

FINANCIAL OMBUDSMAN SCHEME
Terms of Reference for the Ombudsman for Financial Services

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FINANCIAL OMBUDSMAN SCHEME (FOS)

Terms of Reference for the Ombudsman for Financial Services

Introduction

1. (1) These terms of reference (TOR) of the Ombudsman for Financial Services (OFS) come into operation on 1 October 2016.

(2) Consistent with the FOS Regulations, these TOR set out the scope of the FOS which include the terms of membership, types of disputes, the Award that may be granted by an Ombudsman, and the procedures and timeframe for a Dispute to be referred to the FOS.

(3) These TOR shall not be amended without prior consultation with the Members and the prior approval from Bank Negara Malaysia.

(4) The purpose of the FOS is to provide an effective and fair handling of complaints and for the resolution of Disputes between Eligible Complainants and Members.

(5) The OFS is a dispute resolution body for Eligible Complainants. It is an alternative to, and not a replacement for court proceedings.

(6) The OFS seeks to resolve Disputes professionally, impartially and strives to promote mutual trust and respect between the Eligible Complainant and the Member.

(7) A dispute resolution process covers a wide range of approaches, including negotiation, conciliation, mediation and adjudication.

(8) The OFS focuses on promoting early resolution as an alternative way in resolving Disputes between the Eligible Complainant and the Member.

(9) The dispute resolution services provided by the OFS to Eligible Complainants are free of charge.

Interpretation

2. In these TOR, unless the context otherwise requires –

“Adjudication” means the process where the Ombudsman adjudicates a Dispute and makes a final decision, including granting an Award in accordance with these TOR;

“Award” means an award granted by the Ombudsman in accordance with paragraphs 12 and 41 of these TOR;

“Board” means the board of directors of the OFS as approved by Bank Negara Malaysia in accordance with the relevant FOS Regulations;

“Bank Negara Malaysia” means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 (*Act 519*) and continues to exist under the Central Bank of Malaysia Act 2009 (*Act 701*);

“Case Management” means the management of a Dispute by a Case Manager by way of, including but not limited to, conducting mediation, negotiation or conciliation process in accordance with these TOR;

“Case Manager” means an officer of the OFS appointed to manage a Dispute filed by an Eligible Complainant against a Member in accordance with these TOR;

“Chief Executive Officer” means the person appointed by the Board to manage and direct the day-to-day management and affairs of the OFS in accordance with the OFS’ Memorandum and Articles of Association, and these TOR;

“Commercial Decision” includes but is not limited to an assessment of risks (such as approval, rejection and rescheduling of credit facilities, taking of securities and insurance underwriting) and assessments of financial and commercial criteria or of character of a customer;

“Dispute” means a dispute between an Eligible Complainant and a Member in respect of financial services or products and Islamic financial services or products developed, offered or marketed by a Member, or by a Member for or on behalf of another person as set out in these TOR;

“Eligible Complainant” refers to an eligible complainant under paragraph 9 of these TOR;

“Financial Ombudsman Scheme” or “FOS” means the financial ombudsman scheme approved by Bank Negara Malaysia under subsection 126(2) of the Financial Services Act 2013 and subsection 138(2) of the Islamic Financial Services Act 2013 for the resolution of Disputes;

“FOS Regulations” means the Financial Services (Financial Ombudsman Scheme) Regulations 2015, the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 and the Development Financial

Institutions (Financial Ombudsman Scheme) Regulations 2016 issued pursuant to the Financial Services Act 2013, the Islamic Financial Services Act 2013 and the Development Financial Institutions Act 2002 respectively;

“Member” means a financial service provider as set out in the First Schedule of the Financial Services (Financial Ombudsman Scheme) Regulations 2015 and the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015, and Regulation 3 of the Development Financial Institutions (Financial Ombudsman Scheme) Regulations 2016 which is member of the FOS. A reference to the member includes any of its officers or employees, agents, contractors, any person who has actual, ostensible, apparent or usual authority to act on behalf of the member or authority to act by necessity in relation to a financial service or product;

“Ombudsman for Financial Services” or “OFS” means the scheme operator approved by Bank Negara Malaysia to operate the FOS;

“Ombudsman” means an officer of the OFS appointed by the Board to adjudicate Disputes;

“Predecessor Scheme” means the dispute resolution scheme that was operated by the Financial Mediation Bureau (company no. 664393P) prior to 1 October 2016;

“Recommendation” means an assessment made by a Case Manager relating to a Dispute in accordance with subparagraph 34(11) of these TOR; and

“Terms of Reference” or “TOR” means the terms of reference for the OFS as approved by Bank Negara Malaysia under Regulation 7(1) of the Financial Services (Financial Ombudsman Scheme) Regulations 2015 and the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015, and Regulation 4(1) of the Development Financial Institutions (Financial Ombudsman Scheme) Regulations 2016.

Principles that underpin the OFS’ operations and process

3. In dealing with any Dispute, the OFS shall be required to observe the following principles:

(1) **Independence**

The OFS shall be subject to the oversight of the Board which shall be responsible for ensuring the integrity of the operations and its ability to provide effective and independent services to Eligible Complainants. The OFS’ decision making process shall be objective and independent of the

Members and Eligible Complainants.

(2) Fairness and Impartiality

- (a) In dealing with Disputes, the OFS shall act fairly and impartially. The Ombudsman must ensure that information provided by Members and Eligible Complainants is carefully and objectively considered in reaching a well-reasoned decision, while having regard to the law, regulations, standards and/or guidance issued by Bank Negara Malaysia as well as industry best practices; and
- (b) The OFS must ensure that at all times, the Case Manager and Ombudsman handling a Dispute, have no conflict of interest with any of the disputing parties, and provide fair, adequate and intelligible reasons for any decisions given.

