NOTIFICATION

New Delhi, the 2nd July, 2008

G.S.R. 495(E).— In exercise of the powers conferred by clauses (c), (d) and (e) of sub-section (2) of section 55 read with sub – section (2) of section 26, sub – sections (2) of section 27 and section 31, of the Actuaries Act, 2006 (35 of 2006), the Central Government hereby makes the following rules , namely :

1. **Short title and commencement.-** (1) Theses rules may be called the Actuaries (Procedure for Enquiry of Professional and Other Misconduct) Rules, 2008.

(2) They shall come into force from the date of their publication in the Official Gazette.

CHAPTER I

PRELIMINARY

2. **Definitions.** - (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Actuaries Act, 2006 (35 of 2006);

(b) "Committee" means the Disciplinary Committee constituted under sub – section (1) of section 26 of the Act;

(c) "Defendant" Means a Member against whom the complaint or information has been received under the Act;

(d) "Designated Person" means a person authorized by the Council;

(e) "Director" means a person appointed as Prosecution Director under sub – section (1) of section 27 of the Act;

(f) From mean the From annexed to these rules;

(g) "Institute" means the Institute of Actuaries of India constituted under section 3 of the Act;

(h) "Member" means an associate or fellow of the Institute and includes a person who was a member of the Institute on the date of the alleged misconduct, although he has ceased to be a member of the Institute at the time of filing the complaint, initiation of the inquiry or thereafter;

(i) "Presiding Officer" means the Presiding Officer of the Committee

(j) "Professional Address" means, in relating to a Member,–

(i) the last registered address, where a Member is carrying his profession or when he is carrying his profession at more than one place, the principal place; or
(ii) the last registered place of employment or, at his option, the place of his residence, if the member is employed ; or
(iii) the last registered place of residence, if the member neither carried on the profession nor is employed ; or

(iv) the last registered overseas address or, at his option, place of residence in India which shall be deemed to be the professional address for the purposes of these rules.

(k) "regulations" means the regulations made by the Council under section 56 of the Act;

(l) "Schedule" means Schedule annexed to the Act,

(2) Words and expressions used herein and not defined in these rules but defined in the Act, shall have the same meanings as assigned respectively to them in the Act.

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CHAPTER II

PROCEDURES OF ENQUIRY RELATED TO COMPLAINTS AND INFORMATION

3. **Procedure for filing complaint**.- (1) A complaint shall be presented in the Form in triplicate before the Designated Person in person, by post or courier, as the case may be.

(2) The complaint sent by post or courier under sub – rule (1) shall be deemed to have been presented to the Designated Person on the day on which it is received in the Institute.

(3) If the complaint filed by or on behalf of the Central Government or any State Government, such complaint shall be authorized by an officer holding a post not below the rank of Joint Secretary or equivalent and shall be signed by an officer holding a post not below the rank of Under Secretary or equivalent rank in the Central Government or State Government, as the case may be.

(4) If the complaint filed by or on behalf of any statutory authority, such as Insurance Regulatory and Development Authority, Reserve Bank of India or Securities and Exchange Board of India, such complaint shall be authorized by an officer holding a post of Joint Secretary to the Government of India or equivalent and shall be signed by an officer holding a post not below the rank of Under Secretary or equivalent in the Central or State Government, as the case may be.

(5) If the complaint filed by or on behalf of a company, shall be accompanied by a resolution, duly passed by the Board of Directors of partners of the company, as the case may be, specifically authorizing an officer or a person to make the complaint on behalf of the company.
Explanation: For the purpose of this sub-rule, "company" means any body Corporate and includes a firm or other association of individuals.

(6) If the complaint filed by the Central Government, State Government, statutory authority or company, a change in the name of complainant at any later stage, shall be duly supported by a specific authorization made by an officer holding a post equivalent to that of the original complainant.

(7) Every complaint received by the Designated Person shall be duly acknowledged upon receipt of complaint in person or by post under a certificate of posting as the case may be with an acknowledgement number.

4. **Fee for filing complaint.** - (1) Every complaint, other than a complaint filed by or on behalf of the Central Government, any State Government or any statutory authority, shall be accompanied by a fee not exceeding Rs 500/-..as may be determined by the Council through regulations(ICAI charge Rs 100/-).

