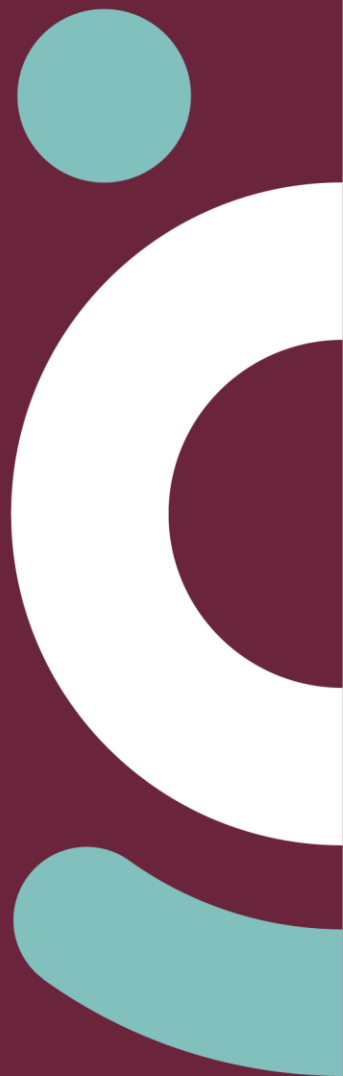




Terms of Reference





Terms of reference

Introduction

The Ombudsman for Banking Services scheme (the OBS) exists to provide individual and small business bank customers with a fair, quick and effective dispute resolution process, free of charge. It provides an informal, easily accessible alternative to other remedies, such as court proceedings.

Maintaining the independence of the Ombudsman and the OBS

The OBS is a scheme recognised under the Financial Sector Regulation Act (FSRA) and has statutory jurisdiction to deal with matters arising from the National Credit Act (NCA).

The OBS is a section 21 (non-profit) company, with a board comprising of four independent directors that are not associated with the banking industry, three directors that represent the banks and an independent chairperson. The composition of the Board assists in assuring that the scheme is and remains independent. The Board is responsible for appointing the Ombudsman.

The Ombudsman acts independently and objectively in resolving disputes and is not influenced by anybody in making his or her decisions. The Ombudsman enjoys security of tenure and can only be dismissed on the ground of incompetence, gross misconduct, or inability to effectively carry out his or her duties. The Ombudsman may not be dismissed for being unpopular with the banks or the consumer groupings.

The independence of the OBS and the Ombudsman is further assured by the fact that the Ombudsman and employees of the OBS are:

- entirely responsible for the handling and determination of complaints;
- accountable only to the Board; and
- adequately resourced to carry out their respective functions.

Criteria used to resolve disputes

1. The law, especially FSRA and NCA;
2. Applicable industry codes or guidelines;
3. Good banking practice;
4. Banking practice in other jurisdictions; and
5. Fairness in all the circumstances.



PART 1

These Terms of Reference have been adopted by the Board of the OBS in accordance with its Memorandum and Articles of Association as those which shall govern the OBS and the member banks.

These Terms of Reference define the powers and the duties of the Ombudsman and the OBS and the member banks. The Operational Procedures define the manner in which those powers and duties are to be exercised and fulfilled

1. The OBS' Principle Powers and Duties

1.1

- (a) The OBS's principal powers and duties are to consider disputes within these Terms of Reference and to facilitate the satisfaction, settlement or resolution of such disputes whether by agreement, by making recommendations or determinations or by such other means as seem expedient, subject to these Terms of Reference and the Operational Procedures.
- (b) It is a function of the OBS to educate bank customers regarding its existence, role and procedures and how to avoid encountering problems while using the banking system.
- (c) The OBS may report to the FSCA, Ombud Council and to the Banking Association on matters which may be of interest to them.
- (d) It is not a function of the OBS to provide advice to individual bank customers about banks or banking services.

1.2 The OBS shall:

- (a) receive and deal with complaints arising relating to the provision of banking services by a bank to a bank customer;
- (b) at the Ombudsman's sole discretion, determine whether or not a complaint falls within his or her jurisdiction within these terms of reference;
- (c) explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to both parties;
- (d) report any material or persistent non-compliance with the Terms of Reference or Operational Procedures by a member bank to the Board, thereafter to BASA and if non-compliance persists, to the FSCA.
- (e) report to the Board regarding complaints which have not been completed within a time laid down by the Board. This time period shall



initially be set at four months calculated from the date that a complaint became a dispute;

- (f) provide the Board with any information and assistance which it reasonably requires;
- (g) provide the Ombud Council with any information and assistance which it reasonably requires;
- (h) comply with any requirement under the Financial Advisory and Intermediary Services Act (FAIS), FSRA, NCA or other legislation.

1.3 The OBS may:

- (a) in respect of matters not falling within NCA, make a recommendation or determination up to R2 million¹ which may include amounts awarded for damages and interest or amounts for distress and inconvenience not exceeding R50 000, where appropriate;
- (b) make an award up to R10 000 in favour of a complainant when a bank unnecessarily delays the proceedings or fails to respond to a request from the OBS;
- (c) make a suggestion or recommendation to the parties regarding how the matter should be settled, in order to resolve a complaint speedily by conciliation;
- (d) follow and implement any procedure (including mediation) which the OBS deems appropriate;
- (e) require a bank or complainant involved in a complaint or dispute to provide any information which in the view of the OBS relates to that complaint and is necessary for its resolution;
- (f) in determining the principles of good banking practice, consult within the industry as the Ombudsman thinks appropriate;
- (g) advise the public on the procedure for making a complaint to the OBS;
- (h) set down and extend a time limit for any aspect of the OBS's procedures other than that mentioned in 4.2;
- (i) take account of a bank's security measures of which he or she has knowledge notwithstanding that no disclosure of those measures has been or will be made to the complainant;
- (j) collect information concerning any issues which may, in the opinion of the Ombudsman, be indicative of systemic problems pertaining to one bank or the banking industry generally, conduct research and formulate proposals for the rectification of the problems, submit them to the Banking Association and monitor the response thereto;

¹ Previously R1 million. Increased to R2 million as from 31 May 2011



- (k) issue bulletins or other information notes regarding banking practice and the approach of the OBS in a manner approved by the Board;
- (l) apply for recognition under the FSRA;
- (m) at any stage of the procedure dismiss a complaint on the grounds that:
 - (i) the complainant has misled the OBS;
 - (ii) the complainant has failed to:
 - (aa) cooperate in the process; or
 - (bb) respond to requests for information or comments within a reasonable time; or
 - (iii) there does not appear to be a reasonable prospect of the OBS eventually making a recommendation or determination in favour of the complainant for whatever reason; or
 - (iv) a real dispute of facts exists that cannot be resolved on a balance of probabilities; or
 - (v) any of the grounds for exclusion from jurisdiction referred to in 3.2 of these Terms of Reference are established or come into existence after the complaint has provisionally been determined to fall within the OBS's jurisdiction.