(3) Accessibility

The OFS shall promote easy and affordable access to its services by creating awareness of its services, maintaining easy to understand, clear and transparent procedures for Eligible Complainants to refer a Dispute to the FOS.

(4) Accountability

The OFS shall publish an annual report on its activities and operations and submit to Bank Negara Malaysia a report on its activities during the financial year, including its audited annual accounts.

(5) Transparency

- (a) The OFS shall publish information on the services and scope of coverage. This would include the types of Disputes and Awards granted by an Ombudsman, the approach adopted in handling Disputes and the manner in which the decisions were made; and
- (b) In a Dispute of material significance, the OFS should also publish relevant information on the manner and reasons for arriving at a particular decision with a view of educating the general public and Members. However, the identities of the disputing parties shall remain anonymous, in compliance with any confidentiality and privacy obligations.

(6) Effectiveness

- (a) The OFS shall have the necessary resources, coverage and powers to resolve Disputes in a timely and effective manner. This includes ensuring an adequate number of suitably qualified and competent Case Managers and Ombudsmen to reflect the volume and complexity of Disputes handled; and
- (b) The OFS shall proceed with the minimum formality and technicality to resolve the Disputes. Decisions on Disputes and reasons for the decision must be clearly communicated to the disputing parties.

Members of the FOS

4. Members of the FOS are as follows:

- (1) Licensed bank;
- (2) Licensed Islamic bank;
- (3) Licensed insurer (excluding professional reinsurer and licensed insurer carrying on financial guarantee insurance business);
- (4) Licensed takaful operator (excluding professional retakaful operator);
- (5) Prescribed development financial institution;
- (6) Approved issuer of a designated payment instrument;
- (7) Approved issuer of a designated Islamic payment instrument;
- (8) Approved insurance broker;
- (9) Approved takaful broker;
- (10) Approved financial adviser; and
- (11) Approved Islamic financial adviser.

Terms of membership of the FOS

Procedures for membership

5. (1) No person shall be admitted to membership of the FOS unless it is a financial service provider as set out in the First Schedule of the Financial Services (Financial Ombudsman Scheme) Regulations 2015 and the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015, and Regulation 3 of the Development Financial Institutions (Financial Ombudsman Scheme) Regulations 2016.

(2) Every financial service provider who is desirable to be admitted to membership of the FOS shall submit to the OFS an application duly signed by any two of its directors or any one of its director with the company secretary in the form and manner specified by the OFS.

(3) Every financial service provider shall nominate a natural person to act as its representative pursuant to Article 6 and Article 7 of the Articles of Association of the OFS.

Circumstances in which a membership ceases

- (4) Membership in the FOS shall automatically cease if –
- (a) the Member is dissolved or wound up; or
 - (b) its licence, approval or prescription has been surrendered, revoked or withdrawn, as the case may be.

Payment of annual levy or case fee

(5) A Member shall pay the following levy and case fee of such amount as may be determined by the Board to fund the operations of the OFS:

- (a) an annual levy payable by a Member who is a licensed person or a prescribed institution; and
- (b) a case fee to be paid by one or more particular Member based on the number of Disputes against those Members.

(6) The Board shall serve a notice to Members requesting payment of the money referred to in subparagraph (5) above and give particulars of the amount of annual levy or case fee due from any Member.

(7) The payment of money referred to in subparagraph (5) above shall become due and payable by each Member in the month of January each year, or within such other period as the Board may stipulate in the notice served as the Board deems fit.

(8) A new Member shall be liable to pay the full amount of annual levy, which is prorated at the date of entry, as the case may be, payable in that year upon its admission to membership.

Provision of data, document and information by a Member

(9) The provisions in relation to the obligation of a Member to provide data, document and information requested by the OFS for the purposes of resolving a Dispute are provided in paragraphs 21, 22 and 23 of these TOR.

Other obligations of a Member

(10) A Member shall comply with any request or instruction of the OFS which is considered necessary for purposes of resolving a Dispute, including facilitating the investigation within the timeframe specified by the OFS. This may include requiring a Member –

- (a) to attend an interview conducted by the OFS;
- (b) to submit statutory declarations (SD) from any person or persons who have knowledge of or connected to the Dispute;
- (c) to complete its internal investigations into a Dispute;
- (d) to appoint an independent expert on a matter pertaining to the Dispute; or
- (e) to investigate further on specific issues identified by the Case Manager or the Ombudsman, as the case may be.

(11) Where a Member without valid reasons fails to provide or procure data, document and information or comply with any request made by the OFS within the timeframe specified, the OFS may take the steps it considers reasonable in ensuring compliance by the Member, including to proceed with the resolution of the Dispute on the basis that an adverse inference may be drawn from the Member's failure to comply with the OFS' request.

Procedures and time period for a Member to comply with any Award granted

(12) A Member shall comply with any Award granted by the Ombudsman under the FOS within 14 days from the date of acceptance by the Eligible Complainant.

(13) If it has come to the knowledge of the OFS that a Member has failed to comply with any Award granted under the FOS within the deadline in subparagraph (12) above, the Ombudsman may impose late payment charges in accordance with paragraph 42 of these TOR.

Duty to notify Bank Negara Malaysia

(14) If a Member –

- (a) fails to comply with the terms of membership of the FOS, including failure to pay any fee or charge payable by the Member under the terms of membership; or

- (b) fails to comply with subsection 126(4) of the Financial Services Act 2013, subsection 138(4) of the Islamic Financial Services Act 2013 or subsection 42E(2) of the Development Financial Institutions Act 2002,

the OFS shall notify Bank Negara Malaysia immediately.

