

**OMBUDSMAN FOR LONG-TERM INSURANCE****RULES**

These Rules, effective from 1 January 1998 and last amended with effect from 11 March 2022, regulate the relationship between the Ombudsman for Long-term Insurance (the Ombudsman) and each member of the Long-term Insurance Industry who subscribes to the Ombudsman's scheme as well as between the Ombudsman and each complainant who lodges a complaint with the Ombudsman's office.

**1. Mission**

- 1.1 The mission of the Ombudsman is to receive and consider complaints against subscribing members and to resolve such complaints through mediation, conciliation, recommendation or determination.
- 1.2 The Ombudsman shall seek to ensure that:
  - 1.2.1 he or she acts independently and objectively in resolving any complaint received and takes no instructions from anybody regarding the exercise of his or her authority;
  - 1.2.2 he or she follows informal, fair and cost-effective procedures;
  - 1.2.3 he or she keeps in balance the scale between complainants and subscribing members;
  - 1.2.4 he or she accords due weight to considerations of equity;
  - 1.2.5 he or she maintains confidentiality, in so far as it is feasible to do so and subject to Rules 3.8 and 7 below, in respect of every complaint received;
  - 1.2.6 he or she co-operates with the Council established in terms of the Financial Sector Regulation Act, (Act 9 of 2017), in promoting public awareness of the existence, function and functioning of the Ombudsman and the Ombudsman's office and in informing consumers and potential complainants of available dispute resolution forums;
  - 1.2.7 subscribing members act with fairness and with due regard to both the letter and the spirit of the contract between the parties and render an efficient service to those with whom they contract.

**2. Jurisdiction**

- 2.1 Subject to Rule 2.2, the Ombudsman shall receive and consider every complaint which arises from the use by the complainant of the services of a subscribing member and every complaint by a complainant who is or claims to be a policyholder, a successor in title, a beneficiary, a life insured or a premium payer, against a subscribing member concerning or arising from the marketing, conclusion, interpretation, administration, implementation or termination of any long-term insurance contract marketed or effected within the Republic of South Africa.
- 2.2 The Ombudsman shall not consider a complaint:
  - 2.2.1 if such complaint is, or if it has been, the subject of legal proceedings instituted and not withdrawn, or if legal proceedings are contemplated to be instituted by the complainant against the subscribing member, during such time as the complaint remains under advisement by the Ombudsman; or
  - 2.2.2 if it has previously been determined by the Ombudsman, unless new evidence likely to affect the outcome of a previous determination has thereafter become available; or
  - 2.2.3 if three years or more has elapsed from the date on which the complainant became aware or should reasonably have become aware that he or she had cause to complain to the Ombudsman, unless the failure so to complain within the said period was due to circumstances for which, in the opinion of the Ombudsman, the complainant could not be blamed.

**3. Procedure**

- 3.1 The Ombudsman shall require, or in suitable circumstances cause, all complaints to be reduced to written or electronic form, shall elicit such further information or expert advice as is regarded as

necessary and shall seek to resolve every such complaint through mediation, conciliation, recommendation, failing which, by determination.

