

## **PIBC Bylaws: Professional Conduct & Discipline Process**

*(Proposed Revised Bylaws – Based on proposed Special Resolution – June 1, 2018):*

### **13.0 PART 13 – PROFESSIONAL CONDUCT AND DISCIPLINE OF MEMBERS:**

#### **REVIEW COMMITTEE:**

- 13.1** The Board of Directors shall establish and maintain a committee of members to be called the “Professional Conduct Review Committee” or the “Review Committee”.
- 13.2** The Review Committee shall, pursuant to these bylaws and any rules, policies and procedures established by the Board of Directors from time to time, be responsible for:
- 13.2.1** Overseeing and administering the Institute’s response to complaints or allegations of misconduct against its corporate members;
  - 13.2.2** Assisting the Institute in upholding the Code and seeking compliance by members;
  - 13.2.3** Assisting the Institute in providing education or training to members from time to time regarding best practices of ethical and professional conduct; and
  - 13.2.4** Other responsibilities as the Board of Directors may designate from time to time which are not in conflict with the committee’s primary responsibilities.
- 13.3** The Review Committee shall consist of not less than 11 Certified members in good standing of the Institute, at least one of whom shall be a member of the Board of Directors and serve as the chair of the committee. The Review Committee chair may select and designate a deputy chair from amongst the members of the Committee.
- 13.4** The composition of the Review Committee shall include two sub-committees as follows:
- 13.4.1** An “investigations sub-committee” of not less than six committee members, each appointed by the Review Committee chair, responsible for the initial investigation of all complaints received by the Institute;
  - 13.4.2** An “adjudication sub-committee” of not less than four committee members, each appointed by the Review Committee chair,

NOTE: Deleted previous sub-section 13.4.2 and revised subsequent numbering in this sub-section.

responsible for conducting formal review hearings to adjudicate complaints received by the Institute as required from time to time.

- 13.5** The Board of Directors shall, by resolution, establish rules, policies and procedures for the Review Committee and the conduct of its activities and responsibilities pursuant to these bylaws.
- 13.6** The Board of Directors shall, by resolution at its first meeting following its election, appoint the members and the Review Committee chair.
- 13.7** The Review Committee chair shall, following her/his appointment, appoint members of the Review Committee to the sub-committees of the committee and report such appointments to the Board of Directors.
- 13.8** The Board of Directors may, by resolution, as circumstances from time to time require:
- 13.8.1** Appoint Certified members in good standing to fill vacancies on the Review Committee;
  - 13.8.2** Appoint additional Certified members in good standing to the Review Committee; and
  - 13.8.3** Remove members from the Review Committee.
- 13.9** The Board of Directors may designate one or more officer(s), employee(s) or legal counsel to:
- 13.9.1** Represent the Institute at any time during the course of any disciplinary process;
  - 13.9.2** Assist, advise and counsel the Review Committee, or any one of its sub-committees, as may be required to ensure the effective and efficient administration of any disciplinary process; or
  - 13.9.3** Perform such role or fulfill such function in any disciplinary process as the Board of Directors or the Review Committee may determine and designate.

#### **COMPLAINTS:**

- 13.10** Any person or persons may deliver to the Institute a written complaint against a corporate member.
- 13.11** The Review Committee chair may at her/his discretion deem information received from any source, including information available in the public realm, to constitute a complaint and proceed accordingly notwithstanding that the information may not be in the form of a written complaint or that a specific individual complainant may not exist, provided that the chair is reasonably satisfied that:

- 13.11.1** The information received suggests possible misconduct on the part of a corporate member or members; and
- 13.11.2** The information received indicates that it would be in the public interest and or the interests of the Institute to proceed with a complaint pursuant to these bylaws.

