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INVESTMENT BUSINESS ACT 2003

2003 : 20

**INVESTMENT BUSINESS APPEAL TRIBUNAL REGULATIONS
2004**

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In exercise of the powers conferred upon the Minister of Finance by section 36(2) of the Investment Business Act 2003, the following regulations are made:—



Citation

1 These Regulations may be cited as the Investment Business Appeal Tribunal Regulations 2004.

Interpretation

2 In these Regulations, unless the context otherwise requires —

"the Act" means the Investment Business Act 2003;

"appellant" means a person who under the Act is entitled to appeal or has appealed, as the case may be, to the tribunal against a decision of the Authority or against a finding on which such a decision is based;

"chairman" means the chairman of the tribunal appointed under section 34(2) of the Act, and includes a deputy chairman when acting in the absence of the chairman;

"panel" means the panel of members of the appeal tribunal appointed by the Minister under section 34(4) of the Act;

"preliminary hearing" means a hearing held pursuant to regulation 9;

"secretary" means the person appointed by the Minister to act as secretary to the tribunal;

"tribunal" means a tribunal established pursuant to regulation 5.

Time for and manner of bringing appeals

3 An appeal shall be brought by sending a notice of appeal to the secretary of the appeal tribunal, Ministry of Finance, Hamilton not later than—

- (a) in the case of an appeal against a decision of the Authority (or any finding relating thereto) to revoke a licence, 10 days from the date on which the Authority serves notice in writing on the appellant of its decision; or
- (b) in the case of an appeal against a decision of the Authority to impose or vary a restriction on an Investment Provider's licence as a matter of urgency —
 - (i) 28 days from the date on which the Authority imposes or varies the restriction by written notice to the Investment Provider under section 23(2) of the Act; or

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- (ii) 10 days from the date on which the Authority gives written notice to the Investment Provider under section 23(7) of the Act of its decision under section 23(6) of the Act,

whichever is the later; or

- (c) in any other case, 28 days from the date on which the Authority serves notice in writing on the appellant of its decision.

Notice of appeal

4 (1) The notice of appeal shall be signed by or on behalf of the appellant and shall contain the following particulars—

- (a) the appellant's name;
- (b) his address, or where the appellant is an institution the address of its registered office;
- (c) the address, if different from that referred to in subparagraph (b), to which applications, notices and other documents in connection with the appeal should be sent to the appellant within Bermuda;
- (d) the name and address of any person appointed by the appellant to represent him or it in connection with the appeal; and
- (e) a statement of the decision or finding of the Authority against which the appeal is made.

(2) The appellant shall, upon sending notice of appeal to the secretary, send forthwith a copy of the notice to the Authority, to any person to whom a copy of the notice was sent under section 22(7) of the Act, and, in the case of an appeal under section 33(2) of the Act, to the Investment Provider concerned.

Establishment of the tribunal

5 On receipt of a notice of appeal the secretary shall forthwith request the chairman to select from the panel the other two members of the tribunal to hear the appeal.

Respondent

6 On every appeal the Authority shall be the respondent.

Grounds of appeal

7 (1) The appellant shall send to the secretary a notice setting out the grounds of appeal, which, in the case of an appeal other than an appeal under section 33(2)(a) shall contain sufficient particulars to show why the appellant considers the decision appealed against was unlawful or was not justified by the evidence on which it was based or in the case of an appeal under section 33(2)(a) shall contain sufficient particulars to show why the appellant considers the finding appealed against was not justified by the evidence on which it was based—

(a) within 28 days from the date on which the Authority served notice in writing on the appellant of its decision, in the case of an appeal against the decision of the Authority (or any finding relating thereto) to revoke a licence; and

(b) within 14 days of serving the notice of appeal, in any other case.

(2) The appellant shall upon sending the notice of grounds of appeal referred to in paragraph (1), send a copy of the notice to the persons to whom a copy of the notice of appeal was sent pursuant to regulation 4(2).

(3) In the case of an appeal under section 33(1) of the Act the appellant may omit any information from the notice of grounds of appeal referred to in paragraph (1) on the ground that it is confidential or commercially sensitive, in which event it shall include such information in a notice of supplementary grounds of appeal, which it shall send to the secretary and the Authority, with an explanation in writing of the reasons for the omission, at the same time as it sends the notice of grounds of appeal under paragraph (1).