- 3.2 The determination aforesaid may be to:
  - 3.2.1 decline to consider the complaint;
  - 3.2.2 uphold the complaint, either wholly or in part;
  - 3.2.3 dismiss the complaint;
  - 3.2.4 make a ruling of a procedural or evidentiary nature;
  - 3.2.5 award compensation, irrespective of a determination made in terms of Rule 3.2.2 or 3.2.3, for material inconvenience or distress or for financial loss suffered by a complainant as a result of error, omission or maladministration (including manifestly unacceptable or incompetent service) on the part of the subscribing member; provided that the amount of such compensation shall not exceed the sum of R50 000;
  - 3.2.6 order a subscribing member, in addition to any other recommendation or determination made, to pay interest to a complainant on the pertinent sum at a rate and from a date that is considered to be fair and equitable in the circumstances;
  - 3.2.7 order a subscribing member to take, or refrain from taking, any such action in regard to the disposal of a specific complaint as the Ombudsman may deem necessary;
  - 3.2.8 issue a declaratory order.
- 3.3 The Ombudsman may decline to consider or may dismiss a complaint, at any stage of the complaints handling process, if it appears to him or her that:
  - 3.3.1 the complaint has no reasonable prospect of success; or
  - 3.3.2 the complaint is being pursued in a dishonest, frivolous, vexatious, abusive or unreasonable manner; or
  - 3.3.3 the complaint can more appropriately be dealt with by a court of law; or
  - 3.3.4 the complaint is predominantly about investment performance or the legitimate exercise by a subscribing member of its commercial judgment; or
  - 3.3.5 the complainant has not suffered, and is not likely to suffer, material inconvenience or distress or financial loss either within the meaning of Rule 3.2.5. or at all.
- 3.4 If a complainant or a subscribing member fails or refuses to furnish information requested by the Ombudsman within the period fixed for that purpose, the Ombudsman shall be free to make a determination on the information as may then be available to him or her.
- 3.5 A determination made by the Ombudsman shall be binding on the subscribing member concerned.
- 3.6 A determination made by the Ombudsman shall not preclude the complainant from thereafter instituting legal proceedings against a subscribing member in respect of any such complaint.
- 3.7. All exchanges between, on the one hand, the office of the Ombudsman and a complainant and, on the other, the office and a subscribing member in relation to a complaint and all the documentation generated in regard thereto, shall by agreement be regarded as privileged and shall as such be immune from disclosure in evidence, save by an order of court or the consent of the parties concerned.
- 3.8 In any case in which a determination as provided for in Rule 3.2.2 is made against a subscribing member, or in which in an appeal by a complainant a ruling is made by the Appeal Tribunal holding that the appeal is substantially successful as envisaged in Rule 6.8.3, the Ombudsman shall publish such determination or ruling, including a summary of the facts concerned, the reasons for the determination and the identity of the subscribing member; provided that the Ombudsman shall not publish as aforesaid in any case in which there is reason to believe that such publication will expose the identity of the complainant, the policyholder, a successor in title or beneficiary, a life insured or a premium payer; provided further that there will be no publication of a determination by the Ombudsman against a subscribing member if on appeal the subscribing member is substantially successful as envisaged in Rule 6.9.1.

#### **4. Prescription**

The receipt of a complaint by the Ombudsman suspends any applicable contractual time barring terms or the running of prescription in terms of the Prescription Act (Act 68 of 1969), for the period from such receipt until the complaint has been withdrawn by the complainant concerned, been determined by the Ombudsman or any appeal in terms of these Rules has been disposed of.

#### **5. Determination of disputes of fact**

- 5.1 The Ombudsman shall resolve material disputes of fact on a balance of probabilities and with due regard to the incidence of the onus.
- 5.2 If the Ombudsman is of the opinion that a material and conclusive dispute of fact cannot be resolved on a balance of probabilities and with due regard to the incidence of the onus, the parties concerned shall be advised that a determination in favour of the one or the other party cannot be made.
- 5.3 Notwithstanding Rule 5.2, 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 determined by the hearing of evidence, it may be so determined.
- 5.4 A hearing as aforesaid may be conducted by the Ombudsman or any other person or persons appointed for that purpose by the Ombudsman.
- 5.5 At such a hearing all issues of a procedural or evidentiary nature shall be determined by the Ombudsman or other person or persons so appointed.

