

THE SOUTH AFRICAN MOBILE DEVICES DISTRIBUTORS AND REPAIRERS' ASSOCIATION -SAMDDRA-

DISCIPLINARY REGULATIONS.

OCTOBER 2023
VERSION 1.1

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1. DEFINITIONS

Board: The Board of Directors of the SAMDDRA.

Balance of Probabilities: The standard of proof that must be reached and which indicates that an event has more likely occurred than not.

Chair: The person selected to chair the Panel in the adjudication of a complaint received/sub-committee/ad-hoc committee of SAMDDRA.

Code: The SAMDDRA member Code of Professional Conduct and Ethics applicable to SAMDDRA members, as amended from time to time.

Committee: The SAMDDRA Disciplinary Committee.

Business days: means any day in which normal business operations are conducted , excluding Saturday, Sunday and those days that fall on an official public holiday in South Africa.

Interested Party: any member of the public, an organisation, an association of persons, member of the SAMDDRA or SAMDDRA itself, with the reasonable belief of possessing information or a basis of complaint which may be reasonably indicative of Misconduct on the part of a SAMDDRA member and which information or basis of complaint shall for the purposes of this document be referred to as “a complaint”, and which person may be referred to as “the Complainant”.

SAMDDRA: South African Mobile Devices Distributors and Repairers Association, registered in South Africa as a Non-Profit Company.

member ship scheme manual: the SAMDDRA members regulations, as amended from time to time.

member : a person affiliated to SAMDDRA as defined in the SAMDDRA constitution and SAMDDRA membership scheme manual.

member in good standing: a SAMDDRA member that has met all the obligations of membership, is up to date with the requisite membership fees, does not have any other outstanding payments due to the SAMDDRA, and has no current disciplinary process(es) in progress.

Misconduct: Any act or omission, whether intentional or unintentional, which is contrary to one or more of the provisions of the Code.

Panel: The disciplinary panel, established to adjudicate over a specific case, comprising three or more individuals from any of the group of persons identified in Section 4.4 of these Regulations.

Regulations: these SAMDDRA Disciplinary Regulations, as amended from time to time.

2. PREAMBLE.

The goal of this Disciplinary Regulation of the South African Mobile Devices Distributors and Repairers Association (SAMDDRA) is to regulate standards of conduct of SAMDDRA members. This is to align with SAMDDRA's constitution and membership scheme's rules.

The SAMDDRA disciplinary process is intended to regulate the conduct of members, while addressing and resolving instances of misconduct on the part of a member in a manner that is fair, objective, rational and transparent manner. This will allow to demonstrate due process, protect the public, maintain public confidence in SAMDDRA and its members and partners. It also asserts and upholds the highest standards of conduct amongst SAMDDRA members in the furtherance of their professional integrity and stature.

3. SCOPE AND APPLICATION

These Disciplinary Regulations are binding on all SAMDDRA members as indicated in the SAMDDRA constitution and membership scheme's rules. This includes individual members, companies, institutions as well as their employees and representatives whether they are personally SAMDDRA members on their own rights or not.

4. THE SAMDDRA DISCIPLINARY FUNCTION

4.1. The SAMDDRA membership committee shall appoint a Panel to oversee disciplinary matters.

4.2. A Panel can be appointed up to a duration of 12 months renewable only with the approval of the SAMDDRA management team.

4.3. The SAMDDRA membership committee will select and approve an uneven minimum of 3 up to a maximum of 5 individuals that may serve as Panel members.

4.4. The Panel may comprise:

4.4.1. SAMDDRA senior managers or executives.

4.4.2. SAMDDRA members in good standing, with experience and expertise commensurate with the adjudication of disciplinary matters.

4.4.3. SAMDDRA advisors or consultants or

4.4.4. Any such other persons as the SAMDDRA membership committee may deem suitable for the circumstances from time to time.

4.5. Panel members must be individuals holding either:

4.5.1. experience and expertise with the adjudication of disciplinary matters.

