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FINANCIAL SERVICES TRIBUNAL RULES 2015 Index

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Financial Services Tribunal Rules 2015 (as amended 2017 and 2018)

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Tribunals Act 2006

FINANCIAL SERVICES TRIBUNAL RULES 2015

Approved by Tynwald: 21 October 2015 and 19 June 2018

Coming into Operation: 30 October 2015 and 30 June 2018

The Council of Ministers, after consulting the Deemsters makes the following Rules under sections 8 and 12(3) of the Tribunals Act 2006.

PART 1 – PRELIMINARY

1 Title

These Rules are the Financial Services Tribunal Rules 2015.

2 Commencement

If approved by Tynwald, these Rules come into operation on 30 October 2015/ 30 June 2018.

3 Interpretation

(1) In these Rules —

“**appeal**” means an appeal to the Tribunal which is permitted under any provision of Manx legislation;

“**appellant**” means the person by whom an appeal is made;

“**the Chairman**” means the chairman of the Tribunal;

“**the Clerk**” means the person for the time being appointed under section 9 of the Tribunals Act 2006 to act as clerk of the Tribunal, and includes an acting clerk and a person acting with the authority of the Clerk;

“**costs**” means fees, charges, disbursements or expenses incurred by or on behalf of a party in relation to the appeal in question;

“**costs order**” means an order of the Tribunal or Chairman that a party make a payment in respect of the costs incurred by another party;

“**decision**” (except in “**the original decision**”) means a final determination by the Tribunal or the Chairman of an appeal or of a particular issue in the proceedings on an appeal, including a decision —

(a) on a matter falling within rule 23(1); or

(b) under rule 7 or 9 that an appeal or reply should not be accepted;

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"electronic communication" has the same meaning as in the Electronic Transactions Act 2000;

"hearing" means a preliminary hearing or a full hearing;

"order" means an order made by the Chairman or the Tribunal including an order made in relation to —

- (a) interim matters (whether or not requiring a person to do or not to do something);
- or
- (b) a matter falling within rule 23(1);

and includes a costs order;

"the original decision" means the decision against which an appeal is made;

"party", in relation to an appeal, means (subject to rule 10) the appellant or a respondent;

"person" includes any body of persons, whether incorporated or unincorporated, as well as an individual;

"the register" means the register of appeals, decisions, orders and written reasons kept in accordance with rule 25;

"respondent", in relation to an appeal, means (subject to rule 10) —

- (a) the person or body by whom the original decision was taken; and
- (b) any person made a respondent to the appeal by an order under rule 11;

"the Tribunal" means the Financial Services Tribunal;

"writing" is defined in paragraphs (2) to (5).

(2) **"Writing"** includes writing delivered by means of electronic communications and writing recorded electronically which comply with the requirements set out in paragraphs (3) to (5).

(3) At the time any information is given by means of an electronic communication, it must have been reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference.

(4) At the time any document is produced by means of an electronic communication —

- (a) the method of generating the electronic form of the document must have provided a reliable means of assuring the maintenance of the integrity of the information contained in the document; and
- (b) it must have been reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be usable for subsequent reference.

(5) At the time of recording any information in electronic form it must have been reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference.

4 Application of rules

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- (1) These Rules apply in relation to all proceedings before the Tribunal which are commenced on or after 30 October 2015/ 30 June 2018.
- (2) Subject to the provisions of these Rules, the Tribunal or Chairman may regulate its or his own procedure.

5 Overriding objective

- (1) The overriding objective of these Rules is to enable the Tribunal and the Chairman to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes, so far as practicable —
 - (a) dealing with the appeal in ways which are proportionate to its importance, the complexity of the issues, the anticipated costs and the resources of the parties;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using effectively any special expertise which the Chairman or members of the tribunal may have;
 - (e) avoiding delay so far as is compatible with proper consideration of the issues; and
 - (f) dealing with the appeal in a way which is in the public interest.
- (3) The Tribunal or Chairman must seek to give effect to the overriding objective whenever —
 - (a) exercising any power given to the Tribunal or the Chairman by these Rules; or
 - (b) interpreting these Rules.
- (4) The parties must assist the Tribunal or the Chairman to further the overriding objective.

PART 2 — STARTING AN APPEAL

6 Starting an appeal

- (1) An appeal is made to the Tribunal by the appellant delivering to the Clerk a notice of appeal in writing (which may, but need not, be in a form prescribed under rule 30) within 21 days of the date on which the original decision was notified to the appellant.
- (2) When the appellant delivers the notice of appeal to the Clerk the appellant must also deliver a copy of the notice to the respondent at the same time.
- (3) The notice must include all the following information —
 - (a) the appellant's name and address;
 - (b) details of the original decision; and
 - (c) the grounds of the appeal (including, where appropriate, a brief summary of the facts giving rise to it).
- (4) The notice must be accompanied by a copy of the document by which the original decision was notified to the appellant and confirmation that a copy of the notice of appeal has been sent to the respondent.
- (5) An appellant may make an application to the Chairman for an extension of the time-limit for delivering a notice of appeal and such an application may be made before or at the same time as a notice of appeal is delivered and must —

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- (a) set out the reasons for making the application; and
 - (b) explain why the appellant cannot or could not comply with the time-limit.
- (6) The Chairman may extend the time-limit for delivering a notice of appeal only if the Chairman is satisfied that –
- (a) there are exceptional circumstances justifying the late acceptance of the notice of appeal; and
 - (b) the appellant has done all the appellant could to deliver the notice of appeal within the time-limit.

