



# Financial Services Act 1986

## 1986 CHAPTER 60

### PART I

#### REGULATION OF INVESTMENT BUSINESS

#### CHAPTER IX

#### THE TRIBUNAL

#### **96 The Financial Services Tribunal**

- (1) For the purposes of this Act there shall be a Tribunal known as the Financial Services Tribunal (in this Act referred to as "the Tribunal").
- (2) There shall be a panel of not less than ten persons to serve as members of the Tribunal when nominated to do so in accordance with subsection (3) below; and that panel shall consist of—
  - (a) persons with legal qualifications appointed by the Lord Chancellor after consultation with the Lord Advocate, including at least one person qualified in Scots law; and
  - (b) persons appointed by the Secretary of State who appear to him to be qualified by experience or otherwise to deal with the cases that may be referred to the Tribunal.
- (3) Where a case is withdrawn from the Tribunal under this State shall nominate three persons from the panel to serve as members of the Tribunal in respect of that case and nominate one of them to be chairman.
- (4) The person nominated to be chairman of the Tribunal in respect of any case shall be a person with legal qualifications and, so far as practicable, at least one of the other members shall be a person with recent practical experience in business relevant to the case.

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- (5) If while a case is being dealt with by the Tribunal one of the three persons serving as members in respect of that case becomes unable to act the case may, with the consent of the Secretary of State and of the person or persons at whose request the case was referred to the Tribunal, be dealt with by the other two members.
- (6) Schedule 6 to this Act shall have effect as respects the Tribunal and its proceedings.

## 97 References to the Tribunal

- (1) Any person—
- (a) on whom a notice is served under section 29, 34, 59(4), 60(2) or 70 above ; or
  - (b) on whom a copy of a notice under section 29, 34, 60(2) or 70 above is served or on whom the Secretary of State considers that a copy of such a notice would have been served if it had been practicable to do so,
- may within twenty-eight days of the date of service of the notice require the Secretary of State to refer the matter to which the notice relates to the Tribunal and, subject to the provisions of this section, the Secretary of State shall refer that matter accordingly.
- (2) The Secretary of State need not refer a matter to the Tribunal at the request of the person on whom a notice was served under section 29, 34, 59(4) or 60(2) above if within the period mentioned in subsection (1) above he—
- (a) decides to grant the application or, as the case may be, decides not to withdraw or suspend the authorisation, give the direction or publish the statement to which the notice relates; and
  - (b) gives written notice of his decision to that person.
- (3) The Secretary of State need not refer a matter to the Tribunal at the request of the person on whom a notice is served under section 70 above if—
- (a) that matter is the refusal of an application for the rescission or variation of a prohibition or requirement and within the period mentioned in subsection (1) above he—
    - (i) decides to grant the application ; and
    - (ii) gives written notice of his decision to that person ; or
  - (b) that matter is the imposition or variation of a prohibition or requirement, being a prohibition, requirement or variation which has not yet taken effect, and within the period mentioned in subsection (1) above and before the prohibition, requirement or variation takes effect he—
    - (i) decides to rescind the prohibition or requirement or decides not to make the variation ; and
    - (ii) gives written notice of his decision to that person.
- (4) Where the notice served on a person under section 29 or 34 above—
- (a) proposed the withdrawal of an authorisation or the giving of a direction under section 33(1)(a) above; or
  - (b) proposed the suspension of an authorisation or the giving of a direction under section 33(1)(b) above,
- and at any time within the period mentioned in subsection (1) above the Secretary of State serves a new notice on that person in substitution for that previously served, then, if the substituted notice complies with subsection (5) below, subsection (1) above shall have effect in relation to the substituted notice instead of the original notice and as if the period there mentioned were twenty-eight days after the date of service of

the original notice or fourteen days after the date of service of the substituted notice, whichever ends later.

- (5) A notice served in substitution for a notice within subsection (4)(a) above complies with this subsection if it proposes—
- (a) the suspension of an authorisation or the giving of a direction under section 33(1)(b) above; or
  - (b) the exercise of the power conferred by section 60 above ;
- and a notice served in substitution for a notice within subsection (4)(b) above complies with this subsection if it proposes a less severe suspension or direction under section 33(1) MM or the exercise of the power conferred by section 60 above.
- (6) The reference of the imposition or variation of a prohibition or requirement under Chapter VI of this Part of this Act to the Tribunal shall not affect the date on which it comes into effect.

