

**Suspension of time barring terms**

**216.** Receipt of a complaint by a financial sector regulator, the Ombud Council or an ombud suspends any applicable time barring terms, whether in terms of an agreement or any law, or the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the period from the receipt of the complaint until the complaint has either been withdrawn or finally determined. 5

**Reporting**

**217.** (1) An ombud scheme must—

- (a) within six months after the end of each financial year, submit to the Ombud Council, in the form and with the content required by the Ombud Council, a report on the operation of the ombud scheme during the financial year, including in relation to—
  - (i) compliance with the financial sector laws in so far as they relate to ombud schemes;
  - (ii) the complaints that the ombud scheme is dealing with, and how they are being dealt with; and
  - (iii) the conduct of financial institutions that is giving rise to complaints; and
- (b) comply with any request by the Ombud Council at any time for information about the operation of the ombud scheme, trends in and implications of the conduct of financial institutions observed by the ombud scheme, and any other relevant information. 10 15 20

(2) Each of the following must, on request by the Financial Sector Conduct Authority, and may at any time, provide information and reports to the Financial Sector Conduct Authority about the operation of ombud schemes and trends in and implications of the conduct of financial institutions observed by it: 25

- (a) The Ombud Council;
- (b) a statutory ombud scheme;
- (c) a recognised industry ombud scheme.

(3) If, in dealing with a complaint, an ombud becomes aware that there has or may have been— 30

- (a) a contravention of a financial sector law in a material way by a financial institution; or
- (b) an activity or action by a financial institution that has an effect on financial customers other than the complainant,

the ombud must report the details of the matter, including the identity of the financial institution concerned, to the Financial Sector Conduct Authority. 35

(4) (a) The Ombud Council must provide the Minister of Finance and the National Treasury with information, returns, documents, explanations and motivations that may be prescribed by Regulation for this section or information that the Minister of Finance or the National Treasury may request. 40

(b) Paragraph (a) does not require or permit the provision of information about persons identifiable from the information.

**CHAPTER 15****FINANCIAL SERVICES TRIBUNAL****Part I** 45**Interpretation****Definitions**

**218.** For the purposes of this Chapter—

“**decision**” means each of the following:

- (a) A decision by a financial sector regulator or the Ombud Council in terms of a financial sector law in relation to a specific person; 50

- (b) a decision by an authorised financial services provider, as defined in section 1 of the Financial Advisory and Intermediary Services Act, in terms of section 14 of that Act in relation to a specific person;
- (c) a decision in relation to a specific person by a market infrastructure, being a decision in terms of rules of the market infrastructure contemplated by the Financial Markets Act, or a decision contemplated in section 105 of the Financial Markets Act; 5
- (d) a decision of a statutory ombud in terms of a financial sector law in relation to a specific complaint by a person;
- (e) a decision of a kind prescribed by Regulation for the purposes of this paragraph, 10  
and includes—
- (f) an omission to take such a decision within the period prescribed or specified in a financial sector law, rules, or other requirements pertaining to the decision-maker; 15
- (g) an omission to take such a decision within a reasonable period, if the applicable financial sector law, or rules of, or other requirements pertaining to, the decision-maker require the decision to be taken but without prescribing or specifying a period;
- (h) an action taken as a result of such a decision; and 20
- (i) an omission to take action as a result of such a decision within the prescribed or a reasonable period, if the applicable financial sector law requires the action to be taken but does not prescribe a period,
- but does not include—
- (j) a decision of a financial sector regulator that the financial sector regulator is directed to take in terms of section 18(2) or 30(1); 25
- (k) a decision to conduct a supervisory on-site inspection or an investigation;
- (l) an assessment of a levy issued to a specific person; or
- (m) a decision prescribed by Regulations made for this paragraph; 30
- “decision-maker”** means—
- (a) in relation to a decision by a financial sector regulator, the financial sector regulator;
- (b) in relation to a decision by the Ombud Council, the Ombud Council;
- (c) in relation to a decision referred to in paragraph (b) of the definition of “decision” in this section, the authorised financial services provider; 35
- (d) in relation to a decision referred to in paragraph (c) of the definition of “decision” in this section, the market infrastructure;
- (e) in relation to a decision by a statutory ombud, the statutory ombud; and
- (f) in relation to a decision referred to in paragraph (e) of the definition of “decision” in this section, the person identified in the Regulations as the 40  
decision-maker.

