GENERAL NOTICE

NOTICE 1802 OF 2004

NATIONAL TREASURY

PUBLICATION OF FINANCIAL SERVICES OMBUD SCHEMES BILL, 2004

The Minister of Finance intends tabling the Financial Services Ombud Schemes Bill, 2004 in Parliament during the current parliamentary term. The Bill is published in accordance with Rule 241 (1)(c) of the Rules of the National Assembly.

Interested persons and institutions are invited to submit written representation on the Bill to the Secretary to Parliament by no later than 23 September 2004.

All submissions must be addressed to:

The Secretary to Parliament
c/o Mr. A Hermans
Committee Section
Parliament of the RSA
P.O.Box 15
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BILL

To provide for the recognition of financial services ombud schemes, to lay down minimum requirements for ombud schemes; to promote consumer education with regard to ombud schemes; to co-ordinate the activities of ombuds of recognised schemes and those of the Pension Funds Adjudicator and Ombud for Financial Services Providers; to develop and promote best practices for complaint resolution; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: –

Definitions

1. (1) In this Act, unless the context indicates otherwise –

"Adjudicator" means the Pension Funds Adjudicator appointed in terms of section 30C(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

"board" means the Financial Services Board established by section 2 of the Financial Services Board Act;

"client" means a person who uses the services of a financial institution or a person who enters into a transaction with a financial institution in respect of a product of that institution, and includes the –

(a) successor in title of such person; or

(b) beneficiary of such service or product;

"complaint" means a complaint of a client relating to any agreement with, or a financial service or product of, a financial institution, and in which it is alleged that the client has suffered or is likely to suffer financial prejudice or damage as a result of the financial institution –

(a) having contravened or failed to comply with a provision of any agreement or the law or of a code of conduct subscribed to by the financial institution;

(b) having wilfully or negligently supplied, or failed to supply, a financial service or a product, to the client;

(c) having treated the client unreasonably or inequitably; or

(d) having maladministered the implementation of an agreement with, or the supply of a financial service or a product to, the client;

"Council" means the Financial Services Ombud Schemes Council established by section 2;

"financial institution" means –

(a) a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

(b) any financial institution as defined in paragraph (a) of the definition of "financial institution" in section 1 of the Financial Services Board Act; or

(c) any person declared to be a financial institution in terms of section 17;

"Financial Services Board Act" means the Financial Services Board Act, 1990 (Act No. 97 of 1990);

"Minister" means the Minister of Finance;

"ombud" means a person who is empowered in terms of a scheme to resolve a complaint;

"participant", in relation to a scheme, means a financial institution which takes part in the scheme or its funding and which submits to the authority of the relevant ombud;

"person" includes any partnership or trust;

"prescribed" means prescribed by regulation;

"recognised scheme" means a scheme which has been granted recognition in terms of section 11;

"registrar" means the executive officer appointed as such in terms of section 13(1)(a) of the Financial Services Board Act;

"regulation" means a regulation made in terms of section 19;

"scheme", notwithstanding any other law, means any scheme or arrangement established by or for a financial institution, or a group of financial institutions, in order to resolve a client's complaint by an ombud–

(a) and includes any arrangement in terms of which resolution of the complaint is to be effected by mediation or arbitration;

(b) but does not include any internal complaint resolution arrangement established by a financial institution either with or without any affiliate or subsidiary of the institution;

"Statutory ombud" 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;

"this Act" includes-

(a) any regulation; and

(b) any determination, decision, requirement or condition made, determined or imposed, and any notice published, by the Minister.

Establishment of Financial Services Ombud Schemes Council

2. (1) There is hereby established a council to be known as the Financial Services Ombud Schemes Council.

(2) The Council must be regarded as a committee of the board contemplated in section 10(1) of the Financial Services Board Act.

Composition of Council

3. (1) The Council consists of a chairperson, a deputy chairperson and other members appointed by the Minister after consultation with the board.

(2) (a) The members must include persons who are representative of financial institutions which and clients who are affected by this Act.

(b) The majority of members of the Council must not be actually engaged in the -

(i) business of a financial institution; or

(ii) supply to a client of a financial service or product of a financial institution.