#### **6. Appeals**

- 6.1 A complainant who or a subscribing member which feels aggrieved by any determination by the Ombudsman may apply to the Ombudsman for leave to appeal against it to a designated Appeal Tribunal.
- 6.2 Such an application shall be made within a period of one calendar month from the date on which the determination that is challenged has been made.
- 6.3 Such leave to appeal shall be granted:
  - 6.3.1 if the determination is against a subscribing member and involves an amount in excess of R250 000 or such other sum as the Council may from time to time determine; or
  - 6.3.2 if the Ombudsman is of the opinion that the determination as such or the particular issue in dispute is of considerable public or industry interest; or
  - 6.3.3 if the Ombudsman is of the opinion that the aggrieved complainant or subscribing member has a reasonable prospect of success in an appeal before a designated Appeal Tribunal.
- 6.4 The member or members of the Appeal Tribunal shall be appointed by the Ombudsman with the consent of all the parties concerned or, failing such consent, with the approval of the Chairman of the Council or, if he or she is unavailable, two members of the Council not connected with the Industry.
- 6.5 The Ombudsman shall prepare the record for consideration by the Appeal Tribunal.
- 6.6 All issues of a procedural or evidentiary nature shall be determined by the Appeal Tribunal itself.
- 6.7 The decision of the Appeal Tribunal shall be final and binding:
  - 6.7.1 if the complainant is the appellant, on all the parties concerned;
  - 6.7.2 if the subscribing member is the appellant, on it.
- 6.8 When the complainant is the appellant:
  - 6.8.1 he or she may be required to deposit such amount as the Ombudsman may consider appropriate into the trust account of an attorney designated by the Ombudsman;
  - 6.8.2 such amount shall be held in trust pending the outcome of the appeal;

- 6.8.3 if the appeal is, in the view of the Appeal Tribunal substantially successful, such amount shall be refunded to the complainant;
- 6.8.4 if the appeal is, in the view of the Appeal Tribunal substantially unsuccessful, such amount shall be applied by the Ombudsman to defray, either wholly or in part, the costs incurred by the Ombudsman in connection with the appeal proceedings and to refund any surplus to the complainant.
- 6.9 When the subscribing member is the appellant:
  - 6.9.1 if the appeal is, in the view of the Appeal Tribunal substantially successful, the Ombudsman shall defray the costs incurred by him in connection with the appeal proceedings;
  - 6.9.2 if the appeal is, in the view of the Appeal Tribunal substantially unsuccessful, the subscribing member shall defray the costs incurred by the Ombudsman in connection with the appeal proceedings.

## **7. Enforcement**

- 7.1 If a subscribing member should fail or refuse to comply with a determination made by the Ombudsman:
  - 7.1.1 it shall be given notice by the Ombudsman that it is to comply with such determination within a period of four weeks or such further period as the Ombudsman may determine;
  - 7.1.2 on the failure or refusal by the subscribing member to comply with such notice, the Ombudsman shall report such failure or refusal to the Chairman of the Long-Term Insurance Ombudsman's Committee ("the Committee").
- 7.2 The Ombudsman may thereupon:
  - 7.2.1 determine what, if any, further opportunity should be afforded to the subscribing member concerned to make representations as to why the measures described below should not be implemented;
  - 7.2.2 publish, in whatever manner the Ombudsman considers to be appropriate, the fact of such failure or refusal;
  - 7.2.3 suspend or terminate, with the consent of the Chairmen of both the Council and the Committee, the membership of the subscribing member concerned; and, in that event,
  - 7.2.4 publish in whatever manner the Ombudsman considers to be appropriate, the fact of such suspension or termination of such membership.

## **8. Information about the Ombudsman**

Subscribing members shall disclose the availability and contact details of the Ombudsman to:

- 8.1 policyholders at point of sale and in relevant periodic communications;
- 8.2 claimants when a claim is rejected;
- 8.3 complainants when a complaint is not resolved in favour of the complainants;
- 8.4 members of the public on its website and at its premises.

## **9. Funding**

The Subscribing members shall pay the levies and case fees the Ombudsman charges, to the Ombudsman, as and when required.

## **10. Report**

The Ombudsman shall report publicly on or before 31 May of each year on his or her activities during the previous calendar year.

