

[Rev. 2012]

Rule

State Corporations Act

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SCHEDULES

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STATE CORPORATIONS APPEAL TRIBUNAL RULES, 2001

[L.N. 59/2001.]

1. Citation

These Rules may be cited as the State Corporations Appeal Tribunal Rules, 2001.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**appellant**” means the person who is empowered by the Act to appeal to the Tribunal;

“**Chairman**” means the Chairman of the Tribunal appointed under section 22 of the Act;

“**hearing**” means a sitting of the Tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses, delivering the decision of the Tribunal or doing anything lawfully required to enable the Tribunal to reach a decision on any particular appeal or matter prosecuted before it;

“**inspector**” means the Inspector of State Corporations;

“**interested party**” means any party named and enjoined in any proceedings before the Tribunal;

“**member**” means a member of the Tribunal appointed under section 22 of the Act;

“**representative**” means an officer or advocate appointed by the Inspector of State Corporations or an advocate appointed by an appellant or any of the parties;

“**Secretary**” means the Secretary to the Tribunal appointed under section 22 of the Act.

3. Quorum

(1) The quorum of a meeting of the Tribunal shall be two members.

(2) The Chairman shall preside over all meetings of the Tribunal, but in his absence for any reason he shall appoint one of the other members to preside, and the proceedings of such meeting shall be deemed to be valid proceedings of the Tribunal for all purposes.

4. Form of Appeal

(1) Every appeal shall be made in the form of a memorandum in writing presented by the appellant or his representative and shall have attached thereto a copy of the decision appealed against or other document prescribed under these Rules and shall be presented to the registry of the Tribunal together with the prescribed fee.

(2) Each separate ground of appeal shall be contained in a separate paragraph of the memorandum and shall be numbered consecutively.

(3) The appellant shall attach to his Memorandum of Appeal any documentary evidence, or copy thereof, relevant to his appeal, which is in his possession or which he can reasonably obtain.

5. Register of appeals

The Secretary shall keep in the registry of the Tribunal a register of all matters dealt with by the Tribunal indicating the following particulars in respect of each matter—

(a) the date of filing;

- (b) the serial number assigned thereto;
- (c) the names of the parties;
- (d) the relief sought; and
- (e) the final determination or order of the Tribunal and the date thereof.

6. Filing of Memorandum

The appellant shall, within thirty days from the date of the decision of the Inspector file his Memorandum of Appeal at the Registry of the Tribunal and shall serve the same together with any annexures thereto upon the Inspector and any other named interested party.

7. Amendment of Memorandum

The appellant may with the leave of the Tribunal amend his Memorandum of Appeal at any time before the hearing of the appeal and shall serve the same upon the Inspector and any other named interested party.

8. Service of memorandum

The service of any pleadings or documents under these Rules shall be effected in the manner prescribed for the service of summons under Order V of the Civil Procedure Rules or in such manner as the Tribunal may direct on application made to it by any party.

9. Service of notice of hearing

As soon as may be practicable after the lodging of the Memorandum of Appeal, the Chairman shall fix a date and place for the hearing and shall cause to be served upon the appellant, not less than seven clear days before the date fixed for the hearing, a notice as prescribed in the First Schedule and shall cause a copy of such notice to be sent to the Inspector and any named interested party.

10. Withdrawal of appeal

An appellant may at any time before the hearing of his appeal by notice in writing to the Secretary withdraw his appeal, and thereupon the appeal shall be struck out with such order as to costs as may appear to be just to the Tribunal.

11. Appearance

Any advocate appearing for any party in proceedings before the Tribunal shall file a notice of his appointment as such and any subsequent change shall be notified by the filing of a notice of change of advocate or a notice of intention to act in person as the case may be.

12. Hearing

(1) The hearings of the Tribunal shall be held in public, unless for good cause shown and reasons recorded the Tribunal directs that a hearing shall be held in camera.

(2) The parties appearing before the Tribunal at a hearing may under the direction of the Tribunal proceed either by giving oral evidence or by way of making written submissions.

(3) The Tribunal shall not be bound to reject any evidence on the ground only that the evidence would be inadmissible in any other Court or Tribunal, and may dispense with the formal proof of any of the documents referred to in rule 4(3).

