

## INVITATION FOR SUBMISSIONS

# DRAFT AMENDMENT TO THE GOVERNING RULES OF THE OMBUDSMAN FOR SHORT-TERM INSURANCE

21 October 2022

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## 1 Background and purpose

1.1 The Ombud Council granted recognition as an industry ombud scheme to the OMBUDSMAN FOR SHORT-TERM INSURANCE (the OSTI Scheme) in terms of section 194 of the Financial Sector Regulation Act, No. 9 of 2017 (FSR Act), with effect from 1 May 2022, under Recognition Certificate No. OC/004/22.

1.2 The OSTI Scheme's recognition was granted subject to the following Recognition Conditions, imposed in accordance with section 195(2) of the FSR Act and annexed to its Recognition Certificate:

*1. The scheme must make the following amendments to its governing rules:*

*1.1. Replace all references in the governing rules to the Financial Sector Ombud Schemes (FSOS) Act; Financial Sector Ombud Schemes (FSOS) Council; and the Financial Services Board (FSB) with appropriate references to the Financial Sector Regulation Act, 2017; the Ombud Council; and the Financial Sector Conduct Authority (FSCA) respectively.*

*1.2. Add a provision to the governing rules requiring members of the scheme to provide their financial customers with the information referred to in section 196(3)(b)(ii) of the Financial Sector Regulation Act, 2017.*

*2. The scheme must, after following any necessary internal procedures for amending its governing rules, submit a draft of the rule amendments referred to in paragraph 1 to the Ombud Council on or before 30 September 2022.*

1.3 The OSTI Scheme submitted a revised version of its governing rules, incorporating the amendments required by the Recognition Conditions, to the Ombud Council for consideration and approval on 26 August 2022. The Scheme confirmed that it had followed its necessary internal procedures for making these rule amendments.

## **2 Statutory requirements for approval of amendments to industry ombud scheme governing rules:**

2.1 Section 214 of the FSR Act contains, in summary, the following provisions in relation to the amendment of the governing rules of a recognised industry ombud scheme -

- 2.1.1. the governing rules may not be amended without the approval of the Ombud Council (see s.214(3)(a))
- 2.1.2. any governing rule amendment adopted by a recognised industry ombud scheme without the approval of the Ombud Council is void (see s.214(3)(b))
- 2.1.3. the Ombud Council must not approve a governing rule amendment unless it is satisfied that doing so achieves the object of the FSR Act as set out in section 7 (see s.214(4)); and
- 2.1.4. before approving a governing rule amendment, the Ombud Council must publish a draft of the amendment together with: A statement explaining the need for, intended operation of, and expected impact of the amendment; and a notice inviting submissions in relation to the amendment that allows for a period of not less than 30 days for making such submissions (see s.214(1) and (2)).

2.2 The Ombud Council has reviewed the rule amendments submitted by the OSTI Scheme and is satisfied that they comply with Recognition Condition 1. The Ombud Council is also satisfied that the OSTI Scheme has complied with Recognition Condition 2.

2.3 The OSTI Scheme also requested approval for two additional amendments to its governing rules, required to ensure compliance with certain provisions of the Income Tax Act, 1962 and the Companies Act, 2008 (see detail in paragraphs 3.2.3 and 3.2.4 below). The Ombud Council has considered these additional rule amendments and is satisfied that they are appropriate.

2.4 The Ombud Council is also satisfied that the proposed governing rule amendments will assist in achieving the object of the FSR Act.

## **3 Statement of need for, intended operation and expected impact of proposed governing rule amendments:**

3.1 The governing rules of the OSTI Scheme comprise two documents:

- The Terms of Reference of the Ombudsman for Short-Term Insurance (OSTI TORs); and
- The Memorandum of Incorporation of the Ombudsman for Short-Term Insurance (OSTI MOI).

3.2 The proposed amendments relate to the following provisions of the OSTI TORs and OSTI MOI:

*3.2.1. Various amendments to replace outdated statutory references:*

Various clauses throughout the OSTI TORs and OSTI MOI are to be amended to comply with the Ombud Council's Recognition Condition 1.1, as set out in paragraph 1.2 above.