**THE OMBUDSMAN FOR LONG-TERM INSURANCE**

**CONSTITUTION OF THE ASSOCIATION**

**1. Preamble**

1.1 The Office of the Ombudsman for Long-term Insurance was established on 1 January 1985.

1.2 The Mission of the Ombudsman is to resolve disputes between the Subscribing Members of the Industry and Complainants, through mediation, conciliation, recommendation or determination.

In doing so, the Ombudsman will seek to ensure that:

- he or she acts independently and objectively in advising on any complaint received (referred to as the complaint handling process) and takes no instructions from anybody regarding the exercise of his or her authority;
- The Subscribing Members of the industry act with fairness and with due regard to both the letter and spirit of the contract between the parties and render an efficient service to those with whom they contract;
- He or she keeps the scale in balance between the rights of the Complainants on the one hand and the rights of the Subscribing Members on the other; and
- Due weight is given to considerations of equity.

1.3 The rulings of the Ombudsman are binding on Subscribing Members. However, its rulings do not bind Complainants. Their right to institute legal proceedings in a court of law remains unaffected by any ruling made by the Ombudsman.

1.4 The Ombudsman is accountable to the Council (as defined) on matters that are required to be dealt with by the Council in the performance of its functions.

1.5 The purpose of the Council is to facilitate the provision by the Office of the Long-term Insurance Ombudsman of independent, equitable, speedy and cost-effective resolution of disputes between Complainants and Subscribing Members of the Industry.

1.6 To this end, the Council:

- 1.6.1 appoints or reappoints the Ombudsman and Deputy Ombudsman and settles the terms and conditions of their employment;

- 1.6.2 receives the Ombudsman's Annual Report and ongoing updates on the Ombudsman's activities to enable it to oversee the strategy, the efficiency and the effectiveness of the Ombudsman;
  - 1.6.3 approves any changes to the published Rules and policy guidelines governing the Ombudsman's powers and activities to ensure that they comply with the purpose stated above;
  - 1.6.4 monitors, maintains and promotes the Ombudsman's independence;
  - 1.6.5 gives input on any legislative or regulatory change affecting the Ombudsman and the exercise of his responsibilities;
  - 1.6.6 assists in ensuring that the financial services industry, consumer bodies, the media and the general public understand the role , function and activities of the Ombudsman; and
  - 1.6.7 generally take such steps as may be necessary to facilitate the purposes stated above.
  - 1.6.8 the powers set out in paragraphs 1.6.2 and 1.6.3 above are exercised by the Council after receiving input from the Committee where appropriate.
- 1.7 The Committee concerns itself primarily with the efficient operations of the Ombudsman's Office. In this context it:
- 1.7.1 considers and recommends to the Council appropriate mechanisms for financing the Ombudsman's operational costs;
  - 1.7.2 communicates to the Ombudsman industry views concerning any operational issues including the efficiency of the service rendered by the Ombudsman's Office;
  - 1.7.3 receives and comments upon the Ombudsman's annual report; and
  - 1.7.4 acts as a consultative body and provides comment to the Council and the Ombudsman when requested, in respect of:
    - a. any changes to the Rules under which the Ombudsman operates;
    - b. any legislative or regulatory change affecting the Ombudsman and the exercise of his or her responsibilities; and
    - c. any extension or limitation of the jurisdiction of his or her Office.

## **2. Pre-establishment Resolutions**

- 2.1 By resolution dated 7 May 2002 the Committee resolved that it would peruse and comment on the budget before submission to the Council which would be responsible for the approval of the budget.
- 2.2 By resolution dated 9 May 2002 the Council resolved to approve the proposal that final approval of the budget be the responsibility of the Council.
- 2.3 By resolutions of the Committee and the Council passed on 19 March and 20 March 2003 respectively, it was resolved that a Long-Term Insurance Ombudsman's Association ("The Association") be established.

## **3. Establishment of Voluntary Association**

A Voluntary Association, under the name and style of the Long-term Insurance Ombudsman's Association, is hereby established as a legal persona, distinct from its Members, functioning not for gain but for the purposes set out in paragraph 1.2 above, with the capacity of acquiring rights, owning property, incurring obligations, having the power to institute and defend legal proceedings in its own name, and with the attribute of perpetual succession.

