



A SIMPLER, STRONGER FINANCIAL SECTOR OMBUD SYSTEM

POLICY STATEMENT

February 2024



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



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FINANCIAL SECTOR
OMBUD SYSTEM**
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Private Bag X115, Pretoria, 0001 | 40 Church Square, Pretoria, 0002 | Tel: +27 12 315 5944 | Fax: +27 12 406 9055 | www.treasury.gov.za



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THE FINANCIAL OMBUD SYSTEM

Part of a stronger market conduct framework for South Africa

The National Development Plan 2030¹ highlights the role that a safe and efficient financial sector can play in contributing towards greater economic inclusion, fostering growth, and creating employment in South Africa.

Market conduct regulation aims to prevent poor outcomes that may arise if financial institutions conduct their business in ways that are unfair to consumers or undermine confidence in the financial system. It also aims to manage those poor outcomes when prevention is not successful.

Good conduct by financial institutions is encouraged and poor individual consumer outcomes can be better addressed if there is an independent, free, user-friendly, and efficient system for consumers to seek redress if they are treated unfairly. This is the role of the financial ombud system.

This document outlines the government's intentions for comprehensive reform of the financial ombud system, in order to help underpin consumer confidence and encourage good market conduct in the financial sector.

In line with international best practice, it is intended that the reformed financial ombud system should have the following attributes:

- Effectiveness: Consistent redress in all appropriate sectors of financial services
- Independence: Visibly objective, impartial, and unbiased
- Accessibility: Well known, easy to use, and free for consumers
- Fairness: Processes and decisions visibly fair and equitable
- Efficiency: Good quality of service and value for money
- Openness: Clear and open to scrutiny about its work and the lessons that can be drawn from it.

This policy statement outlines

- Key decisions of principle about the future shape of the reformed ombud system; and
- How the work of implementing these principles will proceed.

A separate feedback statement, published alongside this policy statement, describes in greater detail the process by which these decisions have been reached.

¹ See the plan at www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf.

CONTENTS

ABBREVIATIONS AND ACRONYMS.....	III
BACKGROUND	1
ROLE OF THE FINANCIAL OMBUD SYSTEM	1
CURRENT FINANCIAL OMBUD SYSTEM IN SOUTH AFRICA.....	1
OPTIONS FOR REFORM.....	3
POLICY OVERVIEW	5
KEY ISSUES.....	5
NFO.....	6
RFO	6
OC.....	6
IMPLEMENTATION.....	6
LEGISLATION.....	7
INTERIM PROGRESS.....	7
POLICY DETAILS	8
OVERALL STRUCTURE OF THE OMBUD SYSTEM.....	8
SCOPE OF THE NFO AND THE RFO	8
INDEPENDENT GOVERNANCE.....	9
COMPOSITION OF THE NFO AND RFO BOARDS	9
COMPLAINTS AND LANGUAGE ISSUES.....	10
COMPLAINT-HANDLING BY FINANCIAL INSTITUTIONS	11
PROCESSES, PROCEDURES, AND FORMS OF REDRESS	11
RECONSIDERATION MECHANISM.....	12
ANNEXES	
ANNEX A: OUTLINE OF INTENDED NFO REGIME	14
ANNEX B: OUTLINE IMPLEMENTATION PLAN.....	23
FIGURES AND TABLES	
FIGURE 1: CURRENT STRUCTURE OF FINANCIAL OMBUD SYSTEM IN SOUTH AFRICA	2
FIGURE 2: WBG RECOMMENDED STRUCTURE OF FINANCIAL OMBUD SYSTEM IN SOUTH AFRICA	3

ABBREVIATIONS AND ACRONYMS

ADR	alternative dispute resolution (out-of-court redress)
Banking Ombud	Ombudsman for Banking Services
COFI Bill	Conduct of Financial Institutions Bill
Credit Ombud	Office of the Credit Ombud
FAIS Ombud	Office of the Ombud for Financial Services Providers
FSCA	Financial Sector Conduct Authority
FSR Act	Financial Sector Regulation Act (Act 9 of 2017)
FST	Financial Services Tribunal
JSE	Johannesburg Stock Exchange
JSE Ombud	Johannesburg Stock Exchange Ombud
LTI Ombud	Ombudsman for Long-Term Insurance
NCR	National Credit Regulator
NFO	National Financial Ombud
NFO1	NFO stage 1: Amalgamation of existing Banking, Credit, LTI, and STI Ombuds
NFO2	NFO stage 2: Underpinned by amended FSR Act plus Ombud Council recognition, and incorporating FAIS Ombud
NT	National Treasury
OC	Ombud Council
PAJA	Promotion of Administrative Justice Act (Act 3 of 2000)
PFA	Pension Funds Adjudicator
PFMA	Public Finance Management Act
RFO	Retirement Funds Ombud
STI Ombud	Ombudsman for Short-Term Insurance
WBG	World Bank Group

BACKGROUND

ROLE OF THE FINANCIAL OMBUD SYSTEM

A growing and efficient market in financial services depends on, amongst other things, consumer confidence. Developing consumer trust and confidence requires accessible, effective, and user-friendly alternative dispute resolution to resolve disagreements between consumers and financial institutions.

The form of alternative dispute resolution adopted in South Africa is an ombud system. Financial ombuds are well established in many jurisdictions throughout the world. They aim to

- Resolve complaints fairly, using all appropriate means;
- Operate flexibly and with minimum formality; and
- Be free and accessible for all consumers.

Like the courts, a financial ombud system resolves individual cases. Unlike the courts, a financial ombud system can also deal with enquiries and proactively feed back the lessons from its work to help governments, regulators, financial institutions, and consumers improve things for the future.

A financial ombud system's wider role in helping to enhance good market conduct includes

- Helping to support improvements and reduce disputes in financial services;
- Helping financial institutions themselves to resolve disputes with consumers;
- Resolving consumer disputes that financial institutions fail to resolve themselves;
- Reducing the burden on the courts;
- Reducing unrealistic expectations on consumers to seek redress for complaints through the courts; and
- Increasing financial inclusion by providing a visible and accessible route to redress.

A financial ombud actively investigates complaints and uses its specialist knowledge of financial services. This means that the consumer is not disadvantaged by the financial institution's greater resources and technical knowledge. Neither the consumer nor the financial institution needs to employ a lawyer.

An effectively organised ombud system is well suited to supporting broader efforts to enhance financial inclusion in addressing structural issues for vulnerable and disadvantaged consumers.