(3) The registrar is a member of the Council by virtue of the office of the registrar.

Term of office of members of Council

4. (1) A member of the Council holds office for three years or such shorter period as the Minister may determine at the time of the member's appointment.

(2) A member whose term of office has expired is eligible for reappointed.

Vacating of office by members of Council

5. (1) A member of the Council must vacate office-

(a) on resigning as a member;

(b) if the member is discharged by the Minister on the grounds of misconduct or incapacity;

(c) if the member is an unrehabilitated insolvent;

(d) if the member has at any time been convicted (whether in the Republic of South Africa or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty for which the member has been

sentenced to a period of imprisonment without the option of a fine or to a fine exceeding R100;

(e) if the member has been absent for more than two consecutive meetings of the Council without leave of the chairperson; or

(f) if the member becomes a member contemplated in subsection (2) and the member is discharged by the Minister in order to comply with section 3(2)(b).

(2) A member who was not actually engaged in the business of a financial institution or the supply to a client of a financial service or product of a financial institution at the time of his or her appointment must inform the Minister if he or she becomes so engaged.

(3) If a member vacates office the Council may continue its work as long as no fewer than five members are in office.

Meetings and decisions of Council

6. (1) The Council may meet or otherwise arrange for the performance of its functions and may regulate its meetings as it deems fit.

(2) The chairperson or the deputy chairperson presides at meetings of the Council, but if both are absent from a meeting the members present must elect another member to preside at that meeting.

(3) The decisions of the Council are valid if taken by a simple majority of members in office at the relevant time, and in the event of an equality of votes on any matter the person presiding at the meeting in question shall have a casting vote in addition to the person's deliberative vote.

Remuneration of members of Council

7. A member of the Council who is not in the full-time employment of the State or the board is paid the remuneration and allowances determined by the board as well as all reasonable expenses incurred in the performance of the functions of the Council.

Functions of Council and registrar

8. (1) The Council must–

(a) consider and grant or refuse an application for the recognition of a scheme;

(b) monitor compliance with this Act by a recognised scheme;

(c) promote the education of clients with regard to available complaint resolution forums;

(d) after consultation with the relevant ombud, develop and promote best practices for complaint resolution by the recognised scheme in question;

(e) ensure that the independence and impartiality of an ombud is not affected when the Council performs its function; and

(f) perform such other functions as the Minister, after consultation with the board, may direct in order to achieve the objects of this Act.

(2) The Council may -

(a) issue guidelines to inform clients of the jurisdiction of different ombuds and of the procedures for the submission of a complaint;

(b) if necessary, facilitate co-ordination of the activities of an ombud of a recognised scheme and those of the Adjudicator and statutory ombud; and

(c) if necessary, require an independent assessment and audit on the conformity with this Act by any recognised scheme,

(3) The registrar must perform the administrative work incidental to the performance of the functions of the Council.

(4) The Council must each year submit to the board and Minister a report on its affairs and functions during the preceding year ended on 31 December.

Expenditure and service fees

9. (1) The expenditure connected with the functions of the Council is paid out of the funds of the board, and the approval of the board is required for all expenditure proposed to be incurred, or actually incurred, by the Council.

(2) The board may charge a service fee in accordance with the prescribed tariff in respect of any service rendered by the Council to a scheme or participant.

Requirements for recognition of scheme

10. (1) In order to qualify for recognition in terms of section 11, a scheme must comply with the following requirements:

(a) A majority of financial institutions, based on asset value, gross income or client base (as the Council may determine in general or in a particular instance), in a particular category of financial institutions must participate in the scheme;

(b) a body which is not controlled by participants in the scheme and to which the ombud is accountable, must–

(i) appoint the ombud, settle the remuneration and monitor the performance and independence of the ombud; and

(ii) monitor the continued compliance by the scheme with its constitution, the provisions of the scheme and this Act;

(c) the scheme must provide for minimum requirements relating to qualifications, competence, knowledge and experience with which the ombud must comply;

(d) the scheme must have sufficient human, financial and operational resources, funded by the participants in the scheme, to enable the ombud to function efficiently and timeously;

