



**CONSTITUTION FOR  
THE CREDIT OMBUD (CO)  
ASSOCIATION**

## **PREAMBLE**

The primary objective of the CO Association is to establish the Office of the CO. The Association will appoint the CO Council and establish an Office called the CO's Office. The purpose of the Office of the CO ("the CO") is to effectively resolve disputes within the credit industry, comprising:

- non-bank credit matters including, but not limited to credit transactions from the furniture and clothing retailers, micro-lenders, non-bank motor and home financiers;
- credit Information matters;
- disputes relating to Credit Providers;
- the CO Council may from time to time decide what type of disputes the office of the CO should accept and investigate; and
- a further objective of the Association is to provide consumer education to the public in respect of the role and functions of the CO's Office as well as on matters of a general financial nature.

## **MISSION STATEMENT AND VALUE PROPOSITION**

### **Values**

The values of the CO are not negotiable and cannot be diminished in any way.

### **Fair**

The CO will act in the best interests of all the parties, taking both sides into consideration and considering the merits of each case carefully.

### **Independent**

The CO will not take sides and will remain impartial at all times. No individual or organization will be in a position to unduly influence the Ombudsman or the staff of the CO in relation to any matter.

### **Honest**

- The CO will openly deal with any issues brought before it, asking the relevant questions and communicating clearly and transparently.
- In resolving disputes, the CO shall:
  - act independently and objectively; and
  - have regard to the law, fairness, justice, equity and fundamental human rights and values as prescribed by the principles of 'UBUNTU'
- The CO must balance the rights of consumers on the one hand and the rights of the members on the other hand.

## 1 NAME

The name of the Association is and shall be the CO Association.

## 2 LEGAL STATUS

- 2.1 The CO is a voluntary, non-statutory body that has been afforded recognition under section Chapter 14 of the Financial Sector Regulation Act 9, 2017 (FSRA) and an Ombud with jurisdiction in terms of the National Credit Act, 2005 (NCA), which may engage in the resolution of disputes arising within the credit industry.
- 2.2 The Association is a distinct and separate legal entity with the power to acquire, to hold and to alienate property of every description whatsoever and with the capacity to acquire rights and obligations and having perpetual succession.
- 2.3 The Association is and shall be a juristic person and can act and be acted against in its own name.
- 2.4 The property and funds of the Association vest in the Association as a juristic person and no member of the Association shall be liable for the debts of the Association.

## 3 DEFINITION

In this Constitution, except in a context indicating that some other meaning is intended:

- 3.1 **“CO Council” or “Council”** means the Council appointed from time to time to perform the duties as set out in this Constitution on behalf of the Association;
- 3.2 **“Ombud Council”** means the Ombud Council , established in terms of Section 175 of the Financial Sector Regulation Act, 2017;
- 3.3 **“Chairperson”** means the independent chairperson of the Council appointed by the members of the Council;
- 3.4 **“Constitution”** means the Constitution of the CO Association as amended and in force from time to time;
- 3.5 **“Council Members”** means a member of the Council, including the chairperson;
- 3.6 **“Council Secretary”** means the secretary appointed by the members of the Council to perform the duties as required in the Constitution;
- 3.7 **“CO Association”** means the voluntary association of members, a separate legal entity, constituted in terms of this Constitution of the CO Association;
- 3.8 **“Financial Sector Regulation Act”** means the Financial Sector Regulation Act, 2017 (Act 9 of 2017) ;
- 3.9 **“Corporate Governance”** means the responsible leadership of the Council of the CO that is transparent, answerable and accountable towards the Association's members and which aims at achieving a balance between economic, social, consumer and collective goals, seeking to align as closely as possible the interests of consumers, the CO Association and the credit industry as a whole;

- 3.10 **“Ombudsman”** means the person for the time being appointed to and occupies the position of the Ombud to exercise the powers and duties as delegated by the Council and where appropriate it shall include the Deputy Ombud. ;
- 3.11 **“Public Benefit Organisation”** means the CO Association which carries on a public benefit activity and complies with the provisions of section 30 of the Income Tax Act of 1962;
- 3.12 **“Credit Ombud or CO”** means the Credit Ombud;
- 3.13 **“Code of Conduct”** means any relevant Industry Code of Conduct, or any Code approved by the NCR, or accepted in a particular industry;
- 3.14 **“Complainant”** means any person (individual or juristic person) making a complaint to the CO;
- 3.15 **“Dispute”** means a disagreement in relation to information listed on a credit bureau which has not been resolved by the parties or disagreement in relation to a credit transaction between a member and customer of that member which has not been resolved between the parties.
- 3.16 **“NCA”** means the National Credit Act, 34 of 2005;
- 3.17 **“Scheme”** means the CO Scheme;
- 3.18 **“member”** means an entity as described in clause 8 of the Constitution;
- 3.19 **“Tribunal”** means the National Consumer Tribunal created in terms of Section 26 of NCA;
- 3.20 expressions in the singular also denote the plural, and *vice versa*;
- 3.21 words and phrases denoting natural persons refer also to juristic persons, and *vice versa*;
- 3.22 pronouns of any gender include corresponding pronouns of the other gender; and
- 3.23 the headings shall not be treated as forming part of the Constitution; as such headings are for convenience of reference only; and
- 3.24 the use of the male gender in this Constitution includes the other gender, as applicable.

#### **4 ESTABLISHMENT AND INDEPENDENCE OF THE CO ASSOCIATION**

- 4.1 A voluntary association under the name of the CO Association, was established in terms of a Constitution, with effect from 04 November 2009 under the now repealed Financial Services Ombud Schemes Act 37 of 2004. The CO Association is now recognized in terms of Chapter 14 of the FSRA. This Constitution replaces any previous Constitution in its entirety.
- 4.2 The amendments to the Constitution have been approved by the CO Council. The effective date of this new Constitution is the date of its final approval by the Ombud Council.
- 4.3 The CO as well as the Ombudsman shall act independently and objectively in resolving disputes and is not influenced by anybody in making its decisions.

## **5 OBJECTS**

The Association is a non-profit organization established for the following public benefit objectives:

- 5.1 to establish the office of the CO to accept, investigate and resolve complaints from consumers, free of charge, against members of the Association;
- 5.2 for the office of the CO to play an advocacy role and including, but not limited to providing commentary on relevant issues within the industry as well as commentary on relevant legislation and any proposed amendments;
- 5.3 the CO may perform a consumer education function – in relation to the existence and role of the Office of the CO, as well as general consumer education in relation to financial matters; and
- 5.4 the CO may also assist the members, industry associations and/or stakeholders in the broader credit industry with the dissemination of information which is deemed relevant and necessary and/or for the benefit of consumers.

## **6 POWERS OF THE ASSOCIATION**

In pursuance of the main objects and powers of the Association and subsidiary thereto, the Association shall have all such powers as are necessary for the proper attainment of the objects set out in **5** above and shall in particular, have the following express powers to:

- 6.1 institute or defend any legal or other proceedings and to settle any claims;
- 6.2 open and conduct bank accounts in the name of the Association and to prudently invest the funds of the Association;
- 6.3 accumulate capital for any purpose of the Association, either by capitalizing unexpended income or otherwise, and to appropriate any of the Association's assets for specific purposes, either conditional or unconditional;
- 6.4 buy, maintain, manage, lease, sell or in any way deal with the property and assets of the Association;
- 6.5 donate and transfer the property and assets of the Association to public benefit organizations of its choice;
- 6.6 effect assurances of all descriptions, including assurances against accidents of any description; against liability to pay compensation for injuries happening to or sustained by any employee, official, administrator of or connected with the Association; against liability to pay damages to any person in consequence of such accident, and to pay the premiums and other monies required to keep such policies of assurance in full force and effect;
- 6.7 institute, conduct, defend, compound or abandon any legal proceedings by or against the Association or its officers, or otherwise concerning the affairs of the Association;
- 6.8 execute any act or deed in any deeds registry or other public office;
- 6.9 duly delegate authority to act on its behalf to the CO Council and the Ombudsman; and
- 6.10 do all such other things as are incidental or conducive to the attainment of the above objects, whether main or subsidiary.

## **7 LIMITATIONS**

- 7.1 The members and office-bearers have no rights in the property or other assets of the Association solely by virtue of their being members or office-bearers.
- 7.2 Member contributions and property of the Association shall be used solely for the promotion of the stated objectives and shall not be paid or distributed directly or indirectly to any person, except as reasonable compensation for services rendered to the Association or as reimbursement or actual costs or expenses reasonably incurred on behalf of the Association.

