

# FINANCIAL SERVICES TRIBUNAL

## CONSOLIDATED RULES

### ISSUED IN TERMS OF SECTION 227 OF THE FINANCIAL SECTOR REGULATION ACT 9 OF 2017

1 JUNE 2021<sup>1</sup>

#### DEFINITIONS

1. The following definitions apply:
  - a. “Act” means the Financial Sector Regulation Act 9 of 2017.
  - b. “Tribunal” means the Financial Services Tribunal established in terms of section 219 of Chapter 15 of the Act.
  - c. “Chairperson” means the Chairperson of the Tribunal and includes the Deputy Chairperson.
  - d. “Panel Chairperson” means the chairperson of a Tribunal panel presiding over and responsible for a particular matter.
  - e. “Decision” means decision as defined in terms of section 218 of the Act.
  - f. “Decision-maker” means decision-maker as defined in terms of section 218 of the Act.
  - g. “Affidavit” includes a solemn promise.
  - h. “Day” for purposes of the Act and these rules does NOT refer to court or business days but (in accordance with the Interpretation Act) to ordinary days and shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.

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<sup>1</sup> The rules that are amended or added are Rules 71; 72 and 78 to 82. The Forms have also been updated.

- i. "Regulations" refer to the "Regulations in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act 9 of 2017" issued by the Minister of Finance on 29 March 2018.
  - j. "Secretariat" refers to the secretarial support for the Tribunal provided in terms of regulation 4(1) of the regulations.
  - k. "POPIA" means the Protection of Personal Information Act 4 of 2013.
2. Documents that have to be lodged or delivered to the Tribunal may be lodged or delivered by hand, registered post or electronically to:

[Applications@fstribunal.co.za](mailto:Applications@fstribunal.co.za)

## **INTRODUCTION**

- 3. These rules are made in terms of section 227 of the Act.
- 4. The Chairperson or the Panel Chairperson may deviate from these rules to the extent permitted by applicable law.
- 5. They must be read in the light of and subject to laws and regulations that circumscribe the powers of the Tribunal and which prescribe time limits and procedures. Particular regard must be had to:
  - a. the Act, Chapter 15 - sections 218 to 236, 271, 298, 299 and 300;
  - b. the relevant financial sector laws; and
  - c. the regulations.

## **APPLICATIONS FOR RECONSIDERATION OF DECISIONS**

- 6. The right to apply to the Tribunal for a reconsideration of a decision by a decision-maker is derived from section 230 of the Act and, if subject to the provisions of other financial sector laws (such as the Financial Advisory and Intermediary Services Act 37 of 2002), will derive from those laws.

7. Only a person who is “aggrieved” by a “decision” of a “decision-maker” may apply to the Tribunal for a reconsideration of the decision. The first term has specific legal meaning, and the last two terms are defined in section 218 of the Act.
8. An application for reconsideration must be made:
  - a. if the applicant requested reasons in terms of section 229 of the Act, within 30 days after the statement of reasons was given to the applicant; or
  - b. in all other cases, within 60 days after the applicant was notified of the decision, or such longer period as may on good cause be allowed.
9. An application for reconsideration must contain the:
  - a. decision letter; and
  - b. statement of reasons, referred to in section 229 of the Act, and any other information including annexures provided to the applicant by the decision-maker.
10. The application for reconsideration must contain the full particulars of the grounds (stated succinctly) on which the application is based and, if necessary, must deal with the aspect of condonation should the application be filed out of time (refer to section 230(2)(b) of the Act).
11. An application for reconsideration, to be valid, must cite all other parties to the decision and be lodged with the secretariat AND all the other parties to the decision.
12. The application for reconsideration must be drafted to conform as far as possible with either the standard Form A or B attached. Form A must be used if the relevant decision-maker’s decision is in favour of another party; and Form B must be used if the decision does not affect another party but only the applicant.