## **4. Council as an organ of the Association**

- 4.1 The Council is hereby confirmed as a separate organ of the Association.
- 4.2 Each member of the Council, on accepting appointment as such, subscribes and agrees to the provisions of this Constitution.

## **5. Committee as an organ of the Association**

- 5.1 The Committee is hereby confirmed as a separate organ of the Association.
- 5.2 Each Subscribing Member, in subscribing as such, shall be deemed to have subscribed and agreed to the provisions of this Constitution and the Rules.

## **6. The Constitutional Provisions of the Association**

### Definitions

In this Constitution, unless otherwise required or indicated by the context, the singular shall include the plural and vice versa, natural persons shall include legal and juristic persons and vice versa, and the following terms shall have the meanings assigned to them hereunder, namely:

- 6.1 the Subscribing Members Shall mean: Those members of the Long-term insurance industry who, from time to time, are Subscribing Members to the

		Rules of the Ombudsman for Long-Term Insurance.
6.2	the Members	Shall mean: The Members of the Association referred to in paragraph 7 below.
6.3	the Council	Shall mean: The Ombudsman's Council, referred to above.
6.4	the Committee	Shall mean: The Long-term Insurance Ombudsman's Committee, referred to above.
6.5	the Association	Shall mean: The Long-term Insurance Ombudsman's Association, referred to above
6.6	the Ombudsman	Shall mean: The Long-term Insurance Ombudsman, appointed by the Council.
6.7	the Deputy Ombudsman	Shall mean: The Long-term Insurance Deputy Ombudsman, appointed by the Council.
6.8	the Policyholders	Shall mean: The holders of policies of whatever nature issued by the Subscribing Members.
6.9	the Office	Shall mean: Collectively, the Ombudsman, the Deputy Ombudsman, the Assistant Ombudsmen, the Financial Manager and Office Manager and the staff engaged in managing the complaint handling process, referred to above.
6.10	the Rules	Shall mean: The Rules as approved by the Council and published annually in the Annual Report of the Ombudsman.
6.11	the Complainants	Shall mean: Persons who lodged complaints with the Office against Subscribing Members.
6.12	The financial year-end of the Office shall be 31 December of each year.	



## **7. Membership**

- 7.1 the Members of the Association are:
  - 7.1.1 The Chairperson of the Council, from time to time.
  - 7.1.2 The Chairperson of the Committee, from time to time.
  - 7.1.3 The Ombudsman for Long-term Insurance, from time to time.
  - 7.1.4 The Deputy Ombudsman, from time to time.
  - 7.1.5 The persons appointed as Assistant Ombudsmen, from time to time.
  - 7.1.6 The Financial Manager, from time to time.
  - 7.1.7 The Office Manager, from time to time.
- 7.2 Save for the Chairpersons of the Council and the Committee, membership of the Association shall be confined to and be dependent on permanent employment of such Member as Ombudsman, Deputy Ombudsman, Assistant Ombudsman, Financial Manager or Office Manager.

## **8. Authority to Act**

- 8.1 The Council is vested with the authority, on behalf of the Association, to appoint the Ombudsman and the Deputy Ombudsman and to determine all matters relating to their conditions of service and remuneration.
- 8.2 The Ombudsman, the Deputy Ombudsman, the Financial Manager and the Office Manager are jointly and severally vested with the authority to enter into legal acts on behalf of the Association.
- 8.3 The Ombudsman, the Deputy Ombudsman and the Assistant Ombudsmen are vested with the authority to give rulings relating to the complaint handling process.