1.4 The Ombudsman and any member of the OBS staff may not be subpoenaed to testify in court by either of the parties to a dispute considered by the OBS.

2. The Obligations of the Member Banks

2.1 The member banks shall:

- (a) act within these Terms of Reference;
- (b) act according to the rules of procedure;
- (c) abide by the provisions of the Code of Banking Practice (the Code);
- (d) abide by the standard complaints handling procedures compiled by the Banking Association;
- (e) compile and make readily available brochures or other materials advising customers of those procedures;
- (f) expeditiously comply with requests made by the OBS in terms of the Terms of Reference and Operational Procedures; and
- (g) display notices in a prominent position in all their branches stating that they participate in the OBS and that copies of the Code are available on request.
- (h) communicate to clients at all relevant stages of the relationship with the bank, including point of sale, in relevant periodic communications and



when a complaint is rejected of the availability of the Ombudsman and its contact details

- (i) Supply the OBS's brochures, address, telephone, email and website details on request and ensure that the OBS's contact details are prominently displayed in all branches. Should any dispute not be resolved, and on request, members will provide all the documentation required to lodge a complaint.

2.2 The member banks shall not:

- (a) resort to litigation while a complaint is being dealt with by the OBS and, in respect of matters not falling within NCA, unless the Ombudsman gives his or her written approval on the application of a bank whose rights would otherwise be prejudiced;
- (b) prevent a customer who would otherwise be eligible to use the services of the OBS from doing so through the use of an arbitration clause in a contract;
- (c) provide the OBS with any misleading information or answer;
- (d) provide any customer with any misleading information regarding the operation of the OBS.

3. The OBS' Jurisdiction

3.1 Eligible complainants

The OBS may consider a dispute brought by or on behalf of a customer or prospective customer of a bank who is:

- (a) a private individual; or
- (b) a small business, including a sole proprietor or trader, a juristic person, partnership or trust, that had a turnover in the last financial year of less than R10 million²; or
- (c) an executor or beneficiary of a trust or estate in respect of which a banking service has been provided; or
- (d) the nominated beneficiary of the financial product which is the subject of the relevant complaint; or
- (e) a person for whose benefit a contract on insurance was taken out or was intended to be taken out; or

² Previously R5 million. Increased to R10 million as from 31 May 2011



- (f) the true owner or the person entitled to the immediate possession of a cheque or the funds that it represents, collected by the bank for someone else's account; or
- (g) the provider of a suretyship or security for a mortgage or loan; or
- (h) a person whose information is the subject of a dispute relating to confidentiality; or
- (i) a person entitled to complain to the OBS under the provisions of FAIS, FSRA, NCA or other legislation; and
- (j) in respect of matters not falling within NCA, or other legislation that specifically empowers the OBS to act, as a recognised ombud, has suffered some significant monetary loss, distress or inconvenience as a result of the bank's conduct; and
- (k) has or should have received the banking service that is the subject of the dispute or advice given by the bank's own staff, either in relation to the bank's own products or to the products of other institutions; and
- (l) has tried unsuccessfully to resolve the dispute through approaches to the bank's management or its internal complaints handling section or the complaint has been repudiated, or there has been an undue delay by the bank in resolving the complaint.

3.2 Limits on the Ombudsman's jurisdiction

- (a) Amount involved
 - (i) In respect of matters falling within NCA or other legislation, the OBS may not consider a complaint or dispute that relates to an amount that exceeds the limit determined by the Minister;
 - (ii) In respect of matters not falling within NCA, the OBS may not consider a complaint or dispute that relates to an amount that:
 - (aa) exceeds R2 million unless the bank concerned has agreed in writing to this limitation being exceeded; or
 - (bb) is part of a larger claim by the complainant against the bank involving more than R2 million, unless the complainant agrees to limit the claim to R2 million; or
 - (cc) together with another claim which the complainant could make against the bank would add up to a total of more than R2 million, unless the other claim is separate or unrelated.



(b) Time limit

- (i) The OBS may not consider a complaint or dispute that relates to:
 - (aa) an act or omission which occurred more than three years prior to the date when the complaint was lodged with the Ombudsman;
or
 - (bb) a claim that has become prescribed by law.
- (ii) The period of three years commences on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.

(c) Other processes

The OBS may not consider a complaint or dispute that:

- (i) falls within the jurisdiction of any statutory ombud as defined by their enabling legislation; or
- (ii) is based on the same event and facts as any matter which is, was, or becomes, the subject of any proceedings in any court, tribunal or regulator or other independent dispute resolving body or an investigation by a statutory ombud of any jurisdiction, unless the proceedings were instituted by the bank and the OBS has considered it appropriate to intervene and is not prohibited from doing so under any law; or
- (iii) is under consideration by a legal practitioner, whether or not with a view to instituting legal proceedings, unless the OBS determines that the involvement of a legal practitioner is appropriate in the circumstances; or
- (iv) would more appropriately be dealt with by a court of law or through any other dispute resolution process.

(d) Charges

In respect of matters not falling within NCA or other legislation, the OBS may not consider a complaint or dispute that relates to a bank's general interest rate policy or fees and charges policy, unless it relates to a fee or charge being incorrectly applied by the bank having regard to any scale of charges generally applied by that bank or maladministration which involves an act or omission contrary to or not in accordance with a duty owed at law or pursuant to the terms (express or implied) of the contract between the bank and the complainant.



(e) Unreasonable complainants

The Ombudsman may, at the Ombudsman's sole discretion, determine that a dispute should not be considered on the grounds that the complainant is pursuing it:

- (i) in an unreasonable manner; or
- (ii) in a frivolous, vexatious, offensive, threatening or abusive manner.

(f) Termination by complainant

A complainant may, at any time prior to the issuing of a determination, terminate the OBS's handling of the complaint and resort to litigation or other dispute resolution process by withdrawing the complaint in writing.

4. Prescription

4.1 Prescription shall not run against a complainant or bank during the period that the complaint is under consideration by the OBS.

4.2 For purposes of 4.1, the time during which a matter is before the OBS shall (provided that the complaint is determined to fall within the OBS's jurisdiction) commence on the day that a properly completed application form is lodged with the OBS until thirty days after the closure or withdrawal of the complaint, or the appeal process is complete.

5. Rules of Evidence

The OBS shall not be bound by any legal rule of evidence.

6. Documents

6.1 Correspondence, communications and documents which came into existence in the course of a genuine and bona fide attempt to settle a dispute will be considered to be privileged and not subject to the rule of discovery in any ensuing court action.

6.2 Documentation relating to assessments, recommendations and determinations shall not be admissible in a court of law.



6.3 The OBS shall return all original documents to the parties from whom they are received, unless the documents are required for the purposes of investigation. The OBS shall ensure that any such documents are safeguarded and returned upon the closure of the case.

7. Assessment, Mediation, Hearing, Recommendation and Determination

7.1 Assessment

The OBS may, in order to settle a dispute speedily, make an assessment of its merits without undertaking an investigation and suggest to the parties how the matter should be settled.