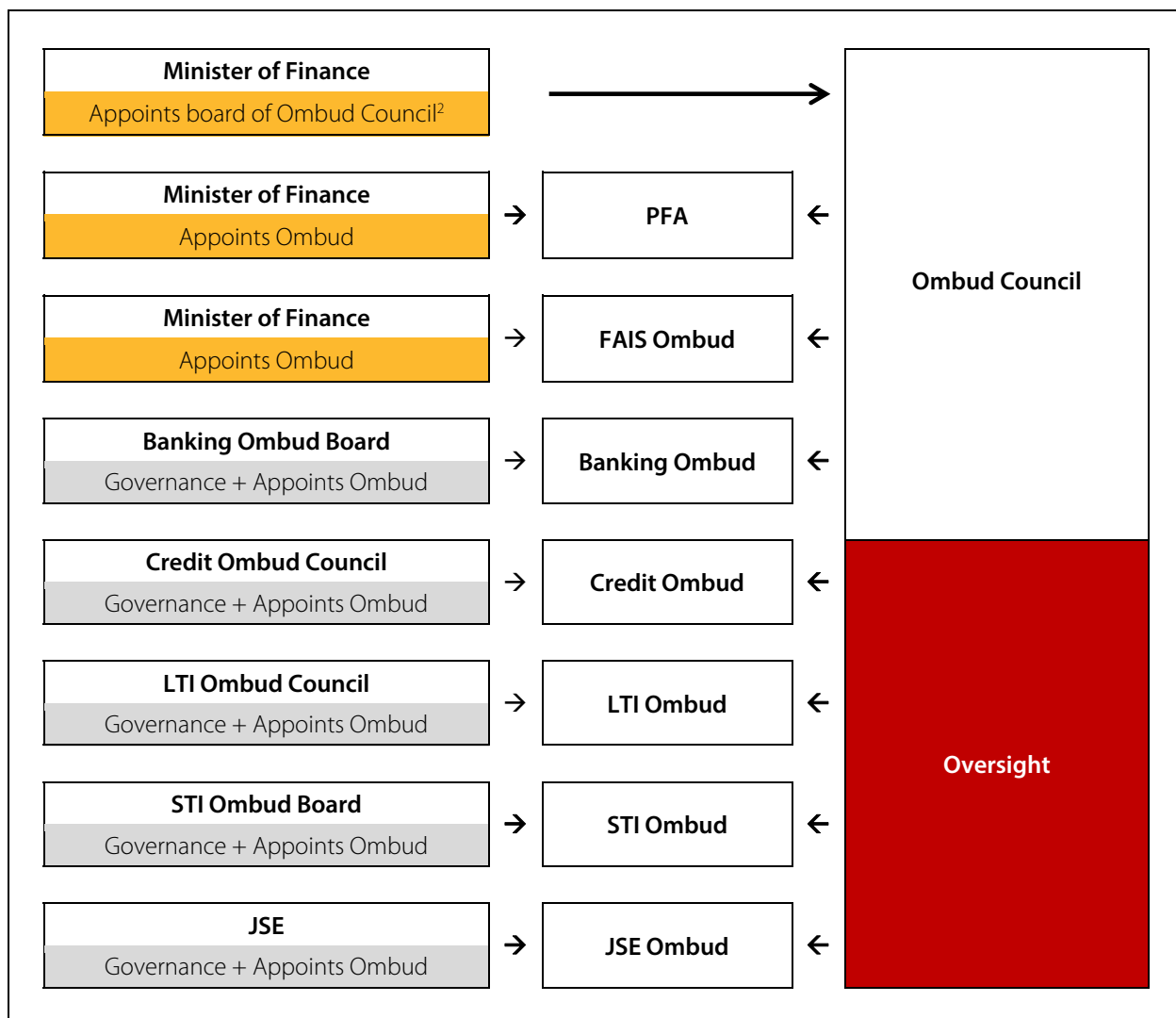
CURRENT FINANCIAL OMBUD SYSTEM IN SOUTH AFRICA

The current structure of the financial ombud system in South Africa is extremely complex, as illustrated by figure 1 overleaf. The current system comprises:

- Two ombud schemes established by statute:
 - FAIS Ombud: Office of the Ombud for Financial Services Providers
 - PFA: Pension Funds Adjudicator
- Five industry ombud schemes recognised by the Ombud Council:
 - Banking Ombud: Ombudsman for Banking Services

- Credit Ombud: Office of the Credit Ombud
- LTI Ombud: Ombudsman for Long-Term Insurance
- STI Ombud: Ombudsman for Short-Term Insurance
- JSE Ombud: Johannesburg Stock Exchange Ombud (not a separate legal entity)
- And an oversight body established by statute:
 - OC: Ombud Council

Figure 1.1: Current Structure of the Financial Ombud System in South Africa



Source: World Bank.

² This includes the chief executive, currently called the ‘Chief Ombud’—though it is planned to change that title to ‘Chief Executive Officer’ in FSR Act amendments to be made through the COFI Bill.

Note: PFA = Pension Funds Adjudicator; FAIS = Office of the Ombud for Financial Services Providers; LTI = Long-Term Insurance; STI = Short-Term Insurance; and JSE = Johannesburg Stock Exchange

OPTIONS FOR REFORM

In 2017 a National Treasury consultation policy document—*A Known and Trusted Ombuds System for All*³—described three possible alternative models for reform. The responses to that consultation produced no consensus on the appropriate way forward.

In order to progress reform of the financial ombud system, the National Treasury and the Financial Sector Conduct Authority (FSCA) asked the World Bank Group (WBG) to undertake a diagnostic report into the ombud system and to make recommendations.

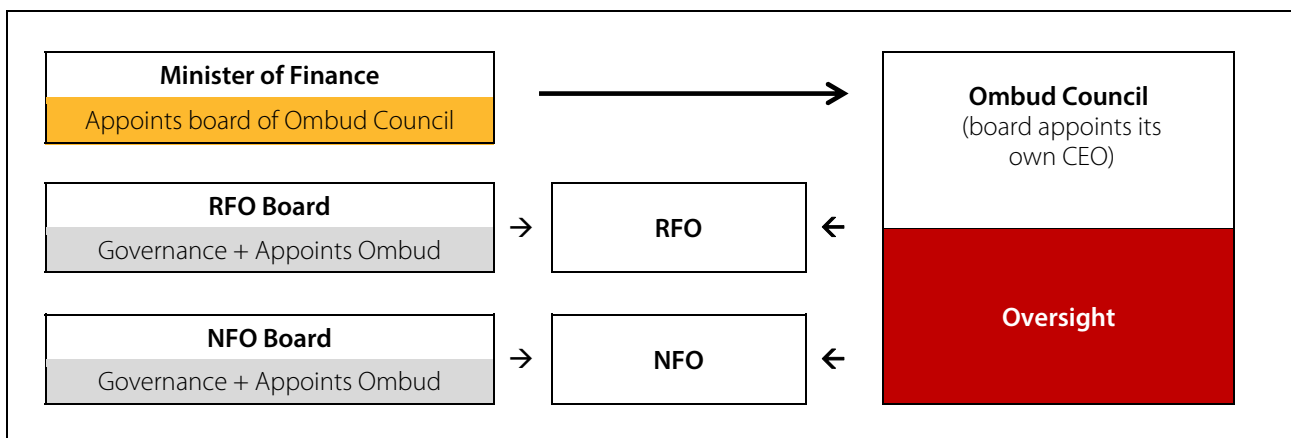
The WBG team took into account the specific context in which the ombud system operates in South Africa, including the challenges faced in relation to financial inclusion.

The WBG report

- Concluded that the overall system and its components will need significant changes to make it fit for purpose now and in coming years;
- Recognised the importance of keeping the ombud system operational (retaining existing personnel, expertise, and stakeholder support) through the transition to a reformed system;
- Recommended a new structure that builds on existing strengths, addresses the complexity and weaknesses identified, and minimises risks and disadvantages in implementing the reforms; and
- Noted that its recommendations were interrelated and should be considered as a whole, to ensure a coherent approach or the reformed system would be unbalanced.

The WBG report contained 62 detailed recommendations. Broadly, as illustrated in figure 2, the WBG recommended a reformed and simplified structure comprising a new National Financial Ombud (NFO), a reformed Retirement Funds Ombud (RFO), and a modified Ombud Council (OC).

Figure 1.2: WBG’s Recommended Structure of the Financial Ombud System in South Africa



Source: World Bank.

Note: RFO = Retirement Funds Ombud; NFO = National Financial Ombud.

The report highlighted that a properly managed transition will be key to the success of the proposed reforms. This involves early decisions to set clear directions for the reforms and put in place a clear independent governance framework to manage a staged implementation plan with a clear timetable.

³ See the report at www.gov.za/sites/default/files/gcis_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf

POLICY OVERVIEW

Following public consultation on the WBG report—which showed a high degree of consensus—and detailed discussions with the OC, FSCA, and the existing financial ombud schemes, National Treasury is now publishing its policy for the reform of the financial ombud system.

KEY ISSUES

The complexity of the current financial ombud system means that, however good any individual ombud scheme may be, the overall system is not as accessible, efficient, and effective as it needs to be. Consumers find the complexity difficult to navigate and may just give up, or their experience—if they decide to continue—may be unnecessarily inefficient.

