



### Application for reconsideration by the Financial Services Tribunal

Certain sections of the Financial Sector Regulation Act 9 of 2017 (FSRA) came into effect on 1 April 2018. One of the changes that were introduced is the authority of the Financial Services Tribunal (Tribunal) to hear applications for reconsideration of a decision made by a decision-maker. Below is a summary of the process to be followed when applying for reconsideration of a Pension Funds Adjudicator (PFA) determination.

#### A. Background

Section 230 of FSRA provides that any person who is unhappy with a decision (Applicant) made by a decision-maker may apply to the Tribunal to reconsider the decision. Decision is defined in the FSRA and includes a decision of a statutory ombud in terms of a financial sector law for a specific complaint by a person. A decision-maker is also defined and includes the statutory ombud who made the decision. The PFA is an ombud established in terms of the Pension Funds Act, which is a financial sector law. The Tribunal rules set out the form of the application and the process to be followed.

#### B. The Tribunal

The Tribunal is established under the FSRG. Section 219(2) the FSRA states the following:

(2) The Tribunal:-

- (a) is independent;
- (b) must be impartial and exercise its powers without fear, favour or prejudice;
- (c) is a tribunal of record; and
- (d) must perform its function in accordance with this Act and the specific financial sector laws.

Its members are appointed by the Minister of Finance, and must under section 220(2) consist of:

- (a) at least two persons who are retired judges, or are persons with suitable expertise and experience in law; and
- (b) at least two other persons with experience or expert knowledge of financial products, financial services, financial instruments, market infrastructures or the financial system.

## **C. Application for reconsideration**

### **1. Timeframe**

The application must be made within 60 days after the Applicant was informed of the PFA's determination or any longer period that may be allowed if good cause is shown.

### **2. Format of the application**

The application must comply as closely as possible with the standard format in the precedent in the Tribunal's rule. See Annexure A for a copy of the precedent. The application must contain the determination and any other information, including any annexures provided to the Applicant by the PFA. It must also contain full details of the grounds on which the application is based. If the application is made outside of the allowed timeframe, it must also set out reasons why the Tribunal should allow the late application. The application must be lodged with the Tribunal **and all** the other parties to the decision.

Once the application is lodged, the PFA will have 30 days to provide the Tribunal with the documents the determination was based on and, if necessary, further reasons for the determination. The Applicant then has 10 days to amend or supplement the grounds on which the application is based. The Applicant can also apply for the suspension of a determination while the hearing of the application by the Tribunal is pending. To apply for the suspension the Applicant must submit an affidavit to the Tribunal and the PFA.

### **3. Set-down, hearing and decision**

The Tribunal will issue a notice of set-down which informs the Applicant and the PFA of the date and time of the hearing. The notice of set-down will contain instructions on filing of heads of argument and the conduct of the proceedings. The Applicant will not have to file heads of argument if he is not represented by a legal representative. The hearing will usually be scheduled for one day.

On the day of the hearing, the matter will be limited to the grounds on which the application is based. The Applicant and the PFA will each be given a maximum of two hours to set out their arguments. The Tribunal can decide to set aside the PFA's determination and refer the matter back to the PFA for further consideration or dismiss the application. In exceptional circumstances, the Tribunal can order that a party to the proceedings must pay some or all of the costs reasonably and properly incurred by the other party in connection with the proceedings.

The Tribunal's order has the same effect as a civil judgment and may be enforced as if it was granted by a court. A party who is unhappy with the Tribunal's decision make apply to court for review in terms of the Promotion of Administrative Justice Act 3 of 2000 or any other applicable law.

## **Dionne Nagan**

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## ANNEXURE A

### THE FINANCIAL SERVICES TRIBUNAL

In the matter between:

**ABC (PTY) LTD**

**Applicant**

(insert name of the relevant applicant)

**and**

**FINANCIAL SECTOR CONDUCT AUTHORITY**

**Respondent**

(insert name of the relevant decision-maker)

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### APPLICATION FOR RECONSIDERATION OF DECISION

#### IN TERMS OF SECTION 230 OF THE

#### FINANCIAL SECTOR REGULATION ACT 9 OF 2017 (“FSR Act”)

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#### 1.1 PARTICULARS OF APPLICANT

(if the applicant has legal representation these details must be inserted here)

- a. Applicant’s full names
- b. Telephone numbers
- c. Fax numbers
- d. Residential address (only required if the applicant is a natural person, i.e. not a company; close corporation; pension fund etc.)
- e. Business address (this information must always be provided, if applicable)

#### 1.2 PARTICULARS OF THE DECISION

An application for reconsideration is hereby noted against the respondent’s decision contained in the decision letter, dated \_\_\_\_\_, and received by the applicant on \_\_\_\_\_, attached hereto marked annexure “A”.

The statement of reasons, referred to in section 229 of the FSR Act, and any annexures provided to the applicant by the decision-maker are attached hereto marked annexure “B”.

### 1.3 GROUNDS

**NB:** This section must contain the full particulars of the grounds (stated succinctly) on which the application is based and, if necessary, deal with the aspect of condonation should the application be filed out of time – refer to section 230(2)(b) of the FSR Act.

DATED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF  
\_\_\_\_\_ 2018

\_\_\_\_\_  
Signature of applicant/legal representative

**TO:**           **FINANCIAL SERVICES TRIBUNAL**  
c/o FINANCIAL SECTOR CONDUCT AUTHORITY  
RIVERWALK OFFICE PARK  
BLOCK B  
41 MATROOSBERG ROAD  
ASHLEA GARDENS EXT 6  
PRETORIA  
TEL: (012) 428 8012 / (012) 367 7259  
FAX: (012) 346 6481  
E-MAIL: LEG.Tribunal@fsca.co.za / tribunal.fspdebar@fsca.co.za

**AND TO:**   **RELEVANT RESPONDENT**

(insert full physical and contact details of the relevant parties)

**AND TO:**   **ALL OTHER PARTIES TO THE DECISION**

(insert full physical and contact details of the relevant parties)