

BERMUDA

INSURANCE APPEAL TRIBUNAL REGULATIONS 2011

BR / 2011

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The Minister of Finance, in exercise of the power conferred by section 44D(2) of the Insurance Act 1978, makes the following Regulations:

Citation

1 These Regulations may be cited as the Insurance Appeal Tribunal Regulations 2011.

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Interpretation

2 In these Regulations, unless the context otherwise requires—

“the Act” means the Insurance Act 1978;

“appellant” means a person who has brought an appeal pursuant to regulation 4;

“chairman” means the chairman of the tribunal and includes the deputy chairman when acting in the absence of the chairman;

“corporate body” means a corporate body which is or acts as a registered insurer, insurance manager, broker, agent or salesman;

“panel” means the panel of members of the appeal tribunal appointed by the Minister under section 44B(4) of the Act;

“tribunal” means the tribunal empaneled pursuant to regulation 6.

Appointment of Secretary

3 The Minister may appoint a person to act as secretary to the tribunal.

Manner and time for bringing an appeal

4 (1) An appeal shall be brought by filing a notice of appeal with the Secretary, Ministry of Finance, Hamilton as follows—

- (a) in the case of an appeal by an insurer under section 44A(1)(a) of the Act, not later than 10 days from the date on which the Authority serves on the insurer (after it has considered any written objections made by the insurer) an order of cancellation of registration under section 41(1) of the Act;
- (b) in the case of an appeal by an insurance manager, broker, agent or salesman under section 44A(1)(a) of the Act, not later than 10 days from the date on which the Authority serves on the insurance manager, broker, agent or salesman (after it has considered any written objections made by the insurance manager, broker, agent or salesman) an order of cancellation of registration under section 42(1) of the Act;
- (c) in the case of an appeal by a registered person under section 44A(1)(b) of the Act, not later than 28 days from the date on which the Authority gives to the registered person (after it has taken into account any representation made by the registered person) a direction under section 32(2)(j) of the Act to remove a controller or officer;
- (d) in the case of an appeal by an insurer under section 44A(1)(c) of the Act, not later than 10 days from the date on which the Authority gives to the insurer (after it has taken into account any written representations) a notification under section 6D(4) of the Act of any adjustments the Authority has made to the insurer’s enhanced capital requirement and available statutory capital and surplus;

- (e) in the case of an appeal by a controller or officer under section 44A(2)(a) of the Act—
 - (i) where the Authority has cancelled the registration of an insurer on the ground that the criterion in paragraph 1 of the minimum criteria is not or has not been fulfilled, not later than 28 days from the date on which the Authority serves on the insurer (after it has considered any written objections made by the insurer) an order of cancellation of registration under section 41(2) of the Act; or
 - (ii) where the Authority has cancelled the registration of an insurance manager, broker, agent or salesman on the ground that the criterion in paragraph 1 of the minimum criteria is not or has not been fulfilled, not later than 28 days from the date on which the Authority serves on the insurance manager, broker, agent or salesman (after it has considered any written objections made by the insurance manager, broker, agent or salesman) an order of cancellation of registration under section 42(2) of the Act;
 - (f) in the case of an appeal by a controller or officer under section 44A(2)(b) of the Act against a direction by the Authority to remove the controller or officer, not later than 28 days from the date on which the Authority (after taking into account any representations made by the registered person) gives a direction to the registered insurer under section 32(7)(j) of the Act to remove the controller or officer; and
 - (g) in the case of an appeal by a person under section 44A(3) of the Act against a decision of the Authority to serve on the person a notice of objection under section 30F, 30H or 30JC of the Act, not later than 28 days from the date on which the Authority serves on the person (after it has taken into account any written representations made by the person) the notice of objection.
- (2) When filing a notice of appeal, the appellant shall serve a copy of the notice on—
- (a) the Authority; and
 - (b) the registered person concerned, where the appellant is a controller or officer bringing an appeal under section 44A(2) of the Act.