(e) the proposed procedures of the scheme must enable the ombud–

(i) to resolve a complaint through mediation, conciliation, recommendation or determination;

(ii) to act independently in resolving a complaint or in making a determination;

(iii) to follow informal, fair and cost-effective procedures;

(iv) where appropriate, to apply principles of equity in resolving a complaint;

(v) to report to the registrar and to a body representative of the relevant category of financial institutions on matters which may be of interest to them;

provision must be made for the effective enforcement of determinations of the ombud;

(g) provision must be made to ensure that the questions, concerns and complaints of consumers are treated equitably and consistently in a timely, efficient and courteous manner;

(h) the scheme must provide for ways in which the public can be made aware of the existence of the scheme and how it functions; and

(i) any other requirements which may be prescribed and which are not in conflict with the objects of this Act.

(2) Nothing contained in subsection (1) precludes a scheme from providing that its participants are bound by other provisions set out in the scheme and which are not in conflict with the provisions of this Act.

Application for recognition by scheme

11. (1) A scheme must submit its application for recognition in the prescribed manner and form to the Council together with the supporting documentation and information determined by the board and a non-refundable prescribed fee.

(2) A properly authorised representative of the body referred to in section 10(1)(b) or of the participants concerned may appear before the Council in order to submit the scheme's application for recognition and to present its case in support of such recognition.

(3) The Council must, after consideration of an application -

(a) if satisfied that the scheme complies with the requirements of this Act, grant the application; or

(b) if not so satisfied, refuse the application and furnish the scheme with reasons for such refusal.

(4) At any time after a scheme has been recognised in terms of subsection (3)(a) and after affording the relevant scheme an opportunity to be heard, the Council may impose on such scheme, any requirement contemplated in section 10(1)(i) prescribed after the date of recognition of the scheme.

(5) No change to–

(a) the constitution of a recognised scheme;

(b) the provisions under which a recognised scheme operates; and

(c) the terms of reference of recognised scheme's ombud,

is valid unless approved by the Council.

(6) If an application has been granted, the Council must issue a certificate of recognition in the prescribed manner to the relevant scheme and the registrar must publish the recognition by notice in the *Gazette*.

Suspension, reinstatement or withdrawal of recognition

12. (1) The Council may at any time suspend or withdraw recognition -

(a) on application by the scheme;

(b) if the scheme has ceased to function; or

(c) if the scheme no longer complies with any provision of this Act.

(2) The Council may reinstate the recognition of a suspended scheme if the reason for the suspension no longer exists.

(3) The registrar must in the prescribed manner publish a notice of suspension, reinstatement or withdrawal of recognition in the *Gazette.*

(4) A suspension or withdrawal of recognition for the reasons contemplated in paragraphs (b) and (c) of subsection (1) -

(a) may only be made after the scheme concerned has been afforded a reasonable opportunity to be heard; and

(b) is subject to an appeal by the scheme concerned to the board of appeal established by section 26(1) of the Financial Services Board Act.

(4) For the purpoes of an appeal contemplated in subsection (3)(b) the provisions of section 26 of the Financial Services Board Act apply with the necessary changes.

Jurisdiction

13. (1) The operation of a recognised scheme does not affect the activities and authority of the Adjudicator or the statutory ombud.

(2) No ombud of a recognised scheme has jurisdiction to resolve a complaint or settle a matter in respect of which the Adjudicator or statutory ombud has in terms of a law jurisdiction, except in the case of any such complaint in respect of which the Adjudicator or statutory ombud has in terms of a law declined to resolve the complaint or settle the matter.

(3) In the case of unceitainty regarding jurisdiction over a specific complaint, the relevant ombud, Adjudicator and statutory ombud must agree on who has jurisdiction over such complaint.

(4) If the relevant ombud, Adjudicator and statutory ombud fail to reach such agreement, the statutory ombud must determine who may exercise jurisdiction over such complaint.

Authority of statutory ombud to entertain certain complaints

14. (1) Subject to section 13, the statutory ombud may deal with complaints against a financial institution in the circumstances and on the basis set out in subsection (2).