Powers, duties and responsibilities of an Ombudsman

6. An Ombudsman shall exercise all powers, duties and responsibilities in accordance with the Articles of Association, the FOS Regulations and these TOR, including adjudicating and making a final decision on a Dispute.

Transition from Predecessor Scheme

7. For purposes of the transition from the Predecessor Scheme to the FOS –

(1) Where a Dispute was first registered under the Predecessor Scheme and remains outstanding on 1 October 2016, it will be deemed to have been transferred to the FOS on 1 October 2016. However, the OFS will consider such Dispute based on the TOR of the Predecessor Scheme of which, the maximum monetary award for the Predecessor Scheme is set out in Schedule 1 of these TOR; and

(2) Where a Dispute which was first registered under the Predecessor Scheme had already been resolved before 1 October 2016 and subsequently reopened by the OFS in view of the availability of substantiated new evidence on or after 1 October 2016, such Dispute will be considered based on the TOR of the Predecessor Scheme.

8. For Disputes that are referred to the FOS on or after 1 October 2016, these TOR will apply.

Eligible Complainant

9. Subject to the monetary limit set out in Schedule 2 of these TOR, the following persons are Eligible Complainants for purposes of the FOS:

(1) a financial consumer who uses or has used any financial services or products provided by a Member –

- (a) for personal, domestic or household purposes; or
- (b) in connection with a small business.

(2) For the purposes of subparagraph (1) above, unless the context otherwise requires –

- (a) a financial consumer includes a person insured under a group policy or a person covered under a group takaful certificate where the premiums or contributions are paid by the person insured or the person covered, as the case may be;
- (b) small business refers to small and medium enterprises (SMEs) as defined in the “Guideline for New SME Definition” issued by SME Corporation Malaysia in October 2013; and
- (c) a financial consumer includes a third party who is –
 - (i) an insurance or a takaful claimant for motor third party property damage;
 - (ii) a guarantor for credit facilities granted by a Member;
 - (iii) a nominee or a beneficiary under a life policy/family takaful certificate or a personal accident policy/takaful certificate, including a beneficiary under a group policy or a group takaful certificate where the premiums or contributions are paid by the person insured or the person covered, as the case may be; and
 - (iv) a person insured under a group policy and his beneficiaries or a person covered under a group takaful certificate and his beneficiaries, where the premiums or the contributions are paid by the Federal and/or State Government and the group policy or the group takaful certificate provides for the person insured or the person covered to deal directly with the Member in the event of a claim.

(3) For the avoidance of doubt, the OFS has the sole discretion in determining whether or not a financial consumer is an Eligible Complainant for purposes of filing his Dispute with the OFS and such determination is final and binds the Member and the Eligible Complainant.

Types of Disputes eligible for consideration

10. The OFS will consider a Dispute against a Member for a direct financial loss up to the monetary limit as set out in Schedule 2 of these TOR.

11. The OFS will handle a Dispute filed by an Eligible Complainant against a Member regardless of whether or not that financial service provider was a Member at the time of the act or omission.

Award and monetary limit

12. (1) Any Award granted by an Ombudsman and accepted by the Eligible Complainant shall be binding on the Member concerned.

(2) An Award granted by the Ombudsman shall be made in accordance with the monetary limit as set out in Schedule 2 of these TOR.

(3) A Dispute which involves a monetary claim exceeding the monetary limit as set out in Schedule 2 of these TOR may be referred to the FOS if the OFS, the Eligible Complainant and the Member involved in the Dispute agree –

(a) to refer such Dispute to the FOS; and

(b) that the monetary Award may exceed the monetary limit as set out in Schedule 2 of these TOR.

Disputes outside the scope of the FOS

13. The OFS will not consider the following types of Disputes:

(1) A Dispute that is beyond the monetary limit as set out in Schedule 2 of these TOR, save where mutually agreed in writing by the OFS, the Eligible Complainant and the Member in accordance with subparagraph 12(3) above;

(2) A Dispute on general pricing, product features, credit or underwriting decisions, or applications to restructure or reschedule a loan or financing which are Commercial Decisions within the discretion of a Member;

(3) A Dispute concerning the actuarial standards, tables and principles which a Member applies to its long-term insurance/takaful business (including the method of calculation of surrender values, paid-up policy values and the bonus rate applicable to the policy in question) for insurance or takaful claims, except guaranteed payments which are explicitly mentioned in the terms and conditions of the policy;

(4) A Dispute relating to a contract of employment between a Member and its officers and employees or agency matters concerning a Member;

(5) A Dispute that has been filed in court or referred to arbitration or has been decided by a court or arbitrator;

- (6) A Dispute that is referred to the FOS after more than six months from the date the Member has provided its final decision;
- (7) A Dispute that is time barred under the Limitation Act 1953 or Limitation Ordinance (Sabah) (Cap.72) or Limitation Ordinance (Sarawak) (Cap. 49);
- (8) A Dispute that had been previously decided by the OFS (including a Dispute decided under the Predecessor Scheme) unless new evidence, which are material facts that could change the earlier decision, is available for the OFS' consideration;
- (9) A Dispute on investment performance of a financial product except in relation to non-disclosure of facts or misrepresentation;
- (10) A Dispute on capital market services and products offered or marketed by a Member;
- (11) A Dispute that involves more than one Eligible Complainant and has been referred to the FOS without the consent of the other Eligible Complainant, and the OFS is of the view that it would be inappropriate to deal with the Dispute without that consent;
- (12) A Dispute involving claims arising from third party bodily injury or death; and
- (13) A Dispute relating to the payment of policy moneys under a life policy and personal accident policy or payment of takaful benefits under a family takaful certificate and personal accident takaful certificate made in accordance with the provisions set out in Schedule 10 of the Financial Services Act 2013 and the Islamic Financial Services Act 2013, respectively.

