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FMB’s Performance in 2015

In 2015, the Financial Mediation Bureau (FMB) received a total of 10,323 enquiries and complaints (2014: 13,190). Telephone calls and emails were the preferred channels of communication by the general public. There were only 414 ‘walk-in’ customers as compared to 9,909 enquiries and complaints received via telephone calls and emails. As in the previous years, more than 50% of the enquires and complaints received were regarding insurance claims. Out of 10,323 enquiries and complaints received in 2015, a total of 6,039 (58.5%) cases were related to insurance claims and the remaining 4,284 (41.5%) were banking claims. Of these, only 1,707 cases fell within FMB’s jurisdiction and were registered as formal disputes (2014: 1,691 cases).

In 2015, FMB handled a total of 2,322 cases (2014: 2,721), of which, 615 cases were brought forward from 2014. As at 31 December 2015, a total of 1,876 cases were resolved (2014: 2,106 cases), of which, 962 cases and 239 cases were related to insurance and takaful respectively (64%) and the remaining 675 cases (36%) related to banking. The Board is delighted to note that the number of cases remaining outstanding has reduced to 446 cases (2014: 615; 2013: 1,030, 2012: 1,741, 2011: 2,540 and 2010: 3,150), the lowest in the last five years.

The reduction in the number of enquiries and complaints received from the general public and the lower number of cases referred to FMB, as well as, fewer number of outstanding cases as at 31 December 2015, are positive reflections of the outcome of collaborative efforts taken by the financial service providers and FMB to resolve disputes effectively and efficiently. Awareness programmes carried out by FMB in partnership with Bank Negara Malaysia (BNM), Agensi Kaunseling dan Pengurus Kredit (AKPK) and Perbadanan Insurans Deposit Malaysia (PIDM) to educate the general public through various channels and FMB’s active engagements with the financial service providers individually and collectively with their respective trade associations in the recent years had contributed to this healthy development.

2016 and Beyond – Extended Financial Consumer Protection Framework with the Implementation of the Financial Ombudsman Scheme (FOS)

The financial consumer protection framework is further solidified with the implementation of the FOS. On 29 October 2015, Bank Negara Malaysia announced that the Financial Services (Financial Ombudsman Scheme) Regulations 2015 and the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 (the Regulations) came into force on 14 September 2015. These Regulations, which were published in the Gazette on 11 September 2015, provide for the approval, oversight and obligations of a Financial Ombudsman Scheme (FOS) in Malaysia. The Regulations pave the way for the establishment of a FOS as part of Bank Negara Malaysia’s efforts to enhance financial dispute resolution arrangements for consumers and to strengthen consumer protection. The proposed FOS framework covers its scope, membership, funding, governance and resolution process. Bank Negara Malaysia will announce the commencement of the operation of the FOS in the near future. Once implemented, the financial consumers can refer eligible disputes involving any of the following financial service providers to the FOS for resolution:
Chairman’s Message 2015

- licensed banks and Islamic banks;
- licensed insurers and takaful operators;
- prescribed development financial institutions;
- approved designated payment instrument issuers and designated Islamic payment instrument issuers;
- approved insurance and takaful brokers; and
- approved financial advisers and Islamic financial advisers.

FMB’s jurisdiction will be expanded under the FOS. The monetary limit for all types of banking and insurance claims or Islamic banking and Takaful claims will be increased to RM250,000.00, except for motor third party property insurance/takaful claims which will be increased from RM5,000.00 to RM10,000.00. The maximum monetary limit for claims arising from unauthorised transactions through the use of designated payment instruments or a payment channel such as internet banking, mobile banking or automatic teller machine (ATM), or an unauthorised use of a cheque remain unchanged at RM25,000.00 per claim.

FMB looks forward to work collaboratively with all stakeholders, in particular, Bank Negara Malaysia, to ensure the financial consumer protection framework is implemented successfully. In this regard, FMB aspires to further strengthen its reputation as the trusted independent and impartial alternative dispute resolution channel for the financial consumers and the financial services industry. FMB also looks forward to assume the role as the FOS Operator once its application has been approved by Bank Negara Malaysia.

Appreciation

On behalf of the Board, let me thank our Members for their financial support by way of annual levy and the cooperation extended to FMB during the year. I would also like to thank the trade associations for their valuable contributions through periodic engagements and dialogue with FMB.

Last, but not least, I wish to extend my deepest appreciation to the management and staff of FMB for their continued support, commitment, dedication and excellent performance in 2015.

Relinquishing Position as a Board Member

I wish to inform that I have relinquished my position as Chairman of FMB with effect from 31 December 2015 following my appointment as a member of the Board of Directors of Bank Negara Malaysia (BNM). Sub-section 17(1)(c) of the Central Bank of Malaysia Act 2009 disqualifies a person from being appointed or remain as a member of the Board of Directors of BNM if that person is a director of an entity under the supervision of BNM. By virtue of the implementation of the FOS and the appointment of FMB as the Operator of the FOS, FMB is deemed to be an entity under the supervision of BNM pursuant to the Financial Services Act 2013 and the Islamic Financial Services 2013. As such, it is not legally possible for me to continue to be the Chairman and a member of the Board of Directors of FMB. Looking back, my past 6 years with FMB has been a rewarding one. From a humble beginning, FMB has grown to be a reputable alternative dispute resolution body recognised by the financial services industry and will soon be the Operator of the FOS. I wish FMB all the very best in its new role and I am confident FMB will continue to grow from strength to strength and will contribute immensely to the development of the financial services industry.

Tan Sri Dato’ Seri Siti Norma binti Yaakob
Chairman
Brief Overview

2015 has been a challenging and rewarding year for the Financial Mediation Bureau (FMB) as the centre for dispute resolution for the consumers and their financial service providers (FSPs).

Challenging

It has been challenging because of the transformation that need to be completed end of 2015 to enable FMB to assume the role as the Operator of the Financial Ombudsman Scheme (FOS) in 2016.

The transformation covers a wide range of issues including amendments to the constituent documents, review of the human resource and IT requirements, reorganisation of the internal structure within the organisation, as well as, review the effectiveness of the complaints handling and dispute resolution processes.

Among others, the Memorandum and Articles of Associations (M&A) have to be reviewed to provide the necessary powers and to effect the following changes for the implementation of the FOS framework:-

(a) enabling powers – provide the legal power for FMB to undertake its role as the Operator of the FOS;
(b) name of company – enable FMB to assume a new name to reflect its role as the Operator of the FOS;
(c) object clause of the company – set out the types of disputes that can be handled under the FOS;
(d) list of Members – cater for the cessation of investment banks as Members and inclusion of new Members comprising approved insurance and takaful brokers, financial advisers and Islamic financial advisers;
(e) board of directors – to cater for the appointment of a member of the board for a term up to three years based on certain criteria and the appointment is subject to Bank Negara Malaysia’s approval, as well as, the composition of the board which shall at all times consists of seven to eleven members;
(f) terminology and scope of powers – to cater for the change of terminology from Mediator to Ombudsman and to expand the power of an Ombudsman to adjudicate disputes against the Member in accordance with the Terms of Reference, the discretion of an Ombudsman to grant monetary awards not exceeding the monetary limit specified in the Financial Ombudsman Scheme Regulations;
(g) independent review - to cater for periodic independent review of the FOS as required under the FOS Regulations; and
(h) appointment of an Ombudsman – to cater for the appointment of an Ombudsman by the board of directors for a period not exceeding five years based on certain set of criteria and the general power of the board to remove an Ombudsman who is no longer fit to hold such office or where the Ombudsman commits a conduct inconsistent with his engagement.
FMB has completed the review of the M&A and drafted a new set of Terms of Reference, the Terms and Procedures for Case Management and Adjudication, the Settlement Agreement for Case Management and Adjudication, as well as, the Code of Practice for Ombudsman and Case Managers for Bank Negara Malaysia’s approval.

In this regard, I truly appreciate the valuable insights, guidance and support received from Bank Negara Malaysia, members of the Board of Directors of FMB, and FMB’s Members, without which, the completion of all the preparatory works may not be possible.

**Rewarding**

Over the years, FMB has enhanced its dispute resolution processes and complaints handling database. Such enhancements are critical to ensure FMB has the effective process and capacity to provide efficient service to its Members, the financial consumers and the general public. In addition, FMB actively participated in public engagement sessions to impart greater awareness on FMB’s jurisdiction and to promote its dispute resolution services. As in the previous years, in 2015, FMB initiated meetings with relevant trade associations, including the Life Insurance Association of Malaysia, General Insurance Association of Malaysia and Malaysia Takaful Association, to share its observations on issues arising from the disputes handled by FMB. Where appropriate, FMB has recommended to the trade associations best practices which could further enhance the complaints handling process of the financial services industry.

The meaningful contributions of FMB towards the development and growth of the financial services industry, in particular, the insurance and takaful industry was duly noted and recognised. In October 2015, FMB was presented the inaugural ‘Distinguished Partner Award 2015’ by the Malaysian Insurance and Takaful Industry for its significant and meaningful contributions to the insurance and takaful industry. FMB’s Chairman, Y.Bhg. Tan Sri Dato’ Seri Siti Norma binti Yaakob was given the honour to receive the distinguished award from the Guest of Honour, Y.Bhg. Dato’ Muhammad bin Ibrahim, Deputy Governor, Bank Negara Malaysia. FMB is indeed honoured and humbled by such recognition and will continue to play its role as the dispute resolution channel for the FSPs and their customers and contribute meaningfully to the financial services industry.

**Complaints Handling in 2015**

**Public Enquiries and Complaints**

The total number of enquiries and complaints from the general public received in 2015 had reduced by 21.7%, to 10,323 (2014: 13,190), of which, 1,707 cases fell within FMB’s jurisdiction.

The lower number of enquiries and complaints received over the last few years is a welcomed trend and, it reflects the positive outcome of the awareness programmes conducted by FMB over the past years. FMB believes that the general public’s increased awareness of its jurisdiction and terms of reference has attributed to fewer enquiries and complaints in 2015.

**Cases Handled**

During the year, FMB handled 2,322 cases – 615 cases brought forward from 2014 and 1,707 new cases registered in 2015.

**Cases Resolved**

As at 31 December 2015, FMB resolved 1,876 cases - all the 615 cases brought forward from 2014 and 1,261 of the cases registered in 2015.

**Manner of Disposal**

Out of the 1,876 cases resolved in 2015, 1,741 cases were resolved via mediation, of which, 838 cases (48.1%) were resolved amicably by way of negotiated settlements and the remaining 903 cases (51.9%) were adjudicated by the Mediators.
The remaining 135 cases (7.2%) were withdrawn by the complainants or closed subsequently as there was no response from the complainants or found to be outside FMB’s jurisdiction upon investigation.

**Outstanding Cases**

Only 446 cases remained outstanding as at 31 December 2015 – the lowest number achieved thus far. It is heartening to note that the concerted efforts by the Mediation team to resolve disputes in a timely manner have resulted in the lower number of cases outstanding at the end of December 2015.

**Stakeholders’ Engagement**

Throughout 2015, FMB has worked jointly with Bank Negara Malaysia, Perbadanan Insurans Deposit Malaysia Berhad, Agensi Kaunseling dan Pengurusan Kredit, Federation of Malaysia Consumers’ Association and other non-profit organisations to promote awareness amongst the public and staff of the financial service providers (FSPs). The main focus of the awareness programmes was to disseminate useful information to the general public on the jurisdiction and the terms of reference of FMB. The various engagement sessions with the general public and the FSPs have yielded positive results as can be seen from the declining number of enquiries and complaints received by FMB over the last few years. In addition, FMB also worked closely with the Securities Industry Dispute Resolution Center (SIDREC) in resolving disputes relating to capital market products and services offered by banks, Islamic banks and prescribed development financial institutions.

**Other Operational Matters**

**Levy and Funding Mechanism**

In 2015, RM5.4 million (2014: RM5.45 million) was collected from the Members to fund the operations of FMB. As in the past, the funding mechanism for 2015 remained unchanged. In 2015, each Member paid a flat levy of RM54,000.00 regardless of the number of complaints received against the Members.

Moving forward, however, the annual levy contribution by the Members will be differentiated with the introduction of case fees under the Financial Ombudsman Scheme (FOS) framework. The imposition of case fees, as practiced in other jurisdictions, is to promote a level playing field and equitable utilisation of resources by the Members.

**Operating Expenditure**

Total operating expenditure incurred in 2015 increased marginally to RM5.89 million (2014: RM5.49 million) mainly due to payment of consultancy fees for the job sizing and job pricing benchmarking exercise conducted by Messrs. Towers Watson to determine the remunerations of certain key positions in FMB, as well as, the professional legal fees incurred for the review of FMB’s Memorandum and Articles of Association in connection with the implementation of the FOS.

FMB will continue to adopt a prudent budget control measure as has been the practice in the past. All operating expenditure are fully justified and consistent with FMB’s mandate. Internally, FMB’s corporate governance requires the Board Audit Committee to review and endorse the proposed budget before it is submitted to the Board for approval.

**Human Resources**

In total, FMB has 40 staff, led by the Chief Executive Officer who is on secondment from Bank Negara Malaysia. 26 staff are involved in the dispute resolution process whilst the remaining are support staff from the IT, Human Resource, Corporate Affairs and Administration.

**Appreciation**

I wish to express my sincere appreciation to the Chairman and Board of Directors for their excellent leadership in steering FMB’s agenda forward
successfully. Without the Board’s undivided support, dedication, commitment and valuable guidance during the year, FMB would not have been able to perform its mandate effectively.

Our Members and their trade associations have been very supportive of our mandate since inception. Their understanding, cooperation and financial support are our critical success factors. For this reason, I want to thank them for their solid support.

For the years ahead and in anticipation of our new role as the Operator of the FOS in 2016, I envisage the importance of forging strategic collaboration with the key players in the financial services industry - including Bank Negara Malaysia, our Members and their trade associations, and other stakeholders, especially the Securities Industry Dispute Resolution Centre (SIDREC). Such collaboration is vital as FMB continues to position itself as the trusted and reputable alternative dispute resolution body for the financial services industry.

Last but not least, I wish to thank my colleagues in FMB for their commitment, dedication and contribution throughout 2015. They have performed well in 2015 and I am confident they will continue to give their best to FMB.

Lee Eng Huat
Chief Executive Officer
Financial Mediation Bureau
Board of Directors

Tan Sri Dato' Seri Siti Norma binti Yaakob
Chairman

Tan Sri Dato' Sri Tay Ah Lek
Deputy Chairman

Tan Sri Dato' V.C. George
Non-Executive Independent Director

Prof. Datuk Dr Marimuthu Nadason
Non-Executive Independent Director

Mr Ong Chong Hye
Non-Executive Independent Director

Encik Mohd Radzuan bin Abdul Halim
Non-Executive Independent Director

Mr Wong Teck Kat
Non-Executive Independent Director

Ms Chuah Mei Lin (Banking)
Non-Executive Non-Independent Director

Mr Chua Seck Guan (General Insurance)
Non-Executive Non-Independent Director

Datin Veronica Selvanayagy (Life Insurance)
Non-Executive Non-Independent Director
Memorable Moments with Tan Sri Dato’ Seri Siti Norma Yaakob
20th January 2015 marked the 10th anniversary of the Financial Mediation Bureau’s (FMB) operation. During the decade, the number of cases handled by FMB has grown. FMB is recognised as an independent and impartial alternative dispute resolution channel for the financial services industry.

The history…
As FMB will assume its role as the operator of the Financial Ombudsman Scheme, it is timely to reminisce on how FMB has evolved from a humble start in 2005 into its current form.

Prior to the formation of FMB, there were two separate Bureaus handling disputes relating to insurance and banking disputes, namely, the Insurance Mediation Bureau and the Banking Mediation Bureau.

The Insurance Mediation Bureau (IMB)
IMB was the first self-regulatory dispute resolution scheme introduced within the financial services industry in Malaysia. IMB was incorporated as a company limited by guarantee on 23 August 1991 and commenced its operation in October 1992. IMB operated with a staff of 6 at Wisma Harwant, Jalan Tuanku Abdul Rahman, Kuala Lumpur.

On inception of IMB, its Members comprised composite insurance companies and general insurance companies. In June 1996, IMB’s membership was extended to the life insurance companies.

The structure of IMB consists of:
(a) the Board of Directors responsible for the general management of the Bureau including finance;
(b) the Council responsible for the appointment of Mediators and providing assistance and guidance concerning the performance of his duties; and
(c) the Mediator, who investigates the complaint or claims against members and settles dispute or issues decisions.

The nine members of the Board were appointed by members of the Bureau. Its first Board was chaired by Encik Subri Abdullah and its members were Mr Michael Wong Teck Kat (Deputy Chairman), Encik Dzulkifli bin Mohd Salleh, Mr Kuok Khoon Ping, Mr Raymond Wong Shu Yoon, Mr P. Raveenderen, Encik Mohd Yusof Idris, Encik Abdullah bin Abdul Samad and Mr D.V.N. Rao.

Its five member Council consists of two members of the Board, one representative from the Federation of Malaysia Consumers Association (FOMCA), one representative from a university in Malaysia and one other person nominated by the Board. The Council was chaired by Mr James Joseph Puthucheary and its members were En Ahmad Subri Abdullah (board member), Mr Michael Wong Teck Kat (board member), Associate Professor Dr. S. Sothi Rachagan (representing FOMCA), and Associate Professor Dr. Nik Ramlah binti Nik Mahmood (representing a university in Malaysia).

When IMB commence its operations in 1991, it was mandated to handle complaints involving claims in connection with policies of personal insurance of up to RM50,000.00. Consistent with the expansion of IMB’s jurisdiction to include references in relation to life insurance policies in 1996, the monetary jurisdiction was increased to RM100,000.00.
The first Mediator was Y. Bhg. Dato’ Wan Ismail bin Wan Mohd Salleh, who held office from 1992 until the end of 1995. Upon his retirement, he was succeeded by Y.Bhg. Dato’ Wan Mohamed bin Wan Muda.

The timeline for the resolution of disputes was three months from the date of receipt of full documents from the complainants and the insurance companies. The Mediator’s decision was binding against the insurance company only if the complainant accepts the decision. However, if the complainant rejects the decision, he can institute legal action or seek arbitration.

Over a span of 12 years, the number of cases handled by IMB rose significantly from 37 cases in 1992/1993 to 1,105 cases in 2004. Although IMB was funded by the insurance companies, the complaints were decided independently and impartially and an average of 21% adjudicated cases were decided in favour of the complainant.

The table below shows the number of cases handled by IMB from October 1992 to 2004:

<table>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Brought forward</td>
<td>-</td>
<td>5</td>
<td>14</td>
<td>54</td>
<td>52</td>
<td>40</td>
<td>31</td>
<td>40</td>
<td>77</td>
<td>145</td>
<td>165</td>
<td>172</td>
</tr>
<tr>
<td>New cases received</td>
<td>37</td>
<td>58</td>
<td>110</td>
<td>152</td>
<td>279</td>
<td>383</td>
<td>463</td>
<td>515</td>
<td>726</td>
<td>932</td>
<td>1,070</td>
<td>1,105</td>
</tr>
<tr>
<td>Cases resolved</td>
<td>32</td>
<td>49</td>
<td>70</td>
<td>154</td>
<td>291</td>
<td>392</td>
<td>454</td>
<td>478</td>
<td>658</td>
<td>912</td>
<td>1,063</td>
<td>1,115</td>
</tr>
<tr>
<td>Cases outstanding</td>
<td>5</td>
<td>14</td>
<td>54</td>
<td>52</td>
<td>40</td>
<td>31</td>
<td>40</td>
<td>77</td>
<td>145</td>
<td>165</td>
<td>172</td>
<td>162</td>
</tr>
</tbody>
</table>

**Banking Mediation Bureau (BMB)**

Following the success of the IMB, the banking industry recognised the need for a similar dispute resolution body for a speedy resolution of complaints received from their customers.

As a result, BMB was established as a company limited by guarantee on 28 June 1996 and commenced its operation on 1 April 1997 with the objective to provide a simple mechanism for dispute resolution free of cost to the customers of banks and finance companies. BMB’s Members comprised commercial banks, finance companies and merchant banks. BMB operated with a staff of 5 at MUI Plaza, Jalan P. Ramlee, Kuala Lumpur.

