

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY ACT
(Cap. 46:08)

**NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY
(TRIBUNAL) REGULATIONS, 2018**
(Published on 8th June, 2018)

ARRANGEMENT OF REGULATIONS

REGULATION

Part I – Preliminary

1. Citation
2. Interpretation

Part II – Establishment, Function and Composition of Tribunal

3. Establishment and function of Tribunal
4. Composition of Tribunal
5. Appointment of Secretary
6. Disqualification, removal or resignation of member
7. Filling of vacancies
8. Sittings of Tribunal
9. Declaration of interest
10. Confidentiality
11. Remuneration and allowance

Part III – Application for Review

12. Application for review and review notice
13. Statement of case
14. Applicant's reply
15. Withdrawal of application
16. Reviews by Tribunal

PART IV – Procedure of Inquiry

17. Notice of hearing
18. Hearings by Tribunal
19. Issue of summons
20. Power to direct proceedings
21. Practice directions
22. Rules of evidence
23. Determination of procedure
24. Extension of time
25. Filing of documents
26. Service of documents

Part V – Determination of Application for Review

- 27. Power of Tribunal to make determination
- 28. Determination of review without hearing
- 29. Determination of Tribunal by majority decision
- 30. Power of Tribunal in case of non-compliance
- 31. Right of appeal

Part VI – Costs of Proceedings before Tribunal

- 32. Order as to costs
- 33. Costs of Tribunal
- 34. Practice directions on costs

Part VII – Miscellaneous Provisions

- 35. Report of Tribunal
- 36. Legal representation
- 37. Indemnity
- 38. Rules of Tribunal
- 39. Offence and penalty

SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 50 (2) as read with section 61 of the Non - Bank Financial Institutions Regulatory Authority Act, the following Regulations are hereby made –

Part I – Preliminary

1. These Regulations may be cited as the Non-Bank Financial Institutions Regulatory Authority (Tribunal) Regulations, 2018. Citation

2. In these Regulations, unless the context otherwise requires – Interpretation

“applicant” means a person who, in terms of section 52 of the Act, is aggrieved by a decision of the Regulatory Authority or a self-regulatory organisation;

“chairperson” means a person appointed as the chairperson of the Tribunal under regulation 4 (1) (a);

“electronic hearing” means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another;

“filing” means the effective delivery of a document to and its receipt by the Tribunal;

“member” means a member of the Tribunal appointed under regulation 4;

“practice direction” means a requirement by the Tribunal to enable the parties to prepare for the hearing of a review and to assist the Tribunal to determine the issues involved;

“review notice” means an application for review of a decision by the Regulatory Authority or the self-Regulatory Organisation or a notice given by the Tribunal to prepare for a hearing;

“Secretary” means the person appointed as Secretary to the Tribunal under regulation 5 (1); and

“Tribunal” means the Non-Bank Financial Institutions Tribunal established under regulation 3.

PART II – Establishment, Function and Composition of Tribunal

Establishment and function of Tribunal

3. (1) Subject to section 50 of the Act, there is hereby established a Tribunal to be known as the Non-Bank Financial Institutions Tribunal.

(2) The Tribunal shall at such times as shall be determined by the Chairperson, upon the giving of not less than 30 days' notice, review decisions made under the Act by the Regulatory Authority or a self-regulatory organisation, which decisions shall be subject to an application under regulation 12.

Composition of Tribunal

4. (1) The Tribunal shall be composed of the following members appointed by the Minister –

(a) a chairperson, who shall be qualified to be appointed as a judge or a person holding similar legal credentials; and

(b) two other persons with experience and qualifications in finance, economics, accounting, commerce or law.

(2) The chairperson shall serve the Tribunal for a period not exceeding five years, on such terms and conditions as the Minister may determine and shall be eligible for re-appointment.

(3) A member appointed under subregulation (1) (b) shall be appointed for a term of three years and, shall be eligible for re-appointment for a further term.

(4) The Tribunal may, for purposes of reviewing a matter for which specialised knowledge is required, co-opt not more than two additional persons with specialist qualification and knowledge on the matter, to be members of the Tribunal only with respect to the sittings of the Tribunal convened for the review of such matter.

(5) A member appointed under subregulation (4) shall not count towards the constitution of the quorum and shall not be entitled to vote.

