

CHAPTER 307

UTILITIES APPEAL TRIBUNAL RULES

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CHAPTER 307

UTILITIES APPEAL TRIBUNAL

S.I. 2/2014.

UTILITIES APPEAL TRIBUNAL RULES

(SECTION 7)

[Commencement 24th January, 2014]

**PART I - INTRODUCTION AND OVERRIDING
OBJECTIVE**

Citation. **1.** These Rules may be cited as the Utilities Appeal Tribunal Rules.

Interpretation.
Ch. 2. **2.** In these Rules, all terms have the meanings given to them by the Interpretation and General Clauses Act unless expressly defined herein or the context otherwise requires —

“appellant” means a person who —

- (a) commences Tribunal proceedings, whether by making an appeal, an application, a claim, a complaint, a reference or otherwise; or
- (b) is substituted as an appellant under rule 23;

“document” means anything in which information is recorded in any form, and an obligation under these Rules or any judgement, order or direction of the Tribunal, to provide or allow access to a document or a copy of a document for any purpose or means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form, or a form which can readily be made into a legible form;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“interested party” means a person added as an interested party under rule 23;

“party” means any person engaged in a dispute before the Tribunal, excluding their advisors, interested parties and advisors to the interested parties;

“respondent” means —

- (a) in proceedings appealing against or challenging a judgement, order or direction, the person who made the judgement, order or direction appealed against or challenged;
- (b) a person against whom an appellant otherwise brings proceedings; or
- (c) a person substituted or added as a respondent under Rule 23;

“the Act” means the Utilities Appeal Tribunal Act.

Ch. 307.

3. (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

Overriding objective and parties’ obligation to cooperate.

(2) Dealing with a case fairly and justly includes —

- (a) dealing with the case in ways which are proportionate to the importance of the case, 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 fully able to participate in the proceedings;
- (d) using any special or sectoral expertise of the Tribunal effectively; and
- (e) avoiding delay so far as practicable and compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective in paragraph (1) of this Rule, when it —

- (a) exercises any power under these Rules; or
- (b) interprets any Rules of the Tribunal or issues any judgements, orders or directions.

PART II-GENERAL POWERS AND PROVISIONS

Powers and functions of the Registrar.

4. (1) The Registrar of the Tribunal shall have such jurisdiction, powers and duties as are conferred or imposed upon the Registrar by the Act or these Rules.

(2) The Registrar shall act in accordance with the instructions of the President and shall, in particular, be responsible for —

- (a) the establishment and maintenance of a register in which all pleadings and supporting documents and all judgements, orders and directions of the Tribunal shall be registered;
- (b) the acceptance, transmission, service and custody of documents in accordance with these Rules;
- (c) the enforcement of orders or directions of the Tribunal;
- (d) certifying that any judgement, order or direction is a judgement, order or direction of the Tribunal or the President, as the case may be.

(3) Any administrative function of the Registrar may be performed on his behalf by any member of the Tribunal whom the President may authorise in writing for the purpose.

Tribunal Website.

5. The location of the Tribunal Website is <http://www.utilitiesappealtribunal.bahamas.com> or such other Uniform Resource Locator as may be notified from time to time in such manner as the President may direct.

General powers of the Tribunal.

6. (1) Subject to the provisions of these Rules, the Tribunal may regulate its own procedures.

(2) The President may, after consulting and having due regard to the advice of such persons as he considers appropriate, make rules with respect to proceedings before the Tribunal.

Duties of parties to the Tribunal.

7. Parties to proceedings to the Tribunal must —

- (a) help the Tribunal to further the overriding objective as specified in rule 3 of these Rules; and
- (b) co-operate with the Tribunal generally.

8. (1) The President shall determine which members of the Tribunal are to constitute a Panel of the Tribunal in relation to the exercise of any function. Panels of the Tribunal.

(2) The President shall ensure that each Panel is constituted in one of the following ways —

- (a) as the President sitting alone;
- (b) as the President sitting with two ordinary members; or
- (c) as the President sitting with one ordinary member.

(3) For the purposes of a Panel, the President can delegate his powers and functions to a legal member who may then constitute a Panel —

- (a) on his own;
- (b) sitting with two ordinary members; or
- (c) sitting with one ordinary member.

(4) In determining which members of the Tribunal are to constitute a Panel, the President shall have regard to the overriding objective of these Rules and to —

- (a) the submissions of the parties;
- (b) whether technical, legal, valuation or other specialist matters are likely to be central to the resolution of the dispute; and
- (c) the availability of the members of the Tribunal.

PART III-APPEALS FROM THE TRIBUNAL

9. (1) An appellant must start proceedings before the Tribunal by sending or delivering to the Registrar a notice of appeal so that it is received within 21 days of the date upon which the appellant was notified of the disputed judgement or the date of publication of the judgement, whichever is earlier. Time and manner of commencing proceedings.