Box 2.1: Complexity of the Current Financial Ombuds System

Consider the example of the following typical transaction for an unsophisticated consumer. The consumer takes out an unsecured loan from a lender. The lender advises the consumer to take a loan package that includes credit insurance underwritten by an insurer.

Sometime later, the consumer loses their job and cannot afford the loan repayments and claims on the insurance. The insurer turns down the claim. The lender says that is not its problem and expects the consumer to continue to pay.

Currently, in relation to one problem, the unsophisticated consumer is expected to deal with a multiplicity of ombud schemes plus a regulator regarding the following:

- Whether the insurer should have paid up:
 - If the credit insurance included life cover (the LTI Ombud);
 - Otherwise, the STI Ombud; or
 - If the insurer is not an LTI or STI Ombud member, the FAIS Ombud.
- Whether the lender gave wrong advice about what the insurance covered:
 - the FAIS Ombud.
- Whether the customer must continue the payments to the lender:
 - If the lender is a bank, the Banking Ombud;
 - If it is a nonbank lender, the Credit Ombud;
 - If the nonbank lender is not a Credit Ombud member, the National Credit Regulator (NCR).

National Treasury's aim is for a reformed financial ombud system that is simpler, accessible, comprehensive, efficient, and effective.

It must also be independent (from both the industry and the government) in order to guarantee that when ombuds decide individual cases, they can be as visibly objective, impartial, and unbiased as a judge would be in court.

Accordingly, National Treasury has decided that the reformed financial ombud system will comprise

- A new NFO;
- A reformed RFO; and

- A modified OC.

NFO

An outline of the overall regime for the new NFO—independent of both industry and government—is set out in annex A. New legislation will give the statutory OC power, through recognition and oversight, to implement some statutory underpinning of the new NFO's status, jurisdiction, powers, and accountability. However, the new NFO will not be a public entity and will not involve the use of public funds.

Initially, the new NFO will absorb the work currently carried out by the Banking, Credit, JSE, LTI, and STI Ombuds so that it can deal with products from all these sectors. It will also absorb the work of the FAIS Ombud, which will be wound up once the new arrangements are in force, so that complaints about advice or intermediation can be dealt with as part of complaints about the products involved. This will ensure a simpler, accessible, comprehensive, efficient, and effective system.

The new NFO will have a flexible jurisdiction that can be extended over time to cover other sectors (apart from retirement funds), so that it will eventually be able to handle all complaints that seek redress from financial institutions, apart from retirement funds.

RFO

National Treasury considers that it would be too complex a transition for the NFO to absorb the work of the RFO at this stage, but—consistently with the ultimate overall aims of these reforms (a simpler, accessible, comprehensive, efficient, and effective system)—that is likely to happen in the medium term, once the NFO has been up and running for a while.

Meanwhile, the RFO will be created by renaming the statutory PFA. It will continue to be a public entity and subject to the Public Finance Management Act (PFMA). Its governance will be enhanced in order to underpin its independence and oversight (in accordance with international good practice).

It will continue to handle complaints that seek redress from providers of retirement funds, including employers and administrators.

OC

The OC's statutory provisions will be modified to give it increased independence (in accordance with international good practice).

The OC's chief executive will be called its Chief Executive Officer rather than Chief Ombud. The OC board, appointed by the Minister of Finance on terms that secure their independence, will appoint the Chief Executive Officer.

Later, once the NFO and RFO are in place, the OC's powers will be reviewed in light of the reformed and simplified new structure for the ombud system.

IMPLEMENTATION

National Treasury accepts the importance of a smoothly planned transition to the reformed ombud system. Annex B outlines an implementation plan prepared in consultation with the FSCA, OC, and current ombud schemes and with technical support from the WBG.

LEGISLATION

The final form of the new ombud system will be based on the combined effect of existing legislation (including the existing rule-making powers of the OC) together with new primary and subordinate legislation.

National Treasury will introduce primary legislation in Parliament to

- Allow the OC to recognise an entity as the NFO;
- Underpin the NFO as a body independent from government and industry;
- Rename the PFA and update its legislation; and
- Increase the independence of the OC.

The new primary and subordinate legislation will include:

- The Conduct of Financial Institutions Bill (COFI Bill), including consequential amendments to the Financial Sector Regulation Act (FSR Act);
- A new Omnibus Bill (further amending the FSR Act, COFI Bill provisions, and/or other laws); and
- Conduct standards made under them and future OC rules.

National Treasury is in discussion with the OC about which details of the new ombud system are best dealt with in primary legislation and which are best left to the rule-making (subordinate legislation) and designation powers of the Ombud Council.

Legislation will necessarily take time. National Treasury will facilitate the tabling of the COFI Bill in Parliament as soon as practicable and hopes that a draft of the Omnibus Bill will be published for consultation during 2024.

INTERIM PROGRESS

Awaiting legislation does not prevent significant progress taking place in the meantime. The Banking, Credit, LTI, and STI Ombuds are already working towards a voluntary amalgamation (in consultation with the OC).

So that the NFO name can be established with the public as soon as possible, National Treasury has agreed that the voluntarily amalgamated ombud scheme can use the name 'National Financial Ombud'. In this policy statement

- NFO1 = NFO stage 1: Amalgamation of Banking, Credit, LTI, and STI Ombuds;
- NFO2 = NFO stage 2: Recognised under future amended FSR Act, incorporating the FAIS Ombud.

It is intended that this amalgamated ombud scheme (NFO 1) should substantially mirror the design of the new NFO (NFO2)—with a view to forming the core of the new NFO2 (through recognition by the OC, with or without such conditions as may be necessary) once the necessary underpinning legislation is enacted.

Significant work has been done by the four schemes on developing the governance model, funding, and a single case management system. Three of the schemes moved into shared premises from April 1, 2023. The four schemes are aiming for January 1, 2024 as the start date for the consolidated scheme.

National Treasury welcomes these initiatives by the OC and the industry ombud schemes, which will help smooth the transition to the reformed ombud system—with the amalgamated scheme able to provide the core of the new NFO.

The new NFO will, in due course, absorb the JSE Ombud and will eventually absorb the FAIS Ombud (once the necessary legislation has been enacted). Meanwhile, the FAIS Ombud is being involved in the NFO1 amalgamation discussions to ensure that processes and systems are also suitable for the FAIS sector.

POLICY DETAILS

OVERALL STRUCTURE OF THE OMBUD SYSTEM

In light of the WBG report's recommendations and the support of stakeholders, National Treasury has decided that the overall structure for the reformed financial ombud system will comprise a new NFO, a reformed RFO, and a modified OC.

The new NFO (NFO2)⁴ will be independent of both industry and government. An outline of the regime is set out in annex A. New legislation will give the statutory OC power, through recognition and oversight, to implement some statutory underpinning of NFO2's status, jurisdiction, powers, and accountability. NFO2 (likely to be in the form of a nonprofit company without members) will not be a public entity and will not involve the use of public funds.

Initially, NFO2 will absorb the work currently carried out by the Banking, Credit, JSE, LTI, and STI Ombuds so that it can deal with products from all these sectors. It will also absorb the work of the FAIS Ombud (which will be wound up once the new arrangements are in force) so that that complaints about advice or intermediation can be dealt with as part of complaints about the products involved.

Incorporating the RFO within the NFO now would add further complexity to what will already be a complex transition and would cause delay in reforming the financial ombud system. However, National Treasury's medium-term intent is for the NFO to also take over the work of the RFO as a future step.

The reformed RFO will be created by renaming the statutory PFA and enhancing its governance in order to underpin its independence. It will continue the existing jurisdiction of PFA over all complaints that seek redress from providers of retirement funds, including administrators and employers.

The COFI Bill will rename the PFA and clarify the RFO's jurisdiction. Reforms to the governance structure of the RFO will be proposed and consulted on through a subsequent Omnibus Bill.

