

# ESOMAR Disciplinary Procedures

## Introduction

Applying the ICC/ESOMAR International Code of Marketing and Social Research Practice is the primary responsibility of ESOMAR in cases involving an ESOMAR member and of the ICC in cases not involving an ESOMAR member. ESOMAR will notify the ICC of cases submitted to the ESOMAR Disciplinary Committee.

## Rules

### SECTION A

#### The Professional Standards Committee

##### Article 1

1. ESOMAR has a Professional Standards Committee ("PSC"). An important function of the PSC is to apply, primarily at the international level, the ICC/ESOMAR International Code of Marketing and Social Research Practice, as detailed in the related Notes on the ICC/ESOMAR International Code of Marketing and Social Research Practice ("Notes").
2. The PSC is located at the ESOMAR Secretariat but may meet in any appropriate place at the request of the PSC Chairman or in his/her absence the Vice Chairman.

#### Composition and Appointment

##### Article 2

1. The PSC shall be composed of a Chairman and no fewer than five ESOMAR members from different countries, who themselves shall elect a Vice Chairman from among the remaining PSC members. The PSC shall be composed so as to reflect a variety of experiences and interests relating to the market research sector.
2. The Chairman and members of the PSC shall be appointed for a term of three years by the ESOMAR Council, acting on the recommendation of the President of the Society. Their term of office shall be renewable. Upon the retirement of the Chairman of the PSC, a replacement shall be nominated by the President of the Society, said nomination being subject to approval by the Council.
3. Additional PSC members (with a maximum of two) and one or more consultants may be appointed by the Council.
4. The Chairman of the PSC shall nominate a Secretary to the committee, said nomination being subject to approval by the PSC. The position of Secretary may be filled by either a PSC member or non-member. The Secretary shall be entitled to vote on matters brought to the PSC only if the Secretary has been confirmed by the Council as a PSC member.

5. The Council, acting in its sole discretion, may replace any PSC member for cause. Such cause may include, but need not be limited to, failure to perform the duties expected of PSC members, as described herein. The Council also may replace any PSC member who has become unavailable.

## **Competence**

### **Article 3**

1. The Chairman, the Vice Chairman or his/her delegate, after consultation with the PSC, shall examine cases of possible infringement by an ESOMAR member of the above mentioned Code and Notes arising at the international level.
2. As a matter of principle, the PSC shall not examine alleged infringements of the above mentioned Code and Notes occurring at a national level, unless:
  - (a) there are no competent national associations or
  - (b) the relevant national associations are not able to deal with the case and refer the case to ESOMAR or
  - (c) more than one country is involved, as with international projects.
3. Notwithstanding the provisions of Article 3.2, in any case where an ESOMAR member has after investigation by a national association been found to be guilty of an infringement of the above mentioned Code and Notes at national level that the association considers sufficiently serious to call for suspension or withdrawal of the offender's membership in that association, the latter shall notify the ESOMAR PSC accordingly and provide full details of the case to the PSC. The PSC then shall consider whether the case calls for additional action by ESOMAR in relation to the member concerned.
4. The PSC may upon request give opinions to courts of law, public authorities, national associations and national self-regulatory bodies with respect to the interpretation of the above mentioned Code and Notes.

## **Submission of complaints**

### **Article 4**

1. Any firm, company, business, association or private individual directly concerned by an alleged infringement of the above mentioned Code and Notes by a member may file a complaint with the PSC in accordance with Article 3.
2. The complaint shall be made in writing and shall be supported with a statement of the case as well as by all relevant documents and other evidence. It shall be addressed to the Director General of ESOMAR.

## **Procedure**

### **Article 5**

1. On receipt of a complaint concerning a member's conduct or on his/her own initiative, the Chairman of the PSC, the Vice Chairman or his/her delegate shall cause inquiries to be made to establish the facts and circumstances of the matter by whatever means the PSC considers

appropriate, including raising questions directly with the member concerned. The member shall be informed upon the raising of any question that such questions are being asked in connection with possible disciplinary proceedings.