BMB had a three-tier structure which was similar to IMB as follows –

(a) the Board of Directors - responsible for the management of the business and affairs of the Bureau;

(b) the Council - responsible for the appointment of the Mediator and providing assistance and guidance concerning the performance of his duties; and

(c) the Mediator - responsible for the investigation of all complaints or claims against the Members and settles any dispute or makes decisions.
A Milestone in the History of Alternative Dispute Resolution and Financial Consumer Protection in Malaysia

Its first Board was chaired by Y. Bhg. Dato’ Md. Nor bin Md. Yusof and members were Y. Bhg. Tan Sri Dato’ Sri Tay Ah Lek, Y. Bhg. Datuk Ramly bin Ahmad, Y. Bhg. Dato’ Mohammed Hussein and Mrs Wong Suan Lye.

Its five member Council comprised three independent members and two members representing the banking industry. Its first Council was chaired by Y.Bhg. Tan Sri Dato’ Vadaketh Chacko George and its members were Y.Bhg. Tan Sri Dato’ Sri Tay Ah Lek (member of the board) Y.Bhg. Datuk Ramly bin Ahmad (member of the board), Professor Dr. Hamzah Ismail (representing a university in Malaysia) and Encik Abdul Rahman Said Ali (representing FOMCA).

BMB was mandated to handle complaints involving monetary loss in connection with the provisions of banking services, namely:
- excessive fees, interest, and penalty charges;
- misleading advertisements;
- unauthorised Automated Teller Machine withdrawals;
- unauthorised use of credit cards;
- unfair practice of instituting legal actions against guarantors.

The first Mediator of BMB was Y.Bhg. Dato’ Wan Ismail bin Wan Mohd Salleh, who was also the pioneer Mediator of the IMB. He retired in April 2003 and was succeeded by Y.Bhg. Datin N. Segara.

The Mediator was empowered to make awards of up to RM25,000.00. The main aim of the monetary limit was to cater for the ‘small man’ of the banking industry. The timeline set for the resolution of cases was three months from the date of receipt of the complaint. Over its 8 years of operation, BMB received a total of 2,754 cases, out of which, 2,568 cases were resolved. 10% of the 2,568 cases were amicably resolved through mediation whilst the remaining 90% were adjudicated. 35% of the 2,311 adjudicated cases were decided in favour of the complainants; this demonstrated the impartiality and independence of the Mediator.

The table below shows the number of cases handled by BMB from 1997 to 2004:

<table>
<thead>
<tr>
<th>Year</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brought Forward</td>
<td>-</td>
<td>28</td>
<td>34</td>
<td>164</td>
<td>166</td>
<td>87</td>
<td>163</td>
<td>153</td>
</tr>
<tr>
<td>New cases received</td>
<td>87</td>
<td>134</td>
<td>325</td>
<td>447</td>
<td>346</td>
<td>503</td>
<td>468</td>
<td>444</td>
</tr>
<tr>
<td>Cases resolved</td>
<td>59</td>
<td>128</td>
<td>195</td>
<td>445</td>
<td>425</td>
<td>427</td>
<td>478</td>
<td>411</td>
</tr>
<tr>
<td>Cases outstanding</td>
<td>28</td>
<td>34</td>
<td>164</td>
<td>166</td>
<td>87</td>
<td>163</td>
<td>153</td>
<td>186</td>
</tr>
</tbody>
</table>
Both IMB and BMB were modelled on the ombudsman schemes of the United Kingdom. Their services are free of charge to the financial consumers. Although IMB and BMB were funded entirely by their respective industries, the Mediator’s decision is independent and impartial. The public’s positive perception of the IMB and BMB Mediators’ independence and impartiality was the cornerstone of the success of the Bureaus.

**Financial Mediation Bureau (FMB)**

In 2004, as part of Bank Negara Malaysia’s (BNM) efforts to strengthen the complaints resolution redress mechanism under the Financial Consumer Protection Framework in its Financial Sector Masterplan, IMB and BMB were merged into a one-stop alternative dispute resolution centre for the convenience of the financial consumers. The merged entity, the Financial Mediation Bureau (FMB) was incorporated as a company limited by guarantee on 30 August 2004 and commenced operations on 20 January 2005. From an initial 94 Members in 2005, FMB’s current membership grew to 100 Members.

The establishment of FMB as an independent and impartial alternative dispute resolution channel complements BNM’s initiatives in promoting financial system stability and financial consumer protection in Malaysia. Over the last 10 years, FMB has grown from strength to strength, in terms of the numbers of enquiries received, complaints registered and resolved by FMB.

In line with the principle of accessibility, the services provided by FMB continued to be free for the financial consumers. This was made possible because of the financial support received from its Members by way of annual levy. Members of FMB are the financial service providers (FSPs) licensed and/or approved by BNM which comprised the commercial banks, investment banks, Islamic banks, development financial institutions, payment system operators and payment instrument issuers, insurance companies and takaful operators.

The jurisdictional limit was expanded from RM25,000.00 to RM100,000.00 for banking disputes and from RM100,000.00 to RM200,000.00 for motor and fire insurance disputes to provide increased access to the Bureau as an avenue for redress for a wider spectrum of the public.

When FMB was first incorporated, it was governed by a Board of Directors comprising nine members, of whom five are independent directors with the rest from the banking and insurance industries. Its first Chairman of the Board was Y.Bhg. Tan Sri Dato’ Seri Haidar bin Mohamed Noor and the members were Dr. Rozali Mohamed Ali (Deputy Chairman), Y.Bhg. Tan Sri Dato’ Sri Tay Ah Lek, Mr Michael Wong Teck Kat, Mrs Wong Suan Lye, Y.Bhg. Tan Sri Dato’ Vadaketh Chacko George (independent director), Mr Ong Chong Hye (independent director), Encik Mohd Radzuan Bin Abdul Halim (independent director) and Y.Bhg. Professor Datuk Dr. Marimuthu Nadason (independent director).

The present Chairman of the Board is Y.Bhg. Tan Sri Dato’ Seri Siti Norma binti Yaakob and the members are Y.Bhg. Tan Sri Dato’ Sri Tay Ah Lek (Deputy Chairman), Y.Bhg. Tan Sri Dato’ Vadaketh Chacko George, Mr Michael Wong Teck Kat, Mr Ong Chong Hye, Encik Mohd Radzuan Bin Abdul Halim, Y.Bhg. Professor Datuk Dr. Marimuthu Nadason, Y.Bhg. Datin Veronica Selvanayagy, Puan Chua Mei Lin and Mr Chua Sek Guan.

At the helm of FMB is the Chief Executive Officer (CEO) who oversees the smooth running and effectiveness of its daily operations. The first CEO was Mr John Thomas who took office from 2005 until 30 July 2012. He was succeeded by Mr Lee Eng Huat with effect from 1 August 2012.
The objective of FMB is to provide an alternative dispute resolution channel which is free of charge, convenient, efficient and independent. FMB’s wider scope and expanded monetary limit covers the following:

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of dispute</th>
<th>Monetary Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Conventional/Islamic banking services or products.</td>
<td>RM100,000.00</td>
</tr>
<tr>
<td>2.</td>
<td>Fraud cases involving the use of designated payment instrument or a payment channel, credit card, charge card or Automated Teller Machine (ATM) card, or a cheque.</td>
<td>RM25,000.00</td>
</tr>
<tr>
<td>3.</td>
<td>Life insurance/family takaful claims</td>
<td>RM100,000.00</td>
</tr>
<tr>
<td>4.</td>
<td>Motor and fire insurance/takaful claims.</td>
<td>RM200,000.00</td>
</tr>
<tr>
<td>5.</td>
<td>Third-party property damage insurance/takaful claims.</td>
<td>RM5,000.00</td>
</tr>
<tr>
<td>6.</td>
<td>Other general insurance/takaful claims.</td>
<td>RM100,000.00</td>
</tr>
</tbody>
</table>

FMB’s dispute resolution services are provided by a pool of professionally qualified and experienced Mediators and Assistant Mediators. They are committed to resolve disputes in an independent, impartial, fair and timely manner within 3 to 6 calendar months from the date of receipt of complete documentation from the complainant and the financial services provider concerned. For disputes which are not within FMB’s jurisdiction, FMB will ensure that the complainants are duly informed and, where appropriate, they are referred to other relevant bodies or agencies.

FMB has, over the years, been able to resolve cases effectively and in a timely manner. FMB has also been pro-active in engaging its stakeholders periodically, including Persatuan Insurans Am Malaysia (PIAM), Life Insurance Association of Malaysia (LIAM) and Malaysian Takaful Association (MTA). Such engagements provide a platform for FMB to share with the insurance and takaful industry its observation on the nature and trend of disputes, as well as, enable FMB to suggest best practices and proposals for the consideration of the insurance industry with a view to further improve the way complaints are managed by the industry. In doing so, it enhances the industry’s understanding of the role of FMB and the approach it adopts in resolving disputes, in particular, how disputes are adjudicated. Likewise, FMB’s constant engagement and collaboration with the Securities Industry Dispute Resolution Center (SIDREC) and the banking industry has also helped to highlight ways to further improve the overall complaints handling processes.

The engagement sessions, especially those held with the relevant trade associations add value and further improves the effectiveness of complaints handling by the financial service providers. This invariably enhances financial consumers’ confidence in the insurance and banking industry.
FMB has successfully resolved over 22,000 cases in the last 10 years (2005 – 2015) as can be seen from the statistics below:

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Brought Forward</td>
<td>348</td>
<td>575</td>
<td>865</td>
<td>1,166</td>
<td>1,917</td>
<td>2,743</td>
<td>3,150</td>
<td>2,540</td>
<td>1,741</td>
<td>1,030</td>
<td>615</td>
</tr>
<tr>
<td>New cases received</td>
<td>1,934</td>
<td>2,107</td>
<td>2,287</td>
<td>2,337</td>
<td>2,624</td>
<td>2,150</td>
<td>2,224</td>
<td>1,919</td>
<td>1,881</td>
<td>1,691</td>
<td>1,707</td>
</tr>
<tr>
<td>Cases resolved</td>
<td>1,707</td>
<td>1,817</td>
<td>1,986</td>
<td>1,586</td>
<td>1,798</td>
<td>1,743</td>
<td>2,834</td>
<td>2,718</td>
<td>2,592</td>
<td>2,106</td>
<td>1,876</td>
</tr>
<tr>
<td>Cases outstanding</td>
<td>575</td>
<td>865</td>
<td>1,166</td>
<td>1,917</td>
<td>2,743</td>
<td>3,150</td>
<td>2,540</td>
<td>1,741</td>
<td>1,030</td>
<td>615</td>
<td>446</td>
</tr>
</tbody>
</table>

The complaints were resolved independently, impartially and in a fair manner. Out of the 22,763 cases resolved since 2005, 25% of the cases were settled through mediation, 67% of the cases were adjudicated and 8% were withdrawn.

The above track record represents an important milestone and growth in the financial consumer protection framework for financial consumers in Malaysia.

The Transformation of the Financial Mediation Bureau to the Operator of the Financial Ombudsman Scheme

The Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA) provide for the approval of the Financial Ombudsman Scheme (FOS) to ensure effective and fair handling of complaints and for the resolution of disputes with the financial service providers (FSPs) in connection with financial services or products. The Financial Services (Financial Ombudsman Scheme) Regulations 2015 and the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 (the Regulations) came into force on 14 September 2015 and were gazetted on 11 September 2015 to provide for the approval, oversight and obligations of a Financial Ombudsman Scheme (FOS) in Malaysia.

The FOS framework was formulated based on the six underlying principles namely independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness. The establishment of FOS is part of Bank Negara Malaysia’s efforts to further enhance the current financial dispute resolution arrangements for the consumers and also to further strengthen financial consumer protection.

Under the FOS, consumers can refer eligible disputes involving financial service providers such as licensed banks and Islamic banks, licensed insurers and takaful operators, prescribed development financial institutions, approved designated payment instrument issuers (including non-bank e-money issuers), approved designated Islamic payment instrument issuers (including non-bank Islamic e-money issuers), approved insurance and takaful brokers and approved financial advisers and Islamic financial advisers. The FOS services will be provided to consumers free of charge.
The dispute resolution process under the FOS is further enhanced with a two-tier approach. At the first stage of the resolution process, the dispute will be managed by a Case Manager. The Case Manager’s role is to encourage and facilitate dialogue, provide guidance, assist the parties to the dispute in clarifying their interests and in understanding differences, and to work towards a mutually acceptable settlement. If parties to the dispute fail to reach an amicable agreement, the Case Manager will make a recommendation on the manner in which the dispute should be resolved.

If the complainant choose not to accept the recommendation made by the Case Manager, the complainant is not bound by the said recommendation. The complainant is free to pursue his rights through any other means, including referring the dispute to the Ombudsman for adjudication (second stage of the dispute resolution process) within the stipulated time frame, or the complainant may want to initiate a legal redress or arbitration according to the complainant’s own discretion.

The enhancement of the dispute resolution process will undoubtedly bring about positive changes in the financial dispute resolution landscape in Malaysia.

The monetary awards that may be granted by the Ombudsman for a dispute under the Financial Ombudsman Scheme are as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of disputes</th>
<th>Monetary Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>A dispute involving financial services or products or Islamic financial services or products, developed, offered or marketed by a by a Member, or by a Member for or on behalf of another person, other than a dispute under paragraphs (2) and (3) below.</td>
<td>RM250,000.00</td>
</tr>
<tr>
<td>2.</td>
<td>A dispute on motor third party property damage insurance/ takaful claims.</td>
<td>RM10,000.00</td>
</tr>
<tr>
<td>3.</td>
<td>A dispute on -</td>
<td>RM25,000.00</td>
</tr>
<tr>
<td></td>
<td>(a) an unauthorised transaction through the use of a designated payment instruments or a Islamic designated payment instruments or payment channel such as internet banking, mobile banking, telephone banking or automated teller machine (ATM); or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) an unauthorised use of a cheque as defined in section 73 of the Bills of Exchange Act 1949 [Act 204].</td>
<td>RM25,000.00</td>
</tr>
</tbody>
</table>
The existing voluntary financial dispute resolution scheme has indeed progressed and developed from a humble beginning to one which has gained reputation as a trusted independent and impartial scheme. With the launch of the FOS in 2016, the financial dispute resolution mechanism is set to scale greater heights in the history of the financial dispute resolution in Malaysia. We look forward to working collaboratively with all our stakeholders to ensure that the FOS is implemented successfully as intended.
In 2015, FMB received a total number of 10,323 enquiries and complaints, a 22% reduction compared to 13,190 received in 2014. Phone calls accounted for 71% of the enquiries and complaints received whilst 25% were written enquiries and complaints via email, letter or fax and the remaining 4% were from walk-in customers.

### Enquiries and Complaints Received in 2014 and 2015

<table>
<thead>
<tr>
<th>Channel</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Insurance &amp; Takaful Matters</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enquiries via Phone Calls</td>
<td>5,176</td>
<td>4,203</td>
</tr>
<tr>
<td>Enquiries/Complaints via Walk-Ins</td>
<td>464</td>
<td>238</td>
</tr>
<tr>
<td>Enquiries/Complaints via Email/Letter/Fax</td>
<td>2,038</td>
<td>1,598</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>7,678</td>
<td>6,039</td>
</tr>
</tbody>
</table>

| **Banking Matters**                   |      |      |
| Enquiries via Phone Calls              | 3,985| 3,105|
| Enquiries/Complaints via Walk-Ins      | 403  | 176  |
| Enquiries/Complaints via Email/Letter/Fax | 1,124| 1,003|
| **Total**                             | 5,512| 4,284|

| **Total**                             | 13,190| 10,323|

Out of 2,601 formal complaints received through letters, emails and fax, 1,707 (66%) complaints fell within FMB’s jurisdiction. The remaining 894 (34%) disputes fell outside FMB’s jurisdiction. Reason being, the enquiries and complaints were related to matters including those concerning the service level of the financial service providers (FSPs), the underwriting of insurance/takaful policy, appeals on loan settlement arrangements or where the disputed sum exceed FMB’s jurisdiction.
The main type of enquiries and complaints received in 2015 were on the following:

(a) **Banking Sector**
- amount of loan in arrears/outstanding, credit card payments and auction of property;
- FSP’s credit decisions pertaining to approvals, rejections, rescheduling and settlement of loans;
- allegation of delay in disbursement of loans or loans connected to housing projects;
- waiver of annual fees and GST for credit cards, and maintenance fees imposed by FSPs.

(b) **Insurance and Takaful Sector**
- cancellation of insurance/takaful policies by FSPs;
- refund of premiums paid, surrender or cash values, or maturity value;
- scope of coverage of an insurance/takaful policy,
- allegation of inaccurate or misleading information provided by FSP’s agents;
- FSP’s delay in processing claims.

It is observed from the enquiries and complaints received that some complainants were unaware that they must file their disputes with FMB within six months from the date of the final decision of the FSPs, failing which, the dispute would fall outside FMB's jurisdiction. There were instances where FSPs have omitted to include such reminder in their final decision as required by Bank Negara Malaysia.

We wish to urge FSPs to ensure their officers and employees comply with **Bank Negara Malaysia's (BNM) Guideline on Complaints Handling (BNM/RH/GL/000-4)**, which requires FSPs to include the following statement in all their final letters/decisions issued to customers if the dispute or claim is within FMB’s jurisdiction:

‘Any person who is not satisfied with the decision of ________________ (name of FSP), should refer to the procedure of appeal as stated in the leaflet issued by the Financial Mediation Bureau, entitled ‘An Avenue to Seek Redress’.”
### Table 1 – Comparison of Cases Handled in 2014 and 2015

<table>
<thead>
<tr>
<th>Categories</th>
<th>Cases Handled in 2014</th>
<th>Cases Handled in 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B/f</td>
<td>Registered</td>
</tr>
<tr>
<td><strong>Conventional</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Insurance (Motor)</td>
<td>207</td>
<td>407</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>104</td>
<td>264</td>
</tr>
<tr>
<td>General Insurance (Medical)</td>
<td>19</td>
<td>70</td>
</tr>
<tr>
<td>General Insurance (Non-Motor)</td>
<td>155</td>
<td>107</td>
</tr>
<tr>
<td>Third Party Property Damage</td>
<td>28</td>
<td>70</td>
</tr>
<tr>
<td><strong>Total Conventional</strong></td>
<td>513</td>
<td>918</td>
</tr>
<tr>
<td><strong>Takaful</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family</td>
<td>58</td>
<td>103</td>
</tr>
<tr>
<td>General</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>Motor</td>
<td>18</td>
<td>93</td>
</tr>
<tr>
<td>Third Party Property Damage</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total Takaful</strong></td>
<td>97</td>
<td>219</td>
</tr>
<tr>
<td><strong>TOTAL CONVENTIONAL / TAKAFUL</strong></td>
<td>610</td>
<td>1,137</td>
</tr>
</tbody>
</table>
The combined number of cases registered against the insurance and takaful sectors continued to record a downtrend over the past years (2012: 1,318 cases; 2013: 1,229 cases; 2014: 1,137 cases; and 2015: 1,104 cases).

In 2015, the conventional insurance division which has been recording a declining trend over the past years has registered a further reduction of 5.1% (2014: 918 cases; 2015: 871 cases). On the other hand, the cases against the takaful operators have increased over the past years in tandem with the growing takaful business (2012: 166 cases; 2013: 217 cases; 2014: 219 cases; and 2015: 233 cases).

The close collaboration forged between FMB and the insurance associations such as Life Insurance Association of Malaysia (LIAM), Persatuan Insurans Am Malaysia (PIAM), Malaysian Takaful Association (MTA) and the National Insurance & Takaful Claims Society (NCIS) contributed positively to the efficiency and effectiveness in resolving the disputes.
Overview of 2015

- **General Insurance (Motor)**

The motor insurance disputes continued to record a declining trend over the past years. In 2015, 368 cases were registered compared to 407 cases in 2014, a reduction of 9.6%. The declining trend augurs well for the insurance industry. We believe, it is attributable to the better and more effective complaints handling by the insurers in resolving the disputes when complaints were first referred to them for resolution. Secondly, the declining trend is also attributable to better-informed financial consumers. They are more aware of the jurisdiction of FMB through the engagement programmes conducted by FMB in the past.

