



15th October 2012

NOTICE

Credit Unions Appeal Tribunal Regulations 2012 (the “Regulations”)

The Credit Unions Act **2010** was brought into force in 2011 (the “Act”) and made provision for, amongst other matters, an appeal process under section 22. Similar to other financial services sectors, an appeal tribunal (“Tribunal”) may be constituted to address an appeal from the decisions of the Authority on the following matters:

Pursuant to section 22 of the Act, a credit union or other relevant persons that are aggrieved by a decision of the Authority may appeal to a Tribunal where the Authority has:

- a. Restricted a credit union’s licence or restricted in a particular manner or varied any restrictions of its licence under section 22 (1) (a);
- b. Revoked a credit union’s licence under section 22 (1) (b);
- c. Given a decision which falls within the ground or grounds set out under section 22 (2) (a); or
- d. Given a decision pursuant to section 22 (2) (b) which has the effect of requiring the removal of a person as the chief executive officer or senior executive officer of a credit union.

The proposed Regulations are similar to those adopted for other appeals tribunals including regulations enacted under the Trusts (Regulation of Trust Business) Act 2001, the Investment Business Act 2003 and the Banks and Deposit Companies Act 1999.

The Regulations are subject to negative resolution procedure and will also be reviewed and signed off by the Attorney General’s Chambers in due course.

In addition to the Regulations, the Authority proposes for the form of licence attached to be issued to any credit union, and which shall be required to be displayed by that credit union in accordance with the provisions of section 10 of the Act.

The Ministry of Finance proposes to make the Regulations by the end of October 2012. Comments on the draft Regulations are invited by **31st October 2012** and should be sent to policy@bma.bm.

BERMUDA

CREDIT UNIONS APPEAL TRIBUNAL REGULATIONS 2012

BR / 2012

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The Minister of Finance, in exercise of the power conferred by section 40 of the Credit Unions Act 2010, makes the following Regulations:

Citation

1 These Regulations may be cited as the Credit Unions Appeal Tribunal Regulations 2012.

Interpretation

2 In these Regulations, unless the context otherwise requires—
“the Act” means the Credit Unions Act 2010;
“appellant” means a person who has brought an appeal pursuant to regulation 4;
“chairman” means the chairman of the Tribunal and includes the deputy chairman when acting in the absence of the chairman;
“Minister” has the meaning given in section 2 of the Credit Unions Act 2010;
“panel” means the panel of members of the appeal Tribunal appointed by the Minister under section 23(4) of the Act;
“Tribunal” means the Tribunal empanelled pursuant to regulation 6.

Appointment of secretary

3 The Minister may appoint a person to act as secretary to the Tribunal.

Manner and time for making an appeal

4 (1) An appeal shall be brought by filing a notice of appeal with the Tribunal Secretary, Ministry of Finance, Hamilton as follows—

- (a) In the case of an appeal by a credit union under section 22 (1) (a) of the Act, not later than 10 days from the date of the Authority’s decision to restrict its licence, to restrict in a particular manner or to vary any restrictions of its licence;
- (b) In the case of an appeal by a credit union under section 22 (1) (b) of the Act, not later than 10 days from the date of the Authority’s decision to revoke its licence.
- (c) In the case of an appeal by a person under section 22 (2) (a) of the Act, not later than 28 days from the date of the Authority’s decision under 17 (4) (a) to impose or vary a restriction or for proposed revocation where the criterion in paragraph 1 of the minimum criteria is not or has not been fulfilled, or may not

be or may not have been fulfilled, in the case of any person; or

- (d) In the case of an appeal by a person under section 22 (2) (b) of the Act, not later than 28 days from the date of the Authority's decision to restrict a licence which consists of or includes a condition requiring the removal of any person as chief executive officer, senior executive officer or director of a credit union.

(2) When filing a notice of appeal, the appellant shall serve a copy of the notice on the Authority; and the persons concerned under sections 22 (2) (a) and (b).

