

FINANCIAL INTELLIGENCE CENTRE ACT APPEAL
BOARD RULES
ISSUED BY THE CHAIRPERSON OF THE APPEAL BOARD

INTRODUCTION

1. These rules are made in terms of section 45D(5) of the Act.
2. The Chairperson may deviate from these rules to the extent permitted by applicable law.

DEFINITIONS

3. In these Rules “the Act” means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), and, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act has that meaning, and—
 - a. “affidavit” includes a solemn promise;
 - b. “Chairperson” means the Chairperson of the Appeal Board and includes the Deputy Chairperson;
 - c. “decision-maker” refers to the Centre or the supervisory body in accordance with section 45C of the Act;
 - d. “days” means all days of the week excluding a Saturday, Sunday or public holiday;
 - e. “intervening party” means a person who has an interest in the appeal and has been granted leave by the Chairperson of the Appeal Board or the Deputy Chairperson to become a party to the proceedings;
 - f. “Regulations” refers to the Money Laundering and Terrorist Financing Control Regulations, published under Government Notice 1595 in Government Gazette 24176 of 20 December 2002 as amended by Government Notice R456 in Government Gazette 27580 of 20 May 2005; Government Notice

R867 in Government Gazette 33596 of 01 October 2010; Government Notice 1107 in Government Gazette 33781 of 26 November 2010 and Government Notice R.1062 in Government Gazette 41154 of 29 September 2017; and

- g. “Secretariat” refers to the administrative support for the Appeal Board as provided in terms of section 45E(12) of the Act;
4. These Rules must be read together with and subject to the laws and regulations that circumscribe the powers of the Appeal Board and that prescribe time limits and procedures. Particular regard must be had to:
- a. sections 45D and 45E of the Act;
 - b. sections 219 and 220 of the Financial Services Regulation Act, 2017; and
 - c. regulation 27C of the Regulations.

LODGING AN APPEAL

- 5. The right to appeal against a decision by a decision-maker to the Appeal Board is derived from section 45D(1)(a) of the Act.
- 6. The notice of appeal contemplated in regulation 27C(b) of the Regulations must be drafted to conform as far as possible with the standard format contained in the precedent “FORM 1” hereto.
- 7. The appellant must file, in addition to the notice of appeal and other documents contemplated in regulation 27C(b) of the Regulations, copies of the following:
 - a. the notice by which the decision-maker informed the applicant of the decision against which the appeal is made;
 - b. any statement of reasons and any other information including annexures that the decision-maker may have provided to the appellant.
- 8. The affidavit contemplated in regulation 27C(b) of the Regulations accompanying the notice of appeal must deal with the aspect of condonation should the application be filed out of time (refer to section 45D(1)(c) of the Act).

9. For an appeal to have been lodged validly, the notice of appeal and other documents contemplated in regulation 27C(b) of the Regulations and all other documents contemplated in paragraphs 7 and 8 above, must be delivered to the Secretariat AND served on all the other parties to the decision.

PROCEDURE FOR FILING FURTHER PLEADINGS

10. In the event that a decision-maker elects to oppose an appeal against its decision, it must file a notice to oppose, within 15 days from the day on which the notice of appeal was served on it.
11. The respondent must file its answering affidavit containing the respondent's full particulars, the reasons for its decision and the physical address where the respondent will accept delivery of all documents relevant to the appeal, accompanied by an indexed and paginated record of the documents, with adequate certified copies, which was before it when it made the decision to impose an administrative sanction and any further relevant documents which it wishes to submit to assist the Appeal Board in considering the Appeal within 15 days of filing its notice of intention to oppose.
12. The appellant must file a replying affidavit within 10 days of receipt of the respondent's answering affidavit, if it chooses to do so.
13. In the event that the appellant elects not to file a replying affidavit, it must file a notice to that effect, within 5 days of receipt of the answering affidavit.

HEADS OF ARGUMENT

14. The appellant shall file its heads of argument, together with an indexed and paginated record of the entire appeal application, within 15 days from the date on which its replying affidavit was filed or within 15 days from the date on which it indicated its election not to file the replying affidavit.
15. The respondent must file its heads of argument within 15 days from the date on which the appellant's heads of argument were served on it.
16. Persons who are not legally represented do not have to file heads of argument.

17. The heads of argument must generally comply with the rules for heads in the Constitutional Court or the Supreme Court of Appeal.
18. Heads of argument may not exceed 25 pages.