#### **INITIAL INVESTIGATION:**

- 13.12** The Review Committee chair shall, upon receipt by the Institute of a complaint against a corporate member, designate two members of the investigations sub-committee as the case officers for that complaint.
- 13.13** The case officers shall undertake and complete a confidential initial investigation of a complaint pursuant to these bylaws and any rules, policies and procedures established by the Board of Directors.
- 13.14** The case officers shall deliver to the subject member in respect of whom a complaint has been made a written copy of the complaint or a suitable written summary of the complaint.
- 13.15** The case officers may, when appropriate in the extraordinary circumstances of a particular complaint, and with the written consent of the Review Committee chair, decline to identify the complainant or other source of the complaint to the subject member during the initial investigation. In such circumstances the case officer shall provide the subject member with a written summary explaining the decision not to identify the complainant or other source of the complaint.
- 13.16** The case officers shall require a response to the complaint from the subject member and such a response shall:
  - 13.16.1** Reasonably address the substance of the complaint,
  - 13.16.2** Be submitted to the case officers in writing; and
  - 13.16.3** Be submitted to the case officers within a reasonable time period as may be prescribed or otherwise determined by the case officer.
- 13.17** The case officers may, after receipt of a written response from the subject member, deliver a copy of the response, or a suitable written summary of the response, to the complainant.
- 13.18** The case officers may, after receipt of a written response from the subject member, carry out such further investigation or make such further inquiries as the case officers, in their discretion and, determines may be necessary to determine the nature or merits of the complaint.

**13.19** The case officers, in their discretion and pursuant to these bylaws, may, when appropriate in the circumstances of the complaint, attempt to resolve the complaint between the complainant and the subject member in a manner not necessitating further review or disciplinary action by the Institute, provided that such a resolution:

- 13.19.1** Adequately addresses the matter or matters which gave rise to the complaint;
- 13.19.2** Is appropriate and proportionate taking into reasonable consideration the nature of the alleged misconduct involved; and
- 13.19.3** Respects and upholds the public interest, the Code, and the integrity of the Institute.

**13.20** The case officers, in their discretion and pursuant to these bylaws, may, when appropriate in the circumstances of the complaint, attempt to resolve the complaint by means of a proposed consent discipline action as provided for in these bylaws.

**13.21** At the conclusion of the initial investigation, and prior to finalization of the investigation report, the case officers shall consult with the Review Committee chair to advise the chair of the status of the investigation and to seek and receive appropriate direction to resolve any outstanding issues related to the investigation that may have arisen.

**13.22** Following the conclusion of the initial investigation a written investigation report shall be submitted to the Review Committee chair which:

- 13.22.1** Summarizes the complaint;
- 13.22.2** Summarizes the response from the subject member;
- 13.22.3** Summarizes the conduct of the investigation;
- 13.22.4** Summarizes the findings of the investigation; and
- 13.22.5** Outlines the recommendation(s) with respect to the disposition of the complaint.

NOTE: Added new sub-section (13.21) and revised numbering of all subsequent sub-sections accordingly.

**13.23** With respect to the recommended disposition of a complaint, the investigation report shall recommend one of the following:

- 13.23.1** That no further action be taken with respect to the complaint, if there is reasonable satisfaction that:
  - 13.23.1.1** The complaint does not fall within the Institute's jurisdiction;
  - 13.23.1.2** There is no basis for the complaint;

- 13.23.1.3** The complaint is frivolous or vexatious;
- 13.23.1.4** The complaint raises a minor issue which does not warrant further review or disciplinary action by the Institute; or
- 13.23.1.5** The matter giving rise to the complaint has been adequately resolved in a manner not necessitating further review or disciplinary action by the Institute.
- 13.23.2** That the complaint be resolved by means of a proposed consent discipline action pursuant to these bylaws; or
- 13.23.3** That the complaint be referred for resolution by means of a formal review hearing pursuant to these bylaws.
- 13.24** Concurrent with the submission of the investigation report to the Review Committee chair, a written summary of the report and recommendation(s) shall be provided to the complainant and the subject member.
- 13.25** The Review Committee chair shall receive, review and act upon the investigation report and recommendation(s) pursuant to these bylaws, except in the circumstances described in section 13.26.
- 13.26** Where it is recommended in the investigation report that a complaint be referred to a formal review hearing:
- 13.26.1** The Review Committee chair may only withdraw the allegation(s) against the subject member and conclude the disciplinary process without any further action upon receipt of a legal opinion from the Institute's legal counsel that, to the satisfaction of the chair, raises reasonable grounds to withdraw the allegation(s), including but not limited to the likelihood of a successful prosecution; and
- 13.26.2** The Review Committee chair shall consult with the case officers in such a case regarding any decision to withdraw pursuant to this section; and
- 13.26.3** The Review Committee chair shall provide written notification of and a rationale for any decision to withdraw pursuant to this section to the case officers, the subject member, and the complainant.
- REVIEW PANEL:**
- 13.27** Upon referral of a complaint for a formal review hearing, the Review Committee chair shall appoint from amongst the members of the adjudication sub-committee a suitable review panel of three members, one of whom shall be designated as the

NOTE: Added new sub-sections (13.25) and (13.26) and revised numbering of all subsequent sub-sections accordingly.

