
GOVERNMENT NOTICE

NATIONAL TREASURY

No. R. 847

18 August 2006

FINANCIAL SERVICES OMBUD SCHEMES ACT, 2004 (ACT NO. 37 OF 2004)

FINANCIAL SERVICES OMBUD SCHEMES REGULATIONS

The Minister of Finance has, after consultation with the Financial Services Board and the Financial Services Ombud Schemes Council, under **section 19** of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), made the regulations set out in the Schedule.



MINISTER OF FINANCE

SCHEDULE

FINANCIAL SERVICES OMBUD SCHEMES REGULATIONS

Definitions

1. In this Schedule “the Act” means the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), including any measure or act referred to in the definition of “this Act” in section 1 thereof, any word or expression to which a meaning is assigned in the Act, unless the context indicates otherwise, has the meaning so attached to it, and-

“**FAIS Act**” means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

“**FAIS Ombud**” means the ombud functioning under and exercising authority in terms of the relevant provisions of the FAIS Act;

“regulation” means a regulation in this Schedule.

CHAPTER 1

REQUIREMENTS FOR RECOGNITION OF VOLUNTARY OMBUD SCHEMES, APPLICATION FOR RECOGNITION, FEES AND FORMS

(Section 19, read with sections 10(1)(i) and 11(1), of the Act).

Requirements for recognition

2. (1) An applicant for recognition must satisfy the Council that the scheme in question will on the granting of the application comply with all applicable requirements of the Act.
- (2) In instances where majority support as contemplated by section 10(1)(a) of the Act must be determined, the Council is entitled to consider any one or all of the criteria referred to in that section, in accordance with the Council determination contemplated in that section, and require proof in that regard from the applicant.
- (3) The monitoring body referred to in section 10(1)(b) of the Act will be regarded as not controlled by participants in the relevant scheme if its members who represent such participants or have a direct and substantial interest in any participant in the scheme, are in the minority. At least one member of the body should be representative of consumer interest within the financial services sector. Where feasible, the members must be appointed with due regard to the demographic and gender profile of the South African population. Personal particulars of the members serving or who will serve on the body must be furnished to the Council in the relevant application.

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- (4) The Council must be satisfied that, as regards the human resources stipulated in section 10(1)(d) of the Act, and having regard to the number and type of complaints which the office of the ombud will probably deal with, competent and sufficient professional, administrative and clerical staff (or consultants) will in terms of the scheme be available to assist the ombud.
- (5) The proposed procedures of the scheme referred to in section 10(1)(e) of the Act must be set out in a written framework or terms of reference from which it must be clear that the ombud will be able to function properly as contemplated by the scheme and the Act.
- (6) The scheme must provide for the effective enforcement of determinations of the ombud concerned referred to in section 10(1)(f) of the Act by stipulating that the participants of the scheme are legally bound to honour the ombud's determinations and to give effect thereto within the time stipulated by the ombud, subject to any right of appeal which a scheme may provide for.
- (7) Public awareness of the existence of the scheme and how it functions, as contemplated by section 10(1)(h) of the Act, with reference to informing and educating clients, should be promoted by the giving of a written undertaking by the scheme to the Council that it will continuously and actively take reasonably required steps in that regard, and will on demand by the Council, at any time provide the Council with full particulars of such steps that had been taken, are being taken or will in future be taken, including-
- (a) the public promotion of the scheme by written and electronic means dealing with the essential aspects of the scheme, including the jurisdiction of its ombud, and ensuring the ability of the office of the ombud to service personal or telephone enquiries concerning the scheme; and
 - (b) participation by the scheme and its participants in consumer awareness and client education activities undertaken by the Council.
- (8) A scheme must state the name of its contact person and its contact particulars should the Council wish to get in touch with it for purposes of the Act.

Application for recognition of scheme

3. (1) An application in terms of section 11 of the Act must be submitted in the manner and form required by this regulation, and be accompanied by the prescribed non-refundable fee.
- (2) The application must be in writing and essentially be in the form set out in **Part A** to this Chapter 1. All attachments provided for in the form, or for other reasons attached to the form, must be in clearly legible format. If all the provisions relating to the scheme are available in the format of a constitution or other founding document, a copy of such document must be attached to the form which in any such case must also be completed in full.
- (3) The Council may call for further particulars or clarification to enable it to determine whether the applicant and the application comply with the **Act**.