## Part 2

### *Financial Services Tribunal*

#### **Establishment and function of Financial Services Tribunal**

**219.** (1) The Financial Services Tribunal is hereby established to reconsider, in terms of this Chapter, decisions as defined in section 218 and to perform the other functions conferred on it by this Act and specific financial sector laws. 45

(2) The Tribunal—

- (a) is independent;
- (b) must be impartial and exercise its powers without fear, favour or prejudice; 50
- (c) is a tribunal of record; and
- (d) must perform its function in accordance with this Act and the specific financial sector laws.

**Members of Tribunal**

- 220.** (1) The Tribunal consists of as many members, appointed by the Minister, as the Minister may determine.
- (2) The Tribunal members must include—
- (a) at least two persons who are retired judges, or are persons with suitable expertise and experience in law; and 5
  - (b) at least two other persons with experience or expert knowledge of financial products, financial services, financial instruments, market infrastructures or the financial system.
- (3) A person may not be appointed to, or hold office as, a Tribunal member if the person—
- (a) is a disqualified person; or
  - (b) is not a citizen of the Republic or is not ordinarily resident in the Republic.
- (4) The Minister must appoint a Tribunal member referred to in subsection (2)(a) as the Chairperson, and may appoint another Tribunal member as Deputy Chairperson. 15
- (5) The Chairperson—
- (a) must preside at meetings of the Tribunal; and
  - (b) is responsible for managing the work of the Tribunal effectively.
- (6) The Deputy Chairperson performs the functions of the Chairperson on delegation by the Chairperson, or in the absence of the Chairperson, or if for any reason the office of the Chairperson is vacant. 20

**Term of office and termination of membership**

- 221.** (1) A Tribunal member holds office for—
- (a) three years from the date of the member's appointment; or
  - (b) if a shorter period is specified in the appointment of the Tribunal member, that shorter period. 25
- (2) A Tribunal member may be re-appointed at the expiry of a term.
- (3) A person may resign as a Tribunal member by giving at least three months written notice to the Minister, or a shorter period of notice that the Minister may accept.
- (4) The Minister must terminate a person's appointment as a Tribunal member if the member becomes a disqualified person. 30
- (5) The Minister may terminate a person's appointment as a Tribunal member if—
- (a) the member is unable to perform the functions of office for health or other reasons; or
  - (b) an independent inquiry established by the Minister has found that the member— 35
    - (i) has failed in a material way to discharge any of the responsibilities of office; or
    - (ii) has acted in a way that is inconsistent with continuing to hold the office.
- (6) If an independent inquiry has been established in terms of subsection (5)(b) in relation to a member, the Minister may suspend the member from office pending a decision on the removal of the member. 40
- (7) A Tribunal member holds office on terms and conditions, including as to remuneration, not inconsistent with this Act, determined by the Minister.

**Staff and resources** 45

- 222.** (1) The Chairperson may, in accordance with applicable law—
- (a) for the work of the Tribunal—
    - (i) appoint persons as employees;
    - (ii) enter into secondment arrangements; or
    - (iii) engage persons on contract otherwise than as employees; 50
  - (b) enter into contracts;
  - (c) acquire and dispose of property;
  - (d) insure the Tribunal against any loss, damage, risk or liability that it may suffer or incur; and

- (e) do anything else necessary for the performance of the Tribunal's functions.
- (2) The Chairperson may not enter into a secondment arrangement in respect of a person, or engage persons as employees or on contract, unless the person and the Chairperson have agreed in writing on—
- (a) the performance measures that must be used to assess that person's performance; and
  - (b) the level of performance that must be achieved against those measures.

#### Duties of staff members

- 223.** (1) A person who is or was a staff member under section 222 may not use that position or any information obtained as a staff member to—
- (a) improperly benefit himself or herself or another person;
  - (b) impede the Tribunal's ability to perform its functions; or
  - (c) cause improper detriment to another person.
- (2) For the purposes of this section, “benefit” and “detriment” are not limited to financial benefit or detriment.

