

Appendix 1

Marking-up

In this Appendix, underlining indicates new text and striking through indicates deleted text.

The amendments proposed to Articles 27, 28, 30, 31 and 32 are to the text that was previously proposed under Consultation Paper 94.

**PROPOSED CHANGES TO
REGULATORY LAW 2004**

CHAPTER 4 – THE FINANCIAL MARKETS TRIBUNAL

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27. Powers and Functions of the FMT

- (1) The powers and functions of the FMT are to hear and determine references and ~~regulatory other~~ proceedings as ~~prescribed~~ specified in Chapter 5 of Part 2.
- (2) The FMT may do whatever it deems necessary for or in connection with, or reasonably incidental to, performing its functions and exercising its powers conferred for the purposes of Article 27(1), including the giving of directions as to practice and procedure to be followed in the FMT in the hearing and determination of references or ~~regulatory other~~ proceedings.
- (3) The president of the FMT may establish one or more panels of the FMT to exercise the powers and perform the functions of the FMT.
- (4) The president of the FMT or the chairman of a panel appointed to hear and determine a reference or ~~regulatory other~~ proceeding may make any procedural order or order granting interim relief that the FMT has the power to make.
- (5) For the purpose of a reference or ~~regulatory other~~ proceeding, the president of the FMT or the chairman of a panel appointed to hear and determine the proceeding:
 - (a) may appoint one or more persons, who shall be independent and an expert in their field, to assist the FMT in deciding any of the issues arising in the proceeding, including assistance in the examination of the parties' experts and witnesses; and
 - (b) shall provide the parties with an opportunity to make submissions on the expert's assistance and shall record in its decision the issues on which, and the extent to which, such assistance was relied upon by the FMT.
- (6) Subject to the Law and Rules, the FMT may make rules of procedure governing the commencement, hearing and determination of references and ~~regulatory other~~ proceedings, including as to:
 - (a) rules of evidence;
 - (b) the manner in which powers may be exercised;

- (c) the manner in which conflicts of interest of members of the FMT may be prevented;
- (d) the manner in which an FMT appointed expert may provide assistance to the FMT;
- (e) notification to the Chief Executive of the commencement of a reference, or ~~regulatory other~~ proceeding; and
- (f) the manner in which the Chief Executive may appear and be heard in the reference or ~~regulatory other~~ proceeding.

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CHAPTER 5 – PROCEEDINGS IN THE FINANCIAL MARKETS TRIBUNAL

28. References

- (1) In this Chapter, unless the context provides otherwise:
 - (a) a ‘reference’ is a proceeding before the FMT to review a decision of the DFSA under this Article; ~~and~~
 - (b) an ‘officer, employee or agent’ of a person includes a person who proposes to become an officer, employee or agent of a person; ~~and~~
 - (c) a ‘proceeding’ is:
 - (i) a reference;
 - (ii) a regulatory proceeding; or
 - (iii) an application for the payment or reimbursement of costs and expenses of an investigation under Article 79.

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30. Conduct of a ~~reference or regulatory~~ proceeding

- ~~(1) In this Article, unless the context otherwise provides, a “proceeding” is a reference or a regulatory proceeding.~~

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- (10) At the conclusion of a proceeding, the FMT may also make an order requiring a party to the proceedings to pay a specified amount, being all or part of the costs of the proceedings, including those of any party.
- (11) Where the FMT makes an order requiring a party to the proceedings to pay a party's costs under Article 30(10), such costs may be recovered from the recipient of the order in a court of competent jurisdiction as a debt due to the party which incurred the relevant costs.

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31. Enforcement

- (1) A person commits a contravention if that person, without reasonable excuse:
 - (a) fails to comply with a lawful order, notice, prohibition or requirement of the FMT;
 - (b) having been lawfully required by the FMT to attend before it, does not attend or leaves the place where his attendance is so required without the permission of the FMT;
 - (c) hinders or deters any person from attending before the FMT, giving evidence or producing any item, record or document, for the purposes of any reference or ~~regulatory~~ other proceeding;
 - (d) threatens or causes any loss to be suffered by any person who has attended before the FMT, on account of such attendance;
 - (e) threatens or causes any loss to be suffered by any member of the FMT or any person assisting the FMT at any time; or
 - (f) engages in conduct, including without limitation the:
 - (i) destruction of documents; or
 - (ii) giving of information that is false or misleading;that is intended to obstruct the FMT in the exercise of any of its powers.

- (2) Without limiting the application of Article 31(3), where a person commits a contravention under Article 31(1) the FMT may make one or more orders imposing a fine on the person of such amount as it considers appropriate, censuring the person, requiring the person to effect restitution or compensation, requiring the person to cease and desist from such activity as the FMT may stipulate, or requiring the person to do any act or thing.
- (3) Where a person fails to comply with a decision, lawful order, notice, prohibition or requirement of the FMT, or fails to pay a fine lawfully imposed by the FMT, the Court may, on application of:
 - (a) the FMT; or
 - (b) any party to the reference or ~~regulatory~~ other proceeding, including the DFSA;

make any order as it thinks fit to enforce such decision, order, notice, prohibition, requirement or fine.

32. Appeal from a decision of the FMT

- (1) A party to a reference or a ~~regulatory~~ other proceeding may, with the permission of the FMT or the Court, appeal a decision of the FMT to the Court only on a point of law.
- (2) In this Article:
 - (a) “permission” means, in the first instance, permission of the FMT and where this is denied, permission of the Court; and
 - (b) “a party” includes the DFSA.

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PART 5 – POWERS OF SUPERVISION AND INVESTIGATION

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79. Costs of an Investigation

(1) Subject to Article 79(2), the DFSA shall pay the costs and expenses of an investigation.

(2) Where, as a result of an investigation under Chapter 2 of Part 5, a person is found ~~by: in the Financial Markets Tribunal or in any court of law exercising civil or criminal jurisdiction~~

(a) the DFSA;

(b) the FMT; or

(c) the Court,

to have contravened a provision of the Law or of the Rules or of any other legislation administered by the DFSA, the ~~Financial Markets Tribunal~~ FMT or the Court may order, on application brought by the DFSA, that the person pay or reimburse the DFSA in respect of the whole, or a specified part of, the costs and expenses of the investigation, including the remuneration of any officer involved in the investigation.

(3) The FMT may make an order under Article 79(2), on an application by the DFSA, whether or not the person has commenced, or intends to commence, a reference to the FMT in relation to a decision of the DFSA.

(4) The DFSA may only apply to the Court for an order under Article 79(2) where there is a proceeding before the Court relating to the contravention by the person.