

**FINANCIAL SECTOR REGULATION ACT, 9 OF 2017  
OMBUD COUNCIL RULES FOR THE PENSION FUNDS ADJUDICATOR, 2026**

The Ombud Council, under section 201(1) and (2) read with section 201(6) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), hereby makes Ombud Council Rules for the Pension Funds Adjudicator, as set out in the Schedule.

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CHIEF OMBUD**

**For: THE OMBUD COUNCIL**

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## SCHEDULE

### OMBUD COUNCIL RULES FOR THE PENSION FUNDS ADJUDICATOR, 2026

#### 1. Definitions and application

- (1) In these Rules -

**“Authority”** means the Financial Sector Conduct Authority established by section 56 of the Financial Sector Regulation Act;

**“the Act”** means the Pension Funds Act, 1956 (Act No. 24 of 1956), and unless the context indicates otherwise, words and expressions used in these Rules bear the same meaning as that of similar words and expressions used in the Act;

**“financial institution”** means a financial institution as defined in the Financial Sector Regulation Act;

**“Financial Sector Regulation Act”** means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

**“Financial Services Tribunal”** means the Financial Services Tribunal established by section 219 of the Financial Sector Regulation Act;

**“Ombud Council”** means the Ombud Council established by section 175 of the Financial Sector Regulation Act;

**“respondent”** means a fund or person against whom a complaint is made and, where the context requires, includes any other party to a complaint in respect of whom the Adjudicator has requested a response to any aspect of a complaint.

- (2) These Rules apply in particular to the proceedings of the Adjudicator conducted in terms of Chapter VA of the Act and must be read in conjunction with the provisions of the Act and the applicable provisions of the Financial Sector Regulation Act.
- (3) In accordance with section 201(3) of the Financial Sector Regulation Act, these Rules may not be inconsistent with the provisions of the Act.

#### 2. Fundamental principles

- (1) In disposing of a complaint, the Adjudicator must act independently and objectively without fear, favour, or prejudice.
- (2) The parties to the complaint must act professionally and reasonably and give their fullest co-operation with a view to ensuring the efficient resolution of the complaint within a reasonable time.

- (3) Subject to any specific procedures required by the Act, the Adjudicator may follow any procedure the Adjudicator considers appropriate in disposing of a complaint, including mediation, conciliation, and conducting investigations in an inquisitorial manner.
- (4) The Adjudicator does not provide legal advice. The Adjudicator's main object is to dispose of complaints in terms of section 30D of the Act.

### 3. Category of persons qualifying as complainants

For purposes of paragraph (d) of the definition of "complainant" in the Act, a complainant may include the complainant's lawful successor in title, a dependant or nominee as contemplated in section 37C of the Act of a member or former member of a fund which is the subject of the relevant complaint, or a person acting on behalf of a complainant, where such person has an interest in the complaint.

### 4. Jurisdiction: Types of complaints to be dealt with by the Adjudicator

- (1) Where appropriate, complaints to be dealt with by the Adjudicator include –
  - (a) Any written expression of dissatisfaction comprising one or more of the allegations referred to in the definition of "complaint" in the Act, regardless of whether the expression of dissatisfaction is submitted together with or in relation to a query by the complainant; and
  - (b) A complaint comprising one or more of the allegations referred to in the definition of "complaint" in the Act in relation to decisions taken by, maladministration by or non-fulfillment of duties by –
    - (i) a fund;
    - (ii) a person administering a fund; or
    - (iii) an employer who participates in a fund,where the complaint arises from the conduct of an agent or service provider of any of the persons referred to in (i), (ii) or (iii).
- (2) For a complaint to be dealt with by the Adjudicator the complaint must fall within the ambit of -
  - (i) the Act and these Rules;
  - (ii) an applicable Ombud Council Rule made in terms of section 201(2)(d) of the Financial Sector Regulation Act; or
  - (iii) a designation made by the Ombud Council to the Adjudicator in terms of section 211 of the Financial Sector Regulation Act.
- (3) The Adjudicator must determine whether a complaint falls within the ambit referred to in Rule 4(2) and must decline to investigate a complaint which falls outside the ambit.
- (4) Where the Adjudicator determines that a complaint falls outside of its jurisdiction, the Adjudicator must as soon as reasonably practicable inform the complainant of this decision and provide reasons for the decision.
- (5) Where the Adjudicator determines that a complaint may fall within the jurisdiction of another ombud scheme as defined in the Financial Sector Regulation Act, the Adjudicator must as soon as reasonably practicable refer the matter to the ombud scheme concerned, advise the complainant that it has done so, and provide the complainant with the contact details of the ombud scheme concerned.

