



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 22 September 2006

No. 3705

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Government Notice

MINISTRY OF FINANCE

No. 160 2006

APPEAL REGULATIONS IN TERMS OF NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY ACT, 2001

The Minister of Finance, after consultation with the Namibia Financial Institutions Supervisory Authority, has under section 35 read with section 24 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001), made the regulations set out in the Schedule.

S. KUUGONGELWA-AMADHILA
MINISTER OF FINANCE

Windhoek, 8 September 2006

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, a word or expression defined in the Act has the same meaning, and -

“appeal” means an appeal made in terms of section 24(1) of the Act;

“appellant” means a person who makes an appeal;

“chairperson” means the chairperson of the board of appeal referred to in section 19(a) of the Act;

“document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book and information recorded or stored by means of any device;

“Ministry” means the Ministry responsible for the administration of finance;

“party” means -

- (a) the appellant;
- (b) the respondent; or
- (c) any other person who is or who becomes a party to an appeal;

“respondent” means the chief executive officer;

“secretary” in relation to the board of appeal, means the person designated or appointed as such in terms of regulation 2;

“the Act” means the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).

Secretary to the board of appeal

- 2. (1) The Minister must -
 - (a) after consultation with the board of appeal; and
 - (b) on terms and conditions as the Minister may determine,

designate a staff member of the Ministry or appoint any person as a secretary to perform the administrative functions relating to the board of appeal.

(2) The Permanent Secretary must make staff members of the Ministry available to assist the secretary in performing the administrative functions referred to in subregulation (1).

(3) The secretary must perform the administrative functions relating to the board of appeal at such times and places as the chairperson may determine.

Notice of appeal

3. (1) A person who wishes to appeal against a decision contemplated in section 24(1) of the Act must, within 14 days of receipt of notification of the decision, commence the appeal by filing a notice of appeal with the secretary.

- (2) The notice of appeal contemplated in subregulation (1) must -
 - (a) be in the form substantially corresponding with Form A;
 - (b) include a concise statement of points on which the appellant wishes to rely on; and

- (c) be accompanied by a fee of N\$1000.
- (3) The secretary must within five days of receipt of the notice of appeal -
 - (a) acknowledge receipt of the notice of appeal and issue an acknowledgement of receipt in a form determined by the chairperson; and
 - (b) deliver to the appellant a copy of the acknowledgement referred to in paragraph (a).
- (4) After delivering the acknowledgement of receipt the secretary must immediately forward a copy of the acknowledgement together with the notice of appeal to the chairperson.
- (5) On receipt of the notice of appeal and the acknowledgement, the chairperson must sign the notice of appeal.
- (6) After the chairperson has signed the notice of appeal, the secretary must immediately deliver the notice of appeal to -
 - (a) the appellant;
 - (b) the respondent; and
 - (c) any other party to the appeal.
- (7) A notice of appeal and all other documents relating to the appeal must be prepared in English.
- (8) An appeal does not suspend the operation of the decision appealed against, but a party may apply to the board of appeal to suspend the operation of the decision pending the finalisation of the appeal.
- (9) An application contemplated in subregulation (8) must be made in writing and be filed with the secretary.
- (10) On receipt of an application made in terms of subregulation (9) the secretary must immediately forward the application to the chairperson who must call a meeting of the board of appeal and the board of appeal must determine the application.
- (11) The secretary must deliver to all the parties the decision made in terms of subregulation (10).

Response to notice of appeal

- 4.** (1) On receipt of the notice of appeal in terms of regulation 3(6) the respondent must, in accordance with subregulation (2) or (3), respond to the notice of appeal.
- (2) If the respondent admits all the allegations contained in the notice of appeal the respondent must, within seven days of receiving the notice of appeal, file with the secretary a notice stating that the respondent admits all the allegations contained in the notice of appeal.
 - (3) If the respondent denies any allegation contained in the notice of appeal the respondent must, within seven days of receiving the notice of appeal, file with the

secretary a notice of the respondent's intention to oppose the appeal in the form substantially corresponding with Form B.

(4) The secretary must forward to the chairperson any response received in terms of subregulation (2) or (3).

(5) If the respondent has -

(a) responded in accordance with subregulation (2), the chairperson must call for a meeting of the board of appeal and the board of appeal may make a decision in terms of section 24(6) or (9) of the Act;

(b) responded in accordance with subregulation (3), the chairperson must proceed in terms of regulation 6; or

(c) failed to respond within the time stated in subregulation (2) or (3), the chairperson must, unless the respondent has applied for condonation in terms of regulation 14, call for a meeting of the board of appeal, and the board of appeal must, make a decision in terms of section 24(6) or (9) of the Act.

