

THE FINANCIAL SERVICES COMMISSION ACT, 2017
THE FINANCIAL SERVICES COMMISSION (APPEAL TRIBUNAL)
RULES, 2017

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THE FINANCIAL SERVICES COMMISSION ACT

THE FINANCIAL SERVICES COMMISSION (APPEAL TRIBUNAL)

RULES, 2017

In exercise of the powers conferred upon the Financial Services Commission Appeal Tribunal by paragraph 16 of the Second Schedule to the *Financial Services Commission Act*, and of every other power hereunto enabling, the following Rules are made:—

Preliminary

- Citation. 1. These Rules may be cited as the Financial Services Commission (Appeal Tribunal) Rules, 2017.
- Interpretation. 2. In these Rules, unless the context otherwise requires—
“Appeal Tribunal” means the Financial Services Commission Appeal Tribunal established by section 19 of the Act;

“appellant” means any person who—

- (a) has been granted a right of appeal to the Appeal Tribunal under any relevant Act; and
- (b) has filed a notice of appeal;

“Chairman” means the Chairman of the Appeal Tribunal;

“Commission” means the Financial Services Commission established by section 3 of the Act;

“day” means a business day in Jamaica and excludes Saturdays, Sundays and public holidays;

“decision” includes action, ruling, direction, order or proposal;

“filing” means the effective delivery of a document to the Registrar and its receipt by the Registrar during the office hours of the Appeal Tribunal, as communicated from time to time;

“hearing” means the opportunity to present one’s case before the Appeal Tribunal;

“hearing panel” means the panel described in paragraph 4 of the Second Schedule to the Act;

“party” means—

- (a) the Commission;
- (b) a person appealing a decision of the Commission;
- (c) any person given party status by the Appeal Tribunal; or
- (d) a person specified as a party, by operation of law;

“public holiday” means a day declared to be a Public General Holiday under section 2 of the *Holidays (Public General) Act*;

“Registrar” means the person duly authorized to—

- (a) accept documents on behalf of the Appeal Tribunal or any member of the Appeal Tribunal; and
- (b) issue notices under the hand of the Chairman of the Appeal Tribunal;

“relevant provision” means a provision of—

- (a) the *Financial Services Commission Act*;
- (b) the *Insurance Act*;

- (c) the *Insurance Regulations, 2001*;
- (d) the *Pensions (Superannuation Funds and Retirement Schemes) Act*;
- (e) the *Securities Act*;
- (f) the *Unit Trust Act*; and
- (g) any other provision pursuant to which a person may appeal to the Appeal Tribunal, with respect to a decision of the Financial Services Commission;

“service” means the effective delivery of a document to—

- (a) a party; or
- (b) the authorized representative of that party.

Appeal Process

Appeals to
Tribunal.

3. A person who is granted the right of appeal under any relevant Act or any other enactment may appeal to the Appeal Tribunal in accordance with these Rules.

Filing notice
of appeal.

4. A person shall file a notice of appeal within thirty days of being notified of the decision; and failure by the person to comply with this requirement may result in the appeal not being heard by the Appeal Tribunal.

Contents of
notice of
appeal.

5. A notice of appeal shall include—

- (a) the name and address of the appellant;
- (b) particulars of the decision against which the appeal is being made;
- (c) the grounds of appeal;
- (d) copies of the relevant documents;
- (e) a statement whether the appellant intends to call witnesses; and
- (f) the relief or outcome that the appellant is seeking.

Notice of
appeal to be
signed and
addressed to
Chairman.

6. Every notice of appeal shall be signed by the appellant and shall be addressed to the Chairman.

Commission
to be served.

7. Copies of the notice of appeal and all relevant documents shall be served on the Commission, within the thirty day period prescribed in rule 4.

Filing and Service of Documents

Methods of
filing.

8. A document may be filed by—

- (a) hand delivery;

- (b) courier service;
- (c) prepaid registered post;
- (d) facsimile; or
- (e) any other means directed by the Appeal Tribunal.

Filing by
facsimile.

9. Where a filing is made by facsimile, the document shall include a cover page indicating—

- (a) the name, address and telecommunications number or numbers of the sender;
- (b) the name or office of the person with or on whom it is to be filed;
- (c) the date and time the document is transmitted;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telecommunications number or numbers of a person to contact if a problem arises with the transmission of the facsimile.

Delivery of
copies of
facsimile.

10. Where documents are filed by facsimile, the original and three copies of the documents shall be filed.

Service by
facsimile.