#### Panels of Tribunal

- 224.** (1) The Chairperson must constitute a panel of the Tribunal for each application for reconsideration of a decision.
- (2) The panel constituted to consider an application for the reconsideration of a decision is the decision-making body of the Tribunal, and the panel exercises any of the powers of the Tribunal relating to the reconsideration of the decision.
- (3) The decision of the panel is the decision of the Tribunal as referred to in sections 234, 235 and 236 in respect of an application for the reconsideration of a decision.
- (4) A panel consists of—
- (a) a person to preside over the panel, who must be a person referred to in section 220(2)(a) or 225(2)(a)(i); and
  - (b) two or more persons who are Tribunal members or persons on the panel list.
- (5) If, for any reason, a panel member is unable to complete proceedings for a reconsideration of a decision, the Chairperson may—
- (a) replace that member with a person referred to in subsection (4);
  - (b) direct that the proceedings continue before the remaining panel members; or
  - (c) constitute a new panel and direct the new panel to either continue the proceedings, or start new proceedings.

#### Panel list

- 225.** (1) The Minister must establish and maintain a list of persons who are willing to serve as members of panels of the Tribunal.
- (2) The persons included in the panel list must—
- (a) have relevant experience in or expert knowledge—
    - (i) of law; or
    - (ii) of financial products, financial services, financial instruments, market infrastructures or the financial system; and
  - (b) be a fit and proper person to be included in the panel list.
- (3) A person may not be included in the panel list if the person is a disqualified person.
- (4) The Minister may, every five years, publicly invite persons to apply for inclusion in the panel list.
- (5) The Chairperson must ensure that the persons included in the panel list have an equal opportunity to be appointed to serve on a panel of the Tribunal.

- (6) The Minister—
- (a) must remove a person from the panel list—
    - (i) if the person so requests; or
    - (ii) if the person becomes a disqualified person; and
  - (b) may, on recommendation of the Chairperson, remove a person from the panel list if the person—
    - (i) is unable to act as a panel member for health or other reasons;
    - (ii) has failed in a material way to discharge any of the responsibilities of a panel member; or
    - (iii) has acted in a way that is inconsistent with acting as a panel member.

#### Disclosure of interests

- 226.** (1) (a) If before or during proceedings in which a panel member is participating, it becomes apparent that the panel member or a person who is a related party to the panel member has an interest in the decision that the panel has been constituted to reconsider, the panel member must— 15
- (i) immediately and fully disclose this interest to the other members of the panel; and
  - (ii) withdraw from any further involvement in the hearing.
- (b) A disclosure in terms of paragraph (a) by the Chairperson must, in addition, be made to the Minister. 20
- (c) A disclosure in terms of paragraph (a) by another panel member must, in addition, be made to the Chairperson.
- (2) For the purposes of this section, it does not matter—
- (a) whether an interest is direct, indirect, pecuniary or non-pecuniary; or
  - (b) when the interest was acquired. 25
- (3) In this section, “**interest**” does not include an interest that is not material.
- (4) The Chairperson must maintain a register of all disclosures made in terms of this section, and must maintain a system for the annual disclosure of interests by members of the Tribunal.

#### Tribunal rules 30

- 227.** (1) The Chairperson may make rules, not inconsistent with this Act, in respect of the procedure to be followed in connection with proceedings on applications for reconsideration of decisions in terms of this Chapter, and the conduct of those proceedings, and may at any time amend or revoke those rules.
- (2) Tribunal rules, and amendments and revocations of Tribunal rules, must be published. 35

### Part 3

#### *Right to reasons for decisions*

##### Right to be informed

- 228.** An obligation in a financial sector law to notify a person of a decision taken in relation to that person must be read as including an obligation to notify the person of that person’s right— 40
- (a) to request reasons for the decision in terms of section 229; and
  - (b) to have the decision reconsidered in terms of Part 4.

##### Right to reasons for decisions 45

- 229.** (1) A person who has not already been given the reasons for the decision may, within 30 days after the person was notified of the decision, request a statement of the reasons for the decision from the decision-maker.
- (2) The decision-maker must, within one month after receiving a request in terms of subsection (1), give the person a statement of the reasons for the decision, which must include a statement of the material facts on which the decision was based. 50

**Part 4****Reconsideration of decisions****Applications for reconsideration of decisions**

**230.** (1) (a) A person aggrieved by a decision may apply to the Tribunal for a reconsideration of the decision by the Tribunal in accordance with this Part. 5

(b) A reconsideration of a decision in terms of this Part constitutes an internal remedy as contemplated in section 7(2) of the Promotion of Administrative Justice Act.

