



BERMUDA

CORPORATE SERVICE PROVIDER BUSINESS
APPEAL TRIBUNAL REGULATIONS 2013

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SCHEDULE

Documents to be Filed by Appellant

The Minister of Finance, in exercise of the power conferred by section 39(2) of the Corporate Service Provider Business Act 2012, makes the following Regulations:

Citation

1 These Regulations may be cited as the Corporate Service Provider Business Appeal Tribunal Regulations 2013.

Interpretation

2 In these Regulations, unless the context otherwise requires—

“the Act” means the Corporate Service Provider Business Act 2012;

“chairman” means the chairman of the Tribunal, and includes the deputy chairman when acting in the absence of the chairman;

“person concerned” means a controller or officer concerned in an appeal brought by an undertaking;

“secretary” means the secretary to the Tribunal;

“Tribunal” means the chairman and the two members selected from the panel by the chairman to hear the appeal;

“undertaking concerned” means an undertaking concerned in an appeal brought by a controller or officer.

Appointment of secretary

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 a notice of appeal with the secretary to the Tribunal, Ministry of Finance, Hamilton as follows—

(a) in the case of an appeal under section 36(1)(a) of the Act brought by an undertaking which is aggrieved by a decision of the Authority to restrict the undertaking’s licence, or to restrict it in a particular manner, or to vary any restrictions pursuant to section 14 of the Act, not later than 10 days from the date on which the undertaking received a decision notice given by the Authority pursuant to section 17 of the Act;

(b) in the case of an appeal under section 36(1)(b) of the Act brought by an undertaking which is aggrieved by a decision of the Authority to revoke its licence pursuant to section 15 of the Act, not later than 10 days from the date on which the undertaking received a decision notice given by the Authority pursuant to section 17 of the Act;

- (c) in the case of an appeal under section 36(1)(c) of the Act brought by an undertaking which is aggrieved by a decision of the Authority to refuse an application for a licence made by the undertaking pursuant to section 10 of the Act, not later than 10 days from the date on which the undertaking was notified by the Authority of its determination pursuant to section 11 of the Act;
- (d) in the case of an appeal under section 36(1)(d) of the Act brought by an undertaking which is aggrieved by a decision of the Authority to impose a civil penalty pursuant to section 27 of the Act for failure to comply with any requirement or contravention of any prohibition by or under the Act, not later than 28 days from the date on which the undertaking received a decision notice given by the Authority pursuant to section 28 of the Act;
- (e) in the case of an appeal under section 36(1)(e) of the Act brought by an undertaking which is aggrieved by a decision of the Authority to publish a public censure statement pursuant to section 29 of the Act that the undertaking has contravened a requirement imposed by or under the Act, not later than 28 days from the date on which the undertaking received a decision notice given by the Authority pursuant to section 30 of the Act;
- (f) in the case of an appeal under section 36(2)(a) of the Act brought by a controller or officer where the Authority, pursuant to section 17(2)(a) of the Act, imposed or varied a restriction or revoked the licence of an undertaking on the ground that it appeared to the Authority that the criterion in paragraph 1 of Schedule 1 is not or has not been fulfilled, or may no be or may not have been fulfilled in the case of the controller or officer, not later than 28 days from the date on which the controller or officer received a copy of the decision notice given by the Authority to the undertaking pursuant to section 17 of the Act;
- (g) in the case of an appeal under section 36(2)(b) of the Act brought by a controller or officer where, pursuant to section 14(2)(f) of the Act, the restriction of an undertaking's licence by the Authority consists of or includes a condition requiring the removal of the controller or officer, not later than 28 days from the date on which the controller or officer received a copy of the decision notice given by the Authority to the undertaking pursuant to section 17 of the Act;
- (h) in the case of an appeal under section 36(3) of the Act brought by a person who is—
 - (i) a shareholder controller or a majority shareholder controller served with a notice of objection by the Authority pursuant to section 23 of the Act; or
 - (ii) a controller of any description served with a notice of objection by the Authority pursuant to section 24 of the Act,
not later than 28 days from the date on which the person was served the notice of objection;

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- (i) in the case of an appeal under section 36(4) of the Act brought by an individual against whom the Authority has made a prohibition order pursuant to section 31 of the Act, not later than 28 days from the date on which the prohibition order takes effect;
- (j) in the case of an appeal under section 36(5) of the Act brought by an individual whose application to the Authority pursuant to section 31(6) of the Act to vary or revoke a prohibition order was refused, not later than 28 days from the date on which the individual received a decision notice given by the Authority pursuant to section 33(3) of the Act.