11. Where service is made by facsimile the document shall include a cover page indicating—

- (a) the name, address and telecommunications number of the sender;
- (b) the name or office of the person to be served;
- (c) the date and time the document is transmitted;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telecommunications numbers of a person with whom contact may be made if a problem arises with transmission of the facsimile.

Time of
delivery.

12. Where service is made by facsimile, a copy of the documents shall be delivered by twelve noon of the next day.

Filing
otherwise
than by
facsimile.

13. When filing a document, otherwise than by facsimile, a party shall provide the original and three copies of each document to the Appeal Tribunal.

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| Days and hours for filing. | 14. Filing of documents shall be done Mondays to Fridays, between the hours of 10:00 a.m. and 3:00 p.m. |
| Registrar to date stamp documents received. | 15. The Registrar shall date stamp all documents when they are received and a document is deemed to be filed as at that date. |
| Hours of service. | 16. Service of documents by one party on the other shall be made on any day between the hours of 10:00 a.m. and 3:00 p.m. |
| Methods of service. | 17. Service may be made by— <ul style="list-style-type: none">(a) personal service on a party or the party's authorized representative;(b) courier service;(c) prepaid registered post;(d) facsimile; or(e) any other means directed by the Appeal Tribunal. |
| Proof of service. | 18. Service may be proven by evidence of signed confirmation by the party or the party's authorized representative, inclusive of details in respect of the full name, date, time and method of service. |
| Affidavit of service. | 19. The Appeal Tribunal may direct a party who has served a document to file an affidavit of service that indicates how, when, where and on whom service was made. |

Computation of Time

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| How to compute time. | 20. In computing time for the purposes of these Rules, the following shall apply— <ul style="list-style-type: none">(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happened or on which the act or thing was done;(b) if the last day of the period is Saturday, Sunday or a public holiday (hereafter referred to as an "excluded day") the period shall include the next following day, not being an excluded day;(c) when any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day, not being an excluded day; and(d) where a document is filed or served after 3:00 p.m. or on an excluded day, the document shall be deemed to have been filed or served on the next following day that is not an excluded day. |
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Commission's Response to Notice of Appeal

Statement of
reasons for
decision.

21. The Commission shall, within twenty-one days of being served with a copy of the notice of appeal and accompanying documents pursuant to rule 7, file with the Appeal Tribunal and serve on the appellant a written statement of the reasons for the decision in respect of which the appeal is made and the reasons, if any, for controverting the contents of any documents served by the appellant.

Record of the Appellant

Copies of
appellant's
record to be
filed.

22. The appellant shall, within twenty-one days of receiving the Commission's reasons, file six copies of the appellant's record with the Appeal Tribunal and serve one copy on the Commission.

Contents of
appellant's
record.

23. The appellant's record shall include the following—

- (a) notice of appeal together with the accompanying documents filed with the Appeal Tribunal and served on the Commission;
- (b) supporting affidavits; and
- (c) written submissions.

Written
submissions
by the
appellant.

24. Written submissions shall include the following—

- (a) the facts or evidence on which the appellant intends to rely;
- (b) a statement of the points in issue;
- (c) the arguments in support of the appeal;
- (d) the relief being sought; and
- (e) copies of any legal authorities on which the appellant intends to rely.

Records of the Commission

Copies of
Commission's
record to be
filed.

25. The Commission shall, within twenty-one days of service of the Appellant's record, file six copies of the Commission's record with the Appeal Tribunal and serve one copy on the appellant.

Contents of
Commission's
record.

26. The record of the Commission shall include the following—

- (a) the Commission's response to the notice of appeal and all accompanying documents;
- (b) supporting affidavits; and
- (c) written submissions.

Written
submissions
by the
Commission.

27. Written submissions shall include the following—

- (a) the facts or evidence on which the Commission intends to rely;
- (b) a statement of the points in issue;
- (c) the arguments in response to the appeal;
- (d) the desired outcome of the appeal;
- (e) copies of any legal authorities on which the Commission intends to rely.

Parties to Proceedings

Declaration
that person is
a party.

28. The Appeal Tribunal may declare to be a party to any proceedings, a person who satisfies the Appeal Tribunal that that person has a substantial interest in the proceedings.

Parties may
appear, be
heard, etc.

29. A person who is declared to be a party of any proceedings pursuant to rule 28—

- (a) may appear and be heard in that proceeding; and
- (b) may, at the Appeal Tribunal's sole discretion, produce evidence and cross examine witnesses.