(2) The fee shall be paid in the form of a demand draft drawn on any bank in India in favour of the Institute payable at the place where the head office of the Institute is situated.

(3) The fee once paid shall not be refunded.

Provided that no additional fee shall be payable if the complaint is resubmitted after rectification of defect under sub - rule (5) of rule 5.

5. **Registration of complaint.**- (1) The Designated Person shall endorse on every complaint the date on which it is received or presented and shall sign on each complaint and refer such complaint to the Director.

(2) After receipt of the complaint under sub-rule(1), the Director shall scrutinize the complaint.

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(3) If, on scrutiny under sub-rule (2), the complaint is found to be in order, the Director shall register the complaint and give a serial number to the complaint.

(4) If the subject matter of the complaint on scrutiny is, substantially the same as or has been covered by any previous complaint or information received and is under process or has already been dealt with, the Director shall take the following step, namely,-

(a) if the previous complaint filed is pending before the Director, then the present complaint may be clubbed with the previous complaint and in such case the fact may be conveyed to the complainants both previous and present and respondent; or

(b) if prima facie opinion has been formed by the Director in such a previous complaint and the case is pending before the Committee then the Director shall bring the present complaint before the Committee, and the latter shall either club the complaint with the previous complaint or ask the Director to deal with it as a separate complaint, as it deems fit; or

(c) if order have already been passed by the Committee on a previous complaint, then the Director shall refer the present complaint to the Committee and the Committee shall recommend the same to the Council for decision.

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(5) If the complaint on scrutiny , is found to be defective and the defect is final in nature, the Director may allow the complainant to rectify the same in his presence or if the said defect is not formal in nature, the Director, may allow the complainant such time as he may deem fit.

(6) If the complainant fails to rectify the defect within the time allowed under sub-rule (5) , the Director may by order and reasons recorded in writing decline to register the complaint.

(7) An appeal against the order of the Director under sub-rule (6) shall be made within fifteen days of the recording of such order to the Committee and the decision of the Committee thereon shall be final.

6 **Withdrawal of a complaint.** - The Director, on receipt of an application for withdrawal of a complaint by the complainant, shall place the same before the Committee and the Committee may, if it is of opinion that the circumstances so warrant, permit the withdrawal of the complaint, at any stage, including before or after registration of the complaint:

Provided that in case the Director has not yet formed his prima facie opinion on such a complaint, he shall place the same before the Committee and the Committee may, if it is of opinion that the circumstances so warrant, permit the withdrawal of the complaint.

7. **Information.-** (1) Any written information against a member or a firm, received in person or by post or courier, which is not in Form, shall be treated as information received and shall be dealt with in accordance with the provisions of these rules.

(2) On receipt of such information, the informant shall be, in the first instance, asked as to whether he shall prefer to file a complaint in Form apprising him of the following information, namely,-

(a) relatively longer time is taken for disposal of any information than a complaint;

(b) the person giving information shall not have the right to be represented during the enquiry or hearing of the case;

(c) the Institute shall not inform to the informant, nor entertain any queries from the informant at any and every stage of the progress made in respect of the information received under sub-rule (1), if it is of the opinion that giving of any such information shall impede the process of investigation, apprehension or prosecution of offenders:

Provided that a copy of the final order shall be sent to the informant,

(3) An anonymous information received shall not be entertained by the Director.

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CHAPTER III
PROCEDURE OF ENQUIRY

8. **Procedure to be followed by Director on a complaint.-** (1) The Director or an officer authorized by the Council in this behalf shall, within sixty days of the receipt of a complaint under rule 3, -

(a) if the complaint is received against an individual member, send particulars of the acts of commission or omission alleged, or as the case may be, a copy of the complaint to that member at his professional address ;

(b) if the complaint is received against a firm, send particulars of the acts of commission or omission alleged or as the case may be, a copy of the complaint to the firm at the address of its head office as entered in the Register of Offices of firms maintained by the Institute, with a notice calling upon the firm to disclose the name or names of the member or members concerned and to send particulars of acts of commission or omission or as the case may be, a copy of the complaint, to such members:

Provided that while disclosing the name or names of the member or members, the firm shall send a declaration signed or, as the case may be, jointly signed by the member or members concerned to the effect that he, she or they shall be responsible for answering the allegations mentioned in the complaint and that the particulars of acts of commission or omission or the copy of the complaint sent to the firm by the Director had been duly received by him, her or them.