7 Initial action on receipt of notice of appeal

(1) On receiving a notice of appeal (including a notice of appeal which is re-delivered after being returned to the appellant under paragraph (2)), the Clerk must consider what action to take under this rule.

(2) If the notice of appeal –

- (a) does not comply with rule 6(3) or 6(4); or
- (b) is made after the expiry of the time referred to in rule 6(1) and no application is or has been duly made to extend the time for bringing the appeal; or
- (c) is made after the expiry of any extension of time granted by the Chairman under rule 6 and no further application is or has been duly made to further extend the time for bringing the appeal,

the Clerk must, not later than 7 days after receipt, return it to the appellant, indicating what information or other matters should be included in it or accompany it, and the appeal is to be treated as if it had not been made.

(3) If an application is made under rule 6(5) and provided that the appeal complies with rules 6(3) and 6(4), the Clerk must, not later than 7 days after receipt, refer the appeal to the Chairman.

(4) If it appears to the Clerk that for any reason (other than the expiry of the time-limit referred to in rule 6) the Tribunal does not have power to consider the appeal, he must, not later than 7 days after receipt, either –

- (a) notify the appellant of that opinion in writing, stating his or her reasons for that opinion and informing the appellant that the appeal will be treated as if it had not been made unless the appellant states in writing, not later than 21 days after the date of the notification, that the appellant wishes to proceed with it; or
- (b) refer the appeal to the Chairman.

(5) If, following a notification under paragraph (4)(a), the appellant states within the time allowed that the appellant wishes to proceed with the appeal, the Clerk must forthwith refer the appeal to the Chairman; but if the appellant fails to do so, it shall be treated as if it had not been made.

(6) On a reference under paragraph (3), (4)(b) or (5) the Chairman must decide without a hearing whether –

- (a) the appeal should be accepted out of time; or
- (b) the Tribunal has the power to consider the appeal,

as the case may be and inform the Clerk in writing of his or her decision.

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- (7) Paragraph (8) applies if –
- (a) paragraphs (2) to (5) do not apply; or
 - (b) the Chairman decides under paragraph (6) that the appeal should be accepted
- (8) If this paragraph applies, the Clerk must as soon as reasonably practicable –
- (a) send a copy of the notice of appeal to each respondent and record in writing the date on which it was sent;
 - (b) inform the parties in writing of the case number of the appeal (which must from then on be referred to in all correspondence relating to the appeal) and the address to which notices and other communications to the Clerk must be sent; and
 - (c) inform each respondent in writing about how to enter a reply to the appeal, the time limit for doing so, what may happen if a reply is not entered within the time limit and that the respondent has a right to receive a copy of any decision disposing of the appeal.
- (9) If the Chairman decides under paragraph (6) that the appeal is not accepted out of time, or that the Tribunal has no power to consider it –
- (a) the Clerk must as soon as reasonably practicable inform the appellant of that decision and the reasons for it in writing, together with information on how an appeal may be brought against that decision; and
 - (b) except for the purposes of any appeal to the High Court, the appeal is to be treated as if it had not been made.
- (10) A decision to accept an appeal does not bind the Tribunal or Chairman where any of the issues specified in paragraph (2)(a) to (c) or (4) falls to be decided later in the proceedings.

8 Replying to the appeal

- (1) If a respondent wishes to reply to the appeal the reply must be delivered to the Clerk in writing (which may, but need not, be in a form prescribed under rule 30) –
- (a) within 21 days of the date on which the respondent was sent a copy of the notice of appeal under rule 7(8), or
 - (b) within such further period as the Chairman considers reasonable, where on an application by the respondent the Chairman is satisfied that there are exceptional circumstances justifying the late acceptance of the reply.
- (2) An application under paragraph (1)(b) may be made before or at the same time as a reply is delivered, and must –
- (a) set out the exceptional circumstances relied upon in making the application; and
 - (b) explain why the respondent cannot or could not comply with the time limit.
- (3) The reply must include all the following information –
- (a) the respondent's name;
 - (b) the respondent's address;
 - (c) whether or not the respondent intends to resist the appeal in whole or in part; and
 - (d) if the respondent does intend to resist the appeal, the grounds for resistance.

9 Action on receipt of reply

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(1) On receiving a reply (including a reply which is re-delivered after being returned to the respondent under paragraph (2)), the Clerk must consider what action to take under this rule.

(2) If the reply —

- (a) does not include all the information required by rule 8(3); or
- (b) is made after the time specified in rule 8(1)(a), or that time as extended under rule 8(1)(b), and no application is or has been duly made to extend the time for delivering the reply,

the Clerk must, not later than 7 days after receipt, return it to the respondent, indicating (where appropriate) what information or other matters should be included in it or accompany it, and the reply is to be treated as if it had not been made.

