

EXPLANATORY NOTICE:**DRAFT GOVERNING RULES FOR THE NATIONAL FINANCIAL OMBUD
SCHEME SOUTH AFRICA ("NFO scheme").****1. Background and purpose.**

The Ombud Council is mandated by the Financial Sector Regulation Act, 9 of 2017 ("FSR Act") to assist in ensuring that financial customers have access to, and are able to use, affordable, effective, independent, and fair alternative dispute resolution processes for complaints about financial institutions in relation to financial products, financial services, and services provided by market infrastructures (section 176 of the FSR Act).

To this end, the Ombud Council's specific statutory functions include promoting co-operation between, and co-ordination of the activities of ombuds; and to resolve overlaps of the jurisdictional coverage of different ombud schemes.

In 2021, the National Treasury and the Financial Sector Conduct Authority mandated the World Bank Group to carry out a diagnostic review of the South African financial ombud system. The World Bank published the findings of its review and proposed substantive reforms to the ombud system in its report titled *"South Africa: Financial Ombud System Diagnostic"* (June 2021). The report noted the fragmentation of the current ombud system with concern, and one of its key recommendations was to consolidate the ombud system into a new single ombud scheme, independent of both industry and government, to cover the whole of the financial sector (including credit but excluding retirement funds until a later stage).

Although the National Treasury's policy response to the full set of World Bank recommendations is not yet final, the Treasury has indicated its support for the recommended consolidation of the ombud system. The Ombud Council also strongly supports this recommendation, which fully aligns with the Council's objectives.

The Ombud Council granted recognition under the FSR Act in May, 2022 to the following four industry ombud schemes ("the existing schemes"), which had previously operated in terms of the repealed Financial Sector Ombud Schemes Act, 2004:

- The Credit Ombud Association
- The Ombudsman for Banking Services
- The Ombudsman for Long-term Insurance
- The Ombudsman for Short-term Insurance.

In anticipation of the broader consolidation of the ombud system proposed in the World Bank review, the four existing schemes have voluntarily embarked on an amalgamation exercise. They have been working for the past two to three years to merge and align their operations and processes into a single new industry ombud scheme. This has culminated in the registration of a new juristic entity, in the form of a non-profit company without members, titled the National Financial Ombud Scheme South Africa. Further details of the intended operation of the new entity are set out in Annexure B.

As described in Annexure B, each of the existing schemes has a long history of assisting financial customers in their respective sectors to obtain redress for unfair treatment by financial

institutions, free of charge and with minimal formality. Their amalgamation to form the NFO scheme marks a significant shift in the ombud landscape. The new scheme is expected to leverage the existing schemes' past successes while providing a streamlined, co-ordinated, and less confusing alternate dispute resolution framework for many financial customers.

The Ombud Council commends the ombuds, governing bodies and staff of the existing schemes for their proactivity in initiating the establishment of the NFO scheme and the hard work that has gone into the amalgamation project. The challenging task of fully implementing the new scheme and integrating its operations now lies ahead.

2. NFO Scheme recognition process.

In terms of the FSR Act, financial institutions may not refer their customers to an ombud or ombud scheme unless the scheme is a recognised industry ombud scheme, or a statutory ombud scheme such as the FAIS Ombud or the Pension Funds Adjudicator. An ombud scheme may also not hold itself out as a recognised industry scheme unless it is so recognised (section 210 of the FSR Act).

The NFO scheme will therefore not be able to continue the work of the existing schemes unless and until it is recognised as an industry ombud scheme by the Ombud Council. The NFO scheme has submitted its application for recognition to the Ombud Council on 13 November 2023, and the Ombud Council is considering the application in accordance with section 196 of the FSR Act. As required by section 194(2) of the Act, the scheme has submitted a copy of its proposed governing rules to the Ombud Council together with its recognition application.

The Ombud Council will revoke the recognition of the existing schemes if and when recognition of the NFO scheme is granted.

3. Statutory requirements for approval of industry ombud scheme governing rules.

Section 214 of the FSR Act contains, in summary, the following provisions in relation to the approval of the governing rules of an industry ombud scheme:

- Before granting recognition to an industry ombud scheme, the Ombud Council must publish a draft of the scheme's governing rules together with: A statement of the need for, intended operation of, and expected impact of the rules; and a notice inviting submissions in relation to the rules that allows for a period of not less than thirty days for making such submissions (section 214(1) and (2)).
- The governing rules must be approved by the Ombud Council and governing rules adopted by a scheme without the Ombud Council's approval are void (section 214(3)).
- The Ombud Council must not approve governing rules unless it is satisfied that doing so achieves the object of the FSR Act as set out in section 7 (section 214(4)).
- The Ombud Council must not recognise an industry ombud scheme unless satisfied, among other criteria, that the scheme's governing rules comply with minimum requirements set out in section 196(3)(b) of the FSR Act.

The proposed governing rules of the NFO scheme comprise two documents: The draft Memorandum of Incorporation of the NFO (Annexure C); and the draft Rules of the NFO Scheme (Annexure D). The Ombud Council has reviewed both documents and is satisfied that they together satisfy the criteria in section 196(3)(b) of the FSR Act; and that they will assist in achieving the object of the FSR Act, particularly the object to establish a framework that promotes the fair treatment and protection of financial customers.