We would like to urge insurers to continue taking a pro-active approach in resolving disputes at the forefront, including taking ownership of the disputes by ensuring there is –

(a) adequate resources to deal with the disputes effectively at their end; and

(b) prompt communication with their claimants/policyholders regarding the progress or the status of their claims.

The effective and efficient first level resolution of disputes by the insurers have undoubtedly helped to reduce the number of cases escalated to FMB.

Insurance claims involving breach of policy conditions, in particular non-possession of a valid driving licence or a valid goods driving licence (refer to Case Studies A01) and late notification (refer to Case Studies A02) remains the two main issues dealt with in 2015.

There was also a notable increase in the number of cases involving cheating and/or criminal breach of trust last year (refer to Case Studies A03). From the investigation conducted, we observed that many complainants were unaware of or have lack of understanding regarding the policy wording on cheating and/or criminal breach of trust. Whilst policyholders are responsible to read and understand the policy terms and conditions (including the provisions on cheating and/or criminal breach of trust), the insurers also have an equal responsibility to ensure that the wordings for the terms and conditions are simplified and easy to comprehend.

It was also noted that some insurers apparently were unaware of certain relevant case authorities (cases decided by the courts) regarding an insurer’s liability in claims involving loss of vehicle due to cheating and/or criminal breach of trust, such as the *Taisho Marine and Fire Insurance (M) Sdn Bhd v Secure Guards Sdn Bhd* (2000)1 LNS 142, *Malaysian Motor Insurance Pool v Naza Motor Trading Sdn Bhd* [2011] 9 MLJ 605 and *Ayob Bin Salleh v Amgeneral Insurance Bhd & Anor* [2015] MLJ 327.

We are of the view that all insurers should continue to keep abreast with the latest case authorities involving motor insurance claims. In the interest of fairness and professionalism in complaints handling, it is pertinent for all insurers to ensure their decisions are in line with the case authorities.
Overview of 2015

- **Life Insurance and General Insurance (Medical)**

Life Insurance and General Insurance (Medical) disputes which comprised 29.6% of the total number of insurance and takaful complaints registered in 2015 also registered a marginal reduction of 2.1% in the number of complaints received - from 334 cases in 2014 to 327 cases in 2015.

The types of dispute received were mainly regarding the interpretation on the scope of the terms and conditions of the policy, which include claims excluded by the policy exclusions, and non-fulfilment of policy definitions and conditions *(refer to Case Studies A05).*

It is observed that some of the insured’s Total and Permanent Disability (TPD) claims were repudiated as the insured’s condition did not fulfil the definition of TPD in the policy, despite inconsistent and conflicting medical information on the insured’s condition *(refer to Case Studies A06 and A08).* In such cases, insurers are advised to seek medical reassessment (second opinion) of the insured’s current medical condition. The availability of comprehensive and complete medical information on the insured’s medical condition is necessary to assist FMB in resolving the dispute expeditiously.

- **General Insurance (Non-Motor)**

In 2015, FMB registered 109 cases (2014: 107 cases) of disputes regarding non-motor claims. Among others, claims relating to or arising from insurance policies covering travelling *(refer to Case Studies A11)*, fire, homeowner/householder, contractors’ all risks, goods-in-transits, extended warranty, workers’ compensation and burglary. This figure represents 9.9% of the combined insurance and takaful complaints received for the year 2015. The numbers of cases remained outstanding decreased to 27 cases in 2015 (2014: 78 cases).

- **Third-Party Property Damage (TPPD)**

A total of 67 new cases were registered in 2015, a reduction by 4.3% compared to 70 cases registered in 2014. TPPD cases represented 6.1% of the total insurance/takaful cases.

23 of the TPPD cases involved claims on ‘Compensation for Assessed Repair Time’ (CART), whilst the remaining 44 cases involved disputes on the amount refunded for cost of repairs and breach of terms and conditions of the motor policy.

The number of pending cases as at December 2015 was 18 compared to 22 cases pending as at December 2014.
Overview of 2015

- **Takaful (Family, General, Motor and TPPD)**

  Overall, the takaful cases represent 21.1% of the total number of insurance and takaful cases registered in 2015.

  The takaful sector which comprises Family, General, Motor and TPPD has grown significantly over the years and this has resulted in the corresponding increase in disputes registered under this sector. In 2015, 233 takaful cases were registered compared to 219 cases in 2014, an increase of 6.4% last year.

  The takaful family cases recorded a 10.7% increase to 114 cases in 2015 compared to 103 cases in 2014. The takaful family disputes remained the highest number of cases registered in the takaful category and involved mainly non-fulfillment of the definition of Total and Permanent Disability (**refer to Case Studies A13**), non-disclosure of material information, pre-existing illness, critical illnesses and hospital benefits claims.

  The takaful motor cases which recorded a 1.1% increase to 94 cases in 2015 (2014: 93) mainly involved breach of certificate’s terms and conditions, i.e. late notification of claims (**refer to Case Studies A14**), driving without a valid driving licence, disputes on market valuation of the covered vehicles, as well as, cases involving cheating and/or criminal breach of trust (CBT).

  A similar trend was seen in the takaful third-party property damage cases which registered an increase of 83.3%, from 6 cases registered in 2014 to 11 cases in 2015. The types of claim for takaful third-party property damages involved ‘Compensation for Assessed Repair Time (CART)’, disputes on the amount offered for cost of repairs and breach of terms and conditions of the motor certificates.

  On the other hand, the takaful general cases registered a reduction by 17.6% in the number of cases registered from 17 cases in 2014 to 14 in 2015. The complaints were mainly disputes arising from House owner’s/Householder’s certificates.

  However, only a handful of cases under ‘flood’ claims were reported to FMB even though Malaysia had experienced massive floods in 6 states1 due to continuous rainfall from 15 December 2014 to 3 January 2015 and March 2015. This could be attributed to the takaful operators’ expeditious and timely settlement of claims.

  The pro-active approach by FMB to meet and engage with the takaful operators on a regular basis had expedited the settlement of claims. Dialogue sessions held with the Malaysian Takaful Association (MTA) and the National Insurance & Takaful Claims Society (NICS) in July and September 2015 respectively, and the cooperation from the takaful operators had led to fruitful dialogue sessions to resolve disputes.

---

### Cases Resolved

Table 2 – Comparison of Cases Handled and Resolved in 2015

<table>
<thead>
<tr>
<th>Categories</th>
<th>Cases Handled in 2015</th>
<th>Cases Resolved in 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Casess Brought Forward</td>
<td>Cases Registered in 2015</td>
</tr>
<tr>
<td>Conventional</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Insurance (Motor)</td>
<td>169</td>
<td>368</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>49</td>
<td>262</td>
</tr>
<tr>
<td>General Insurance (Medical)</td>
<td>8</td>
<td>65</td>
</tr>
<tr>
<td>General Insurance (Non-Motor)</td>
<td>78</td>
<td>109</td>
</tr>
<tr>
<td>Third Party Property Damage</td>
<td>22</td>
<td>67</td>
</tr>
<tr>
<td>Total Conventional</td>
<td>326</td>
<td>871</td>
</tr>
<tr>
<td>Takaful</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family</td>
<td>26</td>
<td>114</td>
</tr>
<tr>
<td>General</td>
<td>8</td>
<td>14</td>
</tr>
<tr>
<td>Motor</td>
<td>24</td>
<td>94</td>
</tr>
<tr>
<td>Third Party Property Damage</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>Total Takaful</td>
<td>59</td>
<td>233</td>
</tr>
<tr>
<td>TOTAL CONVENTIONAL / TAKAFUL</td>
<td>385</td>
<td>1,104</td>
</tr>
</tbody>
</table>

![Chart 2(a) – Comparison of Conventional Insurance Cases Resolved in 2014 and 2015](chart2a.png)
The combined number of insurance and takaful cases resolved had declined from 1,362 cases in 2014 to 1,201 cases in 2015. The 11.8% reduction was mainly due to the fewer number of cases brought forward to 2015 (2015: 385 cases; 2014: 610 cases) and only 1,104 new cases were registered last year (2014: 1,137).

The percentage of cases resolved against the total number of cases handled in 2015 was 80.7% compared to 78% in 2014. All the 385 cases that were brought forward to 2015 were resolved this year. 73.9% of the 1,104 new cases registered in 2015 were resolved in the same year.

- **General Insurance (Motor)**
  All the 169 cases brought forward to 2015 were resolved in 2015 and 246 out of the 368 new cases registered in 2015 were also resolved during the year. The 6.7% drop in the number of cases resolved in 2015 was mainly due to the lower number of pending cases (169) brought forward to 2015 (2014: 207). However, the percentage of cases resolved against the total number of disputes handled in 2015 (77.3%) had remained fairly consistent with the percentage recorded in 2014 (72.5%).

  Through close collaboration with the industry, FMB was able to resolve disputes speedily through mediation and/or caucus sessions. Likewise, the insurers benefited from the knowledge gained during the mediation and/or caucus sessions which enabled them to become more responsive in resolving disputes at their end.

- **Life Insurance and General Insurance (Medical)**
  The number of cases resolved has reduced by 21% from 400 cases in 2014 to 316 cases in 2015. The reduction was mainly due to a decrease in the number of cases brought forward to 2015 that is, 57 cases compared to 123 cases brought forward in 2014. The resolved cases comprised 82% of new cases registered in 2015 and the rest of the cases (18%) were brought forward from 2014. Much effort has been put in by the
Overview of 2015

Mediation team to resolve all cases brought forward from 2014 and efficiently dispose new cases registered in 2015. As a result, 79.2% of the new cases registered in 2015 were disposed and the number of pending cases reduced to 68 as at 31 December 2015.

- **General Insurance (Non-Motor)**
  
  A total of 160 cases were resolved in 2015 and this comprised all the 78 cases brought forward to 2015 and 82 cases registered during the year. Only 27 cases out of the 109 new cases registered in 2015 remained pending as at 31 December 2015.

- **Third-Party Property Damage (TPPD)**
  
  Out of 89 cases handled in 2015, 71 cases (80.0%) were resolved. However, the number of cases resolved had reduced from 76 cases in 2014 mainly because of a lesser number of cases handled in 2015 compared to 2014 (2014: 98 cases).

- **Takaful (Family, Motor, General and TPPD)**
  
  The number of takaful cases resolved decreased from 257 cases in 2014 to 239 cases in 2015. This is due to a reduction in the number of cases brought forward to 2015 (59 cases) compared to 2014 (97 cases).

  In 2015, 77.3% of the new cases registered were resolved. The percentage of cases resolved against the total number of takaful disputes handled during the year increased to 81.9% in 2015 compared to 81.3% in 2014.
Manner of Disposal

Table 3 – Analysis of Cases Resolved in 2015

<table>
<thead>
<tr>
<th>Categories</th>
<th>Resolved by Mediation</th>
<th>Decision by Mediator</th>
<th>Others (No Response, Withdrawn)</th>
<th>Total Cases Resolved</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Mediator Upheld FSP’s Decision</td>
<td>Mediator Revised FSP’s Decision</td>
<td></td>
</tr>
<tr>
<td>Conventional</td>
<td></td>
<td>Mediator Upheld FSP’s Decision</td>
<td>Mediator Revised FSP’s Decision</td>
<td></td>
</tr>
<tr>
<td>General Insurance (Motor)</td>
<td>109</td>
<td>278</td>
<td>0</td>
<td>387</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>74</td>
<td>156</td>
<td>1</td>
<td>231</td>
</tr>
<tr>
<td>General Insurance (Medical)</td>
<td>12</td>
<td>43</td>
<td>0</td>
<td>55</td>
</tr>
<tr>
<td>General Insurance (Non-Motor)</td>
<td>67</td>
<td>71</td>
<td>0</td>
<td>138</td>
</tr>
<tr>
<td>Third Party Property Damage</td>
<td>54</td>
<td>14</td>
<td>0</td>
<td>68</td>
</tr>
<tr>
<td>Total Conventional</td>
<td>316</td>
<td>562</td>
<td>1</td>
<td>879</td>
</tr>
<tr>
<td>Takaful</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family</td>
<td>18</td>
<td>81</td>
<td>0</td>
<td>99</td>
</tr>
<tr>
<td>General</td>
<td>5</td>
<td>9</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>Motor</td>
<td>29</td>
<td>58</td>
<td>0</td>
<td>87</td>
</tr>
<tr>
<td>Third Party Property Damage</td>
<td>6</td>
<td>4</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Total Takaful</td>
<td>58</td>
<td>152</td>
<td>0</td>
<td>210</td>
</tr>
<tr>
<td><strong>TOTAL CONVENTIONAL / TAKAFUL</strong></td>
<td><strong>374</strong></td>
<td><strong>714</strong></td>
<td><strong>1</strong></td>
<td><strong>1,089</strong></td>
</tr>
</tbody>
</table>

In 2015, out of a total of 1,089 complaints resolved (excluding cases which were subsequently withdrawn and/or cases which received no response from the complainants), 374 cases (34.3%) were resolved amicably via negotiated settlements facilitated by FMB. Decisions were issued for the remaining 715 cases which were not amicably settled, of which 99.9% of the insurers’ and takaful operators’ decisions were upheld. A total of 112 cases were closed due to non-response or withdrawn by the complainants (9.32%).

Out of the 374 cases that were settled by mediation, 237 cases involved revision of decision by the insurers/takaful operators. Some of the reasons/factors that influenced the insurers/takaful operators to revise their decision at the mediation stage as pointed out by FMB include incomplete investigation, lack of thorough assessment of medical reports, misinterpretation of policy/certificate terms, conditions and exclusions, decisions based on insufficient evidence/proof, failure to probe further on material facts disclosed at underwriting stage, goodwill/discretion exercised after extenuating circumstances of the case were highlighted, failure to take into consideration Bank Negara Malaysia’s Guidelines, failure to seek clarifications on material facts from the insurance/takaful agents and failure to take into consideration the ‘ratio decidendi’ of decided court cases.
We are pleased to announce that almost all decisions including revised decisions by the insurers/takaful operators were in accordance with policy/certificate terms and conditions, Bank Negara Malaysia’s Guidelines and recommendations made by FMB during mediation stage. Only one decision was issued by FMB to revise the decision of the insurer in 2015. This decision concerns interpretation of the terms and conditions of the policy. During the mediation stage, FMB had highlighted to the insurer on the ambiguity of the terms and conditions of the policy and how it should be interpreted. However, the insurer failed to adhere to our recommendation notwithstanding the fact that there was a previous case where the Mediator had revised the decision of the same insurer on similar grounds (Refer to Annual Report 2013, Case Study A14: Critical Illness Claim: Other Serious Coronary Artery Disease).

We hope that with continued close rapport between the insurers/takaful operators, issues can be discussed between the parties and amicable resolution achieved at the mediation table.

It is without doubt mediation continues to be the preferred channel to resolve financial disputes without compromising on the relationship between parties.
Overview of 2015

BANKING (INCLUDING ISLAMIC BANKING) CASES

Cases Handled

Table B1 – Comparison of Cases Handled in 2014 and 2015

<table>
<thead>
<tr>
<th>Categories</th>
<th>Cases Handled in 2014</th>
<th>Cases Handled in 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B/f Registered Resolved</td>
<td>B/f Registered Resolved</td>
</tr>
<tr>
<td>Credit/Charge and Debit Cards</td>
<td>171 270 347</td>
<td>94 268 303 59</td>
</tr>
<tr>
<td>Internet Banking</td>
<td>98 72 105</td>
<td>65 113 137 41</td>
</tr>
<tr>
<td>Operational Issues</td>
<td>22 43 51</td>
<td>14 45 44 15</td>
</tr>
<tr>
<td>Contractual Issues</td>
<td>22 39 47</td>
<td>14 35 35 14</td>
</tr>
<tr>
<td>ATM Non/Short Dispensations</td>
<td>39 76 90</td>
<td>25 83 93 15</td>
</tr>
<tr>
<td>ATM Unauthorised Withdrawals</td>
<td>62 34 90</td>
<td>6 32 30 8</td>
</tr>
<tr>
<td>Cash Deposit Machine (CDM)</td>
<td>6 20 14</td>
<td>12 27 33 6</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>420 554 744</strong></td>
<td><strong>230 603 675 158</strong></td>
</tr>
</tbody>
</table>

Chart B1 – Comparison of Cases Received in 2014 and 2015

(Cases Received)

The overall number of complaints received against the banking sector increased by 8.8% from 554 cases in 2014 to 603 cases in 2015. Conversely, the total number of banking cases handled by FMB in 2015 (cases brought forward from 2014 and new registered cases in 2015) was 833 which is comparatively lower than the number of cases handled in 2014 of 974. This was due to the lower number of outstanding cases brought forward from 2014. The bulk of the complaints received in 2015 were related to credit/debit card and internet banking.
Credit/Charge and Debit Cards

There was a marginal 0.7% decrease of new cases received in 2015. A total of 268 cases were received in 2015 as compared to 270 in 2014. This was mainly due to the continuous pro-active efforts undertaken by banks to resolve disputes amicably with the complainants.

The disputes handled in 2015 were mainly divided into the following categories namely lost/stolen card (65.7%), compromised card (23.2%) whilst the remaining 11.1% consisted of disputes regarding on-line and cash advance transactions.

We received a high number of disputes regarding the theft of cards kept in vehicles parked at public parking areas especially at public swimming pools (refer to Case Studies - Case B06). Disputes arising from unauthorised use of credit card when the credit card holders’ were on holiday trip overseas are on the rise, in particular, unauthorised transactions carried out when credit cardholders were under duress or forced by syndicates. Unauthorised cash advance transactions were also performed as the cardholder was forced at knife point to divulge his credit card Personal Identification Number (PIN) (refer to Case Studies - Case B03).

Disputes arising from on-line purchase transactions were mainly related to transactions performed on non-secured 3D platform where the One-Time Password (OTP) was not required. The said transactions were completed with only the credit card number, expiry date and the card verification value (CVV) number. However, we also received a dispute regarding an on-line purchase transaction performed at a 3D secure platform (refer to Case Studies – Case B05). In this instance, the bank was able to furnish evidence that the OTP was successfully sent to the cardholder’s handphone and the items purchased were successfully delivered to the cardholder’s address. The dispute was amicably resolved after mediation.

Disputes involving debit cards mainly relate to unauthorised retail transactions performed without the Personal Identification Number (PIN) to authenticate the identity of the user. Most of these transactions were done at petrol stations and retail outlets. However, we have also received complaints on unauthorised PIN authenticated retail transactions (refer to Case Studies - Case B01). Cardholders are reminded that they have a duty to maintain and safeguard the custody and confidentiality of their credit/debit card and PIN at all times.

We note with concern that cardholders were generally unaware that their valuable items and credit/debit cards should not be kept unattended in their motor vehicles especially at public parking areas, for example, at swimming pools and recreational parks. In some instances, the cardholders’ handphones were also stolen and the banks were unable to contact the cardholders to verify transactions. Nonetheless, we are of the view that the banks should closely monitor any unusual credit card spending patterns including continuous petrol purchases, prepaid purchases or large transactions performed overseas. Banks should take the pro-active steps to contact the cardholders to verify such transactions if the spending patterns are unusual. Cardholders, on the other hand, should safeguard their credit/debit cards and update the banks of their latest contact number(s).

We also note that the bank’s Short Messaging Service (SMS) sent to the cardholder’s handphone to notify them of transactions performed using their credit card were often left unnoticed/unread by cardholders. We would like to urge cardholders to read such SMS and to contact the banks immediately when they are in doubt or do not fully understand the content of the SMS. Failure to notify the bank of unauthorised transactions as soon as reasonably practicable could result in further losses for the cardholders.
Overview of 2015

● **Internet Banking**

The number of new cases received in 2015 was 113 as compared to 72 cases received in 2014. The significant increase of 56.9% in new cases registered in 2015 was mainly due to a surge in phishing cases. The total number of internet banking cases handled in 2014 and 2015 were 170 and 178 respectively.

