

THE FINANCIAL MARKETS TRIBUNAL

RULES OF PROCEDURE

PART 1 INTRODUCTION

1. These are the Rules of Procedure of the Financial Markets Tribunal.

Defined terms

2. Terms in these Rules have the same meaning as in the Regulatory Law unless expressly stated otherwise.
 - (a) “**Business day**” means a normal working day in the DIFC.
 - (b) “**Chairman**” means the FMT member selected by the President to serve as chairman of a Hearing Panel.
 - (c) “**Chief Executive**” means the Chief Executive of the DFSA.
 - (d) “**Day**” means calendar day unless expressly stated otherwise
 - (e) “**DFSA Executive**” includes the Chief Executive and his staff.
 - (f) “**File**” means to give documents to the Registrar in accordance with FMT Rules 8 and 9.
 - (g) “**FMT**” means the Financial Markets Tribunal established under Article 26 of the Regulatory Law, DIFC Law No. 1 of 2004, as amended.
 - (h) “**FMT Rules**” mean the Rules of Procedure of the Financial Markets Tribunal made under Article 27(6) of the Law.
 - (i) “**FMT Website**” means the dedicated Website address of the FMT nominated by the President.
 - (j) “**Hearing Panel**” means the panel of FMT members selected for the purpose of hearing and determining specific proceedings before the FMT.
 - (k) The “**Law**” means the Regulatory Law, DIFC Law No. 1 of 2004, as amended.
 - (l) “**Parties**” includes the DFSA Executive and any other person who is a party to proceedings before the FMT.
 - (m) The “**President**” means the President of the FMT.
 - (n) “**Reference**” means an action commenced before the FMT under Article 29 of the Law.
 - (o) The “**Registrar**” means the Registrar of the FMT.

- (p) **“Regulatory Proceedings”** means an action commenced before the FMT under Article 30 of the Law.

General

3. The FMT Rules describe the procedures that apply generally to the conduct of proceedings brought before the FMT.
4. The FMT has however the discretion to adopt different procedures to ensure the just, expeditious and economical resolution of proceedings brought before the FMT.
5. Nothing in the FMT Rules shall be taken as abridging the powers of the FMT under the Law or any other legislation.
6. Proceedings before the FMT shall be conducted in English and all documents required to be filed must be in English.
7. The overriding objective of these Rules is to enable the FMT to deal with cases fairly and justly.

7.1 Dealing with a case fairly and justly includes:

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the FMT effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

7.2 The FMT must seek to give effect to the overriding objective when it:

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

7.3 Parties must:

- (a) help the FMT to further the overriding objective; and
- (b) co-operate with the FMT generally.

The Registrar and FMT address for service

8. The Registrar shall be appointed by and act in accordance with the instructions of the President and shall, in particular:
 - (a) establish and maintain a register of pleadings, supporting documents and decisions of the FMT; and

- (b) certify that any order, direction, finding, or decision is an order, direction or decision of the Hearing Panel, Chairman or President, as the case may be.
9. All notices, applications and other documents required to be filed with the FMT or the Registrar must be filed with the Registrar at one of the following addresses:

Personal or postal service:

Registrar
Financial Markets Tribunal
DIFC-LCIA Arbitration Centre
Dubai International Financial Centre
The Gate District
Building 4 Ground Level
PO Box 211724
Dubai, UAE

E-mail: fmreregistrar@difc-lcia.org

Telephone: +971 4 427 3376

Fax: +971 4 427 3378

Exercise of powers of the FMT

10. The powers of the FMT to hear and determine proceedings before the FMT shall be exercised by the Hearing Panel selected by the President for those proceedings.

Constituting a Hearing Panel

11. As soon as the Registrar becomes aware of the commencement of proceedings before the FMT, the Registrar shall notify the President, who shall without undue delay select a Hearing Panel of not less than three FMT members, one of whom may be the President, and appoint its Chairman.
12. On the appointment of the Hearing Panel, the Registrar shall notify all parties to the proceedings of the constitution of the Hearing Panel for those proceedings.

Interim Orders

13. With the consent of all parties to the proceedings or in cases of urgency procedural directions and orders granting interim relief may be made by the Chairman of the Hearing Panel alone.
14. In cases of urgency the powers of the FMT may be exercised by the President before the Hearing Panel has been selected.
15. Where an order or direction is made by the Chairman of the Hearing Panel alone otherwise than with the consent of all parties to the proceedings or is made by the President under FMT Rule 14, any party may apply within seven days of the order for the order or direction to be reconsidered by the full Hearing Panel, but the order or direction shall (unless it is rescinded or varied by the person who made it) remain in force unless and until it is rescinded or varied by the full Hearing Panel.