Certificate of recognition

4. A certificate of recognition of a scheme issued by the Council under section 11(4)(a) of the Act, must be in writing, state the effective date from which the scheme may be operated, and must essentially be in the form set out in **Part B** to this Chapter 1.

Changes in provisions of scheme

5. (1) A scheme seeking approval of the Council for a change to the scheme provisions referred to in section 11(6) of the Act, must apply to the Council in writing (or in any other format or manner from time to time determined by the Council) for approval of any such change.
- (2) The application must contain all relevant information in support of the change provided that the Council may call for such additional information or motivation as it may require.
- (3) If the application is granted, the Council must determine the operative date of the approved change and inform the scheme in writing.

PART A**FORM OF APPLICATION FOR RECOGNITION OF A SCHEME IN TERMS OF SECTION 11 OF THE ACT****1. Applicant**

- (a) Name of applicant:
- (b) Contact particulars of applicant:
- (i) Telephone:
- (ii) Telefax:
- (iii) E-mail address:
- (iv) Postal address:
- (c) Name and contact particulars of person or persons acting as applicant's representative(-s) in this application (if any):
.....

2. Scheme particulars

- (a) Name of scheme:
- (b) Contact person:
- (c) Contact particulars of scheme:
- (d) Address(-es) from which the scheme will be operated:
- (e) Category/categories of financial institutions which will participate in the scheme:
- (9) State on what basis it is contended that the scheme enjoys majority support from the relevant financial institutions:

3. Monitoring body (section 10(1)(b) of Act)

- (a) State how the members of this body are selected or appointed:
- (b) Indicate which of these members represent participants in the scheme or have a direct and substantial interest in any participant in the scheme:
- (c) Indicate the respect(s) in which the ombud of the scheme will be accountable to this body:

- (d) Indicate the measures by which the body will be able to monitor the performance and independence of the ombud and the ombud's compliance with the Act:.....
- (e) Brief personal particulars (curriculum vitae) of each member of the body are attached to this application:
- (f) Indicate who will be the chairperson or chief executive of the body and how elected / appointed as such:

4. Ombud

- (a) What criteria have been/will be applied to candidates for/ incumbent of the office of ombud?:.....
- (b) State what process was/ will be adopted in the selection / appointment of the ombud:.....
- (c) If appointed, names and personal particulars (curriculum vitae) of ombud, deputy ombud and/ or assistant Ombud:
- (d) Provide particulars of the terms or conditions on which the ombud is to be appointed, including the term of appointment:.....
- (e) State the grounds on which the appointment of the ombud may be terminated:

5. Ombud's office

- (a) Give a brief description of the office facilities made available to the Ombud:.....
- (b) Set out the office's full staff complement and contracted consultants:.....
- (c) Explain how the ombud's operations will be funded and how it will be ensured that such funding will be adequate at all times:
- (d) State what measures are in place to prevent backlogs in the ombud's operations:

6. Handling of complaints (section 10(1)(e) of Act and regulation 2(6))

- (a) Submit with this form in full the ombud's terms of reference and the procedures to be followed in complaint resolution processes:
- (b) If provision will be made for any appeal against the ombud's determination, submit with this form full particulars of the basis and procedure for such appeal, and of the body of appeal:

7. Enforcement of determinations

Confirm that all participants in the scheme have agreed to honour the determinations of the ombud as contemplated in regulation 2(6):

8. Authority of Act

Confirm that the scheme accepts the duty to comply at all times with the provisions of the scheme concerned and of the Act as contemplated in section 10(1)(b)(ii) of the Act:

9. Consumer awareness, information and education

Confirm that an undertaking has been given to the Council as contemplated in regulation 2(7) and that a copy thereof is attached to this application:

10. Other information

With a view to full disclosure, the applicant is required to submit any other information, fact or documentation which may be relevant to the Council to evaluate the application:

11. Fees

Confirm that the non-refundable application fee referred to in regulation 11 accompanies this application:

SIGNED ON BEHALF OF THE APPLICANT SCHEME at

on thisday of20..

.....

.....

Name:

Name:

Telephone number:

Telephone number

WITNESSES:

.....

.....

Name:

Name:

Telephone number:

Telephone number:

ATTACHMENTS
(see regulation 3(2))

PART B

FINANCIAL SERVICES OMBUD SCHEMES COUNCIL

(insert logo, seal or official stamp)

CERTIFICATE OF RECOGNITION OF FINANCIAL SERVICES OMBUD SCHEME

It is hereby certified that recognition has been granted to

.....
(Name of Financial Services Ombud Scheme)

in terms of section 11(4)(a) of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), to operate a financial services ombud scheme in terms of and subject to that Act with effect from (operative date).