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chair of the review panel, and one alternate review panel member, to conduct the review hearing pursuant to these bylaws.

- 13.28** The role of an alternate review panel member shall be to:
- 13.28.1** Only participate as a non-voting observer in all meetings of the review panel held prior to the commencement of a review hearing; and
  - 13.28.2** At the commencement of a review hearing, in the circumstance that a member of the review panel is unable to attend and participate in the review hearing, permanently replace such a member of the review panel for the remainder of the particular review hearing and disciplinary process.
- 13.29** Except in the case of a review hearing, meetings of the review panel may be held by telephone teleconference or other similar means of electronic communication as the review panel may decide provided that the review panel is satisfied that the means used are secure, reliable and appropriate.
- 13.30** Upon referral of a complaint for a formal review hearing legal counsel, appointed by the Board of Directors pursuant to these bylaws, shall act on behalf of the Institute in prosecuting the complaint.
- 13.31** As soon as is practicable after it is constituted a review panel shall meet to fix a date for the review hearing and a written “notice of hearing” shall be issued to the subject member. Such notice of hearing shall:
- 13.31.1** Outline all the allegations against the subject member as prepared in writing by the Institute’s prosecuting legal counsel, each of which shall be sufficiently clear and specific to give the subject member notice of the misconduct which is alleged, and with sufficient detail of the circumstances of the alleged misconduct to provide the subject member with sufficient information to address the transactions to which the allegations refer;
  - 13.31.2** Name the members of the review panel and that of the alternate review panel member;
  - 13.31.3** State the date, time and place of the review hearing; and
  - 13.31.4** Unless the subject member has consented to a shorter period of notice and a different method of service, be served by either personal service or by mailing same by registered mail, or equivalent delivery service, not less than 30 days prior to the date set for the commencement of the review hearing.

- 13.32** The review panel may, by majority vote and at its discretion, resolve to adjourn a review hearing as reasonable circumstances may require. Without limiting the generality of the foregoing, the review panel may, by majority vote and at its discretion, and upon application of the subject member and on such terms as it may deem appropriate, adjourn a review hearing pending the conclusion of any civil or criminal proceedings arising from the same facts or transactions which gave rise to the complaint.
- 13.33** Prior to the commencement of a review hearing, the review panel may, at its discretion and with the agreement of both the subject member and the Institute's prosecuting legal counsel, meet in private with the subject member or her/his legal counsel and the Institute's prosecuting legal counsel for the sole purpose of discussing and considering procedural matters related to the conduct of the review hearing. Any such meeting shall be strictly procedural in nature and shall not involve any arguments or consideration of the merits or substance of the complaint.

#### **REVIEW HEARING:**

- 13.34** At a review hearing:

- 13.34.1** The subject member shall normally appear in person and may be represented by legal counsel;
- 13.34.2** The Institute shall be represented by its prosecuting legal counsel; and
- 13.34.3** The review hearing shall normally be in private except that the complainant and or the complainant's legal counsel may, at the discretion of the review panel, remain in attendance as observers.

- 13.35** The review panel at a review hearing may:

- 13.35.1** Admit as evidence any written statement of agreed facts;
- 13.35.2** Accept evidence in a form agreed by both the subject member and the Institute's prosecuting legal counsel;
- 13.35.3** Receive and accept evidence other than under oath or affirmation and, notwithstanding any language in this section, in any manner it considers appropriate; and
- 13.35.4** Engage and seek the assistance and advice of its own separate legal counsel.

- 13.36** A review hearing shall be conducted by a review panel pursuant to these bylaws and any rules, policies and procedures established by the Board of Directors from time to time.