(2) The statutory ombud must deal with a complaint against a financial institution if-

(a) the financial institution does not participate in a recognised scheme;

(b) the recognition of a scheme in which the financial institution participates has been suspended or withdrawn in terms of section 12(1); or

(c) the financial institution participated in a recognised scheme, but the ombud concerned lacks jurisdiction in terms of the relevant scheme while the statutory ombud has jurisdiction to entertain such complaint.

(3) The statutory ombud must deal with complaints contemplated in subsection (2) in the manner and in accordance with the procedures, applied with the necessary changes, provided for in Part 1 of Chapter VI of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).

(4) The statutory ombud who deals with a complaint in terms of this section may determine an amount payable by the financial institution in question in order to cover the costs of dealing with, a complaint in accordance with guidelines set by the board and published by notice in the *Gazette.*

(5) The determination of an amount in terms of subsection (4) has the effect of a civil judgment given by a court in favour of the board for a liquid debt and any amount recovered becomes part of the funds of the board.

Prescription and saving of rights

15. (1) Official receipt of a complaint by an ombud or the statutory ombud suspends any applicable contractual time barring terms or the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the period from such receipt until the complaint has either been withdrawn by the complainant concerned or determined by any such ombud.

(2) No provision of this Act must be construed as affecting any right of a client or other affected person to seek appropriate legal redress by virtue of common or statutory law, before or after the consideration of a complaint by an ombud or the statutory ombud.

Report of ombud

16. (1) The ombud of a recognised scheme must–

(a) within six months after the end of every financial year of the scheme, submit to the Council, in the form and with the content required by the Council, a report on the affairs and functions of the office of the ombud during the financial year in question;

(b) at the request of the Council at any time furnish the Council within a reasonable time with such information or report regarding the operation of the scheme and other matters relating to the scheme as may be necessary to ensure compliance by the scheme with the provisions of this Act.

(2) The Council must at the request of the board or the Minister, and may of its own accord, submit reports and information received from an ombud to the board or Minister, as the case may be with such comment or recommendation as the Council deems necessary.

Declaration as financial institution

17. (1) The Minister may, by notice in the *Gazette* and after consultation with the board, declare any person as a financial institution.

(2) (a) Any person who has not been declared a financial institution and who wishes to be so declared may apply in writing to the board through the registrar for such declaration.

(b) An application contemplated in paragraph (a) must contain substantiating reasons for such application.

(c) The board must submit any application received by it together with a recommendation to the Minister for final decision.

Prohibition and exemptions

18. (1) Notwithstanding any other law, no financial institution may -

(a) participate in a scheme; or

(b) require or invite any client to submit a complaint in terms of any such scheme, unless the scheme is a recognised scheme or the financial institution is exempted from compliance in terms of subsection (4).

(2) Any participation, requirement or invitation in contravention of subsection (1) is null and void.

(3) Despite subsection (1), any scheme existing and in operation immediately before this section came into operation may continue in accordance with the provisions of that scheme until the expiry of a period of 18 months from the date on which this section came into operation.

(4)(a) The Minister may, after consultation with the board, exempt any financial institution or category of financial institutions by notice in the *Gazette* from any provision of this Act relating to the resolution of a complaint by an ombud, if -

(i) the resolution of a complaint against the financial institution or category of financial institutions by an ombud is already partially or wholly regulated by any other law; or

(ii) the granting of the exemption will not conflict with the public interest, prejudice the interests of clients and frustrate the achievement of the objects of this Act.

(b) The Minister–

(i) having regard to the factors mentioned in paragraph (a), may attach to any exemption so granted reasonable requirements or impose reasonable conditions with which the financial institution or category of financial institutions must comply either before or after the effective date of the exemption in the manner and during the period specified by the Minister; and

(ii) must determine the period for which the exemption will be valid.

(c) Subject to paragraph (d), a conditional exemption lapses whenever the financial institution or a financial institution in the category in question contravenes or fails to comply with any such requirement or condition.

(d) The Minister may on application condone any such contravention or failure and determine reasonable requirements or conditions with which the financial institution must comply on or after resumption of the exemption as if such requirements or conditions had been attached or imposed on the first granting of the exemption.