(2) The Tribunal may extend the time limit provided under paragraph (1) where it is satisfied that the circumstances are exceptional.

- (3) The notice of appeal must contain —
 - (a) the name and address of the appellant;

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- (b) the name and address of the appellant’s legal representative, if appropriate;
 - (c) an address for service of the appellant in The Bahamas;
 - (d) the signature of the appellant or that of his duly authorised officer or legal representative and the date that the appellant affixed his signature, or the date that his duly authorised officer or legal representative, affixed his signature thereto; and
 - (e) the name and address of the respondent to the proceedings.
- (4) The notice of appeal must contain —
 - (a) a concise statement of the facts;
 - (b) summary of the grounds for contesting the judgement, identifying in particular —
 - (i) under which statutory provision the appeal is brought;
 - (ii) to what extent (if any) the appellant contends that the disputed judgement was based on an error of fact or was wrong in law;
 - (iii) to what extent (if any) the appellant is appealing against the respondent’s exercise of his discretion in making the disputed judgement;
 - (c) a succinct presentation of the arguments supporting each of the grounds of appeal;
 - (d) the relief sought by the appellant, and any directions sought pursuant to case management; and
 - (e) a schedule listing all of the documents annexed to the notice of appeal.
 - (5) There must be annexed to the notice of appeal —
 - (a) a copy of the disputed judgement; and
 - (b) as far as practicable, a copy of every document on which the appellant relies, including the written statements of all witnesses of fact, or expert witnesses, if any.
 - (6) Unless the Tribunal otherwise directs, the signed original of the notice of appeal and its annexes must be

accompanied by three copies certified by the appellant or his legal representative and conforming to the original.

10. On receiving a notice of appeal the Registrar shall —

Acknowledgement and notification of notice of appeal.

- (a) send an acknowledgement of its receipt to the appellant; and
- (b) subject to Rule 9(3) send a copy of the notice of appeal to the respondent who made the disputed judgement.

11. (1) The appellant may amend the notice of appeal only with the permission of the Tribunal.

Amendment of notice of appeal.

(2) Where the Tribunal grants permission under paragraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.

(3) The Tribunal shall not grant permission to amend in order to add a new ground for contesting a judgement unless —

- (a) such ground is based on matters of law or fact which have come to light since the appeal was made;
- (b) it was not practicable to include such ground in the notice of appeal; or
- (c) the circumstances are exceptional.

12. (1) If the Tribunal considers that a notice of appeal does not comply with Rule 9, or is materially incomplete, or is unduly prolix or lacking in clarity, the Tribunal may give such directions as may be necessary to ensure that those defects are remedied.

Defective notices of appeal.

(2) The Tribunal may, if satisfied that the efficient conduct of proceedings so requires, instruct the Registrar to defer service of the notice of appeal on the respondent until after the directions referred to in paragraph (1) have been complied with.

13. (1) The respondent must send to the Registrar a defence in the form required by this rule so that the defence is received within 21 days (or such further time as the Tribunal may allow) of the date on which the respondent received a copy of the notice of appeal.

Defence.

- (2) The defence must state —

(a) the name and address of the respondent;

(b) the name and address of the respondent’s legal representative, if appropriate;

(c) an address for service in The Bahamas, and must be signed and dated by the respondent, or on his behalf by his duly authorised officer or his legal representative.

(3) The defence must contain —

- (a) a succinct presentation of the arguments of fact and law upon which the respondent will rely;
- (b) the relief and any directions sought by the respondent; and
- (c) a schedule listing all of the documents annexed to the defence.

(4) There must be annexed to the defence a copy of every document upon which the respondent relies, including the written statements of all witnesses of fact, and where practicable, expert witnesses, if any.

(5) The signed original of the defence and its annexes must be accompanied by three copies certified by the respondent or his duly authorised officer or legal representative as conforming to the original.

(6) On receiving the defence, the Registrar must send a copy to the appellant.

Publication of
summary of
appeal.

14. (1) The Registrar must as soon as practicable upon receipt of an appeal publish a notice on the Tribunal website and in any other manner the President may direct.

(2) The notice referred to in paragraph (1) above must state —

- (a) that an appeal has been received;
- (b) the name of the appellant;
- (c) the disputed judgement to which the appeal relates and the person by whom it was made;
- (d) the particulars of the relief sought by the appellant;
- (e) a summary of the principal grounds relied on; and
- (f) a statement indicating that any person who considers that he has sufficient interest may apply to intervene in the proceedings, in accordance

with Rule 32, within 21 days of publication of the notice or such other period as the President may direct.

15. (1) Subject to paragraph (2) a party may give notice of the withdrawal of its case or any part of it —

Withdrawal of the appeal to the Tribunal.

- (a) at any time before a hearing to consider the disposal of the proceedings (or if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or
- (b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal except in relation to an application for permission to appeal. In giving its consent to the withdrawal, the Tribunal may make such order for costs as shall be fair and just in the circumstances.