Supply of documents by the Authority

8 (1) Within 14 days of receiving the copy of the notice of appeal under regulation 4, the Authority shall send to the secretary four copies of the documents listed in the Schedule to these Regulations and shall send to the appellant and, in the case of an appeal under section 33(2) of the Act, to the investment provider concerned, a list of those documents together with a copy of any of those documents which the Authority has not already supplied to the appellant or, in the case of an appeal under section 33(2) of the Act, to the Investment Provider concerned (as the case may be).

(2) Where the Authority gave a copy of a notice to a person under section 22(4) of the Act, or gave a notice to a person under section 22(7) of the Act, and under section 22(12) of the Act omitted any matter

which did not relate to him the Authority may omit that matter from any copy of that document supplied to that person under paragraph (1).

Preliminary hearing

9 (1) Subject to paragraph (2), the secretary shall send to the appellant, the Authority and, in the case of an appeal under section 33(2) of the Act, to the investment provider concerned, a notice informing them of the time and place of the preliminary hearing which, unless the appellant and the Authority otherwise agree, shall be—

(a) not earlier than 5 days after the date on which the notice is sent; and

(b) not earlier than 21 days and not later than 35 days after the date of receipt by the secretary of the notice of appeal unless the chairman otherwise directs on the ground that he considers that the preliminary hearing should be held as a matter of urgency.

(2) The preliminary hearing shall be in private and shall be heard by the chairman.

(3) The appellant and the Authority and, in the case of an appeal under section 33(2) of the Act, the investment provider concerned may appear at the preliminary hearing and may be represented by a barrister and attorney or by any other person.

(4) The chairman shall give such directions as he considers necessary or desirable for the conduct of the appeal and shall fix the time and place of the hearing at the preliminary hearing or, if there is no preliminary hearing, by notice to the parties and in the case of an appeal under section 33(2) of the Act, to the Investment Provider concerned.

(5) Without prejudice to the generality of paragraph (4) and subject to regulation 21(2), the chairman shall consider whether any matters contained in a notice of supplementary grounds of appeal submitted under regulation 7(3) should be disclosed to any other person and may direct accordingly.

Interim relief

10 (1) On an application for the suspension under section 33(4) of the Act of the operation of any restriction or any variation of a restriction which is the subject of an appeal, the tribunal may determine it on the basis of written representations if the parties and, in the case of an appeal under section 33(2) of the Act, the investment provider concerned so agree in writing or may direct the parties and, in the case of an appeal under section 33(2) of the Act, the investment provider concerned to appear before it.

(2) The tribunal shall notify its determination and the reason for it to the Authority and to the party who made the application for interim relief and may do so to any other party to the appeal or to any person to whom notice of appeal has been given under regulation 4(2).

Amendment of grounds of appeal

11 (1) An appellant may amend a notice of grounds of appeal or supplementary grounds of appeal at any time before the preliminary hearing and shall forthwith notify the Authority and the secretary in writing of the amendment.

(2) An appellant may amend a notice of grounds of appeal or supplementary grounds of appeal in the course of the preliminary hearing with the leave of the chairman or at any time thereafter with the leave of the tribunal.

(3) The chairman or the tribunal shall not give leave unless he or it has afforded the Authority an opportunity to make representations on the proposed amendment.

(4) Leave may be granted on such terms (if any), including terms as to costs or expenses, as the chairman or the tribunal (as the case may be) thinks fit.

(5) Where a notice of grounds of appeal is amended the appellant shall forthwith notify any person to whom a copy of the notice was sent pursuant to regulation 7(2) and where a notice of supplementary grounds of appeal is amended the chairman shall consider whether any matters contained therein should be disclosed to any other person and may direct accordingly.

Evidence and procedure

12 (1) For the purposes of the appeal the chairman may, on the application of a party to the appeal or on his own motion, by direction given at the preliminary hearing or by notice in writing require the appellant, the Authority or any other person, at a time and place stated in the notice, to attend and give evidence or produce any document in that person's custody or under his control which relates to any matter in question at the hearing; provided that—

- (a) no person other than the appellant or the Authority shall be required, in obedience to such direction or notice, to attend and give evidence or to produce any such document unless the necessary expenses of his attendance are paid or tendered to him; and
- (b) no person shall be compelled to give any evidence or produce any document which he could not be compelled

to give or produce if the hearing were a proceeding in a court of law; and

(c) in exercising the power conferred by this paragraph the chairman shall take into account, in particular, the need to protect information which relates to a person who is not a party to the appeal and which is commercially sensitive or was communicated or obtained in confidence.