(6) The secretary must deliver to all the parties any notice received in terms of subregulation (2) or (3) or any decision made in terms of subregulation (5).

Intervention

5. (1) The board of appeal may at any time before the date of the hearing of an appeal -

(a) at its initiative; or

(b) on application by any person in accordance with subregulation (2),

allow any person who has an interest in the subject matter of the appeal to intervene as a party to the appeal.

(2) An application referred to in subregulation (1)(b) must -

(a) be made in the form substantially corresponding with Form C; and

(b) be filed with the secretary.

(3) On receipt of the application in terms of subregulation (2), the secretary must immediately forward the application to the chairperson.

(4) On receipt of the application in terms of subregulation (3), the chairperson must call a meeting of the board of appeal and the board of appeal must determine the application.

(5) The secretary must deliver to all the parties the decision made in terms of subregulation (1)(a) or (4).

Notice of hearing

6. (1) The chairperson must, in terms of section 24(2) of the Act, determine the date, place and time of the hearing of an appeal.

(2) After the chairperson has determined the date, and time and place of a hearing of an appeal the secretary must deliver to all the parties a notice of hearing in the form substantially corresponding with Form D.

Informal hearing

7. (1) At any time after the date of filing of the notice of appeal, but before the date of the hearing of an appeal, the chairperson may -

- (a) at the chairperson's initiative; or
- (b) on application by one of the parties,

call for an informal hearing for the purposes of -

- (i) obtaining admission of facts and limiting issues in dispute;
- (ii) obtaining agreement on the introduction of documents; or
- (ii) dealing with any other matters which may assist in the determination of the appeal.

(2) An application referred to in subregulation (1)(b) must be in writing and be filed with the secretary.

(3) The secretary must forward to the chairperson the application received in terms of subregulation (2), and the chairperson must call for an informal hearing.

(4) The secretary must deliver to all the parties a notice of an informal hearing in the form substantially corresponding with Form E.

Postponement and adjournment

8. (1) The chairperson may, if the chairperson considers that it is necessary to do so -

- (a) during the hearing, adjourn the hearing on such terms as the chairperson may consider necessary; or
- (b) postpone a hearing at any time before the date of hearing, if one of the parties or both parties apply for a postponement 10 days before the date of hearing.

(2) An application referred to in subregulation (1)(b) must -

- (a) be in writing;
- (b) state the reason for the postponement; and
- (c) be filed with the secretary.

(3) The secretary must forward to the chairperson the application received in terms of subregulation (2).

(4) On receipt of an application in terms of subregulation (3) the chairperson may -

- (a) grant a postponement on such terms as the chairperson may consider necessary; or
- (b) refuse an application.

(5) The secretary must deliver to all the parties the decision made in terms of subregulation (4).

Documents

9. (1) A party who wishes to make use of a document at the hearing of an appeal must, 15 days before the date of the hearing -

- (a) file with the secretary a notice of intention to make use of the document; and
- (b) deliver the notice referred to in paragraph (a) to all the other parties.

(2) The notice referred to in subregulation (1) must -

- (a) be in writing; and
- (b) give a description of the document.

(3) A party that receives a notice in terms of subregulation (1) may request a copy of the document and the party to whom the request is made must give the requesting party a copy of the document requested within five days of the request being made.

(4) A party requesting a copy of the document in terms of subregulation (3) must pay the costs associated with the production of the document.

(5) A party that requires the production of a document which is in possession of a person who is not a party to the appeal may in accordance with subsection (6) request the chairperson to call for the production of the document.

(6) The request referred to in subregulation (5) must be made in writing and be filed with the secretary.

(7) On receipt of a request in terms of subregulation (6), the secretary must immediately forward it to the chairperson who must in accordance with section 3 of the Commissions Act, 1947 (Act No. 8 of 1947) call for the production of the document.

Witnesses

10. (1) A party who wishes to have a witness summoned or who wishes to call a witness to give evidence at the hearing must, 15 days before the date of the hearing, file with the secretary a notice -

- (a) stating the names of the witnesses to be summoned or called; and
- (b) briefly indicating the areas in respect of which the witnesses are to be called or summoned.

(2) The secretary must forward to the chairperson the notice received in terms of subregulation (1), and the chairperson must, where the witness is to be summoned, in

accordance with section 3 of the Commissions Act, 1947 (Act No.8 of 1947), summon the witness.

Representation

11. At the hearing of an appeal any party to the appeal may be represented by any person or legal practitioner contemplated in section 24(5) of the Act.

Procedure at hearing of appeal

12. (1) Except where the chairperson otherwise directs, the following procedures must be followed at the hearing of an appeal:

- (a) the appeal must be heard in public;
- (b) the appellant must first present the appellant's case followed by the respondent;
- (c) the parties may only present evidence relevant to the appeal;
- (d) the parties may cross-examine or re-examine witnesses; and
- (e) a party may rebut any evidence or argument presented by the other party.

(2) If a party and the representative of the party contemplated in regulation 11, fails to appear at the hearing, after having been given notice of the date of hearing, the board of appeal may -

- (a) in the case of the respondent and the respondent's representative, hear the appeal and make any decision in terms of section 24(6) or (9) of the Act; or
- (b) in the case of the appellant and the appellant's representative, dismiss the appeal.

(3) The chairperson must ensure that there is no unreasonable delay in the hearing and the determination of an appeal.

Board of appeal's decision

13. (1) After hearing an appeal in terms of regulation 12, the board of appeal must make a decision in terms of section 24(6) or (9) of the Act.

(2) The decision of the board of appeal must be given as soon as practicable after the hearing.

(3) The decision of the board of appeal must -

- (a) be in writing;
- (b) be signed by the Chairperson of the board of appeal.

(4) The secretary must deliver to all the parties and the Minister a copy of the decision contemplated in subregulation (1).

Condonation

14. (1) Any party may, in accordance with subregulation (2), apply for condonation for non-compliance with time limits set in terms of these regulations.

(2) The application for condonation must -

- (a) be in writing;
- (b) state the reasons why condonation must be granted; and
- (c) be filed with the secretary.

(3) The secretary must forward to the chairperson the application received in terms of subregulation (1).

(4) On receipt of an application in terms of subregulation (3), the chairperson may if the chairperson considers that it is reasonable to do so -

- (a) condone any non-compliance with a time period; or
- (b) extend any period prescribed under these regulations, whether before or after the expiry of that period.

(5) The secretary must deliver to all the parties the decision made in terms of subregulation (4).

Keeping of records

15. The chairperson must keep or cause to be kept a record of the proceedings of -

- (a) an informal hearing held in terms of regulation 7; and
- (b) a formal hearing held in terms of regulation 12.

Keeping of a register

16. (1) The chairperson must cause to be kept a register of appeals in the form determined by the chairperson.

(2) The register of appeals contemplated in subregulation (1) must contain the following particulars:

- (a) the number allocated to the appeal;
- (b) the names of the parties;
- (c) the decision appealed against;
- (d) the date and place of hearing of the appeal;
- (e) the decision of the board of appeal;
- (f) any subsequent proceedings in connection with the appeal; and

- (g) any other matter which the chairperson may determine.

Service of documents

17. (1) A notice, order or other document required to be served on or delivered to any person in terms of these regulations must be served or delivered by the secretary or any person designated by the chairperson and authorised by the Minister.

(2) A notice, order or other document required to be served on or delivered to any person in terms of these regulations may be served -

- (a) by delivering it personally to the person or the person's duly authorised agent;
 - (b) where a postal address is given, by sending it by registered post to that address;
 - (c) where a facsimile number has been given, by transmitting it by facsimile to that address;
 - (d) by delivering it at the person's place of residence or place of employment or place of business to a person apparently 16 years of age or older and apparently residing or employed there; or
 - (e) in the case of a juristic person, at its local office or principal place of business to a director, secretary or any other person responsible for the management of the juristic person.
- (3) Service may be proved -
- (a) in any case, by an acknowledgment of service signed by the person to be served;
 - (b) by a written statement of the person who made the service; or
 - (c) service by registered post may be proved by a signed post-office return receipt showing that the letter was delivered.

FORM A**NOTICE OF APPEAL****In terms of section 24 of the Namibia Financial Institutions Supervisory
Authority Act, 2001(Act No. 3 of 2001)
(Regulation 3)**

This form must be delivered to the Secretary of the Board of Appeal at -

*The Ministry of Finance, Fiskus Building, or be sent by registered mail to the Secretary
of the Board of Appeal, Ministry of Finance, Fiskus Building, Private Bag 13295,
Windhoek; or*

An address notified to that party by the chairperson of the Board of Appeal.

1. Name of appellant:

2. Present address:
**You must notify the board in writing of any change in your mailing address
while your appeal is pending.**

Postal address:

Physical Address:

3. Telephone numbers (include area code) and E-mail address, (if any):
**You must notify the board in writing of any change in your telephone
number(s) or e-mail address while the appeal is pending.**

Home: ()

Work: ()

Fax: ()

Other: ()

E-mail:

4. Name and address of the person that took the action or made the decision you are
appealing against.

Name:

Address:

5. The date you received the decision or action (if any) (day, month, year):
(Attach a copy)

6. Explain briefly why you think the person was wrong in taking this action or making
this decision.

7. What action would you like the board to take in this case (i.e., what remedy are you asking for)?

8. Do you wish to designate an individual to represent you in this proceeding before the board?

Yes (*Complete the information below and sign*) No

DESIGNATION:

I hereby designate _____ to serve as my representative during the course of this appeal.