(3) If an application is made under rule 8(1)(b) and provided that the reply complies with rule 8(3), the Clerk must, not later than 7 days after receipt, refer the reply to the Chairman.

(4) On a reference under paragraph (3) the Chairman must decide without a hearing whether the reply should be accepted out of time and inform the Clerk of his or her decision in writing.

(5) If —

- (a) paragraphs (2) and (3) do not apply; or
 - (b) the Chairman decides under paragraph (4) that a reply should be accepted out of time;
- the Clerk must as soon as reasonably practicable send a copy of the reply to all other parties and record in writing the date when it is sent.

(6) If the Chairman decides under paragraph (4) that the reply should not be accepted out of time, the Clerk must as soon as reasonably practicable—

- (a) inform both the appellant and the respondent of that decision and the reasons for it; and
- (b) inform the respondent of the consequences of that decision and how it may be appealed.

10 Taking no further part in the proceedings

A respondent who has not delivered a reply to an appeal within the time specified in rule 8(1)(a), or that time as extended under rule 8(1)(b), is not entitled to take any part in the proceedings except to be sent a copy of a decision, order or corrected entry in accordance with rule 22(4) or (5) or 26 and, subject to rule 27(5), these Rules shall be read accordingly.

PART 3 — CASE MANAGEMENT

11 General power to manage proceedings

(1) The Chairman or Tribunal may at any time, either on the application of a party or on the Chairman's or Tribunal's own initiative, make an order in relation to any matter which appears to the Chairman or Tribunal to be appropriate.

This is subject to these Rules, and in the case of an order to which paragraph (7), (8) or (9) applies, compliance with that paragraph.

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- (2) Orders under paragraph (1) may be —
- (a) any of those listed in paragraph (4),
 - (b) any order to which rule 23 applies, subject to the requirements of that rule, or
 - (c) such other orders as the Chairman or Tribunal thinks fit.
- (3) Orders under paragraph (1) may be made as a result of the Chairman or Tribunal considering the papers before the Chairman or Tribunal in the absence of the parties, or at a hearing.

This is subject to any provision to the contrary in a specific case.

- (4) Examples of orders which may be made under paragraph (1) are orders —
- (a) as to the manner in which the proceedings are to be conducted, including any time limit to be observed;
 - (b) that a person appearing to the Chairman or Tribunal to have a direct interest in the outcome of the appeal be made a respondent to the appeal, and giving any necessary directions for the purpose;
 - (c) that a party provide additional information;
 - (d) requiring the attendance of any person in the Island either to give evidence or to produce documents or information;
 - (e) requiring any person in the Island to disclose documents or information to a party, and to allow a party to inspect such material as might be ordered by the High Court;
 - (f) extending any time limit, whether or not expired (subject to paragraph (10) and rules 8(1) and 12(2));
 - (g) requiring the provision of written answers to questions put by the Chairman or Tribunal;
 - (h) adjourning the proceedings so that the parties may seek to resolve the dispute by conciliation;
 - (i) staying the whole or part of any proceedings;
 - (j) suspending the effect of the original decision pending the determination of the appeal;
 - (k) that part of the proceedings be dealt with separately;
 - (l) that different appeals be considered together;
 - (m) postponing or adjourning any hearing;
 - (n) varying or revoking other orders made in the proceedings;
 - (o) giving notice to the parties of a preliminary hearing or full hearing;
 - (p) giving notice under rule 23;
 - (q) giving leave to amend an appeal or reply;
 - (r) that a witness statement be prepared or exchanged;
 - (s) that a party provide copies of documents for the use of the Chairman or Tribunal;
 - (t) regulating the use of experts or interpreters in the proceedings;
 - (u) that a party make a payment in respect of the costs incurred by another party;
 - (v) suspending the effect of the Chairman's or the Tribunal's decision pending an appeal to the High Court;
 - (w) deferring the implementation of the Chairman's or the Tribunal's decision pending an appeal to the High Court; or

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- (x) that a public statement under section 27 of the Designated Businesses (Registration and Oversight) Act 2015 (public statements) must not be issued before any specified date or event in accordance with section 28(4) of that Act.
- (5) An order —
- (a) must specify the time at or within which and the place at which any act is required to be done;
 - (b) may impose conditions; and
 - (c) must inform the parties of the potential consequences of non-compliance set out in rule 14.
- (6) If a requirement has been imposed by an order under paragraph (1), the person subject to the requirement may make an application under rule 12 for the order to be varied or revoked and for that purpose rule 12 is to be construed as if any reference in it to a party included such a person.
- (7) An order described in paragraph (4)(d) or (e) which requires a person to produce, or to allow a party to inspect, a document contained in a computer may require that person to produce it in a visible and legible form which may be taken away.
- (8) An order described in paragraph (4)(e) which requires a person other than a party to grant disclosure or inspection of material may be made only when the disclosure sought is necessary in order to dispose fairly of the appeal or to save expense.
- (9) An order described in paragraph (4)(i) or (j) may be made only if —
- (a) all relevant parties have been given notice that such an order may be made and an opportunity to make oral or written representations as to why such an order should or should not be made; and
 - (b) the Chairman or the Tribunal is satisfied that to do so would not prejudice —
 - (i) the interests of any persons (whether consumers, investors or otherwise) intended to be protected by that decision;
 - (ii) the smooth operation or integrity of any market intended to be protected by that decision; or
 - (iii) the stability and reputation of the financial system of the Island.
- (10) If an order described in paragraph (4)(j) is made, any time limits set out in the Rules or in any orders made under these Rules must not be extended.
- (11) Any order made under paragraph (4)(j) lapses if proceedings against the respondent are struck out or dismissed or otherwise decided.
- (12) An order described in paragraph (4)(x) may be made by the Chairman.