Explanation. – For the purposes of this sub-rule, notice to the firm shall be deemed to be a notice to all the members who are partners or employees of that firm as on the date of registration of the complaint.

(2) A member whose name is disclosed by the firm shall be responsible for replying the complaint , provided such a member was associated, either as partner or employee, with the firm, against which the complaint has been filed, at the time of occurrence of the alleged misconduct.

Provided that if no member of the firm, whether erstwhile or present, own responsibility for the allegation made against the firm, then the firm as a whole shall be responsible for answering the allegation or allegations and, as such, all the members who were partners or employees of that firm, as on the date or occurrence of the alleged misconduct, shall be responsible for answering the allegation or allegations as contained in the complaint.

(3) The Defendant shall, within 21 days from of the receipt the copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Director, submit his written statement before the Director.

(4) On receipt of the written statement of the Defendant, the Director may send a copy of written statement to the complainant, and the complainant shall, within 21 days of receipt the copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Director, file to the Director, his rejoinder, if any.

(5) On perusal of the complaint, written statement, or rejoinder, as the case may be, the Director may call for such additional particulars or documents connected therewith either from the complainant or the Defendant or any party to the complaint, as he may consider appropriate:

Provided that if no written statement is submitted by the Defendant within the time allowed under sub-rule (3) or no rejoinder is filed by the complainant within the time allowed under sub-rule (4), the Director shall presume that the Defendant or the complainant, as the case may be , have nothing further to state and take further action as provided under this Chapter.

9. **Examination of Complaint.**- (1) The Director shall examine the complaint, written statement, rejoinder, or, as the case may be, other additional particulars or documents, if any, for holding prima facie opinion as to whether the member

or the firm is guilty or not of any professional or other misconduct under the as specified Schedule;

(2) Where the Director is of the prima facie opinion that the member or the firm is guilty of any misconduct as specified under the Schedule , he shall place his opinion along with the complaint and other additional particulars or documents and all other relevant papers before the Committee;

(3) If the Committee, agrees with the prima facie opinion of the Director under sub-rule (I) above, then the Committee may proceed further under Chapter IV.

(4) If the Committee, disagrees with the prima facie opinion of the Director under sub-rule (I) , it shall forward the complaint to Council to close the complaint or advise the Director to make further enquire into the complaint .

(5) If the Director is of the prima facie opinion that the member or the firm is not guilty of any misconduct under the Schedule, he shall place the matter before the Committee.

(6) If the Committee agrees with the opinion of the Director, he shall refer the matter to the Council for its closure.

(7) If the Committee disagrees with the opinion of the Director, it may either proceed under Chapter IV of these rules or may advise the Director to further enquire into the matter.

(8) The Director shall, after making further enquiry as advised by the Committee under sub- rules (4) or (7) of this rule, proceed under this rule.

10. Mode of sending notice . - (1) Every notice issued by the Director or the Committee under these rules shall be sent to the member, firm or any other person, by registered post with acknowledgment due or speed post or a messenger, except where specified otherwise in any rule.

(2) If any notice is returned as unserved or undelivered with an endorsement to the effect that the addressee refused to accept the notice, the notice shall be deemed to have been served or delivered, as the case may be.

(3) If the notice is returned with an endorsement to the effect that the addressee cannot be found at the address given, the Director shall ask the complainant or any other person who may be in a position to provide another address of the member or firm or person whose address is found to be not correct, and on production of the correct address, a fresh notice shall be served or delivered on such address.

(4) Where the notice is returned under sub – rule (3), it may be served by fixing a copy thereof in some conspicuous place at the professional address or residence of the Defendant which was last registered with the Institute or in such other

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manner as the Committee may think fit and such service shall be deemed to be sufficient of service for the purposes of these rules.