(4) The Tribunal shall give the Inspector's representative an opportunity to address the Tribunal and call witnesses, and shall give the Appellant and other interested parties or their representatives an opportunity to cross-examine any witness called.

(5) The Tribunal shall give the appellant or his representative an opportunity to address the Tribunal and call witnesses, and shall give the Inspector's representative an opportunity to cross-examine any witness called.

(6) The appellant may, if he so desires, give evidence as a witness on his own behalf.

(7) If at the hearing the appellant fails to appear, either in person or by his representative, or if the Inspector's representative fails to appear, it shall be at the discretion of the Tribunal to proceed with the hearing and determine it or adjourn the hearing or give such directions in respect thereof as appear to it to be just and expedient in all the circumstances of the case.

(8) The Tribunal shall administer to any witness appearing before it an oath in the form prescribed by law for administering oaths during court proceedings.

(9) The Tribunal may have regard to the circumstances existing at the date of the hearing of the appeal where any change of circumstances has occurred since the lodging thereof.

13. Summoning of witnesses

(1) The provisions of Order XV of the Civil Procedure Rules (which deals with the summoning and attendance of witnesses) shall apply *mutatis mutandis* for the purposes of hearings under these Rules.

(2) The Tribunal may require the attendance before it of such other persons as witnesses, not called by any of the parties to an appeal, and may consider such other evidence as may appear to the Tribunal to assist it in reaching its decision, subject to the right of the Inspector and the appellant, or their representatives, to cross-examine any such witnesses as provided in rule 12.

(3) When in the opinion of the Chairman a matter arises in a hearing which calls for specialized knowledge, he may call upon any person whom he considers to be possessed of such knowledge to sit with the Tribunal as an assessor for purposes of assisting it in reaching a decision.

(4) Any person called upon to sit with the Tribunal under paragraph (3) shall be paid his reasonable out-of-pocket expenses and a daily remuneration, the amount of which shall be decided by the Chairman.

(5) The Tribunal may if it deems necessary or expedient in any particular case, enter and inspect any land, property or anything else of whatsoever description concerned in an appeal.

14. Power to adjourn hearing

(1) The Tribunal may adjourn the hearing from time to time if for any reason it appears to the Tribunal necessary or desirable to do so.

(2) The Chairman may on application upon such terms and conditions, if any, as appear to him to be just and expedient, extend the time appointed by these Rules for doing of any act or taking any proceedings.

15. Ruling

(1) At the conclusion of a hearing under these Rules, the Chairman shall require the assessor referred to in rule 13(3) to state his opinion:

Provided that the Tribunal shall in delivering its decision not be bound to conform to such opinion.

(2) The Secretary shall cause the proceedings of the Tribunal to be recorded in a document to be certified by the Chairman as a true and correct record of such decision and proceedings, and shall as soon as may be practicable thereafter forward copies thereof to the appellant.

(3) Every copy certified as provided under this rule shall be conclusive evidence of the decision and proceedings of the Tribunal on the matter to which the decision relates.

16. Procedure

(1) Unless the Tribunal otherwise directs, no proceedings of the Tribunal shall be void by reason only of the non-compliance by the appellant or the Inspector with any of the provisions of these Rules, and the Chairman may at any time give such instructions as appear to him to be necessary or desirable by reason of such non-compliance.

(2) The Tribunal may at its discretion either on its own motion or on the application of any party make such orders and give such directions as may appear to be just and appropriate in the circumstances or necessary to prevent the abuse of its own process.

(3) Applications to the Tribunal shall be made by Chamber Summons supported by an Affidavit and the party served shall be entitled to file an affidavit or statement in reply:

Provided that with the permission of the Tribunal during the hearing of any matter any party may apply orally before the Tribunal.

17. Costs

There shall be paid to the Tribunal the filing and other fees prescribed under the Second Schedule of these Rules.

FIRST SCHEDULE
REPUBLIC OF KENYA
IN THE STATE CORPORATIONS APPEAL TRIBUNAL AT NAIROBI

State Corporations Act

SECOND SCHEDULE

[Rule 17.]

TRIBUNAL FILING FEES