2. Any member of the PSC, including the Chairman, having a personal interest in the subject matter of a complaint or a relationship with one of the parties of a nature that might affect the PSC member's ability to proceed in an objective manner shall withdraw from any consideration of the complaint.
3. Having made such inquiries, the PSC may conclude that there is no prima facie case against the member concerned, in which event the PSC shall so inform in writing the member as well as any complainant involved.
4. To avoid unnecessary damage to the member's reputation or the reputation of others, the Chairman, the Vice Chairman or his/her delegate, as the case may be, may act on behalf of the PSC. Such action shall be limited to deciding whether the complaint and related inquiries have been sufficient to establish the existence of a prima facie violation of the above mentioned Code and Notes. If the Chairman, the Vice Chairman or his/her delegate concludes that a prima facie case has not been established and that an early decision on the particular complaint is needed, he/she may terminate the proceedings and so inform the parties. In the event of such action, the PSC Chairman, the Vice Chairman or his/her delegate, as the case may be, shall notify the other members of the PSC promptly of the action he/she has taken. In no event shall the Chairman, the Vice Chairman or his/her delegate undertake on his/her own to impose a sanction on any member or non-member of ESOMAR.
5. If, having undertaken appropriate inquiries, the Chairman, the Vice Chairman or his/her delegate, after consultation with the PSC, decides that there is a prima facie case that should be pursued against the member concerned in respect of a possible breach of any provision of the above mentioned Code and Notes, the PSC shall write to the member setting out the conduct complained of and the Code provisions allegedly breached.
  - (a) The PSC shall allow the member a period of twenty eight calendar days to provide a written response.
  - (b) Upon receipt of the member's written response, or after twenty eight calendar days, whichever occurs earlier, the PSC shall undertake such further inquiries as it considers necessary.
  - (c) Upon completing its inquiries, the PSC shall give its opinion on the case and send its findings and reasons in writing promptly to the member.
  - (d) In any case that appears to the PSC, having completed its inquiries, to be so serious that a sanction should be considered as stated in Article 12, numbers 3,4,5, 6 or 7, then the matter shall be referred to the Disciplinary Committee. In that event, the PSC shall set out the case fully in writing, together with any relevant documents and other evidence, and shall provide such full case to the Disciplinary Committee and the Council. The member and complainant shall be informed that the case has been passed to the Disciplinary Committee and that the Council has been informed. The member shall be given a period of twenty eight calendar days to provide a written response.
6. Meetings of the PSC may be held, at the discretion of the PSC Chairman, Vice Chairman or his/her delegate, as the case may be, in person, by telephone or by any other appropriate means of communication. Votes may be taken and recorded in the same manner. Complaints may be resolved by the PSC with or without a hearing. In either event, the PSC shall notify the parties involved of their right to appeal any PSC decision involving them to the Disciplinary Committee, at which time the member(s) against whom the particular complaint has been made shall be afforded a hearing opportunity.

7. Any time period set out in these procedures may be varied at the discretion of the PSC within reasonable limits.

## **SECTION B**

### **The Disciplinary Committee**

#### **Article 6**

1. ESOMAR has a Disciplinary Committee ("DC"). An important function of the DC is to apply, primarily at the international level, the ICC/ESOMAR International Code of Marketing and Social Research Practice, as detailed in the related Notes on the ICC/ESOMAR International Code of Marketing and Social Research Practice ("Notes"), after referral by the PSC or upon request of the Council in cases mentioned in Article 17.
2. The DC is located at the ESOMAR Secretariat but may meet, at the call of the DC Chairman or in his/her absence the Substitute Chairman, at any place deemed by a majority of the DC members to be appropriate. In exercising the latter discretion, the DC members shall seek whenever possible to accommodate the interests of those expected to appear before the DC.

### **Composition and Appointment**

#### **Article 7**

1. The DC shall be composed of a Chairman and a minimum of five and always an odd number of senior ESOMAR members from different countries appointed by the Council. The DC shall be composed so as to reflect a variety of experiences and interests relating to the market research sector.
2. The Chairman shall preferably be an independent lawyer with relevant knowledge of the market research sector. The Chairman shall nominate an independent Substitute Chairman who shall replace him/her in cases of unavailability. The appointment of the Substitute Chairman shall be subject to Council approval.
3. The Chairman shall be appointed for a term of five years by the ESOMAR Council, acting on the recommendation of the President of the Society. The Chairman's term of office shall be renewable. Upon the retirement of the Chairman of the DC, a replacement shall be nominated by the President of the Society, said nomination being subject to approval by the Council.
4. The Chairman of the DC shall nominate a Secretary to the committee, said nomination being subject to approval by the DC.
5. The Council, acting in its sole discretion, may replace any DC member for cause. Such cause may include, but need not be limited to, failure to perform the duties expected of DC members, as described herein. The Council also may replace any DC member who has become unavailable.