Public Proceedings

16. All proceedings and decisions of the FMT shall be heard and given in public unless the Hearing Panel orders otherwise on its own initiative or the application of a party. No hearing shall be non-public where all parties request that the hearing be made public.

Confidential Treatment

17. The Hearing Panel on its own initiative or on the application of a person may order that part or all of a proceeding is non-public and that information is to be treated confidentially and not disclosed publicly.
18. An application for confidential treatment shall state the grounds for objection to public disclosure and where applicable shall be accompanied by a sealed copy of the information for which confidential treatment is sought.
19. In determining an application for confidential treatment, the Hearing Panel shall consider, so far as practicable:
 - (a) whether the disclosure of information would in its opinion be contrary to the public interest;
 - (b) whether the disclosure of commercial information would or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates;
 - (c) whether the disclosure of information relating to the private affairs of an individual would, or might, in its opinion, significantly harm the person's interests: and
 - (d) the extent to which any such disclosure is necessary for the purpose of explaining the reasons for the decision.
20. Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be for the confidential use only of the Registrar, the FMT, the applicant, and any other parties and counsel, and shall be made available to the public only in accordance with orders of the FMT.

Application of the FMT Rules

21. Parts 1 and 4 of the FMT Rules apply to all Reference or Regulatory Proceedings brought before the FMT.
22. Part 2 of the FMT Rules applies to a Reference brought before the FMT.
23. Part 3 of the FMT Rules applies to Regulatory proceedings brought before the FMT.

PART 2 PROCEEDINGS BY WAY OF A REFERENCE

Commencement of proceedings

24. Proceedings before the FMT which are by way of a Reference shall be commenced by a reference notice, which shall state:

- (a) the name and address of the applicant;
- (b) the name and address of the applicant's legal representative;
- (c) the applicant's physical address for service in the DIFC, and in the event that the Applicant is willing to accept service electronically, the Applicant's e-mail or facsimile address for service;
- (d) the relief sought by the Applicant, including whether the Applicant is seeking a stay of the decision;
- (e) the grounds and urgency for relief sought;

and the notice must be signed and dated by the Applicant or by the Applicant's duly authorised officer or legal representative. The form of a reference notice is attached to the Rules as FMT Form 1.

25. The reference notice shall contain:

- (a) a concise statement of the facts;
- (b) the legislative provision under which the reference is brought;
- (c) a copy of the disputed decision and all material referred to in the decision;
- (d) a summary of the grounds for contesting the decision.

26. A reference notice shall be filed with the Registrar on the date it is signed by the applicant, and a copy shall be sent by the applicant to the Chief Executive of the DFSA.

Answer to the reference notice

27. The DFSA Executive shall within 28 days of the date of the reference notice, file an answer to the reference notice with the Registrar and at the same time send a copy of the answer to the applicant and to any other party to the proceedings.

28. An answer to a reference notice must include:

- (a) a summary of the facts and law upon which the DFSA Executive relies;
- (b) whether the DFSA Executive intends to rely on any other evidence in support of the decision the subject of the reference; and
- (c) a list of the additional evidence, including copies of documents, names and statements of witnesses of fact or expert witnesses to be called, if any.

29. An answer to a reference notice shall be filed with the Registrar on the date it is signed and a copy shall be sent by the person making the answer to the applicant.

Applicant's reply

30. The applicant may if it wishes, within 28 days of the filing of an answer to the reference notice, serve a reply and shall at the same time send a copy of any such reply to the other parties to the proceedings.

31. A reply shall:
- (a) identify all matters in the answer which are disputed by the applicant;
 - (b) state succinctly the reasons why those matters are disputed;
 - (c) list and attach any documents and witness statements on which the applicant relies and which have not previously been filed by the applicant; and
 - (d) be signed and dated by the applicant or by the applicant's duly authorised officer or legal representative
32. On the date on which a reply is signed by the applicant it shall be filed with the Registrar and a copy shall be sent by the applicant to the Chief Executive of the DFSA.