12 Applications in proceedings

- (1) At any stage of the proceedings a party may apply for an order to be made, varied or revoked or for a preliminary hearing to be held.
- (2) An application for an order must be made not less than 10 days before the date of the hearing at which it is to be considered (if any) unless —
- (a) it is not reasonably practicable to do so, or

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- (b) the Chairman or Tribunal considers that shorter notice should be allowed in the interests of justice.
- (3) An application for an order must—
 - (a) unless the Chairman orders otherwise, be made in writing to the Clerk;
 - (b) include the case number for the proceedings and the reasons for the application; and
 - (c) in the case of an application for an order to be varied or revoked, subject to rule 11(4)(f), be made before the time at which or the expiry of the period within which the order was to be complied with.
- (4) An application for a preliminary hearing to be held must identify any orders sought.
- (5) The Clerk must, as soon as reasonably practicable, provide all other parties with the following information in writing —
 - (a) details of the application and the reasons why it is sought;
 - (b) notification that any objection to the application must be sent to the Clerk within 7 days of receiving the application, or before the date of the hearing (if any) (whichever date is the earlier);
 - (c) that any objection to the application must be copied to both the Clerk and all other parties.
- (6) The Chairman may grant or refuse a party's application, and the Clerk must inform the parties in writing of the grant or refusal as soon as reasonably practicable unless the application is granted or refused at a hearing.

13 Chairman acting on own initiative

- (1) Subject to paragraph (2) and to rules 11(9) and 23(2), the Chairman may —
 - (a) make an order on his or her own initiative, with or without hearing the parties or giving them an opportunity to make written or oral representations; and
 - (b) decide to hold a preliminary hearing on his or her own initiative.
- (2) If the Chairman makes an order without giving the parties the opportunity to make representations —
 - (a) as soon as reasonably practicable the Clerk must send to the parties a copy of the order and a statement explaining the right to make an application under sub-paragraph (b); and
 - (b) a party affected by the order may apply to have it varied or revoked.
- (3) An application under paragraph (2)(b) must —
 - (a) subject to rule 11(4)(f), be made before the time at which, or the expiry of the period within which, the order was to be complied with;
 - (b) unless the Chairman orders otherwise, be made in writing to the Clerk and copied to all other parties; and
 - (c) include the reasons for the application.
- (4) The Clerk must inform the parties in writing of the grant or refusal of an application under paragraph (2)(b) unless it is granted or refused at a hearing.

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14 Compliance with orders

- (1) If a party does not comply with an order made under these Rules, the Chairman or Tribunal may –
- (a) make a costs order under rule 27; or
 - (b) (subject to paragraph (2) and rule 23) at a preliminary hearing or a full hearing –
 - (i) make an order to strike out the whole or part of the appeal or, as the case may be, the reply, and
 - (ii) if appropriate, order that a respondent be debarred from replying to the appeal altogether.
- (2) An order may also provide that unless the order is complied with, the appeal or the reply, as the case may be, shall automatically be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice under rule 23 or hold a preliminary hearing or full hearing.

15 Striking out of appeal or reply

- (1) Subject to rule 23, the Chairman or Tribunal may make an order to—
- (a) strike out or amend all or part of any appeal or reply on the ground that it has no reasonable prospect of success;
 - (b) strike out an appeal which has not been actively pursued;
 - (c) strike out an appeal or reply (or part of one) for non-compliance with an order; and
 - (d) strike out an appeal or reply on the ground that a party has failed to co-operate with the Chairman or the Tribunal to such an extent that the Chairman or the Tribunal cannot deal with the proceedings fairly and justly.
- (2) An appeal or reply or any part of one may only be struck out under these Rules on the grounds stated in paragraph (1) and rule 14(2).

16 Right to withdraw appeal

- (1) An appellant may withdraw all or part of the appeal at any time, either orally at a hearing or in writing in accordance with paragraph (2).
- (2) To withdraw an appeal or part of an appeal in writing the appellant must inform the Clerk of the appeal or the parts of it which are to be withdrawn.
If there is more than one respondent the notification must specify against which respondents the appeal is being withdrawn.
- (3) The Clerk must as soon as reasonably practicable inform all other parties of the withdrawal in writing.
- (4) The withdrawal of an appeal takes effect on the date on which the Clerk (in the case of written notifications) or the Tribunal or the Chairman (in the case of oral notification) receives notice of it; and where the whole appeal is withdrawn proceedings are brought to an end against the relevant respondent on that date and the proceedings against the respondent will be treated as dismissed.

