the Disciplinary Commission.

#### **4.5 Hardship clause**

**4.5.1** A notice of appeal that is submitted after conclusion of the period stated in Article 4.4.1 is handled nonetheless if the Chairman of the Appeals Commission is of the opinion that the petitioner in the appeal cannot reasonably be deemed to be in default.

#### **4.6 Handling of appeal**

**4.6.1** At least one Expert will take part in the handling of an appeal.

**4.6.2** Unless the petitioner in the appeal has restricted the scope thereof, the Appeals Commission assesses the matter in its full scope. It is authorised to hand down a ruling that is detrimental to the requester in the appeal, compared to the disputed decision.

#### **4.7 Decision**

- 4.7.1** The Appeals Commission makes a decision no later than three (3) months after completion of its investigation.
- 4.7.2** If the Appeals Commission arrives at the final decision that a disputed decision of the Disciplinary Commission is correct, the disputed decision will be upheld.
- 4.7.3** If the Appeals Commission arrives at the final decision that a disputed decision of the Disciplinary Commission is not correct, it will overturn the disputed decision and, if necessary, order what it deems to be fitting measures, in accordance with Article 3.9.2, in lieu of the disputed decision.

### **5 DISCIPLINARY REGISTERS<sup>2</sup>**

- 5.1** The Foundation keeps the Disciplinary Register
- 5.2** The amicable settlements as referred to in Article 2.2.5 and the imposed measures as referred to in Article 3.9.2 are included in the Disciplinary Register.
- 5.3** A measure as referred to in Article 3.9.2 is not included in the Disciplinary Register until the measure has become irrevocable. If the measure is a measure as referred to in Article 3.9.2(iv), the notes in the Disciplinary Register contain a statement of the reasons for the measure and this will be struck from the record after the expiration of a period of three (3) years.
- 5.4** The Disciplinary Register is exclusively accessible to Banks as part of Pre-employment and In-Employment Screening and can be consulted via the Foundation.
- 5.5** A record in or perusal of the Disciplinary Register can occur exclusively in accordance with the Protocol for the Disciplinary Register of the Foundation of Disciplinary Law for the Banking Industry adopted by the Foundation and approved by the Data Protection Authority.

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<sup>3</sup> All references to the Disciplinary Register and Protocol for the Disciplinary Register of the Foundation of Disciplinary Law for the Banking Industry are included subject to the approval by the Data Protection Authority.

## **6 OTHER PROVISIONS**

### **6.1 Protection**

Making a Report and submitting and handling a Complaint cannot lead to any detriment for the Reporter, direct or indirect, unless the Reporter has not acted in good faith. The same applies to witnesses, experts, the General Director, members of the Board and members of the Disciplinary Commission. The Banks, NVB, DSI and the Foundation will do everything necessary to ensure this protection.

### **6.2 Authority of General Director to gather information**

**6.2.1** The General Director can gather information from Persons who have taken the Oath or Banks for the enforcement of compliance with the Code of Conduct for the banking industry and as part of procedures to be initiated or pending with the Disciplinary Commission and Appeals Commission.

**6.2.2** A Bank is required to provide information requested by the General Director within a period to be set by the General Director unless this cannot be reasonably expected under the given circumstances or if this would mean acting in violation of rules and legislation. If a Bank is of the opinion that it cannot be reasonably demanded of it that it lends certain cooperation or provides information, it notifies the General Director of this, providing reasons, and can consult with him or her regarding this. The board of the Foundation can act as an intermediary in this.

**6.2.3** The General Director can seek the assistance of experts in the performance of his or her duties as referred to in this article.

### **6.3 Notifications**

Notifications by virtue of this Disciplinary Code addressed to Persons who have taken the Oath or Banks can be legally effected to the address of the Person who has taken the Oath or the relevant Bank as made available by the Bank. The Involved Bank will make the private address of the Person who has taken the Oath available to the Foundation.

### **6.4 Evaluation and Amendments**

This Disciplinary Code was adopted by the Foundation and is evaluated annually by the Foundation. The Disciplinary Code can be amended by the Foundation following approval by the NVB.