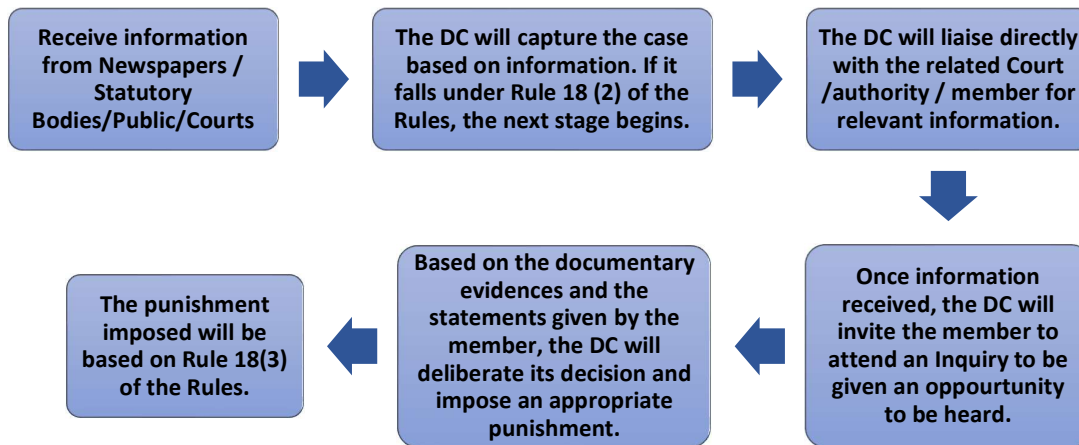


RULE 18(2) OF MIA (DISCIPLINARY) RULES 2002



Under the current enforcement process of the Malaysian Institute of Accountants (**MIA**), there are two modes of how the cases are brought before the Disciplinary Committee (**DC**). The first is by lodging a complaint to the Registrar who will then refer the complaint to Investigation Committee for a thorough investigation. After the Investigation Committee concludes their findings, and if there is a prima facie case, the matter will then be referred to the DC for a hearing. Another mode is where the DC conducts its own inquiry against a member pursuant to Rule 18(2) of the MIA (Disciplinary)(No.2) Rules 2002 (**'the Disciplinary Rules'**). For ease of reference Rule 18(2) of the Disciplinary Rule is reproduced below:

Powers of Disciplinary Committee

(2) Where a fact is brought directly to the knowledge of the Disciplinary Committee and after due inquiry has been made in accordance with the provisions of these Rules, the Disciplinary Committee is satisfied that any member of the Institute has—

(a) Pleaded guilty or been found guilty before a Court of law in Malaysia or in any country whose judgements are registrable in Malaysia of-

- (i) unprofessional conduct; or**
- (ii) an offence involving fraud or dishonesty;**

(b) become a bankrupt; or

(c) within three years preceding the date on which the Disciplinary Committee seeks to exercise its disciplinary powers under this rule, individually or as a partner, assigned substantially the whole of his estate for the benefit of his creditors or has under any deed or instrument placed substantially the whole of his estate in the hands of an assignee or trustee for the benefit of his creditors or made any arrangements for payment of a composition to his creditors,

the Disciplinary Committee shall impose any one or any combination of the disciplinary punishments specified in sub-rule (3).

From the above excerpt of Rule 18(2) of the Disciplinary Rules, any member who fall into any of these categories mentioned above can be subject to an Inquiry by the DC. The DC after a due inquiry shall impose any one or any combination of the disciplinary punishments specified in Rule 18(3) of the Rules. The Investigation Committee is not involved in this process simply because these are matters that come directly to the DC based on **decisions made by a court of law**.

These facts brought directly to the knowledge of the DC can either be via media reports, information from statutory bodies, the courts or public. Once these facts are properly channelled, the DC is empowered to initiate an Inquiry by sending to the member a Notice of Inquiry relating to the facts received, giving an opportunity to be present before the DC to be heard and to provide any explanation and/or any defence that the member may have to the Inquiry.

It is to be noted that civil suits filed in the courts do not fall within these categories and the DC is not empowered to initiate an Inquiry for this. The DC has viewed all these cases under Rule 18(2) very seriously and had in the past imposed a suspension or a removal from Register against members.

Once the notice of Inquiry has been sent for the member to be present before the DC, the member can bring forward any documents or witnesses to speak in their favour. The DC will have the opportunity to peruse and ask questions regarding the documents or from the member's witnesses.

If the member is defending or appealing against the matter in court, the DC will proceed to keep the Inquiry in abeyance pending disposal of the matter in court. The member must produce documentation in support of this.

Once the DC is satisfied with the inquiry, the DC may impose any one or any combination of the punishments specified under Rule 18 (3) of the Disciplinary Rules. The member will then be given the opportunity to make a plea to the DC in mitigation of the punishment that may be imposed. The decision will take effect unless the member lodges a written appeal against the decision to the Disciplinary Appeal Board within the specified time (i.e. within 21 days from the date the decision communicated to the member).

Once the decision has taken effect, i.e. no appeal has been lodged by the member in accordance with the Disciplinary Rules, the decision and the name of the member will be published in the publications prescribed under the Disciplinary Rules. In terms of publication, the decision as well as the name of the member will be published in the government gazette, the Institute's official publication, two (2) daily newspapers and the Institute's official website. The relevant government licensing authorities, association(s) of accountants that the member is associated with and any other body, corporate or unincorporated will also be informed of the decision against the member, whose name will be mentioned.

Examples of cases that have come before the DC are bankrupt members, members charged for offences under Capital Market and Services Act 2007 by the Securities Commission and members charged for offences under the Companies Act 1965 by the Companies Commission Malaysia.

Since the year 2008 till December 2020, the DC has suspended 5 members and removed 9 members from Register respectively for offences under Rule 18(2) of the Disciplinary Rules 2002. Thus, all members are advised to consider this provision seriously.