The Ombud Council's governance will be enhanced in order to underpin its independence. Its statutory powers will be reviewed once the NFO2 has been up and running for sufficient time to assess the most appropriate powers and functions of the OC in the reformed and simplified ombud system.

SCOPE OF THE NFO AND THE RFO

The RFO will continue the existing statutory jurisdiction of the PFA under the Pension Funds Act 1956 (as amended, including by the COFI Bill), which excludes advice or intermediation relating to retirement funds.⁵

Initially, NFO2 will absorb the jurisdiction of all the other current ombud schemes (including NFO1, the JSE Ombud, and the FAIS Ombud's jurisdiction over advice or intermediation). Ultimately, the NFO will aim to be able to handle all complaints that seek redress from financial institutions.

The NFO's jurisdiction will be flexible, to allow for phased expansion of either NFO1 or NFO2 beyond sectors covered by the existing ombud system (for example, payments), to include the activities of all regulated financial institutions—in line with broader reshaping of the market conduct regulatory framework through the COFI Bill.

⁴ NFO1 will be an industry ombud scheme recognised by the Ombud Council under the current FSR Act framework.

⁵ Complaints about advice or intermediation currently go to the FAIS Ombud and in future will go to NFO2.

The OC will review coordination between the RFO and the NFO, and make appropriate rules if necessary, to minimise any risks of retirement fund complainants being passed “from pillar to post” where their complaint relates wholly or partially to advice or intermediary services.

As with the current Credit Ombud and Banking Ombud (in respect of credit-related complaints against banks), the NFO’s jurisdiction over credit providers will stand alongside the statutory role of the NCR, which is also able to receive complaints in this sector as part of its statutory oversight.

The NFO, like the Credit Ombud and Banking Ombud, will coordinate with the NCR. National Treasury and the Department of Trade, Industry and Competition will keep complaint-handling arrangements in the credit sector under review, in light of experience.

INDEPENDENT GOVERNANCE

NFO

An outline of the overall regime for NFO2, including the arrangements for its independent governance, is set out in annex A.

NFO2 will be fully independent not only from the financial industry but also from government. Its board will not be appointed by the Minister of Finance. The NFO2 board will appoint the NFO ombuds. The NFO will not be a public entity for the purposes of the PFMA.

The existing FSR Act already provides some statutory underpinning for the current recognised industry ombud schemes. This provides for their recognition and ongoing oversight by the statutory OC, and requires financial institutions to be members of an industry ombud scheme recognised for their sector and to comply with its rules.

National Treasury has decided that NFO2 will need enhanced statutory underpinning so that once it has been recognised by the Ombud Council, its jurisdiction will be automatic, its ombud determinations will be legally enforceable, and its decisions can be subject to reconsideration by the Financial Services Tribunal (FST).

OC recognition will include approval of NFO2’s accountability mechanisms and the OC’s approval of NFO2’s governing rules and any changes to them will be required. NFO2 will consult publicly on its budget. As with the currently recognised ombud schemes, NFO2’s funding will come through fees from the relevant financial institutions, which will be required to pay, under funding rules approved by the OC, to ensure that the funding regime is sufficient and fair.

RFO

The RFO will be given its own board, appointed by the Minister of Finance on terms that secure their independence, to enhance and safeguard its independence and accountability. The RFO board will appoint the RFO ombuds.

The functions of the board will include: safeguarding the independence of the RFO and the ombuds; ensuring that the scheme has sufficient resources to deal with its workload; overseeing the effectiveness and efficiency of the scheme; ensuring the visibility and accessibility of the scheme; and ensuring effective relationships with stakeholders and the NFO.

The board must not involve itself in the resolution of complaints against financial institutions, which is the function of the ombuds.

OC

The OC’s chief executive will be called its Chief Executive Officer rather than Chief Ombud. The OC board, appointed by the Minister of Finance on terms that secure their independence, will in future appoint the Chief Executive Officer.

COMPOSITION OF THE NFO AND RFO BOARDS

The chair and at least half of the other members of the NFO2 and RFO boards will not be people who

- Are engaged in the business of a financial institution or a body representing financial institutions, or have been so engaged in the previous three years;
- Have a direct material financial interest in a financial institution, except as a financial customer, or have had such interest in the previous three years; or
- Have a close family member who has a direct material financial interest in a financial institution, except as a financial customer.

None of the members of the NFO and RFO boards can be a person falling within (b) to (k) of the definition of a disqualified person in section 1 of the FSR Act or a serving financial regulator.

Board members will be required to act in the public interest. They should not act, or be seen to act, as 'representatives' of particular interests or organisations.

As indicated by the implementation plan in annex B, the voluntarily amalgamated ombud scheme (NFO1) is likely to form the core of the new, statutorily underpinned NFO (NFO2). So, subject to complying with the relevant criteria, the initial board of NFO1 is likely to become the initial board of NFO2. To facilitate this transition, although the composition of the NFO1 board is not prescribed by statute, the amalgamating industry schemes have voluntarily opted to comply with these requirements for the board of NFO1.

The initial board of NFO1 is being chosen by consensus among a selection panel comprising representatives from the FSCA, the NCR, the OC and the governing bodies of the Banking, Credit, LTI, and STI Ombuds. Subsequent members of the NFO board will be appointed by the NFO board itself.

The initial and subsequent members of the RFO board will be appointed by the Minister of Finance.

COMPLAINTS AND LANGUAGE ISSUES

The COFI Bill will provide consistent definitions of "complaint" and "complainant" to apply to both financial institutions and (through consequential amendments to the FSR Act) to all ombud schemes. The COFI Bill's definition of "complaint" includes oral complaints.

Until the COFI Bill's definitions come into effect, the OC is considering the feasibility of greater alignment of these definitions across existing ombud schemes through OC rules—while recognising the need to deal with the practical implications, including appropriate mechanisms for reducing orally submitted complaints to a written or other retrievable form

After an appropriate phasing-in period, the NFO and the RFO will also be required to accept complaints in all South African official languages. Not allowing consumers to submit a complaint in the official language with which they are most familiar would make the complaint-handling systems of financial institutions and the ombud system inaccessible to significant numbers of consumers who would be left without redress.

It would also be wrong in principle for a financial institution to promote its products in a particular local language and then refuse to consider a complaint made in that language.

Section 63 of the National Credit Act (Act 34 of 2005) already provides that (in relation to prescribed information in the credit sector) a consumer has a right to receive any document in an official language that the consumer reads or understands, to the extent that is reasonable having regard to usage, practicality, expense, regional circumstances, and the balance of the needs and preferences of the population ordinarily served by the person required to deliver that document.

However, there are practical implications for financial ombud schemes and financial institutions, including in relation to the new official status of sign language, that will need to be considered in phasing in such a requirement.

COMPLAINT-HANDLING BY FINANCIAL INSTITUTIONS

National Treasury agrees that there should be consistent requirements about how financial institutions should resolve complaints fairly, give a clear written final decision, and give complainants information about the ombud system.

These requirements are already largely in place through various existing FSCA-enforced sectoral regulatory instruments, aligned to the *Treating Customers Fairly* regulatory approach, and for members of industry ombud schemes.

Sectoral provisions will be harmonised and expanded to all applicable financial institutions through COFI conduct standards, the FSCA conduct standard harmonisation process currently underway, and engagement with the NCR on how best to apply the requirements to credit providers (so as to ensure that the institutional arrangements for resolving credit-related complaints in South Africa are ultimately fully consistent with international good practice and the most appropriate for consumers).

Financial institutions will be required to have complaint-handling policies with specific time frames, which will be monitored by regulators.

Ombud schemes will be able to make rules on how they handle complaints that are referred to them by complainants who are dissatisfied with the time the financial institution is taking to issue a final response so that, depending on how long has elapsed since the complaint was submitted to the financial institution and irrespective of the time limits in the financial institution's own complaints process, the ombud scheme may notify the financial institution that the ombud scheme will consider the complaint immediately or after a specified time.