## **98 Decisions on references by applicant or authorised person etc.**

- (1) Where a case is referred to the Tribunal at the request of a person within section 97(1) (a) above the Tribunal shall—
- (a) investigate the case ; and
  - (b) make a report to the Secretary of State stating what would in its opinion be the appropriate decision in the matter and the reasons for that opinion ;
- and it shall be the duty of the Secretary of State to decide the matter forthwith in accordance with the Tribunal's report.
- (2) Where the matter referred to the Tribunal is the refusal of an application the Tribunal may under this section report that the appropriate decision would be to grant or refuse the application or—
- (a) in the case of an application for the variation of a suspension, direction, consent, prohibition or requirement, to vary it in a specified manner;
  - (b) in the case of an application for the rescission of a prohibition or requirement, to vary the prohibition or requirement in a specified manner.
- (3) Where the matter referred to the Tribunal is any action of the Secretary of State other than the refusal of an application the Tribunal may report that the appropriate decision would be—
- (a) to take or not to take the action taken or proposed to be taken by the Secretary of State or to take any other action that he could take under the provision in question ; or
  - (b) to take instead or in addition any action that he could take in the case of the person concerned under any one or more of the provisions mentioned in subsection (4) below other than that under which he was acting or proposing to act.
- (4) Those provisions are sections 28, 33 and 60 above and Chapter VI of this Part of this Act; and sections 29, 34, 60(2) and (3) and 70(2) and (4) above shall not apply to any action taken by the Secretary of State in accordance with the Tribunal's report.
- (5) The Tribunal shall send a copy of its report under this section to the person at whose request the case was referred to it; and the Secretary of State shall serve him with a written notice of the decision made by him in accordance with the report.

## **99 Decisions on references by third parties**

Where a case is referred to the Tribunal at the request of a person within section 97(1) (6) above the Tribunal shall report to the Secretary of State whether the reasons stated in the notice in question which relate to that person are substantiated ; and the Tribunal shall send a copy of the report to that person and to the person on whom the notice was served.

## **100 Withdrawal of references**

- (1) A person who has required a case to be referred to the Tribunal may at any time before the conclusion of the proceedings before the Tribunal withdraw the reference.
- (2) The Secretary of State may at any such time withdraw any reference made at the request of a person on whom a notice was served under any of the provisions mentioned in subsection (1)(a) of section 97 above if he—
  - (a) decides as mentioned in subsection (2)(a) or (3)(a)(i) or (b)(i) of that section ;  
and
  - (b) gives such a notice as is mentioned in subsection (2)(b) or (3)(a)(ii) or (b)(i) of that section ;but a reference shall not be withdrawn by virtue of such a decision and notice as are mentioned in paragraph (b) of subsection (3) unless the decision is made and the notice is given before the prohibition, requirement or variation has taken effect.
- (3) Where a case is referred to the Tribunal the Secretary of section the Tribunal shall not further investigate the case or make a report under section 98 or 99 above; but where the reference is withdrawn otherwise than by the Secretary of State he may require the Tribunal to make a report to him on the results of its investigation up to the time when the reference was withdrawn.
- (4) Where two or more persons have required a case to be referred to the Tribunal the withdrawal of the reference by one or more of them shall not affect the functions of the Tribunal as respects the case so far as relating to a person who has not withdrawn the reference.
- (5) Where a person on whom a notice was served under section 29, 34 or 60 above withdraws a case from the Tribunal subsection (5) of each of those sections shall apply to him as if he had not required the case to be referred.

## **101 Reports**

- (1) In preparing its report on any case the Tribunal shall have regard to the need to exclude, so far as practicable, any matter which relates to the affairs of a particular person (not being a person who required or could have required the case to be referred to the Tribunal) where the publication of that matter would or might, in the opinion of the Tribunal, seriously and prejudicially affect the interests of that person.
- (2) The Secretary of State may, in such cases as he thinks fit, publish the report of the Tribunal and offer copies of any such report for sale.
- (3) The Secretary of State may, on request and on payment of the prescribed fee, supply a copy of a report of the Tribunal to any person whose conduct is referred to in the report or whose interests as a client or creditor are affected by the conduct of a person to whom the proceedings before the Tribunal related.

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- (4) If the Secretary of State is of opinion that there is good reason for not disclosing any part of a report he may cause that part to be omitted from the report as published under subsection (2) or from the copy of it supplied under subsection (3) above.
- (5) A copy of a report of the Tribunal endorsed with a certificate signed by or on behalf of the Secretary of State stating that it is a true copy shall be admissible as evidence of the opinion of the Tribunal as to any matter referred to in the report; and a certificate purporting to be signed as aforesaid shall be deemed to have been duly signed unless the contrary is shown.