7.2 Mediation

The OBS may, in its sole discretion, mediate any matter that it believes is appropriate for mediation, taking into consideration the wishes of the parties and the nature of the complaint, without undertaking an investigation.

7.3 Hearing

- (a) If the Ombudsman and all the parties concerned are in agreement that a complaint or a material and conclusive dispute of fact can best be decided by the hearing of evidence, it may be so decided.
- (b) A hearing as aforesaid may be conducted in an inquisitorial manner by the Ombudsman or any other person or persons appointed for that purpose by the Ombudsman.
- (c) The decision arrived at in a hearing shall be of the same effect as a determination made under 7.5.
- (d) No party shall have the right to be legally represented at a hearing, whether by a practicing lawyer, legal advisor or counsel.

7.4 Recommendation

- (a) The OBS may, in any case where a matter has not been settled, make a written recommendation setting out how the matter should be resolved and the reasons for the recommendation.
- (b) Neither a complainant nor a bank shall be bound to accept a recommendation made by the OBS, but if a bank does not accept a recommendation that has been accepted by the complainant and that



satisfies the requirements of 7.5, the Ombudsman may then proceed to issue a determination.

- (c) A complainant who does not accept a recommendation may institute legal proceedings at his or her own expense, if so advised, or request the Ombudsman to make a determination, if the requirements of 7.5 are satisfied.

7.5 Determination

- (a) The Ombudsman personally may in a case where a recommendation has not been accepted by all parties concerned, make a binding written determination based on the law or the Code and the OBS's equity jurisdiction, provided that:
 - (i) all the material facts are agreed or the facts have been established on a balance of probabilities;
 - (ii) the total amount involved in the dispute exceeds R10 000;
 - (iii) if the determination is sought by a complainant, the complainant has agreed to be bound by it, subject to the right to leave to appeal under 8.2; and
 - (iv) the Ombudsman is satisfied that valid grounds have been advanced by the party seeking the determination; and
 - (v) the subject matter of the complaint does not fall within the provisions of NCA or other legislation.
- (b) A determination is binding on both the parties, subject to the right to leave to appeal under 8.2.
- (c) A determination may order that the bank or complainant take such steps in relation to the complaint as the Ombudsman deems appropriate and just.
- (d) The bank must give effect to any order made in a determination within the time stipulated by the Ombudsman.
- (e) Should the bank fail to give effect to any order made in a determination within the time stipulated, that bank will be liable to have an award made against it under 1.3 (b) and to be reported to the board under 1.2 (d).

8. Appeal

- 8.1 The Board shall select a panel of at least three retired high court judges. The chairperson of the Board shall allocate a single member of the panel (the panel member) to conduct the appeal.



8.2 A bank or a complainant shall have the right to appeal any adverse determination made by the Ombudsman provided that:

- (a) the panel member shall only agree to the appeal of a determination if he or she is of the opinion that there is a reasonable prospect that he or she could come to a different finding;
- (b) if the panel member agrees to an appeal of a determination, the costs of the appeal, as determined by the board from time to time, shall be borne by the parties as decided by the single member of panel;
- (c) no new evidence shall be produced by any party to the proceedings of an appeal;
- (d) no party shall have the right to appear in person or be represented before the panel member;
- (e) both the bank and the complainant will be bound by the panel member's finding;
- (f) the complainant must give such an undertaking before the leave to appeal shall be considered;
- (g) the Ombudsman may assist the complainant if an appeal is brought by a bank;
- (h) the Ombudsman may appoint an amicus curia at the request of the panel.

9. Publication

9.1 In cases where a recommendation may not be made a determination, as per clause 7.5(a), the Ombudsman may, at his or her discretion, publish the details of the recommendation and the fact that the bank has refused to abide by it. The decision of the Ombudsman on this issue shall not be subject to appeal.

9.2 The details of all determinations and appeal decisions, including the names of the parties, shall be published, irrespective of which party they are made in favour of.

10. Extinguishing of Liability

Acceptance by a complainant and bank of the terms of the Ombudsman's determination, or a recommendation, assessment or agreement reached during mediation or other such conciliatory process will finally extinguish the liability in law of the bank and complainant to each other on the cause of action concerned.



11. Enforcement of Outcome

- 11.1 The decision of the appeal panel, in the case where a determination has been appealed, or a determination in the case where an appeal has not been sought in respect of a determination within the prescribed time limit, may be made an order of court by the party in whose favour the matter was decided.
- 11.2 If any matter that falls within the provisions of NCA is resolved by agreement between the parties or through the making of a determination, the OBS may record the resolution of that dispute in the form of an order and, with the consent of the parties, submit it to a court or the NCA Tribunal to be made a consent order.

12. Precedents

Only decisions on appeal in terms of 8.2 and test cases, and not determinations and recommendations, shall establish precedent in the OBS's office. No decision reached in terms of these Terms of Reference shall establish legal precedent.

13. Information not provided timeously

If a bank does not provide information requested or does not provide it timeously, the OBS shall have power to assume that the evidence is against that bank and to make a recommendation or determination accordingly.

14. Test Cases

- 14. The Ombudsman may, upon the request of a bank or on his or her own initiative, refer a matter that may have important consequences for the banking industry in general or that may involve an important or novel point of law or a contentious banking practice or policy to the appeal panel as a test case, in order to obtain a ruling.
- 14.2 The Ombudsman may grant or refuse the application in his or her sole discretion.
- 14.3 If, at any stage after the application has been granted, the OBS is of the opinion that the bank is causing an undue delay in the finalisation of the dispute, the OBS may reopen the file and proceed with the complaint in the usual manner and inform the parties accordingly.



15. Annual Report

The Ombudsman shall prepare a report on the activities of the company for each calendar year and shall publish that report by 30 April of the following year. The report must comply with any requirements imposed by FSCA or the Ombud Council in terms of the FSRA.

16. Amendments to the Terms of Reference

The Ombudsman may make recommendations to the Board (including a committee of the Board) for changes to these Terms of Reference and Operational Procedures.



PART 2

Operational Procedures

STEP 1

17. Receipt of Enquiry

- 17.1 Upon receipt of an enquiry, the OBS will ascertain if the complainant referred the complaint to his/her bank and allowed the bank at least twenty (20) days to deal with the complaint.
- 17.2 If this has not been done, the OBS will advise the complainant to refer the matter to the relevant bank and supply the complainant with the relevant contact details of the person/s responsible for complaint resolution within the complainant's bank.
- 17.3 The bank shall provide the complainant with a reference number or other suitable proof that a complaint has been lodged.
- 17.4 If it would, in the OBS's opinion, cause a complainant undue hardship or inconvenience to refer a matter to his or her bank, before obtaining the OBS's assistance, the OBS may refer the complaint directly to the bank concerned.

STEP 2

18. Complaint Returned to / Received by OBS

- 18.1 When a complaint is received, the OBS shall establish that:
 - (a) the Application for Assistance form has been correctly completed; and
 - (b) the complainant has followed the bank's internal complaints procedure; and
 - (c) the complainant is not satisfied with the outcome or has not received a response from the bank within twenty (20) working days,
- 18.2 The OBS shall determine whether or not the complaint falls within the Terms of Reference and, in reaching this decision may consider representations from both the complainant and the bank named in the complaint.



- 18.3 If the complaint falls within the Terms of Reference, the OBS shall inform the person responsible for complaint resolution within the complainant's bank, hereinafter referred to as the designated official (DO), in writing, that a complaint has been lodged with the OBS and that the bank shall have a time period set by the OBS, but not less than fifteen (15) working days from receipt of the communication, to resolve the dispute with the complainant or to provide its reasons for repudiating the complaint.
- 18.4 Subject to 29 below, the OBS will ensure that the bank concerned is given full details of the complaint, including copies of relevant documentation submitted to the OBS to the extent necessary. The OBS will identify the complaint to the bank concerned through inclusion of the reference number, as described in 17.3 above.
- 18.5 The notification referred to in 18.3 may be delivered by hand to the bank concerned, or be sent by post, telefax or e-mail.
- 18.6 The bank must acknowledge receipt of the notification and may do so by letter delivered by hand or sent by post, telefax or e-mail.
- 18.7 During the time set in terms of 18.3, the bank shall:
- (a) contact the complainant to clarify any issue, to ascertain the essence of the complaint and to attempt to settle the complaint to the reasonable satisfaction of the complainant;
 - (b) if able to resolve the complaint, provide the OBS with proof that the complaint has been settled and that any undertaking made by the bank has been complied with;
 - (c) undertake any investigation that is necessary;
 - (d) inform the OBS if it establishes any fact that would exclude the matter from the OBS's jurisdiction; and
 - (e) if the bank was unable to resolve the complaint within the time period stipulated by the OBS, provide the OBS with a report outlining the investigation that it undertook and the reasons that the matter was not resolved and its reasons for repudiating the complaint.
- 18.8 During the time set in terms of 18.3, the OBS may facilitate a settlement between the bank and the complainant if the OBS considers that it would be appropriate and helpful to do so.



- 18.9 Where two or more banks are involved in a complaint relating to a cheque or the use of an ATM, the drawee bank or the cardholder's bank shall conduct the initial investigation and be responsible for obtaining information from the other bank involved.
- 18.10 If the OBS is of the view that the bank has provided the assistance sought by the complainant or provided an acceptable explanation for its conduct complained of, the OBS may inform the complainant of this fact and close the file if no new information or response is received from the complainant.

STEP 3

19. Complaint becomes a Dispute

If the bank fails to respond to the referred complaint within the time stipulated in 18.3 or informs the OBS that it is not able to resolve the dispute or it appears from the bank's response that the complaint has not been resolved, the complaint becomes a dispute and the OBS shall then proceed to investigate the complaint and obtain such information or expert advice as it shall deem necessary. After the complaint has become a dispute, the OBS will direct all correspondence intended for the bank to the DO.

20. Investigation

- 20.1 The OBS may require the parties to clarify any issues raised by the complaint or to provide such information in their possession or under their control to the extent that the OBS deems necessary in order to arrive at a conclusion.
- 20.2 Subject to the considerations of confidentiality, the OBS shall, to the extent deemed appropriate, permit each of the parties to comment on the information provided to the OBS by the other.

21. Assessment

- 21.1 If deemed appropriate by the OBS, a brief assessment will be issued to the parties.
- 21.2 In the assessment the OBS shall set a time limit within which the parties must indicate whether or not they agreed to the suggested resolution of the dispute.



- 21.3 Should either party disagree with the conclusion reached in the assessment or should either party wish to submit new information that it believes might affect the final decision, it may make further representations to the OBS.
- 21.4 In making such further representations, the parties should avoid repeating arguments already put forward, unless they were clearly overlooked.
- 21.5 A bank wishing to provide new information shall explain why the information was not submitted sooner and shall advance reasons as to why it should not compensate the complainant for the inconvenience caused by the delay.
- 21.6 Upon receipt of representations from either of the parties, a final recommendation may be issued without further consultation with either party.

22. Mediation

- 22.1 If, after the consideration of a complaint, the OBS believes the complaint is suitable for mediation, the OBS shall establish from the relevant parties whether they are prepared to take part in the mediation.
- 22.2 If any party declines the invitation to take part in the mediation, the complaint shall be dealt with in the usual way.
- 22.3 All parties that take part in the mediation shall sign an agreement to mediate, acknowledging their rights and duties during the mediation. Any individual that represents a party at the mediation must ensure that he or she has the necessary mandate and authority to settle the complaint.
- 22.4 In the event of the mediation not being successful, the person acting as mediator shall not proceed to investigate the complaint unless the parties to the mediation had so agreed prior to the commencement of the mediation.
- 22.5 If the parties have not so agreed, another member of the OBS staff shall take over the case.

23. Recommendation

- 23.1 Once the OBS has investigated a matter to the extent necessary, a provisional recommendation may be made.



- 23.2 Should either party disagree with the conclusion reached in the provisional recommendation or should either party wish to submit new information that it believes might affect the final decision, it may make further representations to the OBS.
- 23.3 In making such further representations, the parties should avoid repeating arguments already put forward, unless they were clearly overlooked.
- 23.4 A bank wishing to provide new information shall explain why the information was not submitted sooner and shall advance reasons as to why it should not compensate the complainant for the inconvenience caused by the delay.
- 23.5 Upon receipt of representations from either of the parties, a final recommendation may be issued without further consultation with either party.
- 23.6 The bank and the complainant must advise the OBS in writing within 10 working days from receiving the final recommendation from the OBS whether they accept the terms of the recommendation or not.
- 23.7 If the complainant accepts the recommendation and the bank fails to respond to the OBS within the time limit referred to in 23.6, the Ombudsman may proceed to make a determination.
- 23.8 If the bank responds within the time limit referred to in 23.6 but the complainant rejects the recommendation or fails to respond within the time limit, the recommendation will fall away.
- 23.9 If both parties accept the terms of the recommendation, they must comply within the period of time prescribed in the recommendation.

24. Hearing

- 24.1 If, after the consideration of a complaint, the OBS believes the complaint is suitable for a hearing, the OBS shall establish from the relevant parties whether they are prepared to take part in the hearing.
- 24.2 If any party declines the invitation to take part in the hearing, the complaint shall be dealt with in the usual way.
- 24.3 All parties that take part in the hearing shall sign an agreement, acknowledging their rights and duties during the hearing. Any individual that represents a party



at the hearing must ensure that he or she has the necessary mandate and authority to settle the complaint.

- 24.4 At any hearing, any party, if an individual, may conduct their case themselves (with assistance from any person if they wish) or may appear and be represented by any person who is not legally qualified, provided that, if in any particular case there are good and sufficient reasons for doing so, the Ombudsman or person appointed by the Ombudsman may refuse to permit a particular person to assist or represent the party at the hearing.
- 24.5 Neither party shall be entitled to be legally represented at a hearing.
- 24.6 Evidence before the Ombudsman or person appointed by the Ombudsman may be given orally or where the Ombudsman or person appointed by the Ombudsman considers appropriate, by affidavit or written statement, but the Ombudsman or person appointed by the Ombudsman may, if it is appropriate, at any stage of the hearing require the personal attendance of any deponent or maker of a written statement.
- 24.7 At such a hearing, which shall be conducted in an inquisitorial manner, all issues of a procedural or evidentiary nature shall be determined by the Ombudsman or other person or persons so appointed.

25. Determination

- 25.1 The party seeking a determination shall concisely set out in writing their grounds for doing so, which shall reach the Ombudsman within the time limit referred to in 23.6.
- 25.2 If the determination is sought by the complainant, the complainant must agree to be bound by the determination, subject to the right to leave to appeal .
- 25.3 The Ombudsman shall, at the Ombudsman's sole discretion, give the opposing party an opportunity to comment on the grounds referred to in 25.1
- 25.4 The Ombudsman will make a determination in the matter if satisfied that the party seeking the determination has advanced valid grounds, and deliver it to the parties. Neither party shall have the right to make oral representations to the Ombudsman.



- 25.5 The parties shall advise the OBS within ten (10) working days after receiving the determination whether they accept its terms or not.
- 25.6 If both parties accept the terms of the determination, they must comply within the period of time prescribed in the determination.
- 25.7 If either party does not accept the terms of the determination, it must apply to the panel under 8.1 for leave to appeal within fifteen (15) working days from receiving the determination from the Ombudsman.
- 25.8 When a determination is made at the request of a bank, a standard amount (R2 000 excluding VAT) shall be paid by the bank concerned to the OBS and shall become part of the income of the OBS. The standard amount may be reviewed by the Board from time to time.

26. Appeal Process

- 26.1 The party seeking an appeal shall submit the grounds upon which the appeal is sought in writing to the appeal panel.
- 26.2 A determination made by the Ombudsman is only reviewable by the appeal panel with the leave of the appeal panel after taking into consideration:
 - (a) the complexity of the matter; or
 - (b) the reasonable likelihood that the review panel may reach a different conclusion.
- 26.3 If the appeal panel becomes seized with the appeal, the appeal must be dealt with in terms of the rules applicable to that panel, as approved by the Board.

27. National Credit Act Processes

- 27.1 If any matter that falls within the provisions of the NCA is resolved, the OBS may:
 - (a) record the resolution of that dispute in the form of an order; and
 - (b) if the parties to the dispute consent to that order, submit it to:
 - (i) a court to be made a consent order, in terms of its rules; or
 - (ii) the Tribunal to be made a consent order in terms of section 138.
- 27.2 If in any matter that may be dealt with by the Regulator or the Tribunal under the NCA, the OBS concludes that either party to conciliation, mediation or



arbitration is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the OBS shall issue a certificate in the prescribed form stating that the process has failed.

28. Test Cases

28.1 A bank may, once a complaint has been lodged with the OBS, apply to the Ombudsman for the complaint to be made a test case.

28.2 The bank shall set out the following in its application:

- (a) the reasons for the application;
- (b) the possible implications for the banking industry if the application is not granted;
- (c) the estimated time it would take to finalise the matter;
- (d) any possible prejudice the complainant may suffer;
- (e) an undertaking to pay all the legal costs associated with the test case; and
- (f) an undertaking to finalise the test case within a reasonable time.

28.3 If the application is granted the Ombudsman shall cease considering the complaint and inform the complainant accordingly.

28.4 If, after the application has been granted, the Ombudsman decides to reopen the file on the grounds that the bank is causing an undue delay in the finalisation of the dispute, the OBS shall proceed with the complaint in the usual manner and inform the parties accordingly.

29. Confidentiality

29.1 If any party to a complaint supplies information to the OBS and requests, in writing, that it be treated as confidential information, the OBS shall not disclose that information to any other party, except with the written consent of the first mentioned party.

29.2 If consent is not given, the OBS is not entitled to use that information to reach a decision adverse to the party to whom the confidential information is denied.

29.3 Subject to 29.1, as far as is practical and at the sole discretion of the OBS, all documentation should be provided to both parties to a dispute. However, it is



not necessary for documents and information used by the OBS to be provided to both parties as long as the OBS's written reasons clearly identify the documents or information relied on and the identified documents or information are provided on request.

30. Privacy and the processing of personal information

The OMBUDSMAN FOR BANKING SERVICES (“OBS”, “we” or “us) is committed to protecting complainant’s privacy. We value the trust of our subscribers and all others who work with us, and we recognize that maintaining your trust requires that we be transparent and accountable in how we handle your personal information. For that reason, we call our Privacy Policy and Practices “Our Commitment to Your Privacy.”

The Privacy Policy explains how we collect, use, disclose, and safeguard personal information.

30.1 What personal information do we collect?

You have complete control over your personal information. In general, you can visit our website without providing us with any personal information. There are however instances in which you will need to provide us with your personal information, for instance when you request our office to open a complaint against the bank. This information may include registration data (your name, email address, physical address, phone number, title, bank account number, Identity number etc), information request data and response data (User information). The OBS conducts its business in accordance with South African legislation. The OBS considers it imperative to protect the privacy interests of data subjects. We do not, except where otherwise permitted by law, collect, use or disclose your Personal Information without your consent.

30.2 What Non-Personal Information do we collect?

Non-personal information is gathered automatically when you visit our website and is stored for use on our system. The OBS may collect and analyse non-personal information to evaluate how visitors use the OBS website.



30.3 Retention of Personal and Non-Personal Information

All Personal Information retained on our database is in accordance with the retention provisions set out in the applicable Laws and regulations of South Africa.

30.4 Children's privacy

The OBS is committed to protecting the privacy rights of children and we encourage parents/guardians to participate in their children's online activities. The OBS does not knowingly collect information from children and does not target children with its website.

30.5 How do we use your information?

The OBS uses your personal information to provide a service to you, specifically to communicate with you and the bank regarding your complaint. We will not sell, rent or share your information.

30.6 Ensuring Your Personal Information is Correct and Accurate

You have a right to ensure that your Personal Information is accurate, complete and up-to-date. If you contact us to correct your user information, we will attempt to correct such inaccuracies in a timely manner

30.7 Security

We have adopted an industry grade best of breed security model to protect your Personal Information. As part of our security model, we have implemented fire-wall technology, password controls, encryption processes, antivirus software as well as physical measures. We have a stringent security policy in place that every officer, employer and supplier of OBS must adhere to.

30.8 Usernames and Passwords

To gain access to certain information, specifically the progress on your complaint, the OBS will require you to register, where after you will receive a Username and Password. In some cases, failure to provide information may prevent you from accessing these sections of the OBS website. By accessing and using our protected and secured website, you agree to maintain the



confidentiality of the username and password used to access the site and consent to our terms and conditions

30.9 Cookies

Our site uses cookies in a limited way. Cookies are small files containing information that a website uses to track a visit. Both persistent and session cookies are used by many websites. However, we use session cookies only to better understand how our site is used, to make sure our information and dynamic content are served up to visitors correctly, and to improve the performance of our site for users, particularly the way search pages are delivered. Session cookies do not remain on your computer at the end of your visit, and cannot be used to obtain any personally identifiable details.

30.10 Third-Party Sites

Our site may contain links to third party websites. If you follow a link to any of these websites, please note that these websites have their own terms and privacy policies and that we do not accept any responsibility or liability for them

Because we are not responsible for any representations or information or warranties or content on any website of any third party (including websites linked to this website or websites facilitated by us), we do not exercise control over third parties' privacy policies and you should refer to the privacy policy of any such third party before given them any of your personal information.

30.11 Updating of Privacy Policy

We reserve the right, in our sole discretion to update, modify or amend (including without limitation, by the addition of new terms and conditions) this Privacy Policy from time to time with or without notice. You therefore agree to review the Privacy Policy whenever you visit our website for any such change. Save as expressly provided to the contrary in this Privacy Policy, the amended version of the Privacy Policy shall supersede and replace all previous versions thereof.

Please check our site on an on-going basis or contact us for the most up-to-date information on our privacy practices.



Contact Information

Questions, concerns or complaints related to our Privacy Policy or our treatment of Personal Information should be directed to:

OMBUDSMAN FOR BANKING SERVICES

34 & 36 Fricker Road, Ground Floor,

34 Fricker Road, Illovo Boulevard,

Illovo

info@obssa.co.za

31. Interpretation

31.1 In these Terms of Reference the following expressions have the following meanings:

“Ombudsman” means the South African Banking Ombudsman appointed from time to time by the Board to exercise the powers and duties of that office.

“ATM” means automatic teller machine.

“Bank” means a registered bank that is a member of the Banking Association of South Africa and wholly owned subsidiaries of that bank rendering financial services.

“Bank customer” means any small business or personal banking customer who makes use of banking services.

“Banking Services” means all services provided by banks in the normal and ordinary course of their business including the use overseas of credit or debit cards issued by banks.

“Board” means the Board of Directors of the company “The Ombudsman for Banking Services”.

“Code” means the Code of Banking Practice.

“Complainant” means any bank customer making a complaint to the OBS, in respect of any banking services provided by his or her bank.



“Dispute” means a disagreement in relation to banking services between a bank and a customer of that bank which has not been resolved by the parties.

“DO” means the designated official responsible for complaint resolution within a bank.

“FAIS” means the Financial Advisory and Intermediary Services Act.

“FSRA” means the Financial Sector Regulation Act Act.

“FSCA” means the Financial Sector Regulation Authority

“Maladministration” means an act or omission in breach of any obligations or duty owed by the bank to the complainant for banking services between a bank and its customer.

“Member bank” means a bank that is a member of the Ombudsman for Banking Services company by virtue of its membership of the Banking Association.

“NCA” means the National Credit Act.

“OBS” means the Ombudsman for Banking Services scheme.

“Ombud Council” means the council established by the FSRA

“Scheme” means the Ombudsman for Banking Services.

“Small business” means a sole proprietor, juristic person, partnership or trust whose turnover for the last financial year was less than R10 million.

“Tribunal” means the Tribunal created in terms of s 26 of NCA.

- 31.2 References to the provision of banking services include, where the context admits, references to their non-provision.
- 31.3 The use of the male gender in these Terms of Reference includes the other gender, as applicable, and references to the singular number (including without limitation, references to “recommendation”, complainant” and “bank”) include, where the context admits, the plural number and vice versa.



32. Conflicts

If there is a conflict between the provisions of these Terms of Reference and the provisions of any Act, the latter take precedence.

**Companies and Intellectual Property Commission
Republic of South Africa**

**Form CoR 15.1E
Long Standard Form
Non Profit Companies
with members**

- This form is issued in terms of section 13 of the Companies Act, 2008, and Regulation 15 of the Companies Regulations, 2011.
- This form may be used only to incorporate a Non Profit company with members.
- A Non Profit company may be incorporated by three or more persons.
- The Incorporators must complete this form by-
 - (a) filling in the Name of the Company, unless it is to be completed by the Commission in terms of Regulation 14 (1) (b (iii));
 - (b) inserting a statement of the objects of the company in the space provided;
 - (c) inserting the number of directors and alternate directors in the spaces provided; and
 - (d) each signing and dating the form on a line of the Table.
- There are 9 pages in this form. If filing by paper, all 9 pages must be filed. Use additional sheets if required to provide information.
- This Form must be filed with Form CoR 14.1, Notice of Incorporation, and required annexures and fees.

**Contacting the
Commission**

The Companies and Intellectual
Property Commission of South Africa

Postal Address
PO Box 429
Pretoria 0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

**Memorandum of Incorporation
of**

OMBUDSMAN FOR BANKING SERVICES NPC

Registration Number: 2000/002577/08

which is referred to in the rest of this Memorandum of Incorporation as “the Company”.

The Company is a Non Profit company with members, with the following objects:

To provide customers of participating banks with a dispute resolution mechanism.

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by Special Resolution passed by the Board on 13 June 2018.

In this Memorandum of Incorporation –

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008; and
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act.

Article 1 – Incorporation and Nature of the Company

1.1 Incorporation

- (1) The Company is incorporated as from 10/02/ 2000 as a Non Profit company, as defined in the Companies Act, 2008.
- (2) The Company is incorporated in accordance with, and governed by –
 - (a) the unalterable provisions of the Companies Act, 2008 that are applicable to Non Profit companies;
 - (b) the alterable provisions of the Companies Act, 2008 that are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
 - (c) the provisions of this Memorandum of Incorporation.

1.2 Objects and Powers of the Company

- (1) Except to the extent necessarily implied by the Company's stated objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19 (1)(b)(ii), and as such the Company has all of the legal powers and capacity of an individual to the extent that a juristic person is capable of exercising such power or having such capacity.
- (2) The Company is not subject to any provision contemplated in section 15(2)(b) or (c), as there are no specific provision prohibiting the amendment of this Memorandum of Incorporation nor any restrictive conditions applicable to the Company other than those contained in this Memorandum of Incorporation.
- (3) Upon dissolution of the Company its net assets must be distributed in the manner determined in accordance with item 1(4)(b) of Schedule 1 of the Companies Act, 2008.