PROCESSES, PROCEDURES, AND FORMS OF REDRESS

The NFO and the RFO should have consistent processes and procedures (applicable across all sectors) to apply the principles of fairness in resolving complaints, including with regard to

- Making the process easier to use and more efficient for complainants and financial institutions;
- The terminology used for the stages in the process and the staff involved in them;
- The level of informal engagement with the parties throughout the process;
- The timeframes required for responses by the parties at each stage of the process;
- Triage and prioritisation of complaints;
- Use of confidential information;
- Exchange of information and documents;
- Approach to dismissal of complaints with no merit or no reasonable prospects of success;
- Use of mediation;
- Use of recommendations;
- Use of provisional decisions;
- Ombuds making (and, where appropriate) publishing final decisions on cases;
- The information provided to the parties when a complaint is closed;
- The process to be followed in ensuring final decisions have the status of a civil court judgment; and
- How far parties can use information from the NFO in any subsequent legal proceedings.

An NFO or RFO ombud who upholds a complaint should have power to award any one or more of the following forms of redress:

- Compensation for
 - Loss caused directly by the financial institution's unfair act or omission;
 - Consequential loss that would not have arisen but for the institution's unfair act or omission;
 - Distress or inconvenience caused to the complainant by the institution's unfair act or omission;
- Interest on compensation in appropriate circumstances; or
- A direction—which requires the financial institution to put things right by doing, or not doing, something (specified by the ombud) in relation to the particular complainant.

In the case of the RFO, the reference to "financial institution" includes any person or entity that is within the RFO's jurisdiction—even if it is not an authorised financial institution.

The COFI Bill's definition of "complaint," which will apply to all ombud schemes, (and the current definition in the Pension Funds Act in relation to PFA) includes an allegation that a dispute of fact or law has arisen. The COFI Bill's definition also includes complaints relating to "distress or substantial inconvenience," so there would be a misalignment if the ombud schemes were unable to deal with such disputes.

Where relevant facts of a case are disputed, the ombud should decide (in light of the available evidence) what is most likely to have happened.

Appropriate provisions will be required, potentially through rules made or approved by the OC, to allow an NFO ombud to decline to deal with particularly complex matters that the ombud considers are better suited to the courts. This may include where there is

- A material dispute of fact that cannot be resolved without an oral hearing and sworn evidence;
- A material dispute of law where the legal position is genuinely in doubt; or
- Genuine uncertainty about causation in relation to consequential loss.

However, this should not be allowed to compromise access to the ombud system in cases where an ombud could reasonably be expected to make a decision on the available information. Ombuds should not seek to avoid difficult cases that they can and should deal with.

There should also be measures in place to ensure that the ombud's decision to decline to deal with a matter is communicated to a complainant promptly, to allow them reasonable time to consider other recourse options.

In considering redress for consequential loss, the ombud would need to be satisfied, in light of the available evidence, that the loss would not have arisen but for the financial institution's unfair act or omission. Deciding this might sometimes require expert evidence. Where it does, the ombud would be able to seek expert evidence before making a decision. If the consequential loss would not have arisen but for the financial institution's unfair act or omission, it would be too onerous for the innocent complainant to have to bear it or to be forced to resort to litigation as a matter of course. If the contract between the customer and the financial institution sought to exclude liability for consequential loss, the ombud would have to decide whether it had been validly and fairly excluded.

Pending establishment of the reformed ombud system, the OC is considering making rules requiring all existing ombud schemes to grant redress for distress or inconvenience.

There would be no objection to there being a maximum amount (approved by the OC) that can be awarded for distress or inconvenience.

RECONSIDERATION MECHANISM

Certain decisions of both the NFO2 and the RFO will be subject to reconsideration by the statutory FST. Subject to further consultation on the details through the Omnibus Bill

- Either party will be able to apply to the FST for reconsideration of the following decisions only:
 - An ombud’s ruling that a case is out of jurisdiction;
 - An ombud’s dismissal of a complaint without further consideration; or
 - An ombud’s determination.
- On receiving an application for reconsideration, the FST may
 - Dismiss the application summarily;
 - Hear and dismiss the application;
 - Hear the application and set aside the decision, sending the matter back to NFO2 or the RFO for reconsideration (with or without directions); or
 - Hhear the application and, in exceptional cases, substitute or vary the decision or correct a defect resulting from the decision.⁶
- In considering summary dismissal, the FST will take into account whether
 - The matter is within the FST’s jurisdiction;
 - The FST is likely to reach a different conclusion from the ombud;
 - There is *prima facie* evidence of a material legal or procedural error;
 - It is in the interests of justice to do so; or
 - the case has wider implications for financial consumers or financial institutions generally.

The FST’s rules should be amended in order to streamline or simplify current FST processes—at least in respect of NFO and RFO matters—to minimise potential consumer disadvantages caused by formalities.

⁶ By analogy with PAJA section 8 on remedies in proceedings for judicial review.

Annex A

OUTLINE OF INTENDED NFO REGIME

National Treasury prefers that the final form of the proposed National Financial Ombudsman (NFO2) should be underpinned by statute, in order to reinforce that

- It will have automatic jurisdiction over licensed financial institutions;
- Its ombuds' decisions will be legally binding and enforceable; and
- Those decisions will be subject to a reconsideration process that meets the standards of the Promotion of Administrative Justice Act 2000 (Act No. 3 of 2000) (PAJA).

The intention is to provide the NFO with

- Full independence from the government, regulators, and from the financial industry;
- Flexibility in scope, process, powers, and financing; and
- Compulsory jurisdiction together with binding and enforceable decisions (subject to a PAJA-aligned reconsideration process).

This outline is intended to clarify what the underpinned-by-statute NFO regime will look like. It will provide for

- A mechanism for the creation and recognition of the NFO, within specified parameters;
- Its powers, once created and recognised;
- A reconsideration mechanism; and
- Its accountability and oversight.

If there is an existing body that complies with the necessary parameters, the Ombud Council (OC) will be able to recognise that as the NFO.

It is assumed that the proposed amalgamated ombud scheme being worked on by the Banking, Credit, LTI, and STI Ombuds (NFO1) will want to apply for recognition as the NFO (NFO2). Failing that, the OC can encourage and facilitate the creation of a suitable body.

Flexibility to adapt to changing circumstances without requiring new primary legislation is provided by including powers to make rules on the following issues so that they can be updated without requiring fresh primary legislation:

- NFO's governance and funding;
- NFO's scope/jurisdiction; and
- How the NFO handles complaints.

The extent to which these rules will be made by the OC (in Ombud Council Rules) or by the NFO (in scheme-governing rules) is yet to be finalised.

Ombud Council Rules will need to be made in accordance with appropriate empowering provisions in the Financial Sector Regulation Act (Act 9 of 2017) (FSR Act). It is possible that the existing rule-making provisions in the FSR Act will be refined to clarify the scope of Ombud Council Rules that the OC will be empowered to make in the future system.

NFO-made scheme-governing rules would be subject to approval by the OC, which would need to be satisfied that the rules meet all relevant statutory recognition requirements and comply with any applicable Ombud Council Rules.

IMPORTANT NOTES

- This outline is intended to summarise the overall regime that will be created by the combined effect of existing, amended, and new legislation and rules. It is not intended as the legal wording of legislation or rules.
- The existing legislation and rules that will apply include the
 - FSR Act; and
 - Existing rule-making and designation powers of the OC.
- The FSR Act is to be amended to replace the
 - PFA provisions in the Pension Funds Act (Act 24 of 1956); and
 - FAIS Ombud provisions in the Financial Advisory and Intermediary Services Act (Act 37 of 2002).
- The new legislation and rules that will apply will include
 - The Conduct of Financial Institutions Bill (COFI Bill) and consequential amendments to the FSR Act contained in the COFI Bill;
 - A new Omnibus Bill (amending the FSR Act, COFI provisions, and/or other laws);
 - Regulations and conduct standards made under them; and
 - Future Ombud Council Rules.
- The outline reflects current National Treasury thinking, but which aspects will be in primary legislation and which aspects will be in regulations, conduct standards, Ombud Council Rules, or scheme-governing rules (approved by the OC) is still under discussion.
- There has been consultation on the COFI Bill and consequential amendments to the FSR Act contained in the COFI Bill. There will be consultation on the new Omnibus Bill, new conduct standards, and future Ombud Council Rules.
- However, the outline should help those ombud schemes that wish to take steps now in order to approximate themselves to the design of the future NFO.