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- (5) The withdrawal of an appeal and the dismissal of proceedings do not preclude the making of orders as to costs.
- (6) If an appeal is withdrawn and the proceedings are dismissed, those proceedings cannot be continued by the appellant.

PART 4 – HEARINGS

17 Hearings – general

- (1) This rule applies to —
 - (a) a preliminary hearing under rule 20; or
 - (b) a full hearing under rule 21.
- (2) The Chairman or Tribunal (as the case requires) must make such enquiries of persons appearing before them and of witnesses as they consider appropriate and must otherwise conduct the hearing in such manner as appears to the Chairman or Tribunal most appropriate for the clarification of the issues and generally for the just handling of the proceedings.
- (3) Unless the parties agree to shorter notice, the Clerk must —
 - (a) send written notice of any hearing to all the parties not less than 14 days before the date fixed for the hearing; and
 - (b) inform the parties in writing that they have the opportunity to submit written representations and to advance oral argument.
- (4) If a party wishes to submit written representations for consideration at a hearing the party must present them to the Clerk not less than 7 days before the hearing and at the same time send a copy to all other parties.
- (5) The Chairman or the Tribunal may, if it appears in the interests of justice to do so, consider representations in writing which have been submitted otherwise than in accordance with paragraph (4).
- (6) At a full hearing the Tribunal may make any order which the Chairman has power to make under these Rules, subject to compliance with any relevant notice or other procedural requirements.
- (7) The Chairman or the Tribunal may hold a hearing even though he is not the same individual, or it does not comprise any of the members, who held a previous hearing in the same proceedings, but once a hearing has begun it shall not continue without the consent of the parties unless the Chairman is the same individual, or the Tribunal comprises at least 2 of the members, who began the hearing.
- (8) For the avoidance of doubt, the Chairman or a member of the Tribunal is not precluded from taking part in any hearing by reason only that he has taken part in a previous hearing in the same proceedings.
- (9) Subject to paragraph (10), the Chairman or Tribunal may hold a hearing (in whole or in part) and receive evidence by telephone or video link or by using any other method of direct oral communication.
- (10) If a hearing —
 - (a) is required by these Rules to be held in public, and

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(b) is conducted in accordance with paragraph (9), then, subject to rule 19, it must be held in a place to which the public has access and using equipment so that the public is able to hear all persons taking part in the hearing.
(11) If a decision or order, whether made at a preliminary hearing or otherwise, results in the proceedings being struck out or dismissed or otherwise decided, no full hearing need be held in those proceedings.

18 Representation

A party may be represented at a hearing —

- (a) by an advocate;
- (b) in the case of a body corporate, by an officer of the body corporate; or
- (c) with the permission of the Chairman or the Tribunal, by any other person.

19 Public and private hearings

(1) Subject to paragraph (2), a full hearing shall take place in public.

(2) A full hearing, or part of a full hearing, may be conducted in private —

- (a) where the proceedings relate to a matter of national security;
- (b) for the purpose of hearing from any person evidence or representations which in the opinion of the Tribunal or Chairman is likely to consist of information —
 - (i) which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision; or
 - (ii) which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence placed in him by another person; or
- (c) where the Tribunal considers it appropriate in the interests of justice.

(3) If the Tribunal decides to hold a hearing or part of one in private under paragraph (2), it shall give reasons for doing so.

(4) A preliminary hearing may take place in public or in private, as the Chairman considers appropriate in the interests of justice, except that a preliminary hearing at which —

- (a) a decision is given; or
- (b) an order relating to a matter falling within rule 23 is made,

must take place in public.

20 Conduct of preliminary hearings

(1) Preliminary hearings are interim hearings and must be conducted by the Chairman sitting alone.

(2) At a preliminary hearing the Chairman may carry out a preliminary consideration of the proceedings, and may —

- (a) decide any interim or preliminary matter relating to the proceedings;
- (b) make any order in accordance with rules 11 and 23; or

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- (c) consider any oral or written representations or evidence.
- (3) Despite its preliminary or interim nature, at a preliminary hearing the Chairman may make a decision on any preliminary issue of substance relating to the proceedings.

21 Conduct of full hearing

- (1) A full hearing is a hearing for the purpose of determining outstanding procedural or substantive issues or disposing of the proceedings, and shall be conducted by the Tribunal.
- (2) In any proceedings there may be more than one full hearing.
- (3) The Chairman must fix the date, time and place of a full hearing and the Clerk must send to each party a notice of the full hearing together with information and guidance as to procedure at the full hearing.
- (4) Subject to rule 17(2), at a full hearing a party is entitled to give evidence, to call witnesses, to question witnesses and to address the Tribunal.
- (5) The Tribunal must require parties and witnesses who attend a full hearing to give their evidence on oath or affirmation; and oaths and affirmations are to be administered by the Chairman.
- (6) The Tribunal may exclude from the full hearing any person who is to appear as a witness in the proceedings until such time as that person gives evidence if it considers it in the interests of justice to do so.
- (7) If a party fails to attend or to be represented (for the purpose of conducting the party's case at the full hearing) at the time and place fixed for the full hearing, the Tribunal may dismiss or dispose of the proceedings in the absence of that party or may adjourn the full hearing to a later date.
- (8) If the Tribunal wishes to dismiss or dispose of proceedings in the circumstances described in paragraph (7), it must first consider any information in its possession which has been made available to it by the parties.
- (9) At a full hearing the Tribunal may exercise any powers which may be exercised by the Chairman under these Rules.

