

**PROCEEDS OF CRIME APPEAL TRIBUNAL REGULATIONS  
2009**

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**BR 52/2009**

**PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING AND ANTI-  
TERRORIST FINANCING SUPERVISION AND ENFORCEMENT)  
ACT 2008**

**2008: 49**

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In exercise of the powers conferred upon the Minister of Justice by section 27 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, the following Regulations are made—

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*[NB All references to “Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008” changed to “Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008” by 2010 : 50 effective 25 August 2010. Changes are not individually noted.]*

### **Citation**

1 These Regulations may be cited as the Proceeds of Crime Appeal Tribunal Regulations 2009.

### **Interpretation**

2 In these Regulations, unless the context otherwise requires —

"the Act" means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;

"appellant" means a person who under the Act is entitled to appeal or has appealed, as the case may be, to the tribunal against a decision of the BMA;

"chairman" means the chairman of the tribunal appointed under paragraph 1 of the Schedule to the Act, and includes the deputy chairman when acting in the absence of the chairman;

"panel" means the panel of members of the appeal tribunal appointed by the Minister under paragraph 1 of the Schedule to the Act;

"secretary" means the person appointed by the Minister to act as secretary to the tribunal;

"tribunal" means a tribunal established pursuant to regulation 5.

### **Time for and manner of bringing appeals**

3 An appeal may be brought by serving a notice of appeal on the secretary—

(a) in the case of an appeal against a decision of the BMA to cancel the registration of a non-licensed person under section 12 of the Act, not later than 10 days from the date on which the BMA gives notice in writing to the appellant of its decision; or

(b) in any other case, not later than 28 days from the date on which the BMA gives notice in writing to the appellant of its decision.

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**Notice of appeal**

4 (1) The notice of appeal must be signed by or on behalf of the appellant and contain the following particulars—

- (a) the appellant's name;
- (b) his address or, where the appellant is a company, the address of its registered office;
- (c) the address, if different from that referred to in subparagraph (b), to which applications, notices and other documents in connection with the appeal should be sent to the appellant within Bermuda;
- (d) the name and address of any person appointed by the appellant to represent him or it in connection with the appeal; and
- (e) a statement of the decision of the BMA against which the appeal is made.

(2) The appellant must, when serving notice of appeal on the secretary, also send a copy of the notice to the BMA.

**Establishment of the tribunal**

5 On receipt of a notice of appeal, the secretary must request the chairman to select from the panel the other two members of the tribunal to hear the appeal.

**Respondent**

6 On every appeal the BMA is to be the respondent.

**Grounds of appeal**

7 (1) The appellant must, within 14 days from the date of serving the notice of appeal, serve on the secretary a notice setting out the grounds of appeal.

(2) The grounds of appeal must contain sufficient particulars to show why the appellant considers the decision appealed against was unlawful or was not justified by the evidence on which it was based.

(3) The appellant must, when serving the grounds of appeal on the secretary, also serve a copy on the BMA.

**Supply of documents by the BMA**

8 (1) Within 14 days of receiving the copy of the notice of appeal under regulation 4, the BMA must send to the secretary four copies of the following documents—

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- (a) any notice given under section 13(1) or 22(1) of the Act (warning notices);
  - (b) any written representations; and
  - (c) any notice given under section 13(3) or 22(3) of the Act (decision notices).
- (2) The BMA must also give —
- (a) the appellant a list of those documents, and
  - (b) a copy of any of those documents which it has not already supplied to the appellant.

**Preliminary hearing**

9 (1) Subject to paragraph (2), the secretary shall serve on the appellant and the BMA, a notice informing them of the time and place of the preliminary hearing which, unless the appellant and the BMA otherwise agree, shall be—

- (a) not earlier than 5 days after the date on which the notice is served; and
- (b) not earlier than 21 days and not later than 35 days after the date of receipt by the secretary of the notice of appeal unless the chairman otherwise directs on the ground that he considers that the preliminary hearing should be held as a matter of urgency.

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

(3) The chairman shall give such directions as he considers necessary or desirable for the conduct of the appeal and shall fix the time and place of the hearing at the preliminary hearing.

**Amendment of grounds of appeal**

10 (1) An appellant may amend the grounds of appeal at any time before the preliminary hearing, and must immediately notify the BMA and the secretary by giving each of them a notice in writing of the amendment.

(2) An appellant may amend the grounds of appeal at any time during the course of the preliminary hearing, with leave of the chairman or at any time thereafter with leave of the tribunal.

(3) But the chairman or the tribunal shall not give leave unless he or it (as the case may be) has afforded the BMA an opportunity to make representations on the proposed amendment.

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(4) Leave may be granted on such terms (if any), including terms as to costs or expenses, as the chairman or the tribunal (as the case may be) thinks fit.