Issued by the Financial Services Ombud Schemes Council

Signed on behalf of the Council

.....
CHAIRPERSON

.....
DATE

CHAPTER 2

PROCEEDINGS AND JURISDICTION OF STATUTORY OMBUD (Section 19(a) and (b) of Act)

Application of Chapter 2

6. The provisions of this Chapter apply when the statutory ombud becomes seized with and deals with a complaint in terms of section 14 of the Act.

Jurisdiction

7. (1) The statutory ombud is not empowered to deal with a complaint referred to in regulation 6-
- (a) if the responding party has addressed the complaint to the satisfaction of the complainant within four weeks of its receipt by the responding party;
 - (b) if the complaint constitutes a monetary claim in excess of R800 000,00 for a particular kind of financial prejudice or damage, unless the responding party has agreed in writing to this limitation being exceeded, or the complainant has abandoned the amount in excess of R800 000,00;
 - (c) if the complainant has, prior to submitting the complaint, or while the complaint is pending, brought proceedings before an arbitrator or a court of law for determination of the matter of the complaint;
 - (d) if the facts or legal issues underlying the complaint appear to the ombud to be so complex that lengthy or expert evidence may probably be required to determine them;
 - (e) where the complainant is, at the time of lodging of the relevant complaint a person carrying on any business or profession with a net asset value, an annual turnover (including group turnover) or annual income of more than R8 million; and
 - (f) when the complainant's grievance primarily relates to general industry policies or practices rather than being a complaint against a particular financial institution.
- (2) Any dispute as to whether subregulation (1) applies to a complaint will be determined by the statutory ombud whose decision shall be final.
- (3) The statutory ombud may, notwithstanding that a complaint is justiciable in terms of section 14(2) of the Act, on reasonable grounds

determine that it is more appropriate that the complaint be dealt with by a court of law or through any other available dispute resolution process, and decline to entertain the complaint.

Procedures

8. (1) The statutory ombud may call into assistance and, to the extent deemed necessary, delegate to one or more persons powers to investigate the factual aspects surrounding a particular complaint in order to obtain clarity or to be able to resolve a dispute on such facts.
- (2) No party to proceedings before the statutory ombud is entitled to be represented by a legal representative, but legal representation for the parties may on application by a party be permitted by the statutory ombud if the statutory ombud is satisfied that the factual or legal issues justify such representation.

Determinations

9. Subject to section 14(5) of the Act, the relevant provisions of the FAIS Act applicable to the determinations of the FAIS Ombud, their deemed effect as civil judgments of a court of law, their appealability in terms of the FAIS Act and the rules regarding these matters, apply equally, with the necessary changes, to determinations of the statutory ombud.

CHAPTER 3

MISCELLANEOUS

Notification of changes

10. A recognised scheme must notify the Council in writing of any change in the information provided under regulation 3(2), read with Part A to Chapter 1, within 30 days after the change.

Financial Services Board service fees

11. The tariffs for service fees which the Financial Services Board may impose under section 9(2) of the Act are as set out in the following Table:

SERVICE RENDERED BY COUNCIL	MINIMUM AMOUNT
Processing and consideration of application for recognition under section 11	R 30 000
Consideration of application for approval of change to particulars of recognised scheme under regulation 5	R 5 000
Consideration and publication of re-instatement under section 12(2)	R 12 500
Consideration of application for authorisation under section 18(5)(a)	R 5 000

Manner and form of registrar notice under section 12(3) of Act

- 12.** The notice to be published by the registrar under section 12(3) of the Act relating to the suspension, re-instatement or withdrawal of recognition of a scheme, must be published in the *Gazette* as soon as possible after the date of the suspension, re-instatement or withdrawal, and must for the information of the general public contain particulars of the scheme, the suspension, re-instatement or withdrawal of its recognition and the operative date thereof. The notice must also, if known to the registrar at the time of publication, mention any appeal lodged by the scheme in terms of section 12(4)(b) of the Act.

Fine for purposes of section 5(1)(d) of Act

- 13.** The fine for purposes of section 5(1)(d) of the Act is R 1 000.

Fine under section 18(5)(b) of Act

- 14.** The maximum fine to be imposed under section 18(5)(b) of the Act is R500 000.

Short title and commencement

- 15.** These Regulations are called the Financial Services Ombud Schemes Regulations, 2006.