

POLICY ON APPEALS PROCEDURE UNDER THE LEVY ON TECHNICAL DEVICES FUND

Rule 1: Citation and Scope

Preamble

1. The Levy on Technical Devices Fund (LTDF) Committee is established under Statutory Instrument No. 94 of 2008. The Committee is appointed by the LTDF Accounting Officer, being the Permanent Secretary to the Ministry of Investment, Trade and Industry (MITI).
2. The objective of the LTDF is to fund projects and initiatives that promote Botswana's copyright based industries. The primary mandate of the Committee is to administer the Fund to ensure that it fulfils its mandate. In the discharge of its role, one of the main activities of the Committee is to receive project proposals, evaluate them and take appropriate decisions regarding funding of projects. In addition to this, the Committee is responsible for monitoring project implementation, and in so doing, the Committee has powers to terminate the memorandum of agreement (MOA) entered into with the Beneficiary.
3. In the discharge of its functions, the Committee receives appeals against its decisions from Applicants, Beneficiaries or any other person who may be aggrieved by any decision taken by the Committee. This Policy therefore provides guidance on procedure to be followed in handling appeals that are lodged before the Committee.

Definitions

1. Unless otherwise stated, the following terms shall bear the following meanings:

Administrative

Requirements: information indicated as required for an application to be considered.

Appeal: means a written complaint or statement of facts, filed in objection to a decision of the LTDF, and properly lodged before the LTDF.

Appellant or

Applicant: means a natural or juristic person who is aggrieved by a decision of the Committee and has submitted an appeal against such decision.

Appeals

Committee: shall mean a committee set up to hear a specific appeals against the decisions of the LTDF Committee. The members of the Committee shall be appointed on an ad-hoc basis.

Scope of the Policy

1. This Policy applies to aggrieved applicants for funding or Beneficiaries under the LTDF and Beneficiaries of the Fund. The Policy covers the process of handling the appeal, from receipt of the appeal to final resolution by the LTDF and communication of the decision to Applicants.

Rule 2: Authority

1. The LTDF Committee shall establish an ad-hoc Appeal's Committee which shall comprise co-opted

members, and its chairman shall be appointed by the Committee. The Appeals' Committee shall have authority to preside over all appeals lodged against the decisions of the LTDF Committee.

2. The Accounting Officer shall have the power to hear, uphold or vary the decisions of the Appeals' Committee. In exercising this power, the Accounting Officer may appoint and delegate her powers to a Sub-Committee comprising employees of MITI or any other persons, in accordance with applicable laws.
3. The decision of the Accounting Officer shall be final.

Rule 3: Procedure for Lodging an Appeal

1. Any person wishing to appeal an adverse decision made against him/her shall follow the appropriate procedure as outlined under the sub-rules of this Rule.

Rule 3A: Appeal by Applicants

1. No appeals will be entertained for applicants who failed to meet administrative requirements at the application stage.
2. All appeals shall be lodged within fifteen (15) working days from the date of formal receipt of the decision which such person objects to.
3. Any person who wishes to lodge an appeal against the decision of the LTDF Committee shall request for a formal debrief with the Secretariat prior to the expiry of the fifteen days above. The Secretariat shall disclose the reasons and the grounds upon which the decision was made.
4. If after debrief the Applicant is dissatisfied with the reasons presented, the Applicant shall have the right to appeal the decision of the Committee.
5. The Applicant shall, within five (5) working days from the date of debrief submit a formal written request to present his appeal before the Appeals Committee. The appeal must be addressed to the Chairman of the Appeals Committee.
6. The request for a hearing must be accompanied by a mitigation to the reasons upon which the LTDF Committee based its decision. The appeal shall not be on the score itself but on the reasons for disqualification of the proposal by the evaluators.
7. The Secretariat shall, within ten (10) working days from receipt of the appeal, advise the Applicant of the *date of the hearing*.
8. The Applicant shall, appear before the Appeals Committee and make oral presentation of his grievances, based on the mitigation statement submitted before the Committee.
9. In considering the arguments made, the Appeals Committee shall not accept any new information but shall base its decisions on the clarifications and mitigations to issues raised by the LTDF Committee.
10. The Appeals Committee shall make its decision on the matter within a period of five (5) working days after the hearing. In doing so, the Committee shall consider all documentary and oral evidence placed

before it by the Appellant. The Secretariat shall communicate the decision of the Appeals Committee to the appellant within ten (10) working days from the date of the hearing.

11. Should the Appellant remain unsatisfied with the decision of the Appeals Committee, he shall notify the Chairman of the Appeals Committee and the Chairman of the LTDF through the Secretariat, and communicate his decision to appeal before the Accounting Officer of the LTDF.
12. The appeal should be in writing, and shall be submitted to the Secretariat within five (5) working days of the date of the final notification of the decision of the Appeals Committee.
13. The Accounting Officer shall reserve the right to constitute a new committee to hear the appeal and/or refer the matter back to the Appeals Committee to reconsider the facts presented to it.
14. The Accounting Officer shall make a determination of whether to hear the Appellant or base his or her decision on the arguments presented by the Appellant or documentary evidence presented before him/her. The Accounting Officer reserves the right to hear both the appellant and the Appeals Committee, duly represented by the Chairman of the Appeals Committee.
15. The decision of the Accounting Officer shall be final.

Rule 3B: Appeals by Beneficiaries

1. If in monitoring project implementation the LTDF Committee determines that there is need to terminate or vary the terms of the MOA, the Committee will take its decision and such decision shall be communicated to the Beneficiary.
2. The LTDF Committee shall invite the Beneficiary to appear before it and justify why the Committee should not take the decision it wishes to take against the Beneficiary.
3. *Following the hearing, the Committee's decision will be communicated to the Beneficiary within five (5) days from the day the decision was made.*
4. If the Beneficiary is aggrieved by the decision of the LTDF Committee, he/she shall, within five (5) working days from the date of the notification of the LTDF Committee's decision, lodge his/her written appeal.
5. The Appeals Committee shall hear the Beneficiary, however, it will not entertain new information which was not presented to the LTDF Committee, in his/her project proposal.
6. The Secretariat shall communicate the decision of the Appeals Committee within five (5) working days from the date the decision was made.
7. If the Beneficiary remains unsatisfied, he shall have the right to appeal to the Arbitration Panel. His appeal shall be in writing and submitted within five (5) working days from the date of the notification of the Appeals Committee's decision.
8. The Arbitration Panel shall make a determination of whether to hear the appellant or base his or her decision on the arguments presented by the appellant, in writing. The Arbitration Panel reserves the right to hear both the appellant and the Appeals Committee, duly represented by the Chairman of the

Appeals Committee.

9. The appellant shall have the right to appeal the decision of the Arbitration Panel before the courts of Botswana.

Rule 4: Fees

1. The LTDF Committee shall, in consultation with the Accounting Officer, prescribe the fee for filing of appeals.
2. Fees paid by the appellant shall be non-refundable irrespective of the outcome of the appeal.
3. An appeal shall not be considered to be properly filed before the Committee or the Accounting Officer unless the appropriate fee has been paid to the Secretariat.
4. Fees paid under this Rule shall be collected by CIPA used for administrative purposes other than paying sitting allowances to Committee Members.

Rule 5: Review

1. The Accounting Officer may amend this Policy as he/she deems necessary.
2. Unless otherwise found necessary, this Policy shall be reviewed every three (3) years and any changes or modifications thereto shall not have any force or effect until approved by the Accounting Officer. Such changes or modifications shall immediately be communicated to the LTDF Committee and Officers of the Secretariat.