Regulations

19. The Minister may, after consultation with the board and by notice in the *Gazette,* make regulations regarding–

(a) any matter which in terms of this Act is required or permitted to be prescribed; and

(b) any other matter which it is necessary or expedient to prescribe in order to achieve the objects of this Act.

Short title and commencement

20. This Act is called the Financial Services Ombud Schemes Act, 2004, and comes into operation on a date fixed by the President by proclamation in the *Gazette.*

MEMORANDUM ON THE OBJECTS OF THE FINANCIAL SERVICES OMBUD SCHEMES BILL, 2004

1. Background

1.1 Following an extensive consultative process, which commenced in 1999, a Bill was drafted by the Financial Services Board ("the Board"), which essentially provided for-

(a) the recognition of voluntary ombud arrangements in the financial services sector, provided they complied with certain prescribed criteria; and

(b) the resolution of consumer complaints which could not be accommodated at either voluntary or statutory ombud schemes.

1.2 For a number of reasons, principally based on the Board's experience regarding complaints received and learning of recent developments with ombud schemes in South Africa and other jurisdictions, the Board decided that it was necessary to revise the provisions of the Bill before its promotion through Parliament was proceeded with.

1.3 Thereafter in June 2003, the Minister of Finance temporarily withdrew the Bill from Parliament to further examine and ensure -

(a) the independence of the ombuds;

(b) that a clear demarcation of the jurisdiction exit between the various statutory and voluntary ombuds; and

(c) that there is proper ministerial oversight.

1.4 Further consultations in accordance with the policy direction of the Minister of Finance were held in July 2003. The present draft of the Bill addresses the issues raised by the Minister of Finance.

1.5 The revised Bill retains the main features of the former Bill mentioned in paragraph 1.1. above. It allows a period of grace for schemes existing at the commencement of the Bill as an Act to continue operations for 18 months, and debars the operation by financial institutions of any dispute resolution scheme other than recognised schemes. This promotes one of the main aims of the Bill, namely standard setting. As regards recognised schemes, it preserves their independence to look after own affairs but also extends the. activities of the proposed governing Financial Services Ombud schemes council. It also addresses the problem of consumer confusion by providing for the facilitation of the co-ordination of activities of ombuds of recognised schemes and those of Ombuds created by law, as also appears from similar developments in countries such as Australia and Canada.

1.6 The Bill makes specific provision that the ombud schemes may not deal with complaints subject to the jurisdiction of the Pension Funds Adjudicator and Ombud For Financial Services Providers ("the FAIS Ombud"). This is necessary in order to enable Adjudicator and the FATS Ombud to develop expertise in their fields and to avoid forum arbitrage. The functional approach of having all complaints of the same nature resolved by a dedicated Ombud established by law for such purpose, will avoid consumer confusion.

2. Primary Objects

2.1 The primary objects, which the Bill pursues, are summarised by the long title of the Bill, which reads as follows:

"To provide for the recognition of financial services ombud schemes; to lay down minimum requirements for ombud schemes; to promote consumer education with regard to ombud schemes; to co-ordinate the activities of ombuds of recognised schemes and those of the Pension Funds Adjudicator and Ombud for Financial Services Providers; to develop and promote best practices for complaint resolution; and to provide for matters incidental thereto.".

2.2 The Bill proposes to achieve these objectives through an independent council, which will exercise authority in applying the provisions of the Bill.

3. Salient Provisions of the Bill

(a) clause 1, which is the definition clause, defines the principal words and expressions used in the Bill. It appears from this clause that banks, including mutual banks, and all financial institution over which the Board has jurisdiction (as appears from the definition thereof in the Financial Services

Board Act, 1990 (Act No. 97 of 1990), are to be the financial institutions covered by the provisions of the Bill. Any other person may also be declared a financial institution for purposes of the Act, either on own initiative by the Minister of Finance or an application by the person.