PART 3: REGULATORY PROCEEDINGS

33. A Regulatory Proceeding shall be commenced by an application to the FMT, which shall state:
- (a) the name and address of the applicant;
 - (b) the name and address of the applicant's legal representative (if any);
 - (c) the applicant's address for service in the DIFC;
 - (d) the name(s) and address(es) of the respondent(s) to the Regulatory Proceedings;
- and shall be signed and dated by the applicant or by the applicant's duly authorised officer or legal representative.
34. An application for a Regulatory Proceeding shall:
- (a) state succinctly the nature of the applicant's case; and
 - (b) state what relief is sought from the FMT.
35. On the date on which the application is signed by the applicant it shall be filed with the Registrar and a copy shall be sent by the applicant to every respondent named in the Regulatory Proceeding.
36. Upon receiving an application for a Regulatory Proceeding the FMT shall issue directions, either on its own initiative or after holding a case management conference, setting out the deadlines by which parties are required to file and serve their statement of case and answer.
37. The applicant shall, after filing the application, file with the Registrar and send to each person against whom the proceedings are brought a statement of case which shall:
- (a) state the matters of fact and law on which the applicant relies;

- (b) list and attach the documents and witness statements on which the applicant relies.
38. Each person against whom Regulatory Proceedings are commenced shall file an answer with the Registrar within 28 days and at the same time send a copy of the answer to the applicant and to any other party to the proceedings.
39. An answer to a Regulatory Proceeding must:
- (a) identify all matters in the statement of case which are disputed by the person making the answer;
 - (b) state succinctly the reasons why those matters are disputed, and any other matters on which the person making the answer relies;
 - (c) list and attach the documents and witness statements on which the person making the answer relies;
 - (d) state the address for service within the DIFC of the person making the answer; and
 - (e) be signed and dated by the person making the answer or by the person's duly authorised officer or legal representative.
40. An answer to a statement of case shall be filed with the Registrar on the date it is signed and a copy shall be sent by the person making the answer to the applicant and to every other person against whom the proceedings are brought.

PART 4 GENERAL AND SUPPLEMENTARY

Directions

41. The Hearing Panel may at any time after the commencement of proceedings, on the request of a party or of its own initiative, at a case conference, pre-hearing review or otherwise, give such directions as it thinks fit to enable the parties to prepare for the hearing and for the conduct of the proceedings, to assist the FMT to determine the issues and generally to ensure the just, expeditious and economical determination of the proceedings.
42. In particular, the Hearing Panel may give directions:
- (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of the oral hearing;
 - (b) dispensing with any requirement of Parts 2 and 3 of these Rules or requiring any additional pleadings or information;
 - (c) for the preparation and exchange of skeleton arguments;
 - (d) requiring persons to attend and give evidence or to produce documents, including electronic records and communications;

- (e) as to the evidence which may be required or admitted and the extent to which it shall be oral or written, including any matter on which the Hearing Panel has powers under Rules 54 and 55;
- (f) as to the submission in advance of a hearing of any witness statement or expert report;
- (g) as to the examination or cross-examination of any witness;
- (h) fixing time limits with respect to any aspect of the proceedings;
- (i) for the disclosure between, or the production by the parties of documents or classes of documents, including electronic records and communications;
- (j) for the appointment and instruction of experts, whether by the Hearing Panel or by the parties and the manner in which expert evidence is to be given;
- (k) for the award of costs and expenses, including any allowances payable to persons in connection with their attendance before the Hearing Panel;
- (l) for maintaining the confidentiality of information which the Hearing Panel has power to exclude under Rule 17 from any document recording a decision of the Hearing Panel.

43. The Hearing Panel may:

- (a) put questions to the parties and witnesses;
- (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
- (c) ask the parties or third parties for information;
- (d) ask for documents or records relating to the proceedings to be produced;
- (e) require the parties or their representatives to attend meetings, whether in person or by video link or telephone conference.

44. A request by a party for directions shall be made in writing as soon as practicable and shall be filed with the Registrar and sent to every other party who might be affected by such directions, and the request shall be determined by the Hearing Panel taking into account the observations of the parties.

Case management

45. Where it appears to the Hearing Panel at any time after the commencement of proceedings that the proceedings would be facilitated by a case management conference or pre-hearing review the Hearing Panel may, on the request of a party or of its own initiative, give directions for such a conference or review to be held.

46. The purpose of a case management conference or pre-hearing review shall be:

- (a) to ensure the just, expeditious and economical conduct of the proceedings;
- (b) to determine the points on which the parties must present further argument or

which call for further evidence to be produced;

- (c) to clarify the orders or relief sought by the parties, their arguments of fact and law and the points of issue between them;
- (d) to ensure that all agreements that can be reached between the parties about the matters in issue and the conduct of the proceedings are made and recorded;
- (e) to facilitate the settlement of the proceedings.

47. The Hearing Panel may:

- (a) encourage and facilitate the use of an alternative dispute resolution procedure if the Hearing Panel considers that appropriate;
- (b) dispense with the need for the parties to attend any hearing;
- (c) use technology actively to manage cases.