(3) An application under paragraph (3) must be made in writing and be received by the Tribunal within one month after —

- (a) the date on which the Tribunal received the notice under paragraph (1)(a); or
- (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

(4) The Tribunal must notify each party in writing of a withdrawal under this rule.

PART IV-PROCEEDINGS BEFORE THE TRIBUNAL

16. As soon as practicable, the Tribunal shall —

Timetable for the oral hearing.

- (a) set a timetable outlining the steps to be taken by the parties pursuant to the directions of the Tribunal in preparation for the oral hearing of the proceedings;
- (b) fix the date for the oral hearing;
- (c) notify the parties in writing of the date and place for the oral hearing and of any timetable for that hearing; and

- (d) if it considers it necessary for the expeditious disposal of the proceedings, send the parties a report for the hearing summarising the factual context of the case and the parties' principal submissions.

Premises for
Tribunal hearing.

17. (1) The hearing of any appeal, review or claim for damages by the Tribunal shall be held at Suite No. One, British Colonial Hilton Nassau, No. One Bay Street, Nassau, The Bahamas, or at such other place as prescribed by notice by the Tribunal.

(2) Notwithstanding subsection (1), the Tribunal may determine that any appeal, review or claim for damages shall not be held in public where the Tribunal finds the need to exclude, so far as practicable —

- (a) information the disclosure of which would in its opinion be contrary to the public interest;
- (b) commercial information the disclosure of which would or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates;
- (c) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.

Procedure at the
hearing.

18. (1) The proceedings shall be opened and directed by the President, who shall be responsible for the proper conduct of the hearing.

(2) The Tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just, expeditious and economical handling of the proceedings.

(3) Unless the Tribunal otherwise directs, no witness of fact or expert shall be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Tribunal.

(4) The Tribunal may limit cross-examination of witnesses to any extent or in any manner it deems appropriate.

19. (1) A request for the confidential treatment of any document or part of a document filed in connection with proceedings before the Tribunal shall be made in writing by the person who submitted the document at the latest within 14 days after filing the document indicating the relevant words, figures or passages for which confidentiality is claimed and supported in each case by specific reasons and, if so directed by the Registrar, the person making the request must supply a non-confidential version of the relevant document.

Requests for confidential treatment.

(2) No request for confidential treatment made in disregard of this Rule or outside the period provided under paragraph (1) shall be permitted unless the Tribunal considers that the circumstances are exceptional.

(3) In the event of a dispute as to whether confidential treatment should be accorded, the Tribunal shall decide the matter after hearing the parties, taking into account the matters referred to in rule 18.

20. (1) The Tribunal may, *inter alia*, give directions —

Directions of the Tribunal.

- (a) on the application of one or more of the parties or in its own initiative;
- (b) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of oral hearings;
- (c) requiring persons to attend and give evidence or to produce documents;
- (d) as to the examination and cross-examination of witnesses;
- (e) for the disclosure between, or the production by, the parties of documents or classes of documents;
- (f) for the appointment and instruction of experts, whether by the Tribunal or by the parties and the manner in which expert evidence is to be given;
- (g) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Tribunal;
- (h) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person.

(2) An application for a direction may be made —

- (a) by sending or delivering a written application to the Tribunal; or
- (b) orally during a hearing.

(3) An application for a direction must include the reason for making that application.

(4) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction.

(5) If a party or any other person affected by a direction wishes to challenge that direction, he may do so by applying for another direction which amends, suspends or sets it aside.

Failure to comply with Rules or directions of the Tribunal.

21. (1) An irregularity resulting from a failure to comply with any provision of these Rules or directions of the Tribunal does not of itself render void the proceedings or any step taken in the proceedings.

- (2) The Tribunal may give a direction —
 - (a) waiving any requirement that has not been complied with;
 - (b) requiring the failure to be remedied;
 - (c) exercising its power to strike out the case of the party who has failed to comply or to remedy that failure;
 - (d) barring or restricting a party's participation in the proceedings.

(3) If any party fails to comply with any direction given in accordance with these Rules, the Tribunal may, if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings without the permission of the Tribunal.

Striking out a party's case.

22. (1) The Tribunal must strike out the whole or part of the proceedings if the Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

(2) The Tribunal may strike out the whole or part of the proceedings if —

- (a) a party has failed to comply with a direction which stated that failure to comply with the

direction could lead to the striking out of the proceedings or part of them;

- (b) the party has failed to cooperate with the Tribunal to such an extent that the Tribunal concludes that it cannot fairly or justly proceed any further with the proceedings; or
- (c) the Tribunal considers that there is no reasonable prospect of the party's case, or part of it, succeeding.

(3) If the proceedings, or part of them, have been struck out under paragraph (2), the party affected by that striking out may within 28 days after the date on which the Tribunal notified the party of the striking out, apply for the proceedings, or any part of them, to be reinstated.