Notice of appeal

5 A notice of appeal shall be signed by the appellant and shall contain the following information—

- (a) the appellant's name;
- (b) the appellant's address, or where the appellant is a corporate body, the address of the appellant's registered office;

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- (c) the name and address of the registered person concerned, where the appellant is a controller or officer bringing an appeal under section 44A(2) of the Act;
- (d) the address to which notices and other documents may be served on the appellant in Bermuda, if different from the address given under subparagraph (b);
- (e) the name and address of any person appointed by the appellant to represent him or it in connection with the appeal;
- (f) the address of the secretary to the Board of Directors of the Authority; and
- (g) a statement of the decision of the Authority against which the appeal is being made.

Empaneling the tribunal

6 The secretary shall, upon receiving a notice of appeal, request the chairman to appoint the other two members from the panel to hear the appeal.

Grounds of appeal

7 (1) The appellant shall, within 14 days from the date of filing the notice of appeal, file with the secretary a notice setting out the grounds of the appeal.

(2) The notice of grounds of appeal shall contain sufficient particulars to show why the appellant considers the decision appealed against was unlawful or not justified by the evidence on which it was based.

(3) The appellant shall, when filing the notice of grounds of appeal, serve a copy of the notice on the Authority, and to any person to whom a copy of the notice of appeal was served pursuant to regulation 4(2)(b).

Supplementary grounds of appeal

8 (1) In the case of an appeal by a registered person under section 44A(1) of the Act, the registered person may omit from the notice of grounds of appeal any information that has been given in confidence or is commercially sensitive, and shall file with the secretary a notice of supplementary grounds of appeal.

(2) The notice of supplementary grounds of appeal shall be filed with the secretary at the time the notice of grounds of appeal is filed and shall—

- (a) contain such information that has been given in confidence or is commercially sensitive; and
- (b) give the reason why the confidential or commercially sensitive information was omitted from the notice of grounds of appeal.

(3) The information contained in a notice of supplementary grounds of appeal is restricted information to which section 52 of the Act applies.

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Disclosure by the Authority

9 (1) Within 14 days of receiving a copy of a notice of appeal, the Authority shall file with the secretary the documents listed in the Schedule in respect of the particular appeal.

(2) At the time of filing the documents with the secretary, the authority shall serve on the appellant and any person concerned, a copy or a list of the documents as specified in the Schedule.

Filing of response by Authority

10 (1) In every appeal the Authority shall be the respondent.

(2) The Authority shall, within 28 days of receiving a copy of a notice of the grounds of appeal, file with the secretary a response to the particulars set out in the notice.

(3) The Authority shall, when filing a response, serve a copy of the response on the appellant and on any person to whom a copy of the notice of appeal was served pursuant to regulation 4(2)(b).

Preliminary hearing

11 (1) A preliminary hearing shall be held at which—

(a) the chairman shall—

(i) give such directions as he considers necessary or desirable for the conduct of the appeal; and

(ii) fix the date, time and place of the hearing of the appeal; and

(b) the parties may seek clarification regarding the conduct of the appeal.

(2) The chairman shall serve a notice on the parties, and on the registered person concerned in the case of an appeal by a controller or officer under section 44A(2) of the Act, setting out the date, time and place of the preliminary hearing—

(a) not earlier than 21 days of receipt by the secretary of the response by the Authority;

(b) not later than 35 days after receipt by the secretary of the response by the Authority; and

(c) not less than 5 days before the day appointed for the preliminary hearing.

(3) The appellant and the Authority may agree to the notice being served at times other than those provided in paragraph (2).

(4) A preliminary hearing may be held as a matter of urgency as directed by the chairman or as agreed to by the parties.

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

(6) The parties, and the registered person concerned in the case of an appeal by a controller or officer under section 44A(2) of the Act, may appear in person at the preliminary hearing, or be represented by a barrister and attorney, or by any other person.

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(7) The chairman shall consider whether any matters contained in a notice of supplementary grounds of appeal should be disclosed to any other person, and may direct that the matters be disclosed accordingly.

Interim relief

12 (1) An appellant may, pursuant to section 44A(4) of the Act, make application to the secretary that the tribunal suspend operation of a decision of the Authority which is the subject of an appeal.