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- 13.37** A review panel, acting reasonably and at its discretion, may:
- 13.37.1** Consider one or more allegations of misconduct against a subject member; and
  - 13.37.2** At the same time and same review hearing consider one or more related or connected allegations of misconduct against more than one member.
- 13.38** At a review hearing, unless otherwise ordered by the review panel and subject to these bylaws and any rules, policies and procedures established by the Board of Directors from time to time:
- 13.38.1** The admission of any written statement of agreed facts shall occur at the start of a review hearing, before the calling of any witness or admission of other evidence;
  - 13.38.2** Witnesses called by and or evidence submitted from the Institute's prosecuting legal counsel shall be presented first, followed by witnesses called by and or evidence submitted from the subject member or her/his legal counsel;
  - 13.38.3** Witnesses called to testify shall be subject to both direct examination and cross-examination;
  - 13.38.4** The review panel shall, following the testimony of all witnesses and submission of all other evidence, invite the subject member or her/his legal counsel and the Institute's prosecuting legal counsel to each make a final submission as to the facts at issue and as to each of the allegations contained in the in the notice of hearing; and
  - 13.38.5** The review panel may, at any time before final submissions, give consideration to a resolution to the matter of the allegations contained in the notice of hearing by means of a proposed consent discipline action pursuant to these bylaws, if such a resolution is proposed.
- 13.39** Where the subject member concerned fails to attend or otherwise be represented at a review hearing after having been served proper notice of hearing, the review panel may proceed in the absence of the subject member to determine the matter of the allegations contained in the notice of hearing.
- 13.40** The review panel may proceed with a hearing and make its decision with respect to the allegations contained in the notice of hearing notwithstanding that the subject member has ceased to be a member for any reason where the review panel considers that the circumstances so warrant.



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**REVIEW PANEL DECISION:**

- 13.41** Following the testimony of all witnesses, submission of all other evidence, and final submissions by the subject member or her/his legal counsel and the Institute's prosecuting legal counsel, the review panel shall withdraw and in private:
- 13.41.1** Review and consider the evidence and arguments presented at the review hearing;
  - 13.41.2** Seek and receive, at its discretion, advice from its own legal counsel; and
  - 13.41.3** By a majority vote and at its sole discretion, make a finding as to the facts in issue and on each allegation contained in the notice of hearing.
- 13.42** Following its decision, the review panel shall make and deliver in writing its findings and reasons for judgment concurrently to the subject member and or her/his legal counsel, the Institute's prosecuting legal counsel, the complainant, and the Review Committee chair.

**DISCIPLINE:**

- 13.43** Where the review panel has made a determination adverse to the subject member with respect to its finding as to the facts at issue and on any allegation contained in the notice of hearing, the review panel shall:
- 13.43.1** Invite the subject member or her/his legal counsel and the Institute's prosecuting legal counsel to each make a written submission as to which disciplinary action or actions would be appropriate;
  - 13.43.2** Seek and receive, at its discretion, any other information it may require or deem relevant and appropriate;
  - 13.43.3** Meet in private to review and consider the submissions with respect to what disciplinary action or actions would be appropriate;
  - 13.43.4** Seek and receive, in private and at its discretion, advice from its own legal counsel;
  - 13.43.5** By a majority vote and at its sole discretion, in private, decide and order one or more of the following disciplinary actions against the subject member:
    - 13.43.5.1** A written reprimand;
    - 13.43.5.2** The requirement for a written apology;

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- 13.43.5.3** A requirement for further training, education or counseling;
  - 13.43.5.4** Censure of the subject member by written public notice to the membership of the Institute;
  - 13.43.5.5** Suspension of membership in the Institute for a specified period;
  - 13.43.5.6** A requirement for payment of a financial penalty or fine to the Institute in any amount up to and including 10 thousand dollars, in Canadian funds; and
  - 13.43.5.7** Being struck from membership in the Institute.
- 13.43.6** At its discretion, order that the subject member pay to the Institute an amount, in whole or in part, equal to Institute's reasonable costs for the review proceedings including, but not limited to, the costs of:
- 13.43.6.1** Retaining and engaging legal counsel;
  - 13.43.6.2** Any investigations;
  - 13.43.6.3** Conducting a review hearing;
  - 13.43.6.4** Publishing any notice(s); and
  - 13.43.6.5** Other applicable costs incurred.
- 13.43.7** Determine the nature, content and distribution of any written apology;
- 13.43.8** Determine the nature, content and distribution of any public notice to the membership to be published;
- 13.43.9** At its discretion and as it deems appropriate, order the notification in writing of the subject member's employer, clients or others outside the membership of the Institute; and
- 13.43.10** Make and deliver in writing its decision(s) and order(s) with respect to disciplinary action concurrently to the subject member and or her/his legal counsel, the Institute's prosecuting legal counsel, and the Review Committee chair.