### **Right of challenge**

#### **Article 8**

1. Any member of the DC, including the Chairman, having a personal interest in the subject matter of a complaint or a relationship with one of the parties of a nature that might affect the DC member's ability to proceed in an objective manner shall withdraw from any consideration of the complaint.

2. Should a member of the DC be challenged at the outset of a case or at the earliest practicable time by one of the parties, the DC shall so advise the Council. The decision of the Council, which shall be the sole judge of the grounds of challenge, shall be final.

## **Quorum**

### **Article 9**

1. The deliberations of the DC shall be valid when the Chairman and a minimum of five members participate.
2. Decisions by the DC require a majority vote by the ESOMAR members serving on the Committee. The Chairman of the DC or, in his/her absence, the Substitute Chairman, shall not be entitled to vote.

## **Competence**

### **Article 10**

1. The DC shall examine, upon referral from the PSC, cases in which the PSC has found a prima facie breach of the ICC/ESOMAR International Code of Marketing and Social Research Practice, as detailed in the related Notes on the ICC/ESOMAR International Code of Marketing and Social Research Practice, that is, in the opinion of the PSC, so serious that a sanction should be considered as stated in Article 12, numbers 3, 4, 5, 6 or 7.
2. As stated in Article 5, the PSC, having first carried out its own preliminary investigation, shall refer to the DC for judgement only those cases where the PSC has concluded that one or more of the more serious sanctions (numbers 3, 4, 5, 6 or 7 under Article 12) may be called for.
3. The DC also shall deal with appeals against decisions made and of any sanctions imposed by the PSC.

## **Procedure**

### **Article 11**

1. Following receipt of the member's response to the PSC or twenty eight calendar days after the PSC's submission of the case to the member, whichever occurs earlier, the DC shall confer to consider the matter and:
  - (a) may raise preliminary questions with the PSC and/or the member, which shall be in writing and shall be sent to both the PSC and the member, and
  - (b) shall set a date, time and place for a hearing, which details shall be promptly notified to the PSC and to the member together with a statement of the procedures to be followed.
2. The member, upon receipt of notification of the hearing, may request that there not be a hearing but that the matter be dealt with on paper only. The DC then shall obtain the views of the PSC and inform the PSC and the member of its decision. If the DC determines the matter without a hearing it shall do so promptly and shall inform the PSC and the member of its decision and reasons therefore and of any sanction to be imposed.
3.
  - (a) No witness shall give evidence before the DC unless a written statement setting out the essential features of that evidence has been provided to all parties concerned.
  - (b) Any documents or witness statements relating to the case shall be exchanged at least one week prior to the hearing. Any document or witness statement submitted later shall be accompanied by a statement of reasons deemed by the submitter to justify the late submission. The DC shall be the final arbitrator of the admissibility of individual documents, being guided in that respect by the need to ensure that the proceedings are conducted in a fair and orderly manner.

- (c) The DC may vary these requirements in exceptional circumstances.
- 4. The order of proceedings for the hearing before the DC, unless the DC otherwise directs, shall be as follows:
  - (a) submissions by or on behalf of the PSC;
  - (b) submissions by or on behalf of the member;
  - (c) hearing of any witnesses called by the PSC followed by cross examination of such witnesses by or on behalf of the member;
  - (d) hearing of any witnesses called by the member followed by cross examination of such witnesses by or on behalf of the PSC;
  - (e) closing submissions by or on behalf of the PSC and
  - (f) closing submissions by or on behalf of the member.
- 5.
  - (a) In the event that the member wishes to have legal representation at a scheduled hearing the member shall so inform the DC at least one week in advance of the hearing.
  - (b) The burden of proof shall be upon the party claiming that a violation of the above mentioned Code and Notes has taken place.
  - (c) Members of the DC may themselves question witnesses, parties or representatives as they think fit.
- 6. The decision of the DC together with any sanction to be imposed shall be provided in writing to the member, complainant, the PSC and Council as promptly as practicable in writing and the DC shall set out the reasons therefore.
- 7. Whilst the decision of the DC shall be final, the member is entitled to appeal to Council if he or she contends that there have been substantial deviations from the required procedure.
- 8. In the event of an appeal to the Council, the PSC and the DC each shall be entitled to respond to the member's claim of procedural irregularity.