## **8 MEMBERSHIP**

### **8.1 The Members of the Association:**

The members of the Association shall be:

- 8.1.1 registered Credit Providers;
- 8.1.2 registered Credit Bureaux;
- 8.1.3 subscribers who contract with the Credit Bureaux to submit consumer credit information; and
- 8.1.4 any other entities as may be approved by the Council from time to time.

### **8.2 Application for Membership**

- 8.2.1 Any person who makes a written application to become a member of the Association and undertakes to pay such sum as determined by the Council from time to time and whose application is accepted by the Council shall be and become a member of the Association.
- 8.2.2 Any person who has paid the annual fee contribution towards the office of the CO, or who has received an invoice and has not objected thereto, shall be a member.
- 8.2.3 Any person, who through membership of an industry body/organisation has agreed to and accepted that his/her membership of that body/organisation is conditional upon membership of the CO Association, shall be deemed to have submitted an application for membership as set out in clause 8.2.1 above.
- 8.2.4 Applicants for membership and all members shall be obliged to agree to be bound by this Constitution and any other rules of the Association, Council or the CO's Office.
- 8.2.5 A list of names of the members may be displayed on the website of the CO and in any publications of the CO, including but not limited to the Annual Report, press releases, etc.
- 8.2.6 Upon payment of the annual fee contribution, a certificate of membership will be provided to the member.

## **9 FUNDING AND FEES**

- 9.1 The basis of financing the CO by the members of the Association will be determined by the Council. In making this determination, the Council shall ensure that the funding contributed

by the members of the Association is sufficient to enable the CO to function efficiently and timeously and to fulfil the stated objectives of the Association.

- 9.2 In determining the funding principles, the Council shall also ensure that the independence of the Ombud may not suffer from any undue influence by any party responsible for funding the office.
- 9.3 The annual fees for members shall be such sum as the Council shall from time to time determine. All fees payable by members shall become due and payable annually in advance and within 30 (thirty) days after invoicing.
- 9.4 Members joining during a year shall be liable to pay a *pro rata* portion of the annual fee for that year.

## **10 LIABILITIES, DUTIES AND RIGHTS OF MEMBERS**

- 10.1 Any member who has been accepted as a member of the Association shall be bound by the Constitution.
- 10.2 The duties of members shall include:
- 10.2.1 the adherence to the terms of the Constitution for the CO in their broadest context;
  - 10.2.2 to act honestly towards the Association and its members as well as the office of the CO;
  - 10.2.3 to act in the best interests of the Association and the CO;
  - 10.2.4 to further the objects of the Association;
  - 10.2.5 to act in good faith towards the Association and its members as well as the CO; and
  - 10.2.6 not to bring the name of the Association or the CO into disrepute through any conduct whatsoever.
  - 10.2.7 to abide by the provisions of any relevant Industry Code of Conduct;
  - 10.2.8 to abide by the standard complaints handling procedures as per the NCA, the relevant Industry Codes of Conduct as well as the CO's operational procedures;
  - 10.2.9 to compile and make readily available brochures or other materials advising customers of its membership of the CO, as well as the required procedures for submitting a complaint;
  - 10.2.10 to expeditiously comply with requests made by the CO in terms of this Constitution and the Operational Procedures;
  - 10.2.11 to take every reasonable step to notify consumers with a dispute of the existence of the CO or if the consumer has been declined for credit, based on a negative credit report or the credit provider or the representative of the credit provider is unable to satisfactorily resolve a dispute with that consumer or the consumer's representative;
  - 10.2.12 to notify consumers, disputing their credit profile, of the existence of the CO;
  - 10.2.13 to notify and promote to consumers who have a complaint relating to their credit providers in relation to their applications for credit in general, of the services of the CO; and
  - 10.2.14 To abide by the rulings of the Ombudsman.
- 10.3 The members shall not:

- 10.3.1 resort to or continue with litigation while a complaint is being dealt with by the CO, and the CO undertakes to resolve the case within a maximum period of six months unless another period is agreed between the CO and the member or a representative industry body;
- 10.3.2 prevent a consumer who would otherwise be eligible to use the services of the CO from doing so through the use of an arbitration clause in a contract;
- 10.3.3 provide the CO with any misleading information or answer or unduly delay the process through lack of cooperation or failure to provide the necessary information and/or documentation to enable the CO to assess the matter; and
- 10.3.4 provide any consumer with any misleading information regarding the operation of the CO.

## **11 TERMINATION OR SUSPENSION OF MEMBERSHIP**

- 11.1 A member may resign from the Association on written notice given at any time. He shall not be entitled to a refund of any fees or amounts paid in respect of any period after the date of resignation.
- 11.2 If any member should fail to pay any amount owing to the Association, whether for annual member fees or for goods or services supplied by the Association, or otherwise, howsoever arising, then the membership of the Association may be terminated by the Council on written notice to the domicilium address of that member. The Council may in its discretion reinstate such member on the payment of all arrear amounts and upon such terms as the Council may decide.
- 11.3 The Council shall have the power to take such steps as it may deem fit against any member failing to comply with or contravening this Constitution, any of the rules of the CO , any resolutions adopted and rulings made by the Association or its Council, any contract entered into by the Association, and in general, to take such steps against any member, whose actions, or lack of action in its sole opinion are detrimental to the best interests of the Association.
- 11.4 Notwithstanding anything to the contrary contained in this Constitution, the Council may delegate its powers in terms of this paragraph to a committee, or an *ad hoc* committee established from time to time for a specific purpose and for a specific period of time, and may for this purpose prescribe any matter including the procedure to be observed in the conduct of hearings, the right of appeal, and in general, with regard to any other matter which it deems necessary or expedient to prescribe in order to achieve or promote the objects of this paragraph.
- 11.5 The term “such steps” in clause 11.3 above shall specifically include (but not to the exclusion of any other measure) termination of membership, suspension or the imposition of a monetary fine, the amount/s whereof shall be determined by the Council from time to time.
- 11.6 The Council may cause the name of any member whose membership is terminated or who is suspended, to be posted on the website of the CO.

## **12 MISCONDUCT OF MEMBERS**

- 12.1 Should any member, in the opinion of the Council, commit any breach of this Constitution or any rules of the CO’s Office, or be guilty of improper or dishonest conduct, or fail to make payment of monies due to the Association after due notice or be guilty of conduct in any



way offensive to the other members, including the Council, or be guilty of conduct unbecoming to a member of the Association or prejudicial to the interest and reputation of the Association, the Council shall have the power to call upon such member to appear before the Council to explain his conduct.

- 12.2 Should such member fail to appear when reasonably called upon to do so, the Council may suspend that member's membership or otherwise deal with such member.
- 12.3 At the hearing and investigation of any complaint as to the conduct of a member, the procedure to be adopted in connection thereto, shall be in the sole discretion of the Council, provided, however, that the member whose conduct is the subject of the complaint and investigation shall be informed of the nature of the complaint, or the Council shall take any reasonable steps to bring to his notice the nature thereof, by posting a registered letter to the *domicilium* address, and provided that such member shall be afforded an opportunity of replying to any such complaint, whether in writing or in such other manner as the Council may determine.
- 12.4 After the hearing and investigation of any complaint as to the conduct of a member, the Council shall have the power to:
  - 12.4.1 cancel the membership of such member forthwith and all monies paid to the Association by that member shall be forfeited;
  - 12.4.2 deprive such member of any or all the rights, benefits and advantages of membership of the Association during such time or period as the Council in its absolute discretion may deem fit and advisable;
  - 12.4.3 call upon such member in writing to resign and if the member fails to resign within seven days of the date of such request, to cancel the membership of such member; and/or
  - 12.4.4 reprimand or caution such member.
- 12.5 Notification of any decision of the Council pursuant to this clause shall be forwarded in writing to such member.

