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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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**PART I : SECTION (I) — GENERAL**

**Government Notifications**

**ENGINEERING COUNCIL SRI LANKA ACT, No. 4 OF 2017**

RULES made by the Engineering Council under Section 39 of the Engineering Council Sri Lanka Act, No. 4 of 2017.

**TILAK DE SILVA,**  
Chairman,

Engineering Council Sri Lanka,  
Colombo,  
20th September, 2022.

**Rules**

1. The Rules may be cited as Procedure for Disciplinary Inquiry rules.

**PROCEDURE FOR DISCIPLINARY INQUIRY OF ENGINEERING COUNCIL SRI LANKA**

CONSTITUTED AND ESTABLISHED UNDER THE ACT, No. 4 OF 2017

**PROCEDURE FOR DISCIPLINARY INQUIRIES IN RESPECT OF ENGINEERING PRACTITIONERS AS PER SECTION 13(h) AND (i) OF THE  
ENGINEERING COUNCIL SRI LANKA ACT, NO. 4 OF 2017.**

**PREAMBLE**

The necessity of having a common and stable disciplinary inquiry procedure for engineering practitioners has been identified for long years in Sri Lanka. For this purpose, inquiries conducted about professional misconduct as well as malpractice as well



as quarrels and disputes among engineering Practitioners and misunderstandings while Performing professional works and duties stood as obstacles and barriers to the professionals in a reductive way in their professional performance and outcome. Therefore, this procedure for disciplinary inquiries of engineering practitioners is introduced for better performance and to solve the disagreements and make paths to compromise. Nevertheless, if professional misconduct or malpractice occurred due to negligence or with intention should be wiped out form the engineering profession after having justifiable concerns of all parties not only among engineering practitioners but also on the complaints of complainants who are either third party or outsiders to this profession. To develop the skills and professional conduct within the frame of professional wellbeing and genuineness should be identically identified along with the professional disciplinary guidelines. The procedure for disciplinary inquiries should proceed with/ according to the law and justice of the country as well as within the code of ethics. For these purposes, the procedure for disciplinary inquiries in respect of engineering practitioners hereby declare with the approval of the Engineering Council of Sri Lanka under the power vested to the Council as per Section 13(h) and (i) of the Engineering Council Act, No. 4 of 2017 as thus,

## **BACKGROUND**

The Disciplinary Inquiries Procedure has been made under Section 13(h) and (i) of the Engineering Council, Sri Lanka Act, to meet with the purpose introduced by Section 12 (d) of Act, No. 4 of 2017, Engineering Council Sri Lanka has empowered among other functions of the Council to hold inquiries on any matter relating to the professional misconduct of the engineering practitioners. All stages set out in this procedure shall be conducted and decisions reached in accordance with the law and justice of the country as well a within the code of Ethics. In publishing the ECSL's Disciplinary Inquiries Procedure, the Council has to abide by the related guidance published in *Gazette* as regulations by the Hon. Minister under the power vested by the Act.

## **PROFESSIONAL MISCONDUCT**

In accordance with the introductions and interpretations of Professional misconduct of an engineering practitioner, this disciplinary procedure has been approved by the Council to proceed with all types of allegations of Professional Misconduct of its Engineering Practitioners. The Council delegates the powers set out in theses procedures to the Chairman, Chief Executive Officer, the Complaint Secretary, the preliminary investigatory panel, the investigator, Disciplinary panel and the disciplinary Board President of the disciplinary Board to investigate and adjudicate on alleged Professional Misconduct, to prescribe appropriate sanctions and orders in accordance with provisions of the Engineering Council Sri Lanka Act and implement disciplinary rules inter alia if an act or omission which amounts to professional misconduct is established.

## **INTERPRETATIONS AND ABBREVIATIONS**

- a. Act - Engineering Council, Sri Lanka Act, No. 4 of 2017.
- b. ECSL - Engineering Council, Sri Lanka.
- c. Complaint Secretary - ECSL Council will appoint a Complaint Secretary.
- d. Preliminary Investigation Board - Appointed by the Council and shall comprise not more than five (5) individuals.
- e. Preliminary Investigation Panel - Three individuals are drawn from the Preliminary Investigation Board by Complaint Secretary.
- f. Disciplinary Board - Appointed by the Chairman of the Engineering Council Sri Lanka and shall comprise not more than seven individuals, either from the members of the council or non-members or both who are eligible to conduct a disciplinary inquiry according to the rules, regulations and laws.
- g. Disciplinary Panel - Three individuals are drawn by the Compliant Secretary from the Disciplinary Board.
- h. Investigator - One individual selected and appointed from the preliminary investigation panel.
- i. The word “misconduct” used in this procedure means and includes - all the acts and/ or omissions which are and will be introduced through the regulations passed by the Hon. Minister under the legal capacity vested on him or her by Section 16(6) of Act number 4 of 2017.