23. (1) The Tribunal may give a direction substituting or removing a party if —

- (a) the wrong person has been named as a party; or
- (b) the substitution has become necessary or desirable because of a change in circumstances since the start of the proceedings.

Substitution and addition of parties.

(2) The Tribunal may give a direction adding a person to the proceedings as an interested party or a respondent.

(3) If the Tribunal gives a direction under paragraphs (1) or (2) it may give such consequential directions as it considers appropriate.

(4) Any person who is not a party to proceedings before the Tribunal may apply to the Tribunal to be added or substituted as a party or an interested party under paragraph (1) or (2).

24. (1) The address for service of documents on the Tribunal (referred to in these Rules as “the Tribunal address for service”) is P. O. Box N 7148, Suite No. One, British Colonial Hilton Nassau, No. One Bay Street, Nassau, The Bahamas.

Service and delivery of documents on the Tribunal.

(2) Any document to be provided to the Tribunal under these Rules, a judgement, order or direction of the Tribunal must be —

- (a) sent by pre-paid post or delivered by hand to the Tribunal's address for service; or

(b) sent or delivered by any other method as the Tribunal may permit or direct.

(3) If a party informs the Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party, that form of communication must not be so used.

(4) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(5) If the Tribunal or a party sends a document to a party or to the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(6) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

Calculating time.

25. (1) Any act required by these Rules, a direction of the Tribunal to be done on or by a particular day must be done by five o'clock in the afternoon on that day.

(2) If the time specified by these Rules, a direction of the Tribunal for doing any act ends on a day other than a working day, that act is done in time if it is done on the next working day.

Representation of parties in proceedings before the Tribunal.

26. (1) If a party appoints a representative to represent that party in the proceedings, the party must send or deliver to the Tribunal, and to each other party, written notice of the representative's name and address and fax number, email address or other details for the electronic transmission of documents to the representative where available.

(2) Anything permitted or required to be done under these Rules, a direction of the Tribunal may be done by the representative of that party, except signing a witness statement.

(3) A person who receives due notice from another party that the other party has appointed a representative —

- (a) must provide to the representative any document which is required to be provided to the represented party, and unless required by the Tribunal to do so, need not provide that document to the represented party; and
- (b) may assume that the representative is and remains authorised as such until they receive written notice to the contrary from the representative or the represented party.

(4) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (1) and that person may, with the permission of the Tribunal, act as representative or otherwise assist in presenting the party's case at the hearing.

27. (1) On the application of either party or on its own initiative, the Tribunal may —

Powers of the
Tribunal at
proceedings.

- (a) by summons require any person to attend as a witness before the Tribunal, at the time and place specified in the summons; or
- (b) order any person to answer any questions or produce any documents or other material in that person's possession or control which relate to any issue in the proceedings.

(2) A summons under paragraph (1)(a) must —

- (a) give the person required to attend at least 14 days' notice of the hearing or such shorter period as the Tribunal may direct; and
- (b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.

(3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce in a trial of an action in a court of law in The Bahamas.

(4) A summons or order under this Rule must —

- (a) state the name of the person on whom the requirement is imposed and expressly provide that such person may apply to the Tribunal to

vary or set aside the summons or order if he has not had an opportunity to object to it; and

- (b) state the consequences of failure to comply with the summons or order.

Evidence and submissions.

28. (1) The Tribunal may give directions as to —

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (c) whether the parties are permitted or required to provide expert evidence, and if so, whether the parties must jointly appoint a single expert to provide such evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which evidence or submissions are to be provided, which may include a direction for them to be given —
- (i) orally at a hearing; or
- (ii) by written submissions or witness statements; and
- (f) the time by which any evidence or submissions are to be provided.
- (2) The Tribunal may —
- (a) admit evidence whether or not —
- (i) that evidence would be admissible in a civil trial in The Bahamas; or
- (ii) the evidence was available to a previous judgement maker; or
- (b) exclude evidence that would otherwise be admissible where —
- (i) the evidence was not provided within the time allowed by a direction of the Tribunal;
- (ii) the evidence was otherwise provided in a manner that did not comply with a direction of the Tribunal; or
- (iii) it would be unfair to admit the evidence.

(3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath or affirmation and may administer an oath for that purpose.

29. (1) Any irregularity resulting from failure to comply with any provision of these Rules before the Tribunal has reached its judgement shall not of itself render the proceedings void. Irregularities.

(2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and must if it considers any person may have been prejudiced by the irregularity, give such directions as it thinks just, to cure or waive the irregularity before reaching its judgement.

(3) Clerical mistakes in any document recording a judgement, order or direction of the Tribunal, the President, a chairman or the Registrar, or errors arising in such a document from an accidental slip or omission, may be corrected by the President or the Registrar, as the case may be, by certificate under his hand.