Appointment of Secretary

5. (1) The Tribunal shall, with the approval of the Minister, appoint a Secretary who shall provide secretarial and administrative services to the Tribunal.

(2) The Secretary shall be appointed for a term not exceeding five years on such terms and conditions as the Tribunal shall determine, with the approval of the Minister.

(3) The Secretary of the Tribunal shall attend meetings of the Tribunal but shall have no right to vote and shall be responsible for the accurate and complete recording of the Tribunal's proceedings and decisions.

Disqualification, removal or resignation of member

6. (1) A person shall not be appointed to be a member of the Tribunal if the person –

(a) is a member of the National Assembly, a Councilor in a local authority, member of the Ntlo ya Dikgosi or the holder of an office in a political party;

(b) is an employee, director, secretary or executive officer of a non-bank financial institution;

(c) is convicted of an offence in or outside Botswana for which he or she could have been sentenced to imprisonment without the option of a fine, or an offence involving dishonesty;

(d) is insolvent or is declared bankrupt and has not been rehabilitated;

(e) is disqualified or suspended by a competent authority from practising on the grounds of misconduct;

(f) is disqualified in or outside Botswana from acting as a director or executive officer of a body corporate under a law relating to corporations or to the provisions of financial services;

- (g) is an employee or Director of the Regulatory Authority;
 - (h) was an employee of the Regulatory Authority, and the period between the date of his or her separation from the Regulatory Authority and the date of his or her appointment to serve on the Tribunal is less than two years; or
 - (i) with the exception of the Chairperson, has held a total number of two terms as a member of Tribunal.
- (2) The Minister may terminate a member's appointment from office where the member —
- (a) is absent without reasonable cause from three consecutive meetings of the Tribunal of which he or she has had notice;
 - (b) has been found to be physically or mentally incapable of performing his or her duties efficiently and a medical doctor has issued a certificate to that effect;
 - (c) contravenes a provision of these Regulations or otherwise misconducts himself or herself to the detriment of the object of the Tribunal, or
 - (d) has failed to comply with the provisions of regulations 9 and 10.
- (3) The chairperson may resign by giving three months notice in writing to the Minister.
- (4) A member appointed under regulation 4 (1) (b) may resign by giving one month notice in writing to the Minister.

7. (1) The Minister shall, on being notified by the Regulatory Authority in writing of the death of, or vacation of office by, a member, within 60 days of receiving notification, appoint a member to hold office for the remainder of the period of office of such deceased or vacating member.

Filling of vacancies

(2) Subregulation (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than three months.

8. (1) Subject to the provisions of these Regulations, the Tribunal shall regulate its own proceedings.

Sittings of Tribunal

(2) The Tribunal shall sit at such times as shall be determined by the Chairperson, upon the giving of not less than 30 days' notice.

(3) The Chairperson may call for a sitting of the Tribunal by giving notice of less than 30 days where the urgency of a particular matter does not permit the giving of notice in accordance with subregulation (2).

(4) At any sitting of the Tribunal any two members, including the Chairperson, shall constitute a quorum.

9. (1) Each member shall disclose in writing to the Regulatory Authority all interests that the member has that could conflict with the proper performance of the functions of the member's office, whether the interests were acquired before or after appointment.

Declaration of interest

(2) A disclosure in terms of subregulation (1) shall be given as soon as practicable after the member becomes aware of the interest.

(3) The Tribunal shall record all disclosures in terms of this regulation.

(4) A member who has an interest that could conflict with the proper performance of the functions of his or her office in relation to a particular matter shall not perform functions in relation to the matter unless —

- (a) the member has complied with subregulation (1) in relation to the interest; and
- (b) each of the other members have consented to the member's performing those functions in relation to the matter despite the potential conflict of interest.

(5) For the purposes of subregulations (1) and (4), it does not matter whether the interest is direct, indirect, pecuniary or non-pecuniary, nor when the interest was acquired.

(6) For the purpose of this regulation, if —

(a) a related party of a member has an interest; and

(b) the member had the interest, and it could conflict with the proper performance of the functions of the member's office,

the member is taken to have an interest, and this regulation applies accordingly.