PART 5 — DECISIONS

22 Decisions and orders

- (1) Any decision or order (whether made orally or in writing) must be recorded in writing and signed by the Chairman.
- (2) At the end of a hearing the Chairman or Tribunal, as the case may be, must—
 - (a) make any decision or order orally; or
 - (b) reserve the decision or order to be given in writing at a later date.
- (3) The Chairman or Tribunal may deal with an appeal in accordance with paragraph (2)(a), but give reasons for the decision or (if reasons are required) the order in writing at a later date.
- (4) The Clerk must as soon as reasonably practicable after a decision has been made —
 - (a) send a copy of the written decision to the parties, and
 - (b) include guidance on how it may be appealed.

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- (5) The Clerk must inform all parties to the proceedings in writing of any order as soon as practicable after it is made.
- (6) If the parties agree in writing upon the terms of any decision or order the Chairman or Tribunal may, if he or it thinks fit, make the order or decision.
- (7) Any decision or order of the Tribunal may be made by a majority.

23 Restrictions as to certain decisions and orders

- (1) This rule applies to a decision or order —
 - (a) as to the entitlement of any party to bring or contest particular proceedings; or
 - (b) to strike out or amend all or part of any appeal or reply under rule 15.
- (2) Subject to paragraph (3), before the Chairman or the Tribunal makes a decision or order to which this rule applies, the Clerk must give written notice to —
 - (a) the party against whom it is proposed that the order or decision should be made, and
 - (b) if another party has made an application for the order or decision, that party, informing the recipient of the notice of the order or decision to be considered and giving the recipient the opportunity to give reasons why the order or decision should, or should not, be made.
- (3) Paragraph (2) does not —
 - (a) apply to an order described in rule 14(2); or
 - (b) require the Clerk to send such a notice to a party, if that party has been given an opportunity to give reasons orally to the Chairman or the Tribunal as to why the order or decision should not, or should, be made.
- (4) If a notice required by paragraph (2) —
 - (a) is sent in relation to an order or decision to strike out an appeal which has not been actively pursued, and
 - (b) has been sent to the address specified in the notice of appeal, or in a subsequent notice under rule 29(5), as the address to which notices are to be sent,the notice is to be treated as received by the addressee unless the contrary is proved.
- (5) A decision or order to which this rule applies may not be made except at a preliminary hearing or a full hearing, if one of the parties has so requested.
If no such request has been made such a decision or order may be made in the absence of the parties.
- (6) Nothing in this rule prevents the Chairman deciding under rule 7 or 9 that an appeal or reply should not be accepted.

24 Reasons

- (1) The Tribunal or Chairman must give reasons (either oral or written) for —
 - (a) any decision;
 - (b) any order relating to a matter falling within rule 23(1); and
 - (c) a costs order.

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- (2) Reasons may be given orally at the time of making the decision or order, but shall in any case be given in writing at that time or at a later date.
- (3) Written reasons must be signed by the Chairman and sent to all parties by the Clerk, who shall record the date on which the reasons were sent.
- (4) Written reasons for a decision must include the following information —
 - (a) the issues which the Tribunal or Chairman has identified as being relevant to the appeal;
 - (b) if some identified issues were not decided, what those issues were and why they were not decided;
 - (c) findings of fact relevant to the issues which have been decided;
 - (d) a concise statement of the applicable law; and
 - (e) how the relevant findings of fact and applicable law have been applied in order to decide the issues.

25 The register

- (1) The Clerk must maintain a register that is to be open for inspection by any person without charge at all reasonable hours.
- (2) The register, or any part of it, may be kept by means of a computer.
- (3) Subject to paragraph (4), the Clerk shall enter in the register —
 - (a) the following particulars of every appeal delivered to the Tribunal—
 - (i) the case number;
 - (ii) the date the appeal was delivered;
 - (iii) the name and address of the appellant;
 - (iv) the name and address of each respondent; and
 - (v) the subject-matter of the appeal.
 - (b) a copy of each of the following documents —
 - (i) any decision;
 - (ii) any order to which rule 23(1) applies; and
 - (iii) the written reasons provided in accordance with rule 24 in relation to a decision or order.
- (4) Written reasons for a decision or an order must be omitted from the register in any case in which evidence has been heard in private and the Tribunal or Chairman so orders; and in such a case —
 - (a) the Clerk shall send the reasons to each of the parties; and
 - (b) if there are proceedings before the High Court relating to the decision or order in question, the Clerk must send the reasons to the court, together with a copy of the entry in the register of the decision or order to which the reasons relate.