It is encouraging to note that the banks have increased their consumer awareness programmes by publishing detailed educational materials in their websites, newspapers and also social media to educate customers on the risk and precautions to observe while performing internet banking transactions to avoid falling prey to frauds/scams. Banks have also periodically enhanced their internal system to comply with the latest and best practices adopted for their internet banking services.

The majority of disputes handled in year 2014 and 2015 comprised ‘phishing’ scam whereby fraudsters impersonated the ‘bank’ and send emails to their customers purportedly requiring them to update their accounts to avoid disruption to their on-line banking services. The customers were required to click on a link provided in the email which directs them to a fake website. Customers then unknowingly key in their username and password and enter the Transaction Authorisation Code (TAC) sent to their handphone. Upon obtaining the essential credentials, the fraudster would then perform the on-line transactions without the customers’ knowledge. Internet banking users are advised to ensure the image and phrase they had previously selected are correct before they proceed with their on-line transactions. Internet banking users should also read the contents of the TAC received carefully before completing the on-line transaction by entering the TAC given by the bank. When there is doubt as to the authenticity of the transaction, the rightful action that an internet banking user should do is to contact the bank immediately.

It is observed that first time or new internet banking users are generally vulnerable to internet banking scams. Internet banking users are advised to manually type in the bank’s Uniform Resource Locator (URL) in the browser instead of using the search engine as bogus links are likely to appear in the search engine result page and they may unwittingly be redirected to a phishing site. Internet banking users are also reminded to install recognised antivirus programmes in their computers as a protection from malicious software programs (refer to Case Studies - Case B07). On the other hand, upon receipt of an unauthorised on-line fund transfer dispute, banks should immediately alert the beneficiary bank to prevent the withdrawal of the funds by the fraudster (refer to Case Studies - Case B08).

● **Operational issues**

The total number of disputes relating to operational issues recorded a 4.7% increase from 43 cases in 2014 to 45 cases in 2015. The type of disputes handled generally involved fixed deposits/savings, structured/investment linked products, remittances and Islamic accounts.

In 2015, there was a two fold increase in disputes relating to structured investment and capital market/Islamic capital market products from 9 cases in 2014 to 17 cases in 2015.

In this respect, steps are being taken to facilitate the Securities Industry Resolution Center (SIDREC), an alternative dispute resolution body set up by the Securities Commission Malaysia to handle disputes involving capital markets/Islamic capital market products such as structured investments, unit trust and shares offered
and marketed by banks. FMB will continue to mediate disputes related to insurance linked investment products (bancassurance) and dual currency products. This is part of the joint effort taken by Bank Negara Malaysia, the Securities Commission Malaysia, SIDREC and FMB to enhance the effectiveness of dispute resolution for financial consumers involving such services and products.

- **Operational Issues - Structured/Investment Linked/Bancassurance Products**

  In 2015, we received a number of complaints on alleged mis-selling/mis-leading advice which led consumers to purchase insurance related products sold by the bank (bancassurance). Customers who preferred to place their money in fixed deposits were instead offered a deposit plan which purportedly promised better returns. The marketing information cascaded to the customers, had misled them to think that the product was a deposit plan which offered higher returns compared to the interest earned on fixed deposits with free insurance coverage. In such disputes, the customers would later discover that they had actually purchased a life insurance policy instead of placing the money in a fixed deposit accounts when they found out that their savings were deducted monthly for the payment of insurance premiums.

  We continue to urge banks to comply with the proper sales procedures and guidelines prescribed to ensure that customers/potential investors fully understand the product features and risks. Banks should adhere to Bank Negara Malaysia's Guideline on Product Transparency and Disclosure (BNM/RH/GL 000-3) which emphasise the need to increase product transparency and disclosure to minimise mis-selling of financial products and services and ensure that products sold are suitable to the needs and resources of the consumers.

  Banks should ensure that pertinent documents such as the terms and conditions, product disclosure sheet, and sales illustration are signed by their customers/investors and copies of the same are furnished to the customer. It is recommended that banks maintain a checklist of all documents that are duly signed with relevant clauses/warning statements initialled by the customers/investors to confirm that these warnings have been read and understood by them. A post-sale customer call-back by an independent high ranking officer is necessary to assess the customers’ comprehension of the product and its risks. The cooling-off period should also be brought to the customers’ attention so that they are aware that the option to opt-out is available within a stipulated time frame.

- **Contractual issues**

  The total number of disputes received arising from contractual issues decreased marginally from 39 cases in 2014 to 35 cases in 2015. The type of disputes handled in 2015 related to excessive fees, interest, penalty charges imposed by developers due to the delay in disbursement of the loan, penalty imposed by the bank on early redemption of the loan (exit penalty) and also issues related to Hire Purchase.

  - **Contractual Issues - Charging of excessive fees, interest and penalty**

    The common disputes received from borrowers were regarding the high loan outstanding at the end of the loan tenure despite prompt payment of the monthly instalments. An increase in the loan outstanding may be the result of an increase in the loan interest rate whereas the increase in interest rate may be due to the following factors:
Overview of 2015

- The fluctuation in the Base Lending Rate (BLR). The loan agreement allows the bank to adjust the loan interest rate in accordance with movements in the BLR during the duration of the loan.
- Penalty interest charged when the borrower defaults in the monthly repayment. The terms and conditions of the loan also allow the bank to revise the loan interest rate upwards to a specific spread above the BLR throughout the loan tenure due to the borrower’s default.

Banks should notify their borrowers of any changes in the interest rates and/or monthly repayment amount. On the other hand, borrowers are advised to service their monthly instalments promptly to avoid imposition of penalty interest on the loan.

- **Contractual Issues - Penalty on late disbursement imposed by Developer**

The issue in dispute here relates to the penalty charges imposed by the developer on the purchaser due to the delay in the loan disbursement by the bank. The Mediator opined that the bank should bear the penalty for the late disbursement and the bank should not take into account the ‘interest’ portion which the borrower would have to pay if the loan was disbursed to the developer on time (refer to Case Studies - Case B17).

- **Automated Teller Machines (ATM) and Cash Deposit Machine (CDM)**

The overall number of disputes received had increased by 9.2%, from 130 cases in 2014 to 142 cases in 2015.

In cases relating to cash deposit machines and non/short dispensation of cash, the common issues raised relate to the cash retrieval process undertaken by the bank’s outsourced service providers at the CDM/ATM. We are of the view that the outsourced service provider should count the notes jammed inside the CDM in front of the stand-in camera during the retrieval process and the entire retrieval process should be recorded to protect the interest of the bank and its customers. This will serve as evidence as to the number of notes found inside the machine should a dispute arise.

In a large number of non-dispensation of cash disputes, the CCTV recordings revealed that the customers had left the ATM without taking the dispensed cash. The dispensed cash was then taken by a subsequent customer or third party before the cash could be retracted into the ATM. In such circumstances, we suggest that banks should take pro-active steps to trace the person who took the dispensed cash and return the cash to the rightful owner.

The majority of non-dispensation of cash and unauthorised ATM withdrawals disputes are resolved with the availability of the CCTV recording. In this regard, banks are advised to preserve the CCTV recordings of the disputed transactions immediately upon receipt of complaints.
Overview of 2015

Table B2- Comparison of Cases Handled and Resolved in 2015

<table>
<thead>
<tr>
<th>Categories</th>
<th>Cases Brought Forward</th>
<th>Cases Registered in 2015</th>
<th>Total Cases Handled</th>
<th>Cases Brought Forward</th>
<th>Cases Registered in 2015</th>
<th>Total Cases Resolved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit/Charge and Debit Cards</td>
<td>94</td>
<td>268</td>
<td>362</td>
<td>94</td>
<td>209</td>
<td>303</td>
</tr>
<tr>
<td>Internet Banking</td>
<td>65</td>
<td>113</td>
<td>178</td>
<td>65</td>
<td>72</td>
<td>137</td>
</tr>
<tr>
<td>Operational Issues</td>
<td>14</td>
<td>45</td>
<td>59</td>
<td>14</td>
<td>30</td>
<td>44</td>
</tr>
<tr>
<td>Contractual Issues</td>
<td>14</td>
<td>35</td>
<td>49</td>
<td>14</td>
<td>21</td>
<td>35</td>
</tr>
<tr>
<td>ATM Non/Short Dispensations</td>
<td>25</td>
<td>83</td>
<td>108</td>
<td>25</td>
<td>68</td>
<td>93</td>
</tr>
<tr>
<td>ATM Unauthorised Withdrawals</td>
<td>6</td>
<td>32</td>
<td>38</td>
<td>6</td>
<td>24</td>
<td>30</td>
</tr>
<tr>
<td>Cash Deposit Machine (CDM)</td>
<td>12</td>
<td>27</td>
<td>39</td>
<td>12</td>
<td>21</td>
<td>33</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>230</strong></td>
<td><strong>603</strong></td>
<td><strong>833</strong></td>
<td><strong>230</strong></td>
<td><strong>445</strong></td>
<td><strong>675</strong></td>
</tr>
</tbody>
</table>

The overall number of banking cases resolved in 2015 was comparatively lower, 675 cases compared to 744 in 2014. This was due to the relatively lower number of outstanding cases brought forward from 2014.

All the 230 outstanding cases brought forward from 2014 were resolved in 2015. As for the new cases registered in 2015, 73.8% were resolved within the year, a marked improvement compared to 58.50% in 2014. The timely resolution of cases remained FMB’s utmost priority and this was achieved through the commitment and continuous hard work of the respective Mediation teams.
Overview of 2015

- **Credit/Charge and Debit Cards**
  The total number of cases resolved in 2015 decreased by 12.7% as compared to 2014, from 347 cases in 2014 to 303 cases in 2015. The reduction was due to the lower number of cases brought forward to 2015, 94 cases as compared to 171 cases brought forward to 2014. The number of new cases registered in 2015 (268 cases) was also slightly lower than the cases registered in 2014 (270 cases). The cases were resolved expeditiously in 2015 due to the willingness of the customers to accept the banks’ settlement offer.

- **Internet Banking**
  The number of cases resolved increased by 30.5% from 105 cases in 2014 to 137 cases in 2015. Most of the cases were resolved amicably by way of mediation, despite the customers’ ignorance, inattentiveness whilst performing internet banking transactions and the failure to read the contents of the TAC sent via SMS.

- **Operational and Contractual Issues**
  The number of operational cases resolved has declined from 51 cases in 2014 to 44 cases in 2015. The 13.7% reduction was largely attributed to a lower number of cases brought forward to 2015. Out of the new 45 cases registered in 2015, 30 cases were resolved, which is 66.7%. Similarly, the number of contractual cases resolved has declined from 47 cases in 2014 to 35 cases in 2015. This was due to the lower number of cases brought forward to 2015.

- **Automated Teller Machines (ATM) and Cash Deposit Machine (CDM)**
  The overall number of cases resolved under this category had declined from 194 cases in 2014 to 156 cases in 2015.

  The unauthorised ATM withdrawals category declined by 66.7%, from 90 cases in 2014 to 30 cases in 2015. The significant reduction was due to the low number of cases (6 cases) brought forward to 2015 (2014: 62 cases) and there were only 32 cases registered in 2015. The 6 cases brought forward from 2014 and 24 out of the 28 cases registered in 2015 were resolved this year. Conversely, the number of cases resolved under Cash Deposit Machine recorded an increase of more than two folds with 33 cases resolved in 2015 against 14 cases in 2014. This was due to the higher number of cases brought forward to 2015 and an increase in the number of cases registered in 2015.
Overview of 2015

Manner of Disposal
Table B3 – Analysis of Cases Resolved in 2015

<table>
<thead>
<tr>
<th>Categories</th>
<th>Resolved by Mediation</th>
<th>Decision by Mediator</th>
<th>Sub-Total Cases Resolved</th>
<th>Others (No Response, Withdrawn)</th>
<th>Total Cases Resolved</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Mediator Upheld FSP's Decision</td>
<td>Mediator Revised FSP's Decision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit/Charge and Debit Cards</td>
<td>189</td>
<td>90</td>
<td>12</td>
<td>291</td>
<td>12</td>
</tr>
<tr>
<td>Internet Banking</td>
<td>135</td>
<td>0</td>
<td>0</td>
<td>135</td>
<td>2</td>
</tr>
<tr>
<td>Operational Issues</td>
<td>32</td>
<td>7</td>
<td>5</td>
<td>44</td>
<td>0</td>
</tr>
<tr>
<td>Contractual Issues</td>
<td>27</td>
<td>3</td>
<td>4</td>
<td>34</td>
<td>1</td>
</tr>
<tr>
<td>ATM Non/Short Dispensations</td>
<td>60</td>
<td>26</td>
<td>3</td>
<td>89</td>
<td>4</td>
</tr>
<tr>
<td>ATM Unauthorised Withdrawals</td>
<td>19</td>
<td>5</td>
<td>6</td>
<td>30</td>
<td>0</td>
</tr>
<tr>
<td>Cash Deposit Machine (CDM)</td>
<td>2</td>
<td>25</td>
<td>2</td>
<td>29</td>
<td>4</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>464</strong></td>
<td><strong>156</strong></td>
<td><strong>32</strong></td>
<td><strong>652</strong></td>
<td><strong>23</strong></td>
</tr>
</tbody>
</table>

A total of 652 complaints were resolved in 2015 (excluding cases with no response from or withdrawn by the complainants). Out of the 652 cases, 464 cases were settled amicably between the bank and the customers through negotiation and conciliation facilitated by FMB. The remaining 188 cases were decided by the Mediator by either upholding the decision of the bank (156 cases: 83%) or revising the decision of the bank (32 cases: 17%).

It is encouraging to note that 71.2% of the banking cases were successfully resolved through mediation. This affirms the effectiveness of mediation as a dispute resolution tool. In this regard, we wish to highlight an unauthorised withdrawal case which was successfully resolved through mediation. In the said case, a hearing impaired customer discovered cash missing from her account which was her savings to purchase a hearing aid. Even though the dispute was not in the customer’s favour, however the bank had considered the customer’s plight and presented a pair of hearing aid valued more than the disputed sum as a gift to the customer. We applaud the bank’s generosity and care for the welfare of their customer.

For credit/debit card cases, it was noted that 65% of the cases were resolved in 2015 via mediation compared to 61.42% cases in 2014. The increase was attributed to the willingness of the banks and customers to resolve disputes amicably through mediation. The number of cases where FMB had revised the banks’ decision via adjudication had reduced from 29 cases in 2014 to 12 cases in 2015.
As for internet banking, 100% cases were resolved by way of mediation both in 2014 and 2015. This confirms that mediation is an effective tool to facilitate resolution of cases expeditiously.

Out of the 44 operational cases resolved in 2015, 32 cases (72.7%) were resolved by way of mediation whilst 12 cases (27.3%) were adjudicated. Out of the 12 cases adjudicated, 7 (58.3%) cases were decided in favour of the FSPs.

For non/short dispensation of cash disputes, it is noted that 67.4% of the cases were resolved through mediation. This is mainly due to the bank’s willingness to resolve the dispute amicably. As for the 30 unauthorised ATM withdrawal cases resolved in 2015, 19 cases (63.3%) were resolved through mediation and 11 cases (36.7%) were adjudicated.
Case Studies

INSURANCE
(including Takaful)

BANKING
(including Islamic Banking)
Case A01: Insured Did Not Possess a Valid Goods Driving Licence (GDL)

Background
The insured’s motor lorry was damaged in an accident whilst being driven by the insured driver. The insured submitted an ‘Own Damage’ claim to the insurer for the cost of repair.

The insurer rejected the claim on the grounds that the insured driver did not possess a valid Goods Driving Licence (GDL) at the time of the accident. According to the insurer, the insured driver’s GDL had expired prior to the accident and therefore the insurer was unable to determine whether the insured driver was physically fit to operate the insured vehicle at the material time. The Road Transport Ordinance requires an individual to pass a series of exams and be certified as medically fit before a GDL is granted.

In the absence of a valid GDL, the insurer excluded the claim under the General Exception 1 of the policy which states:

*We will not pay for any liability under the following circumstances:*
1. *If You or any person with your consent are not licensed to drive the vehicle except if You or any person with your consent has held and is not disqualified from holding or obtaining such licence to drive your vehicle under any required laws, by laws and regulations.*

Investigation and Findings
The Mediator observed from the Road Transport Department’s search that the insured driver had a valid GDL which had expired 10 days prior to the said accident. The insured driver had successfully obtained a new GDL after the accident. Thus, the Mediator highlighted to the insurer that prima facie, the insured driver was not disqualified from holding or obtaining the GDL and he was fit and competent to hold the GDL. Therefore, it can be concluded that the insured driver was also fit and competent to drive the insured vehicle at the material time of the accident.

On this note, the Mediator drew reference to the case of *Malaysia National Insurance Sdn Bhd v. Abdul Aziz bin Mohammed Daud [1979] 2 MLJ 29* wherein the Federal Court held that a person whose driving licence had expired should not be treated as disqualified from holding or obtaining a licence.

The above legal principle is reflected in Para 8.7 in the *Bank Negara Malaysia’s Guideline on Claims Settlement Practices (BNM/RH/GL/003-9)* which states:

8.7 *The insurer should honour claims where the driving licence or the road tax was invalid or had expired at the time of accident provided the person driving is not disqualified from holding or obtaining such a licence to drive the vehicle under any required laws, bylaws or regulations.*

Settlement
The insurer agreed with the Mediator’s observation and settled the claim with the insured.
Case A02: Delay in Notification of Claim

Background
When the insured’s vehicle was involved in an accident, the insured had initially filed a claim against the manufacturer via the franchise repairer. However, the manufacturer rejected the claim as the damage to the vehicle was not caused by mechanical failure but by an accidental collision. The insured then submitted the ‘Own Damage’ claim to the insurer for the cost of repair but the claim was repudiated on the grounds of late notification.

Investigation and Findings
During a caucus session with the insured’s representative, the Mediator was informed that the insured’s company had made the initial claim against the manufacturer based on the company driver’s confirmation that the accident was caused by a mechanical defect/malfunction of the vehicle and therefore the company wanted the manufacturer to indemnify the losses.

However, the manufacturer had furnished their engineer’s report which confirmed that there was no evidence of defect/malfunction of the vehicle, and that the front right wheel of the vehicle had detached from the vehicle due to the strong impact of the vehicle against the road divider.

The insured was dissatisfied with the manufacturer’s report and proceeded to obtain a technical investigation report from Jabatan Pengangkutan Jalan (JPJ). However, JPJ’s report also concluded that the damages to the front right side of the vehicle were due to an impact arising from the vehicle’s collision with a permanent/stationary object and not due to a technical defect.

Dissatisfied with JPJ’s findings, the insured then requested for an independent police investigation. However, the police could only provide the witnesses’ narration of the accident and the police investigation was not conclusive.

Having exhausted all avenues of recovery from the manufacturer, the insured then filed the ‘Own Damage’ claim with the insurer.

The Mediator informed the insurer of the insured’s explanation for the delay in notification of the claim.

While the Mediator was of the view that the delay of 9 months was not intentional but was mainly due to the insured’s initial efforts to recover the cost of repair from the manufacturer, the insured should have also notified the insurer of his intention to file a claim against the manufacturer and may pursue an ‘Own Damage’ claim if his claim against the manufacturer is rejected.

Settlement
The insurer agreed with the Mediator’s observation and the dispute was amicably resolved.
Case A03: Criminal Breach of Trust

Background
The insured’s employee had absconded with the insured's vehicle and the insured’s money. The insured vehicle was subsequently found damaged with some missing parts. The insured submitted an ‘Own Damage’ claim to the insurer for the cost of repair.

The insurer rejected the claim on the recommendation of the licensed loss adjuster pursuant to Exception 4(e) to section A of the policy which states:

> We will not pay for:

> (e) any loss or damage caused by or attributed to the act of cheating/criminal breach of trust by any person within the meaning of the definition of the offence of cheating/criminal breach of trust set out in the Penal Code.