48. In preparation for a case management conference or pre-hearing review, the Registrar shall ascertain from the parties what matters if any are agreed among them.

Timetable for the oral hearing

49. As soon as practicable the Hearing Panel shall:

- (a) set a timetable outlining the steps to be taken by the parties pursuant to the directions of the Hearing Panel for the oral hearing;
- (b) fix the date for the oral hearing; and
- (c) notify the parties in writing of the date and place for the oral hearing and of any timetable for that hearing.

Evidence

50. The Hearing Panel may receive and consider any material by way of oral evidence, written statements or documents, even if such material may not be admissible in evidence in civil or criminal proceedings in a court of law.

51. The Hearing Panel shall determine the proceedings brought before the FMT on a balance of probabilities.

52. The Hearing Panel may control the evidence by giving directions as to:

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the Hearing Panel.

53. A party may not without the permission of the Hearing Panel adduce any written or oral evidence which has not previously been disclosed to all other parties to the proceedings (in the case of oral evidence, in the form of a witness statement or expert opinion).

54. The Hearing Panel may dispense with the need to call a witness to give evidence if a witness statement or expert opinion has been submitted in respect of that witness.

Conduct of hearings

55. Every oral hearing in the course of proceedings shall be opened, directed and closed by the Chairman, who shall be responsible for the proper conduct of the hearing.
56. The Hearing Panel shall, so far as it appears to be appropriate, seek to avoid formality in its proceedings and shall conduct any oral hearing in such manner as it considers most appropriate for the clarification of the issues and generally for the just, efficient and expeditious handling of the proceedings.
57. The Hearing Panel may, of its own initiative or on the application of any party, direct that a witness or a party, or the representative of a party may take part in any oral proceedings by way of video link or telephone conference in such manner as the Hearing Panel may direct, and whether or not that person is physically present within the DIFC.
58. Unless the Hearing Panel otherwise directs, no witness of fact or expert shall be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Hearing Panel.
59. Unless the Hearing Panel otherwise directs, all documentary exhibits of a particular class (e.g. correspondence, witness statements, contractual documents, etc) shall be presented in bundles arranged chronologically, and any document contained in such a bundle shall be deemed authentic without further proof.
60. Any documentary exhibit whose authenticity is challenged shall be excluded from such bundles and shall be proved by such evidence as is appropriate to the circumstances.
61. After the Chairman has closed the proceedings, no further evidence or argument may be submitted without the consent of the Hearing Panel.
62. The Hearing Panel may determine all questions of fact and law that arise in any proceedings brought before it.

Location and manner of hearings

63. Subject to Rule 55, every oral hearing on the merits of a Proceeding shall take place in the DIFC in the presence of all the members of the Hearing Panel.
64. In any other case the Hearing Panel may:
- (a) with the consent of all the parties, dispense with an oral hearing and make its decision on written submissions and evidence;
 - (b) hold an oral hearing by video link or telephone conference, which the participants, including the members of the Hearing Panel, may attend whether or not they are physically present in the DIFC.

Interim relief

65. The Hearing Panel may make an order on an interim basis:
- (a) for the preservation of evidence or assets;
 - (b) requiring a party to do or to cease and desist from doing any act or thing; or
 - (c) suspending the operation of any decision which is the subject of the Reference before the Hearing Panel.
66. Any interim order is subject to the Hearing Panel's further order, direction or final decision.
67. If the urgency of the case so requires, the Hearing Panel may make an interim order on the request of a party before the observations of the other parties have been submitted, and without notice to those other parties, but in such a case the Hearing Panel shall require notice of the request and of the order to be given forthwith to all parties who are affected by the order, and any party who is so affected may request the Hearing Panel to set aside or vary the order.

Vacancies

68. If at any time a member of the Hearing Panel is unable or unwilling to act the President shall appoint a new member to fill the vacancy, and the Hearing Panel shall then decide whether the proceedings are to continue or to start afresh, and may make any consequential directions which it considers appropriate.

Representation at hearings

69. A party may appear at any hearing and may be represented by any person, whether or not that person is legally qualified.
70. However, if in any particular case the Hearing Panel is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to represent a party at the hearing.

Costs

71. The FMT may make an order for costs on an application or on its own initiative.
72. A person making an application for an order for costs must:
- (a) send or deliver a written application to the FMT and to the person against whom it is proposed that the order be made; and
 - (b) send or deliver with the application a schedule of the costs or expenses claimed sufficient to allow summary assessment of such costs or expenses by the FMT.
73. An application for an order for costs may be made at any time during the proceedings but may not be made later than 28 days after the date on which the FMT sends:
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice under Rule 93 that a withdrawal which ends the proceedings has taken effect.

