

FINANCIAL SERVICES TRIBUNAL
RULES
ISSUED BY THE CHAIRPERSON OF THE TRIBUNAL

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.
- 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.
2. Documents that have to be lodged or delivered to the Tribunal may be lodged or delivered by hand, registered post or electronically to LEG.Tribunal@fsca.co.za
3. Documents relating to applications in so far as FSP debarment matters that have to be lodged or delivered to the Tribunal may be lodged or delivered by hand, registered post or electronically to tribunal.fspdebar@fsca.co.za

INTRODUCTION

4. These rules are made in terms of section 227 of the Act.
5. The Chairperson or the Panel Chairperson may deviate from these rules to the extent permitted by applicable law.
6. 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

7. 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.
8. 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.
9. 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.
10. 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.
11. 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).
12. 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.
13. The application for reconsideration must be drafted to conform as far as possible with the standard format contained in the precedent annexure "A" hereto.

DECISION-MAKER'S FURTHER REASONS

14. 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 the underlying documents on which the decision was based together with further reasons, where necessary.

APPLICANT'S AUGMENTED GROUNDS

15. 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

16. 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.
17. It must be by way of an affidavit and delivered to the secretariat, the decision-maker and all the other parties to the decision.
18. 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.
19. 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.
20. The applicant may reply within five days by means of an affidavit or written submissions.
21. 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.
22. The application, opposed or unopposed, will be decided by the Chairperson on the papers unless otherwise minded.

APPLICATION FOR SUBMISSION OF FURTHER EVIDENCE

23. An application for submission of further evidence is filed in terms of section 232(5) of the Act.
24. 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.
25. 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.
26. If a party wishes to introduce new documents, these must be annexed to the application.

27. Evidence of witnesses other than the applicant must be attached and be by way of affidavit.
28. Oral evidence may be permitted in exceptional cases only.
29. The application, opposed or unopposed, will be decided by the Panel Chairperson on the papers unless that Chairperson decides otherwise.
30. 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

31. 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.
32. It must be succinct and show good cause.
33. If opposed by an interested party, the grounds of opposition must also be stated succinctly.
34. 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

35. 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.

36. The application must be on affidavit and be filed with the secretariat and all other parties to the proceedings.
37. It must be succinct and show good cause.
38. If opposed by an interested party, the grounds of opposition must also be stated succinctly.
39. The application, opposed or unopposed, will be decided by the Chairperson or the Panel Chairperson unless he or she directs otherwise.
40. 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

41. 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").
42. The respondent must within 10 days of receipt of the application notify the secretariat of any intention to oppose the application.
43. 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.
44. The applicant may reply within 10 days by means of an affidavit or written submissions.
45. 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.
46. 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

47. 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.

48. An application for leave to reconsider must 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; and
- d. to be valid, must be lodged with the secretariat AND all other parties to the decision.

49. All documents submitted must be relevant to the decision, properly marked, collated and cross-referenced.

50. The Tribunal does not accept applications lodged piecemeal.

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

52. 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).

53. 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

54. 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.

55. 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

56. 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.
57. 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

58. The date, time and place of the hearing is fixed by the Panel Chairperson through the secretariat.
59. Although an attempt will be made before the set-down to accommodate a party and the legal representatives, their convenience is of secondary importance.
60. 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.
61. Matters are set down for one day only unless the Panel Chairperson in exceptional circumstances decides otherwise.

HEADS OF ARGUMENT

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

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

HEARING OF AN APPLICATION FOR RECONSIDERATION

67. The unavailability of a legal representative is not a ground for postponement.
68. The argument is limited to the grounds upon which the application for reconsideration is based.
69. The maximum time allowed for argument is two hours for the applicant and two hours for the respondent(s).
70. The form of address to the Tribunal panel is "Chair" or "Chairperson" and "Tribunal members".
71. Persons attending must be dressed appropriately.

WITHDRAWAL

72. An applicant may withdraw a matter at any stage.
73. Other parties to the proceedings may withdraw their participation or opposition at any stage.
74. 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

75. 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.

76. 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

77. 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.

78. 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.



Chairperson – Financial Services Tribunal

Judge Y Mokgoro

Date: 14 November 2018

PRECEDENT ANNEXURE "A"

THE FINANCIAL SERVICES TRIBUNAL

In the matter between:

ABC (PTY) LTD
(insert name of the relevant applicant)

Applicant

and

FINANCIAL SECTOR CONDUCT AUTHORITY
(insert name of the relevant decision-maker)

Respondent

APPLICATION FOR RECONSIDERATION OF DECISION

IN TERMS OF SECTION 230 OF THE

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

1.1 PARTICULARS OF APPLICANT

(if the applicant has legal representation these details must be inserted here)

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

1.2 PARTICULARS OF THE DECISION

An application for reconsideration is hereby noted against the respondent'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

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
_____ 2018

Signature of applicant/legal representative

TO: FINANCIAL SERVICES TRIBUNAL
c/o FINANCIAL SECTOR CONDUCT AUTHORITY
RIVERWALK OFFICE PARK
BLOCK B
41 MATROOSBERG ROAD
ASHLEA GARDENS EXT 6
PRETORIA
TEL: (012) 428 8012 / (012) 367 7259
FAX: (012) 346 6481
E-MAIL: LEG.Tribunal@fsca.co.za / tribunal.fspdebar@fsca.co.za

AND TO: RELEVANT DECISION-MAKER
(insert full physical and contact details of the relevant parties)

AND TO: ALL OTHER PARTIES TO THE DECISION/RESPONDENTS

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

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

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.