Representative's address:

Address:

Representative's telephone numbers (*include area code*) and e-mail address:

Office:

Fax:

Other:

E-mail address (if any):

SIGN BELOW TO MAKE YOUR DESIGNATION OF REPRESENTATIVE EFFECTIVE

Appellant's signature

Date

9. Address for service of documents:

I certify that all of the statements made in this form and any attachments are true, complete, and correct to the best of my knowledge and belief.

Signature of appellant or representative

Date

FORM B**NOTICE OF INTENTION TO OPPOSE AN APPEAL**

**Made in terms of section 24 of the Namibia Financial Institutions Supervisory
Authority Act, 2001(Act No. 3 of 2001)
(Regulation 4(3))**

This form must be delivered to the Secretary of the Board of Appeal at -

*The Ministry of Finance, Fiskus Building, or be sent by registered mail to the Secretary
of the Board of Appeal, Ministry of Finance, Fiskus Building, Private Bag 13295,
Windhoek; or*

An address notified to that party by the chairperson of the Board of Appeal.

In the matter between

Appellant

and

Respondent

TAKE NOTICE that the respondent intends to oppose the above mentioned appeal.

TAKE FURTHER NOTICE that the respondent the respondent relies on the following
points for its case:

- 1.
- 2.
- 3.

Dated at.....this.....day of.....

Address for service of documents.

FORM C**LEAVE TO INTERVENE**

**In an appeal made in terms of section 24 of the Namibia Financial Institutions
Supervisory Authority Act, 2001(Act No. 3 of 2001)
(Regulation 5(1)(b))**

Please deliver this form to the Secretary of the Board of Appeal at -

*The Ministry of Finance, Fiskus Building, or be sent by registered mail to the Secretary
of the Board of Appeal, Ministry of Finance, Fiskus Building, Private Bag 13295,
Windhoek; or*

An address notified to the party by the chairperson of the Board of Appeal.

Part I - GENERAL INFORMATION ABOUT THE APPLICANT (Intervener)

Organisation name:

Mailing address:

Telephone: _____

Facsimile: _____

Email Address: _____

To be represented by the following:

Representative: _____

Name: _____

Name of organisation (if any): _____

Title: _____

Tel No: _____

Fax No: _____

Email Address (if any): _____

Part II - SUBMISSION OF LEAVE TO INTERVENE IN APPEAL NO: ____

The submission shall include a statement as to why the applicant may be directly or indirectly affected by the determination of the board of appeal and the position of the applicant has with respect to the complainant and respondent.

Copies of relevant documents submitted in support of this application should be listed.

A. Reasons for application for leave to intervene

- 1.
- 2.
- 3.

B. List of documents to be filed at the hearing:

- 1.
- 2.
- 3.
- 4.
- 5.

C. Nature of Participation

Describe the nature of participation at the hearing sought (for example: oral representation, written representations, cross-examination of witness etc.)

Part III - DECLARATION

The undersigned, person applying for leave to intervene or his or her duly authorized representative in respect of Appeal No. _____ hereby declares that the information contained in and submitted in support of this leave to intervene is to the best of the applicant's knowledge, complete and accurate.

Signed by or on behalf of the Applicant (Intervener):

Signature : _____

Name: _____

Title: _____

Dated at _____ this _____ day of _____, _____

Part IV - BOARD OF APPEAL'S DECISION

The application for leave is

Granted/Not Granted

Chairperson of the Board of Appeal

By order of the Board of Appeal

Dated at _____ this _____ day of _____, _____

FORM D

NOTICE OF HEARING

**Of an appeal made in terms of section 24 of the Namibia Financial Institutions
Supervisory Authority Act, 2001(Act No. 3 of 2001)
(Regulation 6(2))**

In the matter between

Appellant

and

Respondent

TAKE NOTICE that the board of appeal will hear the abovementioned appeal on the.....day of, at..... or as soon thereafter as the appeal may be heard.

Dated at.....this.....day of.....

**By order of the Board of Appeal
Chairperson of the Board of Appeal**

FORM E

NOTICE TO ATTEND AN INFORMAL HEARING

**For the purposes of an appeal made in terms of section 24(1) of the Namibia
Financial Institutions Supervisory Authority Act, 2001(Act No. 3 of 2001)
(Regulation 7(4))**

In the matter between

Appellant

and

Respondent

You are hereby given notice to attend a hearing to be held before the board of appeal on
the..... day of, at..... to consider -

(a)

(b)

Dated at.....this.....day of.....

**By order of the Board of Appeal
Chairperson of the Board of Appeal**
