

FINANCIAL SECTOR REGULATION ACT, 2017

**NOTICE REGARDING THE PUBLICATION OF DRAFT OMBUD COUNCIL RULES
FOR THE OMBUD FOR FINANCIAL SERVICES PROVIDERS, 2023**

The Ombud Council hereby invites, in accordance with section 98(1)(a)(iv) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), submissions on the draft Ombud Council Rules for the Ombud for Financial Services Providers, 2023, to be made in terms of section 201(1) and (2) read with sections 201(6) and 301(2) of the FSR Act, as per the Schedule below.

The draft Ombud Council Rules, together with a statement supporting the draft Rules, is available on the Ombud Council's website at <https://www.ombudcouncil.org.za>.

Submissions on the draft Ombud Council Rules must be submitted in writing, on or before **16 October 2023** to the Ombud Council, at admin@ombudcouncil.org.za.



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DRAFT OMBUD COUNCIL RULES FOR THE OMBUD FOR FINANCIAL SERVICES PROVIDERS, 2023

1. Definitions and application

- (1) In these Rules -

"the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and unless the context indicates otherwise, words and expressions used in these Rules bear the same meaning as that of similar words and expressions used in the Act.

"Financial Sector Regulation Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).

"previous Rules" means the Rules on Proceedings of the Office of the Ombud for Financial Services Providers, 2003, published under the Financial Services Board's Board Notice 81 in Government Gazette 25299 of 8 August 2003, and amended by Board Notice 100 published under Government Gazette 26844 of 29 September 2004.

"respondent" means a person against whom a complaint is made.

- (2) These Rules apply in particular to the proceedings of the Ombud conducted in terms of Part I of Chapter VI of the Act, and must be read in conjunction with the provisions of the Act and the applicable provisions of the Financial Sector Regulation Act.

2. Fundamental principles

- (1) In disposing of a complaint the Ombud must act independently and objectively without fear, favour or prejudice.
- (2) The complainant, the respondent and any other party to the complaint must give their fullest co-operation to the disposal of the complaint within a reasonable time.
- (3) The services rendered by the Ombud are not to be construed as being similar to those of a professional legal adviser and are confined to the investigation and determination of complaints in terms of the Act and these Rules.

3. Category of persons qualifying as complainants

Where appropriate, a complainant includes the complainant's lawful successor in title or the nominated beneficiary of the financial product which is the subject of the relevant complaint.

4. Type of complaint justiciable by Ombud

- (1) For a complaint to be considered by the Ombud:

- (a) The complaint must fall within the ambit of –
 - (i) the Act and these Rules;
 - (ii) an applicable Ombud Council Rule made in terms of section 201(2)(d) of the Financial Sector Regulation Act; or
 - (iii) a designation made by the Ombud Council to the Ombud in terms of section 211 of the Financial Sector Regulation Act;
 - (b) The act or omission complained of must have occurred at a time when these Rules or the previous Rules were in force;
 - (c) The Ombud must be satisfied that the complainant has endeavoured to resolve the complaint with the respondent and the respondent must have failed to address the complaint satisfactorily within six weeks of its receipt;
 - (d) Subject to Rule 8(2), the complaint must be received by the Ombud within six months after the complainant receives a final response from the respondent, or within six months after expiry of the six week period referred to in (c);
 - (e) The complaint must not constitute a monetary claim in excess of R3 500 000.00 or a particular kind of financial prejudice or damage, unless the respondent has agreed in writing to this limitation being exceeded, or the complainant has abandoned the amount in excess of R3 500 000.00;
 - (f) The complaint must not relate to the investment performance of a financial product which is the subject of the complaint, unless such performance was guaranteed expressly or implicitly or such performance appears to the Ombud to be so deficient as to raise a *prima facie* presumption of misrepresentation, negligence or maladministration on the part of the person against whom the complaint is brought, or that person's representative; and
 - (g) The complaint must relate directly or indirectly to a financial service rendered by a person authorised as a financial services provider or by a person acting on behalf of such a person.
- (2) A complainant may seek any relief relating to the subject matter of the complaint, but a complaint constituting a claim for a monetary award, must relate to the redress of financial prejudice or damage suffered or likely to be suffered by the complainant

5. Rights of complainants in connection with complaints

- (1) Subject to Rule 7, the Office must receive any complaint that is within the Ombud's jurisdiction in terms of the Act and Rule 4, where the complaint is submitted in any manner which reasonably conveys the complaint in comprehensible form, including orally.
- (2) The Ombud must advise the complainant –
 - (a) that the complaint must, where necessary, be accompanied by available documentation in the complainant's possession, including relevant correspondence with the respondent;
 - (b) of the response of the respondent to the extent necessary to react to such response and to decide whether the complaint should be proceeded with, and of the period within which the complainant must advise the Ombud of such reaction and decision;
 - (c) that subsequent to lodging the complaint with the Ombud, the complainant is entitled to submit further facts, information or documentation in connection with the complaint and must do so, to the extent possible, if requested by the Ombud.