Notice of appeal

5 A notice of appeal shall be signed by the appellant, or on behalf of the appellant by his representative, and shall contain the following information—

- (a) the appellant's name;
- (b) the appellant's address, or where the appellant is a corporate body, the address of the appellant's registered office;
- (c) the address to which notices and other documents may be served on the appellant in Bermuda, if different from the address given under subparagraph (b);
- (f) the name and address of any person appointed by the appellant to represent him or it in connection with the appeal;
- (g) the address of the secretary to the Board of Directors of the Authority; and a statement of the decision of the Authority against which the appeal is being made.

Empanelling the Tribunal

6 The secretary shall, upon receiving a notice of appeal, request the chairman to appoint the other two members from the panel to hear the appeal.

Grounds of appeal

7 (1) The appellant shall, within 14 days from the date of filing the notice of appeal, file with the secretary a notice setting out the grounds of the appeal.

- (2) Where the appellant is a credit union under section 22 (1) (a) or (b); and
- (3) Where the appellant is any person making an appeal under sections 22 (2)

(a) or (b) of the Act; the notice of appeal shall contain sufficient particulars setting out the person's reasons for appealing against the decision of the Authority, under section 17 (4) of the Act, to serve the notice of objection.

(4) The appellant shall, when filing the notice of grounds of appeal, serve a copy of the notice on the Authority, and on any person to whom a copy of the notice of appeal was served pursuant to paragraph 4(2).

Supplementary grounds of appeal

8 (1) In the case of an appeal by a credit union under sections 22 (1) (a) or (b) of the Act, or an appeal by a person under sections 22 (2) (a) or (b) of the Act, the appellant may omit from the notice of grounds of appeal any information that has been given in confidence or is commercially sensitive, and shall file with the secretary a notice of supplementary grounds of appeal.

(2) The notice of supplementary grounds of appeal shall be filed with the secretary at the time the notice of grounds of appeal is filed and shall—

- (a) contain such information that has been given in confidence or is commercially sensitive; and
- (b) give the reason why the confidential or commercially sensitive information was omitted from the notice of grounds of appeal.

Disclosure by the Authority

9 Within 14 days of being served a copy of a notice of appeal, the Authority shall—

- (a) file with the secretary the documents listed in the Schedule in respect of the appeal; and
- (b) serve on the appellant and any person concerned, a list of the documents filed with the secretary, or a copy of the documents if the appellant or person concerned does not already have a copy of the documents.

Filing of response by Authority

10 (1) In every appeal the Authority shall be the respondent.

(2) The Authority shall, within 28 days of being served a copy of a notice of the grounds of appeal, file with the secretary a response to the particulars set out in the notice.

(3) The Authority shall, when filing a response, serve a copy of the response on the appellant and on any person to whom a copy of the notice of appeal was served pursuant to paragraph 4(2).

Preliminary hearing

11 (1) A preliminary hearing shall be held at which—

(a) the chairman shall—

(i) give such directions as he considers necessary or desirable for the conduct of the appeal; and

(ii) appoint the date, time and place of the hearing of the appeal; and

(b) the parties may seek clarification regarding the conduct of the appeal.

(2) The chairman shall serve a notice of the preliminary hearing appointing the date, time and place of the hearing on the parties to the appeal.

(3) The notice mentioned in paragraph (2) shall be served—

(a) not earlier than 21 days of receipt by the secretary of the response by the Authority;

(b) not later than 35 days after receipt by the secretary of the response by the Authority; and

(c) not less than 10 days before the day appointed for the preliminary hearing.

(4) The parties to the appeal may agree to the notice being served by the chairman at times other than those provided under paragraph (3).

(5) A preliminary hearing may be held as a matter of urgency as directed by the chairman or as agreed to by the parties.

(6) The preliminary hearing shall be in private and shall be heard by the chairman.

(7) The parties may appear in person at the preliminary hearing, or be represented by a barrister and attorney, or by any other person.

(8) The chairman shall consider whether any matters contained in a notice of supplementary grounds of appeal should be disclosed to any other person, and may direct that such matters be disclosed accordingly.