#### **DECISION-MAKER’S FURTHER REASONS**

13. Upon receipt of the application for reconsideration, the decision-maker must, within 30 days of the date of receipt thereof, furnish the Tribunal secretariat with a hard copy or an electronic PDF version of a properly collated indexed and paginated

bundle of the relevant underlying documents on which the decision was based together with further reasons, where necessary. Duplicates and documents that are not relevant to the application for reconsideration may not form part of the record. Records that do not comply with this provision will be returned to the decision-maker.

### **APPLICANT'S AUGMENTED GROUNDS**

14. The applicant may, within 10 days of the date of receipt of the decision-maker's underlying documents and further reasons (if any) referred to in 14 above, by notice amend or augment the grounds on which the application is based, if necessary.

### **APPLICATION FOR SUSPENSION OF A DECISION**

15. An application in terms of section 231 of the Act for suspension of a decision pending the hearing of an application for reconsideration may be made only once there is a pending application for reconsideration of a decision.
16. It must be by way of an affidavit and delivered to the secretariat, the decision-maker and all the other parties to the decision. The affidavit must be succinct and to the point and not restate the application for reconsideration.
17. The decision-maker and all the other parties to the decision must within two days of receipt of the application notify the secretariat of any intention to oppose the application.
18. The decision-maker and all the other parties to the decision may oppose the application by way of affidavit or written submissions to be filed within five days after the notice of intention to oppose.
19. The applicant may reply within five days by means of an affidavit or written submissions.
20. The parties may agree to extend the time periods stipulated herein, and if they are unable to agree, the Chairperson may do so on request from either of the parties to extend the time periods.

21. The application, opposed or unopposed, will be decided by the Chairperson on the papers unless otherwise minded.

## **APPLICATION FOR SUBMISSION OF FURTHER EVIDENCE**

22. An application for submission of further evidence is filed in terms of section 232(5) of the Act.
23. The application must be on affidavit and be filed with the secretariat and all other parties to the proceedings as soon as the particular party becomes aware of the existence of the evidence.
24. The application must show good cause including the reason why the evidence was not submitted earlier, its likely credibility, and its relevance to the decision.
25. If a party wishes to introduce new documents, these must be annexed to the application.
26. Evidence of witnesses other than the applicant must be attached and be by way of affidavit.
27. Oral evidence may be permitted in exceptional cases only.
28. The application, opposed or unopposed, will be decided by the Panel Chairperson on the papers unless that Chairperson decides otherwise.
29. Attention is drawn to section 271 of the Act which states:

*“A person who contravenes a direction in terms of section 232(5)(a), or refuses, without reasonable excuse, to take an oath or make an affirmation when required to do so as contemplated in section 232(5)(b), commits an offence and is liable on conviction to a fine not exceeding R5 000 000 or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.”*

## **CONDONATION APPLICATIONS**

30. An application for condonation within the jurisdiction of Chapter 15 of the FSR Act may be made on affidavit or in written submissions and must be filed with the secretariat and all other parties to the proceedings.

31. It must be succinct and show good cause.
32. If opposed by an interested party, the grounds of opposition must also be stated succinctly.
33. Depending on the nature of the application, the application, opposed or unopposed, may be decided on the papers by the Chairperson or the Panel Chairperson presiding over the Tribunal panel, or by the Tribunal panel during the hearing.

## **JOINDER**

34. A person with a direct and substantial interest in the decision upon which the application for reconsideration is based may apply to be joined as a party to the proceedings.
35. The application must be on affidavit and be filed with the secretariat and all other parties to the proceedings.
36. It must be succinct and show good cause.
37. If opposed by an interested party, the grounds of opposition must also be stated succinctly.
38. The application, opposed or unopposed, will be decided by the Chairperson or the Panel Chairperson unless he or she directs otherwise.
39. If the application is granted, the Chairperson or the Panel Chairperson may issue such directions as to the further procedure as deemed appropriate.

## **ENFORCEABLE UNDERTAKINGS - APPLICATIONS IN TERMS OF SECTIONS 151(6) AND 203(2) OF THE ACT**

40. An application launched in terms of sections 151(6) or 203(2) of the Act relating to contraventions of enforceable undertakings must be by way of an affidavit and delivered to the secretariat and the contravening party ("respondent").
41. The respondent must within 10 days of receipt of the application notify the secretariat of any intention to oppose the application.