(7) In subregulation (6), "related party" means any of the following —

(a) a spouse or immediate family member;

(b) a person in accordance with those directions, instructions or wishes the member is accustomed to act or is under an obligation, formal or informal, to act;

(c) a person who is accustomed to act, or is under an obligation, whether formal or informal, to act, in accordance with the direction, instructions or wishes of the member;

(d) a company of which the member is a director or executive officer, and a subsidiary of such a company;

(e) a company of which the member, or a spouse or immediate member, is a director or executive officer;

(f) a company of which the member, or a spouse or relative of the member, is a controller;

(g) a company, if its directors are accustomed to act, or under obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the member; and

(h) if the member and another person are parties to a contract, arrangement or understanding —

(i) to acquire, hold, sell or otherwise deal in securities in concert, or

(ii) to exercise voting rights in a specified company in concert, the other party to the contract, arrangement or understanding.

(8) Where a member fails to disclose his or her interest in accordance with subregulation (1) and a decision by the Tribunal is made benefiting such member, such decision shall be void.

(9) A member of the Tribunal or any person who fails to comply with provisions of subregulation (1) commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months, or to both .

Confidentiality

10. (1) A member and any other person assisting the Tribunal shall observe and preserve the confidentiality of all matters coming before the Tribunal, and such confidentiality shall subsist even after the termination of their terms of office or their mandates.

(2) Any member or any person to whom confidential information is revealed through working with the Tribunal shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any member or any other person who contravenes the provisions of this regulation commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months, or to both.

11. A member shall be paid, out of the funds of the Tribunal, such remuneration and allowance, if any, as the Minister may from time to time determine.

Remuneration and allowance

PART III – *Application for Review*

12. (1) An application for review of a decision of the Regulatory Authority or a self-regulatory organisation, shall be made in Form 1 set out in the Schedule and shall be accompanied by a non-refundable fee of P500.

Application for review and review notice

(2) An applicant shall lodge a review notice within 28 days from the date on which the decision of the Regulatory Authority or self-regulatory organisation is received by the applicant.

(3) The review notice under subregulation (2) shall state –

- (a) the name and address of the applicant;
- (b) the name and address of applicant’s representative; and
- (c) the issues concerning the decision of the Regulatory Authority or the self-regulatory organisation that the applicant wishes the Tribunal to consider.

(4) The applicant shall attach to the review notice, a copy of the decision of Regulatory Authority or a self-regulatory organisation to which the review notice relates, and shall send a copy of the review notice to the Regulatory Authority or self-regulatory organisation.

(5) Upon receiving a review notice, the Secretary shall –

- (a) enter particulars of the review notice in a register kept for that purpose; and
- (b) inform the parties in writing –
 - (i) that the review notice has been lodged,
 - (ii) of the date when the review notice was lodged with the Tribunal, and
 - (iii) of the Tribunal’s decision on any application made for directions.

13. (1) The Regulatory Authority, or a self-regulatory organisation shall file a statement of case in support of the decision referred to in the application for review not later than 28 days after the date on which the Regulatory Authority or self-regulatory organisation received the information sent by the Secretary under subregulation 12 (5).

Statement of case

(2) The statement of case shall be in Form 2, set out in the Schedule, and it shall –

- (a) specify the provisions providing for the Regulatory Authority or self-regulatory organisation’s decision referred to in the application;
- (b) specify the reasons for the decision;
- (c) set out all the matters and facts upon which the Regulatory Authority or self-regulatory organisation relied to support its decision; and
- (d) specify the date on which the statement of case is filed.

(3) The statement of the case shall be accompanied by a list of –

- (a) the documents on which the Regulatory Authority or self-regulatory organisation relies in support of the decision; and
- (b) any additional documents and material which, in the opinion of the Regulatory Authority or self-regulatory organisation, would further assist the Tribunal.

(4) The Regulatory Authority or self-regulatory organisation shall send the applicant a copy of the statement of case, the documents and material in the list under subregulation (3) at the same time that it files the statement of case.

Applicant's
reply

14. (1) An applicant shall file a written reply to the Tribunal not later than 28 days after —

- (a) the date on which the applicant has received a copy of the Regulatory Authority or a self-regulatory organisation's statement of case; or
- (b) the date on which the applicant has received a copy of the amended statement of case from the Regulatory Authority or self-regulatory organisation.