APPLICATION FOR SUBMISSION OF FURTHER EVIDENCE

19. The Chairperson of the Appeal Board may, on application by the appellant and on good cause shown, allow further oral and written evidence or factual information and documentation not made available to the Decision-maker prior to the making of the decision against which the appeal is lodged
20. The Chairperson of the Appeal Board may, on application by the Decision-maker concerned and on good cause shown, allow further oral and written evidence or factual information and documentation to be submitted and introduced into the record of the appeal.
21. An application for submission of further evidence is filed in terms of section 45D(3B)(a) and (b) of the Act.
22. The application must be on affidavit and be filed as soon as the particular party becomes aware of the existence of the evidence.
23. The application must show good cause including the reason why the evidence was not submitted earlier, its likely credibility, and its relevance to the decision.
24. If a party wishes to introduce new documents, these must be annexed to the application.
25. Evidence of witnesses other than the applicant must be attached and by way of affidavit.
26. Oral evidence may be permitted in exceptional cases only.
27. The application, opposed or unopposed, will be decided by the Chairperson on the papers unless that Chairperson decides otherwise.

REFERRAL TO DECISION-MAKING BODY FOR RECONSIDERATION

28. If introduction by an appellant of further oral and written evidence or factual documentation is allowed into the record of the appeal under subsection (3B)(a), the matter must be submitted to the decision-maker in question for reconsideration.
29. When an appeal is submitted to the decision maker, as contemplated in paragraph 28 above, the appeal is deferred pending the final decision of the decision-maker.
30. If, after the decision-maker concerned has made a final decision as contemplated in section 45D(3D), the appellant continues with the appeal by giving written notice to the Appeal Board, the record must include the further oral evidence properly transcribed, the written evidence or factual information or documentation allowed, and the further reasons or documentation submitted by the decision-maker.

CONDONATION APPLICATIONS

31. An application for condonation in terms of section 45D(1)(c) of the Act may be made on affidavit or in written submissions.
32. It must be succinct and show good cause.
33. If opposed by an interested party, the grounds of opposition must also be stated succinctly.
34. Depending on the nature of the application, the application, opposed or unopposed, may be decided on the papers or during the hearing by the Chairperson presiding over the Appeal Board.

JOINDER

35. A person with a direct and substantial interest in the decision upon which the application for appeal is based may apply to be joined as a party to the proceedings.

36. The applicant for joinder must file an affidavit showing good cause and stating the reasons for the joinder succinctly.
37. If opposed by an interested party, the grounds of opposition must also be stated succinctly.
38. The application, opposed or unopposed, will be decided by the Chairperson unless he or she directs otherwise.
39. If the application is granted, the Chairperson may issue such directions as to the further procedure as deemed appropriate.

MANNER IN WHICH DOCUMENTS MUST BE FILED

40. For any documents that have to be filed in terms of these Rules to have been filed validly they must-
 - a. be delivered by hand to the Secretariat to the street address provided in Form 1;
 - b. sent by registered post to the postal address provided in Form 1; or
 - c. sent electronically to the Secretariat of the Appeal Board and at the same time be served on all other parties to an appeal.
41. The office hours of the Secretariat are 08:00 to 16:00 on business days and if physically delivered, documents will only be received between these hours.

If documents are sent electronically, they must be in Adobe Acrobat (.pdf) format.

HEARING OF AN APPEAL APPLICATION

42. The date, time and place of the hearing are fixed by the Chairperson through the Secretariat. The Secretariat will from time to time issue directives relating to the filing of appeal processes and generally with regard to the conduct of the appeal.

43. Although the Secretariat will attempt before the set-down to ascertain suitable dates for the hearing to accommodate all parties and their legal representatives, their convenience is of secondary importance.
44. The notice of set-down will also contain directives relating to the conduct of the proceedings.
45. Matters are set down for one day only unless the Chairperson in exceptional circumstances decides otherwise.
46. The unavailability of a legal representative is not a ground for postponement.
47. The argument is limited to the grounds upon which the appeal is based.
48. The maximum time allowed for argument is two hours for the appellant and two hours for the respondent(s).
49. The form of address to the Tribunal panel is “Chair” or “Chairperson” and “Appeal Board members”.
50. Persons attending must be dressed appropriately.
51. Attention is drawn to section 62C of the Act which states:
“Any person who, having been summoned to attend and give evidence or to produce any book, document or object before the Centre or a supervisory body or the appeal board—
 - (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or*
 - (b) attends as required, but—*
 - (i) refuses to take an oath or to make affirmation; or*
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person, is guilty of an offence.”*

WITHDRAWAL

52. An appellant may withdraw an appeal at any stage.
53. Other parties to the proceedings may withdraw their participation or opposition at any stage.