42. The respondent may oppose the application by way of affidavit or written submissions to be filed within 10 days after the notice of intention to oppose.
43. The applicant may reply within 10 days by means of an affidavit or written submissions.
44. The parties may agree to extend the time periods stipulated herein, and if they are unable to agree, the Chairperson may extend the time periods on request from either of the parties.
45. The application, opposed or unopposed, will be decided by the Chairperson on the papers unless otherwise minded.

#### **APPLICATIONS FOR LEAVE TO RECONSIDER RESULTING FROM DECISIONS MADE BY THE OFFICE OF THE FAIS OMBUD**

46. The right to apply to the Tribunal for leave to reconsider a decision by the FAIS Ombud is derived from section 28(5)(b)(ii) of the Financial Advisory and Intermediary Services Act 37 of 2002.
47. An application for leave to reconsider, to be valid, must be lodged with the secretariat AND all other parties to the decision. It must be in accordance with Form C attached and contain:
  - a. a copy of the original application submitted to the Ombud;
  - b. the decision letter;
  - c. full particulars of the grounds (stated succinctly) on which the application is based and, if necessary, must deal with the aspect of condonation should the application be filed out of time.
48. Only documents relevant to the decision may be submitted. All documents must be properly marked, not duplicated, collated and in a single file. The Tribunal does not accept applications lodged piecemeal.
49. The FAIS Ombud, on receipt of an application for leave to reconsider, must provide the Tribunal secretariat with a hard copy or an electronic PDF version of a properly collated bundle of the relevant underlying documents on which the decision was

based. Duplicates and documents that are not relevant to the application for leave to reconsider may not be included. Records that do not comply with this provision will be returned to the Ombud.

50. The application will be decided by the Chairperson on the papers.

51. If the application is granted by the Chairperson, the applicant may proceed to lodge an application for reconsideration in accordance with section 230 of the Act (refer to paragraphs 7 to 13 above).

52. Any decision by the Chairperson is final and not open to reconsideration by the Tribunal.

#### **APPLICATIONS FOR RECONSIDERATION RESULTING FROM DETERMINATIONS MADE BY THE PENSION FUNDS ADJUDICATOR**

53. Upon receipt of the application for reconsideration, the respondent (other than the decision-maker) may within 14 days of the date of receipt thereof, furnish the Tribunal secretariat with written submissions in response to the application, where necessary.

54. Thereafter the respondent may, upon receipt of the applicant's notice to amend or augment the grounds on which the application is based referred to in 15 above, within 14 days of the date of receipt thereof, furnish the Tribunal secretariat with further written submissions, if necessary.

#### **THE RECORD**

55. Once the pleadings are closed and/or the applicant has filed a notice to amend or augment the grounds on which the application is based, referred to in paragraph 15 above, the record is prepared by the secretariat and provided to the parties.

56. Any party may request the secretariat to augment the record with written evidence, factual information and documentation that had been submitted to the decision-maker before the decision which is the subject of the application for reconsideration.



## **SET-DOWN**

57. The date, time and place of the hearing is fixed by the Panel Chairperson through the secretariat.
58. Although an attempt will be made before the set-down to accommodate a party and the legal representatives, their convenience is of secondary importance.
59. The notice of set-down will contain directives relating to the filing of heads of argument and generally with regard to the conduct of the proceedings.
60. Matters are set down for one day only unless the Panel Chairperson in exceptional circumstances decides otherwise.

## **HEADS OF ARGUMENT**

61. Persons who are not legally represented do not have to file heads of argument.
62. Legal representatives must file heads of argument as required in the notice of set-down.
63. The heads of argument must generally comply with the rules for heads in the Constitutional Court or the Supreme Court of Appeal.
64. They may not exceed 25 pages.
65. If filed electronically, they should be filed in PDF and also in WORD format.