(b) Clause 2 provides for the establishment of the Financial Services Ombud schemes Council ("the Council"), a body representative of consumers, the financial services industry and others, which will function as a committee of the Financial Services Board ("the Board") and be responsible for the application of the Act. The majority of members of the Council must be independent of the financial services industry. As appears from other clauses, the Executive Officer of the Board (the "registrar" under the Bill), will serve as a member of the Council and the administrative work of the Council will be the responsibility of the Board which will also fund the activities of the Council. The Council is empowered to charge service fees in respect of any service rendered by it.

(c) Clause 8 sets, out the functions of the Council, which essentially are –

(i) to consider and grant or refuse applications for recognition of financial services ombud schemes;

(ii) to monitor the compliance by recognised schemes with the requirements of the Act;

(iii) to request independent assessments and audits of recognised schemes and their compliance with the Act;

(iv) to promote consumer education with regard to available, complaint resolution forums;

(v) to facilitate co-ordination of the activities of recognised schemes and those of the Adjudicator and FAIS Ombud; and

(vi) to develop and promote best 'practices for complaint resolution by recognised schemes.

(d) Clause 10 lays down the minimum requirements for recognition of an ombud scheme. These include -

(i) majority support by those financial institutions in whose sector of industry the scheme will operate;

(ii) the appointment of the ombud by a body not controlled by scheme participants, and to which body the ombud must be accountable;

(iii) specified minimum requirements for the ombud in relation to qualifications, competence, knowledge and experience;

(iv) sufficient financial, operational and human resources;

(v) specific requirements with regard to the procedures finder which the ombud will operate, especially that they should be informal, fair and cost-effective; and

(vi) provision for the effective enforcement of determinations of the ombud.

(e) Clause 11 sets, out the, procedures to be followed when application for recognition of a financial services ombud scheme is made. The Council has to be satisfied in the respects laid down by the Act and will be entitled to either grant or refuse the application.

(f) Clause 12 provides for suspension or withdrawal of an authorisation granted to a scheme in certain circumstances.

(g) Clause 13 deals with the jurisdiction of the ombuds of recognised schemes. It also deals with cases of uncertainty regarding jurisdiction over specific complaints.

(h) Clause 14 empowers the FAIS Ombud to, entertain client complaints if those complaints cannot be accommodated by a ombud of any of the recognised scheme. That would for example be the case if the financial institution complained against does not participate in a recognised scheme.

(i) Clause 15 provides for the suspension of barring clauses or prescription while a complaint is in the hands of an ombud of a recognised scheme or the FAIS Ombud, and further makes clear that a complainant's rights to institute action through the courts are not affected.

(j) Clause 16 requires the ombuds of recognised schemes to submit annual reports to the Council and further to furnish any information, which the Council may require from time to time. The Council in turn must submit these reports and information to the Board or the Minister, with such recommendations as it deems necessary.

(k) (i) Clause 18(1) and (2) provides that no financial institution may (as from the day of coming into operation of the Bill as an Act) participate in a financial services ombud scheme, or require or invite any client to submit a complaint to a scheme, unless the scheme is a recognised scheme, and that any such participation in, requirement or invitation, without the scheme having obtained recognition as such a scheme, will be null and void.

(ii) Clause 18(3) provides that any financial services Ombud scheme existing immediately before the date of coming into operation of the Bill as an Act, may continue in accordance with the provisions of that scheme until the expiry of 18 months from the date on which the Act came in operation.

(iii) Clause 18(4) provides for exemptions, subject to reasonable requirements or conditions, from provisions in the Bill on resolution of complaints where such resolution is already dealt with in any other law or the exemption will not frustrate the achievement of the objects of the Bill.

(l) Clause 19 enables the Minister, after consultation with the Board and Council, to make regulations on a number of aspects in order to achieve the objects of the Bill.

(m) Clause 20 deals with the commencement and short title of the Bill.

4. Consultative process

(a) The first draft of the Bill was preceded by an extensive consultative process with the financial services industry and other roleplayers such as the existing financial services ombud schemes and consumer bodies.

(b) When the Bill was revised to address the problem of consumer confusion with regard to where complaints must be lodged, the consultative process was resumed with the parties who had previously commented on the contents of the Bill.