OMBUD SCHEME

A new, single financial ombud scheme (the new ombud scheme, NFO2) will resolve complaints—other than those covered by the Retirement Funds Ombud (RFO)—independently, fairly, promptly, and with minimum formality.

The new ombud scheme will be independent—including from the government, regulators, the OC, the financial industry, and consumer bodies. It will be a nonprofit company without members and have regard to international good practice for financial ombud schemes.

The OC will only recognise one body as the new ombud scheme (with or without conditions) and will approve its name. If there is an existing body that is suitable, the OC will recognise that body.

It is envisaged that the OC will recognise as NFO2 the body created by the voluntary amalgamation of the Banking, Credit, LTI, and STI Ombuds (NFO1), but if there is no existing body that is suitable, the OC will be able to promote and facilitate the creation of a suitable body.

A transitional period will be necessary to secure a smooth handover to the new ombud scheme from existing schemes. After that, legislation winding up the Ombud for Financial Services Providers (currently known as the FAIS Ombud) will be brought into force—and no other ombud scheme for complaints about licensed financial institutions will be established, approved, or recognised apart from the RFO.

GOVERNANCE

BOARD

The first board of directors of the body that wishes to be recognised as the NFO will have been appointed in consultation with: the Financial Sector Conduct Authority (FSCA); the National Credit Regulator (NCR); the OC; and the governing bodies of the recognised industry ombud schemes.

Subsequent directors will be appointed by the board of directors of the new ombud scheme in accordance with criteria previously approved by the Ombud Council.

There will be between five and nine directors, and the board will appoint one of them as chair. The board and each of the directors must act independently in the public interest, irrespective of their background and experience.

Ordinarily, directors will be appointed for terms of between three and five years. Exceptionally, some of the first directors may be appointed for two years, to facilitate maintaining continuity through staggered terms. A director may be reappointed, but must not serve for a total of more than 10 years.

A director's terms of appointment and security in office must be such as to ensure the director's independence, including independence from the government, regulators, the financial industry, consumer bodies, and the OC.

The board must collectively provide a balance of understanding in respect of: effective corporate governance; alternative dispute resolution; the regulation of licensed financial institutions; the legitimate concerns of consumers of financial services; and the legitimate concerns of the financial services industry.

None of the directors can be: a person falling within (b) to (k) of the definition of a 'disqualified person' in section 1 of the FSR Act or a serving financial regulator.

The chair cannot be a person associated with the financial industry. Only a minority of directors can be persons associated with the financial industry. For this purpose, "associated with the financial industry" means someone who

- Is engaged in the business of a financial institution or a body representing financial institutions, or has been so engaged in the previous three years;
- Has a direct material financial interest in a financial institution, except as a financial customer, or has had such interest in the previous three years; or
- Has a close family member who has a direct material financial interest in a financial institution, except as a financial customer.

Only the board can exercise the functions of: appointing ombuds who can make legally binding decisions; designating one of the ombuds as chief ombud; making governing rules; adopting strategic plans and annual objectives; and adopting or varying a budget.

The functions of the board include: safeguarding the independence of the new ombud scheme and the ombuds; ensuring that the scheme has sufficient resources to deal with its workload; overseeing the effectiveness and efficiency of the scheme; ensuring the visibility and accessibility of the scheme; and ensuring effective relationships with stakeholders and the RFO.

The board must not involve itself in the resolution of complaints against financial institutions, which is the function of the ombuds.

OMBUDS

The new ombud scheme must appoint enough persons to act as ombuds for the purposes of the new ombud scheme and designate one of the ombuds as chief ombud. It must only appoint ombuds with suitable qualifications, experience, and integrity.

An ombud's terms of appointment and security in office must be such as to ensure their independence, including from the board.

PUBLIC ADVERTISEMENT AND CONSULTATION

Before appointing any director of the new ombud scheme, the appointing body must consult those stakeholders that it considers to be relevant about the expertise required and (except in the case of the first board) advertise the vacancy publicly.

Before appointing any ombud, the new ombud scheme must advertise the vacancy publicly.

Before making any governing rules and before adopting its annual budget, the new ombud scheme must consult and have regard to comments received.

OBJECTIVES AND BUDGET

Before the start of each financial year, the new ombud scheme must set out its strategic objectives and (after consulting as described in the previous paragraph) adopt a budget that provides sufficient funding and reserves for the operation of the new ombud scheme. The new ombud scheme may vary the budget after it has been adopted.

FUNDING

Subject to the approval of the OC, the board of the new ombud scheme will make (and may vary) governing rules on funding (funding rules) that

- Ensure the scheme is sufficiently financed and provide for financial controls and audits;
- May specify periodic or specific charges to be paid to the scheme by financial institutions that are subject to the new ombud scheme;
- May provide for different charges or amounts (or amounts calculated in different ways) for different types of financial institutions and/or complaints; and
- May include (and may vary) additional amounts or interest or both that will become due in the event of late payment.

The new ombud scheme must be free of charge for complainants.

The new ombud scheme will not be a public body for the purposes of the Public Finance Management Act number 1 of 1999 (PFMA) and will not be subject to the provisions of that Act.

REPORTS

At least once per year, the new ombud scheme and the chief ombud of the scheme must make and publish a public report (as well as reporting to the OC under section 217(1)(a) of the FSR Act).

The new ombud scheme may publish data and ombud determinations and identify financial institutions in published data and ombud determinations, but—except in a determination provided to the parties or the courts—must not identify complainants nor publish information from which their identity is apparent.

JURISDICTION

The new ombud scheme will have an initial jurisdiction that at least covers the existing jurisdictions of the Banking, Credit, FAIS, JSE, LTI, and STI Ombuds. That jurisdiction will be extended, at a pace consistent with the new ombud scheme's ability to absorb the work, as additional sectors are regulated and further regulatory reforms take place.

The aim is to provide a mechanism to modify, without requiring primary legislation: the definition of a complaint for the purpose of the new ombud scheme; the financial institutions and activities that are subject to the new ombud scheme; who is eligible to bring a complaint to the new ombud scheme; and the time limits within which a complaint must be brought to the new ombud scheme.

A first step will be to work with the Banking, Credit, FAIS, JSE, LTI, and STI Ombuds in order to map their jurisdictions and to confirm in particular

- If their definitions of a complaint are all covered by the COFI Bill's definition of a complaint;
- If they cover any types of complaint that are not covered by the COFI Bill's definition;
- If they cover any unregulated activities of licensed financial institutions;
- If they cover any financial institutions that are not required to be licensed;
- If there are any regulated activities of licensed financial institutions that they do not cover;
- If they cover complaints from anyone outside the COFI Bill's definition of a complainant; and
- How their time limits can be reconciled.

National Treasury can then consider what elements relating to the jurisdiction of the new ombud should be included in primary legislation and what powers should, if possible, be provided so that the OC can potentially refine and extend the scope of jurisdiction through jurisdiction-related Ombud Council Rules, or the use of its designation or approval powers, in light of circumstances.

The OC should have regard to suggestions received from the new ombud scheme and should consult with it before making public proposals on jurisdiction.

A complaint about an act or omission by a financial institution can be dealt with under the new ombud scheme if

- The complaint is within the definition in the jurisdiction rules;
- the financial institution is covered by the rules (or was at the time of the relevant act or omission);
- The act or omission occurred in carrying out an activity covered by the rules;
- The complainant is eligible under the rules; and
- The complainant wishes to have the complaint dealt with under the new ombud scheme.