## **9. Administration of the Office**

- 9.1 The Ombudsman and Deputy Ombudsman shall have overall responsibility for the conduct of the day-to-day administration and business of the Office and serve, whenever it is necessary to do so, as the executive of the Association with the power of co-option.
- 9.2 The Ombudsman and Deputy Ombudsman shall have the power, on behalf of the Association, to appoint employees and to determine all matters relating to their conditions of service and remuneration.
- 9.3 The Ombudsman and Deputy Ombudsman shall have the power generally to do anything that is necessary or expedient for the running of

the Office, which may include issuing guidelines for the implementation and application of the Rules.

## **10. Meetings**

- 10.1 The Members of the Association shall meet from time to time but not less than twice per calendar year.
- 10.2 Such meetings shall be convened by the Chairperson of the Council, failing which, the Chairperson of the Committee, failing which, the Ombudsman, provided that it shall be convened, if so requisitioned, at any time by at least four (4) Members.
- 10.3 The meeting shall:
  - i) receive and consider all resolutions adopted at the immediately preceding meetings of the Council and the Committee;
  - ii) consider any other matters relating to as such and the business, functioning and operation of the Office.
- 10.4 Minutes shall be kept of the proceedings of the meeting, including a record of the members present at each meeting. Such minutes shall be signed by the Chairperson and shall be available at all reasonable times to Members.
- 10.5 The minutes of each such meeting shall be reported at the next succeeding meetings of both the Council and the Committee.
- 10.6 The quorum shall consist of at least one of the Chairman of Council, the Chairman of the Committee or the Ombudsman, as well as three (3) other members.
- 10.7 Each member who is present shall have one vote. Voting shall take place by a show of hands.
- 10.8 A "round robin" resolution signed by all members shall be as valid as if passed at a duly convened meeting.

## **11. Powers of the Association**

The Association shall be seized with the power to do all things necessary to give effect to the Mission of the Ombudsman as set out above. More particularly it will be empowered as follows:

- 11.1 to mediate, conciliate, recommend and, if it is considered necessary or appropriate, to adjudicate on any complaint or dispute lodged with the Office;
- 11.2 to prepare and submit to the Council an Annual Report dealing with the activities and finances of the Office for the year in question and to

report, as and when it is considered appropriate, on current matters and activities;

- 11.3 to promote, within the financial services industry and the public domain, the services provided by it and the Office by ensuring the appropriate publication and dissemination of reports in the media and to consumer bodies;
- 11.4 to identify and bring to the attention of the Subscribing Member concerned any undesirable practices to which the Subscribing Member may be a party and if necessary, to report such matter to the Chairperson of the Committee;
- 11.5 to appoint such personnel as would be reasonably required to ensure an efficient management of such complaints as the Office may receive from time to time;
- 11.6 to enter into contracts of employment with such personnel;
- 11.7 to enter into contracts with any entity carrying on fidelity insurance business in the Republic whereby the Association and its Members are indemnified against public liability;
- 11.8 to enter into agreements of purchase, sale and letting and hiring of property, both movable and immovable, reasonably required for the purposes of the functioning of the Office;
- 11.9 to open such bank and other accounts as are reasonably necessary for the performance of its obligations by the Office;
- 11.10 to make recommendations to the Council for amendments to the Rules and policy guidelines;
- 11.11 to determine, in consultation with the Ombudsman's Council and after comment from the Ombudsman's Committee, a charge-out for the services the Association renders to the Subscribing Members in managing complaints received;
- 11.12 to institute and defend legal proceedings in its own name;
- 11.13 to facilitate and enlist as Subscribing Members any registered long-term insurer who in the opinion of the Association is fit and proper to be so enlisted and is prepared to subscribe to the Rules;
- 11.14 to apply its funds, inclusive of reserves and surpluses, and notwithstanding anything to the contrary herein contained, in promoting the objects of the Association and the functioning of the office, provided that no distribution of reserve or surplus funds and no extraordinary and excessive remuneration shall at any time be effected to any employee, office bearer or Member of the Association; and to invest its funds only in those investments identified in section 30(3)(b)(ii)(aa),(bb) or (cc) of the Income Tax Act, No.58 of 1962.