## **13 THE CO COUNCIL**

### **13.1 Vision and Mission of The Council**

- 13.1.1 The management and control of the affairs of the Association shall vest in the Council which shall have full power and authority to do any act, matter or thing which could or might be done by the Association, excepting where such matters are in the Constitution of the CO Association specifically reserved to be dealt with by the Association. The Council shall have the powers and authority required to achieve the objects of the Association.
- 13.1.2 The mission of the Council is to facilitate the provision by the CO of independent, equitable, speedy, and cost-effective resolution of disputes between credit receivers on the one hand and subscribing Members of the Credit Ombud Association on the other hand.
- 13.1.3 The Council is ultimately accountable and responsible to all the stakeholders, the members and the public for the performance and affairs of the CO. The Council must therefore retain full and effective control over the CO and must give strategic direction to the scheme's

management. The Council is responsible for ensuring that the CO complies with all relevant laws, regulations and codes of business practice.

- 13.1.4 In addition, the Council has a responsibility to the broader stakeholders, which include the present and potential beneficiaries of its services, all the members, and employees.

## **13.2 Fiduciary responsibility**

The individual Council Members and the Council as a whole, carry full fiduciary responsibility in terms of the CO Council towards the CO. These duties include:

- 13.2.1 a Council Member must not use the position of Council Member, or any information obtained while acting in the capacity of Council Member to gain an advantage for the Council Member, or for another person other than the CO or to knowingly cause harm to the CO;
- 13.2.2 a Council Member must communicate to the Council at the earliest practicable opportunity any information that comes to the Council Member's attention, unless the Council Member reasonably believes that the information is immaterial to the CO or generally available to the public or known to the other Council Members or is bound not to disclose the information by a legal or ethical obligation of confidentiality;
- 13.2.3 when the Council Member is acting in that capacity as Council Member, he must exercise the powers and perform the functions of a Council Member-
- (a) in good faith and for proper purpose;
  - (b) in the best interest of the CO; and
  - (c) with the degree of care, skill and diligence that may be reasonably expected of a person-
    - (i) carrying out the same functions in the relation to the CO as those carried out by that Council Member; and
    - (ii) having the general knowledge, skill and experience of that Council Member.
- 13.2.4 in respect of any particular matter arising in the exercise of the powers or the performance of the Council Member, a particular Council Member of the CO will have satisfied the obligations as set out above if the Council Member-
- (a) has taken reasonably diligent steps to become informed of the matter;
  - (b) had no material personal financial interest in the subject matter of the decision, and had no reasonable basis to know that any related person had a personal financial interest in the matter; and
  - (c) made a decision, or supported the decision of the Council, with regards to that matter and the Council Member had a rational basis for believing, and did believe, that the decision was in the best interest of the CO; and
- 13.2.5 a Council Member is entitled to rely on the performance by any of the persons to whom the Council may reasonably have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the Council's functions that are delegable under applicable law and any information, opinions, recommendations, reports or statements. A Council Member is entitled to rely on professional advisors and experts provided that the person appears reliable.

### **13.3 Composition of The Council**

13.3.1 The Council comprises of three constituencies, namely:

- (a) Consumer bodies (comprising a maximum of (2) two representatives);
- (b) Independent representatives (comprising a maximum of (2) two representatives); and
- (c) Credit industry constituency (comprising a maximum of (3) three representatives of the credit industry.

13.3.2 There shall at all times be not less than (3) three or more than (7) seven persons appointed as members of the Council.

13.3.4 If at any time, as a result of retirement, resignation, death, or for any other reason, the number of members shall fall below such stated minimum, the remaining members shall nominate other persons to be co-opted as council members, in accordance with the nomination process adopted by the Council.

### **13.4 Nomination and election of Council Members**

13.4.1 The members of the Council shall be elected every (5) five years at a Council meeting.

13.4.2 Nominations in writing of members to be elected as members of the Council shall be delivered to the Secretary of the Council at least (14) fourteen days before the date of the meeting at which the election is to take place, provided that the current members of the Council shall be eligible for re-election without nomination to their respective offices.

13.4.3 Nominations for membership of the Council shall be signed by the proposer and a secondant and shall be accompanied by acceptance in writing by the candidate.

13.4.4 Voting for the election of Council members shall be by way of show of hands or by way of ballot in the discretion of the Chairperson.

### **13.5 Appointment of representatives on behalf of constituencies**

The consumer body and credit industry constituencies must elect/nominate the persons to be appointed as members of the CO Council, as well as one additional person to be an alternate member. Such nomination must be submitted in writing to the Chairperson who will circulate the information to the full Council. Should there be no objections, the nominated person and his alternate will be approved as a Council member at the next Council meeting. Should there be any objections, the Council shall discuss the matter at the next Council meeting and if necessary, put the matter to a vote.

### **13.6 Powers and responsibilities**

13.6.1 The purpose of the Council is to facilitate the provision by the CO of independent, equitable, speedy, and cost-effective resolution of disputes between credit receivers and the members of the CO Association.

13.6.2 Without in any way limiting such powers and authority the Council shall have the following further special powers, to:

- (a) make any rules and/or Policies or to take any resolutions or decisions, that are necessary or expedient in order to achieve the objects of the Association in terms of its Constitution and to approve any amendments to such rules or Policies;

- (b) form or appoint sub-committees and the members of such sub-committees, for special or general purposes and to delegate powers to such sub-committees and to delegate to any sub-committee or sub-committees all or any of the authorities conferred on the Council by the Association and in this Constitution;
- (c) cause the Association's books of account to be audited by a duly elected chartered accountant and auditor who shall audit the books of the Association at such intervals as the Council may require and at least once in each financial year;
- (d) decide on points of dispute; and the Council's ruling thereon shall be final and binding;
- (e) appoint or re-appoint the Ombudsman and settle the remuneration and to monitor the performance and independence of the Ombudsman as well as to settle the terms and conditions of his employment;
- (f) delegate to the Ombudsman such power and authority as the Council deem necessary and fit in order to ensure the effective functioning of the Office of the CO in accordance with the stated objectives of the Association;
- (g) receive the Ombudsman's Annual Report and ongoing updates on the CO's activities;
- (h) monitor, maintain and promote the CO's independence;
- (i) assists in ensuring that the broader credit industry, consumer bodies, payment distribution companies, the media and the general public understand the role, function and activities of the CO;
- (j) fully cooperate with the Ombud Council where required;
- (k) monitor the continued compliance by the CO with its Constitution, the compliance by this Council with its duties in terms of the Constitution of the Association and the FSRA and to report any non-compliance to the Ombud Council;
- (l) borrow or raise money for the purpose of the attainment of any of the Association's objects, and to apply any of the Association's funds or income in the repayment thereof;
- (m) apply to any other appropriate authority for the grant of any other licence, permission, accreditation or authority as may be necessary for the effective functioning of the CO and which it may be decided to apply for, in connection with the Association's business;
- (n) institute, conduct, defend, oppose, settle or abandon any legal proceedings by and against the Association, or its officers or otherwise concerning the affairs of the Association; and also to settle and allow time for payment in satisfaction of any debts due, and of any claims or demands by or against the Association;
- (o) refer any claim or demand by or against the Association to arbitration;
- (p) borrow, collect, or raise money in such manner as the Council shall think fit for the sole purpose of carrying out the objects of the Association, and in particular by means of subscriptions, contributions, levies, entrance fees, loans with or without security to give security for money by the issue of or upon bonds, debentures or obligations or securities of the Association, or by mortgage or charge upon all or part of the property of the Association;

- (q) do all such other things as may be necessary for the proper carrying out of the objects of the Association; and
  - (r) adopt a formal Conflicts of Interest Policy in terms of which conflicts are defined and appropriate procedures for dealing with conflicts are prescribed. As a minimum, such a policy must state that Council Members recuse themselves from discussions or decisions on matters on which they have a conflict of interest. Council Members are required to inform the Council in advance of any conflicts or potential conflicts of interest they may have in relation to particular items to be discussed at a meeting. Council Members may not vote in a meeting to pass a resolution in respect of business where they have a direct or indirect interest.
- 13.6.3 The Council of the CO Association has absolute responsibility for the performance of the Office of the CO and is accountable for such performance. As a result, the Council should give strategic direction to the Office and, in accordance with the authority delegated to it by the Association, appoint the Ombudsman, Deputy Ombudsman and do all such things as may be necessary to give effect to the objectives of the Association.
- 13.6.4 The Council must retain full and effective control over the Office of the CO, and monitor the management and implementation of Council decisions, plans and strategies.
- 13.6.5 The Council must ensure that the Office of the CO is fully aware of and complies with applicable laws, regulations, government policies and codes of business practice and communicates with its stakeholders openly and promptly with substance prevailing over form.
- 13.6.6 All Council Members should ensure that they have unrestricted access to accurate, relevant and timely information of the CO. Council members are required to act on a fully informed basis, in good faith, with diligence, skill and care and in the best interest of the Association and the CO, whilst taking account of the interests of all the other stakeholders, including members, employees, creditors, suppliers and consumers.
- 13.6.7 To this end, the Council must monitor the process of disclosure and communication and exercise objective judgment in the affairs of the CO Association, independent of management. In so doing, each individual member of the Council must keep confidential all confidential matters of the CO.
- 13.6.8 The services of a Council member may be terminated because of misconduct. This will apply to any Council member who is guilty of:
- (a) grossly abusing the position of Council member;
  - (b) taking personal advantage of information;
  - (c) leaking of confidential information and/or matters discussed by the Council and its Committees;
  - (d) intentionally or by gross negligence inflicted harm on the CO Association or the CO
  - (e) in relation to the performance of his/her duties, acts in a manner amounting to gross negligence, willful misconduct or breach of trust.
- 13.6.9 The Council, as a whole and/or the Ombudsman, may if necessary, solicit independent professional advice at the expense of the CO. The Chairperson of the Council shall ensure

- that in a matter before the Council that requires professional advice in order to make an informed decision, that such advice is obtained from an expert approved by the Council.
- 13.6.10 The Council must ensure that the relevant Subcommittee prepares a risk report, which must be submitted to the Council at its meetings not less than once a year.
  - 13.6.11 Without derogating from its fiduciary duties, the Council must ensure that the strategic objectives are achieved and that this can be measured in terms of the performance of the CO. In addition, the Council must ensure that the Office of the CO prepares an annual budget against which its performance can be monitored.
  - 13.6.12 The Council should ensure that the scope of delegation of authority is defined. Delegated authority must be in writing and/or set out in the Constitution of the CO and should be evaluated on a regular basis.
  - 13.6.13 The CO must submit an Annual Report of its activities to the Council. The Council must ensure that each financial year the annual financial statements fairly represent the affairs of the CO.
  - 13.6.14 Furthermore, they must ensure that the CO maintains adequate accounting records, and also ensure that suitable accounting policies consistently applied and supported by reasonable and prudent judgment and estimates, have been used in the preparation of the financial statements, and they must ensure that relevant accounting standards are applied.
  - 13.6.15 The Council shall appraise the performance of the Chairperson on an annual basis, or on a more frequent basis, as the Council may determine.
  - 13.6.16 The Council shall also, on an annual basis, review and evaluate its required mix of skills and experience and other qualities in order to assess the effectiveness of the entire Council, its Committees and the contribution of each individual member during his term of office.
  - 13.6.17 The Council must ensure that, on an annual basis, a confidential Council appraisal is conducted.
  - 13.6.18 The Council must ensure that there are appropriate and effective induction, education and training programmes offered to new and existing Council members, as and when required.
  - 13.6.19 Enter into agreements of purchase and sale and letting and hiring of property reasonably;
  - 13.6.20 Open bank and other accounts, necessary for the association to perform its obligations.
  - 13.6.21 The Council is comprised of (2) two representatives of consumer bodies, (2) two independent representatives, and (3) three representatives of the credit industry.
  - 13.6.22 The composition of the Council assists in assuring that the CO scheme is and remains independent.
  - 13.6.23 The Council is responsible for appointing the Ombudsman.
  - 13.6.24 The Council is responsible for ensuring and maintaining compliance with the relevant provisions of the FSRA and any other legislation or regulation.
  - 13.6.25 The Ombudsman enjoys security of tenure and can only be dismissed on the grounds of incompetence, gross misconduct, or inability to effectively carry out his or her duties.
  - 13.6.26 The independence of the CO and the Ombudsman is further assured by the fact that the Ombudsman and employees of the CO are:
    - 13.6.27 entirely responsible for the handling and determination of complaints;
    - 13.6.28 accountable only to the Council; and
    - 13.6.29 adequately resourced to carry out their respective functions.

## **14 TERMINATION OF OFFICE OF COUNCIL MEMBERS**

- 14.1 Each elected member of the Council, including the Chairperson, shall hold office for the period of five years, concluding with the end of the Council Meeting, being the five year anniversary of the Council meeting at which he was elected.
- 14.2 Upon expiry of such period such member shall automatically retire from office but shall be eligible for nomination and re-election as a member of the Council provided that he retains his qualifications.
- 14.3 A Council member shall cease to hold office as such if–
- 14.3.1 he resigns his office by notice in writing to the Council;
- 14.3.2 he is or becomes of unsound mind;
- 14.3.3 he surrenders his estate as insolvent or his estate is sequestered;
- 14.3.4 he is convicted of an offence which involves dishonesty;
- 14.3.5 he is or becomes disqualified from being appointed or acting as a director of a company; or
- 14.3.6 His service as Council member is terminated due to misconduct.
- 14.4 The Council shall have the right to co-opt any new member as a member of the Council to fill any vacancy should a member cease to hold office as stated in clause 14.3 above.
- 14.5 The Council may at a Special Council Meeting remove any Council member before the expiry of his term of office and appoint another Council member in his place to hold office for the unexpired part of the term of the Council member so removed, provided that the intention to vote upon his removal from office was specified in the notice convening the meeting.

## **15 ROLE OF THE CHAIRPERSON**

- 15.1 The Council elects the Chairperson of the Council.
- 15.2 The Chairperson’s responsibilities are separate from those of the Ombudsman. The Chairperson’s role is to lead and manage the Council and ensure that it meets its obligations and responsibilities.
- 15.3 The responsibilities of the Chairperson include:
- 15.3.1 ensuring that all Council members are fully involved and informed of any issue on which a decision has to be taken;
- 15.3.2 ensuring that the Council members participate fully in the pursuit of good corporate governance of the CO Association;
- 15.3.3 ensuring that the Council monitors the business and contribute to the business decisions of the Association;
- 15.3.4 exercising independent judgment, acting objectively and ensuring that all relevant matters are placed on the agenda and prioritised properly;

- 15.3.5 working closely with the Council Secretary in ensuring that at all times the Council members fully understand the nature and extent of their responsibilities and to ensure the effective governance of the CO;
- 15.4 The Chairperson will act as a facilitator at meetings of the Council to ensure that no Council member dominates the discussion, that relevant discussion takes place, that the opinions of all Council members relevant to the subject under discussion are solicited and freely expressed and that Council discussions lead to appropriate decisions.
- 15.5 The Chairperson will seek a consensus amongst the Council but may, where considered necessary, call for a vote, in which event the decision of the majority of Council members will prevail and dissenting views will be recorded. The Chairperson shall not have a casting vote.

## **16 ROLE OF THE DEPUTY CHAIRPERSON**

- 16.1 The Council shall elect a Council member as the Deputy Chairperson of the Council.
- 16.2 When the Chairperson is absent or unable to perform his duties, the Deputy Chairperson must act in his stead and when so acting, perform any function of the Chairperson.
- 16.3 Should both the Chairperson and Deputy-Chairperson not be present at any meeting of the Council the members present shall elect a Chairperson from their number at that meeting.

## **17 APPOINTMENT, ROLE AND RESPONSIBILITIES OF THE OMBUDSMAN**

- 17.1 The Council will be responsible to appoint the Ombudsman who must possess the relevant qualifications, competence, knowledge and experience to effectively execute his duties as Ombudsman.
- 17.2 The Ombudsman will be appointed and elected by a majority vote of the Council.
- 17.3 There shall at all times be 1 (one) Ombudsman.
- 17.4 If requested by the Ombud, the Council shall be entitled to appoint a Deputy Ombudsman. The appointment and election of the Deputy Ombudsman will take place by majority vote of the Council.
- 17.5 Any person appointed as Ombudsman shall hold office until:
  - 17.5.1 he shall have resigned there from by notice in writing to the Association; or
  - 17.5.2 a period of 3 (three) years from the date of election as Ombud has elapsed. The Ombud's tenure shall not exceed a period of 5 (five) years;
- 17.6 The Ombud shall be seized with the power to do what is necessary to give effect to all of the objectives of the Association.
- 17.7 The powers and duties of the Ombudsman shall be exercised in accordance with the limits determined by the Council and as shall be limited to what is stipulated in this document and the Ombudsman's Contract of Employment.
- 17.8 The Ombudsman shall be responsible for ensuring that the mandate and strategic objectives approved by the Council is effectively implemented.