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## **IMPLEMENTATION OF DISCIPLINE:**

- 13.44** Following receipt of a review panel's written findings and reasons for judgment, and the review panel's written decision(s) and order(s) with respect to disciplinary action, or following the confirmation of a consent discipline action, the Review Committee chair shall:
- 13.44.1** Ensure and direct the imposition of the disciplinary action(s) ordered by the review panel, or the approved consent discipline action, with immediate effect;
  - 13.44.2** Ensure and direct, where applicable, the publication of any public notice or notices or other notification(s) as ordered by the review panel, or the confirmed consent discipline action;
  - 13.44.3** Ensure and direct, where applicable, the receipt by the Institute of any payments of costs, fines or other financial penalties as ordered by the review panel, or the confirmed consent discipline action;
  - 13.44.4** Ensure and direct, where applicable, any other order, procedure or requirement with respect to the orderly disposition and conclusion of the disciplinary process;
  - 13.44.5** Notify CIP in writing of the outcome(s) of the disciplinary process and any disciplinary action; and
  - 13.44.6** Summarize and report to the Board of Directors the outcome(s) of the disciplinary process.
- 13.45** Where, as a result of any disciplinary action, a member is suspended from membership in the Institute for any period of time or is struck from membership in the Institute, the member shall forfeit and hand over to the Institute within seven days of such suspension or expulsion her/his membership certificate issued by the Institute, as well as any professional seal or stamp used by the member which indicates membership in the Institute.
- 13.46** Subject to an order by a court of competent jurisdiction, the outcome of any disciplinary process, including, but not limited to, a review panel's findings and reasons for judgment, and a review panel's written decision(s) and order(s) with respect to disciplinary action, or a confirmed consent discipline action, shall be final and binding.
- 13.47** Where disciplinary action is ordered and imposed against a member as a result of any disciplinary process, including a confirmed consent discipline action, a suitable summary of the circumstances of any decision, reasons and action taken shall normally be published and circulated to the Institute's membership in a form consistent with any order from a review panel, confirmed consent discipline action, or otherwise in a form approved by the Review Committee chair.

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## **CONSENT DISCIPLINE:**

- 13.48** A complaint may be resolved at any point before the conclusion of a review hearing by means of a proposed consent discipline action subject to the following:
- 13.48.1** The subject member shall admit to misconduct and agree to disciplinary action and such admission and agreed disciplinary action shall be documented in writing;
  - 13.48.2** The agreed disciplinary action may include one or more of the remedies prescribed in section 13.43.5;
  - 13.48.3** Any resolution by means of proposed consent discipline action shall:
    - 13.48.3.1** Adequately address the matter or matters which gave rise to the complaint;
    - 13.48.3.2** Be appropriate and proportionate taking into reasonable consideration the nature of the misconduct involved; and
    - 13.48.3.3** Respect and uphold the public interest, the Code, and the integrity of the Institute.
  - 13.48.4** A proposed consent discipline action may be achieved as part of an initial investigation by the case officers, and in such cases shall be:
    - 13.48.4.1** Recommended in the investigation report to the Review Committee chair; and
    - 13.48.4.2** Subject to review, confirmation and ratification by the Review Committee chair.
  - 13.48.5** A proposed consent discipline action may be achieved in the case of a complaint that has been referred to a formal review hearing following the initial investigation but before the conclusion of such a review hearing by a review panel, and in such cases shall be:
    - 13.48.5.1** Recommended by the Institute's prosecuting legal counsel; and
    - 13.48.5.2** Subject to review, confirmation and ratification by majority vote of the review panel established to adjudicate the complaint.

- 13.48.6** Implementation of a consent discipline action shall be the responsibility of the Review Committee chair pursuant to these bylaws.