(2) When filing the notice of appeal, the appellant shall serve a copy of the notice on the Authority, and on any person concerned or any undertaking 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 street, postal and e-mail address, and the facsimile number of the appellant to which notices and other documents may be served; or where the appellant is a corporate body, the address of the body's registered office;
- (c) the street, postal and e-mail address, and the facsimile number, if different from that referred to in subparagraph (b), to which notices and other documents may be served on the appellant in Bermuda;
- (d) the name, street, postal and e-mail address, and the facsimile number of any person appointed by the appellant to represent him or it in connection with the appeal;
- (e) the name, street, postal and e-mail address, and the facsimile number of the secretary to the Board of Directors of the Authority; and
- (f) a statement on the decision of the Authority against which the appeal is being made.

Empanelling the Tribunal

6 Upon the filing of a notice of appeal, the secretary shall forward the notice to the Chairman who shall select the two other members from the panel to hear the appeal.

Grounds of appeal and supporting documents

7 (1) The appellant shall, within 14 days from the date of filing the notice of appeal, file with the secretary a notice setting out the grounds of the appeal.

(2) The notice of grounds of appeal shall contain—

- (a) sufficient particulars setting out the appellant's reasons for appealing against the decision of the Authority;

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- (b) in the case of an appeal brought by an undertaking under section 36(1) or (2) of the Act, the reasons that the decision of the Authority was unlawful or not justified by the evidence on which it was based.
- (3) The appellant shall, when filing the notice of grounds of appeal—
 - (a) serve a copy of the notice on the Authority, and on any person concerned or any undertaking concerned;
 - (b) file with the secretary the documents listed in the Schedule; and
 - (c) serve on the Authority and any person concerned or any undertaking concerned—
 - (i) a list of the documents filed with the secretary under subparagraph (b); or
 - (ii) a copy of the documents referred to in subparagraph (b) not in the possession of any person concerned or any undertaking concerned.

Supplementary grounds of appeal

8 (1) An appellant may omit from the notice of grounds of appeal any information which 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—

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

Amending grounds of appeal, or supplementary grounds of appeal

9 (1) An appellant may amend the grounds of appeal or supplementary grounds of appeal—

- (a) at any time before the hearing by filing with the secretary notice of the amendment;
- (b) during the preliminary hearing with the leave of the chairman;
- (c) at any time after the preliminary hearing with the leave of the Tribunal.

(2) Leave to amend under paragraph (1)(b) and (c) shall not be granted unless the Authority has been given an opportunity to make representations on the proposed amendment.

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

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(4) The Authority may file an amended response with the secretary where grounds of appeal have been amended, and shall at the same time, serve a copy of the amended response on the appellant and on any person concerned or any undertaking concerned.

Interim relief

10 (1) An appellant may, pursuant to section 36(6) of the Act, file an application with the secretary requesting the Tribunal to suspend operation of a direction or variation of a direction pending the determination of the appeal.

(2) The Tribunal may determine the application on the basis of written representations, if the parties agree in writing, or it may direct the parties to appear before it.

(3) The Tribunal shall notify the parties of its determination of the application, and shall give a statement of its reasons, and unless the Tribunal otherwise directs, the determination shall come into operation when the notice is served on the appellant and the Authority.

Authority as respondent

11 In every appeal the Authority is the respondent.

Filing of response by Authority

12 (1) Within 28 days of being served a copy of a notice of grounds of appeal, the Authority shall file with the secretary a response to the particulars set out in the notice.

(2) When filing a response, the Authority shall serve a copy of the response on the appellant, and on any person concerned or any undertaking concerned.

Amending response

13 (1) The Authority may amend its response—

- (a) at any time before the hearing by filing with the secretary notice of the amendment;
- (b) during the preliminary hearing with the leave of the chairman;
- (c) at any time after the preliminary hearing with the leave of the Tribunal.

(2) Leave to amend under paragraph (1)(b) and (c) shall not be granted unless the appellant has been given an opportunity to make representations on the proposed amendment.

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

(4) The appellant may file a notice of amended grounds of appeal with the secretary where a response has been amended, and shall at the same time, serve a copy of the notice on the Authority and on any person concerned or any undertaking concerned.

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Withdrawal of appeal or opposition

14 (1) An appellant may withdraw his appeal or the Authority may withdraw its opposition to an appeal—

- (a) at any time before any preliminary hearing or before the hearing by filing a notice with the secretary;
- (b) during any preliminary hearing by giving notice to the chairman; or
- (c) during or after the hearing by giving notice to the Tribunal.

(2) Where an appeal is withdrawn, the Tribunal may give directions as to the payment of costs or expenses by any party to the appeal, and shall bring the hearing to a close.