30. (1) The Tribunal may, after giving the parties an opportunity to be heard, reject an appeal in whole or in part at any stage in the proceedings if — Power of Tribunal to reject part or whole of appeal.

- (a) it considers that the notice of appeal discloses no valid ground of appeal;
- (b) it considers that the appellant does not have (or represent those who have) a sufficient interest in the judgement in respect of which the appeal is made;
- (c) it is satisfied that the appellant has habitually and persistently and without any reasonable ground —
 - (i) instituted vexatious proceedings, whether against the same person or different persons; or
 - (ii) made vexatious applications in any proceedings; or
- (d) the appellant fails to comply with any rule, judgement, order or direction of the Tribunal.

(2) When the Tribunal rejects an appeal it may make any consequential order it considers appropriate.

31. (1) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, Case management powers.

including a direction amending, suspending or setting aside an earlier direction.

(2) In particular, and without restricting the general powers in paragraph (2), the Tribunal may —

- (a) extend or shorten the time for complying with any rule, judgement, order or direction of the Tribunal, unless such extension or shortening would conflict with a provision of any other law containing a time limit;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues or stemming from the same facts or circumstances;
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) stay proceedings; and
- (j) suspend the effect of its own judgement or order pending determination by the court of an application for permission to appeal against, and any appeal or review of that judgement or order.

PART V-INTERVENTION, CONSOLIDATION AND FORUM

Intervention.

32. (1) Any person who considers he has sufficient interest in the outcome may make a request to the Tribunal for permission to intervene as an interested party in the proceedings.

(2) The request must be sent to the Registrar within the period referred to in rule 14(2)(f).

(3) The Registrar shall give notice of the request for permission to intervene as an interested party to all the

other parties to the proceedings and invite their observations on that request within a specified period.

(4) A request for permission to intervene as an interested party must state —

- (a) the title of the proceedings to which that request relates;
- (b) the name and address of the person wishing to intervene as an interested party;
- (c) the name and address of his legal representative, if appropriate;
- (d) an address for service in The Bahamas.

(5) The request must contain —

- (a) a concise statement of the matters in issue in the proceedings which affect the person making the request;
- (b) the name of any party whose position the person making the request intends to support; and
- (c) a succinct presentation of the reasons for making the request.

(6) If the Tribunal is satisfied, it may permit an intervention on such terms and conditions as it thinks fit, having taken into account the observations of the parties and that the interested party has a sufficient interest.

(7) On granting permission in accordance with paragraph (6), the Tribunal shall give all such consequential directions as it considers necessary with regard, in particular, to the service on the interested party of the documents lodged with the Registrar, the submission by the intervener of a statement of intervention and, if appropriate, the submission by the principal parties of a response to the statement of intervention.

(8) The statement of intervention and any response to it shall contain —

- (a) a succinct presentation of the facts and arguments supporting the intervention;
- (b) the relief sought by the intervener;
- (c) a schedule listing all of the documents annexed to the intervention and, as far as possible, a copy of every document on which the intervener relies,

including the written statements of witnesses of fact or expert witnesses, if any.

Consolidation.

33. (1) Where two or more proceedings are pending in respect of the same judgement, or which involve the same or similar issues, the Tribunal may, on the request of a party or of its own initiative, order that the proceedings or any particular issue or matter raised in the proceedings be consolidated or heard together.

(2) Before making an order under this Rule, the Tribunal shall invite the parties to the relevant proceedings to submit their observations.

Forum.

34. (1) The Tribunal may hold any meeting, case management conference, prehearing review or hearing, or give any directions, in such place and in such manner as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.

(2) The Tribunal may have regard to all matters which appear to it to be relevant and in particular, where —

- (a) any individual party to the proceedings is habitually resident or has his head office or principal place of business;
- (b) the majority of the parties are habitually resident or have their head offices or principal places of business;
- (c) any agreement, judgement or concerted practice to which the proceedings relate was made or implemented or intended to be implemented;
- (d) any conduct to which the proceedings relate took place.

(3) Without prejudice to paragraph (2), in making a determination for the purposes of a claim for damages under section 9(2) of the Act, the Tribunal may —

- (a) have regard to the law which is applicable to the claim;
- (b) decide that one or more of the claims is to be treated as included in separate proceedings; and
- (c) summary judgement.

35. (1) Where it appears to the Tribunal that any proceedings would be facilitated by holding a case management conference or pre-hearing review, the Tribunal may, on the request of a party or on its own initiative, give directions for such a conference or review to be held.

Case
Management
Conference and
Pre-hearing
Review.

(2) Unless the Tribunal otherwise directs, a case management conference shall be held as soon as practicable after the filing of an appeal, whether or not the time for service of the defence has expired.

(3) A case management conference or pre-hearing review shall be held in private unless the Tribunal otherwise directs.