74. The FMT may not make an order for costs against a person (the “paying person”) without first:
- (a) giving that person an opportunity to make representations; and
 - (b) if the paying person is an individual, considering that person’s financial means.
75. The amount of costs or expenses to be paid under an order under this rule may be ascertained by:
- (a) summary assessment by the FMT;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (“the receiving person”); or
 - (c) assessment of the whole or a specified part of the costs, including the costs or expenses of the assessment, incurred by the receiving person, if not agreed.
76. Upon making an order for the assessment of costs, the FMT may order an amount to be paid on account before the costs are assessed.

Deliberations and decisions of the Hearing Panel

77. The Hearing Panel may conduct its deliberations in the presence of all its members or in such other manner as it considers appropriate, whether or not any or all of them are in the DIFC.
78. Decisions of the Hearing Panel:
- (a) shall be communicated to the parties in writing by the Registrar;
 - (b) shall be entered by the Registrar on the register;
 - (c) shall, unless otherwise ordered under Rule 16, be published on the FMT website.
79. With the permission of the Hearing Panel, orders and decisions to which the parties consent may be drawn up and issued as orders of the FMT.

Filing and sending documents.

80. A document which is required by these Rules to be filed with the Registrar shall be delivered personally or by post or by facsimile or by e-mail to the Registrar’s address for service (see Rule 9).
81. Where a person is required to state an address for service the person shall provide a physical address for service within the DIFC, and may in addition provide an e-mail or facsimile address at which the person is willing to accept service.
82. A document which is required by these Rules to be sent to any person other than the Registrar may be:
- (a) delivered personally to the person’s physical address for service;

- (b) sent by post to the person's physical address for service;
 - (c) sent to the person by e-mail at any e-mail address which the person has provided as an address for service;
 - (d) sent to the person by facsimile at any facsimile address which the person has provided as an address for service.
83. If a person has not provided an address for service, a document may:
- (a) in the case of a company, be delivered personally or sent by post to the secretary of the company at the registered address or principal place of business of the company;
 - (b) in the case of a partnership, be delivered personally or sent by post to the last known address of any one of the partners;
 - (c) in the case of any other person, be delivered personally to him or sent by post to the last known address of that person.
84. A document shall be treated as having been filed or sent at the time when, having regard to all the circumstances, including the method of filing or sending, the incidence of non-working days and the differences between time zones, the document should in the ordinary course have come to the notice of the intended recipient.
85. The Hearing Panel may dispense with the filing or sending of a document if the interests of justice so require.
86. The Hearing Panel may, for good reason, authorise a document to be sent or filed by an alternative method to those permitted by these Rules.

Amendment

87. A document served or filed by a party in any Proceedings may be amended only with the permission of the Hearing Panel.
88. Permission to amend such a document may be granted on such terms as the Hearing Panel thinks fit, and the Hearing Panel shall give such further or consequential directions as may be necessary.

Calculation of Time

89. Where the time for doing any act expires on a non-business day, the act is in time if done on the next business day.
90. Subject to legislative provisions to the contrary, the Hearing Panel may extend or abridge the time for doing any act under these Rules, whether or not expired.

Non-compliance: non-attendance: irregularities

91. If any party fails to comply with these Rules or any direction given in accordance with these Rules, the Hearing Panel may, if it considers the justice of the case so requires:
- (a) order that such party be barred from taking any further part in the proceedings without the permission of the Hearing Panel;

- (b) draw such inferences from that party's failure to comply with such Rules or direction as it considers are justified in the circumstances.
- 92. If any party fails to attend any hearing, case management conference or pre-hearing review of which it has received proper written notice, the Hearing Panel may continue with such case management conference or pre-hearing review in the absence of that party.
- 93. Any irregularity resulting from failure to comply with these Rules shall not of itself render the proceedings void, and the Hearing Panel may give such directions as it thinks just to cure the irregularity.
- 94. Clerical mistakes or errors arising from any accidental slip or omission in any document recording a decision of the Hearing Panel may be corrected by the Chairman by a certificate signed by the Chairman.

Withdrawal

- 95. (1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it:
 - (a) by sending or delivering to the FMT a written notice of withdrawal; or
 - (b) orally at a hearing.
- (2) Notice of withdrawal will not take effect unless the FMT consents to the withdrawal.
- (3) The FMT must notify each party in writing that a withdrawal has taken effect under this rule.

Practice Directions

- 96. The President may issue practice directions in relation to the procedures governed by these Rules.

Financial Markets Tribunal