#### **DISCIPLINE ADMINISTRATION:**

- 13.49** If a member ceases to be member of the Institute for any reason prior to the resolution of a pending complaint or allegation of misconduct against the member, the member may not subsequently reapply for or be readmitted to membership except as provided for in section 13.52.
- 13.50** If a subject member fails to pay any portion of a financial penalty, fine or other costs ordered by a review panel as a result of any review or disciplinary process, including a confirmed consent discipline action, within the time period prescribed for such payment:
- 13.50.1** The Board of Directors may, upon recommendation of the Review Committee chair, and after giving 14 days written notice to the subject member of its intention to do so, summarily strike the subject member from membership in the Institute; or
- 13.50.2** The Board of Directors, at its discretion and upon written application by the subject member showing good reason for the failure to pay such financial penalty, fine or other costs within the time period prescribed, may grant an extension of a specific period of time for payment.
- 13.51** Any amount owing by a subject member from a financial penalty, fine or other costs ordered by a review panel as a result of any review or disciplinary proceedings, including a confirmed consent discipline action, shall be recoverable by the Institute from the subject member as a contract debt by legal action brought in any court of competent jurisdiction. Such legal action may be commenced and continued notwithstanding that the subject member has ceased to be a member of the Institute.

#### **REAPPLICATION FOLLOWING A DISCIPLINARY PROCESS:**

- 13.52** A person who has been struck from membership in the Institute as a result of the disposition of a complaint or allegation of misconduct, including a person who ceased to be a member for any reason prior to the resolution of a pending complaint or allegation of misconduct against the person, may not apply for readmission to membership in the Institute in any class or category of membership for 10 years from the time of the person's departure from membership. In consideration of any such application for readmission the Board of Directors shall:
- 13.52.1** Give consideration and have regard to any conduct, action or circumstances which resulted in the applicant's departure from membership;

- 13.52.2** Give consideration and have regard to any steps or action taken by the applicant to safeguard against recurrence of any conduct, action or circumstances similar to that which resulted in the applicant's departure from membership;
- 13.52.3** Give consideration and have regard to such other facts and circumstances as the Board of Directors, at its sole discretion, considers relevant;
- 13.52.4** At its sole discretion, approve or refuse such an application for readmission; and
- 13.52.5** At its sole discretion, impose any specific additional condition or requirement for readmission upon such an applicant as the Board of Directors may deem appropriate.

#### **DISCIPLINARY PROCESS CONFLICT OF INTEREST:**

- 13.53** In the event of a conflict of interest or potential conflict of interest related to a disciplinary process:
  - 13.53.1** Where any member of the Review Committee is the subject member, complainant, or a witness in a disciplinary process, or who is related to or associated either personally, professionally or through any business, to a subject member or complainant in a disciplinary process, such a member of the Review Committee shall:
    - 13.53.1.1** Immediately notify the Review Committee chair, in writing, of the conflict of interest or potential conflict of interest; and
    - 13.53.1.2** Be excluded from participating or involving herself/himself, at any point and in any capacity, in the disciplinary process, except as may be required as the subject member, complainant, or a witness.
  - 13.53.2** Where the Review Committee chair is involved in a conflict of interest or potential conflict of interest related to a disciplinary process as described in section 13.53.1 above, the chair shall temporarily step aside and the Board of Directors shall designate another member of the Committee to serve as interim chair for the duration of the relevant disciplinary process, after which the originally appointed chair shall normally resume her/his position or be replaced as circumstances may warrant.
  - 13.53.3** Where a member of the Board of Directors is involved in a conflict of interest or potential conflict of interest related to a disciplinary process as described in section 13.53.1 above, the Director shall

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be excluded from any discussion(s), deliberation(s) or decision(s) of the Board of Directors related to the relevant disciplinary process.

- 13.54** Information received by members serving in a disciplinary process of the Institute in any capacity shall be confidential unless otherwise provided for in these bylaws or any rules, policies and procedures established by the Board of Directors. Such information shall not be privileged and such members shall not be prohibited by her/his duties, obligations and responsibilities to the Institute, including any obligation to maintain confidentiality of the Institute's affairs, from reporting any suspected criminal activities or alleged breaches of the law to the appropriate legal authorities, or from complying with any order of a court of competent jurisdiction.

**NOTE:**

*The above text is comprised of excerpts from Part 13 of the existing PIBC Bylaws (June 2017) with the proposed June 2018 amendments incorporated for reference.*

*This text is for general information and reference only. For the precise details of the proposed amendments please refer to the separate formal Notice of Special Resolution issued for the June 1, 2018 Annual General Meeting (AGM).*