Interim relief

12 (1) An appellant may make application to the secretary that the Tribunal suspend operation of a direction or variation of a direction pending the determination of the appeal, pursuant to section 22 (3) of the Act.

(2) The Tribunal may determine the application on the basis of written representations, if the parties agree in writing, or it may direct the parties to appear before it.

(3) The Tribunal shall notify the parties of its determination giving a statement of its reasons pursuant to section 24 (3).

Amending grounds of appeal, or supplementary grounds of appeal, or response

13 (1) An appellant may file with the secretary a notice of amended grounds of appeal or a notice of amended supplementary grounds of appeal at any time before the hearing.

(2) An appellant may amend the grounds of appeal or supplementary grounds of appeal during the preliminary hearing with the leave of the chairman, or at any time thereafter with the leave of the Tribunal.

(3) Leave to amend grounds of appeal or supplementary grounds of appeal—

- (a) shall not be given unless the Authority has been afforded an opportunity to make representations on the proposed amendment; and
- (b) may be granted on such terms, including terms as to costs or expenses, as the chairman, or the Tribunal, thinks fit.

(4) Where grounds of appeal are amended, the appellant shall immediately serve notice of the amendment on the parties.

(5) Where supplementary grounds of appeal are amended, the chairman shall consider whether any matters contained in the amended notice of supplementary grounds of appeal should be disclosed to any other person, and may direct that the matters be disclosed accordingly.

(6) The Authority may file an amended response where the grounds of appeal or the supplementary grounds of appeal have been amended.

(7) The Authority may amend its response in accordance with the procedures provided in paragraphs (1) to (4).

Evidence during hearing

14 (1) At the hearing the chairman may, on the application of a party to the appeal or on his own motion, by direction given at the hearing or by notice in writing, require the parties or any other person, at a time and place given in the direction or notice, to attend and give evidence or to produce any document in that person's custody or under his control which relates to any matter in question at the hearing.

(2) Notwithstanding paragraph (1)—

- (a) no person other than the parties shall be required, in obedience to such direction or notice, to attend and give evidence or to produce any

document unless the necessary expenses of his attendance are paid or tendered to him;

- (b) no person shall be compelled to give any evidence or to produce any document which he could be compelled to give or produce if the hearing was a proceeding in a court of law; and
- (c) except where the chairman otherwise directs, a witness shall not be obliged to attend and give evidence or to produce any document in obedience to a direction or notice given by the chairman unless that direction was given or notice has been served on him not less than 5 days before the day appointed for the hearing.

(3) In exercising the power conferred by paragraph (1), the chairman shall take into account the need to protect information which relates to a person who is not a party to the appeal, or which was communicated or obtained in confidence, or is commercially sensitive.

(4) The chairman may set aside any direction or notice given under paragraph (1) on the application of the person to whom the direction or notice was given, but shall not do so without first notifying any person who applied for the direction or notice and considering any representations made by that person.

(5) The secretary shall supply a copy of any document obtained under this regulation to any party to the appeal if that party does not already have a copy of the document.

Procedure during hearing

15 (1) The hearing shall be in private.

(2) The parties may appear at the hearing, or be represented by a barrister and attorney or by any other person.

(3) At the hearing the parties are each entitled to make an opening statement, call witnesses to give evidence, cross-examine witnesses called by the other party, and make a final statement.

(4) In the case of an appeal by a person concerned under section 22 (2) (b) notwithstanding that the hearing is in private, the person concerned is entitled to appear, or be represented by a barrister and attorney or by any other person.

(5) Where the Tribunal requires any witness to give evidence, such evidence shall be given on oath or affirmation; and the chairman shall administer the oath or affirmation.

(6) Subject to regulation 14(2) evidence may be admitted by the Tribunal whether or not it would be admissible in a court of law.

(7) If the parties fail to appear or be represented at the time and place appointed

for the hearing, the Tribunal may proceed with the hearing or adjourn it to a later date.

