

EXPLANATORY NOTE:

BACKGROUND TO THE ESTABLISHMENT OF THE NATIONAL FINANCIAL OMBUD SCHEME SOUTH AFRICA.

Date: 23 February 2024

1. Introduction

To provide context to the Ombud Council's recognition of the National Financial Ombud Scheme South Africa (NFO) as an industry ombud scheme with effect from 1 March 2024, the Council provides the following background information.

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.

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to the following four industry ombud schemes ("the Predecessor Schemes"), which had previously operated in terms of the repealed Financial Sector Ombud Schemes Act, 2004: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

2. Rationale for amalgamation of the Predecessor 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).

Following indications from the National Treasury that it supported the recommended broader consolidation of the ombud system proposed in the World Bank review, the four Predecessor Schemes proactively and voluntarily embarked on an amalgamation exercise in anticipation of this reform. Approximately three years of work on the project to merge and align their operations and processes into a single new industry ombud scheme, culminated in the registration of a new non-profit company, titled the National Financial Ombud Scheme South Africa NPC. The Ombud Council also strongly supports this recommendation, and has worked with the amalgamation project team to support and facilitate the establishment of the NFO, which fully aligns with the Council's objectives and understanding of the policy direction.

Each of the Predecessor 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 is expected to leverage their predecessors' past successes while providing a streamlined, co-ordinated, and less confusing alternate dispute resolution framework for many financial customers.

2. NFO Scheme recognition process, and approval of its governing rules.

The NFO Scheme submitted its application for recognition to the Ombud Council on 13 November 2023, and the Ombud Council has considered and determined the application in accordance with section 196 of the FSR Act, including by obtaining additional information from the applicant as contemplated in section 195. As required by section 194(2) of the Act, the scheme submitted a copy of its proposed governing rules to the Ombud Council together with its recognition application.

Section 214 of the FSR Act provides that, 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 Council duly published the proposed governing rules and required supporting documents for public comment on 13 November 2023.

The Ombud Council has carefully reviewed all comments received on the governing rules, which resulted in several amendments to the draft rules being made in consultation with the NFO leadership. The Ombud Council today publishes the approved governing rules of the NFO Scheme, as part of its recognition of the Scheme. The Council is satisfied that these governing rules comply with the standards in section 196(3)(b) of the FSR Act and that approval of the rules will assist in achieving the object of the Act (as required by section 214(4)), particularly the object to establish a framework that promotes the fair treatment and protection of financial customers.

The approved governing rules of the NFO scheme comprise two documents:

- The Memorandum of Incorporation ("MOI") of the National Financial Ombud Scheme South Africa NFC, being the founding document of the non-profit company housing the Scheme, including key elements of its governance; and
- The draft Rules of the NFO Scheme, setting out details of the Scheme's jurisdiction, functions and operations.

A Consultation Report, summarising the comments received, the Ombud Council's response to the comments, and resulting changes to governing rules is also published today.

The Ombud Council is also satisfied that the NFO Scheme will meet the membership and resource requirements of sections 196(3)(a) and (c) of the FSR Act, and that recognising the NFO Scheme will not be contrary to the interests of financial customers, the financial sector, or the public interest (section 196(3)(d)).

OMBUD COUNCIL