- (6) The Adjudicator must decline to investigate a complaint where the matter has previously been considered by the Adjudicator.

## **5. Receipt of complaints**

- (1) Subject to Rule 8, the Adjudicator must receive any complaint that is within the Adjudicator's jurisdiction in terms of Rule 4(2) and where –
  - (a) the Adjudicator is satisfied that the complainant has submitted the complaint in writing to the fund concerned and that the fund or employer concerned has failed to address the complaint to the complainant's satisfaction within 30 days of its receipt, as contemplated in section 30A(3) of the Act; and
  - (b) the complaint is submitted in the form and manner required by the Adjudicator.
- (2) For purposes of Rule (1)(a), in the event that a complainant has not submitted the complaint to the fund in accordance with section 30A(1) of the Act, the Adjudicator may do so on behalf of the complainant and such submission will for all purposes of the Act and these Rules be deemed to be a submission by the complainant as contemplated in section 30A(1) of the Act, provided that: The Adjudicator may require the respondent to provide its written response to the complaint to both the Adjudicator and the complainant within thirty days.
- (3) For purposes of Rule (1)(b), the Adjudicator may publish an official Complaint Form on the website of the Office of the Pension Funds Adjudicator and may, after notification to the complainant, decline to investigate any complaint not submitted on a fully completed Complaint Form, provided that: The Adjudicator may receive a complaint, or any supporting information provided by a complainant, in any other manner which reasonably conveys the complaint or information in comprehensible form, where the Adjudicator deems it fair and equitable to do so.

## **6. Communication with and rights and duties of parties to the complaint**

- (1) Where the respondent is a financial institution, the respondent must ensure that the written reply to a complaint required by section 30A(2) of the Act includes:
  - (a) The contact references of the respondent, including the contact references of the internal complaint escalation channels of the respondent where applicable;
  - (b) An explanation that the complaint may be lodged with the Adjudicator if the complainant is not satisfied with the reply; and
  - (c) The contact references of the Adjudicator.
- (2) In disposing of a complaint, the Adjudicator must take reasonable steps to advise the complainant –
  - (a) that the complaint must, where necessary, be accompanied by available documentation in the complainant's possession, including relevant correspondence with the respondent;
  - (b) of the response provided by the respondent or another party to the complaint, where the Adjudicator is aware of such response, to the extent necessary for the

complainant to reply. Where the Adjudicator considers it necessary, the Adjudicator must also inform the complainant of the period within which they must submit their reply;