(8) Where the Tribunal proceeds with the hearing pursuant to paragraph (7) it shall take into consideration any written representations which may have been submitted by either party whether the written representations were submitted in accordance with these Regulations or otherwise.

(9) The Tribunal may from time to time adjourn the hearing, and if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice is required.

(10) A person contravenes section 25(4) of the Act and is liable on summary conviction to a fine of \$10,000 if he, in respect of a material matter—

- (a) tenders into evidence, or procures another to tender into evidence, a false written statement;
- (b) while giving evidence under oath or affirmation knowingly makes a false statement or makes a statement which he does not believe is true; or
- (c) procures another to give evidence under oath or affirmation which the person knows is a false statement or which he does not believe is true.

Procedure after hearing

16 (1) The Tribunal shall, after the close of a hearing, notify the parties of its determination and give a statement of its reasons in accordance with section 24(3) of the Act.

(2) The Tribunal may arrange for the publication of its determination and a statement of its reasons, but in doing so shall have regard to the desirability of safeguarding confidential or commercially sensitive information given to the parties, or information which was communicated or obtained in confidence, or the identity of or information relating to any person who is not a party to the appeal, and for that purpose may make any necessary amendments to the text of its determination and statement of reasons.

Withdrawal of appeal or opposition

17 (1) The appellant may withdraw an appeal, and the Authority may withdraw its opposition to an appeal, at any time before the hearing by giving notice in writing to the secretary and to the other party.

(2) At the hearing, the appellant may give notice to the Tribunal that he desires to withdraw the appeal, or the Authority may give notice that it desires to withdraw its opposition to the appeal, and thereupon the Tribunal shall bring the hearing to a close.

(3) Where an appeal or an opposition to an appeal is withdrawn, the appeal shall be deemed to be dismissed and the Tribunal shall accordingly formally notify the parties to the appeal.

Costs

18 (1) Any costs or expenses which the Tribunal directs to be paid under section 25(1) of the Act and required to be taxed shall be taxed by the Registrar of the Supreme Court.

(2) A direction by the Tribunal under section 25(1) of the Act in respect of the payment of costs or expenses by a party to the appeal shall, on application being made to the Supreme Court by the party to whom costs have been directed to be paid, be enforceable as if the party had obtained a judgment of that Court in his favour.

Time and miscellaneous powers

19 (1) Where the time prescribed by these Regulations for doing any act expires on a Saturday, Sunday or public holiday and by reason thereof the act cannot be done on that day, the act shall be in time if done on the next working day.

(2) A party to an appeal may file with the secretary an application requesting the chairman to extend the time referred to in regulation 7, 8, 9, or 10, and the chairman may, after consulting with the other party, grant such extension on such terms, if any, as he thinks fit.

(3) An application may be granted after the time specified in regulation 7, 8, 9, or 10 has expired.

(4) The chairman may, after consulting with the parties—

- (a) postpone the date appointed for the hearing;
- (b) or alter the place appointed for any hearing.

(5) Where the hearing is postponed, or the place for any hearing is altered under paragraph (4), the secretary shall notify the following of the revised arrangements—

- (a) the parties to the appeal;
- (b) any witnesses concerned;

Tribunal to determine its procedure

20 Subject to the Act and these Regulations, the Tribunal has power to determine its own procedure.

Absence of a member of the Tribunal

21 An appeal may, with the consent of all the parties, continue to be heard in the absence of any one member of the Tribunal other than the chairman, and in that event the Tribunal is deemed to be properly constituted.

Service of notices and other documents

22 (1) Any notice or other document to be filed or served on any person for the

purposes of an appeal may be filed or served—

- (a) by registered mail—
 - (i) in the case of the secretary, to the address set out in p 4(1);
 - (ii) in the case of the appellant or the appellant’s representative, to the address provided in the notice of appeal, or such other address as may subsequently be notified to the secretary;
 - (iii) in the case of the Authority, to the address provided in the notice of appeal, or such other address as may subsequently be notified to the secretary; and
 - (iv) in the case of any other person, to the last known address of the person, or the person’s representative; or
- (b) by facsimile or other electronic means which produces a document containing the text of the notice or document.