Investigation and Findings
The Mediator noted that the issue to be determined here is whether the factual circumstances of the case constituted ‘theft’ or ‘criminal breach of trust’ (CBT) as defined in the Penal Code.

Reference was made to section 378 of the Penal Code which defines ‘theft’ as:

> Whoever, intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.

> Illustration:

> (d) A, being Z’s servant and entrusted by Z with the care of Z’s plate, dishonestly runs away with the plate without Z’s consent. A has committed theft.

The Mediator was of the view that the circumstances of the loss in this case fell under the above said illustration.

The facts of this case was similar to Taisho Marine and Fire Insurance (M) Sdn Bhd v Secure Guards Sdn Bhd (2000)1 LNS 142, whereby the theft of the vehicle occurred when it was in the care of the employee/servant. KC Vohrah, J (as he then was) stated:

> Illustration (d) should be understood in the context of the explanatory of the Penal Code, s. 27, which reads:

> 27. When property is in the possession of a person’s wife, clerk or servant, on account of that person, it is in that person’s possession, within the meaning of this section.

In the context of illustration (d).... and taking into account the explanatory s. 27, it is quite clear that when the security guard of the Plaintiff - a servant of the Plaintiff - took the van he took it as a servant of the Plaintiff entrusted by the Plaintiff with it. The possession of the van through the servant was, under s.27, the possession of the Plaintiff.
The court may presume having regard to human conduct that when the servant did not return that day with the van or at all to the Plaintiff’s premises, he had dishonestly run away with it……. In the context of s.378, illustration (d) read with s.27 of the Penal Code, the servant had dishonestly taken the van out of the Plaintiff’s possession without the Plaintiff’s consent.

Thus, the loss of the motor van was due to theft committed by the security guard.

The Federal Court in the case of Malaysian Motor Insurance Pool v Naza Motor Trading Sdn Bhd [2011] 9 MLJ 605 had also cited Taisho Marine’s case and was decided on similar principles.

**Settlement**

The insurer agreed with the Mediator’s observation and settled the claim with the insured.

**Case A04: Breach of General Exception No.5**

**Background**

The engine of the insured’s vehicle was damaged while it was driven through a puddle of water. The insured submitted an ‘Own Damage’ claim to the insurer for the cost of repair. The insurer repudiated the claim under General Exception No. 5 of the private car policy as the damages sustained by the engine of the vehicle were due to flood.

**Investigation and Findings**

The insured had informed the adjuster that he had driven through a puddle of water on the road on his way back home. He alleged that the water had splashed onto his bonnet and the right side of the vehicle. This caused the engine to stop and he was unable to restart the engine. The vehicle was towed to the workshop.

Based on the adjuster’s report, there were no accidental impact or collision damages visible on the vehicle other than the damage caused by water. The adjuster noted that water had gone into the intake nozzle and air filter which indicates that the vehicle had gone through a large amount of water.

According to the adjuster when a vehicle is driven through a puddle of water, only a small amount of water would splash on the vehicle for a few seconds. The adjuster opined that the extent of damage sustained by the insured’s vehicle was inconsistent with the insured’s contention that he had driven through a puddle of water.

The adjuster concluded that the damage to the engine was caused by water that had entered into the intake nozzle when the vehicle was driven through a large volume of water for a long duration. The intake nozzle outlet is located on top of the radiator of the vehicle about 28 inches from the ground with an undercarriage cover to protect the vehicle from splashes of water.

The meteorological report confirmed that the total accumulation of rain recorded at the material date and time of the accident was classified as heavy rain. The adjuster observed that it was raining heavily and the area was flooded on the day of the mishap.
The adjuster’s investigation and the meteorological report confirmed that the damages to the insured’s vehicle were due to flood water entering the engine.

**Decision**
The Mediator upheld the insurer’s decision.

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**LIFE / MEDICAL**

**Case A05: Hospitalisation Claim – Exclusion: Congenital Condition**

**Background**
The assured was diagnosed with Bilateral Inguinal Hernia and underwent a Bilateral Hernia Repair surgery. The insurer rejected his hospitalization claim as his illness was a congenital condition (birth defect) that was within the clause 6 of the Policy Exclusions (VI) which states:

> *The Company will not pay the insured Benefits as stated in Clause 4.4.1 to 4.4.17 under this Annexure as a result of, including of any of the following whether directly or indirectly:*

> 6.1.7 *any treatment or surgical operation for Congenital Conditions or deformities including hereditary conditions;*

The policy defined congenital condition as ‘any medical or physical abnormalities existed at the time of birth or neo-natal physical abnormalities developing within six (6) months from the time of birth. This will include all type of hernias and epilepsy except when caused by trauma, which occurred after the Risk Effective Date.’

**Investigation and Findings**
The assured’s attending doctor was of the opinion that the underlying cause of the assured’s hernia is likely due to excessive physical exertion and may not be congenital in nature.

However, the insurer’s in-house doctor disagreed with the attending doctor’s view based on medical guidelines and literature which state that inguinal hernia in children is due to an arrest of embryologic development when the processus vaginalis failed to obliterate after the descent of testis through it. The defect is a physical abnormality, which is congenital in nature.

The insurer highlighted that the symptoms of pain and swelling, does not necessarily appear or occur during birth or soon after birth, but it can happen any time during the assured’s lifetime. Medical studies have shown that excessive physical exertion by a child (e.g. crying/straining) only causes the symptomatic presentation of the inguinal hernia and is not the cause of the hernia per se.

The Mediator noted that the attending doctor’s opinion was not substantiated with any medical evidence, whereas the insurer’s in house doctor’s opinion was supported with medical evidence.
Decision
The Mediator upheld the insurer’s decision.

Case A06: Total and Permanent Disability Claim – Definition not fulfilled

Background
The assured met with an accident while driving his taxi and as a result, lost his right upper limb from the mid forearm and below. He filed a claim for total and permanent disability (TPD) benefit. The assured’s claim was rejected by the insurer on the grounds that his condition does not fulfill the policy definition of TPD which reads as:

If the Life Assured is gainfully employed

A disability which is totally and permanent and continues for at least six (6) months and which totally prevents the Life Assured from ever carrying out their job or any other job which they are trained for or are fit to do as a result of their education or experience.

We also consider any of the following as TPD:-

a) total and permanent loss of sight of both eyes; or
b) permanent loss of, or permanent loss of use of two limbs at or above the wrist or ankle; or
c) total and permanent loss of the sight of one eye and permanent loss of, or permanent loss of use of one limb at or above wrist or ankle;

To be considered permanent, the disability should continue for at least six (6) months. The disability will begin on the first day of the event leading to it.

The insurer rejected the claim based on the medical assessment made by the assured’s attending doctor who was of the view that his disability does not prevent him from returning to work and to perform any type of occupation as the assured is able to find a job that did not involve the usage of the upper limb.

Investigation and Findings
The Mediator observed from the same medical assessment that the assured’s disability is permanent. The Mediator was of the view that while the assured was ambulatory, he was not able to return to his existing occupation as he could not drive his taxi with one hand. The attending doctor further confirmed that the assured needed assistance to eat, bath and dress as it is difficult for him to do these activities with only one hand.

Further investigations revealed that the assured:
1. has been certified as an Orang Kurang Upaya (OKU),
2. is a receiver under the SOCSO scheme,
3. has been jobless since the accident,
4. has very minimal academic qualification as he failed his SPM examination,
5. has no working experience other than being a company’s taxi driver; and
6. has multiple type of illness as he was also suffering from cardiovascular disease and hypertension.

Based on the above findings, the Mediator opined that it is unlikely for the assured to secure a substitute occupation at the age of 56, with minimal qualifications and without any substantial training on other job skills.

**Settlement**

The insurer concurred with the Mediator’s observation and settled the claim with the assured.

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**Case A07: Death Claim – Non-disclosure**

**Background**

The assured passed away on 11/10/2013 due to septic shock with multiple organ failure. The assured’s husband filed a claim. The insurer rejected the claim on the grounds of non-disclosure of the assured’s medical condition of Systemic Lupus Erythematosus (SLE) in the Proposal Form dated 10/9/2008.

**Investigation and Findings**

The Mediator observed that based on the medical reports furnished by the insurer, the assured was diagnosed with SLE in 2008 and underwent renal biopsy on 30/5/2008. She was later diagnosed with renal impairment in 2008.

The claimant highlighted that the insurer had approved the assured’s hospitalisation claim in relation to her SLE condition in 2012 and 2013. The insurer contended that the claim was erroneously paid due to an oversight.

The Mediator was of the view that the insurer should have investigated the assured’s hospitalisation claim in 2012 and 2013, and any decision to decline the claim due to the assured’s SLE condition ought to have been done at that time. As such, the insurer is deemed to have prior knowledge of the assured’s SLE condition and therefore estopped from raising it to repudiate this claim.

**Settlement**

The insurer concurred with the Mediator’s observation and settled the claim.
Case A08: Total and Permanent Disability Claim – Definition not fulfilled

Background
The insured was diagnosed with Metastatic Cancer of Sigmoid Colon. The assured filed a claim under Total and Permanent Disability (TPD) benefit. The insurer repudiated the claim on the grounds that the insured’s condition did not fulfill the policy definition of TPD, as the insured was able to perform at least three (3) of the ‘Activities of Daily Living’ independently.

Investigations and Findings
The Mediator observed that the definition of TPD in the policy had two limbs, which states as follows:-

Total and Permanent Disability shall mean wherever the context admits, disability such that there is neither at the time disability commences nor at anytime thereafter, any work, occupation or profession that the insured is capable of doing or by which continues to earn or obtain any wages, compensation or profit. Provided that such disability must last for not less than six months in duration and at the end of such period admitted as total and permanent, in which case the benefits shall nevertheless accrue as from the date of commencement of disability.

Notwithstanding the above, in respect of insured who are dependent on others for financial support at any time of disability, or in respect of insured who are unemployed or not engaged in any business or activity whatsoever from which income, profits, commissions or compensation is derived at the commencement of disability, TPD is defined as totally unable by reasons of accident or sickness to perform independently at least three (3) of the ‘Activities of Daily Living’ as hereinafter defined, without the frequent attention of a third party and in the opinion of the Company, is likely to remain so permanently disabled however that such Disability must last for not less than six months duration.

The Mediator highlighted to the insurer that there were two limbs in the policy definition of TPD; whereby, the first limb applies to insureds who are gainfully employed and, the second limb applies to insureds who are dependent on others for financial support. In the present case, the insured has been working as a vegetable seller. Therefore, the insured’s claim should be assessed based on the first limb of the policy definition, which is, whether the disability is such that there is any work, occupation or profession that the insured is capable of doing or by which continues to earn or obtain any wages, compensation or profit.

In the present case, the insured is still suffering from Metastatic Cancer of Sigmoid Colon which prevents her from performing all the normal duties of her occupation as a vegetable seller.

Further investigation revealed that the insured is not working and has an education background of up to Form 3 only. A medical report from the insured’s attending doctor has confirmed that the insured still has scar discomfort and is easily fatigued.
This prevents the insured from returning to her occupation wherein she is required to do the following:

i. shift boxes/basket of vegetables from the lorry;
ii. push and move the boxes/basket of vegetables in a wheelbarrow;
iii. unpack the boxes/basket of vegetables; and
iv. stand for long hours (10-12 hours a day).

The Mediator referred to the case of *Pacific & Orient Insurance Co Sdn Bhd v R Kathirvelu (1992) 1 CLJ 251* which followed *Pocock v Century Insurance Sdn Bhd (1960) 2 LJ R 150*, where it was held that a person could not be said to attend to business simply because he was capable of doing some minor part of the work involved in business. The issue as stated by the learned judge Molony QC is:

*Is he able to attend to business of the nominated or substantiated type? My view is that a person cannot be said to attend to business in that sense simply because he is capable of doing perhaps rather badly some minor part of the work involved in that or any other sort of business.*

**Settlement**

The insurer agreed with the Mediator’s observation and settled the claim in accordance with the terms and conditions of the policy.

**Case A09: Hospitalisation Claim – Co-Insurance Charges**

**Background**

The assured was hospitalized due to ‘Acute Rhinosinusitis and Acute Infective Bronchitis’. The insurer reimbursed the assured for the medical bills of RM4,945.26 but the payment of RM997.04 charged for an upgraded Room and Board Co-Payment was excluded. The assured claimed for the balance of RM997.04.

**Investigation and Findings**

The insurer rejected the assured’s claim pursuant to the following policy provision which states:

**CONDITIONS**

13. **UPGRADED ROOM AND BOARD CO-PAYMENT**

*If the Insured Person is hospitalised at a published Room and Board rate which is higher than his/her eligible benefit, the Insured Person shall bear 20% of the other eligible benefits described in the Schedule of Benefits.*

The assured contended that there were no available rooms within his daily entitlement limit of RM80.00.

**Decision**

The Mediator noted that the terms of the policy on co-payment were clearly established. The Mediator referred to the case of *Chew Swee Chai v British American Insurance Co (1987) 1 MLJ 53*, where the court held that ‘where the words of the policy are clear, it is the view of this court that the sanctity of the contract should be upheld.’
The Mediator highlighted that co-payment ensures fairness in the distribution of benefits amongst the policy holders according to the plan chosen and the premium paid. The assured had paid a lower premium for his plan compared to the other policy holders who had purchased higher plans. Hence, the eligible benefits of the assured were lower.

The Mediator upheld the insurer’s decision.

Case A10: Critical Illness Claim (Other Serious Coronary Artery Disease)

Background
The assured was diagnosed with ‘Triple Vessel Coronary Artery Disease’ and went for a surgery. The assured’s critical illness claim was declined by the insurer on the grounds that his medical condition did not fulfill the policy definition of ‘Other Serious Coronary Artery Disease’ which states:

Other Serious Coronary Artery Disease –

The narrowing of the lumen of at least three major arteries, i.e. Circumflex, Right Coronary Artery (RCA), Left Anterior Descending Artery (LAD) by a minimum of 60 percent or more as proven by coronary arteriography. This benefit is payable regardless of whether or not any form of coronary artery surgery has been performed.

The medical report prepared by the assured’s attending doctor state that the degree of narrowing of the assured’s three major arteries is as follows: - Circumflex (50%), RCA (80%) and LAD are (90%).

Investigation and Findings
Even though the assured had suffered three blockages in his main arteries, only two, i.e. the RCA and LAD, fulfilled the policy requirement of blockages which exceeded 60% whereas the blockages in Circumflex artery was only 50%.

The Mediator was of the view that even though the assured’s condition did not technically conform to the policy condition, the assured’s disease was far more severe than patients who had 60% blockages in all three main arteries. The blockages in the assured’s two main arteries were high, i.e. 80% (RCA) and 90% (LAD), and fell within the severe disease category which warrant immediate medical intervention. The assured’s Circumflex artery blockage was only 10% below the policy definition.
The Mediator drew the insurer’s attention to **BNM’s Guideline on Claims Settlements Practices (Consolidated) BNM/RH/GL/003-09** which states:

4.4.2 **Repudiation of Liability**

4.4.2.1 ……………………………………..;

4.4.2.2 An insurer should not repudiate a claim on the following grounds:

- **Technical breaches of warranty or policy conditions which are not material or unconnected to the circumstances of the loss, unless it had prejudiced the interest of the insurer or has exceeded time bar as provided under the law; and**

**Settlement**

The insurer agreed with the Mediator’s view and settled the claim.

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**GENERAL INSURANCE (NON-MOTOR CASES)**

**Case A11: Travel Insurance**

**Background**

The insured’s checked-in luggage was found open during his return journey to Malaysia. The insured discovered some electronic items were missing and damaged. The insurer repudiated the claim on the basis that the policy does not cover any loss or damage of electronic items that were checked-in with the carrier. According to the terms and conditions only electronic items that were hand carried were covered by the policy.

The insurer referred to **Exclusion 19** applicable to item C5 of the Policy, i.e. **Damage or Loss of Baggage and/or Personal effects** which states as follows:-

‘For purposes of item C5, we **will not pay** benefits for a loss due to or expenses incurred **for any electronic items, laptop or jewellery that is checked – in** with the common carrier.’

The insured contended that Exclusion 19 was not stated in the Policy Jacket furnished by the insurance agent.

**Investigation and Findings**

The Mediator observed that the insurance agent did not furnish the correct Policy Jacket to the insured. The Mediator noted that the Policy Jackets had different ‘Titles’ printed on the respective policies. Further investigation revealed that the insurance agent had mistakenly furnished the Policy Jacket of another Travel Policy which has been discontinued.
The Mediator was of the view that the insurer should implement measures to ensure that the correct Policy Jacket was furnished to the insured as there were several travel policies available.

During the mediation session, the insured insisted that the claim be assessed on the terms and conditions of the discontinued policy furnished to him by the insurance agent. The insurer agreed to review the claim based on the terms of the discontinued policy.

However, according to the terms and conditions of the discontinued policy, the coverage was only for the loss or damage of electronic items due to burglary, robbery and snatch theft. The circumstances of this loss did not match any of the above descriptions.

**Decision**

The Mediator upheld the insurer’s decision to repudiate this claim based on the terms and conditions of the policy.

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**TAKAFUL THIRD PARTY PROPERTY DAMAGE**

**Case A12: Repudiation of a third party’s claim based on Certificate exception**

**Background**

Following an accident involving the participant’s vehicle, the third party driver had submitted a claim to the takaful operator for the loss of use of the damaged vehicle. However, the claim was repudiated on the grounds that the third party driver was related to their participant pursuant to Exception 5(c) to Section B of the Certificate which states:

**SECTION B – LIABILITY TO THIRD PARTIES**

5. Exceptions to Section B

We will NOT pay for :-

(c) damage to property belonging to or in the custody of or control of or held in trust by You or Your authorised driver or any member of Your household under this Section

**Investigation and Findings**

The third party’s vehicle was knocked from the rear. According to the chain collision claims procedure, the vehicle immediately behind shall be responsible for the damages and uninsured losses for the vehicle in front of it. In this claim, the driver of the third party vehicle was the participant’s brother.

The takaful operator initially rejected the claim on the grounds that the third party claimant and their participant are ‘members of the same household’. The third party claimant however denied that they were members of the same household as the word ‘household’ refers to ‘people who live in the same dwelling and also share at meals or living accommodation’.
On this, the Mediator noted that the standard Motor Tariff defines ‘household’ as:

‘Your household refers to all members of Your immediate family (i.e. Spouse, Children including legally adopted Children, Parents, Brother and Sister)’

The Mediator further noted that the above definition was not included in the Certificate.

The Mediator advised the takaful operator to review their decision as the absence of the above definition in the Certificate renders the term ‘household’ ambiguous. The takaful operator agreed with the Mediator’s views and made a settlement offer to the third party. However, the settlement amount was rejected by the third party due to a disagreement on the number of days offered for loss of use of the vehicle.

**Decision**

The Mediator confirmed the takaful operator’s settlement offer for the loss of use of vehicle on the basis that the takaful operator had complied with Para 3, Appendix II, Bank Negara Malaysia’s Guideline on Claims Settlement Practices (Consolidated) (BNM/RH/GL/004-17).

**Case A13: Takaful Family (Claim not within the Certificate’s definition of Total and Permanent Disability)**

**Background**

The participant was suffering from ‘RVD positive, VDRL/TPHA positive’ and he submitted a claim for Total and Permanent Disability (TPD) benefits under the Certificate.

**Investigation and Findings**

The participant’s claim was repudiated on the grounds that his condition did not fulfill the Certificate’s definition of TPD, which reads as follows:

**Permanent Total Disability**

Permanent Disability as used in the clause shall mean disability whether caused by bodily injury or disease which wholly prevents the Participant from engaging in any business or occupation or performing any work for compensation or profit, provided however, that to determine if the total disability has become a permanent one, it must continue uninterruptedly for a period of at least six months.

Total loss of both arms and both legs or of one arm and one leg or both eyes shall be considered permanent total disability without prejudice to other causes of permanent total disability. Loss shall mean with regard to arms and legs, dismemberment by physical separation at or above the wrist and ankle or loss of use of both hands, both feet or one hand and one foot, with regard to eyes, total and irrecoverable loss of sight.
The takaful operator’s decision was based on the medical report prepared by the attending physician of Hospital ABC which stated that the participant was diagnosed with ‘RVD positive, VDRL/TPHA positive’. The physician also stated that the participant’s illness may be incurable but the disability does not prevent him from continuing his usual occupation or affect his ability to perform any other occupation or part-time job.