11. **Certain provisions relating to complaint also to be applicable for information relating to misconduct of members . -** The procedure laid down for dealing with complaints in sub – rule (7) of rule 3, sub – rules (1), (2), (3) and (4) of rule 5, sub – rules (1), (2), (3) and (5) of rule 8 rule 9 and rule 10 shall also apply to information received by the Director under these rules.

12. **Time limit on entertaining complaint or information . -** Where the Director is satisfied that there shall be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information or complaint, as the case may be, has been received shall find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Committee.

CHAPTER IV
DISCIPLINARY COMMITTEE

13. **Functioning of the Committee** (1) All questions which come up before the Committee shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Presiding Officer or in his absence, the person presiding at the meeting of the Committee, shall have a second or casting vote.

(2) The quorum for any meeting of the Committee shall be two members

(3) In the event of the Presiding Officer not being able to attend the meeting of the Committee, the member of the Council dully elected by the Council under subsection (1) of section 26 of the Act shall act as the Presiding Officer.

14. **Procedure to be followed by the Committee. -** (1) The Committee shall follow summary disposal procedure in dealing with all cases before it, as laid down in this Chapter.

(2) If the Committee decide to proceed further under rule 2 or rule 9, it shall expeditiously cause to deliver to the Defendant and the complainant, a copy each of the following, namely,-

(a) opinion formed by the Director on the complaint or information; and

(b) particulars or documents relied upon by the Director, if any, during the course of formulation of opinion.

(3) The Committee shall inform the Defendant to file a written statement, within such time as may be specified:

Provided that the Committee may grant additional time for filing his written statement on application made by the Defendant on his adducing sufficient reasons to the satisfaction of the Committee for seeking additional time:

Provided further that such additional time shall not be given more than once and if the Defendant does not file the written statement within the additional time granted under first proviso, the Committee shall presume that the Defendant has no further submissions to make and shall proceed to decide the case on merits.

(4) The Defendant shall send a copy of his written statement along with supporting documents to the Director and to the complainant within the time.

(5) The complainant may, after receipt of the written statement, file the rejoinder, if any, to the Committee, with a copy of the rejoinder to the Defendant along with documents, if any.

(6) The Presiding Officer shall fix the date, hour and place for hearing, of the information or complaint, which shall not ordinarily be later than 45 days from the date of receipt of opinion taken by; Committee and the Committee shall cause a notice to be sent of such date, hour and place to the Director, Defendant and complainant and require them to appear before it in person to make oral submission, if any.

(7) On the date fixed for hearing, if the Defendant, on receipt of the service of notice, under sub – rule (6), does not appear either in person or through his authorized representative, as the case may be, the Committee may precede ex-parte and proceed with the matter as provided under sub-rule (19) or, as the case may be, direct fresh notice to be served.

(8) During the first hearing, the Committee shall read out the allegations to the Defendant along with the summary of opinion arrived at by the Director, and ask the Defendant whether he pleads guilty to the allegations made against him:

Provided that, if the Defendant does not appear before the Committee on the place, date and time fixed by it, the Committee shall proceed with the proceeding in accordance with the provisions of this Chapter.

(9) If the Defendant pleads guilty, the Committee shall record the statement of Defendant and take submit the report to the Council as per the provision of the Act.

(10) If the Defendant does not plead guilty, then the Committee shall fix a date for examination of witnesses or production of documents, if any.

(11) The Committee may, on application of the complaint, Defendant or Director, issue notice to any of his witnesses to attend or produce any other document or , as the case may be, evidence.

(12) The Committee shall, on date fixed for hearing, proceed to take all such evidence as may be produced by complaint, Defendant or the Director including oral examination of witnesses or production of documents:

Provided that the Committee may permit the cross – examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross – examination.

(13) After the presenting of evidence by the Director is over, the complainant shall be given an opportunity, if present during the hearing , to present any additional evidence after satisfying the Committee that such evidence is relevant and has not been brought forward during the presentation by the Director.

(14) The Defendant shall be then called upon to enter upon his defence and produce his evidence.