Interim Action by the Appeal Tribunal

Appeal
Tribunal may
require
further
information.

30. The Appeal Tribunal may require the appellant or the Commission to furnish, in writing, such other information as it may request, within such time as the Appeal Tribunal may specify.

Directions of
the Appeal
Tribunal.

31. The Appeal Tribunal may, of its own initiative or on the application of the appellant or the Commission, issue directions as to the procedure to be adopted in the conduct of the appeal; and the directions may include—

- (a) extending any time limit for making an appeal or carrying out any procedure pursuant to these Rules;
- (b) suspending the effect of any notice issued by the Commission pursuant to a relevant Act;
- (c) allowing the Commission or the appellant to provide further information or supplementary statements or to amend any document or response previously issued;
- (d) requiring any party to file a list of its proposed witnesses and the statements of any such witnesses;
- (e) providing for the manner in which evidence may be given; and
- (f) providing, where two or more appeals have been filed in respect

of the same matter and covering the same interests and issues, that the appeals be consolidated.

Application
for
directions.

32. Where a party applies to the Appeal Tribunal for the issue of directions pursuant to rule 31, that party shall at the same time serve a copy of the application on the other party, which latter party shall, if it wishes to contest the application, file a written response with the Appeal Tribunal (within seven days of receiving the copy of the application) and, at the same time, shall also serve a copy of that response on the applicant.

Interim
applications.

33. The Appeal Tribunal may determine any interim applications, by either party, on the basis of the written submissions or may, in addition, hear evidence from the parties and their respective witnesses.

Notification
of interim
hearing.

34. Where the Appeal Tribunal decides that an interim hearing should be held, the Chairman shall set a date, time and place for the hearing and the Registrar shall, by notice in writing, notify the parties accordingly.

Interim
hearings to
be held in
private.

35. Interim hearings shall be held in private, unless the Appeal Tribunal determines, on its own initiative or on the application of either party, that the hearing should be held in public.

Indexed
documents to
be filed.

36. Once the respondent to the interim application has been notified, at least three days before the hearing or at such time as may be directed by the Chairman, the Applicant shall file with the Appeal Tribunal, four sets of all relevant documents, duly indexed.

Withdrawal of Appeal

Discontinuation
by notice or
motion.

37. An appellant may withdraw a notice of appeal—

- (a) before the hearing, by filing a notice in writing with the Appeal Tribunal and serving same on the Commission and any other party; or
- (b) at the hearing, by way of motion with the consent of the Appeal Tribunal.

Timing of
motion.

38. A party may by motion seek to discontinue its participation in the proceeding at any time before a final decision.

Conditions
for discontinuance.

39. The Appeal Tribunal may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.

Conduct of Appeal

Date, place,
etc., of
hearing of
appeal.

40. The Chairman shall, after considering any relevant input by either party, set a time, date and place for the hearing of the appeal and the Registrar shall by notice in writing, at least twenty-one days before the hearing, notify the parties.

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| Filing documents relevant to appeal. | 41. Upon being notified of the date of hearing, the appellant shall file with the Appeal Tribunal, four sets of all documents relevant to the appeal, duly indexed, at least seven days before the date of hearing. |
| Co-opting experts. | 42. The Appeal Tribunal may co-opt to a panel such persons as, in its opinion, have the requisite expertise in any matter before that panel for the purpose of advising the panel on that matter. |
| Witnesses. | 43. The Appeal Tribunal shall have the power to summon and enforce the attendance of witnesses and to compel them to give evidence on oath or otherwise and to produce documents, records and things. |
| Evidence by affidavit. | 44. The Appeal Tribunal may require or permit persons to give evidence before itself by means of affidavit. |
| Representatives of appellant. | 45. An Appellant may be represented at a hearing by any person authorized in writing by him in that behalf. |
| Adducing new evidence. | 46. Where either party to the appeal intends to make an application to adduce new evidence at a hearing, that party shall disclose that evidence to the other party no later than fourteen days prior to the hearing. |
| Objection to adduced evidence. | 47. A party to whom evidence is disclosed under rule 46 may object to the new evidence being adduced by filing with the Appeal Tribunal and serving on the applicant, submissions in support of its objection, within seven days of the evidence having been disclosed to it. |
| Hearing of objections. | 48. Upon receipt of submissions under rule 47, the Appeal Tribunal shall conduct a hearing into the objection within a reasonable time and may make such orders as it deems fit. |
| Attendees at hearing. | 49. Where the Appeal Tribunal orders a hearing to be held in private, it may be attended only by the parties, their authorized representatives, and any other person allowed by the Appeal Tribunal. |
| Record of evidence. | 50. A record of the evidence given by each witness at a hearing shall be made and the Chairman of the panel shall—
<ul style="list-style-type: none">(a) sign that record;(b) mark, date and initial all documents produced at the hearing; and(c) attach such documents to the other papers pertaining to the appeal. |