(2) The tribunal may determine the application on the basis of written representations, if the applicant and the Authority and the registered person concerned in the case of appeal by a controller or officer under section 44A(2) of the Act agree in writing, or it may direct the parties, and the registered person concerned, to appear before it.

(3) The tribunal shall notify the applicant and the Authority of its determination giving a statement of its reasons, and may do so to any registered person concerned or to any person to whom a copy of the notice of appeal has been given pursuant to regulation 4(2)(b).

Amending grounds of appeal, supplementary grounds of appeal, or response

13 (1) An appellant may file with the secretary a notice of amended grounds of appeal or a notice of amended supplementary grounds of appeal at any time before the hearing.

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

(3) Leave to amend grounds of appeal or supplementary grounds of appeal—

(a) shall not be given unless the Authority has been afforded an opportunity to make representations on the proposed amendment; and

(b) may be granted on such terms, including terms as to costs or expenses, as the chairman, or the tribunal, thinks fit.

(4) Where grounds of appeal are amended, the appellant shall immediately notify any person to whom a copy of the notice of appeal was served pursuant to regulation 4(2)(b).

(5) Where supplementary grounds of appeal are amended the chairman shall consider whether any matters contained in the amended notice of supplementary grounds of appeal should be disclosed to any other person, and may direct that the matters be disclosed accordingly.

(6) The Authority may file an amended response where the grounds of appeal or the supplementary grounds of appeal have been amended.

(7) The Authority may amend its response in accordance with the procedures provided in paragraphs (1) to (4).

Evidence and procedure during hearing

14 (1) At the hearing the chairman may, on the application of a party to the appeal or on his own motion, by direction given at the hearing or by notice in writing, require the parties or any other person, at a time and place given in the direction or notice, to attend and give evidence or to produce any document in that person's custody or under his control which relates to any matter in question at the hearing.

(2) Notwithstanding paragraph (1)—

- (a) no person other than the parties 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;
- (b) no person shall be compelled to give any evidence or to produce any document which he could not be compelled to give or produce if the hearing was a proceeding in a court of law; and
- (c) except where the chairman otherwise directs, a witness shall not be obliged to attend and give evidence or to produce any document in obedience to a direction or notice given by the chairman unless that direction was given or notice has been served on him not less than 5 days before the day appointed for the hearing.

(3) In exercising the power conferred by paragraph (1), the chairman shall take into account 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.

(4) The chairman may set aside any direction or notice given under paragraph (1) on the application of the person to whom the direction or notice was given, 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.

(5) 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.

(6) The hearing shall be in private.

(7) The parties may appear at the hearing, or may be represented by a barrister and attorney or by any other person.

(8) At the hearing the parties are each entitled to make an opening statement, call witnesses to give evidence, cross examine witnesses called by the other party, and to make a final statement.

(9) In the case of an appeal by a controller or officer under section 44A(2) of the Act, notwithstanding that the hearing is in private, the registered person concerned is entitled to be heard, or may be represented by a barrister and attorney or by any other person.

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(10) Where the tribunal requires any witness to give evidence, such evidence shall be given on oath or affirmation; and the chairman shall administer the oath or affirmation.

(11) Subject to paragraph (2)(b), evidence may be admitted by the tribunal whether or not it would be admissible in a court of law.

(12) If the parties, or the registered person concerned in the case of an appeal by a controller or officer under section 44A(2) of the Act, 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.

(13) Where the tribunal proceeds with the hearing pursuant to paragraph (12) it shall take into consideration any written representations which may have been submitted by either party, or submitted by the registered person concerned in the case of an appeal by a controller or officer under section 44A(2) of the Act, whether the written representation was submitted in accordance with these Regulations or otherwise.

(14) 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 is required.

(15) A person contravenes section 44D(4) of the Act and is liable on summary conviction to fine of \$10,000 if he, in respect of a material matter—

- (a) tenders into evidence, or procures another to tender into evidence, a false written statement;
- (b) while giving evidence under oath or affirmation knowingly makes a false statement or makes a statement which he does not believe is true; or
- (c) procures another to give evidence under oath or affirmation which the person knows is a false statement or which he does not believe is true.