Financial institutions will be liable for the acts and omissions of their agents. Additionally, where a financial institution (the "successor") has assumed a liability (including a contingent liability) or continued the business (or the relevant part of the business) of another financial institution (the 'predecessor') and the predecessor was or would have been the respondent in respect of a complaint under the new ombud scheme, the new ombud scheme may (but need not) deal with the complaint as if it were a complaint against the successor.⁷

⁷ This to give the ombud scheme jurisdiction in the fairly common situation of a predecessor financial institution (which did the act or omission) later selling the product and customer to a successor financial institution—or where a partnership/sole trader turns itself into an incorporated business.

PROCESS

COMPLAINT-HANDLING RULES FOR FINANCIAL INSTITUTIONS⁸

In consultation with the Ombud Council, the FSCA (and, where appropriate, the NCR in respect of credit providers)—so far as it has not already done so—will make (and may vary) rules ('complaint-handling rules') in conduct standards specifying the way in which licensed financial institutions subject to the new ombud scheme must deal with complaints received from eligible complainants.

The FSCA (and, where appropriate, the NCR in respect of credit providers) will oversee and enforce the complaint-handling rules for financial institutions. The rules may, among other things, require licensed financial institutions that are subject to the jurisdiction of the new ombud scheme to

- Establish clear and simple procedures for handling complaints;
- Ensure customers are made aware of them;
- Make every effort to resolve complaints at an early stage;
- Issue a final and reasoned written response within a specified time;
- Tell complainants they can go to the new ombud scheme if a complaint is unresolved;
- Tell a complainant about any applicable time limit;
- Cooperate with the new ombud scheme;
- Provide a senior-level contact officer for the new ombud scheme;
- Provide specified complaints data to the FSCA, NCR, and/or OC; and
- Provide effective sanctions for any failure to comply with the complaint-handling rules.

PROCEDURAL RULES FOR OMBUD SCHEME

Rules made by the OC or governing rules made by the board of the new ombud scheme with the approval of the OC ("procedural rules")

- Must specify the procedure for the submission, investigation, and consideration of complaints and determination of complaints by an ombud, including procedures to record and manage oral complaints and complaints in various languages;
- May provide that an ombud may extend a time limit set by the jurisdiction rules in specified circumstances;
- May specify circumstances in which an ombud can dismiss a complaint without further consideration;
- May allow an ombud to fix (and to extend) time limits for any stage of the procedure for consideration of a complaint;
- May allow an ombud to specify what evidence, in what form, a party should provide and also the consequences if it is not provided;
- May provide for parts of the procedure for the submission, investigation, consideration, mediation, and resolution (but not the determination) of complaints to be done by a member of the new ombud scheme's staff who is not an ombud;
- May specify matters for an ombud to take into account in deciding what is fair and reasonable in the circumstances of the complaint;
- May specify the maximum amount that an ombud can award per complaint (which may vary by type of complaint);
- May allow an ombud to make a nonbinding recommendation for any amount that exceeds any maximum amount that can be awarded;
- May specify a maximum that an ombud can award for distress and/or inconvenience;

⁸ The complaint-handling rules allow the setting, and variation, of the obligations of licensed financial institutions to attempt to resolve complaints before they are referred to the ombud scheme.

- May allow for the correction by an ombud of any clerical mistake in an ombud’s determination;
- May specify the types of ombud determinations that are to be published; and
- May provide that any failure to comply with the procedural rules does not, of itself, render a determination void.

The circumstances in which the procedural rules provide that an ombud may dismiss a complaint without further consideration may, among other things, include where an ombud considers that

- The complaint is frivolous, vexatious, trivial, or has no reasonable prospect of success;
- The complainant has not suffered (and is unlikely to suffer) material loss, distress, or inconvenience;
- The complaint is about the legitimate exercise of the financial institution’s commercial judgment;
- The subject matter of the complaint has already been decided by a court or a competent regulator;
- The complaint is more suitable for the courts; or
- There are other compelling reasons why the complaint should not be dealt with by the new ombud scheme.

REQUIRING INFORMATION OR DOCUMENTS

Where an ombud considers it necessary for the determination of a complaint, the ombud may require a financial institution or complainant to produce any information or document (and, if necessary, an explanation of it).

If any financial institution fails to comply with such a requirement, the ombud may decide the case on the basis of the available information and/or notify the FSCA or NCR so that the financial institution’s failure to comply with the requirement can be subject to enforcement action as a contravention of a financial sector law.

If a complainant fails to comply with such a requirement, the ombud may (but does not have to) dismiss the complaint.

OMBUD DETERMINATIONS

If the complaint is not resolved by the new ombud scheme through facilitating a fair outcome agreed between the parties, an ombud will determine what is (in the ombud’s opinion) fair and reasonable (equitable) in the circumstances of the complaint.

The ombud will give both parties a written determination (with reasons), specifying how long the complainant has to accept it. The ombud may extend the time for acceptance if, in the ombud’s opinion, there was an exceptional reason why the complainant could not respond earlier.

If the complainant does not accept the determination in time, the complainant is deemed to have rejected it. The new ombud scheme must notify the financial institution whether the complainant accepts or rejects the determination.

If the complainant accepts the determination in time—subject only to any right to apply for reconsideration to the Financial Services Tribunal (FST) and (after any such reconsideration) the judicial review powers of the High Court in respect of the FST—it is binding on the financial institution and the complainant, and the complainant may not pursue the subject matter of the complaint in court.

If the complainant rejects the determination: the determination is not binding on the financial institution or the complainant; the complainant retains any right to seek reconsideration by the FST or to pursue the subject matter of the complaint in court; and any time limit to bring court proceedings is extended by the time during which the complaint was being considered by the new ombud scheme.

If a complaint is determined in favour of the complainant, the ombud’s determination may include a money award, an interest award, and/or a direction.

A money award is what the ombud considers to be fair compensation for any loss, damage, distress, and/or inconvenience, and so far as the ombud considers it practicable in the circumstances of the case, the award can also include consequential loss or damage.

The procedural rules may set a maximum amount for a money award (though this does not prevent an ombud making a nonbinding recommendation for the excess) and/or a maximum for distress and/or inconvenience.

An interest award: may provide for a money award to carry interest at a rate (or rates), and from a date (or dates), specified in the determination; and is disregarded in calculating any maximum amount specified in the procedural rules.

A direction is where the ombud requires the financial institution to take specified steps in relation to the complainant (whether or not a court could or would do so). So far as it results in the respondent having to pay money to (or for the benefit of) the complainant, it is to be treated as a money award for the purposes of any maximum limit on money awards.

A mechanism will be provided under which a determination in favour of a complainant can be enforced by the complainant against the financial institution in the same way as if it were a judgment of the High Court.

RECONSIDERATION OF DETERMINATIONS ('APPEALS')

Either party can apply to the FST within 30 days for reconsideration of the following decisions only: an ombud's ruling that a case is out of jurisdiction, and an ombud's dismissal of a complaint without further consideration or an ombud's determination.

On receiving an application for reconsideration, the FST may: dismiss the application summarily; hear and dismiss the application; hear the application and set aside the determination, sending the matter back to the new ombud scheme for reconsideration (with or without directions); or hear the application and, in exceptional cases, substitute or vary the decision or correct a defect resulting from the decision.⁹

In considering summary dismissal, the FST will take into account whether

- The matter is within the FST's jurisdiction;
- The FST is likely to reach a different conclusion from the ombud;
- There is *prima facie* evidence of a material legal or procedural error;
- It is in the interests of justice to do so; or
- The case has wider implications for consumers or financial institutions generally.

Further consideration will be given to streamlining or simplifying current FST processes—at least in respect of NFO and RFO matters—to minimise potential consumer disadvantages caused by formalities.