## **HEARING OF AN APPLICATION FOR RECONSIDERATION**

66. The unavailability of a legal representative is not a ground for postponement.
67. The argument is limited to the grounds upon which the application for reconsideration is based.
68. The maximum time allowed for argument is two hours for the applicant and two hours for the respondent(s).

69. The form of address to the Tribunal panel is “Chair” or “Chairperson” and “Tribunal members”.

70. Persons attending must be dressed appropriately.

## **WITHDRAWAL**

71. An applicant may withdraw a matter at any stage. An application that is not prosecuted within the time frames laid down may be dismissed for non-prosecution.

72. Other parties to the proceedings may withdraw their participation or opposition at any stage. An opposition that is not prosecuted within the time frames laid down may be considered as having been withdrawn or abandoned.

73. The Chairperson or the Panel Chairperson may in exceptional circumstances make an appropriate costs order in terms of section 234(2) of the Act.

## **GENERAL**

74. In terms of section 235 of the Act, any party to proceedings on an application for reconsideration of a decision who is dissatisfied with an order of the Tribunal may institute proceedings for a judicial review of the order in terms of the Promotion of Administrative Justice Act or any applicable law.

75. An order of the Tribunal made in terms of section 234 of the Act has the effect of a civil judgment and may be enforced as if lawfully given in a competent court having regard to the requirements set out in section 236(1)(a) and (b) of the Act.

## ***DIES NON***

76. The period 16 December to 15 January in every year is regarded by the Tribunal as a period of *dies non*, literally meaning “no days”, and these days are not included in the time period set by these Rules.

77. The *dies non* period does not apply to time periods mentioned in the Rules but set by the Act, such as for the filing of an application for reconsideration.

**POPIA**

78. The Tribunal is a public body in terms of POPIA, and documents filed become part of the public record that is accessible in the public domain.

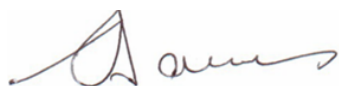
79. Section 232(3) of the Act states the following:

*“A panel must conduct any hearing it holds in public, but the person presiding over the panel may direct that a person be excluded from the hearing on any ground on which it would be proper to exclude a person from civil proceedings before the High Court.”*

80. Parties’ attention is drawn to the fact that any information contained in any applications and/or subsequent submissions/pleadings filed by any of the parties during Tribunal proceedings with the secretariat will be used solely for the purpose of administering and adjudicating the application(s) so filed.

81. The Tribunal will respect parties’ privacy and keep personal information confidential, but parties are deemed to consent to the Tribunal sharing any such information submitted by parties with any of the regulators and relevant/interested parties involved in the application(s) to enable the Tribunal to process and adjudicate the application(s).

82. Parties have the right to object to the sharing of personal information with other parties, however, in that event the Tribunal may not be able to process and adjudicate the application(s) or opposition(s) lodged with the secretariat.



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**Deputy Chairperson – Financial Services Tribunal**

**Judge L T C Harms**

**Date: 1 June 2021**

## FORM "A"

## THE FINANCIAL SERVICES TRIBUNAL

In the matter between:

**ABC**  
(insert name of the relevant applicant)

**Applicant**

and

**XYZ**  
(insert name of the relevant respondent, namely, the party in whose favour the decision was made)

**First Respondent**

**EFG**  
(insert official designation of the relevant decision-maker)

**Second Respondent**

**APPLICATION FOR RECONSIDERATION OF DECISION OF**

(insert the name of the relevant decision-maker)

**IN TERMS OF SECTION 230 OF THE**

**FINANCIAL SECTOR REGULATION ACT 9 OF 2017 ("FSR Act")**

**1.1 PARTICULARS OF APPLICANT**

**(If there is more than one applicant, each applicant must complete this form)**

- a. Applicant's full names
- b. ID number/registration number
- c. Telephone numbers
- d. E-mail address
- e. Residential address **(only required if the applicant is a natural person, ie. not a company; close corporation; pension fund etc)**
- f. Business/registered address **(this information must always be provided, if applicable)**
- g. Particulars of legal representative (if any):
  - i. Name
  - ii. Practice number

- iii. Contact person/reference
- iv. Telephone numbers
- v. E-mail address
- vi. Business address

**1.2 PARTICULARS OF RESPONDENT(S)** (ie. the party in whose favour the decision was made)

- a. Respondent's full names
- b. Telephone numbers
- c. E-mail address
- d. Residential or business address

**1.3 PARTICULARS OF THE DECISION AND DECISION-MAKER**

- a. Insert the official designation of the decision-maker
- b. An application for reconsideration is hereby noted against the decision-maker's decision contained in the decision letter, dated \_\_\_\_\_, and received by the applicant on \_\_\_\_\_, attached hereto marked **annexure "A"**.