11.15 to do all things reasonably necessary for the achievement of its objects;

11.16 to receive any donations, save that the Association is prohibited from accepting any donation which is revocable at the instance of the donor.

Save that the Association may not use its resources directly or indirectly to support, advance, or oppose any political party.

## **12. Indemnity**

Each member of the Association, of the Council and of the Committee is indemnified by the Association in respect of all decisions and acts of omission or commission made and undertaken in good faith on its behalf; and it shall be the duty of the Association to reimburse such persons in respect of any costs or expenses incurred in the bona fide discharge of such person's fiduciary responsibilities to the Association, the Council and the Committee.

## **13. Amendments to the Constitution.**

This Constitution may be amended by resolution of the Members, and if duly approved by the Council the Association, shall submit to the Commissioner for SARS a copy of any amendment to this Constitution.

## **14. Dissolution**

14.1 The Association may be re-constituted or dissolved by resolution of the Members, duly approved by the Council; or by any cause recognised by law for its dissolution.

14.2 Upon dissolution, and subject to the provisions of par.11.14, the assets of the Association shall devolve on another body which has a purpose and a function similar to that of the Association.

**THE OMBUDSMAN FOR LONG-TERM INSURANCE**  
**CONSTITUTION OF THE OMBUDSMAN'S COUNCIL**

The Council is constituted as an independent organ of the Office of the Ombudsman, in accordance with the following provisions, viz:

**1. MANDATE AND RESPONSIBILITIES**

The purpose of the Council is to facilitate the provision by the Office of the Long-term Insurance Ombudsman of independent, equitable, speedy, and cost-effective resolution of disputes between complainants and subscribing members of the Long-term insurance industry.

To this end, the Council:

- 1.1 appoints or re-appoints the Ombudsman and Deputy Ombudsman and settles the terms and conditions of their employment, provided that in appointing the Ombudsman it will follow a transparent process after public advertisement and it will fix the period of employment for at most 5 (five) years, renewable for a maximum further period of 3 (three) years; provided that the Council may in its sole discretion determine that it will best serve the interests of the office to temporarily extend the Ombudsman's employment for a further period or further periods on conditions to be agreed upon between the Council and the Ombudman; the Ombudsman will enjoy security of tenure and will be liable for dismissal only on the grounds of incompetence, gross misconduct or inability to effectively carry out his or her duties or on any ground recognised as good cause in law;1.2 receives the Ombudsman's Annual report and ongoing updates on the Ombudsman's activities to enable it to oversee the strategy, the efficiency and the effectiveness of the Ombudsman;
- 1.2 approves any changes to the published rules and policy guidelines governing the Ombudsman's powers and activities to ensure that they comply with the purpose stated above;
- 1.3 monitors, maintains and promotes the Ombudsman's independence;
- 1.4 assists in ensuring that the financial services industry, consumer bodies, the media and the general public understand the role, function and activities of the Ombudsman;
- 1.5 generally takes such steps as may be necessary to facilitate the purpose stated above.

The powers set out in paragraph 1.3 above will be exercised by the Council after input from the Ombudsman's Committee.

## **2. COMPOSITION**

2.1 There shall at all times be not less than Five (5) nor more than Eleven (11) persons appointed as Members of the Council. If at any time, as a result of retirement, resignation, death, or for any other reason, the number of Members shall fall below such stated minimum, then the remaining Members shall cause other persons to be co-opted as additional Members.

2.2 Three of the Members of the Council are to be appointed *ex officio*, viz:

2.2.1 The Ombudsman;

2.2.2 The Chairperson of the Ombudsman's Committee; and

2.2.3 A nominee of the Financial Sector Conduct Authority, which may from time to time remove and substitute its nominee.

All other Members of the Council are appointed in their personal capacity, having due regard to the knowledge and skills required by the Office of the Ombudsman, and the need to represent the broad public interest and promote public confidence.

2.3 The Council may appoint any one or more Members of the Council provided that the total number of Members shall not exceed eleven (11).