(3) Where an opposition is withdrawn, the Tribunal shall direct the Authority as it thinks fit, subject to section 38(2) of the Act; give directions as to the payment of costs or expenses by any party to the appeal, where it thinks fit; and bring the hearing to a close.

(4) Where an appeal is withdrawn, the appeal is deemed dismissed and the Tribunal shall formally notify each party.

Preliminary hearing

15 (1) A preliminary hearing may be held, and the chairman shall serve on the parties to an appeal any notice appointing the date, time and place of the preliminary hearing as follows—

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

(2) 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 to the appeal may seek clarification regarding the conduct of the appeal.

(3) The parties to the appeal may agree to the notice being served by the chairman at times other than those provided under paragraph (1); and may be held as a matter of urgency as directed by the chairman or as agreed to by the parties.

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

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

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(6) Notwithstanding that the preliminary hearing is in private, any person concerned or any undertaking concerned is entitled to appear in person at the preliminary hearing, or be represented by a barrister and attorney, or by any other person.

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

Procedure during hearing

16 (1) The hearing shall be in private.

(2) The parties to the appeal may appear and be heard in person 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) Notwithstanding that the hearing is in private, any person concerned or any undertaking concerned is entitled to appear at the hearing, or be represented by a barrister and attorney, or by any other person.

(5) Where the Tribunal requires any witness to give evidence, such evidence shall be given on oath or affirmation; and the chairman shall administer the oath or affirmation.

(6) Subject to regulation 17(2)(b) evidence may be admitted by the Tribunal whether or not it would be admissible in a court of law.

(7) If the parties fail to appear or be represented on the date, time and place appointed for the hearing, the Tribunal may proceed with the hearing or adjourn it to a later date.

(8) Where the Tribunal proceeds with the hearing pursuant to paragraph (7) it may take into consideration any written representations which may have been submitted by either party, whether the written representations were submitted in accordance with these Regulations or otherwise.

(9) 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.

Tribunal may require attendance and evidence

17 (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)—

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- (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) The Chairman may direct that a copy of any document obtained under this regulation be supplied to any party to the appeal if that party does not already have a copy of the document, and it shall be a condition of such supply that the document so supplied shall be used only for the purposes of the appeal.

(4) The chairman may set aside any direction or notice given under paragraph (1) on its own motion or 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.

Procedure after hearing

18 (1) The Tribunal shall, after the close of a hearing, notify the parties of its determination in accordance with section 38(3) of the Act.

(2) The Tribunal may arrange for the publication of its determination, 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.

Costs or expenses

19 (1) Any costs or expenses which the Tribunal directs to be paid and required to be taxed under these Regulations shall be taxed by the Registrar of the Supreme Court.

(2) A direction by the Tribunal in respect of the payment of costs or expenses shall, on application being made to the Supreme Court by the party to whom such 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 12, and the chairman may, after consulting with the other party, grant such extension; and the chairman may grant the extension on such terms, including terms as to costs or expenses, as he thinks fit.

(3) An application may be granted after the time specified in regulation 7, 8, or 12 has expired.

(4) The chairman may, after consulting with the parties, postpone the date appointed for any hearing, or alter the place appointed for any hearing.

(5) Where any hearing is postponed, or the place for any hearing is altered under paragraph (4), the secretary shall notify the parties to the appeal and any person concerned or any undertaking concerned, of the revised arrangement.

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 written 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 properly constituted.

Service of notices and other documents

23 (1) Any notice or other document to be filed or served on any person for the purposes of an appeal may be filed or served—

(a) by registered mail—

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

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

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

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

(b) by electronic means to the e-mail address or facsimile number provided in the notice of appeal.

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

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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 making 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 an undertaking under regulation 4(1)(a) or (b); and an appeal brought by a controller or officer under regulation 4(1)(f);
- (b) an appeal brought by an undertaking under regulation 4(1)(a); and an appeal brought by a controller or officer under regulation 4(1)(g);

(2) A direction shall not be given under paragraph (1) unless the parties to the appeal and the person concerned or the undertaking concerned has been given an opportunity to show cause as to why such a direction should not be given.

(3) Where appeals have been consolidated, the chairman shall consider whether any matters contained in any supplementary grounds of appeal or any amended supplementary grounds of appeal should be disclosed to the person concerned or the undertaking concerned, and may direct that such matters be disclosed accordingly.

(4) The chairman shall not direct that any supplementary grounds of appeal or any amended supplementary grounds of appeal be disclosed under paragraph (3) where—

- (a) all of the matters contained in any such supplementary or amended supplementary grounds of appeal have been disclosed to the person concerned or the undertaking concerned at the preliminary hearing; or
- (b) the appellant, when showing cause why a direction to consolidate should not be made, represented that it did not wish copies of such notices to be disclosed, and any person concerned or any undertaking concerned consented to the notices not being disclosed to him.