26 Correction of orders etc.

- (1) Clerical mistakes in any order, decision or record of reasons, or errors arising in those documents from an accidental slip or omission, may at any time be corrected by certificate by the Chairman.

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(2) If a document is corrected by certificate under paragraph (1), or if an order, decision or record of reasons is altered in any way by order of the High Court, the Clerk must alter any entry in the register which is affected by the correction to conform with the certificate or order and send a copy of any entry so altered to each of the parties.

(3) If a document omitted from the register under rule 25 is corrected by certificate under this rule, the Clerk must send a copy of the corrected document to the parties; and if there are proceedings before the High Court relating to the order, decision, or record of reasons in question, the Clerk must also send a copy to the court together with a copy of the entry in the register of the order, decision or record of reasons, if it has been altered under this rule.

PART 6 – COSTS

27 Costs

(1) In this rule –

(a) "the paying party" means the party by whom a payment under a costs order is to be made;

(b) the "receiving party" means the party in respect of whose costs the payment is to be made.

(2) The Tribunal or Chairman must not make a costs order in any proceedings unless paragraph (3), (4), (5) or (6) applies.

(3) The Tribunal or Chairman may make a costs order if in its or his opinion –

(a) in bringing the proceedings, that party, or

(b) in conducting the proceedings, that party or that party's representative, has acted vexatiously, abusively, disruptively or otherwise unreasonably.

(4) The Tribunal or Chairman may make a costs order –

(a) where it or he has postponed the day or time fixed for or adjourned a full hearing or preliminary hearing; or

(b) against a party who has not complied with an order.

A costs order under sub-paragraph (a) may be against or in favour of any party as respects any costs incurred as a result of the postponement or adjournment.

(5) A costs order may be made against or in favour of a respondent who has not had a reply accepted in the proceedings, in relation to the conduct of any part which the respondent has taken in the proceedings.

(6) The Tribunal or Chairman may make a costs order against an appellant who has withdrawn an appeal in respect of the costs which the respondent has incurred on or before the date on which the respondent was informed of the withdrawal. If an appeal is only partly withdrawn, the appellant is liable for the costs relating only to the part of the appeal which is withdrawn.

(7) An application by a party for a costs order may be made at any time during the proceedings, and may be made –

(a) orally during or at the end of a hearing, or

(b) in writing to the Clerk.

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(8) An application for costs which is received by the Clerk later than 21 days from the issuing of the decision determining the appeal must not be accepted or considered by the Tribunal or Chairman unless it or he considers that it is in the interests of justice to do so. For the purpose of this paragraph the date of issuing of the decision determining the appeal is either –

- (a) the date of the full hearing, if the decision was made orally; or
- (b) if the decision was reserved, the date on which the written decision was sent to the parties.

(9) No costs order may be made unless –

- (a) the Clerk has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made, or
- (b) that party has been given an opportunity to give reasons orally to the Chairman or Tribunal as to why the order should not be made.

(10) The amount of a costs order against the paying party is to be decided in any of the following ways –

- (a) the Chairman or the Tribunal may specify the sum which the paying party must pay to the receiving party;
- (b) the parties may agree on a sum to be paid by the paying party to the receiving party, and if they do so the costs order shall be for the sum so agreed; or
- (c) the Chairman or the Tribunal may order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party with the amount to be paid being decided by way of assessment in the High Court in accordance with rules of court.

(11) If the paying party is an individual, the Tribunal or Chairman must have regard to the paying party's ability to pay when considering whether to make a costs order or how much should be paid.

PART 7 – SUPPLEMENTAL

28 Power to rectify error in procedure

(1) If there has been an error of procedure such as a failure to comply with a provision of these Rules –

- (a) the error does not invalidate any step taken in the proceedings unless the Chairman or Tribunal so orders; and
- (b) the Chairman or Tribunal may make an order to remedy the error.

(2) The Chairman or Tribunal may only allow an application to set aside any such step for an error of procedure –

- (a) if it is made within a reasonable time; or
- (b) if the applicant has not taken a step after knowledge of the error.

(3) The application must specify the error of procedure to which the application relates.

29 Notices etc.

Financial Services Tribunal Rules 2015 (as amended 2017 and 2018)

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- (1) Any notice given or document sent under these Rules must (unless the Chairman or Tribunal orders otherwise) be in writing and may be given or sent —
- (a) by post;
 - (b) by fax or other means of electronic communication if such addresses are provided as a means of communication by the party or person in question; or
 - (c) by personal delivery.
- (2) If a notice or document has been given or sent in accordance with paragraph (1), that notice or document is to be taken, unless the contrary is proved, to have been received by the party or person to whom it is addressed —
- (a) in the case of a notice or document given or sent by post, on the day on which the notice or document would be delivered in the ordinary course of post;
 - (b) in the case of a notice or document transmitted by fax or other means of electronic communication, on the day on which the notice or document is transmitted;
 - (c) in the case of a notice or document delivered in person, on the day on which the notice or document is delivered.
- (3) All notices and documents required or authorised by these Rules to be sent or given to any person listed below may be sent to or delivered as follows —

| Person | Address |
|---|--|
| the Clerk | the office of the Tribunal |
| a party | (a) the address specified in the appeal or reply to which notices and documents are to be sent, or in a notice under paragraph (5); or (b) if no such address has been specified, or if a notice sent to such an address has been returned — <ul style="list-style-type: none">(i) any other known address or place of business of the party in the Island, or(ii) if the party is a corporate body, its registered or principal office in the Island, oror(iii) in any case, such address or place outside the Island as the Chairman may allow |
| a public authority (not a party to the proceedings) | the principal office of the authority |
| any other person | that person's address or place of business in the Island or, if it is a corporate body, its registered or principal office in the Island or such address or place outside the |

