

APPEAL BOARD OF THE FINANCIAL SERVICES BOARD

PRACTICE DIRECTIONS AND GUIDELINES ISSUED BY THE CHAIRPERSON OF THE APPEAL BOARD

DEFINITIONS

- 1 The following definitions apply:
 - a. "Act" means the Financial Services Board Act, no. 97 of 1990.
 - b. "Affidavit" includes a solemn declaration.
 - c. "Day" for purposes of these practice directions refers to a court day which excludes Saturdays, Sundays and public holidays.
 - d. "Regulations" refer to the "Regulations in respect of Appeals to Appeal Board" R. 605 of 22 July 2011 issued by the Minister of Finance.
 - e. "Secretariat" refers to the secretarial support for the Appeal Board provided in terms of sec 26A(11) of the Act.
- 2 Documents that have to be lodged or delivered may be lodged or delivered by hand, registered post or electronically.

INTRODUCTION

- 3 These Practice Directions and Guidelines replace the "Guidelines on Proceedings of the Appeal Board" of 14 June 2011.
- 4 The Chairperson or Deputy Chairperson of the Appeal Board or the Chairperson of any given appeal panel may deviate from them to the extent that the law allows such deviation.

- 5 They must be read in the light of and subject to laws and regulations that circumscribe the powers of the Appeal Board and which prescribe time limits and procedures. Particular regard must be had to
- a. the Act, sections 26, 26A and 26B;
 - b. the relevant provisions of “financial services board legislation” (as defined in sec 1) that grant the right of appeal to the Appeal Board; and
 - c. the regulations.

NOTING OF APPEAL

- 6 The right of appeal is derived from sec 26(1) of the Act and, if subject to the provisions of other financial services board legislation (such as the Financial Advisory and Intermediary Services Act 37 of 2002), will depend on that law.
- 7 Only a person who is “aggrieved” by a “decision” of a “decision-maker” may appeal. The first two terms have specific meaning in jurisprudence, and the last is defined in sec 1 of the Act.
- 8 An appeal must be lodged within 30 days of the appellant becoming aware of, or ought to have become aware of, the decision complained of.
- 9 The period refers to 30 ordinary days in accordance with the Interpretation Act and NOT to business or court days.
- 10 The Appeal Board does not have the power to grant condonation of a late lodging.
- 11 An appeal, to be valid, must be lodged with the secretary AND all the other parties to the decision.
- 12 An appeal must be noted in terms of Regulation 2(1).
- 13 It must be drafted to conform as far as possible to the standard format contained in Annexure “A” hereto.

NOTICE OF APPEAL AND GROUNDS

- 14 The Notice of Appeal is prescribed in Regulation 2(4).

- 15 The Notice must be delivered within 30 days of the date of receipt of the written copy of the reasons for the decision by the decision-maker.
- 16 The period refers to 30 ordinary days in accordance with the Interpretation Act and NOT to business or court days.
- 17 The appeal lapses if the Notice is not delivered within the prescribed period.
- 18 The Appeal Board does not have the power to grant condonation of late delivery.
- 19 The Notice must contain full particulars of the grounds of appeal.
- 20 The grounds must be stated succinctly.
- 21 An appellant may by notice amend or augment the grounds of appeal.

APPLICATION FOR SUSPENSION OF A DECISION

- 22 An application in terms of sec 26(3) of the Act for suspension of a decision pending the hearing of an appeal can only be made once there is a pending appeal.
- 23 It must be by way of affidavit and delivered to the Secretariat and the decision-maker.
- 24 No fee is payable.
- 25 The decision-maker must within two days of receipt of the application notify the Secretariat of any intention to oppose the application.
- 26 The decision-maker may oppose the application by means of an affidavit or written submissions to be filed within five days after the notice of intention to oppose.
- 27 The applicant may reply within five days by means of an affidavit or written submissions.
- 28 The parties may agree to extend the time periods stipulated herein, and if they are unable to agree, the Chairperson or Deputy Chairperson may be requested by either of the parties to extend the time periods.
- 29 The application, opposed or unopposed, will be decided by the Chairperson or Deputy Chairperson on the papers unless they decide otherwise.

APPLICATION FOR SUBMISSION OF FURTHER EVIDENCE

- 30 Attention is drawn to sec 26B(10) to (13) of the Act.
- 31 An application under these provisions must be on affidavit and be filed with the Secretariat and all other parties to the appeal together with the Notice prescribed in Regulation 2(4) or as soon thereafter as any party becomes aware of the existence of the evidence.
- 32 The application must show good cause which includes the reason why the evidence was not submitted earlier, its likely credibility, and its relevance to the decision.
- 33 If a party wishes to introduce new documents, these must be attached to the application.
- 34 Evidence of witnesses other than the appellant must be attached and be by way of affidavit.
- 35 Since the function of the Appeal Board is to hear appeals, oral evidence will be permitted in exceptional cases only.
- 36 The application, opposed or unopposed, will be decided by the Chairperson of the appeal panel on the papers unless the said Chairperson decides otherwise.
- 37 If the evidence is admitted, the appeal is delayed pending reconsideration of the evidence by the decision-maker.

