

FSCA COMMUNICATION 18 OF 2023 (FAIS)

STATUS UPDATE WITH REGARDS TO THE AMENDMENT OF THE RULES ON PROCEEDINGS OF THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS (FAIS)

1 PURPOSE

The purpose of this Communication is to provide stakeholders with an update on the status of the draft Amendment to the *Rules on the Proceedings of the Office of the Ombud for Financial Services Providers, 2022*, which the Financial Sector Conduct Authority (FSCA) published for comment in July 2022.

1. BACKGROUND AND CONTEXT

2.1 In 2021, National Treasury and the Financial Sector Conduct Authority (FSCA) published a diagnostic study entitled: “*South Africa – Financial Ombud System Diagnostic*”.¹ The study was commissioned by National Treasury and prepared by the World Bank Group (WBG). It aimed to provide an independent review of South Africa’s financial ombud system and recommended reforms to enhance customer protection and good-quality outcomes in the financial sector.

2.2 One of the recommendations in the report was that the current maximum compensation limit for the FAIS Ombud, which was set in 2004 at R 800,000, should be reviewed and that the 2004 limit was no longer appropriate, as it has not kept up with inflation or the financial realities in the market. Also, the current limit of the FAIS ombud is out of kilter when compared to other ombuds in the financial sector, thereby creating significant inconsistencies.

2.3 The Authority agreed with the recommendation that the limit should be increased, as the proposed amendment would be consistent with the objectives of the Financial Sector Regulation Act, 2017 (FSR Act) and the mandate of the FSCA to protect financial customers by promoting their fair treatment by financial

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http://www.treasury.gov.za/comm_media/press/2021/Annexure%20A_South%20Africa%20Financial%20Ombud%20System%20Diagnostic-Final-Web.pdf

institutions.

- 2.4 The Authority published a draft Amendment Notice on 6 July 2022, with public comments due by 19 August 2022. Public comments were received and considered from four (4) commentators.

3. CURRENT STATUS OF DRAFT AMENDMENTS TO THE FAIS OMBUD RULES

- 3.1 After publication of the Amendment Notice, however, the FSCA reconsidered its powers to make rules, as encapsulated in section 26(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (FAIS Act), *vis a vis* those of the Ombud Council, as encapsulated in section 201 of the FSR Act, read with section 301(2) of the FSR Act.
- 3.2 The FSCA also considered the strategic role and legislated objectives of the Ombud Council, as set out in Chapter 14 of the FSR Act. The objective of the Ombud Council is to assist in ensuring that financial customers have access to, and are able to use, affordable, effective, independent and fair alternative dispute resolution processes for complaints about financial institutions in relation to financial products, financial services, and services provided by market infrastructures. The Ombud Council has, among other powers, been afforded the powers to make rules for, or in respect of, ombuds and ombud schemes, aimed at ensuring this objective. In this context, section 301(2) of the FSR Act provides that the existing rules made under section 26 of the FAIS Act have effect as Ombud Council Rules and may be amended or revoked by Ombud Council rules.
- 3.3 The Ombud Council also has specific statutory functions to monitor and enforce compliance by ombud schemes with the FSR Act and specific financial sector laws (such as the FAIS Act), insofar as they relate to ombud schemes.
- 3.4 Emanating from the above considerations, the FSCA, in conjunction with the Ombud Council, came to the conclusion that it is more appropriate for the Ombud Council to take responsibility for the FAIS Ombud Rules going forward, given the Ombud Council's strategic role in respect of ombuds as set out in the FSR Act.
- 3.5 As such, the FSCA will not continue with the *Amendment of the Rules on the Proceedings of the Office of the Ombud for Financial Services Providers, 2022*.

The Ombud Council will also not continue the process to amend the existing rules that was initially undertaken by the Authority. Instead, the Ombud Council will undertake a new consultation process in terms of which the current FAIS Ombud Rules will be revoked in their entirety, and a new set of Ombud Council Rules will be made in their stead. The proposed Ombud Council Rules will incorporate the compensation limit increase as previously proposed and a few additional, mainly procedural matters, that it is appropriate to address at this time. The Ombud Council will imminently publish their set of documents in order to initiate consultation on the proposed Ombud Council Rules, as required in terms of section 201 read with Chapter 7 of the FSR Act.

- 3.6 The FSCA shared the comments received through its initial public consultation process, together with the FSCA's proposed views on the comments, with the Ombud Council, and will provide support to the Ombud Council as the Council undertakes its consultation process.

4. CONTACT

For further information regarding this Communication please contact the Regulatory Framework Department of the FSCA by emailing Hannelie Hattingh at hannelie.hattingh@fsca.co.za



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