The Mediator noted that although the participant’s illness may have affected his ability to perform a permanent job but this did not render him incapacitated or prevent him from performing his daily routine and earning a living. The participant’s condition did not fulfill the definition of TPD.

Decision
Based on the facts and the medical evidence adduced, the Mediator upheld the decision of the takaful operator.

Case A14: Takaful General (Motor) – Claim rejected on Grounds of Late Notification

Background
The participant’s vehicle was stolen and he submitted a theft claim. The takaful operator repudiated the claim due to late notification of the loss. The participant contended that he had notified the loss to the takaful operator’s agent within the time frame stipulated in the Certificate.

Investigation and Findings
The supporting documents indicated that the claim was reported 3 months after the date of loss.

The takaful operator relied on clause (2) of the Certificate which states as follows:

2. ACCIDENTS AND CLAIMS PROCEDURE

We must be notified in writing or by phone in either case with particulars of the vehicle involved, date of accident and, if possible, a brief description of the circumstances of the accident within the specific time frame as follows after an event which may become the subject of a claim under this Certificate:

(a) Within seven (7) days if you are not physically disabled or hospitalised following the event;

(b) Within thirty (30) days or as soon as practicable if you are physically disabled or hospitalised as a result of the event;

(c) Other than (a) and (b), a longer notification period may be allowed subject to specific proof by you.

The Mediator noted that the participant had reported the loss to the takaful operator’s agent via short message services (SMS). The agent had acknowledged in a Statutory Declaration that she received the SMS from the participant. However, she did not receive any documentary evidence such as the police report from the participant.
The Mediator opined that it was sufficient for the participant to notify the loss via SMS by giving particulars of the date of loss and the vehicle registration number. The participant need not submit the police report or any other evidence with regard to the loss at the time of notification. The Mediator highlighted that there was no requirement in the Certificate for the notification to be supported with a police report, pursuant to Clause (12) of ‘Schedule 9, Islamic Financial Services Act, 2013’ which states that the knowledge of that takaful agent shall be deemed to be the knowledge of the licensed takaful operator.

**Settlement**

The takaful operator agreed with the Mediator’s findings and settled the claim.
Case Studies

BANKING (INCLUDING ISLAMIC BANKING)

DEBIT AND CREDIT CARDS

Case B01: Compromised Debit Card and PIN (Unauthorised Retail Transactions)

Background
Mr XY noticed a substantial reduction in his account balance when he made an ATM withdrawal on 5/4/2015. Mr XY reported it to AB Bank and lodged a police report on 6/4/2015. The debit card was in Mr XY’s possession and he has never used the debit card to perform retail transactions.

Investigation and Findings
AB Bank’s investigation revealed that there were six retail transactions totalling RM8,300.00 performed between 1/4/2015 and 6/4/2015 using Mr XY’s debit card at the same merchant. The merchant furnished the sales draft for the six retail transactions as proof of the sales. The merchant rejected the chargeback by AB Bank as the disputed transactions were approved via an authenticated Personal Identification Number (PIN).

AB Bank declined Mr XY’s claim on the grounds that the ‘E-debit’ retail transactions could only be performed with the physical presence of Mr XY’s debit card and valid PIN which is known only to Mr XY. Mr XY did not make a ‘lost/stolen’ card report prior to the incident. Mr XY also failed to contact AB Bank immediately after he discovered the loss on 5/4/2015.

All accountholders have a duty to maintain and safeguard the custody and confidentiality of their debit card and PIN at all times.

Decision
The Mediator upheld AB Bank’s decision.

Case B02: Compromised Credit Card and PIN (Unauthorised Cash Advance Transactions)

Background
Mr TY, a holder of EB Bank’s credit card, disputed six unauthorised cash advance transactions totalling RM5,900.00. These cash advance transactions were performed using his credit card at EB Bank and also at another bank’s ATMs on 30/7/2015, 31/7/2015 and 6/8/2015. Mr TY did not lose his credit card. He claimed that he did not receive any Short Message Services (SMS) alerts or calls from EB Bank to verify the transactions. Mr TY has viewed the CCTV footage and he was unable to identify the person who had performed the disputed transactions.
Case Studies

Investigation and Findings
EB Bank confirmed that Mr TY’s credit card and a valid PIN which is known only to Mr TY were used to perform the cash advance transactions at the ATMs. EB Bank’s records revealed that SMS alerts were sent to Mr TY’s handphone. However, Mr TY had only disputed the transactions one month later.

Decision
The Mediator upheld EB Bank’s decision. EB Bank agreed to waive the cash advance fee and all related charges.

Case B03: Unauthorised Cash Advance Transactions

Background
Mr KL was kidnapped and robbed by two foreigners on 27/2/2015 at about 10.00pm. He was forced at knife point to surrender his ATM/debit and credit card, and to reveal his Personal Identification Number (PIN) to the robbers. Mr KL was tied-up and locked in a room in an apartment. His ATM and credit cards were used to perform the following transactions at the ATM in the wee hours of the morning, on 28/2/2015.

<table>
<thead>
<tr>
<th>Time</th>
<th>Transaction type</th>
<th>Amount (RM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1:53am</td>
<td>cash advance</td>
<td>1,000.00</td>
</tr>
<tr>
<td>1:54am</td>
<td>cash advance</td>
<td>1,500.00</td>
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</tr>
<tr>
<td>2:34am</td>
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<td>600.00</td>
</tr>
<tr>
<td>2:34am</td>
<td>cash withdrawal (Debit card)</td>
<td>400.00</td>
</tr>
</tbody>
</table>

Total disputed amount 11,000.00

When Mr KL was released by the abductors 10 hours later, he lodged a police report and contacted GF Bank to block his cards. Mr KL disputed the above unauthorised transactions and contended that he would not have lost RM10,000.00 to the robbers if GF Bank had maintained a daily cap for the cash advance transactions.

GF Bank rejected Mr KL’s claim on the grounds that the cash advance and cash withdrawal transactions were successfully performed with the cardholder’s card and valid PIN. The bank contended that the cap for overseas and local cash advance transaction was internally monitored and the withdrawal limit varied according to the type of card issued. Mr KL’s credit card caters for young executives and had a higher cap based on the high income of the cardholders.
Investigation and Findings
The Mediator observed that seven disputed cash advance transactions were performed continuously within a period of 6 minutes from 1:53am to 1:59am. Furthermore, Mr KL had just received his credit card a month ago and he had never performed cash advance transactions using his credit card prior to the said incident.

The Mediator was of the view that GF Bank should have implemented alert mechanisms to detect and flag unusual transaction patterns to mitigate losses for its customers.

Settlement
GF Bank agreed with the observations of the Mediator and the dispute was amicably settled between the parties.

Case B04: Compromised Credit Card (Unauthorised Retail Transactions)

Background
Mr X received his August 2015 credit card statement and he discovered 36 unauthorised transactions amounting to RM11,872.00 charged to his credit card from June 2015 until August 2015. The credit card was in Mr X’s possession at all times. Mr X normally stayed outstation every week from Friday to Tuesday.

Investigation and Findings
ABD Bank blocked Mr X’s credit card on 19/8/2015. ABD Bank contended that the disputed transactions were performed using Mr X’s genuine EMV chip card. The sales drafts showed that Mr X’s credit card was presented at the merchant’s premises to perform the disputed transactions. There was no lost card report lodged by Mr X during the period. Mr X had stated in his police report that the credit card was in his possession. ABD Bank had sent five short message services (SMS) alerts to Mr X’s mobile phone on 12/7/2015, 19/7/2015, 1/8/2015, 4/8/2015 and 9/8/2015 to notify him of the transactions. However, there was no response from Mr X.

Fraudsters would normally perform numerous transactions and utilise the credit limit within the shortest possible time. However in this instance, the unauthorised transactions were mostly relatively small amounts spread over a period of two months. This indicates that Mr X’s credit card was compromised and someone known to Mr X may have performed the transactions. A duty is imposed on all cardholders to ensure the safety of their credit cards. Thus far, there are no records of cloned EMV chip cards as confirmed by Bank Negara Malaysia.

Decision
The Mediator upheld ABD Bank’s decision.
Case B05: On-line purchase using 3D secure platform

Background
Mr X denied performing six on-line purchases totalling RM11,262.00 on 20/5/2015. He discovered the disputed transactions upon receipt of his credit card statement in June 2015.

Mr X filed a claim against AB Credit Service on 19/6/2015 to dispute the unauthorised on-line purchases using the merchant’s 3D secure platform. Mr X did not receive any short message services (SMS) notifications from AB Credit Service to alert him of the unauthorised transactions performed on 20/5/2015. Mr X contended that he did not receive the items purchased and therefore he should not be liable for the disputed amount.

Investigation and Findings
AB Credit Service’s investigation revealed that the alleged unauthorised on-line purchases were performed using the merchant’s 3D secure platform which requires Mr X to key in the One Time Password (OTP) sent to his handphone to complete the transaction. Mr X made a lost card report to the bank on 11/6/2015 but he did not lodge a police report.

According to Mr X, he did not make a police report because he subsequently found his credit card in his car. Mr X did not inform AB Credit Service of his new address when he moved to Setia Alam, Selangor as his parents resided with two maids at his old house at Jalan BB, Kuala Lumpur and he frequently visits them.

AB Credit Service contended that there were no glitches in their notification system at the material time. The Tele-communication Service Provider confirmed that the OTPs requested on 20/5/2015 were sent to Mr X’s handphone number maintained in AB Credit Service records. Furthermore, Pos Malaysia also confirmed that all the six items purchased on-line were delivered to Mr X’s old residence at Jalan BB Kuala Lumpur and acknowledged receipt by Mr X’s maid.

Settlement
During the mediation session, Mr X confirmed that his maid had received delivery of the items and he agreed to pay the disputed amount. AB Credit Service agreed to waive the interest and late charges.

Case B06: Stolen Credit Card

Background
On 5/1/2015 at about 7.00pm, Mr C discovered that his car key was stolen from his bag while he was at a public swimming pool. Mr C also found out that his wallet and two of his credit cards which were kept in his car were missing. Mr C received three SMS alerts from Bank Z regarding the unauthorised transactions. Subsequently, Mr C also received a call from Bank Z to verify the three retail transactions totalling RM19,000.00 performed using his cards and he reported the ‘lost/stolen’ credit cards to Bank Z. Mr C lodged a police report on the same day.
Investigation and Findings
Mr C’s two credit cards were blocked on 5/1/2015 at 7.05 pm and 7.06 pm respectively after Mr C’s ‘lost/stolen’ report to Bank Z.

The three unauthorised transactions were performed between 6.31pm and 6.58pm prior to the ‘lost/stolen’ card report. Bank Z confirmed that SMS alerts were sent to Mr C’s handphone to notify him of the retail transactions and Mr C had acknowledged receipt of the said SMS notifications. Bank Z also furnished the sales drafts from the merchant as proof that Mr C’s credit cards were presented at the merchants’s premises during the transactions. Bank Z contended that Mr C should not have kept his wallet in his car and therefore had contributed to the loss. In this regard, Bank Z referred to the Cardholder Agreement which states that the cardholder shall be responsible for all unauthorised transactions effected before notification of the ‘lost/stolen’ card was received by the Bank. Nevertheless, Bank Z offered to waive 30% of the total disputed amount on a goodwill basis.

The Mediator opined that the offer made by Bank Z was fair and reasonable as the alleged unauthorised transactions were performed using Mr C’s stolen EMV credit cards before Mr C realised his car key was stolen. Mr C was a victim of a syndicate which targeted credit cardholders who frequent public swimming pools. Whilst the Mediator sympathised with Mr C on his misfortune, however due consideration was given to the fact that Bank Z was only a billing agent in this instance.

Decision
The Mediator upheld Bank Z’s decision. Bank Z agreed to waive the related finance and late payment charges incurred on the disputed amounts.

INTERNET BANKING (IB)

Case B07: Internet Banking – Malware Scam

Background
Ms ZT has been XYZ Bank’s internet banking user since 2013. On 13/07/2015, when Ms ZT logged into XYZ bank’s internet banking portal from her personal computer, a ‘Pop-Up’ message purportedly from XYZ Bank appeared on the screen requesting her to download a verification ‘certificate’. As required, Ms ZT entered her phone type and number. Ms ZT then received a Short Message Services (SMS) purportedly from XYZ Bank requiring her to download an application on her mobile phone together with a 5 digit ‘Activation Code’. After Ms ZT had completed the process, she checked her account balance before logging out.

Around 15 minutes later, Ms ZT noticed that an SMS was sent from her handphone to an unknown number without her knowledge. Ms ZT became suspicious and she tried to login into XYZ Bank’s internet banking portal but was unsuccessful. She then received a call from XYZ Bank informing her of an on-line transaction for RM7,300.00 performed via the bank’s overseas money transfer services.
Ms ZT lodged a police report to dispute the transaction and she filed an official complaint with the bank. Ms ZT stated that she was unaware of the two messages from XYZ Bank containing the transaction authorisation code (TAC) and post alert notification of the successful transaction until she received the bank’s call. She denied entering the TAC to authorise the transaction.

XYZ Bank rejected the claim on the grounds that the disputed transaction was successfully executed with Ms ZT’s essential credentials, that is: her username, password and TAC.

Investigation and Findings

XYZ Bank investigation revealed that Ms ZT’s personal computer and handphone were infected with a ‘keylogger’ and ‘formgrabbing’ malware virus designed by fraudsters to steal information from the victims. The said malware was able to intercept messages such as the TAC to complete a transaction since the username and password has been obtained by the fraudster via the purported ‘certificate’.

The bank’s investigation further revealed that Ms ZT’s personal computer was corrupted after the incident and required reformatting, thereby supporting the bank’s finding that Ms ZT had fallen victim to a ‘malware scam’.

According to XYZ Bank, continuous steps are being taken to post warnings on the bank’s website to alert its internet banking users of such scams and to ensure their devices are always protected. XYZ Bank rejected the claim on the above grounds as there was no malfunction or breach of the bank’s security measures.

The Mediator noted that Ms ZT’s username, password and TAC were compromised when Ms ZT responded to the ‘malware’ scam.

Ms ZT has a duty to ensure and observe all security measures prescribed by XYZ Bank to safeguard her credentials. Ms ZT should also read XYZ Bank’s security warnings on the risk and precautions to avoid scams. The Mediator referred to clause 15(1) of the Bank Negara Malaysia’s Guidelines on Consumer Protection on Electronic Fund Transfer [BNM/GP11] dated 10 December 1998, which reads as follows:

15 1) A customer shall not –

(A) directly or indirectly disclose to any person the access code of his card or any electronic device used to effect an electronic fund transfer; or

(B) fail to take reasonable care to keep the access code secret.

On the other hand, the Mediator noted that the ‘malware scam’ involving the victim’s personal computers and handphones is a new modus operandi by fraudsters whereby victims are required to enter their handphone number in a verification certificate and to download an application via their handphone.

The Mediator observed that Ms ZT did not enter the TAC as the SMS was intercepted by the fraudster via the malware.

Settlement

XYZ Bank agreed with the Mediator’s observations and the dispute was amicably resolved between parties.
Case B08: E-Mail Scam

Background
Mr ZT had used XYZ Bank's internet banking facility since 2007. On 13/1/2015 at around 9.45pm, Mr ZT received an email purportedly sent by his friend to urgently transfer some money to a third party account. Mr ZT logged into XYZ Bank’s internet banking portal and transferred RM3,750.00 via interbank GIRO (IBG) fund transfer to the third party account with ABC Bank. Thereafter, Mr ZT sent a short message service (SMS) to inform his friend of the transfer. However, Mr ZT’s friend notified him that his email account was hacked by fraudsters and he did not request for the money.

Mr ZT immediately instructed XYZ Bank to stop the fund transfer from his account and lodged a police report. However, XYZ Bank informed Mr ZT that the funds had been withdrawn from the third party account with ABC Bank.

Mr ZT contended that XYZ Bank had ample time to stop the IBG transaction since he had alerted the bank on the night of 13/1/2015 whereas the funds were credited into the third party account with ABC Bank the following day on 14/1/2015 at 11.00am.

XYZ Bank rejected the claim as the disputed transaction was successfully executed with Mr ZT’s essential credentials, that is: his username, password and a valid security code. XYZ Bank advised Mr ZT to pursue his case with the police against the third party as the money had been withdrawn from the third party account.

Investigation and Findings
XYZ Bank’s investigation revealed that the disputed IBG fund transfer on 13/1/2015 was initiated by Mr ZT. XYZ Bank submitted an official request to ABC Bank on 14/1/2015 at 11.26am to recover the funds. However, the transferred sum had been withdrawn by the third party.

XYZ Bank contended that Mr ZT was negligent as he had transferred the funds without checking the authenticity of the e-mail purportedly sent by his friend. XYZ Bank rejected the claim as there was no malfunction or breach of the bank’s security measures. XYZ Bank emphasized that notices and warnings were posted on the bank’s website and in the media to alert its internet banking users of scams perpetrated by fraudsters.

The Mediator observed that the disputed transaction was performed via Mr ZT’s username, password and security code. On the other hand, the Mediator noted that XYZ Bank’s request to recover the funds was only submitted to ABC Bank on 14/1/2015 even though Mr ZT had instructed the bank to stop the transfer on the night of 13/1/2015.

Settlement
XYZ Bank agreed with the findings of the Mediator and resolved the dispute amicably with Mr ZT.
Case B09: Dispute on the amount of cash deposited into the CDM

**Background**

On 2/10/2015, Ms A inserted 160 pieces of RM50.00 notes totaling RM8,000.00 into Bank T’s Cash Deposit Machine (CDM). The CDM returned all the inserted notes as the machine could only process a maximum of 99 notes. According to Ms A, she removed half of the returned notes from the cash slot leaving the remaining 90 pieces amounting RM4,500.00 in the slot and continued with the transaction. The CDM’s note counting process stopped abruptly and the cash was jammed inside the CDM. Ms A lodged a complaint to Bank T on the failed deposit transaction.

Bank T refunded the excess cash of RM1,450.00 found inside the CDM to Ms A. However, Ms A alleged that she had deposited RM4,500.00 and claimed for the balance of RM3,000.00 from the bank.

**Investigation and findings**

According to Bank T, the maximum number of notes allowed per transaction is 99 notes. However, as Ms A had inserted more than the maximum number of notes in the cash slot, the CDM returned the deposited cash and prompted Ms A to remove all the notes from the cash slot. Subsequently, when the CDM detected some notes left at the cash slot, Ms A was again prompted to remove all the notes. As Ms A did not remove the notes from the cash slot, a ‘time-out’ occurred 30 seconds later and the CDM retracted the notes. An error occurred during the retraction process and the cash was jammed between the bill validator and the reject bin. Thereafter, the CDM went out of service.

The bank’s investigation records revealed that the CDM was immediately opened by the bank’s service provider who retrieved 29 pieces of RM50.00 notes totaling RM1,450.00 that were jammed inside the CDM. The cash retrieval process was recorded by a stand-in camera which showed that the cash was counted manually in front of the camera and the total notes found comprised 29 pieces of RM50 notes amounting to RM1,450.00, and not RM4,500.00 as claimed by Ms A.

**Decision**

The Mediator upheld Bank T’s decision.

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**Case B10: Cash Deposited into the Wrong Machine**

**Background**

Ms YY has a savings account with ZZ Bank. On 10/1/2015 at about 7.30am, Ms YY’s father and sister had deposited RM300.00 into her account through ZZ Bank’s Cash Deposit Machine (CDM). The cash was accepted by the CDM but no receipt was issued. Ms YY claimed that the cash deposit of RM300.00 was not credited into her account.
Ms YY claimed for a refund of RM300.00. ZZ Bank rejected the claim as their records showed that there was no cash deposit of RM300.00 at the said CDM on the stipulated date and time.