(c) Thereafter the Bill was placed on the Board's website with public notification that the revised Bill was available there for scrutiny. A list of the parties consulted when the Bill was first released and approved by Cabinet (annexure A) was attached.

(d) Further consultations, in accordance with the specific policy direction of the Minister of Finance, were held with the voluntary and statutory Ombud offices and their industry associations in July 2003. The present draft of the Bill addresses the issues raised by the Minister of Finance, and also reflects the combined efforts of the drafters of the Bill and those of the commentators.

5. Financial, organisational and personnel implications

The Bill has no financial, organisational and personnel implications for the State, except that the statutory recognition of ombud schemes, all funded by industry, is likely to alleviate the burden of the courts.

6. Constitutional implications

Client complaints lodged with an ombud are submitted on a voluntary basis and any client may still elect to take recourse to law through the ordinary judicial process of court, rather than following the ombud route. In these circumstances the provisions of the Bill are not seen to be in contravention of any constitutional right.

7. Communication implications

The Bill does not have communication implications other than the commencement of the Bill as an Act of Parliament being published in the *Gazette*.

8. Parliamentary procedure

In the opinion of the State Law Advisers National Treasury and Financial Services Board this Bill should be dealt with in terms of the procedure laid down by section 75 of the Constitution. None of the procedures laid down in sections 74 and 76 of the Constitution are applicable.

PARTIES CONSULTED **ANNEXURE A**

ABSA Fund Managers Ltd
ABSA Trust Participation Bond
Actuarial Society of SA
African Harvest Management Company Ltd
Afrikaanse Handelsinstituut
Allan Gray Unit Trust Management Ltd
Anglo American Property Fund Managers Ltd
Arthur Andersen & Company
Association for the Advancement of Black Accountants
Association of Banking Lawyers of SA
Association of Black Securities and Investment Professionals
Association of Bond Issuers of SA
Association of Chartered Certified Accountants
Association of Corporate Treasurer of SA
Association of Participation Mortgage Scheme Managers in SA
Association of Property Trust Management Companies
Association of Retired Persons and Pensioners
Association of Trust Companies in SA
Association of Unit Trusts
Banking Council of SA
BDO Spencer Steward
Black Management Forum
Black Lawyers Association
BOE Investment Administrators
BOE Unit Trust Management Company Ltd
Boland Bank Beleggingsdiens Bpk
Bond Exchange of SA
Brait Management Company Limited
Business Practices Committee: Department of Trade and Industry
Business South Africa
CFL
Chartered Institute of Management Accountants
Commercial Union Unit Trust Management Company Ltd
Commission of Inquiry into the Affairs of the Masterbond Group
Community Growth Management Company Ltd
Consulting Actuaries Society of Southern Africa
Consumer Institute SA
Coronation Management Company Ltd
Corporate Lawyers Association of SA
Cosatu
Cover Magazine
Deloitte & Touche
Department of Health
Department of Economic Affairs: Eastern Cape
Department of Economic Affairs: Free State
Department of Economic Affairs: Gauteng
Department of Economic Affairs: KwaZulu/Natal
Department of Economic Affairs: Mpumalanga
Department of Economic Affairs: Northern Cape
Department of Economic Affairs: Northern Province
Department of Economic Affairs: North West
Department of Economic Affairs: Western Cape
Department of Economics: WITS
Department of Finance
Department of Mercantile Law: Unisa
Department Mercantile Law: University of Pretoria
Dr C J de Swardt
Ernst & Young
Fairheads Bond Managers (Pty) Ltd
Fedsal
Fedsure Unit Trust Management Company Ltd