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Island as the Chairman may
allow

- (4) A notice or document sent or given to the authorised representative of a party shall be taken to have been sent or given to that party.
- (5) A party may at any time by notice to the Clerk and to the other party or parties change the address to which notices and documents are to be sent or transmitted.
- (6) The Chairman may order that there shall be substituted service in such manner as he or she may think fit in any case he or she considers appropriate.

30 Power to prescribe forms

- (1) The Chairman may prescribe forms for use —
 - (a) by appellants for the purpose of making an appeal, and
 - (b) by respondents for the purpose of replying to an appeal;and such other forms as may be expedient for use in proceedings in the Tribunal.
- (2) The Clerk must publish the forms prescribed under paragraph (1) in such manner as the Clerk considers appropriate in order to bring them to the attention of potential appellants and respondents and their advisers.

31 Calculation of time limits

- (1) Any period of time for doing any act required or permitted to be done under any of these Rules, or under any order or decision of the Tribunal or the Chairman, is to be calculated in accordance with paragraphs (2) to (6).
- (2) If any act must or may be done within a certain number of days of or from an event, the day on which that event occurs is not to be included in the calculation.
- (3) If any act must or may be done not less than a certain number of days before or after an event, the day on which that event occurs is not to be included in the calculation.
- (4) If the Tribunal or the Chairman gives any order or decision which imposes a time limit for doing any act, the last date for compliance must, wherever practicable, be expressed as a calendar date.
- (5) In rule 17(3) the requirement to send notice of a hearing to the parties not less than 14 days before the date fixed for the hearing shall not be construed as a requirement for the notice to have been delivered not less than 14 days before the hearing date, but as a requirement for the notice to have been placed in the post not less than 14 days before that date.
- (6) If any act must or may have been done within a certain number of days of a document being sent to a person by the Clerk, the date when the document was sent is to be regarded, unless the contrary is proved, to be the date on the letter from the Clerk which accompanied the document.

Financial Services Tribunal Rules 2015 (as amended 2017 and 2018)

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32 Transitional provisions

(1) The Financial Services Review Regulations 2001¹ continue to apply to an appeal under section 32 of the *Financial Services Act 2008* made before the coming into operation of these Rules.

(2) These Rules are subject to any specific provision made by Schedule 1 to the *Insurance (Amendment) Act 2017*.

33 Revocation

Subject to the transitional provisions in rule 32, the Financial Services Review Regulations 2001 are revoked in so far as they apply to an appeal under any of the following provisions

—

- (a) section 32 of the *Financial Services Act 2008*;
- (b) section 45 of the *Insurance Act 2008*;
- (c) section 21 of the *Collective Investment Schemes Act 2008*;
- (d) section 38 of the *Retirement Benefits Schemes Act 2000*.

MADE 25TH SEPTEMBER 2015

W GREENHOW
Chief Secretary

¹ SD 332/01

Financial Services Tribunal Rules 2015 (as amended 2017 and 2018)

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EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the practice and procedure for the Financial Services Tribunal.

Part 1 sets out the preliminary provisions relating to the Rules, dealing with their commencement, interpretation, application and overriding objective.

Part 2 provides for the process of starting an appeal and replying to the appeal.

Part 3 deals with case management and the powers of the Chairman and Tribunal to manage proceedings, strike out an appeal or reply and the right of an appellant to withdraw an appeal.

Part 4 deals with the hearings themselves.

Part 5 makes provisions in relation to decisions and orders.

Part 6 deals with the power of the Chairman or the Tribunal to make costs orders.

Part 7 sets out supplemental provisions dealing with errors in procedure, notices, power to prescribe forms, calculation of time limits and transitional provisions.

Following the coming into operation of section 55 of the Insurance (Amendment) Act 2017 and the transfer of functions of the Collective Investment Schemes Tribunal, the Retirement Benefits Schemes Tribunal and the Insurance Tribunal to the Financial Services Tribunal, these Rules amend the Financial Services Tribunal Rules 2015 by amending the definition of an "appeal" so as to include appeals made under —

- (i) section 21 of the Collective Investment Schemes Act 2008;
- (ii) section 38 of the Retirement Benefits Schemes Act 2000; and
- (iii) section 45 of the Insurance Act 2008.

Subject to transitional provisions regarding any appeals that may be in progress, the Rules revoke the Financial Services Review Regulations 2001 (SD 332/01) in respect of appeals made under the Acts listed in Rule 33.