



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

Lught-Reill Shirveishyn Argidoil Ellan Vannin

Consultation Response

Financial Services Tribunal

(Amendment) Rules

CR22-01

Issue Date: 10 February 2022

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| Appendix - <i>Financial Services Tribunal (Amendment) Rules 2022</i> | Error! Bookmark not defined. |

Glossary

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|------------------|--|
| Authority | Isle of Man Financial Services Authority |
| FSA08 | Financial Services Act 2008 ¹ |
| FST Rules | Financial Services Tribunal Rules 2015 ² |
| IoM | Isle of Man |

¹ https://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0008/FinancialServicesAct2008_15.pdf

² <https://www.iomfsa.im/media/2458/fstrules-keelingschedule-2018.pdf>

1. Background

This Consultation Response is issued by the Isle of Man Financial Services Authority ('**Authority**') following Consultation Paper CP21-06³.

The purpose of the consultation was to obtain views on a proposed change to the Financial Services Tribunal Rules 2015 ('**the FST Rules**'), which are made by the Council of Ministers.

The consultation was particularly relevant to persons that may appeal against decisions of the Authority under the FST Rules.

2. Summary of Responses

The consultation was published via the Authority's website⁴ and the IoM Government's consultation hub. It was open from 28 May to 9 July 2021 and received 25 responses, of which 20 were from entities that are either regulated by the Authority or registered as Designated Businesses (with the Authority)⁵. Five responses were from other parties.

The main comments received, and our views on those comments are as follows:

| Comments received | Authority's views |
|--|---|
| The grounds of appeal in the FST Rules should replicate those in the Financial Services Review Regulations 2001 (' 2001 Regulations '). | These two items of legislation have/had differing formats and purposes – the 2001 Regulations instructed the Review Committee what to consider, whereas the FST Rules specify the content of an appellant's notice. The Tribunal under the FST Rules is able to determine its own procedure to a great extent. |
| The proposed grounds of appeal do not include an appeal against the Authority's use of discretion. | This is technically superfluous, because case law ⁶ permits the Tribunal to consider the exercise of discretion without it being specifically stated. |
| The only other course of action open to would-be appellants is the more costly option of a doleance claim. | There are various routes to appeal decisions. The most suitable route would depend on the exact circumstances of each case. |
| The regulatory Acts don't restrict the grounds of appeal, so why do the FST Rules do so. | This misunderstands the interaction between the regulatory Acts and the FST Rules – Tribunals legislation details <i>how</i> to appeal decisions that |

³ https://consult.gov.im/financial-services-authority/financial-services-tribunal-amendment-rules/consult_view/

⁴ <https://www.iomfsa.im/fsa-news/>

⁵ There are almost 900 such entities.

⁶ *Associated British Picture Houses Limited v Wednesbury Corporation* [1947] 2 AER 680 ('*Wednesbury*')

| | |
|---|---|
| | are made under the regulatory Acts, not <i>what</i> may be appealable. |
| As it is a burden to have to monitor the Authority's website, associations should be notified by the Authority when a consultation is issued. | Although the Authority's usual practice is to inform any person or body that is specifically and directly affected by a consultation of its existence, we do expect regulated entities and designated businesses to monitor www.iomfsa.im regularly. The website contains Latest News items which inform readers about various important regulatory matters, AML guidance, licence surrenders and de-registrations, as well as consultations. |

3. Changes to the Proposals

We considered the comments provided by the consultation respondents and heard their concerns. As a result, to aid clarity, paragraph (c) was added to rule 6A to address respondents' concerns regarding exercise of discretion. Please see the appendix for the final legislation.

The wording of rule 6A(c) does not replicate that in the 2001 Regulations because the FST Rules are not styled to instruct the Tribunal what to consider. Additionally, rule 6A(c) uses terminology that reflects the *Wednesbury* unreasonableness test in case law⁷, because the Tribunal will be reviewing any appeal, not rehearing it.

Our views on other matters raised are shown above.

Deemsters

As required by the Tribunals Act 2006, the draft wording of the *Financial Services Tribunal (Amendment) Rules* (including the addition of ground (c)) was considered by the Deemsters, who had no comments.

⁷ The principles established in the matter of *Associated British Picture Houses Limited v Wednesbury Corporation* [1947] 2 AER 680 ('*Wednesbury*') and the sentiments expressed in *El Du Pont de Nemours v ST Du Pont* [2003] EWCA Civ 1368.

4. Next Steps

The *Financial Services Tribunal (Amendment) Rules 2022* were considered by the Council of Ministers on 27 January 2022, which agreed to make the legislation. Accordingly, the *Financial Services Tribunal (Amendment) Rules 2022* were made on 31 January 2022.

Subject to approval by Tynwald, the *Financial Services Tribunal (Amendment) Rules 2022* will come into effect on 1 April 2022.

In case of any query, please contact —

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APPENDIX – LEGISLATION

Statutory Document No. 2022/0015

C

Tribunals Act 2006

FINANCIAL SERVICES TRIBUNAL (AMENDMENT) RULES 2021

Approved by Tynwald: [day month] 2022

Coming into Operation: 1 April 2022

The Council of Ministers, after consulting the Deemsters⁸, makes the following Rules under sections 8 and 12(3) of the Tribunals Act 2006.

1 Title

These Rules are the Financial Services Tribunal (Amendment) Rules 2022.

2 Commencement

If approved by Tynwald, these Rules come into operation on 1 April 2022⁹.

3. Financial Services Tribunal Rules 2015 amended

- (1) The Financial Services Tribunal Rules 2015¹⁰ are amended as follows—
- (2) After rule 6, insert a new rule 6A —
«6A Grounds of appeal

⁸ As required by section 8(1) of the Tribunals Act 2006.

⁹ As required by section 12(2) of the Tribunals Act 2006.

¹⁰ SD 2015/0321, as amended

The grounds of an appeal which must be included in the notice in rule 6(3) are that –

- (a) the disputed decision is based on an error of fact; or
- (b) the disputed decision is wrong in law; or
- (c) the regulatory authority's exercise of its discretion in relation to the disputed decision was so unreasonable that no reasonable regulatory authority would have exercised its discretion in such a manner.».

MADE 31 JANUARY 2022

W. GREENHOW

EXPLANATORY NOTE
(This note is not part of the Order)

These Rules amend the Financial Services Tribunal Rules 2015 by adding the grounds for an appeal.