## DISCIPLINARY INQUIRIES PROCEDURE

All the allegations about an engineering practitioner's professional misconduct should be inquired under this procedure.

01. The Council recognizes seven kinds of allegations, complaints, disputes and conflicts in relation to engineering practitioners. Means,
  - a) Engineering professional disputes among engineering practitioners relate to professional ill treatment.
  - b) A dispute between engineering practitioners and a third person(s). (third-person means any person who's not an engineer or any legal person who is not carrying any engineering business).
  - c) Disputes among and between engineering practitioners and/or engineering professional body/bodies or registered and recognized engineering consultancy organizations or institutions.
  - d) Violation of ECSL Act, its rules or regulations, and Act or omission which amounts to professional misconduct.
  - e) Any breach of the ECSL code of Professional Conduct and ethics.
  - f) Personal status (criminal offenses unconnected with work).
02. Complaints against professional misconduct must be made to Complaint Secretary of Engineering Council by post under the registered cover. His or her address is The Complaint Secretary, Engineering Council of Sri Lanka, No. 230, Bauddhaloka Mawatha, Colombo 7.
  - a) All the complaints must be tendered and forwarded in accordance with the guidelines mentioned above with six (06) calendar months of reveal or disclosure of wrongful act or omission. But if any complainant tenders a complaint with a reasonable time after the stipulated time along with an affidavit with relevant evidence to corroborate, stating unavoidable and special circumstances which prevent or hindered him to tender his complaint within the stipulated time due to a reason which is beyond his control, can be considered by the Council to be entertained.
  - b) The ECSL may direct the Complaint Secretary to investigate an allegation of misconduct where no complaint is received but based on a news item in the media.
  - c) ECSL will not deal with any anonymous complaints and only consider complaints regarding allegations of professional misconduct about engineering practitioners.
  - d) The Complaint Secretary should maintain a register of written records of receiving all complaints which exhibit receiving dates and time and also the Complaint Secretary must keep the envelopes an attachment along with the written complaint.
  - e) The Complaint Secretary should forward and tender the complaint within 7 days of receiving such, to the Preliminary Investigation Panel, keeping a copy of the complaint. The Complaint Secretary must also keep records of forwarding of complaints to the preliminary investigation panel as mentioned above in a separate registry with a signature from one member of the Preliminary Investigation Panel.
  - f) When referring a complaint to a Preliminary Investigation Panel, the Complaint Secretary, with the guidance and direction of the Chairman of the Council (ECSL), will convene a Preliminary Investigation Panel of three Individual drawn from the Preliminary Investigation Board.
03. The Complaint Secretary should direct and command the Preliminary Investigation Panel to appoint an Investigator within 14 days to call all the parties in writing and gather the facts and related documents from them. The Investigator must be one of the members of the Preliminary Investigation Panel.
  - a) The Investigator is legally permitted to call each party Inpersonam while gathering facts and explanations. The Investigator must prepare and conclude his investigation with the summary report of observations along with the material documents and statements of each party and forward the conclusive summary report with all annexes to the Preliminary Investigation Panel within 21 days of his appointment.