(2) Where a notice or document is served on the representative of the appellant, the notice or document is deemed to be served on the appellant.

Irregularities

23 (1) Any irregularity resulting from failure to comply with any provision of these Regulations before the Tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Tribunal before making its determination, the Tribunal may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before making its determination to cure the irregularity.

(3) Clerical mistakes in any document recording a decision of the chairman or Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the chairman under his hand.

Consolidation of appeals

24 (1) At a preliminary hearing or at some other time, the chairman may direct that the following appeals be consolidated—

- (a) an appeal brought by the credit union under sections 22 (1) (a) or (b) of the Act; and
- (b) an appeal brought by a person concerned under sections 22 (2) (a) or (b) of the Act.

(2) A direction shall not be made under paragraph (1) unless all parties concerned have been given an opportunity to show cause as to why such a direction should not be made.

(3) Where appeals have been consolidated the secretary shall, subject to paragraph (4), serve on the credit union or person concerned a copy of any notice of supplementary grounds of appeal or any notice of amended grounds of appeal filed by the credit union or the person concerned.

(4) The secretary shall not serve a copy of any notice of supplementary grounds of appeal or any notice of amended grounds of appeal under paragraph (3) where—

- (a) all of the matters contained in the notices have been disclosed to the credit union or person concerned at the preliminary hearing; or
- (b) the credit union or person concerned, when showing cause why such a direction to consolidate should not be made, represented that it did not wish copies of the notices to be disclosed and consented to the notices not being disclosed to him.

SCHEDULE

DISCLOSURE BY THE AUTHORITY (regulation 9)

- 1 In the case of an appeal by a credit union under section 22 (1) (a) the Authority shall file with the secretary four copies of its decision to restrict the credit union's licence under section 14 (1) of the Act and four copies of any written representations made by the credit union under section 17 (5).
- 2 In the case of an appeal by a credit union under section 22 (1) (b) the Authority shall file with the secretary four copies of its decision to vary a restriction imposed on the licence otherwise than with the agreement of the credit union concerned and four copies of any written representations made by the credit union under section 17 (5).
- 3 In the case of an appeal by a person under section 22 (2) (a) the Authority shall file with the secretary four copies of its decision to revoke the credit union's licence under section 15 of the Act of the Act and four copies of any written representations made by the person under section 17 (5).
- 4 In the case of an appeal by person concerned under section 22 (2) (b) of the Act, the Authority shall file with the secretary four copies of its decision to give a direction under sections 17 (4) (a) of the Act requiring the removal of a person as a chief executive officer, senior executive officer or director; and four copies of any written representations made by such persons under section 17 (9).

Made this day of 2012

Premier and Minister of Finance

BERMUDA

CREDIT UNIONS (FORMS) REGULATIONS 2012

BR / 2011

The Minister of Finance in exercise of the power conferred by section 40 of the Credit Unions Act 2010 makes the following Regulations:

Citation

1 These Regulations may be cited as the Credit Unions (Forms) Regulations 2012.

Forms

2 The form contained in the Schedule is prescribed for the purposes of the Credit Unions Act 2010.

Commencement

3 These regulations come into operation on [.....] 2012.]

CREDIT UNIONS (FORMS) REGULATIONS 2012

SCHEDULE

(regulation 2)

FORMS

BERMUDA MONETARY AUTHORITY
CREDIT UNIONS ACT 2010

CREDIT UNION LICENCE

Pursuant to section 10 of the Credit Unions Act 2010, the Bermuda Monetary Authority hereby issues to:

[NAME OF THE CREDIT UNION]
[Address of the Credit Union]
[Details of Incorporation of the Credit Union]

a licence to carry on the business of a credit union in Bermuda.

The [name of the credit union] is permitted to accept savings and deposits from its members, and to provide credit and other financial services to its members only.

Effective Date: