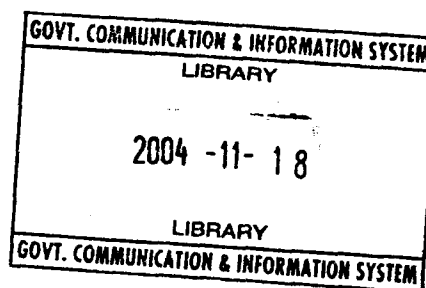


REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
FINANCIAL SERVICES OMBUD
SCHEMES BILL**

[B 20—2004]

*(As agreed to by the Portfolio Committee on Finance
(National Assembly))*



[B 20A—2004]

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AMENDMENTS AGREED TO
FINANCIAL SERVICES OMBUD SCHEMES BILL
[B 20—2004]

CLAUSE 1

1. On page 2, in line 4, to omit “(1)”.
2. On page 2, after line 38, to insert:

“Ombud for Financial Services Providers” means the Ombud for Financial Services Providers appointed in terms of section 21(1)(a) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and includes a deputy ombud appointed in terms of section 21(1)(b) of that Act;
3. On page 3, in line 3, to omit “any partnership or” and to substitute “a”.
4. On page 3, in line 14, after “mediation” to insert “, conciliation, recommendation, determination”.
5. On page 3, in line 17, after “institution” to insert:

, nor the activities of the Ombud for Financial Services Providers, the Adjudicator and statutory ombud
6. On page 3, from line 18, to omit the definition of “statutory ombud” and to substitute:

“statutory ombud” means the Ombud for Financial Services Providers, acting in the capacity contemplated in section 14;

CLAUSE 2

1. On page 3, from line 29, to omit subsection (2) and to substitute:

(2) The Council is an independent body having the powers and duties, and performing the functions, as set out in this Act.
 (3) The Council is directly accountable to the Minister.

CLAUSE 3

1. On page 3, in line 32, after “and” to insert “at least three, but not more than five,”.
2. On page 3, from line 34, to omit subsection (2) and to substitute:

(2) (a) A member shall be appointed with due regard to—
 (i) the person’s knowledge, experience and expertise with reference to the matters for which the Council has been established;
 (ii) the demographic and gender profile of the South African population.
 (b) No member may be actually engaged in the—
 (i) business of a financial institution; or
 (ii) provision of a financial service or product of a financial institution to a client.

3. On page 3, in line 39, after the second “registrar” to insert “, without voting power”.

CLAUSE 4

1. On page 3, from line 41, to omit subsection (1) and to substitute:
 - (1) Members of the Council hold office for three years or such shorter period as the Minister may determine at the time of their appointment.

CLAUSE 5

1. On page 3, in line 48, after “incapacity” to insert:

and such member is afforded a reasonable opportunity to be heard
2. On page 3, in line 49, to omit “is” and to substitute “becomes”.
3. On page 3, in line 55, to omit “R100” and to substitute “the prescribed amount”.
4. On page 4, in line 2, after “chairperson” to insert “presiding at the meeting”.
5. On page 4, from line 3, to omit paragraph (f) and to substitute:

(f) if the member becomes subject to a disqualification referred to in section 3(2)(b).
6. On page 4, from line 5, to omit subsections (2) and (3) and to substitute:

(2) A member referred to in subsection (1)(f) must inform the Minister of the member’s disqualification in terms of section 3(2)(b) and the Minister must appoint within a reasonable period of time a person under section 3(1) to act in the place of such member for the unexpired period of term of office.

CLAUSE 6

1. On page 4, from line 12, to omit subsection (1) and to substitute:

(1) The Council must meet at least twice in any financial year, or such sufficient number of times so as to arrange for the performance of its functions and must regulate its meetings in accordance with the rules and procedures to be established by the Council within six months after the appointment of the first members to the Council.
2. On page 4, in line 14, to omit “(2)” and to substitute “(2)(a)”.
3. On page 4, in line 16, to omit “preside at” and to substitute “act as chairperson of”.
4. On page 4, after line 16, to insert:

(b) At least half the appointed members form a quorum.
5. On page 4, in line 19, to omit “person” and to substitute “chairperson”.

CLAUSE 7

1. On page 4, in line 23, to omit “determined” and substitute “approved”.
2. On page 4, in line 23, to omit “board” and to substitute “Minister, after consultation with the board,”.
3. On page 4, in line 24, to omit “reasonable expenses” and to substitute “the expenditure”.

CLAUSE 8

1. On page 4, from line 29, to omit paragraph (c) and to substitute:
 - (c) promote co-operation and co-ordination of the activities of an ombud of a recognised scheme, the Adjudicator, the Ombud for Financial Services Providers and the statutory ombud, including in relation to informing and educating clients with regard to available resolution forums;
2. On page 4, from line 40, to omit paragraph (b).
3. On page 4, in line 42, to omit “(c)” and to substitute “(b)”.
4. On page 4, in line 42, to omit “and audit”.
5. On page 4, in line 43, after “scheme” to insert:

and may recover the cost from the scheme
6. On page 4, from line 44, to omit subsection (3) and to substitute:

(3) The registrar must assist the Council in performing its functions and implementing its decisions in addition to performing the administrative work of the Council.
7. On page 4, in line 46, to omit “board and”.
8. On page 4, in line 46, after “Minister” to insert “, and provide a copy to the board,”.