Discretion to exclude Disputes

14. The OFS may, at its discretion, refuse to consider or continue to consider a Dispute, if the OFS is of the opinion that such course of action is appropriate in view of the following:

- (1) the Dispute is frivolous, vexatious or lacking in substance; or
- (2) the Dispute relates to or has an element of fraud and is therefore more appropriate to be handled by other relevant law enforcement agencies.

15. Any decision made by the OFS in excluding or dismissing a Dispute must be documented and substantiated with written reasons. Such decisions shall be subject to periodic review by the Board.

Excluding a Dispute

16. (1) Where a Dispute is outside the scope of these TOR or where the OFS excludes a Dispute in accordance with paragraph 14 of these TOR, the OFS shall advise the Eligible Complainant and any other related parties accordingly and provide the reasons for such decision or exclusion.

(2) If the Eligible Complainant objects to the exclusion made by the OFS in accordance with paragraph 14 within 30 days from the date of the receipt of the OFS' decision to exclude a Dispute, the OFS may review the Dispute where the OFS is satisfied, after considering the Eligible Complainant's grounds for objection, that the Dispute is within the competence and scope of the OFS.

(3) For purposes of subparagraph (2) above, the OFS is required to –

- (a) inform the Eligible Complainant and the Member the results of its review;
- (b) give the Eligible Complainant and the Member an opportunity to provide their respective submissions, if any;
- (c) provide the Eligible Complainant and the Member with copies of each other's submission; and
- (d) review the Dispute and inform the Eligible Complainant and the Member of its final decision on whether or not to continue to exclude such Dispute.

Registration of a Dispute

17. (1) An Eligible Complainant may file a Dispute with the OFS provided that such Dispute has been referred to the Member concerned first with a view to find an amicable settlement and –

- (a) the Member has considered the Dispute and issued its final decision no later than 60 calendar days from the date the Dispute was first referred to the Member, and the decision is not acceptable to the Eligible Complainant; or
- (b) no response has been received from the Member after 60 calendar days from the date the Dispute was first referred to the Member.

- (2) A decision issued by a Member under subparagraph (1)(a) above –
- (a) must include a notification to the Eligible Complainant on the availability of the OFS as an alternative dispute resolution channel, including the contact details of the OFS, timeframe within which the Eligible Complainant must file his Dispute with the OFS and the maximum monetary Award that may be granted by the Ombudsman; and
 - (b) must be conveyed to the Eligible Complainant through a letter or an email informing the Eligible Complainant that it is the final decision for the Dispute and there must be no more outstanding issues between the Member and the Eligible Complainant.
- (3) Before registering a Dispute, the OFS must verify whether or not –
- (a) the Dispute is within the scope of the FOS;
 - (b) the complainant is an Eligible Complainant under the FOS; and
 - (c) there is sufficient information on and relating to the Dispute, including –
 - (i) information capable of identifying the Eligible Complainant; and
 - (ii) copies of the contract for financial services or products in dispute including records of the transactions in dispute, insurance policy or takaful certificate, medical reports, adjuster's report, the final decision issued by a Member in accordance with subparagraph (1)(a) above and a duly completed permitted disclosure form, as the case may be.
- (4) The OFS shall register a Dispute within one week from the date of receipt of complete information from an Eligible Complainant.
- (5) If the Dispute falls outside the scope of the FOS, the OFS will advise the Eligible Complainant accordingly.
- (6) A Member shall not initiate any legal action or threaten to initiate legal action against an Eligible Complainant if the Eligible Complainant has filed his Dispute with the OFS, unless the Dispute will otherwise be time barred under the Limitation Act 1953 or Limitation Ordinance (Sabah) (Cap.72) or Limitation Ordinance (Sarawak) (Cap. 49), as the case may be.

Time limit for referring a Dispute

18. (1) An Eligible Complainant may file his Dispute –
- (a) within six months from the date of the final decision issued by a Member on the Dispute; or
 - (b) after 60 calendar days from the date the Dispute was first referred to the Member in respect of which no response has been received from the Member.
- (2) The OFS may still consider a Dispute that falls outside the time limit set out in subparagraph (1)(a) above if –
- (a) there are exceptional circumstances which warrant the OFS to accept such Dispute. These include, but are not limited to, situations where the Eligible Complainant is seriously ill throughout the period when he could have filed his Dispute with the OFS; or
 - (b) the Member does not object to the OFS accepting such a Dispute.

Dispute resolution method

19. To resolve a Dispute, the OFS may use any of the following methods during the entire resolution process, including the Case Management and Adjudication stage, as the case may be:
- (a) negotiation;
 - (b) conciliation or mediation; or
 - (c) Adjudication.

20. Throughout the resolution process, a Member and an Eligible Complainant shall not engage the services of a lawyer or a legal firm in relation to the Dispute before the OFS.

Submission of data, document and information by a Member and/or an Eligible Complainant

21. A Member and an Eligible Complainant (“Parties to a Dispute”) shall, at the request of the OFS, Case Manager or Ombudsman, provide or procure all data, document and information as may be relevant to the Dispute within 14 days and 30 days respectively, from the date of receiving that request.