6. Rights and duties of respondent

- (1) The respondent must as soon as reasonably possible after receipt of a complaint send to the complainant a written acknowledgment of the complaint with contact references of the respondent.
- (2) If within six weeks of receipt of a complaint the respondent has been unable to resolve the complaint to the satisfaction of the complainant, the respondent must inform the complainant that -
 - (a) the complaint may be referred to the Ombud if the complainant wishes to pursue the matter; and
 - (b) the complainant should do so within six months of receipt of such notification.
- (3) The Ombud must advise the respondent -
 - (a) of the complaint submitted to the Ombud to the extent necessary to respond thereto fully;
 - (b) that the respondent is entitled to submit any fact, information or documentation in relation to the complaint and must disclose relevant information or documentation to the Ombud;
 - (c) where deemed necessary by the Ombud, that the respondent must discuss the complaint with the Ombud and furnish such further relevant information as the Ombud may require.
- (4) A respondent is required to act professionally and reasonably and to co-operate with a view to ensuring the efficient resolution of the complaint.

7. Dismissal of complaints

- (1) The Ombud may determine whether a complaint falls within the ambit of Rule 4 and must dismiss a complaint which falls outside the ambit.
- (2) The Ombud may summarily dismiss a complaint without consideration of its merits or without referral to any other party if on the facts provided by the complainant it appears to the Ombud that -
 - (a) the complaint does not have any reasonable prospect of success;
 - (b) the respondent has made an offer which is fair and reasonable and which is still open for acceptance by the complainant;
 - (c) the matter has previously been considered by the Ombud;
 - (d) the essential subject of the complaint has been decided in court proceedings;
 - (e) the subject of the complaint is pending in court proceedings; or
 - (f) the complaint or relief sought is of the nature that the Ombud can be of no assistance to the complainant.

- (3) A complaint received officially may thereafter be dismissed at any stage if the complainant fails to co-operate in the pursuance or resolution of the complaint, or if the Ombud becomes aware of any of the circumstances referred to in (2).
- (4) If in the discretion of the Ombud a complaint is being pursued in a frivolous, vexatious or abusive manner, it may be dismissed summarily or at any other stage.
- (5) The Ombud must in a manner deemed appropriate, inform parties of any dismissal of a complaint referred to in this Rule.

8. Time limits

- (1) Time limits for any aspect of the proceedings in connection with a complaint may be fixed by the Ombud and must be honoured by the parties to the complaint.
- (2) Extensions of time limits imposed by the Act or these Rules or fixed by the Ombud, may in the discretion of the Ombud be granted, and the parties involved notified accordingly.
- (3) If in the discretion of the Ombud a party has in a particular case not responded within a reasonable time, or otherwise failed to comply with these Rules, the Ombud may proceed to dispose of a complaint on the available facts and information.

9. Costs and interest

- (1) When making a final determination in terms of section 28 of the Act, the Ombud may grant costs against the respondent or, in the circumstances contemplated by section 28(2)(b)(iii) of the Act, against the complainant, in either case in favour of the other party to the complaint or in favour of the Office.
- (2) Any costs award by the Ombud must be quantified by the Ombud with due regard to the nature of the complaint, the time spent on the complaint, the expense and inconvenience caused to a party, the conduct of a party in resolving the complaint and any other factor deemed by the Ombud to be appropriate.
- (3) Any award of interest and costs forms part of the relevant final determination of the Ombud.

10. Liaison between Ombud and Authority

- (1) The Ombud must advise the Authority of any material contravention of these Rules or any persistent or material failure to co-operate with the Ombud by a financial services provider or representative, either generally or in relation to a particular matter, to enable the Authority to consider appropriate action.
- (2) The Ombud must refer any complaint relating to a financial service rendered by a person not authorised as a financial services provider or representative, including any relevant supporting information, to the Authority to enable the Authority to consider appropriate action and must advise the complainant of the referral.
- (3) The Ombud may, subject to section 251 of the Financial Sector Regulation Act, request and receive from the Authority information in the Authority's possession which may be relevant for the consideration of a complaint.
- (4) The Ombud must regularly liaise and consult with the Authority as regards any matter relating to mutual administrative support and avoidance of overlapping of their respective functions.

11. Administrative and procedural matters

- (1) The Ombud may decline to investigate a complaint, or may suspend the investigation, when to the knowledge of the Ombud the complainant intends proceeding to litigation.
- (2) Information provided to the Ombud is confidential and may only be disclosed by the Ombud to the Authority as contemplated in section 251 of the Financial Sector Regulation Act, or to another party to the complaint to the extent necessary to resolve the complaint, or where required under the Act, these Rules or any other law.
- (3) The Ombud is not liable to be subpoenaed to give evidence on the subject of a complaint in any proceedings.
- (4) The Ombud may take such steps as deemed expedient to advise the public of the existence of the Office, the procedure for submitting a complaint to the Office, or any other aspect concerning the Office in order to facilitate the submission or disposal of complaints.

12. Reconsideration of decision

When making a final determination in terms of section 28 of the Act, including a decision to dismiss a complaint, the Ombud must advise all parties concerned that a person aggrieved by the Ombud's decision may apply to the Financial Services Tribunal established in terms of the Financial Sector Regulation Act for reconsideration of that decision, in accordance with section 230 of that Act, and must provide the relevant contact details of the Financial Services Tribunal.

13. Rules revoked

These Rules revoke the previous Rules, in accordance with section 301(2) of the Financial Sector Regulation Act.

14. Short title and commencement

These Rules are called the Ombud Council Rules for the Ombud for Financial Services Providers, 2023, and come into operation on the date of publication on the website of the Ombud Council.