1.3 Memorandum of Incorporation and Company rules

- (1) This Memorandum of Incorporation of the Company may only be altered or amended –

- (a) in compliance with a court order, effected by a resolution of the Board of the Company, as provided for in section 16(1)(a) and (4); or
 - (b) pursuant to a special resolution proposed by either the Board or the shareholders entitled to exercise 10% of the voting rights that may be exercised on such resolution, and which is subsequently adopted at a shareholders meeting or adopted as a written resolution in terms of section 60, as is provided for in section 16(1)(c); or
 - (c) in terms of section 17(1) by the Board of the Company, or an individual authorised by the Board, to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document; or
 - (d) in terms of section 152(6)(b) by an appointed Business Rescue Practitioner as a result of a Business Rescue Plan approved by the members.
- (2) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the rules made in terms of section 17(1) and necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by delivering a copy of those rules to every member.
- (3) The authority of the Board to make, amend or repeal any necessary or incidental rules relating to the governance of the Company, as contemplated in section 15(3) to (5) and on matters not addressed in the Companies Act, 2008 or this Memorandum of Incorporation is not limited or restricted hereby in any manner.
- (4) The Board must publish any rules made in terms of section 15(3) to (5) by delivering a copy of those rules to each shareholder by ordinary or electronic mail.
- (5) Rules made, published and filed in terms of section 15(3) take effect on a date that is the later of 10 (ten) business days after the rules are filed or the date, if any, specified in the rule.
- (6) Rules effected in terms of 1.3(4) above are binding –
 - (a) on an interim basis from the time it takes effect until it is put to a vote at the next general members meeting, or is put to a vote to members by ordinary written resolution; and
 - (b) on a permanent basis only if it has been ratified by ordinary resolution on being put to the vote as provided in (a) above.
- (7) Rules –
 - (a) ratified in terms of 1.3(6)(b) above require a notice of ratification being filed with the Commission within 10 (ten) business days after ratification; and

- (b) not ratified when put to the vote require a notice of non-ratification being filed with the Commission within 5 (five) business days thereafter and the Board may not make a substantially similar rule within the ensuing 12 (twelve) months unless it has been approved in advance by ordinary members' resolution.
- (8) The rules are binding -
- (a) between the company and each member;
 - (b) between or among the members;
 - (c) between the Company and –
 - (i) each director or prescribed officer of the Company; or
 - (ii) any member of a committee of the Board,
- in the exercise of their respective functions within the Company.

1.4 Application of optional provisions of Companies Act, 2008

The Company elects, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008 and therefore elects as follows:

- (a) to submit to the enhanced accountability and transparency provisions prescribed by the provisions of Chapter 3 of the Companies Act 2008;
- (b) to have its annual financial statements audited;
- (c) to appoint an auditor and company secretary;
- (d) to appoint an Audit Committee.

1.5 Members of the Company

- (1) As contemplated in Item 4 (1) of Schedule 1 of the Companies Act 2008, the Company has members, who are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the Company.
- (2) The terms and conditions of membership in the company are as follows:
 - (a) All banks which are Members of the Banking Association of South Africa shall be deemed to be Members of the Company for so long as they remain members of the Banking Association of South Africa;

- (b) Members of the Company will be bound by the Ombudsman's Terms of Reference, as amended from time to time;
 - (c) Banks which are not Members of the Banking Association of South Africa may apply to the board, for membership of the Company. If a majority of the board agrees to the membership application being granted, the decision will be ratified at the following members meeting in terms of clause 3.8 hereof.
- (3) A Member shall ipso facto cease to be a Member of the Company –
- (a) If the Membership of the Banking Association of South Africa is terminated it will be deemed to be a termination of Membership of the Company;
 - (b) If an order for the final winding-up of judicial management of the Member is granted or a special resolution for the winding –up of the Member is duly passed and Registered in terms of the Act.

2 – Rights of Members

2.1 Members' authority to act

If, at any time, every member of the Company is also a director of the Company, as contemplated in section 57 (4), the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

2.2 Members' right to Information

Members' rights to access information is as set out in section 26 of the Companies Act 2008.

2.3 Representation by concurrent proxies

The right of a member of the Company to appoint persons concurrently as proxies, as set out in section 58 (3)(a), is not limited or restricted by this Memorandum of Incorporation.

2.4 Authority of proxy to delegate

The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58 (3)(a) is not limited or restricted by this Memorandum of Incorporation.

2.5 Requirement to deliver proxy instrument to the Company

The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting, as set out in section 58 (3)(c), is not varied by this Memorandum of Incorporation.

2.6 Deliberative authority of proxy

The authority of a member's proxy to decide without direction from the member whether to exercise, or abstain from exercising any voting right of the member, as set out in section 58 (7) is not limited or restricted by this Memorandum of Incorporation.

2.7 Record date for exercise of member rights

If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is, in the case of a meeting, the latest date by which the company is required to give members notice of that meeting or the date of the action or event in any other case, in accordance with section 59 (3).

Article 3 – Members Meetings

3.1 Requirement to hold meetings

The Company is not required to hold any members meetings other than those specifically required by the Companies Act, 2008.

3.2 Members' right to requisition a meeting

The right of members to requisition a meeting, as set out in section 63 (3), may be exercised by at least 25% of the voting members, as provided for in that section.

3.3 Location of members meetings

The authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9) is not limited or restricted by this Memorandum of Incorporation.

3.4 Notice of members meetings

The minimum number of days for the Company to deliver a notice of a members meeting to the members, as required by section 62 is as provided for in section 62 (1).

3.5 Electronic participation in members meetings

The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 is not limited or restricted by this Memorandum of Incorporation.

3.6 Quorum for members meetings

- (1) The quorum requirement for a members meeting to begin, or for a matter to be considered are as set out in section 64 (1) without variation, and accordingly –
 - (a) a members meeting may not begin until sufficient persons are present to exercise, in aggregate, at least 25% of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
 - (b) a matter to be decided at the meeting may not begin to be considered unless sufficient persons are present to exercise, in aggregate, at least 25% of all the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda; and
 - (c) as set out in section 64(3), despite the percentage figures set out in (a) and (b) above, if the company has more than two members, a meeting may not begin, or a matter begin to be debated, unless at least three members are present at the meeting
- (2) The time periods allowed in section 64 (4) and (5) to meet the quorum requirements as set out in (1) apply to the Company without variation.
- (3) The authority of a meeting to continue to consider a matter after a quorum has been established for a meeting or for a matter to be considered at a meeting so long as at least one member with voting rights entitled to be exercised at the meeting, or on that matter, is present, as set out in section 64 (9) is not limited or restricted by this Memorandum of Incorporation.

3.7 Adjournment of members meetings

The maximum period allowable for an adjournment of a members meeting is the earlier of the date 120 business days after the record date as provided in 2.7 above or 60 business days after the date on which the adjournment occurred as set out in section 64(12) applies without variation.