22. The Parties to a Dispute shall comply with the OFS' request under paragraph 21, except where the Member or Eligible Complainant can substantiate, within 14 days and 30 days respectively, that –

- (1) by providing the type of data, document and information as requested by the OFS, that party would breach a duty of confidentiality to a third party and, despite best endeavours, the third party's consent to the disclosure of the information has not been obtained;
- (2) by providing the type of data, document and the information as requested by the OFS, that party would breach a court order or prejudice an investigation by the police or other law enforcement agencies;
- (3) the type of data, document and information does not or no longer exists or is not within the party's reasonable possession or control; or
- (4) additional investigation is required since the information sought requires expert advice.

23. Notwithstanding the timeframe under paragraphs 21 and 22, the OFS may stipulate a different period, taking into consideration the type and complexity of data, document and information required from the Parties to a Dispute.

Other obligations of Parties to a Dispute

24. Parties to a Dispute shall comply with any request of the OFS or take the necessary actions to facilitate the resolution of the Dispute within the timeframe stipulated by the OFS which may require the Party to a Dispute to –

- (1) attend an interview;
- (2) submit SDs from persons who have knowledge of or are connected to the Dispute;
- (3) complete its internal investigations into a Dispute;
- (4) appoint and solicit views of an independent expert pertaining to a matter on or relating to the Dispute; or
- (5) investigate further on specific issues identified by the Case Manager or the Ombudsman, as the case may be.

Discretion to extend time

25. Nothing in these TOR shall restrict the OFS' ability and discretion to give a Party to a Dispute an extension of time (even if the original period, or the period as extended, has ended) should the OFS consider it appropriate to do so.

Consequences of non-compliance

26. Where a Party to a Dispute without reasonable excuse fails to provide or procure information or to take any other step requested by the OFS within the timeframe specified, the OFS may take the steps it considers reasonable in the circumstances. This may include –

- (1) proceeding with the resolution of the Dispute on the basis that an adverse inference may be drawn from that party's failure to comply with the OFS' request; or
- (2) to discontinue the dispute resolution process in the event that the Eligible Complainant fails to comply with the OFS' request.

“Without prejudice” – information not to be used in court proceedings

27. The OFS operates on a “without prejudice” basis. This means that information obtained through or from the OFS shall not be used in any court proceedings.

Approach to dispute resolution

28. Since the OFS is an alternative dispute resolution body and not a court, its processes are “inquisitorial” in nature and are not bound by any rules of evidence, prosecution, defence by a lawyer, sworn witnesses, cross-examinations and formal legal procedures as adopted by the court. The Case Manager or the Ombudsman will investigate and examine the evidence on and relating to the Dispute and may contact the Parties to the Dispute to establish the facts of the Dispute or to seek further clarification.

29. A Dispute is resolved on the basis of the documents or information submitted by the Parties to a Dispute to the OFS. Where it is deemed appropriate by the OFS, it may conduct an interview with the Parties to a Dispute either individually or jointly. Such interview or meeting is neither a mandatory procedure nor a compulsory step in resolving a Dispute. The OFS has the full discretion to decide on the most effective approach to resolve the Dispute.

Dispute resolution criteria

30. In deciding a Dispute, the OFS will do what in its opinion is fair and reasonable in all the circumstances, having regard to each of the following:

- (1) the terms and conditions of any contract for the financial services or products entered into between the Parties to a Dispute;
- (2) any applicable law, regulations, standards and/or guidance issued by Bank Negara Malaysia as well as industry best practices; and
- (3) to have regard to, but without being bound, by previous decisions of the OFS or the Predecessor Scheme, if any.

Expert advice

31. For purposes of resolving a Dispute, the OFS may consult any persons, including the relevant associations for the financial industry, consumer associations, Bar Council or relevant ministries or government agencies, as the OFS deems fit.

32. The OFS may obtain expert advice from legal, industry or medical experts or such other experts as the OFS deems fit. In this connection, the OFS may require the Member to pay or contribute to the cost of such expert advice provided that –

- (1) the fees for the expert advice are determined by the OFS to be reasonable, having regard to the complexity of the Dispute; and
- (2) the fees do not deviate significantly from the usual market rate for such expert advice.

Disclosure of information to Parties to a Dispute

33. (1) The OFS shall not disclose to any Party to a Dispute, any data, document and information provided by another Party to a Dispute where the party supplying the information has refused consent to such disclosure.

(2) If a Party to a Dispute does not consent to his data, document and information being disclosed to the other party, the OFS is not entitled to use that information to reach a decision adverse to the party to whom confidential information is denied unless the OFS determines that special circumstances apply.

Dispute resolution process

34. Unless paragraph 35 of these TOR applies, the process for dispute resolution is as follows:

Case Management (First Stage)

- (1) The Dispute shall be managed by a Case Manager assigned by the OFS;

(2) The Case Manager's role is to encourage and facilitate dialogue, provide guidance, assist the Parties to a Dispute in clarifying their interests and in understanding differences, and to work towards a mutually acceptable settlement;

(3) The Case Manager shall be entitled to request for any data, document and information relevant to the Dispute from the Parties to a Dispute;

(4) The Parties to a Dispute shall provide to the Case Manager such data, document and information that are relevant to the Dispute within such period specified by the Case Manager, together with the Member's investigation report on the Dispute (including the grounds of its decision and any other relevant document or information), as the case may be, which was completed when the Eligible Complainant first lodged his complaint with the Member;

(5) After giving the Parties to a Dispute a reasonable opportunity to make submissions and provide data, document and information about the Dispute, the Case Manager may facilitate the resolution of Dispute through negotiation, mediation or conciliation process, as the case may be, with a view to reach an amicable settlement within three months from the date of receipt of full and complete data, document and information from the Parties to a Dispute;