Fedsure Participation Mortgage Bond Managers (Pty) Ltd
Fedusa
Fidelity Bank Ltd
Financial Intermediaries Federation of South Africa
First National Asset Management & Trust Co (Pty) Ltd
Fisher Hoffman Sitole
Fleming Martin Management Company Ltd
Franklin Templeton Management Company Limited
Free Market Foundation
Fund Managers Association of SA
General Council of the Bar of SA
Gobodo Associates
Graaffs' Trust Ltd
Grove Property Fund Managers Ltd
GuardBank Management Corporation Ltd
Institute of Bankers in SA
Institute of Financial Markets
Institute of Life and Pensions Advisors
Institute of Pension Consultants and Advisors
Institute of Pension Consultants and Administrators
Institute of Loss Adjusters of SA
Institute of Retirement Funds of SA
Insurance Brokers Council
Insurance and Financial Services
Insurance Law Society of SA
Insurance Institute of SA
Investec Guinness Flight Management
Johannesburg Stock Exchange
Kessel Feinstein
KMMT Brey & Co
KPMG Aiken & Peat
Law Society of SA
Lawyers for Human Rights
Leveton Boner Horwath
Linked Investment Services Providers' Association
Marriott Property Fund Managers Ltd
Marriott Property Services (Pty) Ltd
Marriott Unit Trust Management Company Limited
Masterbond Deelnemingsverbande Trust Bestuurders (Edms) Bpk
M Cubed Capital Unit Trusts Management Company Ltd
Melboard Property Fund Managers Ltd.
Mercantile Participation Mortgage Bond Managers (Pty) Ltd
Metboard Ltd
Metropolitan Life Unit Trust Management Company Ltd
Moores Rowland
Mr Neil Gillman
MSGM Masuku & Jeena
National African Federated Chamber of Commerce and Industry
National Black Consumer Union
National Consumer Forum
National Consumers Affairs Office
National NGO Coalition
National Council of Trade Unions
NBS Participation Bond Managers (Pty) Ltd
Nedcor Bank Management Company Limited
Nehawu
Nexia Levitt Kirson
NIB Management Company Ltd
NIB Property Fund Managers Ltd
NIB Private Asset Unit Trust Management Company Ltd
Nkonki Sizwe & Ntsaluba
Office for Public Enterprises
Office of the Auditor-General

Old Mutual Unit Trust Managers Ltd
Owen Wiggins Trust Participation Managers (Pty) Ltd
Pagdens Incorporated
Pension Lawyers Association
Policy Board for Financial Services and Regulation
Prestasi Unit Trust Managers Ltd
Price Waterhouse Coopers
Prima Eiendomstrustbestuurders Bpk
Property Fund Managers Ltd
PSG Management Company Ltd
Public Property Syndication Association
Public Accountants and Auditors Board
P W Harvey & Co
Quantim Consultancy Group (Pty) Ltd
Regal Treasury Unit Trust Management Company Ltd
RMB Unit Trusts Ltd
SA Consumer Union
SA Futures Exchange
SA Institute of Chartered Secretaries and Administrators
SA Insurance Association
SA Law Commission
SA Risk and insurance Management Association
SA Society of Claims Administrators
SA Reinsurance Offices' Association
SA Society of Medical Underwriters
SA Reinsurance Brokers Association
SA Property Owners' Association
Sage Property Trust Managers Ltd
Sage Unit Trusts Ltd
Sanlam
Sanlamtrust-Bestuurders Bpk
SARS
School of Management: University of Pretoria
Securities Regulation Panel
Select Committee on Public Accounts
Select Committee on Finance (National Council of Provinces)
Shareholders Association of SA
Society of Risk Managers (SA)
South African Chamber of Business
South African Institute of Chartered Accountants
South African Insurance Brokers Association
Southern Unit Trusts Management Company Ltd
Stabilitas Deelnemingsverbandskema (Edms) Bpk
Standard Bank Fund Managers Ltd
Standard Bank Bond Investments Ltd
Standing Committee on Public Accounts
Supreme Participation Mortgage Managers (Pty) Ltd
Syfrets Participation Bond Managers Ltd
The Board of Executors
The Committee Clerk Portfolio Committee on Finance (National Assembly)
The Life Offices' Association of South Africa (LOA)
The Life Underwriter's Association of South Africa (LUASA)
The Ombudsman for Banking
The Ombudsman for Long-term Insurance
The Ombudsman for Short-term Insurance
The Pension Funds Adjudicator
The Registrar of Medical Schemes
The Registrar of Banks
The Registrar of Companies
Trustee Board Limited
Zodwa Manase & Associates