CLAUSE 10

1. On page 5, in line 13, after “Act” to insert “, and report any non-compliance to the Council”.
2. On page 5, from line 34, to omit paragraph (h) and to substitute:
 - (h) the scheme must provide for ways in which it will co-operate with the Council’s functions of promoting the education of clients and co-ordinating the activities contemplated in section 8(1)(c); and

CLAUSE 11

1. On page 5, after line 48, to insert:

(3) The Registrar of Securities Services established under the Securities Services Act, 2004, must, in respect of any dispute resolution scheme submitted by a self-regulatory organisation under that Act—

- (a) facilitate, by forwarding the rules of that scheme to the Council, the recognition process described in subsection (1), excluding the non-refundable prescribed fee;
 - (b) prior to approving a dispute resolution scheme included in the rules of a self-regulatory organisation submitted in terms of that Act, confirm with the Council that any such dispute resolution scheme included in such rules meets requirements materially equivalent to those of section 10 of this Act; and
 - (c) facilitate the ongoing compliance by the self-regulatory organisation with the requirements of this Act.
2. On page 5, in line 54, to omit "(3)" and to substitute "(4)".

CLAUSE 13

1. On page 6, from line 24, to omit subsection (1) and to substitute:
- (1) The ombuds referred to in this Act have the following jurisdiction:
 - (a) The Adjudicator and the Ombud for Financial Services Providers have jurisdiction as set out in their respective enabling Acts;
 - (b) an ombud of a recognised scheme has the jurisdiction provided by the procedures under which such scheme operates and the terms of reference of such ombud; and
 - (c) the statutory ombud has jurisdiction in respect of matters not within the jurisdiction of the ombuds referred to in paragraphs (a) and (b).
2. On page 6, in line 26, after "(2)" to insert "(a)".
3. On page 6, in line 27, to omit "statutory ombud" and to substitute "the Ombud for Financial Services Providers".
4. On page 6, in line 29, to omit "statutory ombud" and to substitute "the Ombud for Financial Services Providers".
5. On page 6, after line 30, to insert:
- (b) If an ombud of a recognised scheme, the Adjudicator, the Ombud for Financial Services Providers or the statutory ombud does not have jurisdiction in respect of a specific complaint submitted to him or her, that ombud, Adjudicator, Ombud for Financial Services Providers or statutory ombud must submit such complaint without undue delay to the office which does have jurisdiction and must advise the client accordingly.
6. On page 6, from line 31, to omit subsections (3) and (4) and to substitute:
- (3) (a) In the case of uncertainty in respect of whom the complaint should be referred to, the relevant ombud, Adjudicator, Ombud for Financial Services Providers or statutory ombud involved in the uncertainty, must consult in order to determine who should deal with the complaint.
 - (b) Failing agreement under paragraph (a), the matter will be referred to the statutory ombud to determine who may exercise jurisdiction in respect of the complaint, and the statutory ombud shall advise the client accordingly.

CLAUSE 14

1. On page 6, in line 38, to omit "section 13" and to substitute "sections 13 and 19".
2. On page 6, in line 39, to omit "subsection (2)" and to substitute "subsections (2), (3) and (4)".
3. On page 6, from line 42, to omit "has been" and to substitute "is".
4. On page 6, in line 48, after "necessary" to insert "consequential".
5. On page 6, in line 53, to omit "a" and to substitute "the".
6. On page 6, in line 53, after "board" to insert ", after consultation with the Council,".

CLAUSE 15

1. On page 7, in line 3, to omit "contractual time barring terms" and to substitute:

time barring terms, whether in terms of an agreement or any law,

CLAUSE 16

1. On page 7, in line 12, to omit "The ombud of a" and to substitute "A".
2. On page 7, after line 20, to insert:

(2) Notwithstanding subsection (1), a self-regulatory organisation contemplated in section 11(3) must submit to the Registrar of Securities Services an annual report on the affairs and functions of its scheme approved in terms of section 11(3).

CLAUSE 17

1. On page 7, in line 27, after "board" to insert "and the Council".
2. On page 7, in line 33, to omit "a" and to substitute "its".
3. On page 7, in line 34, after "recommendation" to insert "and that of the Council".

CLAUSE 18

1. On page 7, in line 47, after "board" to insert "and the Council".
2. On page 7, in line 54, to omit "and" and to substitute "or".
3. On page 8, after line 13, to add:

(5) (a) No financial institution may use a name or description in respect of any internal complaint resolution arrangement referred to in paragraph (b) of the definition of "scheme" in section 1, which represents or constitutes a "scheme" as so defined, unless the financial institution—

 - (i) has been authorised by the Council to do so; and
 - (ii) complies with the conditions determined by the Council.

(b) A financial institution that contravenes any provision of paragraph (a) is guilty of an offence and on conviction liable to a fine not exceeding the prescribed amount.

(c) Financial institutions not in compliance with this section, must be compliant within 18 months from the date fixed by the President in terms of section 20.

CLAUSE 19

1. On page 8, in line 15, after “board” to insert “and the Council”.
2. On page 8, after line 16, to insert:
 - (a) the proceedings of the statutory ombud;
 - (b) the limitations on the jurisdiction of the statutory ombud, having regard to—
 - (i) the factual or legal complexity of any complaint dealt with by the statutory ombud;
 - (ii) the nature of the client whose complaint is dealt with by the statutory ombud;
 - (iii) the maximum amount involved in the dispute between the client and the financial institution; and
 - (iv) the legal relationship between the client whose complaint is to be dealt with and the financial institution;
2. On page 8, in line 19, to omit “or expedient”.

LONG TITLE

1. On page 2, in the sixth line, after “**resolution**” to insert:

; to empower the Ombud for Financial Services Providers to act as a statutory ombud in certain cases