(2) The application must be made—

(a) if the applicant requested reasons in terms of section 229, within 30 days after the statement of reasons was given to the person; or 10

(b) in all other cases, within 60 days after the applicant was notified of the decision, or such longer period as may on good cause be allowed.

(3) An application in terms of subsection (1) must be made in accordance with the Tribunal rules.

**Decision of Tribunal not suspended** 15

**231.** Neither an application for a reconsideration of a decision, nor the proceedings on the application, suspends the decision of the decision-maker unless the Tribunal so orders.

**Proceedings for reconsideration of decisions**

**232.** (1) In proceedings for reconsideration of a decision— 20

(a) the procedure is, subject to the financial sector laws and the Tribunal rules, determined by the Chairperson;

(b) the proceedings are to be conducted with as little formality and technicality, and as expeditiously, as the requirements of the financial sector laws and a proper consideration of the matter permit; and 25

(c) any party may be represented by a legal representative.

(2) The person chairing a panel may give directions to facilitate the conduct of proceedings for reconsideration of a decision before the panel.

(3) A panel must conduct any hearing it holds in public, but the person presiding over the panel may direct that a person be excluded from a hearing on any ground on which it would be proper to exclude a person from civil proceedings before the High Court. 30

(4) In proceedings for reconsideration of a decision, the panel is not bound by the rules of evidence, but may, subject to this section, inform itself on any relevant matter in any appropriate way.

(5) The person presiding over a panel— 35

(a) may, on good cause shown, by order, direct a specified person to appear before the panel at a time and place specified in the order to give evidence, to be questioned or to produce any document; and

(b) must administer an oath to or accept an affirmation from any person called to give evidence. 40

(6) A person giving evidence or information, or producing documents, has the protections and liabilities of a witness giving evidence in proceedings before the High Court.

**Decisions of panels**

**233.** If the panel constituted for an application for reconsideration of a decision is divided in opinion as to an order to be made, the opinion of the majority of the panel members prevails, but if they are equally divided in opinion, the opinion of the member presiding over the panel prevails. 45

**Tribunal orders**

- 234.** (1) In proceedings on an application for reconsideration of a decision the Tribunal may, by order—
- (a) set the decision aside and remit the matter to the decision-maker for further consideration; 5
  - (b) in the case of a decision of any of the following kinds, also make an order setting aside the decision and substituting the decision of the Tribunal:
    - (i) A decision in terms of Chapter 13;
    - (ii) a decision referred to in paragraph (b) or (c) of the definition of “**decision**” in section 218; and 10
    - (iii) a decision of a kind prescribed by Regulation for the purposes of this section; or
  - (c) dismiss the application.
- (2) The Tribunal may, in exceptional circumstances, make an order that a party to proceedings on an application for reconsideration of a decision pay some or all of the costs reasonably and properly incurred by the other party in connection with the proceedings. 15
- (3) Subsections (1) and (2) are subject to any provision of a financial sector law that excludes, restricts or qualifies the orders that the Tribunal may make in proceedings for reconsideration of a decision. 20
- (4) The Tribunal may, by order, summarily dismiss an application for reconsideration of a decision if the application is frivolous, vexatious or trivial.
- (5) This section does not affect any other right that a person may have.

**Judicial review of Tribunal orders**

- 235.** Any party to proceedings on an application for reconsideration of a decision who is dissatisfied with an order of the Tribunal may institute proceedings for a judicial review of the order in terms of the Promotion of Administrative Justice Act or any applicable law. 25

**Enforcement of Tribunal orders**

- 236.** (1) A party to proceedings on an application for reconsideration of a decision may file with the registrar of a competent court a certified copy of an order made in terms of section 234 if— 30
- (a) no proceedings in relation to the making of the order have been commenced in a court by the end of the period for commencing such proceedings; or
  - (b) if such proceedings have been commenced, the proceedings have been finally disposed of. 35
- (2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court.

**CHAPTER 16****FEES, LEVIES AND FINANCES 40****Part 1*****Fees and levies*****Fees and levies**

- 237.** (1) (a) Fees may be charged by a financial sector body in accordance with this Part to fund the performance of specific functions under this Act and the relevant financial sector laws. 45
- (b) Levies may be imposed by a financial sector body in accordance with this Part, read with legislation that empowers the imposition of levies, to fund the operations of the financial sector body.