COOPERATION

The new ombud scheme, OC, FSCA, and NCR must each take appropriate steps to cooperate with one another and exchange information in the independent exercise of their respective functions.

CONFIDENTIALITY

The Promotion of Access to Information Act (Act 2 of 2000) and the Protection of Personal Information Act (Act 4 of 2013) will apply to the processing of personal information by the new ombud scheme, but National Treasury will consider whether any amendments or exemptions are required to

- Avoid a party seeking information from the ombud scheme that should properly be sought from the other party;
- Ensure that the new ombud scheme is not unduly prevented from sharing information in cases where this may be necessary to fulfil its functions;

⁹ By analogy with PAJA section 8 on remedies in proceedings for judicial review.

- Allow the new ombud scheme to disclose to the following such information as it considers appropriate to assist them in fulfilling their functions:
 - The FSCA;
 - The NCR;
 - The OC;
 - The RFO; or
 - An organ of state responsible for the regulation, supervision, or enforcement of any law.
- Allow the new ombud scheme to publish determinations (but—except in a determination provided to the parties or the courts—excluding the name of the complainant and any information identifying the complainant);
- Facilitate enforcement of an agreed outcome or an ombud’s determination.

Annex B

OUTLINE IMPLEMENTATION PLAN

As set out in annex A, National Treasury has decided the following:

- A new single ombud scheme will replace the industry ombuds and the Office of the Ombud for Financial Services Providers (FAIS Ombud).
- The new scheme will be independent from government and industry, but underpinned by statute.
- The PFA will be renamed the Retirement Funds Ombudsman (RFO).
- The governance of the RFO will be reformed.
- The governance of the Ombud Council (OC) will be reformed.

Legislation will be required to achieve the following:

- Underpin the new, single ombud scheme as a body independent of government.
- Allow the OC to recognise an ombud entity as the new single ombud scheme.
- Reform the OC's governance (stage 1) and review its powers (after the new ombud is operational).
- Wind up the FAIS Ombud once the new ombud is operational.
- Rename the PFA as the RFO and reform its governance.

Pending legislation to underpin the new single ombud scheme, and as an interim step, a voluntary amalgamation is being pursued by the Banking, Credit, LTI, and STI Ombuds (in consultation with the OC).

The resulting voluntarily amalgamated ombud scheme is being designed to substantially mirror the design of the intended new single ombud—with a view to the voluntarily amalgamated ombud scheme becoming the new single ombud scheme (through OC recognition, with or without such conditions as may be necessary to enable refinements) once the necessary underpinning legislation is enacted.

The new single ombud scheme is to be called the National Financial Ombud (NFO). So that the NFO name can be established with the public as soon as possible, National Treasury has agreed that the voluntarily amalgamated ombud scheme can also use the name. So, in this annex

- NFO1 or NFO stage 1 means the voluntarily amalgamated existing Banking, Credit, LTI, and STI Ombuds; and
- NFO2 or NFO stage 2 means the new single ombud scheme, underpinned by the new legislation.

Although the statutory FAIS Ombud cannot be part of the voluntarily amalgamated ombud scheme (NFO1), its work will be taken over later by the new single ombud scheme (NFO2), so the FAIS Ombud will be involved in discussions at an early stage to ensure the amalgamated NFO1 ombud scheme's processes are also suitable for, or capable of ready adaptation to, the FAIS sector.

In outline, and taking into account the modifications mentioned, implementation involves the following steps summarised. These steps may occur in a different order and some may have occurred already when this policy paper is published.

- **Jurisdiction mapping:** Map the jurisdiction of the existing ombud schemes as a preliminary to finalising the scope of NFO2's jurisdiction, building on work already done by the OC to identify jurisdictional gaps and overlaps in the current system.
- **Steering committee:** The OC convenes a steering committee of representatives from the industry ombuds (including the Johannesburg Stock Exchange [JSE] Ombud) and FAIS Ombud to continue the planning for NFO2.
- **Establish initial board of NFO1:** After consulting the selection panel proposed in the WBG report,¹⁰ the members of the initial board are appointed—initially as the board of NFO1 but with the intention that it would be eligible to become the board of NFO2, ensuring membership will, as far as possible, be appropriate for NFO2.
- **Ombud Council:** The OC assists and supports the initial board of NFO1 and the steering committee and uses its existing powers to get existing schemes to approximate to the new NFO2 model.
- **NFO legislation (amending chapter 14 of FSR Act) to underpin NFO2:** The South African authorities draft legislation to allow the OC to recognise a body (potentially NFO1) as NFO2 and underpin it as a body independent of government, and introduce the legislation in Parliament. This is expected to be done under an Omnibus Bill.
- **Develop NFO1:** NFO1, with the approval of its board where necessary
 - Creates the legal entity of (initially) NFO1 and (subsequently) NFO2;
 - Develops NFO1's organisational design, rules, and processes;
 - Prepares a transition plan for NFO1 to take over from the Banking, Credit, LTI, and STI Ombuds; and
 - Prepares a transition plan for NFO2 to take over from NFO1, the FAIS Ombud, and the JSE Ombud.
- **OC/PFA/RFO/FAIS legislation:** The South African authorities draft and introduce to Parliament draft legislation to
 - Provide for a consistent definition of "complaint" (in COFI Bill and FSR Act consequential amendments);
 - Rename the PFA as the RFO (in FSR Act consequential amendments through COFI Bill);
 - Wind up the FAIS Ombud once NFO2 has taken over its work (in Omnibus Bill);
 - Reform the RFO (in Omnibus Bill); and
 - Reform the governance of OC (in Omnibus Bill).
- **NFO legislation (amending chapter 14 of FSR Act through Omnibus Bill) enacted the following:**
 - NFO1 applies to the OC for recognition as NFO2.
 - The OC grants formal recognition of NFO1 as NFO2.
 - NFO2 implements previously-prepared transition plan.
 - NFO2 takes over the work of the FAIS Ombud (plus any other industry schemes still outside NFO1 at that stage).
- **Parallel operation:** In order to facilitate transition, and if applicable, ombuds and other staff may hold parallel posts simultaneously in
 - NFO1 and its predecessor schemes;
 - NFO2 and the FAIS Ombud (until that is wound up).
- **Omnibus Bill amendments repealing the FAIS Ombud provisions in Chapter 14 of FSR Act¹¹ enacted:** The FAIS Ombud is wound up, having been replaced by NFO2.
- **Amendments to RFO provisions in Chapter 14 of FSR Act¹² enacted:** RFO governance changes implemented.

¹⁰ See recommendation B12 on page 169 of the report at <https://openknowledge.worldbank.org/handle/10986/36211>. This refers to the body as the "electoral college" but National Treasury prefers to call it the "selection panel."

¹¹ By this stage, the FAIS Act will have been repealed by the COFI Act and the FAIS Ombud provisions will have been transferred to Chapter 14 of the FSR Act.

¹² By this stage, the PFA provisions in the Pension Funds Act will have been repealed and transferred to Chapter 14 of the FSR Act, and the PFA will have been renamed the RFO.

- **Amendments to provisions relating to the OC in Chapter 14 of FSR Act enacted:** OC governance changes implemented.
- **OC provides ongoing oversight:** The OC provides ongoing oversight of NFO2 and the RFO in order to ensure that they continue to effectively perform their respective functions.

The outline for the statutory underpinning of NFO2, described in annex A, provides a framework—to be clothed by OC rules (regulatory instruments) and NFO2 scheme governing rules (approved by the OC).

There will need to be close liaison with the current ombud schemes and the South African authorities in effecting a smooth transition to the new system.

A SIMPLER, STRONGER FINANCIAL SECTOR OMBUD SYSTEM

POLICY STATEMENT

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Private Bag X115, Pretoria, 0001 | 40 Church Square, Pretoria, 0002 | Tel: +27 12 315 5944 | Fax: +27 12 406 9055 | www.treasury.gov.za



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA