



BERMUDA

CREDIT UNIONS APPEAL TRIBUNAL REGULATIONS 2013

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CREDIT UNIONS APPEAL TRIBUNAL REGULATIONS 2013

The Minister of Finance, in exercise of the power conferred by section 25 of the Credit Unions Act 2010, makes the following Regulations:

Citation

1 These Regulations may be cited as the Credit Unions Appeal Tribunal Regulations 2013.

Interpretation

2 In these Regulations—

“the Act” means the Credit Unions Act 2010;

“chairman” means the chairman of the tribunal, or the deputy chairman acting in the absence of the chairman;

“credit union concerned” means—

(a) the credit union concerned in the case of an appeal brought by a person under regulation 4(1)(c); or

(b) the credit union concerned in the case of an appeal brought by a chief executive officer or senior executive officer under regulation 4(1)(d);

“Minister” has the meaning given in section 2 of the Act;

“secretary” means secretary of the tribunal, unless the context indicates otherwise;

“tribunal” means the credit unions appeal tribunal.

Appointing secretary to the tribunal

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

Manner and time for making an appeal

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

(a) in the case of an appeal by a credit union under section 22(1)(a) of the Act against a decision of the Authority to restrict, to restrict in a particular manner, or to vary any restrictions of the credit union’s licence, not later than 10 days from the date on which the Authority gave written notice to the credit union of its decision;

(b) in the case of an appeal by a credit union under section 22(1)(b) of the Act against a decision of the Authority to revoke the credit union’s licence, not later than 10 days from the date on which the Authority gave written notice to the credit union of its decision;

(c) in the case of an appeal by a person under section 22(2)(a) of the Act, where the ground for restricting, restricting in a particular manner, varying any restrictions, or revoking the credit union’s licence was that it appeared to the Authority that the criterion in paragraph 1 of the minimum criteria is

not or has not been fulfilled, or may not be or may not have been fulfilled in respect of that person, not later than 10 days from the date on which the Authority gave written notice to the credit union of its decision to restrict, restrict in a particular manner, vary any restrictions, or revoke the credit union's licence;

- (d) in the case of an appeal by a chief executive officer or a senior executive officer of a credit union under section 22(2)(b) of the Act, where the effect of restricting, restricting in a particular manner, or varying any restrictions of the credit union's licence requires the removal of the chief executive officer or senior executive officer, not later than 10 days from the date on which the Authority gave written notice to the credit union of its decision to restrict, restrict in a particular manner, or vary any restrictions of the credit union's licence.

(2) When filing a notice of appeal, the appellant shall serve a copy of the notice on the Authority, and on any credit union concerned.

Notice of appeal

5 A notice of appeal shall be signed by the appellant, or on behalf of the appellant by his representative, and shall contain the following information—

- (a) the appellant's name;
- (b) the appellant's address, or where the appellant is a corporate body, the address of the appellant's registered office;
- (c) the name and address of any credit union concerned;
- (d) the address to which notices and other documents may be served on the appellant in Bermuda, if different from the address given under subparagraph (b);
- (e) the name and address of any person appointed by the appellant to represent him or it in connection with the appeal;
- (f) the address of the secretary to the Board of Directors of the Authority; and
- (g) a statement of the decision of the Authority against which the appeal is being made.

Empanelling the tribunal

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

Filing notice of grounds of appeal

7 (1) The appellant shall, within 14 days from the date of filing the notice of appeal, file with the secretary a notice of grounds of appeal setting out sufficient particulars of the reasons adduced by the appellant that the decision of the Authority was unlawful or not justified by the evidence on which it was based.

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(2) The appellant shall, when filing the notice of grounds of appeal, serve a copy of the notice on the Authority, and on any credit union concerned.

Filing supplementary grounds of appeal

8 (1) An appellant may omit from the notice of grounds of appeal any information that has been given in confidence or is commercially sensitive, and shall file with the secretary a notice of supplementary grounds of appeal.

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

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

Interim relief

9 (1) A credit union may file with the secretary an application that the tribunal suspend, under section 22(3) of the Act, the operation of a restriction or the variation of a restriction pending the determination of the appeal in respect of the Authority's decision to impose or vary the restriction.

(2) The tribunal may determine the application under paragraph (1) on the basis of written representations, if the credit union and the Authority agree in writing, or it may direct the parties to appear before it.

(3) The tribunal shall notify the credit union and the Authority of its determination giving a statement of its reasons.

Respondent, disclosure, filing of response

10 (1) In every appeal the Authority is the respondent.

(2) The Authority shall, within 14 days of being served a copy of the notice of appeal—

- (a) file with the secretary documents relevant to the appeal as set out in the Schedule;
- (b) serve on the appellant a list of the documents filed with the secretary; and
- (c) serve on any credit union concerned a copy of the list and, where necessary, a copy of the documents.

(3) The Authority shall, within 28 days of being served a copy of the notice of grounds of appeal—

- (a) file with the secretary a response to the particulars set out in the notice; and
- (b) when filing such response, serve a copy of the response on the appellant, and any credit union concerned.

Amending grounds of appeal

11 (1) An appellant may file with the secretary a notice of amended grounds of appeal at any time before the hearing and shall, when filing such notice, serve a copy of the notice on the Authority, and on any credit union concerned.

(2) The tribunal may give leave to amend, but shall not do so without first giving the Authority an opportunity to make representations on the proposed amendment.

(3) Leave to amend may be given on such terms, including terms as to costs or expenses, as the tribunal thinks fit.

(4) Where the tribunal gives leave to amend grounds of appeal—

(a) the appellant shall serve a copy of the amended grounds of appeal on the Authority, and any credit union concerned; and

(b) the Authority may, in reply to the matters set out in the amended grounds of appeal, file with the secretary notice of amended response, and shall serve a copy of such notice on the appellant, and any credit union concerned.

(5) During a preliminary hearing, the chairman may consider a request for leave to amend grounds of appeal, and in such case, paragraphs (2), (3) and (4) apply, with the necessary modifications.

Amending supplementary grounds of appeal

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

(2) The tribunal may give leave to amend on such terms, including terms as to costs or expenses, as the tribunal thinks fit.

(3) During a preliminary hearing, the chairman may give leave to amend supplementary grounds of appeal on such terms, including terms as to costs or expenses, as the chairman thinks fit.

Amending response to grounds of appeal

13 (1) The Authority may file with the secretary a notice of an amended response to grounds of appeal at any time before the hearing and shall, when filing such notice, serve a copy of the notice on the appellant, and any credit union concerned.

(2) The tribunal may give leave to amend, but shall not do so without first giving the appellant an opportunity to make representations on the proposed amendment.

(3) Leave to amend may be given on such terms, including terms as to costs or expenses, as the tribunal thinks fit.

(4) Where the tribunal gives leave to amend a response to grounds of appeal—

(a) the Authority shall serve a copy of the amended response on the appellant, and any credit union concerned;

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- (b) the appellant may, in reply to the matters set out in the amended response, file with the secretary notice of amended grounds of appeal, and shall serve a copy of such notice on the Authority, and on any credit union concerned.

(5) During a preliminary hearing, the chairman may consider a request for leave to amend a response, and in such case, paragraphs (2), (3) and (4) apply, with the necessary modifications.

Preliminary hearing

14 (1) A preliminary hearing shall be held.

(2) Notice of the preliminary hearing shall be served by the chairman on the parties to the appeal, and any credit union concerned—

- (a) not earlier than 21 days of receipt of the Authority's response by the secretary;
- (b) not later than 35 days after receipt of the Authority's response by the secretary; and
- (c) not less than 10 days before the day appointed in the notice for the preliminary hearing.

(3) The parties to the appeal may agree to the notice being served by the chairman at times other than those provided under paragraph (2).

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

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

(6) At the preliminary hearing—

- (a) the chairman shall give such directions as he considers necessary or desirable for the conduct of the appeal, and shall appoint the date, time and place of the hearing of the appeal; and
- (b) the parties may seek clarification regarding the conduct of the appeal.

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

(8) The chairman shall consider whether any matters contained in any supplementary grounds of appeal or amended supplementary grounds of appeal, should be disclosed to any other person, and may direct that such matters be disclosed accordingly.

Evidence during hearing

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

(2) Notwithstanding paragraph (1)—

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

(3) In exercising the power conferred by paragraph (1), the chairman shall take into account the need to protect information which relates to a person who is not a party to the appeal, or which was communicated or obtained in confidence, or is commercially sensitive.

(4) The chairman may set aside any direction or notice given under paragraph (1) on the application of the person to whom the direction or notice was given, but shall not do so without first notifying any person who applied for the direction or notice and considering any representations made by that person.

(5) The secretary shall supply a copy of any document obtained under this Regulation to any party to the appeal, if that party does not already have a copy of the document.

Procedure during hearing

16 (1) The hearing shall be in private.

(2) The parties to an appeal and any credit union concerned may appear at the hearing, or be represented by a barrister and attorney or by any other person.

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

(4) Where the Tribunal requires a witness to give evidence, or any party to the appeal calls a witness to give evidence, such evidence shall be given on oath or affirmation, administered by the chairman.

(5) Subject to regulation 15(2)(b), evidence may be admitted by the tribunal whether or not it would be admissible in a court of law.

(6) If a party to an appeal or any credit union concerned fails to appear or be represented at the time and place appointed for the hearing, the tribunal may proceed with the hearing or adjourn it to a later date.

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(7) Where the tribunal proceeds with the hearing pursuant to paragraph (6), it shall take into consideration any written representations which may have been submitted by the parties to the appeal, or by any credit union concerned, whether the written representations were submitted in accordance with these Regulations or otherwise.

(8) The tribunal may from time to time adjourn the hearing, and if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice is required.

Procedure after hearing

17 (1) The tribunal shall, after the close of a hearing, notify the parties and any credit union concerned of its determination in accordance with section 24(3) of the Act.

(2) The tribunal may arrange for the publication of its determination and statement of its reasons, but in doing so shall have regard to the desirability of safeguarding confidential or commercially sensitive information given to the parties, or information which was communicated or obtained in confidence, or the identity of or information relating to any person who is not a party to the appeal, and for that purpose may make any necessary amendments to the text of its determination and statement of reasons.

Withdrawal of appeal or opposition

18 (1) The appellant may withdraw an appeal at any time before the hearing by filing with the secretary a notice in writing, and serving a copy of the notice on the Authority and any credit union concerned.

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

(3) The Authority may at any time withdraw its opposition to an appeal by giving notice to the appellant and the tribunal.

(4) Where an appeal is withdrawn, it is deemed dismissed and the tribunal shall accordingly formally notify the parties to the appeal, and any credit union concerned.

Costs

19 (1) Any costs or expenses which the tribunal directs to be paid by any party to the appeal under section 25(1) of the Act and required to be taxed shall be taxed by the Registrar of the Supreme Court.

(2) A direction given by the tribunal under section 25(1) of the Act shall, on application being made to the Supreme Court by the party to whom costs or expenses have been directed to be paid, be enforceable as if the party had obtained a judgment of that Court in his favour.

Time and miscellaneous powers

20 (1) Where the time prescribed by these Regulations for doing any act expires on a Saturday, Sunday or public holiday, the act shall be in time if done on the next working day.

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(2) A party to an appeal may file with the secretary an application requesting the chairman to extend the time referred to in regulation 7, 8 or 10 and the chairman may, after considering any representations made by the other party to the appeal, grant such extension on such terms, if any, as he thinks fit.

(3) An application under paragraph (2) may be granted after the time specified in regulation 7, 8 or 10 has expired.

(4) The chairman may, after considering any representations made by the parties to an appeal, postpone the date appointed for any hearing or alter the place appointed for any hearing.

(5) Where a hearing is postponed, or the place for any hearing is altered, the secretary shall notify the parties to the appeal, credit union concerned, and any witness of the revised arrangements.

Tribunal to determine its procedure

21 Subject to the Act and these Regulations, the tribunal has power to determine its own procedure.

Absence of a member of the tribunal

22 An appeal may, with the consent of all the parties, continue to be heard in the absence of any one member of the tribunal other than the chairman, and in that event the tribunal is deemed to be properly constituted.

Service of notices and other documents

23 (1) Any notice or document may be filed or served—

(a) by registered mail—

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

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

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

(iv) in the case of any credit union concerned, to the address provided in the notice of appeal, or such other address as may subsequently be notified by the credit union concerned to the secretary, the appellant concerned, and the Authority;

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

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

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(2) Where a notice or document is served on the representative of the appellant or the respondent, the notice or document is deemed to be served on the appellant or the respondent.

Irregularities

24 (1) Any irregularity resulting from failure to comply with any provision of these Regulations before the tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal before it makes its determination, the tribunal may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before making its determination to cure the irregularity.

(3) Clerical mistakes in any document recording a decision of the chairman or tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the chairman under his hand.

Consolidation of appeals

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

- (a) an appeal brought by a credit union under regulation 4(1)(a), and an appeal brought by a person under regulation 4(1)(c);
- (b) an appeal brought by a credit union under regulation 4(1)(b), and an appeal brought by a person under regulation 4(1)(c);
- (c) an appeal brought by a credit union under regulation 4(1)(a), and an appeal brought by a chief executive officer or a senior executive officer of a credit union under regulation 4(1)(d).

(2) A direction under paragraph (1) shall not be given without the chairman first taking into consideration any representations by both appellants and the Authority, showing cause why such direction should not be made.

(3) Where appeals have been consolidated the secretary shall, where necessary, serve on the other appellant copies of notices of appeals, grounds of appeal and any amended grounds of appeal, response and any amended response, and the list or copies of documents disclosed by the Authority.

(4) The secretary may serve on the other appellant a copy of any supplementary grounds of appeal and any amended supplementary grounds of appeal, but shall not do so where—

- (a) all of the matters contained in the supplementary grounds of appeal or amended supplementary grounds of appeal, have been disclosed to the other appellant; or
- (b) an appellant, when showing cause why such a direction to consolidate should not be made, represented that he or it did not wish copies to be

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disclosed to the other appellant, and the other appellant consented to such copies not being disclosed to him or it.

Commencement

26 These Regulations come into operation on a day to be appointed by the Minister by notice in the Gazette.

SCHEDULE

(regulation 10)

DISCLOSURE BY THE AUTHORITY

1 In the case of an appeal by a credit union under regulation 4(1)(a), the Authority shall file with the secretary—

- (a) four copies of its written notice of intention given to the credit union under section 17(1) of the Act, to restrict or vary a restriction of the credit union's licence;
- (b) four copies of any written representations made by the credit union under section 17(5) of the Act in response to the notice of intention;
- (c) four copies of the written notice of its decision given to the credit union under section 17(7) of the Act;
- (d) four copies of any written representations made by the credit union under section 17(9) of the Act where it restricted or varied a restriction of the credit union's licence in a manner otherwise than as stated in the notice given under section 17(1) of the Act; and
- (e) four copies of any decision to alter the restrictions made under section 17(9) of the Act.

2 In the case of an appeal by a credit union under regulation 4(1)(b), the Authority shall file with the secretary—

- (a) four copies of its written notice of intention given to the credit union under section 17(1) of the Act, to revoke the credit union's licence;
- (b) four copies of any written representations made by the credit union under section 17(5) of the Act in response to the notice of intention; and
- (c) four copies of the written notice of its decision given to the credit union under section 17(7) of the Act.

3 In the case of an appeal by a person under regulation 4(1)(c), the Authority shall file with the secretary—

- (a) four copies of its written notice of intention given to the person under section 17(4) of the Act, to restrict, vary a restriction, or revoke the credit union's licence;
- (b) four copies of any written representations made by the person under section 17(5) of the Act in response to the notice of intention; and
- (c) four copies of the written notice of its decision given to the person under section 17(7) of the Act.

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4 In the case of an appeal by a chief executive officer or a senior executive officer of a credit union under regulation 4(1)(d), the Authority shall file with the secretary—

- (a) four copies of its written notice of intention given to the chief executive officer or senior executive officer under section 17(4) of the Act, to restrict a credit union's licence by requiring the removal of the chief executive officer or senior executive officer of the credit union;
- (b) four copies of any written representations made by the chief executive officer or senior executive officer under section 17(5) of the Act in response to the notice of intention; and
- (c) four copies of the written notice of its decision given to the chief executive officer or senior executive officer under section 17(7) of the Act.

Made this 2nd day of May 2013

Minister of Finance