**Investigation and findings**

The Mediator reviewed ZZ Bank's CDM Electronic Journal records but could not find any cash deposit transaction for RM300.00 at the said CDM on 10/1/2015 at 7.30am. According to the CDM Electronic Journal, the said CDM was not used by any customer between 1.00am and 8.00am on 10/1/2015.

The Mediator observed from ZZ Bank's closed-circuit television (CCTV) recording, that Ms YY’s father and sister had entered the bank’s self-service terminal area at about 7.30am on 10/1/2015. Ms YY’s father was seen inserting three pieces of RM100.00 notes into the slot of a machine. The first attempt was unsuccessful as the cash was rejected. Thereafter, the cash was successfully reinserted. However, the machine went out of service and no receipt was dispensed.

Upon further scrutiny of the CCTV footage, the Mediator noted that Ms YY’s father had mistakenly deposited the cash into a Cheque Deposit Machine instead of a Cash Deposit Machine. The CCTV footage showed that ZZ Bank’s officers had opened the Cheque Deposit Machine on 10/1/2015 at about 9.30am to retrieve the deposited cheques. The officers were seen collecting 3 pieces of RM100.00 from the Cheque Deposit Machine. The sum of RM300.00 was kept in the Bank’s suspense account pending refund to the rightful claimant.

**Settlement**

ZZ Bank returned the cash to Ms YY.

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**AUTOMATED TELLER MACHINE (ATM)**

**Case B11: Dispute on ATM Withdrawals**

**Background**

Mr P, a savings account holder at BB Bank was issued with a chip based ATM card. Mr P made 13 withdrawal attempts at various banks’ ATMs from 22/1/2015 to 24/1/2015 but all the transactions had failed. However, Mr P noted that RM11,500.00 was deducted from his account on the stipulated dates. According to BB Bank’s ATM records, the 13 withdrawals performed from 22/1/2015 to 24/1/2015 were successfully transacted and the cash was dispensed by the ATMs.

**Investigation and Findings**

During the mediation session, it came to light that the 13 disputed withdrawals were performed at dates, time and locations which differed from Mr P’s unsuccessful withdrawal attempts. BB Bank’s investigation records revealed that numerous withdrawals were transacted up to the maximum daily withdrawal limit and there were also attempts to deplete the funds from Mr P’s account within the shortest time possible. The CCTV recording revealed that the disputed withdrawals were performed by a person who is not known to Mr P.
ATM cards issued by banks in Malaysia are embedded with a chip with enhanced safety features. ATM withdrawals performed in Malaysia are authorised through the data encrypted in the chip and not the data stored in the card’s magnetic stripe. In the case of Mr P, BB Bank’s records revealed that the disputed withdrawals were authorised through the data stored in the card’s magnetic stripe and the transactions were approved via Cirrus, an international interbank network instead of MEPS the local interbank network.

Based on the evidence adduced, the Mediator was of the view that the card’s magnetic stipe was cloned and the disputed transactions were made using a duplicate card.

**Settlement**
BB Bank agreed with the Mediator’s views and the disputed amount was refunded to Mr P.

**Case B12: CCTV Recording Proof of Successful Withdrawal**

**Background**
Ms BC withdrew RM500.00 from XY Bank’s Automated Teller Machine (ATM) on 10/2/2015. Ms BC alleged that she had waited for a few minutes for the cash at the ATM but no cash was dispensed. Ms BC heard the sound of cash being counted but the cash dispensing slot failed to open. Ms BC left XY Bank as she thought that the ATM was faulty. Ms BC later discovered that RM500.00 was deducted from her account.

**Investigation and Findings**
XY Bank’s ATM Journal records revealed that Ms BC’s withdrawal was successfully executed and 10 pieces of RM50.00 notes totalling RM500.00 were dispensed. There were no irregularities or cash retraction recorded during Ms BC’s withdrawal transaction at the ATM.

According to XY Bank’s records, the transactions performed by other customers at the said ATM just before and after Ms BC’s disputed transaction were successfully completed. The ATM cash balancing showed there were no discrepancies or excess cash.

The Mediator observed from XY Bank’s closed circuit television (CCTV) recording that Ms BC had retrieved her card from the ATM at 9.30.10am. Ms BC was then seen taking the dispensed cash from the ATM four seconds later, at 9.30.14am.

**Decision**
The Mediator upheld XY bank’s decision based on the evidence adduced that the cash amounting to RM500.00 was successfully dispensed by the ATM and collected by Ms BC.
Case B13: Claim on Unauthorised ATM Withdrawal

Background
Ms NN, a 17 year old student had opened a junior account with ZM Bank and was issued with an ATM card with a daily withdrawal limit of RM500.00.

When Ms NN reached 18 years old, ZM Bank issued a new ATM card with a higher daily withdrawal limit of RM1,000.00. However, Ms NN was not aware that the new ATM card’s daily withdrawal limit was increased from RM500.00 to RM1,000.00. Ms NN usually withdraws cash within the range of RM100.00 to RM200.00 per day within the initial defaulted daily withdrawal limit of RM500.00.

When Ms NN wanted to withdraw cash at the ATM on 21/9/2015, she discovered that the balance in her account was short by RM1,000.00. ZM Bank informed Ms NN that RM1,000.00 was withdrawn from her account on 11/9/2015 from the bank’s ATM located at a shopping mall. Ms NN contended that the transaction was not performed by her as she was sitting for an examination at her college and the ATM card was in her possession at the material time.

ZM Bank rejected the claim on the grounds that the disputed transaction was successfully performed with Ms NN’s chip-based ATM card and a valid PIN, which is known only to Ms NN. The bank stated that Ms NN should be aware of the higher withdrawal limit when the new ATM card was issued. However, the bank failed to prove that they had notified Ms NN of the higher daily withdrawal limit when the new ATM card was issued to her.

Investigation and Findings
The Mediator observed from the evidence adduced that the disputed transaction was successfully performed using Ms NN’s card and a valid PIN. The Mediator was of the view that the card and PIN was compromised as the PIN was known only to Ms NN.

On the other hand, the Mediator noted that Ms NN had never withdrawn more than RM200.00 a day, which indicates that she may not be aware of the increased daily withdrawal limit. ZM Bank was unable to prove that Ms NN was aware or notified of the higher withdrawal limit of RM1,000.00 at the time the new ATM card was issued and/or the withdrawal limit was increased by her upon receipt of the new ATM card.

Based on the above findings, the Mediator was of the view that ZM Bank could have averted some of the losses if the bank had implemented mechanisms to track its customer’s normal withdrawal pattern.

Settlement
ZM Bank agreed with the Mediator’s findings and agreed to limit Ms NN’s liability to RM500.00 and the dispute was amicably settled.
Case Studies

Case Studies

OPERATIONAL ISSUES

Case B14: Claim on a Fixed Deposit (FD)

Background

In February 1993, Mr J placed RM30,000.00 in a Fixed Deposit (FD) account with N Bank. As Mr J was residing overseas, the FD placement was done via a written instruction sent to N Bank to deduct the amount from his savings account and place his money in FD for 3 months. N Bank had acceded to Mr J’s request for this ‘special arrangement’ and the bank sent the original FD receipt along with its covering letter confirming the FD placement via registered mail to Mr J’s overseas address. The FD was automatically renewed with interest added to the principal on maturity.

In 2015, Mr J presented the original FD receipt to N Bank for withdrawal. However, N Bank rejected the claim as the FD account was no longer in existence.

Investigation and Findings

N Bank confirmed that the receipt in Mr J’s possession is an original receipt issued by the bank in February 1993. N Bank does not allow FDs to be withdrawn without the FD receipts unless the receipt is reported ‘lost’. According to the bank’s records, the FD account was closed in 1993. However, Mr J contended that he did not uplift the FD as he was still residing overseas in 1993. Mr J further asserted that he did not report the loss of the FD receipt.

According to N Bank, when a FD is reported lost, a Letter of Indemnity will be obtained from the accountholder before a new receipt is issued. The bank stated that Mr J may have reported loss of the FD and executed a Letter of Indemnity prior to the withdrawal in 1993. However, the bank was unable to produce the Letter of Indemnity and the withdrawal slip as the transaction took place more than 20 years ago. Such documents are kept for a period of 7 years in line with the bank’s record retention policy.

N Bank clarified that the proceeds of the FD would have been sent to the Registrar of Unclaimed Monies after 7 years if the FD had not been withdrawn. In this instance, the bank confirmed that the proceeds of Mr J’s FD were not transferred to the Registrar of Unclaimed Monies based on their records which showed that the FD account was closed in 1993.

N Bank stated that the placement of FD was made on ‘special arrangement’ as Mr J was residing overseas at the material time. Similarly, the FD may have been uplifted by a similar ‘special arrangement’. However, the bank is unable to adduce evidence to support its claim.

After considering the evidence adduced, the Mediator highlighted the following points:

1. The Rules of the FD does not require the receipt to be surrendered to the bank prior to withdrawal. Therefore, it is implied that the FD could have been withdrawn without surrendering the original FD receipt.

2. Notwithstanding, the Rules of the FD, the Mediator was of the view that as the placement of the
FD was done through a ‘special arrangement’, N Bank should ensure that the original receipt was returned prior to the withdrawal of the FD. If a Letter of Indemnity (LI) was obtained prior to the withdrawal, then N Bank should keep the LI in perpetuity as evidence that the FD receipt was reported ‘lost’ and subsequently withdrawn.

3. N Bank’s audit trail report for February 1993 only showed that the FD was placed on 12/2/1993. However, the bank is unable to produce its reports for March 1993 until November 1993 to show when the fixed deposit was withdrawn. The bank had only produced its report for December 1993 which shows that the FD no longer appeared in their records.

Settlement
The parties considered the points raised by the Mediator and the dispute was resolved amicably.

Case B15: Payment made on an alleged ‘cloned’ cheque

Background
Mr BA is the director and authorised signatory for the operation of JD Sdn Bhd’s corporate account opened at GB Bank. In July 2015, Mr BA wrote a cheque bearing number 028856 post-dated 13/8/2015 for RM10,000.00 in favour of the company’s supplier, OXY. Mr BA kept a photocopy of the said cheque.

On 13/8/2015, when OXY visited JD Sdn Bhd, Mr BA had inadvertently issued a second cheque bearing number 028874 for RM10,000.00 dated 13/8/2015 in favour of the supplier. When Mr BA realised that he had prepared 2 cheques for RM10,000.00 in favour of OXY, he gave the second cheque bearing number 028874 to OXY and he cancelled the first cheque number 028856. Mr BA stapled the cancelled cheque leaf on the back cover of the cheque book that was kept together with the financial documents in his office.

In October 2015, when Mr BA checked the company’s current account on-line, he noticed an amount of RM10,000.00 was debited from the account on 22/10/2015. When Mr BA checked with GB Bank, he was told that the sum of RM10,000.00 was paid out under cheque number 028856 (which he had earlier cancelled) on 22/10/2015 to a payee, PRZ. The payee is unknown to Mr BA.

Mr BA subsequently discovered that the cheque leaf bearing number 028856 which he had earlier cancelled was no longer stapled on the back cover of the cheque book. He also noticed that the counterfoil of the said cheque was neatly cut out from the cheque book. Mr BA furnished a photocopy of the cheque number 028856 issued to OXY, before it was ‘cancelled’. However, he did not have a copy of the ‘cancelled’ cheque number 028856 as evidence that he had crossed out the cheque.

Mr BA alleged that GB Bank had wrongfully paid out a ‘cloned’ cheque bearing number 028856. This is because, the photocopy of the cheque bearing number 028856 bears a ‘Cheque Digit Verification’ (CDV) number ‘03’ printed at the bottom left corner of the cheque. However, the same cheque number 028856 that was paid out to PRZ carried a different CDV of ‘61’. Mr BA contended that GB Bank should not have honoured the cheque number 028856 as the signature on the cheque differed from the bank’s specimen signature.
GB Bank rejected the claim on the grounds that the cheque number 028856 was paid in good faith and in the ordinary course of business. According to GB Bank, the cheque was signed by the authorised signatory. There was no apparent alteration on the face of the cheque and the signature on the cheque matched Mr BA's specimen signature in its record. The cheque was presented for payment on 22/10/2015 and it was cleared on the same day, before Mr BA had alerted the bank.

In regard to Mr BA's allegation that the 2-digit CDV of '03' on the disputed cheque has been altered, GB Bank clarified that it had an independent system to check on the CDVs appearing on the cheques under the eSPICK Guidelines to detect 'cloned' cheques. According to GB Bank, different CDVs are randomly assigned to each cheque leaf. The CDVs do not run in sequential order and are automatically captured into the bank's system at the time of the printing and issuance of cheque books. GB Bank clarified that a cheque will be rejected if there was a mismatch between the CDV on a cheque against the CDV captured in the bank's system during the clearance of the cheque. In Mr BA's case, the CDV of '61' on the disputed cheque number 028856 matched the CDV assigned to the said cheque number in the bank's system.

**Investigation and Findings**

During the mediation session, a photocopy of the cheque number 028856 (before it was purportedly cancelled) and the physical cheque numbers 028856 and 028874 were produced. The Mediator noted that the photocopy of the disputed cheque furnished by Mr BA carried the following details:

<table>
<thead>
<tr>
<th>Date</th>
<th>Cheque number</th>
<th>CDV</th>
<th>Payee</th>
<th>Amount</th>
<th>Clearing date</th>
</tr>
</thead>
<tbody>
<tr>
<td>13/8/2015</td>
<td>028856</td>
<td>03</td>
<td>OXY</td>
<td>RM10,000.00</td>
<td>22/8/2015</td>
</tr>
</tbody>
</table>

The Mediator further noted that the following physical cheques issued by the company were paid out to the respective payees:

<table>
<thead>
<tr>
<th>Date</th>
<th>Cheque number</th>
<th>CDV</th>
<th>Payee</th>
<th>Amount</th>
<th>Clearing date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) 13/8/2015</td>
<td>028874</td>
<td>03</td>
<td>OXY</td>
<td>RM10,000.00</td>
<td>13/8/2015</td>
</tr>
<tr>
<td>(ii) 13/8/2015</td>
<td>028856</td>
<td>61</td>
<td>PRZ</td>
<td>RM10,000.00</td>
<td>22/10/2015</td>
</tr>
</tbody>
</table>

GB Bank had paid out the cheque number 028856 with the CDV of '61' [as per item (ii) above] on the basis that it is a genuine cheque with no apparent alteration on the face of it. The CDV of '61' on the cheque matched with the CDV maintained in its system. The Mediator noted from a cursory examination of the physical cheque number 028865 that the ink pressure on the payee’s name was consistent with the words and figures written on the cheque. The signature on the cheque was also similar to the signature on 2 other earlier cheques issued by Mr BA. The Mediator concluded that there was no apparent alteration to the cheque number 028856 and it was paid in good faith and in the ordinary course of business.

The Mediator noted that the CDV on the photocopy of cheque number 028856 of '03' matched the CDV of physical undisputed cheque number 028874 which was cleared and paid to OXY on 13/8/2015. On a cursory examination of the documents, the Mediator observed that the handwriting and signature on the photocopy of
the cheque number 028856 mirrored the handwriting and signature on the physical cheque number 028874. The only difference between the two documents was the cheque numbers. Therefore, it is highly likely that the serial number on the photocopy of the cheque number 028856 kept by Mr BA had been tempered without his knowledge and altered from 028874 to 028856.

The Mediator opined that the burden was on Mr BA to prove that GB Bank had paid out on a ‘cloned’ cheque. On this note, Mr BA was unable to produce the photocopy of the cheque number 028856 with CDV of ‘03’ which he had purportedly cancelled. Therefore, the Mediator relied on the physical cheque number 028856 with CDV of ‘61’ that was furnished by GB Bank. As the CDV on the physical cheque number 028856 matched the CDV in the bank’s system, the possibility of a ‘cloned’ cheque was ruled out.

Decision
The Mediator upheld GB Bank’s decision.

Case B16: Claim on a Forged Fixed Deposit

Background
Mr LM had stayed and worked overseas since 1987. He placed a fixed deposit (FD) of RM20,000.00 with a finance company, NFinance in June 1996 when he returned to Malaysia for a holiday. The FD was placed for tenure of 12 months. The FD receipt was kept in a safe in his house in Cheras. In March 1997, Mr LM left the country and stayed overseas for 14 years. He returned to Malaysia in 2011.

Meanwhile, NFinance had ceased operation in 2004 and was taken over by NB Bank. Mr LM discovered the FD receipt in 2015 and he presented the receipt to NB Bank for payment. NB Bank rejected the claim as there was no record of Mr LM’s FD account in the bank’s system.

Investigation and Findings
NB Bank was unable to produce the transaction slip as the FD was placed more than 19 years ago and was no longer available. According to the bank’s record retention policy, physical documents exceeding 7 years were destroyed.

Upon investigation, NB Bank noted that the FD receipt in Mr LM’s possession was not issued by NFinance. The bank’s further investigation revealed the following:

i) The FD account number printed on Mr LM’s FD receipt differed from the FD account numbers issued by NFinance.

ii) The FD serial number printed on Mr LM’s FD receipt differed from the sequence of the FD serial numbers issued by NFinance in 1996.

iii) The time of issuance of the FD printed on the receipt was ‘08:21:78’. This indicates that the FD was issued before NFinance’s branch was opened for business at 9:00am. The last column which denotes the time in seconds was ‘78’ and was rather odd as it exceeds 60 seconds.
During a caucus session, Mr LM revealed that he had stayed overseas since 1987 and he only came back home for a short holiday in 1997. However, the FD receipt showed that the FD was placed on 20/6/1996, when Mr LM was out of the country. It was therefore impossible for Mr LM to place the FD in 1996.

Based on the findings, the Mediator was of the view that the receipt in Mr LM’s possession was not valid.

Decision
The Mediator upheld NB Bank’s decision.

Case B17: Penalty on Late Disbursement Imposed by Developer

Background
Mr LS obtained a housing loan from BC Bank on 20/1/2015 to finance the purchase of a property that was under construction. Mr LS executed the security documents and paid the differential sum between the loan amount and the purchase price of the property to the developer on 10/2/2015. BC Bank received the progressive billing dated 30/4/2015 from the developer on the completed construction stage with the due date for payment on 21/5/2015. However, BC Bank was unable to disburse the loan on time. The loan was released 3 months later, on 21/8/2015. The developer imposed 10% late penalty fee of RM1,700.00 based on the amount outstanding and the duration of the delay.

Mr LS disputed the penalty imposed on the late disbursement and he appealed to the developer for a waiver. The developer approved a 50% waiver of RM850.00. As for the remaining 50%, Mr LS contended that BC Bank and/or their appointed solicitor were responsible for the delay and they should bear the balance penalty fee of RM850.00.

Investigation and findings
BC Bank’s appointed solicitor acknowledged that they had contributed to the delay in the release of the loan to the developer. However, the solicitor agreed to bear only a portion of the balance penalty fee of RM850.00. The solicitor contended that Mr LS would have to pay the loan progressive interest of 4.50% p.a. to BC Bank had the loan been disbursed to the developer on time. However, the Mediator was of the view that Mr LS should not bear the penalty fee for the late disbursement because the penalty fee would not be charged if BC Bank had released the loan on time.

According to the terms of the Loan Agreement, the repayment of the monthly loan instalment would only commence after the loan was fully disbursed. Meanwhile, Mr LS would have to pay the loan progressive interest on the portion of the loan disbursed. The tenure of the loan was fixed and was not affected by the delay in the disbursement of the loan.
The Mediator highlighted that the late penalty fee imposed was paid to the developer and not to the bank. The said penalty was paid over and above the loan progressive interest borne by Mr LS upon the disbursement of the loan.

The solicitor was appointed by the bank to complete the loan documentation. Thus, Bank BC was responsible for any act and/or omission on the part of its agent under the principal-agent relationship and should therefore bear the penalty fee of RM850.00 imposed by the developer for the late disbursement.

**Settlement**

BC Bank agreed with the Mediator’s views and settled the balance of the penalty fee of RM850.00 with the developer.