- 4.5.2. appropriate legal background and experience.
 - 4.5.3. extensive experience in relation to professional body membership management.
 - 4.5.4. appropriate experience in relation to the SAMDDRA business.
- 4.6. The SAMDDRA membership committee may remove or exclude any person or expert from the group of persons in Section 4.4 above, if it deems it appropriate to do so under the circumstances.
- 4.7. In the instance of a complaint being pursued, a Panel shall be duly constituted in accordance with these Regulations to adjudicate over the matter.
- 4.8. The Panel shall consist of no less than 3 (three) members, of which one (1) person must be from the group of persons in Section 4.5.2. The SAMDDRA membership committee shall identify one person among those approved as Panel members to act as Chair of the Panel for the duration of a specific complaint adjudication process.
- 4.9. The Panel shall execute their administrative and adjudication functions independently in a reasonable, procedurally fair, transparent, and unbiased manner in accordance with the provisions of these Regulations and the principles of natural justice.
- 4.10. A member of the Panel shall, at the earliest possible opportunity, request a recusal from the Panel should there be any potential, perceived or actual interest in the matter, bias, prejudice, or conflict of interest on their part with regard to the complaint or the SAMDDRA member being investigated.
- 4.11. The Panel shall decide each matter on the evidence before it upon the Balance of Probabilities. The decision will be by majority ruling and in the case of a deadlock the Chair will open further deliberations to get to a majority decision, failing which the Chair will have a casting vote.
- 4.12. The SAMDDRA membership committee shall assist the Panel and all involved persons to administer the exchange of documents between the Complainant, member, the Panel and any other interested party.
- 4.13. The SAMDDRA membership committee shall keep a full record of a complaint in an appropriate format or medium for a minimum period of 5 (five) years after the date on which the matter ended.
- 4.14. SAMDDRA executive management shall be the custodian of these Regulations and ensure that appropriate amendments are initiated and submitted to the SAMDDRA Board for approval, as and when necessary.

4.15. SAMDDRA executive management shall determine administrative processes and procedures, from time to time, to give effective execution of these Regulations.

5. SUBMISSION, RECEIPT AND ADJUDICATION PROCESS OF A COMPLAINT

Complaint Submission

- 5.1. An Interested Party (the Complainant) must refer a complaint to SAMDDRA in writing either online or in the prescribed member complaint form, detailing the particulars relating to the complaint, and as much as include any documentation in support of the complaint. The Complainant must ensure that any supporting document is validly and legally acquired.
- 5.2. A complaint may be lodged with the SAMDDRA membership committee via the following e-mail address: members@samddra.org.za
- 5.3. The SAMDDRA Board may in certain circumstances cause disciplinary proceedings to be considered and, in appropriate cases instituted, against any member or former member who allegedly contravenes or has contravened any provision of the Code or Regulations.
- 5.4. Where SAMDDRA itself is the complainant, the SAMDDRA Board or its nominee shall assume the role of the Complainant in a particular matter. In such case, a SAMDDRA senior officer may not be a member of the Panel adjudicating the complaint.

Receipt and Initial Review

- 5.5. Upon receipt of a complaint the SAMDDRA membership committee shall attend to the following:
- 5.5.1. confirm that the complaint relates to an existing member or past member of SAMDDRA;
 - 5.5.2. determine whether the alleged misconduct relates to a breach of either the Code or SAMDDRA members' Regulations; and
 - 5.5.3. determine whether the complaint may set out a prima facie case of misconduct.
- 5.6. In matters of a complex nature, the SAMDDRA membership committee shall notify the SAMDDRA executive management, who shall determine whether such matter

shall be referred to the membership sub-committee of the board of SAMDDRA to determine whether a prima facie case of misconduct is present.

5.7. Having considered the complaint, the SAMDDRA executive committee may request further particulars from the Complainant, to be given in writing and in the form of a supplementary affidavit, concerning any aspect that may be deemed material in the consideration thereof.

5.8. Upon receipt of a complaint (and further particulars where these have been furnished), the SAMDDRA executive committee (through the SAMDDRA membership committee) may, where it is of the opinion that the complaint does not disclose a prima facie case of misconduct, dismiss the complaint, and inform the Complainant and member accordingly.