CONDONATION APPLICATIONS

- 38 An application for condonation within the jurisdiction of the Appeal Board may be made on affidavit or in written submissions and be filed with the Secretariat and all other parties to the appeal.
- 39 It must be succinct and show good cause.
- 40 If opposed by an interested party, the grounds of opposition must also be stated succinctly.
- 41 Depending on the nature of the application, the application, opposed or unopposed, may be decided on the papers by the Chairperson or Deputy Chairperson of the Appeal Board or the Chairperson of the appeal panel, or by the appeal panel during the appeal hearing.

JOINDER

- 42 A person with a direct and substantial interest in the decision on appeal may apply to be joined as a party to the proceedings.
- 43 The application must be on affidavit and be filed with the Secretariat and all other parties to the appeal.
- 44 It must be succinct and show good cause.
- 45 If opposed by an interested party, the grounds of opposition must also be stated succinctly.
- 46 The application, opposed or unopposed, will be decided by the Chairperson of the appeal panel unless he or she decides otherwise.
- 47 If the application is granted, the Chairperson of the appeal panel will give such directions as to the further procedure as may seem appropriate.

THE RECORD

- 48 The record is prepared by the Secretariat and provided to the parties.
- 49 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 appeal was taken.

SET-DOWN

- 50 The date, time and place of hearing of an appeal is fixed by the Chairperson of the appeal panel through the Secretariat.
- 51 Although an attempt will be made before the set-down to accommodate a party and the legal representatives, their convenience is of secondary importance.
- 52 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 appeal.

53 Appeals are set down for one day only unless the Chairperson of the appeal panel in exceptional circumstances decides otherwise.

HEADS OF ARGUMENT

54 Persons who are not legally represented do not have to file heads of argument.

55 Legal representatives must file heads of argument as required in the notice of set-down.

56 The heads of argument must generally comply with the rules for heads in the Constitutional Court or the Supreme Court of Appeal.

57 They may not exceed 25 pages.

58 If filed electronically, they should be filed in PDF and also in WORD format.

HEARING OF APPEAL

59 The unavailability of a legal representative is not a ground for postponement.

60 The argument on appeal is limited to the grounds of appeal.

61 Subject to an order allowing further evidence, no oral or written evidence or factual information and documentation, other than what was made available to the decision-maker, may be submitted to the panel by a party to the appeal.

62 The maximum time allowed for argument is two hours for the appellant and two hours for the respondents.

63 The form of address to the appeal panel is "Chair" or "Chairperson" and "Appeal Board Members".

64 Persons attending must be dressed appropriately.

WITHDRAWAL

65 An appellant may withdraw an appeal at any stage.


66 Other parties to the appeal may withdraw their participation or opposition at any stage.

67 The appeal panel may in such circumstances make an appropriate costs order in terms of section 26B(16) of the Act.

DIES NON

68 The period 16 December to 15 January in every year is regarded by the Appeal Board as a period of *dies non*, literally meaning “no days” and these days are not included in the time period allowed for delivering pleadings (i.e. reasons, grounds of appeal).

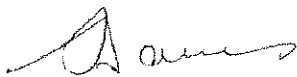
69 The *dies non* period does not apply to the Noting of an Appeal.



CHAIRPERSON – FSB APPEAL BOARD

JUDGE Y MOKGORO

DATE: 25 November 2015



DEPUTY CHAIRPERSON – FSB APPEAL BOARD

JUDGE L T C HARMS

DATE: 20 November 2015

ANNEXURE "A"

IN THE APPEAL BOARD OF THE FINANCIAL SERVICES BOARD

In the matter between:

ABC (PTY) LTD

Appellant

[Insert name of the relevant appellant]

and

REGISTRAR OF FINANCIAL SERVICES PROVIDERS

Respondent

[Insert name of the relevant decision-maker]

NOTICE OF APPEAL

1.1. PARTICULARS OF THE APPELLANT

1.1.1 Appellant's full names.

1.1.2 Telephone Numbers: [Appellant's telephone number (s) or telephone number (s) of the legal representative, if the appellant is represented, must be stated here.]

1.1.3. Fax Number: [Appellant's fax number or fax number of the legal representative, if the appellant is represented, must be stated here.]

1.1.4 Residential Address : [Only required when the appellant is a natural person, i.e. when the appellant is not a company, close corporation, pension fund, etc]

1.1.5 Business Address: [This address must always be provided]

1.2. PARTICULARS OF THE DECISION

An appeal is hereby noted against the Respondent's decision contained in his letter dated ---
----- and received by the appellant on----- ***[The date of the letter received from the relevant decision-maker and the date of receipt of such letter by the appellant must be stated. The name of the relevant decision- maker always appears at the foot of the letter containing the decision].*** A copy of that letter is attached as annexure "A". ***[Please note that***

it is not necessary to describe the decision and/or to quote from the letter containing the decision. The letter containing the decision must be attached to the Notice of Appeal.]

1.3. PROOF OF PAYMENT

I/We attach proof of payment of the amount of R1000.00.

DATED AT ----- ON THIS ----- DAY OF ----- 20 ...

[Signature of the Appellant or of the attorney]

TO: THE SECRETARY: APPEAL BOARD - FSB

Riverwalk Office Park Block B

41 Matroosberg Road Ashlea Gardens, Ext.6 Pretoria, 0081

The Notice of Appeal may be sent to the Secretary by fax, post, e-mail LEG.AppealBoard@fsb.co.za or may be delivered at the abovementioned address. The Secretary's contact details are available on the website of the Financial Services Board, namely www.fsb.co.za

It remains the responsibility of the Appellant to ensure that his/her Notice of Appeal is received by the Secretary.