

INTERNATIONAL COTTON ASSOCIATION LTD

Guidelines for the Application of Disciplinary Procedures

Notes:

- (a) *In these Notes and the Guidelines below, reference is made to “Member” (or, as the context requires, “Members”). This expression shall include Members and Registered Firms of the Association.*
- (b) *These Guidelines have been published by the Association by distribution to every Member and by posting on the public area of the Association’s website. The Guidelines may be amended from time to time, and amended versions will be distributed to all Members and posted on the website.*
- (c) *The Association’s Articles of Association apply to Members, Associate Members and Member’s Registered Firms. Its Bylaws and Rules apply to all other categories of Registered Firms and to non-Members and non-Registered Firms entering into contracts subject to the Bylaws and Rules. In these Notes and the Guidelines below, references are made to “Article” and “Bylaw”. These expressions refer respectively to an Article in the Association’s Articles of Association and to a Bylaw in the Association’s Bylaws and Rules.*
- (d) *Part 1 of the Guidelines applies to the consideration of any alleged offence (“offence”) under Article 23. Part 2 of the Guidelines applies only to the consideration of an offence under Article 23(1)(a) and Bylaw 422(1). These provide that a Member shall be liable to one or more of the penalties listed in the introductory paragraph of Article 23(1) and Bylaw 422(1) (“penalty”) for entering into a contract for the purchase or sale of raw cotton with an individual, firm or company listed on the Association’s List of Unfulfilled Awards (“defaulter”).*
- (e) *The Guidelines apply to a consideration of the offence (whether at first instance or by way of appeal) by the Preliminary Investigation Committee, the Directors of the Association or by the Members of the Association (“Disciplinary Body”), as appropriate.*
- (f) *The purpose of the promulgation of the Guidelines (which are not legally binding) is (i) to ensure that Members, and non-Members are made aware of how Disciplinary Procedures are likely to be applied; (ii) to publish (and procure future publication of) objective and consistent criteria by which a decision to apply a penalty will be imposed; (iii) to ensure that adequate reasons are given for the decision of the Disciplinary Body; and (iv) specifically with regard to Article 23(1)(a) and Bylaw 422(1), to ensure that there is clarity as to the circumstances in which it shall apply.*

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Part 1 - Guidelines applicable to any offence under Article 23 and Bylaw 422(1)

1. Each decision of the Disciplinary Body shall be recorded in writing. It shall briefly summarise the relevant facts and circumstances and succinctly set out the reasons for the decision reached. One copy of the decision shall be delivered to the Member. Copies of all such decisions shall be retained by the Association and shall be made available to all subsequent Disciplinary Bodies to assist them in developing a consistent approach. The Association shall maintain a summary record of each such decision in a register which will be available for inspection by all Disciplinary Bodies. In respect of each decision taken by a Disciplinary Body, the register shall record in summary terms the relevant features of the offence and the penalty imposed.
2. In conducting its proceedings and reaching its decision, each Disciplinary Body shall observe the principles of natural justice. These shall include, but not be limited to, (i) apprising the Member of the precise nature of all allegations and evidence brought against it and providing it with copies of all documents relating to such allegations or evidence, and (ii) giving the Member an opportunity, which shall be reasonable and fair in all the circumstances, to meet all such allegations, to put its case fully and to adduce such documents and evidence as it thinks fit.
3. As stated in the introductory paragraph of Article 23(1) and Bylaw 422(1), the Disciplinary Body shall have at its disposal a range of penalties. Save where penalties are in the alternative (ie expulsion or suspension and caution or censure notice), the Disciplinary Body shall be at liberty in appropriate cases to apply more than one penalty for a particular offence. In deciding which penalty to impose, and whether to impose more than one penalty, the Disciplinary Body shall take into account the following considerations:
 - (a) Whether the Member has been found guilty by a Disciplinary Body of a previous offence, and if so what.
 - (b) Whether the Member has promptly admitted and apologised for its offence.
 - (c) Whether the Member has given to the Disciplinary Body an acceptably worded undertaking not to repeat the offence and that it has taken remedial steps to ensure that there will be no such repetition.
 - (d) Whether the Member has breached an undertaking given on a previous occasion in pursuance of (c) above.
 - (e) Whether the conduct of the Member was intentional, reckless or negligent, including whether prior advice was sought on the acceptability of the conduct leading to or constituting the offence either by the Member from its advisors or by an individual within the Member's organisation from his or her supervisors or relevant compliance staff.
 - (f) Whether the conduct constituting or giving rise to the offence reveals serious or systematic weaknesses, or both, in respect of the management systems or internal controls in relation to the Member's business.
 - (g) The extent to which the Member has co-operated with the Disciplinary Body and has made full and frank disclosure in response to all enquiries made by the Disciplinary Body.
 - (h) Whether the Member has brought its conduct to the Association's attention in a timely manner (and in reviewing this the Disciplinary Body will consider whether the Member has informed the Association of all the conduct of which it is aware or only part, and the manner in which the disclosure has been made and the reasons for such disclosure).
 - (i) Whether the imposition of a particular fine would have the likely effect of putting the Member in financial jeopardy (in considering this factor, the Disciplinary Body will take into account the size and financial resources of the Member)

- (j) What action has been taken by Disciplinary Bodies in previous similar cases: in general, similar cases should be treated consistently (and to this end reference shall be made to relevant previous decisions and to records of previous penalties imposed as referred to in paragraph 1 above).