- b) The other panel members must consider the Investigator's reports and all annexes and observations and each of the panel members must prepare a separate brief conclusion of their own observations and tender within two weeks to the Disciplinary Board for further proceedings.
- c) After receiving the three separate briefs of observations and conclusions tendered by the preliminary investigation panel to the disciplinary board, the President of the disciplinary board should acknowledge and notify the Complaint Secretary to appoint a disciplinary panel.
04. The Disciplinary Board shall be appointed by the Council and shall comprise not more than seven members. Members of the Disciplinary Board shall hold office for one year, which term may be renewed for a further term of one year. The Chairman of the Engineering Council of Sri Lanka is empowered to appoint all the members of the disciplinary board. The Disciplinary Board can comprise either member of the Engineering Council or competent eligible people who are not members of the Engineering Council of Sri Lanka or both. The Chairman of the Council will appoint all the members of the Disciplinary board for a calendar year, which is subject to be extended another one year as per the desire of the Chairman of the Engineering Council. One of the members of the Disciplinary Board shall be nominated as the President of the disciplinary board by the Chairman of the Council. The President of the disciplinary board must be nominated only to facilitate the administrative requirements. The President of the disciplinary board has no any power or authority to intervene with the independent decisions of the members of the disciplinary board and/ or independent decisions of the members of the disciplinary panel.
- a) When the Complaint Secretary is notified by the President of the Disciplinary Board as mention edin paragraph 3 (c) of this procedure, the Complainant secretary should, as per each and every notification, nominate and constitute a disciplinary panel of three individuals drawn from the Disciplinary Board for further proceedings.
- b) Within 14 days of receiving the brief (full report with attachments and summary) from the Preliminary Investigation Panel, the Disciplinary Panel has to call up a session to prepare a letter addressing the engineering practitioner to show cause or tender explanations in accordance with complaints made against him by the complainant.
- c) The disciplinary panel should send a letter to the engineering practitioner under registered postal cover asking for show cause and explanation. Then the practitioner should be given at least two weeks to tender show cause or explanations after receiving a letter for explanation and show cause.
- d) The disciplinary panel should go into an examination of each document and Statement of the Preliminary brief of facts forwarded by the preliminary investigation panel. After recording observations of three disciplinary panel members, the disciplinary panel should proceed with a disciplinary inquiry.
05. If the Engineering practitioner tenders a show cause has explanation, within the stipulated time or otherwise, the panel should take steps for disciplinary inquiry. If He/she tendered a show cause or explanation, it should be included in the disciplinary inquiry file for further peruse in the inquiry.
- a) The Disciplinary Panel must prepare a "Charge Sheet" according to the observations and findings of the briefs made by the Investigation Panel. The Disciplinary Panel should send the charge sheet under the registered cover of a post, to the engineering practitioner or the engineering practitioner who's attached to and working for a legal body or professional institution, asking or calling or directing him/ her to forward a written answer within 14 days with a copy to the complainant.
- b) The top center of the charge sheet should be titled as "IN THE ENGINEERING COUNCIL OR SRI LANKA". In the charge sheet, the complainant's name and address should be mentioned in the top right corner with the title of the complainant. The name and address of the engineering practitioner or the engineering institution or consulting institute or legal body against whom the allegations are made should be mentioned with the title of the respondents in numerical order.
- c) (i) The charge sheet should be signed by the President of the disciplinary board with his title as "President of Disciplinary Board, Engineering Council of Sri Lanka."
- (ii) Above the signature of the President, it should be written as "by the order of the Engineering Council", or in Sinhala "ශ්‍රී ලංකා ඉංජිනේරු සභාවේ අණ පරිදි".

- (iii) There should be a seal on the charge sheet which exhibits the President, Disciplinary Board, Engineering Council of Sri Lanka.
  - (iv) The charges of the charge sheet should be with the heading of the title "Charge Sheet". This parts should be stated under the caption introduced procedure 5 (b) mentioned above and each of the charges should be framed one by one in numerical order.
- d) The Disciplinary Panel can extend the date to file an answer on the written request made by the engineering practitioner or the respondent showing considerable reasons and difficulties. But the extending period should not exceed 30 days from the answer due date.
- e) If the engineering practitioner or a consultancy body or an institution fails to tender an answer within a stipulated time or fails to make an application to extend the time to tender an answer, the Disciplinary Panel will pronounce an ex - parte inquiry on the complaint with the witnesses and evidence forwarded by the complaint.
- f) (i) Regardless of whether the inquiry is held *ex parte* or *inter partes*, further proceedings should be carried out as mentioned in this procedure.
- (ii) If, After considering the evidence, witness, and the complaint, the Disciplinary Panel observes any misconduct of an engineering practitioner and/ or, the engineering institution or consulting institution or legal body which is carrying business of engineering (who constitute(s) offence(s) by act or omission which is subject to penalty under Section 40(1) of the Act and/or penalty for violation of any other regulation passed by the Council), the Disciplinary Panel should tender their decision to the Disciplinary Board.
- (iii) The Disciplinary Board must after signing the decision or suggestion of the Disciplinary Panel with the signature and the seal of the President of the Disciplinary Board and pass it to the Complaint Secretary of the Council.
- (iv) After receiving the disciplinary decision from the Disciplinary Board, the Complaint Secretary should enter the details of receiving the decision in his records and hand over the decision to the Chairman of the Council.
- (v) After receiving the above - mentioned decision, the Council must pronounce the disciplinary decision or suggestion which is tendered by the Disciplinary board regarding the complaint except in situations mentioned in paragraph 9 (1) of this procedure
- (vi) If in the decision, the disciplinary board has recognized an offence(s) committed by an engineering institution or consulting institution, or legal body, the Council can take steps to sue the so-called engineering institution or consulting institution or legal body or bodies for the charge(s) within the legal capacity vested on the Council by the Section 40 (1) of the Act.
06. If the engineering practitioner tendered his answer within the stipulated time, along with the procedure suggested by 5(g) (1) of this procedure.
- a) The Disciplinary Panel must fix a date, time, and place to have a disciplinary inquiry and inform both complainant and respondent/s to appoint a prosecuting officer or/ and defending officer with their addresses and telephone numbers one week before the expected inquiry date. The prosecuting officer or defending officer should not be an attorney-at-law but the particular officer can have the assistance of an attorney-at-law while prosecuting or defending.
  - b) If the complainant did not or was unable to appoint a prosecuting officer, the Investigator who personally did the investigation with the written authority of the Disciplinary Panel should conduct the prosecution in an inquiry.
  - c) On the day of inquiry, the panel can call up both parties to tender possible settlements, if any.
  - d) Where the allegation relates to a matter of a specialized nature the Panel should consider engaging an independent expert witness. The Panel may decide after examining the evidence or, in more serious or complex cases, organize an extended hearing to which all parties are invited.

- e) The hearings should be conducted with transparent fairness. The disciplinary inquiry must be concluded with a decision or suggestion within 6 calendar months or a reasonable time with proposals of disciplinary steps of discharges, dismissals of complaints, acquittals, or convictions.
07. The Disciplinary Panel may impose or suggest one or more of the following sanctions if the decision is to convict (means, if the panel decides professional misconduct is established and proved on the legal element of balance of probability):
- Guide the engineering practitioner to follow the Code of Professional Conduct and ethics;
  - Issue a written warning to the engineering practitioner and include the rule against him or her to their career records;
  - Require the engineering practitioner to attend training on specified matters within a specified period;
  - Require the engineering practitioner to apologize to another person in connection with the allegation;
  - Suspend the registration for such periods of an engineering practitioner under Section 16(2);
  - Cancel the registration of an engineering practitioner under Section 16(1) (a), (b), (c) and (d);
  - Take legal actions for penalties mentioned under Section 40 of the Act.
08. The majority decision or suggestion of the Disciplinary Panel should be the final conclusive decision of the ECSL. Even though the decision is a majority - verdict it should be considered as an undivided and unanimous decision of the Disciplinary Panel, Disciplinary Board as well as the Engineering Council of Sri Lanka. The Engineering Council will Pronounce and endorse the decision with two signatures and an authorized stamp. The above - mentioned decision or suggestion should be signed by two persons, the Chairman of the Engineering Council of Sri Lanka and the president of the disciplinary board with the official seal of the council. The official decision of the Council should be sent to the complainant and the respondents in writing under the registered postal cover.
09. (i) If the Council decides to pronounce the decision of cancellation of registration of an Engineering practitioner, the Council must consider whether there are legal and/ or incidental factors covered and complied by Section 16(1) (either one or more of (a), (b), (c) and (d) before being satisfied to pronounce such a cancellation.
- (ii) If the final decision is pronounced under 7(e) or 7(f) of this procedure the Council should take steps under Section 16(3) of the Act, No. 4 of 2017. As per the Section, the Council should send a cause of notice of cancellation or suspension under a registered postal letter to the engineering practitioner, mentioning the reasons for arriving at such suspension of registration or cancellation of registration. In that letter, ECSL must give clear notice to the engineering practitioner that, if he/she wishes to tender any plea or explanation to waive off the decision, it should be sent to the Council under the registered postal cover within one month from the date of receiving of the letter mentioned above.
10. If the engineering practitioner sends the explanation within the stipulated time mentioned in paragraph 9 (ii), Council should consider the explanation or plea and come to a conclusion to either waive off the decision or revise the decision or to execute the decision as it was.
11. Whether the engineering practitioner's explanation is received or not, after one month's lapses, Council should declare their final decision or conclusion under the registered postal cover to the respondent as their verdict.

**TILAK DE SILVA,**  
Chairman.  
Sri Lanka Engineering Council.