5.9. Where the SAMDDRA executive committee (through the SAMDDRA membership committee) is of the opinion that the complainant does present a prima facie case of misconduct on the part of the member concerned, the SAMDDRA executive committee shall:

5.9.1. furnish the member with a Notice of Complaint (which shall contain the particulars of the complaint and charges, including the Complainant's affidavit and any further particulars received), calling upon the member to furnish an explanation in answer to the complaint and charges, in writing and in the form of an answering affidavit, incorporating any documentation in support of their answer, within 20 (twenty) business days of receipt of such Notice of Complaint. Following the receipt of the member's answering affidavit, furnish a Notice of Response to the Complainant (which shall contain the member's answering affidavit), requesting a reply thereto in writing and in the form of a replying affidavit statement, within 10 (ten) business days of receipt of such Notice of Response. The Complainant may elect not to file a replying affidavit. Should a replying affidavit not be received within the 10 (ten) business days period it will automatically be assumed that the Complainant has elected not to file a reply, and the proceedings will continue on such basis.

5.9.2. where a replying affidavit statement is received from the Complainant, furnish the member with a copy thereof for their records; and

5.9.3. finally, establish a Panel (as per Section 4.7, 4.8 and 4.9 above) and thereafter provide the Panel with all the documentation received in respect of

the matter within 20 (twenty) business days from receipt of the last document(s) being submitted.

Adjudication and Findings by the Panel

- 5.10. The Panel may, in its sole discretion, also request any additional information and documentation from the Complainant or member.
- 5.11. All communications to the Complainant and the member shall be via the SAMDDRA membership committee.
- 5.12. The Panel shall decide based on the information before it (including the complaint, the member 's answering affidavit, any replying affidavit and any other further particulars received).
- 5.13. The Panel must, with regard to each charge, determine on a Balance of Probabilities whether misconduct has occurred.
- 5.14. The Panel may suspend the adjudication of a complaint, in its sole discretion, pending the outcome of ongoing civil, criminal, or employer-based proceedings against a member where such proceedings concern, in part or in full, the subject matter of the complaint lodged with SAMDDRA against the member.
- 5.15. The determination of the Panel shall be based on a Balance of Probabilities and the Panel may either:
- 5.15.1. dismiss the complaint, and provide both the Complainant and member with a Notice of Dismissal notifying the parties of such outcome; or
 - 5.15.2. where the Panel is of the opinion that misconduct has occurred, it shall issue the member with a Notice of Findings and shall give the member an opportunity to respond (in the form of an affidavit), within a stipulated time, with any mitigating factors to be considered prior to the Panel determining the appropriate sanction.

General

- 5.16. A member may utilise legal representation to assist in answering to a complaint. Notwithstanding a member 's right to utilise legal representation in formulating their defence, the member shall personally sign, and file all required affidavits. The costs of a member's legal representation, irrespective of the eventual outcome of the complaint, shall be for the sole and exclusive account of the member concerned and

the member shall have no claim whatsoever against SAMDDRA or any of its officers, members, consultants, Panel, or the Complainant, for the payment of such costs.

5.17.A Complainant may similarly use legal representation to assist in submitting a complaint and the costs of the Complainant's legal representation, irrespective of the eventual outcome of the complaint, shall be for the sole and exclusive account of the Complainant. The Complainant shall have no claim whatsoever against SAMDDRA or any of its officers, members, consultants, Panel or SAMDDRA membership committee for the payment of such costs.

6. SANCTION

6.1. Where the Panel makes a finding of guilt against a member on one or more charges (after considering the member's mitigating submission(s), and any aggravating circumstances it deems relevant in the circumstances), the Panel (via the SAMDDRA membership committee) shall furnish the SAMDDRA executive committee with its Final Notice of Findings and Sanctions for consideration and approval.