- 17.9 The Ombudsman shall also timeously provide the Council with relevant and appropriate information to achieve the necessary strategic objectives and to comply with its legislative, regulatory and other obligations.
- 17.10 The Ombudsman should manage the business of the CO, in accordance with directives from the Council, in accordance with the Constitution .
- 17.11 The role and responsibilities of the Ombudsman shall include:
- 17.11.1 ensuring the operational performance of the CO;
  - 17.11.2 ensuring that management carries out its responsibilities;
  - 17.11.3 ensuring the development of the annual Organizational Plans and Budgets in support of the strategic objectives of the CO;
  - 17.11.4 ensuring that the strategic objectives of the CO are included in all the operations of the CO, the Strategic and Business Plan, and KPIs;
  - 17.11.5 ensuring that the day-to-day business affairs are properly monitored and managed;
  - 17.11.6 liaising and consulting with the Chairperson/Deputy Chairperson of the Council as required by Council policies and resolutions;
  - 17.11.7 refrain from acting in any manner which undermines the authority of the Chairperson/Deputy Chairperson of the Council or the Council members and stakeholders;
  - 17.11.8 ensuring continuous improvement in the quality and value of the services of the Office of the CO;
  - 17.11.9 appointing and managing of personnel while ensuring an effective management team;
  - 17.11.10 ensuring compliance with all legislation as well as all approved Policies of the CO;
  - 17.11.11 compiling management accounts on a monthly basis and provide such management accounts to the Council on a quarterly basis;
  - 17.11.12 promoting employment equity and an organizational culture which ensures retention and development of staff;
  - 17.11.13 formulating and overseeing the implementation of approved projects for the Office;
  - 17.11.14 ensuring that all Council policies and strategies are fully implemented;
  - 17.11.15 acting as chief spokesperson for the CO Association;
  - 17.11.16 fostering a corporate culture, which promotes ethical practices and individual integrity, and fulfils a social responsibility objective;
  - 17.11.17 reporting to the Council on all matters material and on all of the above; and
  - 17.11.18 ensuring that the Council Secretary is provided with the information required for Council Packs timeously in order to ensure that Council Packs are received by Council members at least seven days prior to any meeting;
  - 17.11.19 make recommendations to the Council for amendments to the Constitution and Policies;
  - 17.11.20 institute and defend legal proceedings in his/her own name, as well as any legal proceeding instituted by or against the Association.

- 17.11.21 notwithstanding anything to the contrary contained herein, to apply the funds, reserves and surpluses of the Association in promoting the objects of the Association and the functioning of the CO;
- 17.11.22 the rulings of the Ombudsman shall be binding on the members. However, complainants may dispute any ruling made by the Ombud and could institute legal proceedings and/or approach a court of law or any other relevant regulator or organization; and
- 17.11.23 the Ombudsman shall be accountable to the CO Council at all times.

## **18 FORMAL EVALUATION OF THE OMBUDSMAN**

- 18.1 The Council shall perform a formal evaluation of the Ombudsman on an annual basis. The evaluation must be based on objective criteria agreed to beforehand between the Council and the Ombudsman including performance of the Office, accomplishment of strategic objectives, development of management, and leadership qualities, etc. For this purpose, the Ombudsman should be called to an interview.
- 18.2 The evaluation must be used by the Council in the course of its deliberations when considering the compensation, annual increase and bonus of the Ombudsman.

## **19 ROLE OF THE COUNCIL SECRETARY**

- 19.1 The Council Secretary is appointed by the Council. The Secretary's role is to provide the Council and individual Council members with guidance as to the nature and extent of their duties and responsibilities and, how such duties and responsibilities must be properly discharged in the best interests of the CO Association and the CO.
- 19.2 The Council Secretary's role entails the induction of new and inexperienced members and, together with the Chairperson of the Council, developing mechanisms for providing continuous education and training for all Council members in order to improve and maintain the effectiveness of the Council. The Council Secretary must assist the Chairperson and the Ombudsman in determining the Annual Calendar and Annual Council Plan and other issues of an administrative nature. The Council Secretary must provide a central source of guidance and advice to the Council on matters of business ethics and good governance.

## **20 REMUNERATION OF THE COUNCIL MEMBERS**

- 20.1 The Governance, Human Resources (HR) & Finance Committee, in consultation with management of the CO must make recommendations to the Council on the remuneration of Council members.
- 20.2 The Council must ensure that the remuneration of all members is approved by the full Council and in addition the Council must approve a Remuneration Policy for Council members as recommended by the Council.

## **21 COMMITTEES OF THE COUNCIL**

- 21.1 The Council is assisted by a single committee known as the Governance, Human Resources and Finance Committee to assist the Council to discharge its duties. The duties and responsibilities of this Committee is set out in this Constitution and its own Terms of Reference.
- 21.2 The Council may, if it deems it necessary, form any other subcommittee of the Council or abolish any existing subcommittee.
- 21.3 The Council committees will observe the same rules of conduct and procedures as the Council unless the Council specifically determines otherwise in the Committee's Terms of Reference.
- 21.4 Council Committees must be constituted having regard to the skills, expertise and experience of members appropriate to the respective Committees' mandates. Where appropriate or necessary, independent external professionals with relevant skills and expertise may be co-opted as Advisors to the Committees to assist or bolster the Committees where there is a shortage of such skills or expertise. Such co-opted professionals shall have the status of invitees to the Committee, shall not form part of the quorum for meetings and shall have no voting rights.
- 21.5 Committees must have due regard to the fact that they do not have independent decision-making powers. They make recommendations to the Council except in situations where the Council authorises the Committee to take decisions and implement them. Thus, in undertaking its duties, each Committee must have due regard to its role as an advisory body to the Council, unless specifically mandated by the Council in the relevant Terms of Reference to make certain decisions. (For example; the Committee may have the authority to appoint an independent expert.)
- 21.6 A formal report back, either orally or in writing, shall be provided by the Chairperson of each Committee to all Council meetings following the Committee meetings to keep the Council informed and to enable the Council to monitor the Committees' effectiveness.

## **22 COUNCIL MEETINGS**

- 22.1 The provisions contained in this Constitution govern meetings and proceedings of the Council and its Committees as far as they are applicable.
- 22.2 The Council should meet regularly, at least once a quarter, or more frequently as circumstances require.
- 22.3 No less than 14 (fourteen) days' notice must be given by the Secretary to the members of the Council of all meetings of the Council unless all members of the Council agree to accept shorter notice.
- 22.4 In the Annual Report the number of Council and Committee meetings held in the year and the details of attendance of each Council member, should be disclosed.
- 22.5 A meeting of the Council may be conducted by electronic communication, or one or more Council members may participate in a meeting by means of electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

- 22.6 The Council must institute efficient and timely methods for informing and briefing Council members prior to meetings while each Council member is responsible for being satisfied that, objectively, they have been furnished with all the relevant information and facts before making a decision.
- 22.7 Council members shall use their best endeavours to attend Council meetings and to prepare thoroughly for them.
- 22.8 Council members must participate fully, frankly, and constructively in Council discussions and other activities to bring the benefit of their particular knowledge, skills and experience to the Council.
- 22.9 Council members who are unable to attend a meeting must advise the Chairperson at the earliest possible date and confirm this in writing to the Council Secretary.
- 22.10 The Council must determine the number of Council meetings that each Council member should attend for the year. Should a member attend less than the stipulated number of meetings, that Council member may be required to resign from the Council.
- 22.11 The Chairperson, with the assistance of the responsible official (e.g. Ombudsman or the Council Secretary), shall develop the agenda for each Council meeting. The agenda for each meeting shall provide an opportunity for the Chairperson of the Committee(s) to report orally on any matters of importance. The Chairperson must also place on the agenda any item that is proposed in writing by a member.
- 22.12 The Council Secretary shall circulate the agenda and other relevant documents to Council members at least 7 days in advance.
- 22.13 The Ombudsman, with the assistance of the responsible official, (e.g. Council Secretary), shall cause all information and data that is important to the Council's understanding of the business to be distributed in writing at least seven days before the Council meets. This material should be as brief as possible while still providing the essential information.
- 22.14 Presentations, wherever possible, should be sent to the Council members in advance so that the Council's meeting time can be conserved, and the discussion time focused on questions that the Council has about the material distributed.
- 22.15 On those occasions when, in the opinion of the Chairperson, the subject matter may be too sensitive to record, the presentation will be discussed at the meeting.
- 22.16 Minutes of all Council meetings shall record the proceedings and decisions taken, the details of which shall remain confidential.
- 22.17 The Council Secretary will circulate minutes of Council meetings to all Council members within three weeks of each meeting.
- 22.18 The Council and its Committees may, subject to this being sanctioned by the Chairperson in the case of the Council and by the respective Committee Chairperson in the case of the Committees, take decisions on urgent and non-contentious issues, by means of the "Round Robin" resolution method. The approval of the Round Robin resolution should be by at least the majority of the Council or Committee members.

## **23 FREQUENCY OF MEETINGS, QUORUM AND VOTING**

- 23.1 The Council will meet at least four times in each financial year and may convene additional meetings as and when necessary.

- 23.2 Fifty percent (50%) of the members of the Council, excluding the Chairperson, will constitute a quorum at any meeting of the Council, provided always that there shall be at least one member representing consumer bodies and one member representing independent members.
- 23.3 The fifty percent (50%) of the Council must be present in person or through electronic media throughout the meeting and voting.
- 23.4 A Council member shall vote provided that there are no conflicts of interest present for such Council member. For purposes of quorum, such Council member remains present.
- 23.5 Any decision by the Council shall be by majority vote by show of hands of the members present at the meeting.
- 23.6 Each person entitled to be present and to vote shall have one vote. The Chairperson shall not have a casting vote additional to his deliberative vote.
- 23.7 No voting by proxy shall be permitted.
- 23.8 Ballot may be demanded by not less than three (3) members present at the meeting. Should any such ballot be demanded it shall be taken in such a manner and at such time and place as the Chairperson of the meeting may direct.
- 23.9 A declaration by the Chairperson of the meeting of the result of a show of hands or a ballot, as the case may be, shall be conclusive.

## **24 ADJOURNMENT OF COUNCIL MEETINGS**

- 24.1 The Chairperson of any Council Meeting may, with the consent of the meeting decided by majority vote of members of the meeting, adjourn the meeting from place to place and from time to time.
- 24.2 No business shall be transacted at any adjourned meeting other than that business left unfinished at the meeting from which the adjournment took place.

## **25 MAINTENANCE OF MEETING MINUTES AND OTHER RECORDS**

- 25.1 The Council Secretary shall cause minutes of all Council meetings, written resolutions of such meetings, and names of Council members present at such meeting, to be kept in electronic and written format.
- 25.2 Any such minutes or an extract therefrom, signed by the Chairperson shall be *prima facie* evidence of the matters therein stated.
- 25.3 A resolution in writing which is signed by all the members of the Council and inserted in the minute book of the Council shall be as valid and effective as if passed at a meeting of the Council.
- 25.4 Any such resolution may consist of several documents in the same form, each of which is signed by one or more of the members of the Council and shall be deemed (unless the contrary appears from the resolution) to have been passed on the date it was signed by the last member of the Council entitled to sign it.

- 25.5 The Council Secretary shall cause minute books and other registers to be kept in safekeeping at the Office of the CO and Council members will be entitled to request copies or inspect same as and when required.

## **26 SUCCESSION AND EMERGENCY PLANNING**

- 26.1 The Council shall on an on-going basis perform a skill identification process and communicate with the Ombudsman and relevant stakeholders in this regard.
- 26.2 The Council shall further institute procedures for selecting, monitoring, evaluating and replacing the Ombudsman and/or key management staff of the CO.
- 26.3 In the absence of a formal nominations committee, the full Council shall determine the process and criteria and may delegate certain responsibilities to Council members in this regard.
- 26.4 Similarly, there must be acting arrangements instituted for when the Ombudsman is away or indisposed.
- 26.5 In the event that the Ombudsman is indisposed for an extended period or indefinitely, the Chairperson must consult with the Council on acting arrangements, before an acting Ombudsman is appointed.
- 26.6 The Ombudsman must report annually to the Council on succession planning and development plans for senior management CO.

## **27 MONITORING OF OPERATIONAL ACTIVITIES**

The Ombudsman is responsible for the monitoring of daily activities of the Office of the CO and should report to the Council on same, at each Council meeting.

## **28 COUNCIL'S RELATIONSHIP WITH STAKEHOLDERS**

- 28.1 The Council shall take into account the views and perception of all the stakeholders, and where necessary take steps in clarifying and addressing any matters.
- 28.2 The Council will ensure that stakeholders relevant to the credit industry are identified with their interest and expectations understood and evaluated.
- 28.3 Stakeholders that have been identified include (but are not limited to):
- 28.3.1 Council members
  - 28.3.2 constituencies represented on the CO Council
  - 28.3.3 Ombudsman
  - 28.3.4 staff members of the CO
  - 28.3.5 regulators and other government departments involved with the credit industry and related issues
  - 28.3.6 consumers

28.3.7 press.

## **29 EXCLUSION OF LIABILITY AND INDEMNITY**

29.1 Each member of the Association and each Council member is indemnified by the Association in respect of all decisions, and acts of omission and commission made and undertaken in good faith on its behalf, and it shall be the duty of the Association to reimburse such members in respect of any costs or expenses incurred in the bona fide discharge of such member's fiduciary duty to the association or the Council.

29.2 Neither the Association nor the members of the Council or the Association shall be responsible or may be held liable for any loss, damage or injury including consequential losses, suffered by or caused to any person or property anywhere on or about the Association's property or premises, whether or not such loss, damage or injury is occasioned by any act or omission of the Association, the members of the Council or the Association, or anyone else for whose actions they or any of them would be liable in law, or by reason of *vis major, casus fortuitus*, rain or other water, riots, strikes, theft or burglary with or without forcible entry, or by reason of any condition on or off the grounds of the Association or any building structures, or any defective premises or facilities of the Association, or by any other cause of whatsoever nature and howsoever arising.

## **30 CRITERIA USED TO RESOLVES DISPUTES**

30.1 The law, more particularly but not limited to FSRA, the NCA and the CPA.

30.2 Applicable industry codes and relevant codes of conduct and/or guidelines.

30.3 Fairness in all the circumstances.

In the event of legislation being enacted in the future impacting the credit industry, the criteria referred to may be extended by the Council of the CO.

## **31 THE CO'S PRINCIPAL POWERS AND DUTIES**

31.1 The CO's principal powers and duties are to consider disputes within this Constitution to facilitate and negotiate the satisfaction, settlement or resolution of such disputes whether by agreement, mediation or by making recommendations or rulings or by such other means as seem expedient.

31.2 It is a function of the CO to educate all stakeholders regarding its existence, role, procedures, jurisdiction and Constitution.

31.3 It is a further function of the CO to promote education initiatives and to educate consumers in general regarding financial and credit matters.

31.4 The CO may report to the relevant industry body on matters which may be of interest to them, and as may be agreed by the Council from time to time.

31.5 The CO shall:

31.5.1 receive and deal with complaints relating to credit agreements and/or the listing of credit information, as may be determined by the Council from time to time;

31.5.2 at the Ombud's sole discretion, determine whether or not a complaint falls within its jurisdiction in accordance with the Constitution;

31.5.3 explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to all parties;

- 31.5.4 report any material or persistent non-compliance with Operational Procedures, Constitution of the Association or the relevant legislation, to the Council;
- 31.5.5 report to the Council regarding complaints which have not been completed within a time laid down by the Council. This time period shall initially be set at sixty working days calculated from the date that a complaint became a dispute;
- 31.5.6 prepare and submit to the Council an Annual Report detailing the activities and finances of the association for the year in question.
- 31.5.7 prepare and submit reports to the Council on current matters and activities.
- 31.5.8 provide the Council with any information and assistance which it reasonably requires;
- 31.5.9 provide the Council with any information and assistance which it reasonably requires;
- 31.5.10 comply with any requirements under the FSRA, the NCA or other applicable legislation; and
- 31.5.11 publicize the services provided by the association through the media and consumer bodies.
  