3.8 Members resolutions

- (1) For an ordinary resolution to be adopted at a members meeting, it must be supported by more than 50% of the members who voted on the resolution, as provided in section 65 (7).
- (2) For a special resolution to be adopted at a members meeting, it must be supported by at least 75% of the members who voted on the resolution, as provided in section 65 (9).
- (3) A special resolution adopted at a members meeting is not required for a matter to be determined by the Company, except those matters set out in section 65 (11), being to –
 - (a) Amend the company's Memorandum of Incorporation to the extent required by section 16 (1) (c);
 - (b) Approve the voluntary winding up of the company, as contemplated in section 80 (1);

- (c) Approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5;
- (4) A special resolution adopted at a members meeting is not required for a matter to be determined by the Company, except those matters set out below –
 - (a) Ratify a consolidated revision of a company's Memorandum of Incorporation, as contemplated in section 18 (1) (b);
 - (b) Ratify actions by the company or directors in excess of their authority, as contemplated in section 20 (2);
 - (c) Approve the winding up of a company in the circumstances contemplated in section 81 (1);

Article 4 - Directors and Officers

4.1 Composition of the Board of Directors

- (1) The Board of Directors of the Company comprises eight (8) directors, and if necessary, eight (8) alternate directors each of whom is to be elected –
 - (a) by the members of the Company entitled to exercise voting rights in such an election; and
 - (b) made up as follows:
 - (i) a judge or retired judge (and if a suitable candidate cannot be found, then a senior advocate) selected by the Board who will also be the chairperson of the Board;
 - (ii) three (3) directors, being representatives of the banking sector in South Africa, nominated by the Board of the Banking Association of South Africa;
 - (iii) four (4) directors, independent of the banking sector in South Africa, nominated by the Board of Directors, provided that a majority of 6 out of 8 directors vote in favour of the nomination; and
 - (iv) the chairperson and the directors in terms of of Article 4.1(1)(b)(iii) shall retire at every third Annual General Meeting of the Company after their appointment and may serve two (2) terms of three (3) years which may be consecutive.

- (v) The maximum term of office for the chairperson and the directors appointed in terms of Article 4.1 (1)(b)(iii) should not exceed six (6) years.
- (2) There are no appointed or ex officio directors of the company, as contemplated in section 66 (4).
- (3) The provision of section 68(2)(a) that in any election of directors the election is to be conducted in a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board at that time has filled, is supplemented by the further provision that the result of the voting to fill the available vacancies be determined by reference to the extent of the number of votes cast in favour of each candidate and that any equality of votes be settled by lot.
- (4) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a director of the Company, a person need not satisfy any further eligibility requirements or qualifications.

4.2 Authority of the Board of Directors

The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) is qualified by this Memorandum of Incorporation only in the following respects:

- (1) The Board shall
 - (a) select and appoint an Ombudsman or acting Ombudsman in the event there being a vacancy, provided that 6 (six) out of 8 (eight) directors vote in favour of the appointment;
 - (b) vote to dismiss the Ombudsman (provided that the chairperson is present at the meeting and that 6 (six) out of 8 (eight) directors vote in favour of the dismissal);
 - (c) to approve and/or decide on changes to the Terms of Reference of the Company, provided that 6 (six) out of 8 (eight) directors vote in favour of the changes;
 - (d) to consider the annual report of the Ombudsman and provide comments;
 - (e) from time to time make recommendations to the Banking Association of South Africa as to how the Code should be amended in the light of experience in the Ombudsman's office.
- (2) The directors specifically delegate the following powers and duties to the Ombudsman:
 - (a) The Ombudsman shall have overall responsibility for the conduct of the day-to-day administration of the business of the Company;

- (b) The Ombudsman may appoint an administrator to be responsible to him/her for day-to-day matters of administration of the Company;
 - (c) The Ombudsman shall have the power on behalf of the Company to appoint and dismiss employees, consultants, legal experts, independent contractors and agents and to determine their salaries, fees, terms of employment or engagement;
 - (d) The Ombudsman shall have the power to incur expenditure on behalf of the Company in accordance with the current financial budget approved by the Board;
 - (e) The Ombudsman shall have the power generally to do anything, which is necessary or expedient for the running of the Company, which may include issuing guidelines for the implementation and application of the Terms of Reference;
 - (f) The powers set out in (a) to (e) hereof shall not derogate from any of the general powers and duties of Directors as set out herein or that the Directors may have in terms of the Companies Act or any other applicable legislation.
- (3) The organisation shall be managed by the Ombudsman with the support and assistance of an Executive Committee that consists of:
- (a) The Ombudsman;
 - (b) All the divisional managers;

The Executive Committee shall normally make decisions by consensus. Should consensus not be possible, the Ombudsman shall consider the issues raised in discussion and make a decision.

4.3 Board of Directors meetings

- (1) The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74 is not limited or restricted by this Memorandum of Incorporation.
- (2) The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised by at least 25% of the directors, as provided in that section.
- (3) The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3) is not limited or restricted by this Memorandum of Incorporation.

- (4) The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) is not limited or restricted by this Memorandum of Incorporation.
- (5) The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) is not limited or restricted by this Memorandum of Incorporation.
- (6) The voting rights of one vote for each director on a matter before the board and that at such a meeting in the case of a tied vote, the chair may cast a deciding vote if the chair did not initially have or cast a vote, and the further requirements for approval of a resolution at such a meeting, are as set out in section 73 (5).
- (7) The quorum requirement for a directors meeting to begin shall be 1 (one) director representing the Banking Sector, 3 (three) independent directors and the chairperson of the Board.

4.4 Indemnification of Directors

- (1) The authority of the Company's Board of Directors to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78 (3) is not limited or restricted by this Memorandum of Incorporation.
- (2) The authority of the Company's Board of Directors to indemnify a director in respect of liability, as set out in section 78 (5) is not limited or restricted by this Memorandum of Incorporation.
- (3) The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a director, as set out in section 78 (7) is not limited or restricted by this Memorandum of Incorporation.

4.5 Officers and Committees

- (1) The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- (2) The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board as set out in section 72 (1), or to include in any such committee persons who are not directors, as set out in section 72 (2)(a) is not limited or restricted by this Memorandum of Incorporation.
- (3) The authority of a committee appointed by the Company's Board, as set out in section 72 (2)(b) or (c) is not limited or restricted by this Memorandum of Incorporation.

4.6. Appointment and dismissal of the Ombudsman for Banking Services

- (1) The Board must appoint, establish the conditions of employment of, and terminate any such appointment of the Ombudsman for banking services.
- (2) The Ombudsman for banking services so appointed will be subject to, and must meet the eligibility requirements as set out in, any conditions of employment, this MOI, the Code of Conduct and Company Rules, if any.

- (3) The Board shall determine the remuneration of the Ombudsman for banking services which remuneration will be market related with due regard to the size of the organization, the mandate and complexity of the role.
- (4) The Ombudsman for Banking enjoys security of tenure and can only be dismissed on the ground of incompetence, gross misconduct, or inability to effectively carry out his or her duties. The board must vote to dismiss the Ombudsman (provided that the chairperson is present at the meeting and that 6 (six) out of 8 (eight) directors vote in favour of the dismissal);