GENERAL

54. Any party to an appeal against a decision who is dissatisfied with an order of the Appeal Board may institute proceedings for a judicial review of the order in terms of the Promotion of Administrative Justice Act or any applicable law.
55. An order of the Appeal Board made in terms of section 45D(8) of the Act has the effect of a civil judgment of the magistrate's court and may be taken on appeal to the High Court.
56. The launching of appeal proceedings in terms of section 45D(11)(a) of the Act, and paragraph 55 above, does not suspend the operation or execution of a decision, unless the chairperson of the Appeal Board directs otherwise.
57. Generally, all Appeal Board decisions or judgments shall be published on the website of the FIC and/or the relevant supervisory body unless, on good cause shown at the hearing of the appeal, the chairperson of the Appeal Board directs that such publication shall not reveal the identity of the parties concerned or that no publication shall take place.

DIES NON

58. The period 16 December to 15 January in every year is regarded by the Tribunal as a period of *dies non*, literally meaning "no days", and these days are not included in the time period set by these Rules.
59. The *dies non* period does not apply to time periods set by the Act and referred to in the Rules, such as for the filing of an application for appeal.



Chairperson- Financial Intelligence Centre Appeal Board

Judge Y Mokgoro

Date: 3 April 2019

PRECEDENT FORM 1**IN THE APPEAL BOARD OF THE FINANCIAL INTELLIGENCE CENTRE ACT**

In the matter between

Appeal no

ABC

Appellant

*(name of appellant)***DEF***(insert the name of the Financial Intelligence Centre or
supervisory body that imposed the sanction)*

First Respondent

XYZ

Second Respondent

(insert name of second respondent, if applicable)

NOTICE OF APPEAL

1. Particulars of the Appellant**1.1** Appellant's full name**1.2** Telephone numbers: *[the telephone number(s) of the appellant and its legal representatives]***1.3** Fax numbers: *[Fax number (s) of appellant and its legal representative]*

1.4 E-mail Address [*E-mail address of the appellant and and its legal representative*]

1.5 Residential Address; [*Only in the case of natural persons*]

1.6 Business Address [*Essential*]

2. Particulars of the Decision Appealed Against

An appeal is hereby noted against the Respondent's decision contained in his letter dated and received by the appellant on [*the date of the letter received from the Respondent and the date of receipt of the letter must both be stated.*] A copy of the aforesaid letter is attached hereto as annexure_A. [*Please note that it is not necessary to describe the Respondent's decision and/or to quote from the letter containing the decision as the letter has to be annexed*]

3. Grounds of Appeal

The appellant appeals against the decision on the following grounds:

- (a)
- (b)
- (c)

[Please state the grounds of appeal succinctly]

4. Proof of Payment

Attached hereto as annexure B is proof of payment of the amount of R10 000,00.

DATED ATON THIS.....DAY OF.....20....

[Signature of appellant or the attorney]

TO: **THE SECRETARY**
FIC ACT APPEAL BOARD
For attention: The Secretariat
Building 11, Byls Bridge Office Park
13 Candela Street
Highveld Extension 73
Centurion
E-mail:
AppealBoardSecretariat@fic.gov.za
Tel: 012 641 6242/3

Alternative address:

THE SECRETARIAT
FIC ACT APPEAL BOARD
Financial Intelligence Centre
Private Bag X177
Centurion
0046

AND TO: *[insert the name and address of the respondents]*

PLEASE NOTE: As per Regulation 27C (b), the notice of Appeal must be accompanied by an affidavit containing in full the particulars of the appellant, the decision appealed against, the grounds for the appeal and must also state the physical address where the appellant will accept delivery of all documents relevant to the appeal

NB: The application for reconsideration may be sent to the Appeal Board secretariat by registered post, e-mail or may be hand delivered to the abovementioned address.

It remains the responsibility of the applicant to ensure that the application for appeal is received by the Appeal Board secretariat and all the other parties to the decision.