(6) The Case Manager shall conduct interviews, if deemed necessary, either via telephone or physical meeting. The Case Manager may meet with any of the Parties to a Dispute jointly or separately. The separate meetings (caucus) are designed to improve the Case Manager's understanding of the party's position and to facilitate the Case Manager in expressing each party's viewpoint. The Parties to a Dispute shall not make any recording (visual or audio) of such interview or meeting;

(7) The Case Management shall be conducted in strict confidence and all communication shall not be used in any court proceedings;

(8) The Case Manager may, subject to the approval of the Ombudsman, dismiss a Dispute if such Dispute, in the opinion of the Case Manager, falls within the circumstances set out in paragraph 14 of these TOR;

(9) At all times while the Dispute is being investigated by the Case Manager, nothing shall operate to prevent the Parties to a Dispute from jointly seeking an amicable settlement of the Dispute;

(10) The Eligible Complainant may withdraw from the Case Management at any time prior to the Case Manager issuing his Recommendation by giving a

written notice to the Case Manager of his intention to withdraw his complaint. This option is not available to the Member;

(11) If the Parties to a Dispute fail to reach an amicable settlement, the Case Manager will make an assessment on the manner in which the Dispute should be resolved and issue a Recommendation within 30 days from the date the Parties to a Dispute failed to reach an amicable settlement;

(12) If the Parties to a Dispute accept the Recommendation within 30 days from the date of the Recommendation or by the date stipulated in the Recommendation (whichever is later), the Dispute is resolved on the basis of the Recommendation. The Case Manager shall record in writing the terms of settlement reached by the Parties to a Dispute and a Settlement Agreement shall be executed by the Parties to a Dispute;

(13) If either Party to a Dispute does not accept the Recommendation made by the Case Manager, the Parties to a Dispute are not bound by the Recommendation. The Parties to a Dispute are free to pursue their rights through any other means, including referring the Dispute to the Ombudsman for Adjudication within 30 days from the date of the Recommendation or by the date stipulated in the Recommendation (whichever is later), or a legal process or arbitration;

(14) The Case Management terminates when –

- (a) the Eligible Complainant withdraws from the Case Management;
- (b) the Dispute is resolved amicably by the Parties to a Dispute;
- (c) the Parties to a Dispute accepts the Recommendation of the Case Manager and enter into a Settlement Agreement;
- (d) the Dispute is referred to the Ombudsman; or
- (e) the Eligible Complainant has initiated a legal proceeding against the Member in court or arbitration.

Adjudication by an Ombudsman (Second Stage)

(15) Where the Dispute is not resolved after the Case Management, the Case Manager will issue a Recommendation. If either Party to a Dispute does not accept the Recommendation, that Party may choose to refer the Dispute to the Ombudsman for Adjudication within 30 days from the date of the Recommendation or by the date stipulated in the Recommendation (whichever is later);

(16) The Ombudsman assigned by the OFS to adjudicate the Dispute may provide a preliminary assessment of the Dispute before it is adjudicated on. The Parties to a Dispute shall be given a reasonable opportunity to make further submissions, and to provide further information, if any, relating to the Dispute;

(17) The Ombudsman shall be entitled to request for further data, document and information relevant to the Dispute from the Parties to a Dispute. The Parties to a Dispute shall provide all such data, document and information within such period specified by the Ombudsman;

(18) The Ombudsman shall accept written evidence submitted by the Parties to a Dispute and may also accept any other form of evidence it deems appropriate, including taped or video evidence. The Ombudsman shall give such evidence due weight and consideration;

(19) The Adjudication may be conducted by way of submission of documents (including written submissions, replies and clarifications, if any) or by way of hearing. Upon the full submission of the documents or at such time as the Ombudsman shall determine, a hearing may be conducted with the Parties to a Dispute, where necessary. The Parties to a Dispute shall not make any recording (visual or audio) of the hearing. Where no hearing is conducted, the Ombudsman decides on the Dispute solely on the documents;

(20) The Ombudsman shall adjudicate the Dispute independent of the findings or the Recommendation made by the Case Manager at the Case Management stage and issue a final decision within 14 days from the receipt of full and complete documentation from the Parties to a Dispute;

(21) The Eligible Complainant may withdraw from the Adjudication at any time prior to the final decision by the Ombudsman by giving a written notice to the Ombudsman of his intention to withdraw from the Adjudication. This option is not available to the Member;

(22) A final decision of the Ombudsman by way of Adjudication is the end of the OFS' dispute resolution process. Neither the Eligible Complainant nor the Member can appeal against an Ombudsman's decision;

(23) Where the Ombudsman has made a final decision with respect to the Dispute, the Eligible Complainant may choose whether or not to accept the Ombudsman's decision;

(24) Where the Eligible Complainant accepts the Ombudsman's final decision within 30 days from the date of the decision, the Parties to a Dispute are bound by such decision. The Ombudsman may, after considering the reason for any delay, grant an extension of time within which an Eligible Complainant may accept the Ombudsman's final decision and if accepted, such decision shall bind the Parties to the Dispute;

(25) The Ombudsman shall record in writing the terms of settlement reached by the Parties to a Dispute and a Settlement Agreement shall be executed by the Parties to a Dispute. The Member shall comply with the Award made by the Ombudsman within 14 days from the date the Eligible Complainant informed the Member of his acceptance of the Award;

(26) Where the Eligible Complainant does not accept the Ombudsman's final decision, Parties to a Dispute are free to pursue their rights through any other means, including a legal process or arbitration; and

(27) The Adjudication terminates when –

- (a) the Eligible Complainant withdraws from the Adjudication;
- (b) the Parties accept the preliminary assessment of the Dispute by the Ombudsman before Adjudication and enter into a Settlement Agreement;
- (c) the Ombudsman makes a final decision and/or Award with respect of the Dispute; or
- (d) the Eligible Complainant has initiated a legal proceeding against the Member in court or arbitration.