6.2. The sanction given to a member may be one or a combination of the following and shall, in the case of multiple sanctions, run concurrently:

6.2.1. a written admonishment or reprimand, with or without the requirement to issue a written apology to the Complainant and/or the SAMDDRA and/or any other relevant party;

6.2.2. a suspension of membership for a period not exceeding 36 (thirty-six) months after which time the member will be eligible to apply and upon meeting all requirements be reinstated;

6.2.3. an order to successfully complete a competency or ethics related course and/or examination (the cost of which shall be for the member's account) to the satisfaction of SAMDDRA, within a specified period of time;

6.2.4. an order to successfully complete personal or professional coaching or counselling (or similar remedial intervention) to the satisfaction of the SAMDDRA, within a specified period of time (the cost of which shall be for the member's account);

6.2.5. termination of membership for a period not exceeding 10 (ten) years, at the expiry of which the member concerned may re-apply for membership, in accordance with SAMDDRA membership;

- 6.2.6. a life ban on membership;
 - 6.2.7. revocation of the SAMDDRA designation awarded to the member in the case of Section 6.2.2, 6.2.5 or 6.2.6, above. Where 6.2.2 is applicable, reinstatement of the designation will not be automatic, and the member must apply for a reinstatement as per the Certification Policy and the Professional Designation Policy as amended from time to time.
- 6.3. The SAMDDRA membership committee or the SAMDDRA executive committee shall consider the Panel's recommendation(s) for a sanction or shall either approve the Panel's recommended sanctions, impose additional sanctions, or adjust the sanctions as it deems appropriate.
- 6.4. The SAMDDRA membership committee may suspend or defer all or any part of sanction(s) imposed for any period on any condition that it deems appropriate in the circumstances.
- 6.5. The SAMDDRA membership committee will notify the member and the Complainant in writing of the sanction by issuing a Notice of Sanction.
- 6.6. Where the member is a SAMDDRA designated person, the SAMDDRA membership committee will notify the SAMDDRA Accreditation and Certification committee of the finding(s) and imposed sanction(s).
- 6.7. A member who is dissatisfied with the findings and/or sanctions imposed has the right to refer the matter for appeal, as provided for in Section 8 below.

7. PRECAUTIONARY SUSPENSION OF MEMBERSHIP

- 7.1. Where SAMDDRA becomes aware of published (irrespective of the medium or form) allegations or reports of possible misconduct on the part of a member, and where the process in Section 5 above has not yet commenced, or has commenced but has not yet been concluded, the SAMDDRA membership committee may make a preliminary inquiry in its discretion as to the nature and extent of the allegations or reports to determine whether the publication of such allegations or reports reasonably poses a potential risk to the SAMDDRA's reputation or business interests, and if so the SAMDDRA membership committee shall advise the member in writing that a precautionary suspension of membership is being considered and provide the member with an opportunity to make written representations within 10 (ten) Days to SAMDDRA.

- 7.2. Following receipt of the member's written representations, the SAMDDRA membership committee shall deliberate on the matter and consider imposing a precautionary suspension.
- 7.3. The SAMDDRA membership committee shall notify the member in writing of the finding (i.e. either notifying the member of the suspension as a precaution, pending the outcome of the formal disciplinary process, or not) and thereafter proceed with the process as outlined in Section 5 above at the first reasonable opportunity.
- 7.4. The implementation of a precautionary suspension may not be published as envisaged in Section 9 below, save for a generic confirmation of the precautionary suspension as may be necessary to protect the SAMDDRA's reputation and business interest.
- 7.5. A precautionary suspension may be uplifted should this occur, and at the earliest opportunity, it is found reasonable to do so based on the current circumstances.
- 7.6. The decision on the implementation, duration and/or upliftment, of a precautionary suspension shall vest with the SAMDDRA membership committee as per the normal SAMDDRA Delegation of Authority applicable from time to time.
- 7.7. A precautionary suspension is not a form of sanction as envisaged by Section 6.2.
- 7.8. In the event where the member is suspended, the member will have recourse in the form of lodging an appeal against their precautionary suspension, as per Section 8 below.

8. APPEAL

- 8.1. A member (the Appellant) having been found guilty of a charge or charges may lodge an appeal against the finding and/or sanction of the Panel or SAMDDRA membership committee within 10 (ten) business days of receipt of the Notice of Sanction, by setting out the grounds for appeal in writing and submitting their appeal (Notice of Appeal) to the SAMDDRA membership committee as per Section 5.3. No new evidence or additional information will be considered in the appeal.
- 8.2. The Complainant, in the instance of a complaint being dismissed or where the member is found not guilty, may appeal the finding of the Panel within 10 (ten) business days of receipt of the Notice of Dismissal, setting out the grounds for appeal in writing and submitting their appeal (Notice of Appeal) to the SAMDDRA membership committee, as provided for in Section 5.3 above. No new evidence or additional information will be considered in the appeal.