Procedure after hearing

15 (1) The tribunal shall, after the close of a hearing, notify the parties of its determination and give a statement of its reasons in accordance with section 44C(4) of the Act.

(2) The tribunal may arrange for the publication of its determination and its reasons, but in doing so shall have regard to the desirability of safeguarding confidential or commercially sensitive information given to the parties and for that purpose may make any necessary amendments to the text of its determination and statement to take into account, in particular, the need to protect—

- (a) confidential or commercially sensitive information;
- (b) information which was communicated or obtained in confidence; and
- (c) the identity of or information relating to any person who is not a party to the appeal.

Withdrawal of appeal or opposition

16 (1) The appellant may withdraw an appeal, and the Authority may withdraw its opposition to an appeal, at any time before the hearing by giving notice in writing to the secretary and to the other party.

(2) At the hearing, the appellant may give notice to the tribunal that he desires to withdraw the appeal, or the Authority may give notice that it desires to withdraw its opposition to the appeal, and thereupon the tribunal shall bring the hearing to a close.

(3) Where an appeal or an opposition to an appeal is withdrawn, the appeal shall be deemed to be dismissed and the tribunal shall accordingly formally notify the parties to the appeal.

Costs

17 (1) Any costs or expenses which the tribunal directs to be paid under section 44D(1) of the Act and required to be taxed shall be taxed by the Registrar of the Supreme Court.

(2) A direction by the tribunal under section 44D(1) of the Act in respect of the payment of costs or expenses 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 judgment of that Court in his favour.

Time and miscellaneous powers

18 (1) Where the time prescribed by 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) A party to an appeal may file with the secretary an application requesting the chairman to extend the times referred to in regulation 7, 8, 9, or 10.

(3) The chairman may, after consulting with the other party, grant such extension on such terms, if any, as he thinks fit.

(4) An application may be granted after the times specified in regulations 7, 8, 9, or 10 have expired.

(5) The chairman may, after consulting with the parties—

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

(6) Where the hearing is postponed, or the place for any hearing is altered under paragraph (5), the secretary shall notify the following of the revised arrangements—

- (a) the parties to the appeal;
- (b) any witnesses concerned; and
- (c) the registered person concerned, in the case of an appeal by a controller or officer under section 44A(2) of the Act.

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Tribunal to determine its procedure

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

Absence of a member of the tribunal

20 An appeal may, with the consent of all 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 is deemed to be properly constituted.

Service of notices and other documents

21 (1) Any notice or other document to be filed or served on any person for the purposes of an appeal may be filed or served—

(a) by registered mail—

(i) in the case of the secretary, to the address set out in regulation 4(1);

(ii) in the case of the appellant or the appellant's representative, to the address provided in the notice of appeal, or such other address as may subsequently be notified to the secretary;

(iii) in the case of the Authority, to the address provided in the notice of appeal, or such other address as may subsequently be notified to the secretary; and

(iv) in the case of any other person, to the last known address of the person, or the person's representative; or

(b) by facsimile, or other electronic means which produces a document containing the text of the notice or document.

(2) Where a notice or document is served on the appellant's representative under paragraph (1), the notice or document is deemed to be served on the appellant.

Irregularities

22 (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 making its determination, the tribunal may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before making its determination 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

23 (1) At a preliminary hearing or at some other time, the Chairman may direct that the following appeals be consolidated—

- (a) an appeal brought by—
 - (i) a controller or officer under section 44A(2)(b) of the Act where the Authority has directed the appellant be removed; and
 - (ii) the registered person concerned under section 44A(1)(a) of the Act where the Authority has cancelled the registration of the registered person concerned;
- (b) an appeal brought by—
 - (i) a controller or officer under section 44A(2)(b) of the Act where the Authority has directed that appellant be removed; and
 - (ii) the insurance manager, broker, agent or salesman concerned under section 44A(1)(a) of the Act; or
- (c) an appeal brought by—
 - (i) a person under section 44A(3) of the Act upon whom the Authority has served a notice of objection under section 30F or 30H of the Act; and
 - (ii) the registered person concerned under section 44A(1)(b) of the Act.

(2) A direction shall not be made under paragraph (1) unless all parties concerned have been given an opportunity to show cause as to why such a direction should not be made.