SCHEDULE

(regulation 7(3))

DOCUMENTS TO BE FILED BY APPELLANT

1 In the case of an appeal brought by an undertaking under regulation 4(1)(a), the appellant shall file with the secretary—

- (a) four copies of the warning notice issued to the undertaking by the Authority under section 17(1) of the Act;
- (b) four copies of any representations made by the undertaking to the Authority pursuant to section 17(3) of the Act; and
- (c) four copies of the decision notice issued to the undertaking by the Authority under section 17(4) of the Act.

2 In the case of an appeal brought by an undertaking under regulation 4(1)(b), the appellant shall file with the secretary—

- (a) four copies of the warning notice issued to the undertaking by the Authority under section 17(1) of the Act;
- (b) four copies of any representations made by the undertaking to the Authority under section 17(3) of the Act; and
- (c) four copies of the decision notice issued to the undertaking by the Authority under section 17(4) of the Act.

3 In the case of an appeal brought by an undertaking under regulation 4(1)(c), the appellant shall file with the secretary—

- (a) four copies of the undertaking's application for a licence made to the Authority under section 10(2) of the Act, and the accompanying documents; and
- (b) four copies of the Authority's refusal of the application under section 11(1) of the Act.

4 In the case of an appeal brought by an undertaking under regulation 4(1)(d), the appellant shall file with the secretary—

- (a) four copies of the warning notice issued to the undertaking by the Authority under section 28(1) of the Act; and
- (b) four copies of the decision notice issued to the undertaking by the Authority under section 28(2) of the Act.

5 In the case of an appeal brought by an undertaking under regulation 4(1)(e), the appellant shall file with the secretary—

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- (a) four copies of the warning notice issued to the undertaking by the Authority under section 30(1) of the Act; and
- (b) four copies of the decision notice issued to the undertaking by the Authority under section 30(2) of the Act.

6 In the case of an appeal brought by a controller or officer under regulation 4(1)(f), the appellant shall file with the secretary—

- (a) four copies of the warning notice issued to the undertaking and copied to the controller or officer under section 17(2) of the Act;
- (b) four copies of any representations made by the undertaking to the Authority under section 17(3) of the Act; and
- (c) four copies of the decision notice issued to the undertaking by the authority under section 17(4) of the Act.

7 In the case of an appeal by a controller or officer under regulation 4(1)(g), the appellant shall file with the secretary—

- (a) four copies of the warning notice issued to the undertaking and copied to the controller or officer under section 17(2) of the Act;
- (b) four copies of any representations made by the undertaking to the Authority under section 17(3) of the Act; and
- (c) four copies of the decision notice issued to the undertaking by the Authority under section 17(4) of the Act.

8 In the case of an appeal brought under regulation 4(1)(h) by a person who is a shareholder controller, a majority shareholder controller, or a controller of any description of a licensed undertaking, the appellant shall file with the secretary—

- (a) in the case of a person who is a shareholder controller or a majority shareholder controller of a licensed undertaking—
 - (i) four copies of the preliminary written notice issued to the person by the Authority under section 23(2) of the Act;
 - (ii) four copies of any written representations made by the person to the Authority under section 23(3) of the Act; and
 - (iii) four copies of the notice of objection issued to the person by the Authority under section 23(1) of the Act.
- (b) in the case of a person who is a controller of any description of a licensed undertaking—
 - (i) four copies of the preliminary written notice served on the person by the Authority under section 24(2) of the Act;

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- (ii) four copies of the written representations made by the person to the Authority under section 24(3) of the Act; and
- (iii) four copies of the written notice of objection served on the person by the Authority under section 24(1) of the Act.

9 In the case of an appeal brought by an individual under regulation 4(1)(i), the appellant shall file with the secretary—

- (a) four copies of the warning notice given to the individual by the Authority under section 32(1) of the Act;
- (b) four copies of the decision notice issued to the individual by the Authority under section 32(2) of the Act; and
- (c) four copies of the prohibition order made in respect of the individual by the Authority under section 31(2) of the Act.

10 In the case of an appeal brought by an individual under regulation 4(1)(j), the appellant shall file with the secretary—

- (a) four copies of the application made by the individual to the Authority under section 31(6) of the Act;
- (b) four copies of the decision notice issued to the individual by the Authority under section 33(3) of the Act; and
- (c) four copies of the prohibition order issued to the individual by the Authority under section 31(2) of the Act.

Made this 13th day of November 2013

Minister of Finance