(2) The reply shall —

- (a) state the grounds on which the applicant relied;
- (b) set out all matters contained in the statement of case which are disputed by the applicant;
- (c) state the applicant's reasons for disputing them; and
- (d) specify the date on which the reply is filed.

(3) The reply shall be accompanied by all documents on which the applicant relied in support of its case.

(4) The applicant shall send to the Regulatory Authority or self-regulatory organisation a copy of the reply at the same time as it was sent to the Tribunal.

Withdrawal of
application

15. (1) An applicant may withdraw a review notice —

- (a) any time before the hearing of the review, by filing a notice to withdraw; or
- (b) at the hearing of the review, with the Tribunal's permission.

(2) The Regulatory Authority or self-regulatory organisation may state that it does oppose the review or withdraw the decision to oppose the review —

- (a) at any time before the hearing of the review, without permission, by filing a notice to that effect; or
- (b) at the hearing of the review, with the Tribunal's permission.

(3) The Tribunal may determine the review by the holding of a hearing under regulation 18 where —

- (a) the Regulatory Authority or self-regulatory organisation makes a statement as provided for under subregulation (2) (a);
- (b) the Regulatory Authority or self-regulatory organisation does not file a statement of case within the time limit imposed by regulation 13 (1), or extension in accordance with regulation 24; or
- (c) the applicant does not file a reply within any time limit as provided in regulation 15 (1), or file a request for an extension in accordance with regulation 24.

Reviews by
Tribunal

16. (1) The Tribunal may, for specified purposes related to the effective regulation of non-bank financial institutions, cause a review to be conducted regarding any decision of the Regulatory Authority or self-regulatory organisation.

(2) The Tribunal shall review a decision of the Regulatory Authority or self-regulatory organisation in terms of subregulation (1) by issuing —

- (a) a review notice to review the decision within a period of 60 days of the making of the decision by the Regulatory Authority or self-regulatory organisation;
- (b) practice directions for purposes of such review within a period of 90 days of the making of the decision by the Regulatory Authority or self-regulatory organisation; and

- (c) summons directing persons to attend as witnesses at any hearing of such review.

PART IV – Procedure of Inquiry

17. (1) The Tribunal shall provide, or direct the giving of, a written notice of hearing, as set out in Form 3 of the Schedule, to the parties and other persons as the Tribunal may determine or require. Notice of hearing

(2) A notice of hearing shall include —

- (a) a reference to the law under which the hearing is being held;
- (b) a statement of the dates, time and the purpose of the hearing;
- (c) a statement that if a party does not attend or participate at the hearing, the Tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding; and
- (d) any other information that the Tribunal considers necessary for the proper conduct of the hearing.

18. (1) The Tribunal may hold —

- (a) a preliminary hearing;
- (b) an oral hearing;
- (c) a written hearing;
- (d) an electronic hearing, or
- (e) a hearing that combines one or more of the above formats.

Hearings by
Tribunal

(2) A party who has not consented to any format of hearing referred to under subregulation (1) may object by filing and serving an objection within 14 days after the notice of hearing is given.

(3) Upon receiving the objection in subregulation (2), the Tribunal may cancel the hearing and replace it with another format or it may proceed with the original format, and should it proceed with the original format it shall state its reasons for doing so.

(4) The Tribunal may hold hearings in public, unless otherwise determined by the Tribunal.

(5) The Tribunal shall set the hearing dates and determine its own procedure for the hearing, and the location of hearing.

19. (1) The Tribunal may, by summons set out in Forms 4 (a) and 4 (b) of the Schedule, require any person to — Issue of summons

- (a) attend, at such time and place as is specified in the summons, to give evidence as a witness;
- (b) file, within the time specified in the summons, any document in his or her custody or under his or her control which the Tribunal considers necessary to examine; or
- (c) attend and file in accordance with subparagraphs (a) and (b).

(2) A witness summons shall be sent so as to be received by the person to whom it is addressed not less than 14 days before the time specified in the summons.

(3) The Tribunal may, upon the application of the person to whom the witness summons is addressed, direct that the witness summons be set aside or varied.

20. (1) For the purposes of reviewing a decision, the Tribunal may —

- (a) require a person appearing, before the Tribunal to give evidence either on oath, affirmation or declaration, and the Tribunal shall administer such oath, affirmation or declaration;

Power to direct
proceedings

(b) proceed in the absence of a party who, by notice, has been given a reasonable period to attend the proceedings; or
(c) from time to time adjourn the proceedings.

(2) The Tribunal may direct that any question of fact or law which appears to be in issue in relation to the review should be determined at a preliminary hearing.

(3) If, in the opinion of the Tribunal, the determination of that question substantially disposes of the review, the Tribunal may treat the preliminary hearing as the hearing of the review and may make such order by way of disposing of the review as it deems fit.

(4) Subject to regulation 18, if the parties so agree in writing, the Tribunal may determine the question without an oral hearing, but, in any such case, the Tribunal may not at the same time dispose of the review unless the parties have agreed in writing that it may do so.

Practice
directions

21. (1) The Tribunal may at any time give practice directions to —

- (a) enable the parties to prepare for the hearing of a review;
- (b) assist the Tribunal to determine the issues at a review; and
- (c) ensure the just, expeditious and economical determination of a review.

(2) An application for practice directions shall include the reasons in support of that application.

(3) If any party objects to the practice directions applied for, the Tribunal shall consider the objection and, if it considers it necessary for the determination of the application, the Tribunal shall give the parties an opportunity to make representations.

(4) A person to whom a practice direction is given under these Regulations may apply to the Tribunal showing good cause why it should be varied or set aside, but the Tribunal shall not grant such application without first notifying any person who applied for the direction and giving that party an opportunity to make representations.

(5) Practice directions given by the Tribunal may —

- (a) fix the time and place of the hearing of the review and alter any time and place so fixed;
- (b) provide for an oral hearing, upon such notice as the Tribunal may determine, in connection with any matter arising under the review;
- (c) adjourn any oral hearing;
- (d) suspend the effect of a Regulatory Authority or self-regulatory organisation decision until the review has been finally disposed of, or until any appeal against the Tribunal's determination of the review has been finally disposed of, or both, upon application for such suspension by any party;
- (e) permit or require any party to provide further information or supplementary statements or to amend a replying document or a supplementary statement;
- (f) require any party to file any document that the Tribunal considers is or may be relevant to the determination of the review and to copy the document or make it available to any party that the Tribunal considers necessary;
- (g) require any party to file —
 - (i) a list of witnesses that are to give evidence at the hearing of the review on behalf of the party, and
 - (ii) statements of the evidence which those witnesses intend to give, if called;

- (h) make provisions as to any expert witnesses to be called including the number of such witnesses and the evidence to be given by them;
- (i) provide for the manner in which any evidence may be given; and
- (j) provide for such other matters as may be deemed necessary by the Chairperson, for the effective conduct of the hearing of the review.

22. The Tribunal shall not be bound by the rules of evidence but may remain guided by them on any matter as it considers appropriate in the circumstances.

Rules of evidence

23. (1) The Tribunal may, where the procedure set out under these Regulations is found after due consideration not appropriate for the hearing or other consideration of any particular matter, determine the procedure to apply to that matter, in accordance with the requirements for procedural fairness.

Determination of procedure

(2) A defect in form or other technical breach in a proceeding will not cause the proceeding or the step, document or order in the proceeding to be invalid.

24. (1) Where a party cannot meet a time limit prescribed by these Regulations, the party shall not less than three days before the deadline file a request to the Tribunal for an extension of time, accompanied by the reasons in support of the request.

Extension of time

(2) The number of extensions that a party may be granted under subregulation (1) shall not exceed three.

(3) The Tribunal may, before or after the expiration of a prescribed time limit, extend the time on such terms as it considers appropriate.

25. (1) All documents shall be filed in five copies and shall be legible and written in either English or Setswana, unless the Tribunal otherwise directs.

Filing of documents

(2) The Tribunal may subject to such conditions as may be appropriate, direct that a document be filed by —

- (a) hand delivery;
- (b) courier service;
- (c) registered mail;
- (d) facsimile;
- (e) electronic transmission; or
- (f) any other means.

26. (1) The Tribunal may subject to such conditions as may be appropriate, direct that service of documents be made by —

Service of documents

- (a) hand delivery;
- (b) courier service;
- (c) registered mail;
- (d) facsimile;
- (e) electronic transmission; or
- (f) any other means.

(2) Where documents are filed by facsimile or other electronic transmission, the original copies shall be delivered by noon on the next business day unless the Chairperson otherwise directs.

PART V – Determination of Application for Review

27. The Tribunal may, on hearing an application for review made under regulation 12 —

Power of Tribunal to make determination

- (a) confirm, amend or revoke a decision made by the Regulatory Authority or a self-regulatory organisation;
- (b) return the matter to the Regulatory Authority or the self-regulatory organisation for consideration in accordance with any directions or recommendations; or

- (c) make such order as it deems appropriate.
- Determination of review without hearing** **28.** The Tribunal may determine the application for review without an oral hearing if —
- (a) the parties agree to this in writing;
 - (b) the Tribunal approves subject to regulation 16; or
 - (c) the issue before it concerns an application for directions.
- Determination of Tribunal by majority decision** **29.** (1) An application for review before the Tribunal shall be determined by the decision of any two members including the Chairperson of the Tribunal.
- (2) Any determination of the Tribunal shall be in writing and shall include the reasons for the determination, a statement of its findings on material questions of fact and a reference to the evidence or other material on which the findings are based.
- (3) The Tribunal shall cause its determination to be served on each party to the proceedings.
- (4) Unless specified otherwise, a determination of the Tribunal shall come into operation on the date of the determination.
- (5) Any determination of the Tribunal shall be published in such form and manner as the Tribunal deems fit, except that the names of the parties and any information which the Tribunal considers to be sensitive shall be omitted.
- Power of Tribunal in case of non-compliance** **30.** (1) The Tribunal may take the steps set out in subregulation (2) where a party has, without reasonable excuse, failed to —
- (a) comply with a direction given under these Regulations; or
 - (b) comply with a provision of these Regulations.
- (2) The Tribunal may take any one or more of the following steps in respect of a party's failure referred to in subregulation (1) —
- (a) make costs order under Part VI of the regulations against that party;
 - (b) where that party is the applicant, dismiss the whole or part of the review and direct the party as to any action to be taken by the party; or
 - (c) where that party is the Regulatory Authority or self-regulatory organisation, strike out the whole or part of the statement of case and, where appropriate direct the Regulatory Authority or self-regulatory organisation to be debarred from contesting the review.
- (3) The Tribunal shall not take any of the steps in subregulation (2) in respect of a party, unless it has given that party notice of the steps and an opportunity for the party to make representations.
- (4) Any person who fails to comply with steps taken under subregulation (2) commits an offence and shall be liable to penalties provided under regulation 39.
- (5) Non-compliance with the provisions of any rule of practice for the time being in force or of any of these Regulations shall not render the proceedings of the Tribunal void.
- Right of appeal** **31.** Any person who is dissatisfied with the decision of the Tribunal may, within 28 days of receipt of the decision, appeal to the High Court for judicial review.

PART VI – Costs of Proceedings before Tribunal

- Order as to costs** **32.** (1) The Tribunal may, after considering submissions from a party for an award of costs, order the costs of a party be paid by another party.
- (2) The Tribunal may, in its discretion, order costs —

- (a) in a fixed amount;
- (b) to be assessed according to a specified tariff of costs; or
- (c) to be assessed after receiving a statement of costs and submissions from the parties.

(3) The Tribunal shall, when determining whether a party is liable to pay the costs of another party, or of the Tribunal as provided under regulation 33, consider —

- (a) whether the party is engaged in conduct which is clearly unreasonable;
- (b) whether the party's conduct unreasonably delayed or prolonged the proceedings, including failure to comply with any undertakings or directions;
- (c) whether the party's participation assisted the Tribunal in understanding the issues;
- (d) the failure by a party to cooperate with other parties during preliminary proceedings or at the hearing;
- (e) the failure by a party to attend a hearing or other proceedings, or to send a representative, despite notices being provided;
- (f) the party's degree of success in the proceedings; and
- (g) any other matter it considers relevant.

33. (1) The Tribunal may, either in addition to costs it may award under regulation 32 or without such an award, make an order as to costs of the Tribunal against any one or all of the parties to the review. Costs of Tribunal

(2) The costs of the Tribunal shall consist of the expenses that the Tribunal has incurred in connection with the proceedings of the review.

(3) Where the Tribunal directs that its costs be paid, the Tribunal shall —

- (a) fix the costs of the Tribunal; and
- (b) indicate by whom the costs shall be paid and in what proportion.