(15) If the Defendant applies to the Committee to issue any notice for compelling attendance of any witness for the purpose of examination or cross-examination, or the production of any document or any material object, the Committee shall issue such notice unless it considers that such application shall be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by it in writing.

(16) The notice issued to the witnesses at the request of the complainant under sub- rule (13) or the Defendant under sub – rule (15) shall not be eligible for reimbursement of expenses incurred for attending the proceeding.

(17) After evidences have been adduced, the Director and the Defendant shall present their arguments before the Committee:

Provided that, if the complainant is present during the proceeding feels that any vital argument has been left out by the Director, may present the argument, after convincing the Committee of the same.

(18) The Committee may, at any stage of the proceeding, adjourn the hearing on such terms as it thinks fit:

Provided that such adjournment shall not be given more than once at any stage of the proceeding.

(19) The Committee shall consider the written statement, rejoinder and documents relating thereto, and the oral submission, if any made by the .

Defendant, or the Director and the respondent, and arrive at a finding on whether the Defendant is guilty or not of any professional or other misconduct.

15. **Report of the Committee.** - (1) On arriving at a finding under sub – rule (19) of rule 14, the Committee shall submit its report to the Council as provided under sub-section (2) of section 26 of the Act.

(2) Where the Council refers the report to the Committee with a direction for further enquiry under in sub-section (2) of section 29 of the Act, the Committee shall make such enquiry and submit its report to the Council.

16. **Allowances to the members nominated by the Central Government .** - (1) The Member of the Committee nominated by the Central Government shall be paid Rs. 1000/- as allowance for attending each day of meeting:

Provided that if such a Member is holding post under the Central Government or the State Government or, as the case may be, any statutory authority, he shall not be eligible for any such allowances:

Provided further that the Central Government may, by notification in the Official Gazette, revise the allowances from time to time.

Explanation. - For the purpose of this rule, a person drawing salary from the Consolidated Fund of India or the Consolidated Fund of a State shall be deemed to be a person holding a post under the Central Government or the State Government, as the case may be.

(2) The Presiding Officer or Member of the Committee, while on tour, shall be entitled to the travelling allowance and daily allowance as admissible to them in their official capacity and in case the Member is not a Government Servant, he shall be entitled to the travelling allowance and daily allowance as admissible to an officer holding a post carrying a scale of pay of equivalent to the post to the Government of India.

CHAPTER V
MISCELLANEOUS

17. **Attendance of proceeding by the Complainant, Defendant and witness .-** (1) Unless otherwise any order passed by the Committee, the Complainant or Defendant shall have the right to attend the proceeding of the Committee.

(2) The complainant or the Defendant shall not be eligible for reimbursement of expenses incurred for attending the proceeding.

18. **Residuary provision.** - Matters relating to the procedure of enquiry, conduct of cases and allowances to nominated members with respect to which no express provision has been made in these rules shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be final.

ANNEXURE

FORM

(See sub-rule (1) of rule 3)

1	Name of the Complainant : (with membership number, if member of The Institute of Actuaries of India)		....
2	Name of the member/ firm against whom complaint is being made : (with membership number / registration number of the firm, if known)		....
3	Latest address of the complainant for communication		.... pin code : .....
4	Last available professional address of the Member or the firm against whom the complaint is made		.... pin code : .....
5	Particulars of allegation(s) serially numbered together with corresponding clause/ part of the Schedule, or Particulars of allegation(s) serially numbered together with clause/ part of the relevant Schedule(s) under which the alleged acts of commission or omission or both would fall		1. .... 2. .... 3. .... 4. .... 5. ....
6	Particulars of evidence (s) adduced in support of the allegation(s) made		....
7	Name(s) of person who have knowledge of the facts of the case		....

Date :
Place :

Signature of the Complainant
(Name)

VERIFICATION

I, ..., the Complainant, do hereby declare that what is stated above is true to the best of my information and belief.
Verified today the ..... day of ..... 20 ..... at .....

Date :
Place :

Signature of the Complainant
(Name)

[F. No. 97/11/2003-Ins.III(iv)]

TARUN BAJAJ, Jt. Secy

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