Expedite resolution process

35. Notwithstanding paragraph 34 of these TOR, a Dispute may be referred directly to Adjudication without a Recommendation having first been made by a Case Manager if the OFS considers that it would be in the best interest of the Parties to a Dispute to resolve the Dispute urgently, having regard to the likelihood of systemic risks, the type of financial services or products involved, the amount of loss that may be suffered and the technical complexity of the Dispute.

36. The OFS must inform the Parties to a Dispute of this intended course of action and the OFS must not proceed with the Adjudication without first giving the Parties to a Dispute a reasonable opportunity to make further submissions and provide additional information about the Dispute, if any.

Recommendation and final decision

37. The Recommendation made by a Case Manager and the final decision made by an Ombudsman, as the case may be –

- (1) must be in writing;
- (2) may either reach –
 - (a) a conclusion about the merits of the Dispute; or
 - (b) a view that it would not be appropriate for the OFS to reach any conclusion as to the merits of the Dispute;
- (3) must set out reasons for any conclusion about the merits of a Dispute or view of the kind referred to in subparagraph (2)(b) above;
- (4) must specify the remedy that the OFS considers as fair and appropriate; and
- (5) must be provided to the Parties to a Dispute.

Binding release by Eligible Complainant

38. In accepting a Recommendation or final decision of the Ombudsman, the Eligible Complainant must undertake to provide the Member with a binding release of the Member's liability in respect of matters mutually resolved by the Recommendation or as decided through the Adjudication, if so requested by the Member. The release shall be effective from the date on which the Member fulfils all of its obligations under the Recommendation or final decision, as the case may be.

39. Subject to subparagraph 41(3), where an Eligible Complainant has accepted a Recommendation or the final decision of the Ombudsman, the Eligible Complainant is prohibited from pursuing the same Dispute through any other similar avenue, including filing an action in the court.

Refusal to accept a Recommendation or final decision

40. If an Eligible Complainant does not accept a Recommendation made by the Case Manager or the final decision of the Ombudsman, the Eligible Complainant is not bound by the Recommendation or final decision. The Eligible Complainant is free to pursue his rights through any means he deems fit, including a legal process or arbitration.

Types of Awards

41. (1) The Award granted by an Ombudsman may include –
- (a) a monetary Award of such amount as the Ombudsman considers fair compensation for any direct loss subject to the monetary limit as set out in Schedule 2 of these TOR;
 - (b) a monetary Award of such amount exceeding the monetary limit as set out in Schedule 2 of these TOR provided that the OFS, the Eligible Complainant and the Member involved in the Dispute agree in writing to refer such Dispute to the OFS, and that the Eligible Complainant and the Member agree to be bound by such monetary Award that an Ombudsman may grant;
 - (c) a direction that requires the Member to take certain steps in relation to a Dispute as the Ombudsman considers appropriate;
 - (d) a direction that requires the Member to repay the actual cost incurred by the Eligible Complainant in relation to a Dispute, subject to a maximum of RM1,000.00 per Dispute; or
 - (e) such other relief as provided for in these TOR.
- (2) The OFS shall maintain a register for every Recommendation and final decision made by the Case Manager and Ombudsman respectively, in respect of Disputes referred to the OFS.
- (3) A monetary Award registered in accordance with these TOR that is accepted by the Eligible Complainant can be recovered or enforced by the Eligible Complainant through the court as a contractual debt without any set-off or counter claim after the expiry of the 14 day period as set out in subparagraph 34(25).

Late payment charges

42. The OFS may require a Member to pay late payment charges on the monetary Award if such Member fails to comply with the monetary Award within 14 days from the date the Eligible Complainant informed the Member of his acceptance of the Award. Such late payment charges shall be computed based on –

- (1) the one (1) year average fixed deposit rate published by Bank Negara Malaysia + 1% in respect of Members set out in the First Schedule of the Financial Services (Financial Ombudsman Scheme) Regulations 2015 or

Regulation 3 of the Development Financial Institutions (Financial Ombudsman Scheme) Regulations 2016, as the case may be; and

(2) the rate of investment yield of the participant's risk fund + 1% in respect of Members set out in the First Schedule of the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 or Regulation 3 of the Development Financial Institutions (Financial Ombudsman Scheme) Regulations 2016, as the case may be.

Other types of damages

43. Punitive, exemplary or aggravated damages shall not be awarded by an Ombudsman.

Levy and case fee

Annual levy payable by a licensed person or a prescribed institution with effect from 1 October 2016

44. With effect from 1 October 2016, a Member which is a licensed person under the Financial Services Act 2013 or the Islamic Financial Services Act 2013, or a prescribed institution under the Development Financial Institutions Act 2002 shall pay an annual levy. The amount of the levy is to be computed annually based on the OFS' budget requirement and it shall be shared equally by all licensed persons and prescribed institutions.

Annual levy and case fee payable by a licensed person or a prescribed institution with effect from 1 October 2017

45. With effect from 1 October 2017, a Member which is a licensed person under the Financial Services Act 2013 or the Islamic Financial Services Act 2013, or a prescribed institution under the Development Financial Institutions Act 2002 shall pay –

(1) an annual levy (computed annually based on the OFS' budget requirement and it shall be shared equally by all licensed persons and prescribed institutions); and

(2) a non-refundable case fee of RM1,500.00 for every Dispute filed by an Eligible Complainant against that particular Member.