- 8.3. A member whose membership, and/or designation, has been suspended as envisaged in Section 7, may appeal the suspension decision within 10 (ten) business days of the date of notification of suspension, by setting out the grounds for appeal in writing and submitting their appeal (Notice of Appeal) to the SAMDDRA membership committee, as per Section 5.3.
- 8.4. The SAMDDRA membership committee shall identify and establish a new panel (the Appeal Panel), at the first reasonable opportunity, considering the timelines in 8.6 below.
- 8.5. No Panel member who was involved in the initial consideration of the complaint, may be appointed on to the Appeal Panel.
- 8.6. The Appeal Panel shall consider the record of the complaint and the grounds for the appeal within 20 (twenty) business Days of receiving the Notice of Appeal. The Appeal Panel may either allow or disallow an appeal. The SAMDDRA membership committee shall inform the Appellant in writing, of the Appeal Panel's decision (Notice of Appeal Outcome).
- 8.7. In the case of the Appeal Panel dismissing the appeal, the matter will be dealt with as if no appeal has been lodged.
- 8.8. Where an appeal is allowed, the Appeal Panel shall consider both the record of the initial complaint and the appeal received from the member concerned, but may not consider new evidence, except where:
- 8.8.1. new information becomes available, and it would be impracticable, in the opinion of the Appeal Panel, to refer the matter back to the (initial) Panel; and/or
 - 8.8.2. a dispute arises as to a point of procedure followed by the (initial) Panel, and it is not possible to ascertain from the record, in the opinion of the Appeal Panel and on a Balance of Probabilities, the process that was initially followed.
- 8.9. The Appeal Panel shall, in its sole discretion, have the authority to:
- 8.9.1. substitute any finding of the (initial) Panel, with a new finding;
 - 8.9.2. recommend any new sanction(s) to the SAMDDRA membership committee for consideration and approval; and/or
 - 8.9.3. confirm the finding(s) and/or sanction(s) of the (initial) Panel.
- 8.10. The Appeal Panel shall execute their adjudication function in a reasonable, procedurally fair, transparent, and unbiased manner in accordance with the provision of these Regulations and the principles of natural justice.

8.11. The SAMDDRA membership committee shall keep a full record of the appeal in an appropriate format or medium for a minimum period of 5 (five) years after the date on which the matter ended.

8.12. The outcome of the appeal is final and binding on all parties.

9. PUBLICATION OF FINDINGS

The findings of the SAMDDRA disciplinary function may be published in such form and manner as the SAMDDRA membership committee determines from time to time, subject thereto that a finding and sanction(s) may only be published once the period for lodging an appeal has expired and no appeal was received, or in the event that the member's appeal was unsuccessful. Under the aforementioned conditions, the findings may, at the sole discretion of the SAMDDRA, be communicated to the public, regulators and other relevant associations.

10. EXTERNAL ADVICE

The Panel or Appeal Panel may, if it deems it necessary, request to acquire appropriate external advice or consultation regarding any matter pertaining to a complaint or any procedural aspect not covered by these Regulations. The cost associated with such advice shall be borne by the SAMDDRA.

11. CONTINUITY

The termination, or voluntary cancellation, of a member's membership shall in no way derogate from or affect the SAMDDRA disciplinary function's jurisdiction to adjudicate, at its sole discretion, a complaint(s) of misconduct against a member which:

- (a) arose prior to the date the member's membership was terminated or voluntarily cancelled;
- (b) allegedly occurred while the member was (still) a member of the SAMDDRA; and/or
- (c) has not yet been resolved.

12. REVIEW AND ALTERATIONS

SAMDDRA reserves the right to make alterations to this Disciplinary Regulation from time to time. Such amendments are binding on all current SAMDDRA members as well as any implicated former member. The current Disciplinary Regulation will be maintained on SAMDDRA's website.

Disciplinary Regulation Version	Effective Date
1.0	1 st March 2023
1.1	30 October 2023

Signed by the Chairperson of the Board

Name : Loyiso Tyira



Digitally signed by Loyiso Tyira
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