- 31.6 The CO may:
  - 31.6.1 make a suggestion or recommendation to the parties regarding how the matter should be settled, in order to resolve a complaint speedily by conciliation;
  - 31.6.2 follow and implement any procedure (including mediation) which the CO deems appropriate;
  - 31.6.3 require a complainant or a member to provide any information which in the view of the CO relates to that complaint and is necessary for its resolution;
  - 31.6.4 in determining the principles of good practice, consult with the industry as the CO thinks appropriate;
  - 31.6.5 advise the public on the procedure for making a complaint to the CO;
  - 31.6.6 collect information concerning any issues which may, in the opinion of the CO, be indicative of systemic problems pertaining to the credit industry; conduct research; comment and formulate proposals for the rectification of the problems; submit them to the relevant industry body and/or regulator and monitor the response thereto;
  - 31.6.7 at any stage of the procedure dismiss a complaint on the grounds that:
    - (a) the complainant has misled the CO;
    - (b) the complainant has failed to:
      - (i) cooperate in the process; or
      - (ii) respond to requests for information or comments within a reasonable time; or
    - (c) there does not appear to be a reasonable prospect of the CO eventually making a recommendation or determination in favour of the complainant for whatever reason; or
    - (d) there is no merit to the complaint; or



- (e) any of the grounds for exclusion from jurisdiction referred to in this Constitution are established or come into existence after the complaint has provisionally been determined to fall within the CO's jurisdiction.

## **32. THE CO's JURISDICTION**

### **32.1 General**

32.1.1 The CO may consider a dispute brought by:

- (a) a private individual; or
- (b) a company, including a sole proprietor or trader, a juristic person, partnership or trust
- (c) a person entitled to complain to the CO under the provisions of FSRA or the NCA.

32.1.2 The CO may consider a dispute if an individual or organization has tried unsuccessfully to resolve the dispute through approaches to the Credit Bureaux or Credit Providers or any Organization dealing with credit receivers in terms of credit related matters, or the complaint has been repudiated, or there has been an undue delay (longer than 20 working days) in resolving the complaint.

### **32.2 Limits on the jurisdiction of the CO**

32.2.1 The complaint is about someone who is not a member or a member by association of the CO, the CO has the discretion to decide whether or not to assist the consumer with his/her complaint, provided that the CO acknowledges that any non-member is under no obligation to assist or respond to the complaint.

32.2.2 The complaint relates to a member's commercial judgment about lending or security.

32.2.3 The complaint relates to any transaction entered into outside South Africa.

32.2.4 In the case of a secured loan, where the security is situated or legally registered outside South Africa or is governed by laws other than the laws in South Africa;

32.2.5 The complainant is not the person to whom the services were directly provided to by the member, provided that complainants may be assisted by third parties to submit their complaints;

32.2.6 The member's act or omission occurred more than three years before the receipt of the complaint by the CO, the CO has the discretion to accept the complaint or not, except for Credit Information disputes, where the three-year period shall not apply;

32.2.7 The complainant has lodged a previous complaint regarding similar issues about a member which has been considered by the CO, unless relevant new evidence is available;

32.2.8 If the same complaint is already or has been the subject of proceedings before a tribunal, arbitrator, other Ombudsman, or is under investigation by any Ombudsman or Regulator. If the complaint is the subject of proceedings before a Court of law, instituted by or on behalf of the credit provider, subscriber to the credit bureau or any other organization dealing with the matter, the Ombud has the discretion to accept the complaint.

### **33 JURISDICTION IN RESPECT OF NON-BANK CREDIT MATTERS**

The following jurisdiction relates specifically to non-bank credit transactions having due regard to the requirements of the National Credit Act and any relevant Codes of Conduct, the CO shall consider complaints that pertain to matters where a member:

- 33.1 breached any relevant laws or regulations or by-law or duties imposed by law or did not give effect to a right provided by law or any regulations or by-law in relation to the subject matter of the complaint;
- 33.2 breached an applicable code of practice or code of conduct provided for by relevant legislation or applicable in the industry, regulations or by-laws;
- 33.3 did not meet standards of good practice; and
- 33.4 acted unfairly and/or unconscionable towards a complainant;

### **34 LIMITS ON JURISDICTION IN RESPECT OF COMPLAINTS IN TERMS OF NON-BANK CREDIT TRANSACTIONS:**

- 34.1 cash transactions;
- 34.2 if the complaint relates to a member's commercial judgment about lending or security;
- 34.3 in the case of a secured loan, where the security is situated or legally registered outside South Africa or is governed by laws other than the laws in South Africa.

### **35 JURISDICTION IN RESPECT OF CREDIT INFORMATION MATTERS:**

The CO shall consider complaints that pertain to:

- 35.1 inaccurate or incorrect credit information;
- 35.2 insufficient or incomplete credit information;
- 35.3 outdated credit information;
- 35.4 notification or the lack thereof to consumers prior to listing adverse information as provided for in the NCA and more fully explained hereunder;
- 35.5 listings in respect of prescribed debt, as defined hereunder;
- 35.6 duplicate and/or double listings in respect of the same debt;
- 35.7 service disputes – i.e. non-payment of an account or debt due to a dispute relating to service to which the account relates;
- 35.8 listings in respect of claims or Court orders for damages and/or costs; and
- 35.9 listings following incidents of identity theft and/or identity fraud.

The CO shall apply the applicable legislation, regulation, Code of Conduct or guidelines, and/or the principles of fairness and equity in resolving a dispute.

## **36 LIMITS OF THE CO'S JURISDICTION IN RESPECT OF CREDIT INFORMATION MATTERS**

The CO may not consider a complaint or dispute if it relates to any credit information outside South Africa.

## **37 THE CO'S JURISDICTION IN RESPECT OF CREDIT INFORMATION MATTERS – FURTHER INFORMATION AND INTERPRETATION**

- 37.1 The Consumer Credit information as per Regulation 17 of the National Credit Act, 2005, may be displayed and used for purposes of credit scoring or credit assessment for a maximum period from the date of the event, as indicated in the Table, and as may be amended from time to time.
- 37.2 The date of the event is the date on which the relevant order was given or the date on which the event occurred which is being displayed in the consumer credit record.
- 37.3 The Definitions of Adverse Classifications of Consumer Behaviour are as set out in the Regulations to the NCA, namely:
- 37.3.1 subjective classifications of consumer behaviour which include classifications such as 'delinquent', 'default', 'slow paying', 'absconded', or 'not contactable';
- 37.3.2 Adverse classifications of enforcement action are classifications related to enforcement action taken by the credit provider, including classifications such as 'handed over for collection or recovery', 'legal action', or 'write-off'.
- 37.4 Payment profile refers to the consumer's payment history in respect of a particular transaction.
- 37.5 The obligation of the Subscriber to the Credit Bureaux to supply accurate credit information to the bureaux, entails the following;
- 37.5.1 Subscribers of credit bureaux shall take reasonable steps to ensure that the data supplied to credit bureaux is correct, accurate, up-to-date, relevant, complete and valid.
- 37.5.2 Subscribers will supply the information to the Credit Bureaux within a reasonable time period or as required in terms of the legislation and regulations.
- 37.6 The obligation of the Subscriber to the Credit Bureaux to properly inform credit receivers and all consumers listed on the bureaux, prior to adversely listing them, entails;
- 37.6.1 Subscribers of credit bureaux shall give their customers (20) twenty working days notice of their intention to submit the following adverse information concerning that person to a credit bureau:
- i. classification of behaviour, including classifications such as delinquent, default, slow payer, absconded and not contactable;
  - ii. classifications related to enforcement such as handed over for collection or recovery, legal action or write-off
- 37.6.2 Subscribers shall have the obligation to prove that the relevant notification referred to above was given to the customer;
- i. the CO shall accept postage via registered mail, using the track and trace system, to the correct *domicilium* address for the consumer, as prove of notification;
  - ii. in all other cases and by using other methods or notification, the subscriber must produce proof that the notification reached the consumer; and

- iii. if there is not sufficient proof in respect of clause ii above, and the consumer disputes receiving notice, the information may not be listed and must be removed if already listed. The consumer must be given 20 days notice where after the information may be listed for the remainder of the maximum period as provided for in the NCA (see table in Annexure B);
- 37.6.3 the CO's jurisdiction in respect of listings in respect of prescribed debt entails the following:
- i. Subscribers of credit bureaux shall not submit information to credit bureaux in respect of debts that have prescribed.
  - ii. Prescription of debt in this Constitution is defined as follows: In the event that a debtor has not acknowledged or paid a debt for a period of 36 months or longer, the said debt would have prescribed and a subscriber of Credit Bureaux will not be allowed to list the information on the Credit Bureaux; and
- 37.6.4 duplicate/double listings in respect of the same debt:
- i. Subscribers of Credit Bureaux shall not submit information more than once in respect of the same debt.