The need for the amendment is to replace outdated references to repealed legislation (the Financial Sector Ombud Schemes Act) and now defunct regulatory authorities (the Financial Sector Ombud Schemes Council and the Financial Services Board). This will ensure that the governing rules accurately reflect the current regulatory framework and roles of applicable current authorities, by referencing the FSR Act, Ombud Council and Financial Sector Conduct Authority respectively.

The intended operation and expected impact of these amendments is self-explanatory.

### *3.2.2. Insertion of clause 1.4 in the OSTI TORs:*

This clause imposes obligations on insurers who participate in the OSTI Scheme to make certain disclosures to their financial customers in regard to the availability and contact details of the OSTI Scheme. The need for the amendment is to ensure compliance with the Ombud Council's Recognition Condition 1.2, as set out in paragraph 1.2 above. The Recognition Condition was imposed to ensure that the governing rules comply with section 196(3)(b)(ii) of the FSR Act, which requires such a provision to be included in an industry ombud scheme's governing rules. The underlying need for such a provision is to enhance consumer access to and awareness of ombud schemes, in line with the objective of the Ombud Council as set out in a.176 of the FSR Act.

The operation of the provision, requiring insurers to make the requisite disclosures to their financial customers at appropriate times, is self-explanatory.

The amendment is not expected to have a material practical impact on insurers, as corresponding obligations are already imposed on them by Rules 18.10.1 (b) and (c) of the Policyholder Protection Rules issued under the Short-term Insurance Act, 53 of 1998, which have been in existence for a number of years.<sup>1</sup> Insurers should therefore already have the necessary processes in place to comply with this requirement.

### *3.2.3. Insertion of clause 2.8 in the OSTI MOI:*

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<sup>1</sup> The applicable Policyholder Protection Rules provide that an insurer must "(b) clearly and transparently communicate the availability and contact details of the relevant ombud services to complainants at all relevant stages of the insurance relationship, including at point of sale, in relevant periodic communications, and when a complaint is rejected or a claim is repudiated; and (c) display and/or make available information regarding the availability and contact details of the relevant ombud services at the premises and/or on the web site of the insurer."

This clause deals with special conditions applicable to the tax-exempt status of the OSTI Scheme and is required in terms of section 30 of the Income Tax Act, 1962.

The clause will operate to impose various prescribed obligations on the Scheme in relation to its governance arrangements; the use of its funds; various other financial arrangements, payments, and transactions; and SARS reporting requirements. The clause will require the Scheme to ensure that it has appropriate internal controls in place to ensure compliance with these obligations but is not expected to have a material external impact.

*3.2.4. Insertion of clause 5.1(3) in the OSTI MOI:*

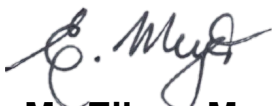
The clause is necessary to ensure compliance with Schedule 1 of the Companies Act, 2008, which requires that, if a non-profit company has directors who are elected by voting members, the Memorandum of Incorporation must provide for the election, each year, of at least one-third of those elected members. The operation of the clause is self-explanatory. The clause will require the Scheme to adopt the necessary governance processes but is not expected to have a material external impact.

## **4 Invitation for submissions on the governing rule amendments.**

4.1 The Ombud Council today publishes the amended governing rules of the OSTI Scheme, incorporating the amendments described in this document, for public comment in accordance with section 214 of the FSR Act.

4.2 Please note that submissions are invited only on the proposed amendments noted in paragraph 3 above. Comment was previously invited on the remainder of the content of the governing rules prior to recognition of the OSTI Scheme.

4.3 Written submissions on the proposed rule amendments must be sent to the Ombud Council via email to [admin@ombudcouncil.org.za](mailto:admin@ombudcouncil.org.za) by no later than 17h00 on 20 November 2022.



**Ms Eileen Meyer**

**Interim Chief Ombud**

**Date: 21 October 2022**

**Annexure A - OSTI TORs and MOI**