Case fee payable by an approved person with effect from 1 October 2017

46. A Member which is an approved person under the Financial Services Act 2013 or the Islamic Financial Services Act 2013 is required to pay a non-refundable case fee for every Dispute filed by an Eligible Complainant against that particular Member.

The quantum of the case fee is to be differentiated depending on the stage of the resolution process as follows:

- (1) a case fee of RM100.00 for each Dispute resolved by the Case Manager at the Case Management stage (First Stage); and
- (2) an additional case fee of RM500.00 for each Dispute where the Parties to a Dispute fail to reach a negotiated settlement and decide to refer their Dispute to an Ombudsman for Adjudication (Second Stage).

OFS funding with effect from the year 2018

47. With effect from 1 January 2018 onwards, the OFS will be fully funded by the annual levy. Any additional amount collected through case fees will go towards reducing the budget requirement in 2018 and the following year of operations.

48. The OFS will collect the annual levy or the case fees, as the case may be, from Members in January of each calendar year.

49. For the avoidance of doubt, all fees due and payable to the OFS will continue to remain payable to the OFS even after a Member has ceased his membership in the FOS.

Witness for a proceeding

50. The Parties to a Dispute shall not call the OFS and its officers, including the Chief Executive Officer, Ombudsman and Case Manager as a witness or expert witness in any proceedings related to or arising from a Dispute handled by the OFS.

Debt recovery or other proceedings

51. (1) Subject to subparagraph (2) below, where a Dispute has been filed by an Eligible Complainant against a Member and such Dispute has been registered and is being dealt with by the OFS, that Member –
- (a) must not initiate legal proceedings against the Eligible Complainant in respect of any aspect of the subject matter of the Dispute;
 - (b) must not pursue legal proceedings on any matter that relates to the financial service or product in Dispute; or
 - (c) must not take any action to recover a debt that is the subject of the Dispute, to protect any assets securing that debt or to assign any right to recover that debt.

(2) Subject to the agreement of the OFS and on such terms as the OFS may deem fit, the Member may –

- (a) initiate proceedings where the limitation period for such proceedings will expire shortly. However, those proceedings shall only be pursued to the minimum necessary to preserve the Member's legal rights. In particular, the Member must not seek judgement in those legal proceedings if the Dispute had already been referred to the OFS; or
- (b) exercise any rights it might have to freeze or otherwise preserve assets that are the subject of the Dispute.

(3) If the Dispute is subsequently decided by the OFS and becomes binding upon the Member, the Member shall abandon any aspect of proceedings against the Eligible Complainant that are inconsistent with that decision.

Settled proceedings

52. Where a Dispute has been referred to the FOS and is subsequently resolved by mutual agreement between the Parties to a Dispute, the Member shall not initiate any legal proceedings that are inconsistent with that agreement.

Protection against defamation proceedings

53. A Member shall not initiate defamation proceedings of any kind against an Eligible Complainant in respect of the allegations made by the Eligible Complainant about the Member in relation to or arising from a Dispute that he has referred to the FOS.

Confidentiality obligation

54. No person, including a member of the Board, Chief Executive Officer, Ombudsman, Case Manager, officer and employee of the OFS, who has access to any data, document and information relating to a Dispute, shall disclose such data, document and information to any person except –

- (1) with the consent of the Member or the Eligible Complainant, as the case may be; or
- (2) if required or permitted to do so under the Financial Services Act 2013, Islamic Financial Services Act 2013 or Development Financial Institutions Act 2002, FOS Regulations or any other written law or by any court.

Immunity from liability

55. The OFS, Chief Executive Officer, Ombudsmen, Case Managers, officers and employees of the OFS and such other person appointed by the OFS to facilitate the settlement of Disputes shall not be liable to the Parties to a Dispute for any loss or damage arising directly or indirectly from any act or omission in connection with or arising from the services provided by the OFS, provided such act or omission was done or made or omitted to be done or made in good faith.

Non-compliance with TOR

56. Where a Member fails to comply with or meet its obligations under these TOR, the OFS may take any action it considers appropriate, including referring such non-compliance to Bank Negara Malaysia.

General matters

57. In these TOR –

- (1) A reference to the singular number includes, where the context requires, the plural number and vice versa;
- (2) A reference to the male gender includes, where the context requires, the female gender and vice versa;
- (3) The words “including”, “such as” or “for example”, does not limit the meaning of the words to which the example relates, that example or examples of a similar kind;
- (4) Where a term is used and it is not defined in paragraph 2, the term is to be interpreted as having its everyday meaning and usage, unless the context otherwise requires;
- (5) References to paragraphs are to paragraphs of these TOR unless otherwise stated;
- (6) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (7) Headings are inserted for convenience only and do not affect the interpretation of these TOR.

SCHEDULE 1

[subparagraph 7(1)]

The monetary award that may be granted by Ombudsman for a Dispute referred to the Financial Mediation Bureau under the Predecessor Scheme which remained outstanding on 1 October 2016.

No.	Type of Dispute	Monetary Limit
1.	Conventional/Islamic banking services or products	RM100,000.00
2.	Fraud cases involving the use of a designated payment instrument or a payment channel, credit card, charge card or automated teller machine (ATM) card, or a cheque	RM25,000.00
3.	Life insurance/family takaful claims	RM100,000.00
4.	Motor and fire insurance/takaful claims	RM200,000.00
5.	Third party property damage insurance/takaful claims	RM5,000.00
6.	Other general insurance/takaful claims	RM100,000.00

RESOLUTION PROCESS