(2) Except where the chairman otherwise directs, a witness shall not be obliged to attend and give evidence or produce any document in obedience to a direction or notice issued by the chairman unless that direction or notice has been served on him not less than 5 days before the day appointed for the hearing.

(3) The chairman may set aside any direction or notice under this regulation on the application of the person to whom the direction or notice was addressed but shall not do so without first notifying any person who applied for the direction or notice and considering any representations made by that person.

(4) The secretary shall supply a copy of any document obtained under this regulation to any party to the appeal if that party does not already have a copy of the document and it shall be a condition of such supply that the information so supplied shall be used only for the purposes of the appeal.

(5) The hearing shall be in private.

(6) The appellant and the Authority may appear at the hearing and may be represented by a barrister and attorney or by any other person.

(7) At the hearing the appellant and the Authority shall each be entitled to make an opening statement, to call witnesses to give evidence, to cross examine witnesses called by the other party and to make a final statement.

(8) In the case of an appeal under section 33(2) of the Act, the investment provider concerned shall be entitled to be heard, notwithstanding that the hearing is in private, and may be represented by a barrister and attorney or by any other person.

(9) The tribunal may require any witness to give evidence on oath or affirmation which may be administered for that purpose by the chairman.

(10) Subject to paragraph (1), evidence may be admitted by the tribunal whether or not it would be admissible in a court of law.

(11) If the appellant or the Authority or, in the case of an appeal under section 33(2) of the Act, the investment provider concerned shall fail to appear or be represented at the time and place fixed for the hearing, the tribunal may proceed with the hearing or adjourn it to a later date; and if it proceeds with the hearing, it shall take into consideration any written representations which may have been submitted by either party and, in the case of an appeal under section 33(2) of the Act, the investment provider concerned whether in accordance with any provision contained in these Regulations or otherwise.

(12) The tribunal may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

Membership of the tribunal

13 Notwithstanding the provisions of regulation 5, an appeal may with the consent of the parties continue to be heard in the absence of any one member of the tribunal other than the chairman, and in that event the tribunal shall be deemed to be properly constituted.

Procedure after hearing

14 (1) The tribunal shall, after the close of the hearing, notify its determination and its reasons therefor in accordance with section 35(4) of the Act (which provides for the giving of notice of a tribunal's determination together with a statement of its reasons, to the appellant and to the Authority).

(2) The tribunal may, after hearing representations from the parties, make arrangements for the publication of its determination and its reasons therefor but in doing so shall have regard to the desirability of safeguarding commercially sensitive information or information given to the appellant or the Authority in confidence and for that purpose may make any necessary amendments to the text of the decision to conceal the identity of the appellant or the source of any such information.

Withdrawal of appeal

15 (1) The appellant may withdraw the appeal at any time before the hearing by giving notice in writing to the Authority and to the secretary.

(2) The appellant may at the hearing give notice to the tribunal that he or it desires to withdraw the appeal and thereupon the tribunal shall bring the hearing to a close.

(3) The Authority may at any time withdraw its opposition to an appeal by giving notice to the appellant and the tribunal.

(4) If an appeal is withdrawn, it shall be deemed to be dismissed and the tribunal shall accordingly formally notify the persons whom it would have notified under regulation 14(1) if it had determined the appeal.

Costs

16 (1) Any costs or expenses directed to be paid under section 36(1) of the Act (which provides that the tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal) and required to be taxed shall be taxed by the Registrar of the Supreme Court.

(2) A direction under section 36(1) of the Act in respect of the payment of costs by a party to the appeal shall, on application being made to the Supreme Court by the party to whom costs have been directed to be paid, be enforceable as if he had obtained a judgement of that Court in his favour.

Time and miscellaneous powers

17 (1) Where the time prescribed by or under these Regulations for doing any act expires on a Saturday, Sunday or public holiday and by reason thereof the act cannot be done on that day, the act shall be in time if done on the next working day.

(2) The periods referred to in regulations 7, 8 and 9 may be extended by the chairman on such terms (if any) as the chairman after consulting the parties thinks fit and any application for such extension may be granted although it is not made until after the expiration of the period.