**Evidence and procedure**

11 (1) For the purposes of the appeal the chairman may, on the application of a party to the appeal or on his own motion, by direction given at the preliminary hearing or by notice in writing require the appellant, the BMA or any other person, at a time and place given in the direction or stated in the notice (as the case may be), to attend and give evidence or produce any document in that person's custody or under his control which relates to any matter in question at the hearing.

(2) But—

(a) no person other than the appellant or the BMA is to be required, in obedience to such direction or notice, to attend and give evidence or to produce any such document unless the necessary expenses of his attendance are paid or tendered to him;

(b) no person is to be compelled to give any evidence or produce any document which he could not be compelled to give or produce if the hearing were a proceeding in a court of law; and

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

(3) Except where the chairman otherwise directs, a witness is not obliged to attend and give evidence or produce any document in obedience to a direction or notice issued by the chairman unless that direction or notice has been served on him not less than 5 days before the day appointed for the hearing.

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

(5) The secretary shall supply a copy of any document obtained under this regulation to any party to the appeal if that party does not already have a copy of the document and it shall be a condition of such

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supply that the information so supplied shall be used only for the purposes of the appeal.

(6) The hearing shall be in private.

(7) At the hearing the appellant and the BMA shall each be entitled to make an opening statement, to call witnesses to give evidence, to cross examine witnesses called by the other party and to make a final statement.

(8) 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.

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

(10) If the appellant or the BMA fail to appear or be represented at the time and place fixed for the hearing, the tribunal may proceed with the hearing or adjourn it to a later date; and if it proceeds with the hearing, it shall take into consideration any written representations which may have been submitted by either party, whether in accordance with any provision contained in these Regulations or otherwise.

(11) 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 shall be required.

### **Membership of the tribunal**

12 Notwithstanding the provisions of regulation 5, an appeal may with the consent of 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 shall be deemed to be properly constituted.

### **Procedure after hearing**

13 (1) The tribunal shall, after the close of the hearing, notify its decision and its reasons in accordance with section 28(3) of the Act (which provides for the giving of notice of a tribunal's decision).

(2) The tribunal may, after hearing representations from the parties, make arrangements for the publication of its determination and its reasons, but in doing so must have regard to the desirability of safeguarding commercially sensitive information or information given to the appellant or the BMA in confidence and for that purpose may make any necessary amendments to the text of the decision to conceal the identity of the appellant or the source of any such information.

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**Withdrawal of appeal**

14 (1) The appellant may withdraw the appeal at any time before the hearing by giving notice in writing to the BMA and to the secretary.

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

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

(4) If an appeal is withdrawn, it shall be deemed to be dismissed and the tribunal shall accordingly formally notify each party.

**Costs**

15 (1) Any costs or expenses directed to be paid under section 29(1) of the Act (which provides that the tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal) and required to be taxed shall be taxed by the Registrar of the Supreme Court.

(2) A direction under section 29(1) of the Act in respect of the payment of costs by a party to the appeal shall, on application being made to the Supreme Court by the party to whom costs have been directed to be paid, be enforceable as if that party had obtained a judgment of that Court in his or its favour.

**Time and miscellaneous powers**

16 (1) Where the time prescribed by or under these Regulations for doing any act expires on a Saturday, Sunday or public holiday and by reason thereof the act cannot be done on that day, the act shall be in time if done on the next working day.

(2) The period of 14 days referred to in regulation 7 may be extended by the chairman on such terms (if any) as the chairman, after consulting the parties, thinks fit and any application for such extension may be granted although it is not made until after the expiration of the period.

(3) The chairman may, after consulting the parties—

(a) postpone the date fixed for the hearing of an appeal; or

(b) alter the place appointed for any hearing;

and, if he exercises either of the above powers, the secretary shall notify each party and any witnesses concerned.

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**Notices**

- 17 (1) For the purposes of section 36 of the Act (notices)—
- (a) the address of the appeal tribunal is as follows: Secretary of the Appeal Tribunal, Ministry of Justice, Global House, 43 Church Street, Hamilton HM12; and
  - (b) the address of the BMA is as follows: Secretary of the Board, Bermuda Monetary Authority, BMA House, 43 Victoria Street, Hamilton HM12.
- (2) Notices required to be given to, or served on, the appellant or his representative may be given to, or served on him in the manner provided by section 36 of the Act—
- (a) at the address provided in the notice of appeal in accordance with regulation 4(1), or
  - (b) such other address as may subsequently be notified to the tribunal and the BMA by the appellant.

**Irregularities**

- 18 (1) Any irregularity resulting from failure to comply with any provision of these Regulations before the tribunal has reached its decision shall not of itself render the proceedings void.
- (2) Where any such irregularity comes to the attention of the tribunal before it has reached its decision, the tribunal—
- (a) may, or
  - (b) if it considers that any person may have been prejudiced, must,
- take such steps as it thinks fit before reaching its decision 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.

Made this 14<sup>th</sup> day of August, 2009

Attorney-General and Minister of Justice

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*[Amended by:  
2010 : 50]*