The statement of reasons, referred to in section 229 of the FSR Act, and any annexures provided to the applicant by the decision-maker are attached hereto marked **annexure "B"**.

**1.4 GROUNDS OF APPLICATION**

**NB:** This section must contain the full particulars of the grounds (stated succinctly) on which the application is based and, if necessary, deal with the aspect of condonation should the application be filed out of time – refer to section 230(2)(b) of the FSR Act.

DATED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
Signature of applicant/legal representative

**TO: FINANCIAL SERVICES TRIBUNAL**  
KASTEEL OFFICE PARK  
ORANGE BUILDING (2<sup>ND</sup> FLOOR)

546 JOCHEMUS STREET  
ERASMUSKLOOF  
PRETORIA  
0048  
TEL: (012) 741 4300  
E-MAIL: [Applications@fstribunal.co.za](mailto:Applications@fstribunal.co.za)

**AND TO: THE RESPONDENT(S) AND ALL OTHER PARTIES TO THE DECISION**

(insert full physical and contact details of the relevant parties)

**AND TO: RELEVANT DECISION-MAKER**

(insert the official designation of the decision-maker)

**NB: The application for reconsideration may be sent to the Tribunal secretariat by registered post, fax, e-mail or may be hand delivered to the abovementioned address. Information relating to the Tribunal is available on the FSCA website, namely [www.fsca.co.za](http://www.fsca.co.za)**

**It remains the responsibility of the applicant to ensure that the application for reconsideration is received by the Tribunal secretariat and all the other parties to the decision.**

**FORM "B"****THE FINANCIAL SERVICES TRIBUNAL**

In the matter of:

**ABC**

(insert name of the relevant applicant)

**Applicant**

and

**EFG**

(insert official designation of the relevant decision-maker)

**Respondent**

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**APPLICATION FOR RECONSIDERATION OF DECISION OF**

(insert the name of the relevant decision-maker)

**IN TERMS OF SECTION 230 OF THE****FINANCIAL SECTOR REGULATION ACT 9 OF 2017 ("FSR Act")**

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**1.1 PARTICULARS OF APPLICANT**

**(If there is more than one applicant, each applicant must complete this form)**

- a. Applicant's full names
- b. ID number/registration number
- c. Telephone numbers
- d. E-mail address
- e. Residential address **(only required if the applicant is a natural person, ie. not a company; close corporation; pension fund etc)**
- f. Business/registered address **(this information must always be provided, if applicable)**
- g. Particulars of legal representative (if any):
  - i. Name
  - ii. Practice number
  - iii. Contact person/reference
  - iv. Telephone numbers

- v. E-mail address
- vi. Business address

## 1.2 PARTICULARS OF THE DECISION AND DECISION-MAKER

- a. Insert the official designation of the decision-maker
- b. An application for reconsideration is hereby noted against the decision-maker's decision contained in the decision letter, dated \_\_\_\_\_, and received by the applicant on \_\_\_\_\_, attached hereto marked **annexure "A"**.

The statement of reasons, referred to in section 229 of the FSR Act, and any annexures provided to the applicant by the decision-maker are attached hereto marked **annexure "B"**.

## 1.3 GROUNDS OF APPLICATION

**NB:** This section must contain the full particulars of the grounds (stated succinctly) on which the application is based and, if necessary, deal with the aspect of condonation should the application be filed out of time – refer to section 230(2)(b) of the FSR Act.