(4) The purpose of a case management conference or pre-hearing review shall be —

- (a) to ensure the efficient conduct of the proceedings;
- (b) to determine the points on which the parties must present further argument or which call for further evidence to be produced;
- (c) to clarify the forms of order sought by the parties, their arguments of fact and law and the points at issue between them;
- (d) to ensure that all agreements that can be reached between the parties about the matters in issue and the conduct of the proceedings are made and recorded;
- (e) to facilitate the settlement of the proceedings.

(5) The Tribunal may authorise a person qualified for appointment to the Panel to carry out on its behalf, a case management conference, prehearing review or any other preparatory measures relating to the organisation or disposal of the proceedings.

PART VI-JUDGEMENTS AND SUPPLEMENTAL PROVISIONS

36. (1) A “payment to settle” is an offer made by way of payment into the Tribunal in such manner as may be prescribed by the Tribunal’s direction.

Offers and
payments to
settle.

(2) An “offer to settle” is an offer made by way of terms or conditions other than, or in addition to, payment of money.

(3) A payment to settle or offer to settle the whole or part of a claim may be made by a respondent once a claim for damages has been commenced.

(4) Notification of a payment to settle into the Tribunal or receipt of an offer to settle must be sent to the Registrar and to the party to whom the payment to settle or offer to settle is made.

(5) The notification specified in paragraph (4) must state precisely the basis on which the payment to settle has been calculated or set out in full, the terms of the offer to settle.

(6) A payment to settle or offer to settle may be withdrawn or reduced only with the permission of the Registrar.

(7) A payment to settle or offer to settle may be accepted any time up to 14 days before the substantive hearing of the claim.

(8) Where an appellant accepts a respondent’s payment to settle or offer to settle the whole or part of the proceedings, he shall be entitled to the costs of his proceedings to which the offer related, up to the date of serving the notice of acceptance, unless the Tribunal otherwise directs.

(9) Where following a substantive hearing an appellant fails to better a payment to settle or offer to settle, the Tribunal will order the appellant to pay the reasonable costs of the respondent incurred after the latest date that the appellant could have accepted the payment to settle or offer to settle, unless it considers it unjust to do so.

(10) The Tribunal may order the costs specified in paragraph (8), to carry interest from that date and to be paid on an indemnity basis.

(11) The fact that a payment to settle or offer to settle has been made shall not be communicated to the Panel until all questions of liability and the amount of money to be awarded have been agreed between the parties or determined by the Tribunal.

(12) A payment to settle or offer to settle under this rule will be treated as “without prejudice” except as to costs.

(13) This rule does not preclude either party from making a payment to settle or an offer to settle at any time or by any other means.

(14) In the event that, following a substantive hearing, an appellant recovers less than the amount offered by a respondent other than by way of a payment to settle, or secures terms less favourable than those set out in the offer to settle, the Tribunal may take that fact into account on the issue of costs.

37. (1) Any member of the Panel, party or third party representatives may attend hearings of the Tribunal remotely, using electronic communications, provided that they have notified the President in advance and in the case of any member of the Panel, the President has approved remote attendance.

Remote attendance.

(2) Unless the Tribunal otherwise directs, no expert evidence or witnesses may be heard unless the relevant expert report or witness statement has been submitted in advance to the Tribunal in accordance with any directions of the Tribunal.

38. (1) Subject to subsection (2), the Tribunal shall not be required to publish or otherwise divulge information that in its view would be commercially confidential.

Confidentiality.

(2) Nothing in these Rules shall limit the Tribunal’s duty to provide information to a court.

39. (1) The Tribunal may give a judgement orally at a hearing.

Delivery of the judgement.

(2) The Tribunal must as soon as practicable after making a judgement which finally disposes of all issues in the proceedings, send to each party —

- (a) a judgement notice stating the Tribunal’s judgement;
- (b) written reasons for the judgement; and
- (c) notification of any right of appeal against the judgement and the time within which, and the manner in which, any right of appeal may be exercised.

Costs.

40. (1) For the purposes of these Rules “costs” means costs and expenses recoverable before the Supreme Court.

(2) The Tribunal may at its discretion, subject to paragraph (3), at any stage of the proceedings make any order it thinks fit in relation to the payment of costs by one party to another in respect of the whole or part of the proceedings and in determining how much the party is required to pay, the Tribunal may take account of the conduct of all parties in relation to the proceedings.

(3) Any party against whom an order for costs is made shall, if the Tribunal so directs, pay to any other party a lump sum by way of costs, or all or such proportion of the costs as may be just.

(4) The Tribunal may assess the sum to be paid pursuant to any order under paragraph (1), (2) or (3) or may direct that it be assessed by the President or the Registrar, or dealt with by the detailed assessment of a taxing Master of the Supreme Court.

(5) Unless the Tribunal otherwise directs, an order made pursuant to paragraphs (1) and (2) may be made in the judgement, if the parties so consent, or immediately following delivery of the judgement.