2.4 No Member of the Council can be:

- a serving politician;
- an employee of a subscribing member, other than the *ex officio* Member who is the Chairperson of the Committee.

## **3. PERIOD OF APPOINTMENT**

Save for those persons who serve *ex officio* as Members of the Council, all its other Members shall be appointed for a term of Three (3) years, but shall be eligible for reappointment for successive terms of Three (3) years each.

## **4. PERSONAL APPOINTMENT**

Each Member of the Council, including those nominated and appointed *ex officio*, shall be obliged to act in the best interests of the Office of the Ombudsman, and are deemed to have been appointed in their personal capacities, notwithstanding that they may serve *ex officio*, or as nominees. An *ex officio* Member of Council may for the purposes of attendance at a meeting of the Council and with the approval of the Chairperson, appoint an alternate to

attend on his/her behalf. Save as aforesaid, no Member of the Council shall be permitted to appoint an alternate or representative to act on his or her behalf.

## **5. PROCEDURES AT MEETINGS**

The business of the Council shall be conducted in accordance with such procedures as may be determined by the Chairperson from time to time, on the basis that:

- 5.1 The Members shall elect from their own number, but excluding *ex officio* Members, persons who will serve respectively as Chairperson and Deputy Chairperson.
- 5.2 The Chairperson (or in his or her absence, the Deputy Chairperson) may convene meetings of the Council at any time, but shall be obliged to convene a meeting if so requisitioned at any time by at least Three (3) Members of the Council.
- 5.3 The quorum necessary for the transaction of the ordinary business of the Council shall be Four (4) Members.
- 5.4 At meetings of the Council each Member shall have One (1) vote.
- 5.5 Save as provided in Clause 8 below, all questions arising shall be decided by a majority of votes. However, in the event of an equality of votes, the Chairperson shall have a second and casting vote.
- 5.6 Proper Minutes shall be kept of the proceedings of the Council, including a record of the Members present at each meeting. Such Minutes shall be signed by the Chairperson, or his/her Deputy, and shall be available at all reasonable times to Members of the Council.
- 5.7 A "round robin" Resolution signed by all Members of the Council shall be as valid as if passed at a duly convened meeting.
- 5.8 The Council may delegate such of its powers and prerogatives as it may deem appropriate to one or more of its Members, or to a specially constituted sub-committee. The Member or sub-committee to whom such delegation is made, shall conform to any stipulations or procedures that may be determined by the Council from time to time.
- 5.9 The Council may conduct its business at a meeting to which all its Members are invited and which is conducted by making use of or facilitated by technology, including a digital online platform.
- 5.10 A Member of the Council must disclose, at a meeting of the Council, any interest in a matter that is being considered or is intended to be considered by the Council being an interest that –
  - 5.10.1 the Member has; or

5.10.2 a person who is a related party to the Member has.

The Council will then decide whether the Member may participate in the consideration of, or decision on the matter.

## **6. NOTICES**

6.1 Notice of Meetings of the Council shall be sent to all its Members, either personally, or by prepaid registered post, or in such other manner (including facsimile or e-mail) as may be deemed expedient by the Chairperson.

6.2 The inadvertent omission to address notice/s to any Member shall not invalidate the proceedings of the resultant meeting.

## **7. INDEMNITY**

Each Member of the Council is indemnified by the Office of the Ombudsman in respect of all decisions and acts made and undertaken in good faith on its behalf; and it shall be the duty of the Office of the Ombudsman to reimburse Members in respect of any costs or expenses reasonably and necessarily incurred in the bona fide discharge of such Member's fiduciary responsibilities to the Council.

## **8. AMENDMENT OR DISESTABLISHMENT**

This constituting document, including the mandate of the Ombudsman's Council, may be amended, the name may be changed, and the Council may be disestablished at any time, by Resolution of the Council, provided that any such resolution is supported by no less than two-thirds of its Members at the relevant time, being not less than the minimum number stipulated above.