DATED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF  
\_\_\_\_\_

\_\_\_\_\_  
Signature of applicant/legal representative

**TO: FINANCIAL SERVICES TRIBUNAL**  
 KASTEEL OFFICE PARK  
 ORANGE BUILDING (2<sup>ND</sup> FLOOR)  
 546 JOCHEMUS STREET  
 ERASMUSKLOOF  
 PRETORIA  
 0048  
 TEL: (012) 741 4300  
 E-MAIL: [Applications@fstribunal.co.za](mailto:Applications@fstribunal.co.za)



**AND TO:      RELEVANT DECISION-MAKER**

(insert the official designation of the decision-maker )

**NB: The application for reconsideration may be sent to the Tribunal secretariat by registered post, fax, e-mail or may be hand delivered to the abovementioned address. Information relating to the Tribunal is available on the FSCA website, namely [www.fsc.co.za](http://www.fsc.co.za)**

**It remains the responsibility of the applicant to ensure that the application for reconsideration is received by the Tribunal secretariat and all the other parties to the decision.**

## FORM "C"

## THE FINANCIAL SERVICES TRIBUNAL

In the matter between:

**ABC**

(insert name of the relevant applicant)

**Applicant**

and

**XYZ**

(insert name of the relevant respondent, namely, the party in whose favour the decision was made)

**First Respondent**

**THE FAIS OMBUD**

**Second Respondent**

**APPLICATION FOR LEAVE TO RECONSIDER A DECISION OF  
THE FAIS OMBUD IN TERMS OF SECTION 28(5)(b)(ii) OF  
THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002**

**1.1 PARTICULARS OF APPLICANT**

**(If there is more than one applicant, each applicant must complete this form)**

- a. Applicant's full names
- b. ID number/registration number
- c. Telephone numbers
- d. E-mail address
- e. Residential address **(only required if the applicant is a natural person, ie. not a company; close corporation; pension fund etc)**
- f. Business/registered address **(this information must always be provided, if applicable)**
- g. Particulars of legal representative (if any):
  - i. Name
  - ii. Practice number
  - iii. Contact person/reference

- iv. Telephone numbers
- v. Email address
- vi. Business address

**1.2 PARTICULARS OF RESPONDENT(S)** (ie. the party in whose favour the decision was made)

- a. Respondent's full names
- b. Telephone numbers
- c. E-mail address
- d. Residential address (**only required if the applicant is a natural person, ie. not a company; close corporation; pension fund etc**)
- e. Business/registered address (**this information must always be provided, if applicable**)

**1.3 PARTICULARS OF THE DECISION AND DECISION-MAKER**

- a. Insert the official designation of the decision-maker
- b. An application for leave to reconsider is hereby noted against the FAIS Ombud's decision contained in the decision letter, dated \_\_\_\_\_, and received by the applicant on \_\_\_\_\_, attached hereto marked **annexure "A"**.

**1.4 GROUNDS OF APPLICATION**

**NB:** This section must contain the full particulars of the grounds (stated succinctly) on which the application is based and, if necessary, deal with the aspect of condonation should the application be filed out of time – refer to section 230(2)(b) of the FSR Act.

DATED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
Signature of applicant/legal representative

**TO: FINANCIAL SERVICES TRIBUNAL**  
KASTEEL OFFICE PARK  
ORANGE BUILDING (2<sup>ND</sup> FLOOR)

546 JOCHEMUS STREET  
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E-MAIL: [Applications@fstribunal.co.za](mailto:Applications@fstribunal.co.za)

**AND TO: THE RESPONDENT(S) AND ALL OTHER PARTIES TO THE DECISION**

(insert full physical and contact details of the relevant parties)

**AND TO: THE FAIS OMBUD**

**NB: The application for reconsideration may be sent to the Tribunal secretariat by registered post, fax, e-mail or may be hand delivered to the abovementioned address. Information relating to the Tribunal is available on the FSCA website, namely [www.fsca.co.za](http://www.fsca.co.za)**

**It remains the responsibility of the applicant to ensure that the application for reconsideration is received by the Tribunal secretariat and all the other parties to the decision.**