(6) The power to award costs pursuant to paragraphs (1) to (3) includes the power to direct any party to pay to the Tribunal such sum as may be appropriate in reimbursement of any costs incurred by the Tribunal in connection with the summoning or citation of witnesses or the instruction of experts on the Tribunal’s behalf.

(7) Any sum due as a result of such a direction may be recovered by the Tribunal as a civil debt due to the Tribunal.

Interest.

41. (1) If it imposes, confirms or varies any penalty under the Act, the Tribunal may, in addition, order that interest is to be payable on the amount of any such penalty from such date, not being a date earlier than the date upon which the application was made in accordance with Rule 9, and at such rate, as the Tribunal considers appropriate.

(2) Unless the Tribunal otherwise directs, the rate of interest shall not exceed the rate specified in any Order made pursuant to the Civil Procedure (Award of Interest) Act.

Ch. 80.

(3) The interest is to form part of the penalty and be recoverable as a civil debt.

(4) If it makes an award of damages the Tribunal may include in any sum awarded interest on all or any part of the damages in respect of which the award is made, for all or any part of the period between the date when the cause of action arose and —

- (a) in the case of any sum paid before the judgement making the award, the date of the payment; and
- (b) in the case of the sum awarded, the date of that judgement.

(5) Unless the Tribunal otherwise directs, the rate of interest shall not exceed the rate specified in any Order made pursuant to the Civil Procedure (Award of Interest) Act. Ch. 80.

42. (1) If all the parties agree the terms on which to settle all or any part of the proceedings, they may request the Tribunal to make a consent order. Consent orders.

(2) A request for a consent order shall be made by sending to the Registrar —

- (a) a draft consent order;
- (b) a consent order impact statement; and
- (c) a statement signed by all the parties to the proceedings or their legal representatives requesting that an order be made in the form of the draft.

(3) A consent order impact statement shall provide an explanation of the draft consent order, including an explanation of the circumstances giving rise to the draft order, the relief to be obtained if the order is made and the anticipated effects on competition of that relief.

(4) If the Tribunal considers that a proposed consent order may have a significant effect on competition, it shall direct the Registrar as soon as practicable following receipt of the application to publish a notice on the Tribunal website or in such other manner as the Tribunal may direct.

(5) The notice referred to in paragraph (4) shall state —

- (a) that a request for a consent order has been received;

- (b) the name of each of the parties to the proceedings;
- (c) the particulars of the relief sought by those parties; and
- (d) that the draft consent order and consent order impact statement may be inspected at the Tribunal address for service or such other place as may be mentioned in the notice and shall so far as practicable exclude any information of the kind referred to in rule 17.

(6) Any person may send his comments upon a request for a consent order to the Registrar within one month of the date upon which the notice was published in accordance with paragraph (4).

(7) Comments supplied in accordance with paragraph (6) shall be in writing, signed by the commentator and shall state the title of the proceedings to which the comments relate and the name and address of the commentator.

(8) The Registrar shall send all comments received in accordance with paragraph (6) to all parties to the proceedings.

(9) Any party to the proceedings may within 14 days of receipt of the comments send a response to the comments to the Registrar.

(10) In respect of any request for a consent order the Tribunal may, as it thinks fit, after hearing the parties and considering the comments of third parties —

- (a) make the order in the terms requested; or
- (b) invite the parties to vary the terms; or
- (c) refuse to make any order.

(11) This Rule does not apply to claims for damages.

43. Subject to rule 38, the Tribunal shall publish its Rules and judgements on its website and in any other form and location approved by the President as soon as practical after they are issued and take steps to ensure that the website is regularly updated and remains available to the public.

44. The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a

Publication of judgements of the Tribunal.

Clerical mistakes and accidental slips or omissions.

judgement, order or direction or any document produced by it, by —

- (a) sending notification of the amended judgement, order or direction or a copy of the amended document to each party and to any interested party; and
- (b) making any necessary amendment to any information published in relation to the judgement, order, direction or document.

45. (1) The Tribunal may set aside a judgement which disposes of proceedings, or part of such a judgement, and remake the judgement or the relevant part of it if —

Setting aside a judgement which disposes of proceedings.

- (a) the Tribunal considers it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are —

- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by a party or a party's representative;
- (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
- (c) a party or a party's representative was not present at a hearing related to the proceedings; or
- (d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a judgement, or part of a judgement, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 21 days after the date on which the Tribunal sent notice of the judgement to the party.

46. (1) The Tribunal may make an order on an interim basis —

Power to make interim orders and to take interim measures.

- (a) suspending in whole or part the effect of any judgement which is the subject matter of proceedings before it;
- (b) granting any remedy which the Tribunal would have the power to grant in its final judgement.