(3) Where appeals have been consolidated, subject to paragraph (4), the secretary shall serve on the controller or officer a copy of any notice of supplementary grounds of appeal or any notice of amended grounds of appeal filed by the registered person.

(4) The secretary shall not serve a copy of any notice of supplementary grounds of appeal or notice of amended supplementary grounds of appeal where—

- (a) all of the matters contained in the notices have been disclosed to the controller or officer by the person concerned at the preliminary hearing; or
- (b) the registered person, when showing cause why such a direction to consolidate should not be made, represented that it did not wish copies of the notices to be disclosed to the controller or officer, and the controller or officer consented to the notices not being disclosed to him.

SCHEDULE

(regulation 9)

DISCLOSURE BY THE AUTHORITY

1 In the case of an appeal by an insurer under section 44A(1)(a) of the Act, the Authority shall—

- (a) file with the secretary—
 - (i) four copies of the order by the Authority cancelling the registration of the insurer under section 41(1) of the Act; and
 - (ii) four copies of any written objections to the order made by the insurer under section 41(2) of the Act; and
- (b) serve on the insurer a list of the documents filed with the secretary under subparagraph (a).

2 In the case of an appeal by an insurance manager, broker, agent or salesman under section 44A(1)(a) of the Act, the Authority shall—

- (a) file with the secretary—
 - (i) four copies of the order by the Authority cancelling the registration of the insurance manager, broker, agent or salesman under section 42(1) of the Act; and
 - (ii) four copies of any written objections to the order made by the insurance manager, broker, agent or salesman under section 42(2) of the Act; and
- (b) serve on the insurance manager, broker, agent or salesman a list of the documents filed with the secretary under subparagraph (a).

3 In the case of an appeal by a registered person under section 44A(1)(b) of the Act, the Authority shall—

- (a) file with the secretary—
 - (i) four copies of the direction given by the Authority to the registered person to remove a controller or officer under section 32(2)(j) of the Act; and
 - (ii) four copies of any representations made in respect of the direction by the registered person under section 32(7) of the Act; and
- (b) serve on the registered person a list of the documents filed with the secretary under subparagraph (a).

4 In the case of an appeal by an insurer under section 44A(1)(c) of the Act, the Authority shall—

- (a) file with the secretary—

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- (i) four copies of the notice given by the Authority under section 6D(4) of the Act to the insurer that an adjustment had been made by the Authority to the insurer's enhanced capital requirement and available statutory capital and surplus; and
 - (ii) four copies of any written representations made by the insurer to the notice under section 6D(3) of the Act; and
- (b) serve on the insurer a list of the documents filed with the secretary under subparagraph (a).

5 In the case of an appeal by a controller or officer under section 44A(2)(a) of the Act, the Authority shall—

- (a) file with the secretary—
 - (i) four copies of any order cancelling the registration of the insurer concerned under section 41(1) of the Act on the ground that it appeared to the Authority that the criterion in paragraph 1 of the minimum criteria is not or has not been fulfilled in the case of the controller or officer; and four copies of any written representation made by the insurer concerned under section 41(2) of the Act; or
 - (ii) four copies of any order cancelling the registration of the insurance manager, broker, agent or salesman concerned under section 42(1) of the Act on the ground that it appeared to the Authority that the criterion in paragraph 1 of the minimum criteria is not or has not been fulfilled in the case of the controller or officer; and four copies of any written representation made by the insurance manager, broker, agent or salesman concerned under section 42(2) of the Act; and
- (b) serve on the controller or officer—
 - (i) a list of the documents filed with the secretary under subparagraph (a); and
 - (ii) a copy of any document listed under subparagraph (a) which has not been served by the Authority on the controller or officer.

6 In the case of an appeal by a controller or officer under section 44A(2)(b) of the Act, the Authority shall—

- (a) file with the secretary
 - (i) four copies of any direction given by the Authority to the registered person concerned to remove the controller or officer under section 32(2)(j); and
 - (ii) four copies of any representations made by the registered person concerned under section 32(7) of the Act to the direction to remove the controller or officer; and