- (c) that subsequent to lodging the complaint with the Adjudicator, the complainant is entitled to submit further facts, information, or documentation in connection with the complaint and any applicable procedure for doing so, and must do so, to the extent possible, if requested by the Adjudicator.
- (3) The Adjudicator must, as soon as reasonably practicable after receipt of a complaint, advise the respondent and any other party to the complaint -
- (a) of the complaint submitted to the Adjudicator, in such manner and to the extent necessary to enable a full response, including notification of any applicable time periods;
  - (b) that the respondent or other party is entitled to submit any fact, information, or documentation in relation to the complaint and must disclose relevant information or documentation to the Adjudicator;
  - (c) where deemed necessary by the Adjudicator and subject to such procedures as the Adjudicator may put in place, that the respondent or party must discuss the complaint with the Adjudicator and furnish such further relevant information as the Adjudicator may require.
- (4) At any stage during the handling of a complaint, the Adjudicator may share information submitted by one a party with any other party to the complaint, if the Adjudicator in their discretion considers it reasonably necessary to give the receiving party an opportunity to respond or otherwise to facilitate fair and efficient resolution of the complaint. The Adjudicator must provide such information where required by section 30F of the Act.
- (5) Where the Adjudicator deems it appropriate the Adjudicator may, before issuing a final determination in accordance with section 30M of the Act, provide the parties with a written preliminary determination, with reasons, inviting them to make submissions within a stipulated period as to why the preliminary determination should not be made final. After considering any submissions received, or if no submissions are received within the stipulated period, the Adjudicator may proceed to issue a final determination.
- (6) The Adjudicator must in a manner that the Adjudicator deems appropriate inform all parties to a complaint in writing, with reasons, of any closure of a complaint in terms of the Act or these Rules, including but not limited to closure as a result of -
- (a) the complaint not falling within the ambit of Rule 4;
  - (b) the complaint being settled in accordance with Rules 7(1) to 7(4);
  - (c) the complainant not proceeding with the complaint as contemplated in Rule 7(6);
  - (d) the complaint being dismissed or closed on any of the grounds referred to in Rule 8; or
  - (e) the issuing of a determination in accordance with section 30M of the Act.
- (7) Where a determination orders a respondent to take any specific action, the Adjudicator must take reasonable steps, over and above providing the statement required by section 30M of the Act, to ensure that the complainant understands the action they should expect to be taken by the respondent, any action required by them, and possible steps

they are able to take to obtain assistance to enforce the determination in the event that the respondent does not take the required action

## **7. Settlement and conciliation**

- (1) Without limiting the generality of section 30J of the Act or Rule 2(3), the Adjudicator must in the first instance and may at any stage of disposing of a complaint consider whether there is a reasonable prospect of resolving a complaint by a conciliated settlement acceptable to all parties.
- (2) A conciliation process proposed by the Adjudicator may be conducted by a staff member of the Adjudicator's office or by an external party, provided that the conciliation process must ensure that the requirements of section 30D(2) of the Act are complied with and that necessary safeguards are in place to maintain the Adjudicator's objectivity, which may not be compromised by the conciliation process.
- (3) Where the Adjudicator deems it appropriate in order to resolve a complaint by conciliation, the person conducting the conciliation process may make a written settlement recommendation to the parties, requiring them to confirm within a period stipulated in the settlement recommendation whether or not they accept the settlement recommendation and, where they do not accept it, inviting them to provide reasons for not accepting it.
- (4) Where all parties accept a settlement recommendation referred to in (3), the Adjudicator must confirm to all parties that the complaint has been settled by conciliation on the basis of the settlement recommendation, provided that before providing such confirmation the Adjudicator may, where a party has agreed to take any action in accordance with the settlement recommendation, require the party within a stipulated period to provide evidence satisfactory to the Adjudicator that they have taken such action.
- (5) If the parties do not accept the settlement recommendation referred to in (3) within the stipulated period, or where a conciliation process fails for any other reason, including because a party does not provide the evidence referred to in (4) within the stipulated period, the Adjudicator must continue to deal with the complaint in terms of the Act and the other provisions of these Rules.
- (6) If at any stage of the complaint process prior to the issuing of a determination, the complainant informs the Adjudicator that they do not wish to proceed with the complaint, the Adjudicator may stop any investigation and regard the complaint as withdrawn or settled and must maintain appropriate records of the basis for this conclusion: Provided that the Adjudicator may require the complainant to provide written confirmation of an oral request not to proceed with the complaint, and may close the complaint if such written confirmation is not received within a stipulated period.

## **8. Dismissal of complaints**

- (1) Notwithstanding any other provision of these Rules, the Adjudicator may summarily dismiss a complaint and issue a determination to that effect without further consideration of its merits or without referral to any other party if to the knowledge of the Adjudicator, or on the facts provided by the complainant, it appears to the Adjudicator after an initial investigation that -
  - (a) the complaint does not have any reasonable prospect of success;
  - (b) the respondent has taken action which satisfactorily addresses the issues raised in the complaint;

- (c) the matter has previously been considered by the Adjudicator; or
  - (d) the complaint is being pursued in a frivolous, vexatious, or abusive manner.
- (2) The Adjudicator must within a reasonable time after summarily dismissing a complaint in terms of Rule 8(1) advise the person or persons against whom the complaint is made of the complaint and the dismissal.
  - (3) A complaint received officially may thereafter be dismissed at any stage if the Adjudicator becomes aware of any of the circumstances referred to in Rule 8(1).
  - (4) A complaint received officially may thereafter be closed on the basis that it has been abandoned by the complainant if the complainant fails to co-operate in the pursuance or resolution of the complaint, and the Adjudicator must maintain appropriate records of the basis for this conclusion.

## **9. Procedure in the event of lack of response**

- (1) If, in the discretion of the Adjudicator, a party has in a particular case not responded within a reasonable time, or otherwise failed to comply with these Rules, the Adjudicator may proceed to dispose of a complaint in accordance with these Rules on the available facts and information.
- (2) Without limiting the generality of Rule 9(1), if after giving a respondent a reasonable opportunity to respond to a complaint or to any related correspondence, with clear timelines and an explanation of the potential consequences of failing to respond, no response is received, the Adjudicator may proceed to issue a default determination as a final determination contemplated in section 30M of the Act, based on the information provided by the complainant or other parties, where the Adjudicator considers such information sufficient to make a determination.

## **10. Costs and interest**

- (1) When making a final determination in terms of section 30M of the Act, the Adjudicator may award costs against the respondent or, if the Adjudicator is of the opinion that the complainant's conduct was improper, unreasonable, or caused an unreasonable delay in finalising the investigation, the Adjudicator may award costs against the complainant. In either case the costs are awarded in favour of the other party to the complaint.
- (2) Any costs award by the Adjudicator must be quantified by the Adjudicator with due regard to the nature of the complaint, the time spent on the complaint, the expense and inconvenience caused to a party, the conduct of a party in resolving the complaint, and any other factor deemed by the Adjudicator to be appropriate.
- (3) Any award of interest and costs forms part of the relevant final determination of the Adjudicator, which must include an appropriate explanation of the reasons for and basis of the award.

## **11. Time limits**

- (1) Subject to section 30I of the Act, time limits for any aspect of the proceedings in connection with a complaint may be fixed by the Adjudicator and must be honoured by the parties to the complaint.

- (2) Subject to section 30I and section 30A(4) of the Act, extensions of time limits imposed by these Rules or fixed by the Adjudicator may be granted in the discretion of the Adjudicator, and the affected parties notified accordingly.

## **12. Administrative and procedural matters**

- (1) Any function to be performed by the Adjudicator in terms of these Rules, except the making of a determination in accordance with section 30M of the Act, may be delegated by the Adjudicator to an employee of the Adjudicator's Office.
- (2) The Adjudicator does not have the power to rescind or revoke a determination that has been issued in accordance with section 30M of the Act.
- (3) Save to the extent that section 30L of the Act, these Rules or any other law requires or permits disclosure, information provided to the Adjudicator is confidential and may only be disclosed by the Adjudicator to the Authority as contemplated in section 251 of the Financial Sector Regulation Act, or to another party to the complaint to the extent necessary to resolve the complaint.
- (4) The Adjudicator must take reasonable steps to keep the public informed of the existence of the Adjudicator, the procedure for submitting a complaint to the Adjudicator, and other information concerning the Adjudicator and the Office of the Pension Funds Adjudicator, in order to facilitate the submission or disposal of complaints.
- (5) The Adjudicator may deliver talks, provide training, publish educational materials, including determinations and related media releases, and generally take steps to educate and inform members of the public on pension law topics.