Decisions of the Appeal Tribunal

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| Decisions of Appeal Tribunal to be in writing. | 51. Within a reasonable time of the hearing, the Appeal Tribunal shall give its decision in writing; and that decision may—
<ul style="list-style-type: none">(a) confirm;(b) vary; |
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(c) cancel; or

(d) reverse,

the Commission's action, decision, ruling, direction, order, proposal, or any part thereof, as the case may be.

Appeal
Tribunal to
copy its
decision to
the Com-
mission and
appellant.

52. The Appeal Tribunal shall forward a copy of its decision to the Commission and a copy to the appellant, together with a written statement of the reasons for its decision.

Orders as to Costs and Recovery of Costs

Costs.

53. The Appeal Tribunal may make such order as to costs with respect to the appeal, as it thinks fit, having regard to all the circumstances of the appeal.

Appeal
Tribunal may
order
payment of
costs.

54. The Appeal Tribunal may order that a party to a proceeding before it, pay—

(a) the costs of another party; and

(b) the Appeal Tribunal's costs of the proceeding.

Appeal
Tribunal's
costs.

55. The Appeal Tribunal's costs of a proceeding consist of the expenses, including costs of any investigation that the Appeal Tribunal and the Commission incur in connection with the proceeding.

Allotting
costs.

56. In deciding who should be liable to pay the costs of the appeal, the Appeal Tribunal shall have regard to—

(a) the outcome of the appeal; and

(b) the party whose admissions were upheld by the Appeal Tribunal;

(c) the conduct of the parties before and during the appeal;

(d) whether a party has been successful on particular issues, even if that party has not been successful in the whole of the proceedings of the appeal;

(e) any offer to settle the appeal made by a party, which is brought to the attention of the Appeal Tribunal;

(f) whether it was reasonable for a party to pursue a particular allegation or to raise a particular issue, or to do both;

(g) the manner in which a party has pursued that party's case, a particular allegation, or a particular issue.

Orders as to
payment of
costs.

57. The Appeal Tribunal may make an order for costs to be paid, wholly or partially, by a party's representative where it is of the view that those costs arose due to any improper, unreasonable or negligent act on the part of that representative or an employee of the representative, and which costs, in light

of any act or omission arising after they were incurred, are in the view of the Appeal Tribunal, unreasonable to expect that party to pay.

Quantum of costs.

58. In the absence of agreement as to costs, the successful party shall lay that party's bill of costs, calculated in accordance with the Schedule of Fees and rules as to cost of the Supreme Court; and the bill of costs shall be taxed by the Appeal Tribunal and the quantum of costs determined.

Costs recoverable in Parish Court.

59. Any costs ordered by the Appeal Tribunal to be paid to the Commission may be recovered in a Parish Court, by or on behalf of the Commission, as a civil debt due to the Crown and notwithstanding any limitation as to amounts recoverable under the *Judicature (Parish Courts) Act*.

General

Procedures to be determined by Appeal Tribunal.

60. Where, in any proceeding, a question of procedure arises to which these Rules do not provide an answer, or the answer they provide is incomplete, the question shall, subject to any relevant provision, be determined in such manner as the Appeal Tribunal directs.

Varying these Rules.

61. The Appeal Tribunal may, in the course of conducting its own proceedings, vary or supplement any of these Rules—

- (a) if it is fair and equitable to do so; or
- (b) in order to provide for a more expeditious or informal process,

as the circumstances and considerations of fairness permit.

Defects in form or technical irregularities.

62. No proceeding of the Appeal Tribunal is invalid by reason only of a defect in form or a technical irregularity.

Time limits may be extended or abridged.

63. Subject to any relevant provision, and if it is fair and equitable to do so, the Appeal Tribunal may extend or abridge any of the time limits fixed by these Rules or otherwise fixed by the Appeal Tribunal, either before or after the expiry of those time limits.

Dated this 19th day of April, 2017.

HONOURABLE MR. JUSTICE IAN FORTE, O.J., C.D., Q.C., J.P.
Chairman

Financial Services Commission Appeal Tribunal.

No. S/L/F 18-198