34. The Tribunal may issue any practice directions on costs from time to time, to address general assessment policies and tariffs, hourly rates for representatives, allowable disbursements, and other matters that the Tribunal may consider appropriate. Practice directions on costs

PART VII – Miscellaneous Provisions

35. (1) The Tribunal shall make an annual report on the discharge of its functions to the Minister and may at any time report to the Minister any matter relating to the functions of the Tribunal. Report of Tribunal

(2) If it appears to the Minister, after consultation with the Tribunal, that the publication of any matter in a report would be prejudicial to the continued discharge of the functions of the Tribunal, the Minister may exclude that matter from a copy of the report.

36. (1) A party to the proceedings before the Tribunal may be represented by an attorney or a representative duly authorised by the party, who shall be allowed reasonable opportunity to present the case and in particular, to inspect documents which the Tribunal proposes to consider in determining the case. Legal representation

(2) The Tribunal may at its discretion, refuse to permit a particular person to assist or represent a party at the hearing and in such instances the Tribunal shall disclose the reasons for its refusal.

Indemnity

37. No matter or thing done or omitted to be done by a member or staff of the Tribunal shall, if the matter or thing is done or omitted to be done in good faith in the course of the performance of the functions of the Tribunal, render that member or staff liable to an action, claim or demand.

Rules of Tribunal

38. For the better carrying out of the provisions of these Regulations, the Tribunal may make rules with respect to matters related to —

- (a) applications for reviews;
- (b) statements of case in support of a decision of the Regulatory Authority or self-regulatory organisation;
- (c) parties to the review and the giving of the status of party to the review to any person;
- (d) hearings under the formats of hearings provided under regulation 18;
- (e) the giving of evidence;
- (f) witnesses and summoning of witnesses;
- (g) fees payable with respect to the lodgement or filing of documents; and
- (h) such other matters as the Tribunal shall consider necessary to facilitate its proceedings.

Offence and penalty

39. (1) Any person who contravenes the provisions of these Regulations commits an offence and is liable to a fine not exceeding P 5000 or to imprisonment for a period not exceeding six months, or to both.

(2) Any person who, for purposes of any matter before the Tribunal, knowingly hinders or prevents compliance with a direction, order or requirement given under these Regulations, commits an offence and shall be liable to penalties specified under section 60 of the Act.

SCHEDULE

FORMS

Form 1

NON-BANK FINANCIAL INSTITUTIONS TRIBUNAL (NBFIT)
REVIEW NOTICE
(reg. 12)

To appeal a decision or order of the Non-Bank Financial Institutions Regulatory Authority or self regulating organization, a person must complete and file this form with the Secretary, Ministry of Finance and Economic Development, Private Bag 008, Gaborone.

Applicant's name and address

| | | | | |
|---------------------------------|-------------------------------|------------------------------|-----------|------------|
| Mr. <input type="checkbox"/> | Mrs. <input type="checkbox"/> | Ms. <input type="checkbox"/> | Last Name | First Name |
| Name of Company or Organization | | | | |
| Street Address | | | | |
| City | | | Phone No. | |
| Email | | | Fax No. | |

Applicant's Representative (if any)

| | | | | |
|---------------------------------|-------------------------------|------------------------------|-----------|------------|
| Mr. <input type="checkbox"/> | Mrs. <input type="checkbox"/> | Ms. <input type="checkbox"/> | Last Name | First Name |
| Name of Company or Organization | | | | |
| Street Address | | | | |
| City | | | Phone No. | |
| Email | | | Fax No. | |

Section and Statute

| |
|--|
| Section and Statute under which the hearing is brought |
|--|

Regulatory Authority's Decision or Order

| |
|---|
| Additional sheets attached |
| <hr/> |
| Date of Decision or Order of the Regulatory Authority |

Relief Sought

| |
|---|
| Order of Relief Sought |
| Parties before the Non-Bank Financial Institutions Tribunal |
| <hr/> |
| <input type="checkbox"/> Additional sheets attached |
| Additional sheets attached |
| Other Persons who may have an interest in the matter |
| <hr/> |

Documents

I am relying on the following documents for the reference

Name (please print)

Title:

Applicant

Representative

Date:

Signature

Form 2
NON-BANK FINANCIAL INSTITUTIONS TRIBUNAL (NBFIT)
STATEMENT OF CASE
(reg. 13)

The Non-Bank Financial Institutions Regulatory Authority or self regulating organization, seeking to respond to a review notice lodged shall complete and file this form with the Secretary, Ministry of Finance & Economic Development, Private Bag 008 Gaborone

Applicant's name and address

| | | | | |
|---|-------------------------------------|------------------------------------|------------------|-------------------|
| Mr. <input type="checkbox"/> | Mrs <input type="checkbox"/> | Ms <input type="checkbox"/> | Last Name | First Name |
| Name of Company or Organization _____ | | | | |
| Street Address & City _____ | | | | |
| Applicants Representatives _____ | | | | |

Respondent (tick the appropriate box)

| | |
|--|---|
| <input type="checkbox"/> | Non-Bank Financial Institutions Regulatory Authority |
| <input type="checkbox"/> | Self-Regulatory Organization |
| Name of Self-Regulatory Organization (if applicable) _____ | |

Respondent's Representative (if any)

| | | | | |
|---------------------------------|-------------------------------|-----------------------------|-----------|------------|
| Mr. <input type="checkbox"/> | Mrs. <input type="checkbox"/> | Ms <input type="checkbox"/> | Last Name | First Name |
| <hr/> | | | | |
| Name of Company or Organization | | | | |
| <hr/> | | | | |
| Street Address & City | | | | |
| <hr/> | | | | |
| Phone number | | Fax number | | Email |
| <hr/> | | | | |

Other persons who may have an interest in the matter

| |
|------------------|
| |
|------------------|

Brief of the Facts:

(additional sheets attached)

Decision reached by the Regulatory Authority or Self – regulatory organisation:

(additional sheets attached)

Form 3

NON-BANK FINANCIAL INSTITUTIONS TRIBUNAL (NBFIT)

NOTICE OF HEARING

(reg. 17)

Particulars of the Parties

| |
|-------------------------------------|
| Applicant(s) _____ _____ |
| Respondent(s) _____ _____ |

PLEASE NOTE that a Hearing in terms of Section/Regulation _____ of the _____ Act/Regulations shall be held before the Non-Bank Financial Institutions Tribunal on the _____ day of _____ 20 at _____ hrs or soon thereafter as may be heard for the purposes of _____

Documents

| |
|--|
| The following documents are attached for reference purposes |
| |

Where a relevant cited party does not attend or participate at the hearing, the Tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.

DATED at Gaborone this _____ day of _____ 20

Signature _____

Form 4 (a)

NON-BANK FINANCIAL INSTITUTIONS TRIBUNAL (NBFTT)
SUMMONS TO A WITNESS
(reg. 19)

Regarding

And

SUMMONS TO A WITNESS BEFORE the Non- Bank Financial Institutions Tribunal

TO: (name)

(address)

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this
proceeding on, _____ at, _____ hours at, _____

and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things: all books, papers, letters, notes or copies thereof and any other writings, and documents in your possession or power containing any entry, memorandum or minutes relating to this matter (whether they are electronic format or hard copy).

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, YOU SHALL HAVE COMMITTED AN OFFENCE UNDER SECTION 60 OF THE NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY ACT AND SHALL BE CHARGED WITH AN OFFENCE UNDER THE ACT.

DATE _____

Signature on behalf of Non-Bank
Financial Institutions Tribunal

Form 4 (b)

**NON-BANK FINANCIAL INSTITUTIONS TRIBUNAL (NBFIT)
SUMMONS TO A WITNESS
(reg. 19)**

Regarding

And

SUMMONS TO A WITNESS BEFORE the Non- Bank Financial Institutions Tribunal

TO: (name)

(address)

YOU ARE REQUIRED TO PARTICIPATE IN AN ELECTRONIC HEARING

On _____, at, _____

**IF YOU FAIL TO PARTICIPATE IN THE HEARING IN ACCORDANCE WITH THE
SUMMONS, YOU SHALL HAVE COMMITTED AN OFFENCE UNDER SECTION 60
OF THE NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY ACT
AND SHALL BE CHARGED WITH AN OFFENCE UNDER THE ACT.**

DATE: _____

Signature on behalf of Non-Bank Financial
Services Tribunal

MADE this 29th day of May, 2018.

O. K. MATAMBO,
*Minister of Finance and Economic
Development.*