## **SECTION C**

### **Sanctions**

#### **Article 12**

The PSC may impose one or more of the following measures:

- 1. warning
- 2. reprimand

The DC may impose the above and in addition one or more of the following measures:

- 3. publication
- 4. suspension
- 5. expulsion
- 6. notification to authorities
- 7. any further measures that are authorised by the Council

## Languages

### Article 13

Complaints and relevant documents shall preferably be presented in English, unless either party can demonstrate that the use of one of the other ESOMAR official languages is necessary. The language to be used thereafter shall be decided at the beginning of each stage of the process as described above.

## Expert Advice

### Article 14

The DC may after consultation with the parties seek expert advice at any time, which shall be made available to both parties. At the discretion of the Chairman or Substitute Chairman, as the case may be, experts may be invited to appear before the DC.

## Costs

### Article 15

1. In the event the PSC decides to refer a case to the DC, ESOMAR normally shall carry the costs of any ensuing prosecution.
2. If the charges in the complaint are not sustained, the Council may indemnify the member(s) involved for that part of the member(s)' out-of-pocket costs that the Council, acting in its sole discretion, deems to be required to serve the interests of justice.
3. If an appeal is made against a PSC decision, the PSC may require a reasonable deposit to be made by the appellant as proof of goodwill. The amount of the deposit shall be decided by the PSC, but shall not exceed five times the annual membership fee. The deposit shall be repaid to the appellant if the appeal is sustained.

## Confidentiality

### Article 16

1. Except as provided below, the deliberations of the PSC and the DC shall be confidential.
2. Documents the PSC or the DC accept as being confidential shall not be shown to anyone other than PSC/DC members, the PSC Secretary, pertinent members of the Society's professional staff and any experts needing access to such documents to enable them to formulate the expert opinion(s) being sought by the PSC or the DC, as the case may be, or any of the parties.
3. All of those given access to confidential documents in connection with any disciplinary proceeding shall be required to sign a document pledging them to respect any and all disclosure limitations that have been placed on individual documents.
4. ESOMAR shall publish the decisions formulated in individual cases by the Chairman or Vice Chairman of the PSC, or his/her delegate, and by the Chairman or Substitute Chairman of the DC once such decisions have become final.
5. Other than in the circumstances described below, PSC/DC decisions shall not refer by name to any ESOMAR member or related company unless the DC sustains the charges alleged in the particular complaint and concludes that disclosure of such name(s) would constitute an appropriate penalty. In the event the DC's decision in a particular matter is appealed to the Council, the DC's decision shall be published only if such publication is approved by the Council. The names of non-members of ESOMAR shall not be mentioned in any such publication.
6. If the PSC or DC, as the case may be, does not sustain the charges alleged in the particular complaint, the name(s) of the ESOMAR member(s) against whom the particular complaint has

been lodged shall be included in the PSC/DC decisions only if such member(s) unanimously so request in writing.

## **SECTION D**

### **Application to Non-members**

#### **Article 17**

1. The rules specified herein shall apply to any complaint brought against an ESOMAR member. To the extent practicable, the same rules shall be employed whenever a complaint involves a non-member.
2. A proceeding against a non-member may be entertained only if approved by the ESOMAR Council, which shall authorise such a proceeding only if deemed by the Council to be required to safeguard the ethical standards contained in the ICC/ESOMAR Code of Marketing Research and Social Research Practice and the related Notes. In the case of a proceeding involving only those who are not members of ESOMAR, the PSC may go no further than requesting that the non-member refrain from the action complained of or, in more serious cases, referring the matter to the DC. The DC may endorse or repeat such request but may not take any other action without the concurrence of the Council.

### **Interpretation**

#### **Article 18**

ESOMAR members should seek always to comply with the spirit as well as the letter of the ICC/ESOMAR Code, as detailed in the related Notes.

### **Annual report**

#### **Article 19**

The PSC and the DC shall present an annual report to the ESOMAR Council and Annual General Meeting.

Approved by Membership referendum and put into effect at the Annual General Meeting held in Vienna, 17<sup>th</sup> September 2000.