## **38 UNREASONABLE COMPLAINTS**

The CO may, at its sole discretion, determine that a dispute should not be considered on the grounds that the complainant is pursuing it:

- 38.1 in an unreasonable manner; or
- 38.2 in a frivolous, vexatious, offensive, threatening or abusive manner.

## **39 TERMINATION OF COMPLAINT BY COMPLAINANT**

A complainant may, at any time prior to the issuing of a Ruling, terminate the CO's handling of the complaint and resort to litigation or other dispute resolution process by withdrawing the complaint in writing.

## **40 RULES OF EVIDENCE**

The CO shall not be bound by any legal rule of evidence and will resolve complaints according to its internal processes.

## **41 DOCUMENTS**

- 41.1 Correspondence, communications and documents which came into existence in the course of a genuine and bona fide attempt to settle a dispute will be considered to be privileged and will not be disclosed to any other party without the consent of the owner/author or person who provided such documentation to the CO.
- 41.2 The CO shall return all original documents to the parties from whom they are received, when requested to do so, unless the documents are required for the purposes of investigation.
- 41.3 The CO shall ensure that any such documents are safeguarded and returned upon the closure of the case.

## **42 THE COMPLAINTS PROCESS**

The CO's complaint process is more fully set out as follows:

### ***ASSESSMENT, FACILITATION, MEDIATION, RECOMMENDATION AND RULINGS***

#### **42.1 Assessment**

The CO may, in order to settle a dispute speedily, make an assessment of its merits without undertaking an investigation and suggest to the parties how the matter should be settled.

#### **42.2 Facilitation**

The CO may, in its sole discretion, facilitate any matter that it believes is appropriate for facilitation, taking into consideration the wishes of the parties and the nature of the complaint.

#### **42.3 Mediation**

42.3.1 The CO may, as it deems it appropriate, at any time during the investigation of a complaint, invite the complainant and the member to participate in mediation proceedings, which mediation shall be conducted in an inquisitorial manner by the Ombudsman or any other person or persons appointed for that purpose by the CO.

42.3.2 At the request of a party to the mediation proceeding, the CO may allow legal representation. Each request shall be determined on its own merits at the sole and absolute discretion of the CO.

#### **42.4 Recommendation**

42.4.1 The CO may, in any case where a matter has not been settled, make a recommendation setting out how the matter should be resolved and the reasons for the recommendation.

42.4.2 Neither a complainant nor a member shall be bound to accept a recommendation made by the CO, but if a member does not accept a recommendation that has been accepted by the complainant, the Ombud may then proceed to issue a ruling.

42.4.3 A complainant who does not accept a recommendation may institute legal proceedings at his or her own expense, if so advised, or request the Ombud, or Deputy Ombud, to make a ruling.

42.5.4 All recommendations are to be made in writing and authorized by the Ombud or Deputy Ombud.

#### **42.5 Ruling**

42.5.1 The Ombudsman personally may, in a case where a recommendation has not been accepted by all parties concerned, make a binding written ruling based on the law, any applicable Code, or fairness, provided that all the material facts are agreed or the facts have been established on a balance of probabilities.

42.5.2 A ruling is binding on the members but not on the complainant.

42.5.3 A ruling may order that the member or complainant take such steps in relation to the complaint as the Ombudsman deems appropriate and just.

42.5.4 The member must give effect to any order made in a ruling within the time stipulated by the Ombudsman.

- 42.5.5 Should the member fail to give effect to any order made in a ruling within the time stipulated, that member will be reported to the Council.

### **43 ENFORCEMENT OF OUTCOME OF A COMPLAINT**

- 43.1 If any matter that falls within the provisions of the NCA is resolved, the CO may record the resolution of that dispute in the form of an order; and if the parties to the dispute consent to that order, submit it to:
- 43.1.1 a court to be made a consent order, in terms of its rules; or
- 43.1.2 the National Consumer Tribunal to be made a consent order in terms of section 138 of the NCA.
- 43.2 If in any matter that may be dealt with by the Regulator or the Tribunal under the NCA, the CO concludes that either party to conciliation, mediation or arbitration is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the CO shall issue a certificate in the prescribed form stating that the process has failed and refer the parties to the National Credit Regulator.
- 43.3 The members of the CO shall abide by the rulings of the Ombud, subject to any appeal process which may be approved by the CO Council.
- 43.4 Consumers shall not be bound by any ruling or decision of the CO and may refer the matter to any other body, court or regulator.

### **44 INFORMATION NOT PROVIDED TIMEOUSLY**

If a member does not provide information requested or does not provide it timeously, the CO shall have power to assume that the evidence is against that Member and to make a decision accordingly.

### **45 AMENDMENTS TO THE CONSTITUTION**

The Constitution of the Association or any part thereof as contained herein shall not be rescinded, added to or amended, save by a resolution, adopted by a majority of two thirds of the Council members present at an ordinary Council Meeting for which due and proper notice has been given, and subject to any legislative requirements and/or approval.

### **46 GENERAL**

A copy of this Constitution and of any rescinding, addition or amendment thereto, shall be available for the inspection of members upon application to the Secretary.

### **47 DISSOLUTION**

- 47.1 The Association may be dissolved by a resolution passed at a Special Council Meeting called for that purpose provided that such resolution is passed by a majority of two thirds of the council members present.

47.2 Upon its dissolution the assets of the association shall devolve on another organisation or parties listed in section 30(3)(b)(iii) of the Income Tax Act.

## **48 INTERPRETATION**

The interpretation of this Constitution and of all rules or decisions of the Association shall rest entirely with the Council, whose interpretation shall be final and binding on all members of the Association.

## **49 PUBLIC BENEFIT ORGANISATION**

49.1 The CO Association has been approved by the Commissioner of the South African Revenue Services as a Public Benefit Organisation and as such it is stipulated that:

49.1.1 The sole object of the public benefit organisation is to carry on one or more public benefit activities as defined in section 30(1) of the Income Tax Act (“the Act”), in a non-profit manner and with an altruistic or philanthropic intent;

49.1.2 No activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation otherwise than by way of reasonable remuneration;

49.1.3 At least three persons, who accept fiduciary responsibility for the public benefit organisation, will not be connected persons in relation to each other, and no single person directly or indirectly controls the decision-making powers relating to such organisation;

49.1.4 No funds will be distributed to any person (other than in the course of undertaking any public benefit activity) and is required to utilize its funds solely for the objects for which it was established;

49.1.5 On dissolution of the public benefit organisation, the remaining assets must be transferred to any–

- (a) similar public benefit organization, which has been approved in terms of Section 30 of the Act;
- (b) institution, board or body which is exempt from the payment of income tax in terms of section 10(1)(cA)(i) of the Act, which has as its sole or principal object the carrying on of any public benefit activity; or
- (c) department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of the Act.

49.1.6 No donation will be accepted which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and condition of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Act: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose any conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;

49.1.7 A copy of all amendments to the constitution, trust deed, memorandum and articles of association, or other written instrument, under which the public benefit organisation was established, will be submitted to the Commissioner for the South African Revenue Service;

- 49.1.8 No remuneration will be paid to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;
- 49.1.9 The public benefit organisation will submit the required returns for income tax together with the relevant supporting documents.

## **50. ANNUAL REPORT**

The CO shall prepare a report on the activities of the Association for each calendar year and shall publish that report within 6 months after the financial year end. The report must comply with any requirements imposed by FSRA.

## **51. CONFIDENTIALITY**

- 51.1 If any party to a complaint, supplies information to the CO and requests, in writing, that it is treated as confidential information, the CO shall not disclose that information to any other party, except with the written consent of the first mentioned party.
- 51.2 As far as is practical and at the sole discretion of the CO, all documentation should be provided to both parties to a dispute. However, it is not necessary for documents and information used by the CO to be provided to both parties as long as the CO's written reasons in the case of a recommendation and ruling, clearly identify the documents or information relied on and the identified documents or information are provided on request.

## **52. CONFLICTS**

If there is a conflict between the provisions of this Constitution and the provisions of any Act, the latter takes precedence.