

Ombud Council

Approval of amendments to the governing rules of the Ombudsman for Short-term Insurance

Date: 28 December 2022.

The Ombud Council has issued a Notice approving amendments to the governing rules of the Ombudsman for Short-term Insurance (OSTI Scheme) with effect from 9 December 2022.

Background

The Ombud Council granted the OSTI Scheme recognition as an industry ombud scheme in terms of section 194 of the Financial Sector Regulation Act, No. 9 of 2017 (FSR Act), with effect from 1 May 2022, under Recognition Certificate No. OC/004/22. The OSTI Scheme's recognition was granted subject to the following Recognition Conditions, imposed in accordance with section 195(2) of the FSR Act and annexed to its Recognition Certificate:

1. The scheme must make the following amendments to its governing rules:

1.1. Replace all references in the governing rules to the Financial Sector Ombud Schemes (FSOS) Act; Financial Sector Ombud Schemes (FSOS) Council; and the Financial Services Board (FSB) with appropriate references to the Financial Sector Regulation Act, 2017; the Ombud Council; and the Financial Sector Conduct Authority (FSCA) respectively.

1.2. Add a provision to the governing rules requiring members of the scheme to provide their financial customers with the information referred to in section 196(3)(b)(ii) of the Financial Sector Regulation Act, 2017.

2. The scheme must, after following any necessary internal procedures for amending its governing rules, submit a draft of the rule amendments referred to in paragraph 1 to the Ombud Council on or before 30 September 2022.

The OSTI Scheme submitted a revised version of its governing rules, incorporating the amendments required by the above Recognition Conditions, to the Ombud Council for consideration and approval on 26 August 2022. The OSTI Scheme also requested approval for two additional amendments to its governing rules, required to ensure compliance with certain provisions of the Income Tax Act, 1962 and the Companies Act, 2008. The Scheme confirmed that it had followed its necessary internal procedures for making these rule amendments.

The Ombud Council reviewed the proposed rule amendments and was satisfied that they were appropriate and that the Recognition Conditions had been satisfied.

Consultation process, comments received and response

Section 214 of the FSR Act contains provisions in relation to the amendment of the governing rules of a recognised industry ombud scheme, including the consultation process the Ombud Council must follow before approving an industry ombud scheme's governing rules or an amendment to such governing rules. In line with these provisions, the Ombud Council

on 21 October 2022 invited public submissions on the draft governing rule amendments and published a statement explaining the need for, intended operation and expected impact of the proposed amendments.

Comment was received from one commentator, the South African Insurance Association (SAIA). In summary, SAIA made two substantive submissions:

- They raised a concern that draft rule 1.4.4 of the OSTI Scheme's Terms of Reference, which required scheme members to publish the OSTI Scheme's availability and contact details both on the member's website and at its premises, was inconsistent with a corresponding disclosure obligation imposed by the Policyholder Protection Rules issued under the Short-term Insurance Act. More particularly, SAIA argued that the obligation to make these disclosures in both formats was "excessive" as fewer customers visit insurer premises and that insurers should instead have an option as to which disclosure method to adopt. They proposed that the language of the clause should be aligned with that in the Policyholder Protection Rules, which require the disclosures to be made on the website "and / or" at the insurer's premises.
- They proposed that the OSTI Scheme should be renamed, to replace the reference to "short-term insurance" in the Scheme's name with a reference to "non-life insurance".

The Ombud Council's response to these submissions is as follows:

- We are concerned that the "and / or" wording of the disclosure obligation contained in the Policyholder Protection Rules implies that an insurer may elect to make the disclosures at its premises and not on its website, or *vice versa*. The Ombud Council believes that the disclosures concerned should always appear in an appropriate position on an insurer's website and that this is industry practice. Although we are not persuaded that requiring the relevant disclosures at an insurer's premises is excessively onerous, we recognise that it may not always be effective. After further engagement with the OSTI Scheme, the Scheme proposed on 9 December 2022 that clause 1.4.4 be further amended to require scheme members to make the relevant disclosures on their websites "and preferably" at their premises. The Ombud Council has approved this further amendment.
- The Ombud Council accepts that using the term "non-life insurance" rather than "short-term insurance" would be better aligned with terminology in prevailing legislation. However, considering pending structural reforms of the ombud system and the likelihood that these reforms will entail renaming and restructuring of various ombud schemes in due course, the Ombud Council does not believe that the proposed Scheme name change is necessary or appropriate at this time.

Approval

Against the above background, the Ombud Council has approved the amendments to the OSTI Scheme's governing rules, comprising the Scheme's Memorandum of Incorporation and Terms of Reference, as published for comment on our website on 21 October 2022, subject to the further amendment to clause 4.1.1 noted above, with effect from 9 December 2022.

A Notice confirming the approval of the amendments, together with the approved versions of the Scheme's governing rules, has today been published on the Ombud Council's website.