## **13. Reconsideration by Financial Services Tribunal**

- (1) When making any of the following decisions the Adjudicator must inform all parties to the complaint that a person aggrieved by the decision, including but not limited to the complainant, the fund, or any other party to the complaint, may apply to the Financial Services Tribunal for reconsideration of that decision, in accordance with sections 228 and 230 of that Act:
  - (a) A decision to decline to investigate a complaint because it does not fall within the ambit of Rule 4;
  - (b) A decision to dismiss or decline to further investigate a complaint in accordance with Rule 8(1) or (2);
  - (c) A determination made in accordance with section 30M of the Act;
  - (d) Any other decision of the Adjudicator as defined in section 218 of the Financial Sector Regulation Act.
- (2) The information referred to in (1) must include the relevant contact details of the Financial Services Tribunal.

## **14. Liaison with Authority, Ombud Council and other entities**

- (1) The Adjudicator must advise the Authority of any material contravention of these Rules or any persistent or material failure to co-operate with the Adjudicator by a party to a complaint who falls under the jurisdiction of the Authority, either generally or in relation

to a particular matter, to enable the Authority to consider appropriate action, and must notify the party concerned that the Authority has been so advised.

- (2) For purposes of Rule 14(1) and without limiting its generality, a failure to provide the evidence referred to in Rule 7(4), where requested, or to respond to a request for information within the timelines stipulated by the Adjudicator may be regarded as a material failure to co-operate with the Adjudicator.
- (3) The Adjudicator may, subject to section 251 of the Financial Sector Regulation Act and section 30J of the Act, request and receive from the Authority information in the Authority's possession which may be relevant for the consideration of a complaint.
- (4) The Adjudicator must regularly liaise and consult with the Authority and the Ombud Council regarding any matter relating to mutual support in the achievement of their respective objectives and avoidance of overlapping of their respective functions and must implement appropriate measures to comply with any reporting requirements or information requests by the Authority or the Ombud Council as contemplated in section 217 of the Financial Sector Regulation Act.
- (5) The Adjudicator must regularly liaise and consult with other ombud schemes defined in the Financial Sector Regulation Act to ensure –
  - (a) co-operation and collaboration with each other regarding complaints or complaint trends in which they have a mutual interest; and
  - (b) that efficient and effective measures are implemented for referrals of complaints to one another where complaints fall within their respective jurisdictions.
- (6) In order to support the enforcement by relevant regulatory or law enforcement authorities of any contravention of a provision of section 13A of the Act against any employer, fund, or other person, or to deter such contraventions, and without limiting any support the Adjudicator may wish to provide to such authorities in relation to any other contravention or offence contemplated in the Act the Adjudicator, in dealing with a complaint –
  - (a) must report any material contravention of section 13A of the Act by a pension fund and the identity of the pension fund to the Authority in accordance with section 217(3) of the Financial Sector Regulation Act;
  - (b) must report any material contravention of section 13A of the Act by an employer and the identity of the employer to the Authority;
  - (c) must generally co-operate with and may share information with the Authority and applicable law enforcement officials that they request or that the Adjudicator deems necessary to support such enforcement;
  - (d) may publicise information in a manner the Adjudicator deems appropriate regarding non-compliance with section 13A of the Act, including the identities of the fund, employer or other person concerned, where such information is included in a determination made by the Adjudicator, has been published by the Authority, or is otherwise in the public domain.
- (7) The Adjudicator may enter into one or more memoranda of understanding with the Authority or any other ombud scheme to give effect to the liaison measures contemplated in this Rule 14.

## 15. Short title and commencement

- (1) These Rules are called the Ombud Council Rules for the Pension Funds Adjudicator, 2026.
- (2) The following Rules come into operation [X] calendar months<sup>1</sup> after the date of publication on the website of the Ombud Council:
  - (a) Sub-rules 6(1), (2), (3), (6) and (7).
  - (b) Sub-rules 7(3), (4) and (5).
  - (c) Rule 10.
  - (d) Sub-rule 14(6).
- (3) All other Rules come into operation on the date of publication on the website of the Ombud Council.

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<sup>1</sup> The Ombud Council will determine an implementation period for these specific Rules of not less than two months after the date of publication, after further consultation with the Adjudicator.