Part 2 - Guidelines applicable to an offence under Article 23(1)(a) and Bylaw 422(1) only

- 4. In the case of an offence under Article 23(1)(a) and Bylaw 422(1), the penalty of denial of arbitration services shall be imposed by the Disciplinary Body unless it considers it inappropriate to do so in all the circumstances. Such leniency shall be exercised only in the most exceptional of cases. Subject always to these overriding provisions, the Disciplinary Body shall not apply a penalty (other than denial of arbitration services) unless satisfied, on the balance of probabilities, and after due consideration of all the evidence, documents and submissions placed before it, that the Member had knowledge that the individual, firm or company with whom it had entered into a contract was a defaulter.
- 5. For these purposes, a Member will be deemed to have knowledge unless he satisfies the Disciplinary Body that, throughout the period starting with the listing of the defaulter on the Association's List of Unfulfilled Awards and ending on the date of the contract, the relevant persons within the Member's organisation did not, and could not reasonably be expected to, have access to the Association's website and did not receive the circular notifying the Member of the inclusion of the defaulter on the Association's List of Unfulfilled Awards.
- 6. In deciding which penalty to impose, and whether to impose more than one penalty, the Disciplinary Body shall take into account the following considerations in addition to those set out in paragraph 3 above:
 - (a) Whether the Member had actual knowledge that the individual, firm or company with whom it had entered into a contract was a defaulter, or only deemed knowledge within the terms of paragraph 5 above.
 - (b) Whether the conduct constituting or giving rise to the offence shows that the Member sought deliberately to profit from trading with a defaulter (and in this connection the Disciplinary Body shall take particular cognizance of any material divergence between the price under any contract concluded between the Member and the defaulter and the fair market price at the date of such contract, and/or any particular terms of the contract or ancillary agreements or arrangements which demonstrate that the Member sought to extract advantage out of concluding a contract with a defaulter which would not have been derived from a contract with a non-defaulter).
 - (c) The profit or potential profit to be derived from the contract constituting or giving rise to the offence.
 - (d) Whether the Member ignored warnings not to enter into a contract with the defaulter or with any individual, firm or company listed in the Association's List of Unfulfilled Awards.
 - (e) Whether the Member can demonstrate a genuine and good faith lack of awareness or understanding of Article 23(1)(a) and Bylaw 422(1).
 - (f) Any submissions put forward by the Member to challenge the underlying basis upon which the defaulter has been placed on the Association's List of Unfulfilled Awards.
 - (g) The extent to which the contract constituting or giving rise to the offence benefited or is likely to have benefited the business of the defaulter.

7 For ease of reference, the following are the penalties laid down in Article 26 and Bylaw 422:

- denial of arbitration services
- caution
- censure
- payment of a fine, not exceeding £25,000
- suspension
- expulsion

or any combination of the above.

The following examples are intended to illustrate how the application of the considerations listed in paragraph 6 above might affect a Disciplinary Body's decision as to which penalty or penalties to apply in any particular case. It is to be stressed, however, that:

- (a) the examples set out below are no more than examples;
- (b) nothing in this paragraph should affect the Disciplinary Body's review of all considerations relevant to the case in question;
- (c) nothing in this paragraph should affect a Disciplinary Body's consideration of the register and previous decisions maintained pursuant to paragraph 1 above; and
- (d) each case must be considered on its merits in the light of all prevailing circumstances and available evidence.

The following examples are for illustrative purposes only and serve as an indication of how the penalties may be applied:

Examples:

Brief summary of relevant circumstances	Penalty
First offence; no actual knowledge that contractual counterpart was defaulter; prompt admission; apology and full co-operation with the Disciplinary Body	Denial of arbitration services (but see paragraph 4 above) and caution
First offence; actual knowledge that the contractual counterpart was defaulter; admission and apology; undertaking given under 3(c)	Denial of arbitration services, censure notice, fine and consideration of imposition of one month's suspension
First offence reported by a third party; member took calculated risk that he would not be caught; lack of co-operation with Disciplinary Body	Denial of arbitration services, censure notice, heavy fine and suspension
Second offence; actual knowledge; no admission or apology; and no undertaking given under 3(c); evidence of intentional conduct; evidence of deliberate profit from trading with defaulter; lack of co-operation with Disciplinary Body	Denial of arbitration services and, unless compelling circumstances dictate otherwise, expulsion