(2) Without prejudice to the generality of the foregoing, if the Tribunal considers that it is necessary as a matter of urgency for the purpose of —

- (a) preventing serious, irreparable damage to a particular person or category of persons; or
- (b) protecting the public interest,

the Tribunal may give such directions as it considers appropriate for that purpose.

(3) The Tribunal shall exercise its power under this Rule, taking into account all the relevant circumstances, including —

- (a) the urgency of the matter;
- (b) the effect on the party making the request, if the relief sought is not granted; and
- (c) the effect on competition if the relief is granted.

(4) Any interim order or direction shall be —

- (a) limited in time to such reasonable period of time as the Tribunal may expect to require to complete its proceedings; and
- (b) shall only address those actions or omissions that are likely to result in serious and irreparable damage.

(5) Any interim order or other direction under this Rule is subject to the Tribunal's further order or other direction.

(6) A party shall apply for an order or a direction under paragraphs (1) and (2) by sending a request for interim relief in the form required by paragraph (7) to the Registrar.

(7) The request for interim relief shall state —

- (a) the subject matter of the proceedings;
- (b) in the case of a request for a direction pursuant to paragraph (2), the circumstances giving rise to the urgency;
- (c) the factual and legal grounds establishing a *prima facie* case for the granting of interim relief by the Tribunal;
- (d) the relief sought.

(8) On receiving a request for interim relief the Registrar shall send a copy to all the other parties to the proceedings and shall inform them of the date by which they may submit written or oral observations to the Tribunal.

(9) The Tribunal shall fix a date for the hearing of the request for interim relief and give the parties any directions as may be necessary for disposing of the request for interim relief.

(10) Subject to paragraph (11), an order or direction for interim relief may be made against a person who is not a party to the proceedings, provided that no such order may be made unless that person has been given an opportunity to be heard.

(11) If the urgency of the case so requires, the Tribunal may dispense with a written request for interim relief or grant the request for interim relief before the observations of the other parties have been submitted.

(12) Unless the context otherwise requires, these Rules apply to requests for interim relief.

47. Except as is otherwise provided, the Tribunal fees set out in the Schedule shall be charged in respect of the matters to which they are respectively assigned and shall be collected and received by impressed stamps.

Tribunal fees.
Schedule.

SCHEDULE (Rule 47)**TRIBUNAL FEES**

(1) On a regulated sector filing a Notice of Appeal, entering the appeal for hearing and on judgement thereunder, an inclusive fee of	\$400.00
(2) On a regulated sector filing a respondent's notice of intention to contend the decision referred to in Item 1 hereof	\$240.00
(3) On a regulated sector filing a notice of appeal against an interlocutory order or decision, entering the appeal for hearing and on judgement thereunder, an inclusive fee of	\$200.00
(4) On a regulated sector making any application not otherwise specifically provided for, and for filing judgement or order thereunder, an inclusive fee of	\$200.00
(5) On a regulated sector filing a bond to secure costs of appeal	\$100.00
(6) On a regulated sector filing a Notice of Change of Attorney	\$100.00
(7) On a regulated sector filing a Notice of Withdrawal	\$100.00
(8) On a regulated sector filing a Notice of Abandonment	\$100.00
(9) On a regulated sector filing an Affidavit	\$100.00
(10) On a regulated sector filing a bond where the appeal is to the Court of Appeal	\$100.00
(11) On a regulated sector filing an order for leave to appeal to the Court of Appeal	\$100.00
(12) For an appointment to settle the record on an appeal to the Court of Appeal	\$100.00
(13) On a regulated sector sealing record on appeal to the Court of Appeal	\$100.00
(14) On a regulated sector filing a document or exhibit for which no special fee is prescribed	\$100.00
(15) On a regulated sector filing a bill of costs for taxation (including certificate)	\$100.00
(16) On certifying a document	\$100.00
(17) If in a foreign language, the actual cost of making and examining the copy, and, in addition for making and sealing the copy	\$200.00

(18) For an office copy of a plan, map, section, drawing, photograph or diagram, the actual cost of making and examining the copy, and, in addition for marking and sealing the copy as an office copy	\$50.00
(19) On sealing a Writ of Subpoena not exceeding three persons	\$50.00
(20) For a certificate of the President for which no special fee is prescribed	\$50.00
(21) On a regulated sector obtaining an appointment for examination of a witness before a panel of the Tribunal	\$50.00
(22) In respect of every witness examined by any panel of the Tribunal for each hour or part of an hour	\$100.00
(23) For an examination of witness away from the physical precinct of the Tribunal-the reasonable travelling and other expenses in addition to the fee chargeable under item 21	\$200.00
(24) For making a file search	\$100.00
(25) (a) For an office copy of any document filed in the Tribunal's Registry per folio of 100 words, for the first folio	\$2.00
(25) (b) For every other folio or part thereof in addition to the fee chargeable under item 25(a)	\$1.00
(26) For an office copy of any document to be included in the record including the President's notes or evidence for each folio	\$2.00