(3) The chairman may, after consulting the parties—

- (a) postpone the date fixed for the hearing of an appeal; or
- (b) alter the place appointed for any hearing;

and, if he exercises either of the above powers, the secretary shall notify each party, any witnesses concerned and, in the case of an appeal under section 33(2) of the Act, the investment provider concerned of the revised arrangements.

Tribunal's power to determine its own procedure

18 Subject to the provisions of the Act and of these Regulations, the tribunal shall have power to determine its own procedure.

Services of notices etc.

19 (1) Any notice or other document to be sent, served or given to any person for the purposes of the appeal may be delivered or may be sent by registered letter—

- (a) in the case of a document directed to the tribunal, to the address set out in regulation 3;
- (b) in the case of a document directed to the appellant or his representative, to the address provided in the notice of appeal in accordance with regulation 4 or such other address as may subsequently be notified to the tribunal and the Authority;
- (c) in the case of a document directed to the Authority, to the Secretary to the Board, Bermuda Monetary Authority, Burnaby House, 26 Burnaby Street, Hamilton HM11;
- (d) in any other case, to the last known address of the person to whom the document is directed;

and documents falling within (b) or (d) above, if sent, served or given to the authorised representative of any person, shall be deemed to be sent, served or given to that person.

(2) Any such notice or other document may be sent, served or given by facsimile, telex or other electronic means which produce a document containing the text of the communication.

Irregularities

20 (1) Any irregularity resulting from failure to comply with any provision of these Regulations before the tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal before it has reached its decision, the tribunal may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before reaching its decision to cure the irregularity.

(3) Clerical mistakes in any document recording a decision of the chairman or tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the chairman under his hand.

Consolidation of appeals

21 (1) Where in making its decision the Authority made a finding that a person is not a fit and proper person to hold the particular position in the investment provider which he holds or is to hold or

imposed a requirement that a person be removed as a controller or officer of the investment provider and both the investment provider and the person concerned appeal against the decision, or where the investment provider appeals against the decision and the person concerned appeals against the finding, the chairman may at the preliminary hearing or at some other time direct that the appeals shall be consolidated:

Provided that the chairman shall not make such a direction without giving all parties concerned an opportunity to show cause to why such a direction should not be made.

(2) If the chairman directs that the appeals shall be consolidated the secretary shall send to the person concerned a copy of any notice of supplementary grounds of appeal submitted by the investment provider under regulation 7(3) unless all of the matters contained in the notice have been disclosed to the person concerned under regulations 9(5) or 11(5) or unless the investment provider when showing cause why such a direction should not be made under paragraph (1) represented that it did not wish the notice of supplementary grounds of appeal to be disclosed to the person concerned and the person concerned consented to the notice not being disclosed to him.

SCHEDULE

Regulation 8

DOCUMENTS TO BE SENT TO THE TRIBUNAL BY THE AUTHORITY

1 In the case of an appeal against a decision of the Authority (or any finding relating thereto) to revoke a licence, to restrict a licence or to vary restrictions imposed on a licence—

- (a) a copy of any notice served under section 22(1) or 22(4) of the Act;
- (b) a copy of any written representations made in accordance with section 22(5) thereof;
- (c) a copy of any notice served under section 22(7) thereof; and
- (d) a copy of any written representations made in accordance with section 22(9) thereof.

2 In the case of an appeal against a decision of the Authority to impose or vary a restriction as a matter of urgency—

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- (a) a copy of any notice served under section 23(2) or 22(4) (as applied by section 23(4) of the Act;
 - (b) a copy of any written representations made in accordance with section 23(5) thereof; and
 - (c) a copy of any notice served under section 23(7) thereof.

3 In the case of an appeal against a decision of the Authority to object to a person who wishes to become a shareholder controller or controller of any description of an authorised institution—

- (a) a copy of any notice served under section 28(1), 28(3), 29(1), 29(2) and 29(6) of the Act, together with a copy of any information and documents required by a notice under section 28(3) thereof; and
- (b) a copy of any written representations made under section 29(3) of the Act.

4 In the case of an appeal against a decision of the Authority to object to an existing shareholder controller of a licensed Investment provider—

- (a) a copy of the notices served under sections 30(1) and (2) of the Act; and
- (b) a copy of any written representations made under section 30(3) of the Act.

Made this 5 day of November , 2004

Minister of Finance