---

**Case B18: Non-receipt of Loan Instalment by Bank**

**Background**

Mr RD maintained a Hire Purchase (HP) account with ABC Bank since January 2010. He maintained a Standing Instruction (SI) with another bank, DEF Bank, for the payment of his monthly HP instalments of RM700.00 via cheque into his ABC Bank account.

Mr RD contended that DEF Bank’s cheque dated 12/2/2015 bearing serial number 00612345 for the sum of RM700.00 was not cleared and credited into his HP account with ABC Bank. As a result of the default in the monthly instalment, Mr RD’s HP account was in arrears. ABC Bank imposed late penalty interest and other charges amounting to RM300.00.

Mr RD wants ABC bank to waive the said charges.

**Investigation and findings**

ABC Bank’s investigation revealed that the cheque bearing serial number 00612345 issued by DEF Bank and dated 12/2/2015 was received by ABC Bank in February 2015. However, ABC Bank had presented the cheque for clearance two months later and the payment was credited into Mr RD’s HP account on 24/04/2015. The Mediator observed that ABC Bank’s delay in clearing the cheque had caused Mr RD’s HP account to be in arrears.

**Settlement**

ABC Bank agreed with the Mediator and waived the overdue interests and related charges totalling RM300.00.
Inculcating heightened awareness of FMB’s existence among the public and the industry has been an ongoing activity over the past years. In 2015, we have engaged with our working partners, Perbadanan Insurans Deposit Malaysia (PIDM) and Bank Negara Malaysia (BNM) on several outreach programmes and workshops to promote and educate the consumers on FMB’s role as an alternative dispute resolution channel for the financial services industry. FMB had participated in nationwide road shows and exhibitions to educate and instill awareness among consumers and staff of FSPs on FMB’s jurisdiction in regard to financial disputes on the banking and insurance products and services.

Participants:

- FSPs’ employees and agents
- Employees of Government departments
- College and university students
- Small Medium Enterprises (SMEs)
- Non-Governmental Organisations (NGOs)
- General Public

Seminars & Events:

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<th>No</th>
<th>Event</th>
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<tr>
<td>1</td>
<td>12th Malaysia International Halal Showcase 2015 (MIHAS 2015), Kuala Lumpur Convention Centre, Kuala Lumpur</td>
<td>1 – 4 April</td>
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<tr>
<td>2</td>
<td>PIDM, SSM, KL Sentral</td>
<td>6 May</td>
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<tr>
<td>3</td>
<td>PIDM, The Puteri Pacific, Johor Baru, Johor</td>
<td>14 May</td>
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<tr>
<td>4</td>
<td>PIDM Annual Corporate Outreach Programme, Weil Hotel, Ipoh, Perak</td>
<td>26 May</td>
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<tr>
<td>5</td>
<td>PIDM, SSM, KL Sentral</td>
<td>13 August</td>
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<td>6</td>
<td>PIDM, The Zenith Hotel, Kuantan, Pahang</td>
<td>2 September</td>
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<td>7</td>
<td>PIDM, Royale Bintang Hotel, Georgetown, Penang</td>
<td>10 September</td>
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<tr>
<td>8</td>
<td>National Insurance Claims Society, Dataran Maybank, Kuala Lumpur</td>
<td>15 September</td>
</tr>
<tr>
<td>9</td>
<td>PIDM, Ramada Plaza Hotel, Melaka</td>
<td>1 October</td>
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<td>10</td>
<td>PIDM, Impiana Hotel, Ipoh, Perak</td>
<td>7 October</td>
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<tr>
<td>11</td>
<td>PIDM, Holiday Villa, Alor Setar, Kedah</td>
<td>22 October</td>
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<td>12</td>
<td>PIDM, Grand Margherita, Kuching, Sarawak</td>
<td>5 November</td>
</tr>
<tr>
<td>13</td>
<td>PIDM, Hyatt Regency, Kota Kinabalu, Sabah</td>
<td>12 November</td>
</tr>
<tr>
<td>14</td>
<td>Satu Daerah Satu Industri 2015, MITC, Ayer Keroh, Melaka</td>
<td>3 – 6 December</td>
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</tbody>
</table>
Good turnout at the seminars/workshops and the participation during the ‘Questions and Answers’ sessions were encouraging.

Some of the questions raised during the face-to-face interactive sessions are:

**General**
- Does FMB charge a fee to register a complaint?
- What types of complaints are handled by FMB?
- What is the time frame for FMB to resolve a complaint?
- Is there an avenue to appeal against FMB’s decision?
- Can a complainant be charged in court if he provides false information to FMB?
- Is a Mediator bound by FMB’s previously decided cases?

**Banking**
- Do banks have the right to deduct funds from its customer’s savings account to settle his credit card payment?
- Can a customer file a complaint with FMB if the bank does not show proof that the money in the customer’s savings account has been transferred to the Registrar of Unclaimed Monies account?

**Insurance**
- Can a claim be repudiated on grounds of ‘vague and unclear’ terms in the policy?
- Can an insurance company repudiate a claim when the insured fails to produce the original medical receipts?
Friday, 23 October 2015 was a momentous occasion in the history of the Financial Mediation Bureau (FMB) as we were presented with the ‘Distinguished Partner Award 2015’ at the biennial Malaysian Insurance and Takaful Industry Distinguished Award Dinner (MITIDAD) 2015 in recognition of FMB’s significant and meaningful contributions to the insurance and takaful industry. FMB’s Chairman, Y. Bhg. Tan Sri Dato’ Seri Siti Norma binti Yaakob, received the award from the Guest of Honour, Y.Bhg. Dato’ Muhammad bin Ibrahim, Deputy Governor, Bank Negara Malaysia.

Over the years, FMB has gained the trust and respect of the regulators, the financial service providers (FSPs), as well as the financial consumers for its services in resolving disputes between FSPs and their customers. In discharging its role as an independent and impartial alternative dispute resolution body for the financial services industry, FMB strives to provide its services effectively and efficiently in the best interest of all stakeholders. For this reason, FMB has been engaging its stakeholders with greater intensity and frequency. Besides the public awareness programmes, FMB initiated discussions with the trade associations, including the Life Insurance Association of Malaysia, General Insurance Association of Malaysia and Malaysia Takaful Association, to provide its observations on dispute resolution and recommended best practices to its Members to further enhance the complaints handling process.

We thank the industry for this award. This recognition is indeed a very humbling experience for the FMB team. We will continue to contribute meaningfully to the financial industry and the consumers.
FMB participated in a dialogue session on ‘Effective Complaints Handling’ at the invitation of RHB Bank Berhad in May 2015. The session was attended by 60 participants comprising senior management, divisional heads and staff of the bank’s various departments in the head office, regional offices, the bank’s group insurance and RHB Easy. The session was also broadcasted live via video conferencing to the bank’s branches nationwide. The bank’s objective was to develop an effective approach to complaints handling and to understand the dispute resolution process at FMB.

The presentation touched on the overview of FMB, issues relating to complaints handled by FMB as well as best practices to improve the resolution of complaints.

The dialogue session was conducted in an interactive manner and there were various questions received from the participants including questions on FMB's jurisdiction, disputes involving cheques and credit card disputes. The participants were also interested in the proposed implementation of Financial Ombudsman Scheme. The participants also shared some of the bank’s experiences and general procedures relating to the operation of accounts. The participants found the session very enlightening and informative. Overall, the dialogue session was a success and positive feedback was received from the participants.

FMB thanks the management of RHB Bank for the opportunity to share its experience with the participants.
FOS to ‘strengthen consumer protection’ — BNM

BNM to establish ombudsman scheme in I1Q6

BY ANIL SARKAR

KHALIL LIMPOK, Bank Negara Malaysia (BNM) said the Financial Ombudsman Scheme (FOS) would art in the first quarter of 2016. In a statement yesterday, BNM said the FOS would enhance dis between consumers and financial service provid The FOS is expected to commence its operations in the first quarter of 2016, where consumers can refer eligible disputes in solving any of the following FSPs to the FOS for resolution:

- The proposed FOS framework, covering its scope, membership, funding, governance, discipline and complaints process, was published for public consultation with the BNM and had received 55 responses from various groups for the proposals, BNM said.
- The original plan for the FOS to come under the Financial Servic and Islamic Financial Services Commission. In such a situation, the regulations, which came into force on Sept 14 this year, provide for the appraisal, oversight and supervision of the FOS in Malaysia, according to the central bank.
- The regulations pave the way for RM12 million as part of BNM’s efforts to enhance consumer arrangements for consumers, and bolster consumer protection,” it said.
- BNM said the FOS would publish its terms of reference upon commencement of its operations.

BNK Negara Malaysia (BNM) plans to establish the financial ombudsman scheme (FOS) as part of its efforts to enhance consumer protection in the financial sector. The scheme is expected to come into operation in the first quarter of 2016.

In a statement yesterday, the central bank said the proposed FOS framework covering its scope, membership, governance and complaints process was published for public consultation on Aug 29, 2014, and that it is expected to provide broad support for consumers and other financial service users who may have been affected by financial service providers.

The Financial Services (FOS) Regulations 2015 and Islamic Financial Services (FOS) Regulations 2015, both of which came into force on Sept 14 this year, provide for the appraisal, oversight and supervision of the FOS in Malaysia. Under the FOS, consumers can refer eligible disputes involving financial service providers (FSPs) such as licensed banks and Islamic banks, licensed insurers and takaful operators, prescribed development financial institutions, approved deposit-taking payment institutions and designated Islamic payment instrument issuers, approved insurance and takaful brokers and approved financial advisors, and Islamic financial advisors.

The feedback received from the consultation on the FOS framework had included recommendations for improving consumer protection by providing broad support to consumers, which is why the FOS was proposed to be established.

The Financial Ombudsman Regulations 2015, which came into force on Sept 14, provide for the appraisal, oversight and supervision of the FOS in Malaysia. The FOS’ role will be to provide consumers at the financial sector’s resolution level with an alternative dispute resolution mechanism.

The BNM said it had received 55 responses from various groups for the proposals, which had included recommendations for improving consumer protection by providing broad support to consumers, which is why the FOS was proposed to be established.

The FOS’ role will be to provide consumers at the financial sector’s resolution level with an alternative dispute resolution mechanism.
Bank Negara enhances consumer protection in disputes involving banks and insurers

PETALING JAYA: Bank Negara expects to implement the financial ombudsman scheme (FOS), which aims to resolve disputes between consumers and financial services providers (FSPs), in the first quarter of next year.

The central bank said in a statement that the Financial Services (Financial Ombudsman Scheme) Regulations 2015 and Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015, which provide for approval, oversight and obligations of a FOS, came into force on Sept 14.

They pave the way to establish a FOS as part of the regulator’s efforts to enhance financial dispute resolution arrangements for consumers and to strengthen consumer protection.

Under the FOS, consumers can refer eligible disputes involving FSPs such as licensed banks and Islamic banks, licensed insurers and takaful operators, prescribed development financial institutions, approved designated payment instrument issuers and designated Islamic payment instrument issuers, approved insurance and takaful brokers, and approved financial advisers and Islamic financial advisers.

The proposed FOS framework, covering its scope, membership, funding, governance and resolution process, was published for public feedback on Aug 29 and had received 55 responses that affirmed broad support for the proposals.

Bank Negara said specific comments and suggestions had been included in the final regulations as well as the operationalisation of the FOS.

Financial ombudsman scheme in force since Sept 14

KUALA LUMPUR: The Financial Ombudsman Scheme (FOS) Regulations 2015 for financial services and Islamic financial services came into force on September 14, said Bank Negara Malaysia (BNM).

It said the regulations, published in the Gazette on September 14, provide for the approval, oversight and obligations of an FOS in Malaysia.

In a statement yesterday, BNM said the regulations have paved the way for the establishment of an FOS as part of the central bank’s efforts to enhance financial dispute resolution arrangements for consumers and strengthens consumer protection.

It added that the proposed FOS framework, covering its scope, membership, funding, governance and resolution process, was published for public feedback on August 29 last year and received 55 responses that affirmed broad support for the proposals.

BNM said specific comments and suggestions had been included in the final regulations as well as the operationalisation of the FOS.

Among them is to provide for the periodic review of monetary limits applied to eligible disputes to ensure that it is reflective of changes in the value of financial services or products and impose a clear duty on the FOS to act at all times.

The FOS is expected to start its operation in the first quarter of next year where consumers can refer eligible disputes involving financial service providers for resolution.
The many events and activities organised by the FMB Recreational Club in 2015 were indeed memorable for the staff. Quarterly birthday celebrations and creative indoor games which were rewarded with attractive gifts and prizes were also instrumental in fostering team building and close interaction among the staff.

The much awaited Family Day was held on 5/9/2015 at Nu Sentral in the heart of KL. The Family Day began with a fun-filled friendly bowling competition for the staff and their families. The winners or ‘bowling champions’ were rewarded with hampers and everyone walked away with attractive door gifts.

After the bowling competition, everyone was treated to a sumptuous lunch before adjourning to enjoy a 3D computer–animated comedy-drama adventure film titled ‘Inside Out’ at the Golden Screen Cinema in Nu Sentral. Popcorn combos were dished out for the staff to relish during the movie. The club’s aim to foster teamwork, co-operation, goodwill and to cultivate family togetherness was achieved.
The finale was the ‘FMB Annual Dinner 2015’ which was held at Swiss Garden Hotel & Residence Kuala Lumpur on 19/12/2015. The event was graced by our Chairman Y. Bhg. Tan Sri Dato’ Seri Siti Norma binti Yaakob and the distinguished members of the Board.

During the dinner, the Club spruced up a surprise 85th birthday celebration for Y. Bhg. Tan Sri V.C. George to wish the ‘birthday boy’ loads of happiness and good health in his golden years.

FMB staff and their spouse came dressed in their best living up to the theme for the evening, ‘Cultural Night’, and they were delightfully entertained by the ‘Gold Dust Entertainers’ live performance which belted out oldies as well as latest numbers causing the guests to sway to the sound of the rhythm. Table games, photoshoots and lucky draws were also held followed by a mouth-watering international buffet dinner. Attractive grand prizes such as mini i-pad, refrigerator, LED television, washing machine, microwave oven and many other prizes were given away as lucky draws to the delight of all. The night ended with a dance session participated not only by the staff but also our distinguished guests. It was indeed an awesome and fabulous night!
Poem Dedicated to FMB

Topic: FINANCIAL MEDIATION BUREAU
Speaker: MR. JEREMY LEE
Date: 9TH June 2015 DOUBLE TREE BY HILTON

FINANCIAL MEDIATION BUREAU (FMB)

President JS Kwang, brought a close friend, Jeremy Lee, to our illustrious club as speaker extraordinaire, you see! Humble, yet powerful Jeremy packed a punch stunningly, as we unassuming Rotarians knew not the role of FMB!

It dealt with complaints, he said, related to personal loans or housing, internet banking and ATM transaction moans! Indeed, FMB dealt with FD related nuances and vexations, All the above for sums not exceeding 100K in transactions.

But for motor and fire related disputes he did clarify though, sums not exceeding 200,000 will be settled all in a mutual tow. The Bureau will liaise with the Financial Service Providers, so till aggrieved parties are helped with no fee charged all the more!

Both consumers and Financial Service Providers stand to gain; there is no legal representations and worrisome court pain! Received they over 14,000 enquiries from letters to walk-ins, It augurs well for the society for this alternative channel means.

Jeremy informed that FMB will soon be FOS, in a name change, a rose by any other name is still a rose and it will not be out of range. A fair, effective and independent dispute resolution process is the aim as the ‘Financial Ombudsman Scheme’ kicks in mid-year all the same!

PP DR. S.SHANMUGAM, 9TH June 2015 at Double tree by Hilton

Light Up Rotary – 45th POEM FOR THE 45th WEEK
### Members of FMB (as at December 2015)

#### COMMERCIAL BANKS (24)

1. Affin Bank Berhad  
2. Alliance Bank Malaysia Berhad  
3. AmBank (M) Berhad  
4. Bangkok Bank Berhad  
5. Bank of America Malaysia Berhad  
6. Bank of China (Malaysia) Berhad  
7. Bank of Tokyo-Mitsubishi UFJ (Malaysia) Berhad  
8. BNP Paribas Malaysia Berhad  
9. CIMB Bank Berhad  
10. Citibank Berhad  
11. Deutsche Bank (Malaysia) Berhad  
12. Hong Leong Bank Berhad  
13. HSBC Bank Malaysia Berhad  
14. Industrial and Commercial Bank of China (Malaysia) Berhad  
15. J. P. Morgan Chase Bank Berhad  
16. Malayan Banking Berhad  
17. OCBC Bank (Malaysia) Berhad  
18. Public Bank Berhad  
19. RHB Bank Berhad  
20. Standard Chartered Bank Malaysia Berhad  
21. Sumitomo Mitsui Banking Corporation Malaysia Berhad  
22. The Bank of Nova Scotia Berhad  
23. The Royal Bank of Scotland Berhad  
24. United Overseas Bank (Malaysia) Berhad

#### ISLAMIC BANKS (16)

25. Affin Islamic Bank Berhad  
26. Al Rajhi Banking & Investment Corporation (Malaysia) Berhad  
27. Alliance Islamic Bank Berhad  
28. AmBank Islamic Berhad  
29. Asian Finance Bank Berhad  
30. Bank Islam Malaysia Berhad  
31. Bank Muamalat Malaysia Berhad  
32. CIMB Islamic Bank Berhad  
33. Hong Leong Islamic Bank Berhad  
34. HSBC Amanah Malaysia Berhad  
35. Kuwait Finance House (Malaysia) Berhad  
36. Maybank Islamic Berhad  
37. OCBC Al-Amin Bank Berhad  
38. Public Islamic Bank Berhad  
39. RHB Islamic Bank Berhad  
40. Standard Chartered Saadiq Berhad
INVESTMENT BANKS (10)

41. Affin Hwang Investment Bank Berhad
42. Alliance Investment Bank Berhad
43. AmInvestment Bank Berhad
44. CIMB Investment Bank Berhad
45. KAF Investment Bank Berhad
46. Kenanga Investment Bank Berhad
47. Maybank Investment Bank Berhad
48. MIDF Amanah Investment Bank Berhad
49. Public Investment Bank Berhad
50. RHB Investment Bank Berhad

DEVELOPMENT FINANCIAL INSTITUTIONS (6)

51. Bank Pembangunan Malaysia Berhad
52. Bank Pertanian Malaysia Berhad (Agrobank)
53. Bank Rakyat
54. Bank Simpanan Nasional
55. Export-Import Bank of Malaysia Berhad
56. Small Medium Enterprise Development Bank Malaysia Berhad (SME Bank)

PAYMENT SYSTEM OPERATORS AND PAYMENT INSTRUMENT ISSUERS (2)

57. AEON Credit Service (M) Berhad

LIFE INSURANCE COMPANIES (9)

59. Allianz Life Insurance Malaysia Berhad
60. AmMetLife Insurance Berhad
61. AXA Affin Life Insurance Berhad
62. Gibraltar BSN Life Berhad
63. Great Eastern Life Assurance (Malaysia) Berhad
64. Hong Leong Assurance Berhad
65. Manulife Insurance Berhad
66. Sun Life Malaysia Assurance Berhad
67. Tokio Marine Life Insurance Malaysia Berhad

GENERAL INSURANCE COMPANIES (18)

68. ACE Jerneh Insurance Berhad
69. AIG Malaysia Insurance Berhad
70. Allianz General Insurance Company (Malaysia) Berhad
71. AmGeneral Insurance Berhad
72. AXA Affin General Insurance Berhad
73. Berjaya Sompo Insurance Berhad
74. Liberty Insurance Berhad
75. Lonpac Insurance Berhad
76. MPI Generali Insurers Berhad
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<tr>
<td>77</td>
<td>MSIG Insurance (Malaysia) Berhad</td>
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<td>Overseas Assurance Corporation (Malaysia) Berhad</td>
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<td>79</td>
<td>Pacific &amp; Orient Insurance Co. Berhad</td>
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<td>Progressive Insurance Berhad</td>
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<td>81</td>
<td>QBE Insurance (Malaysia) Berhad</td>
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<td>RHB Insurance Berhad</td>
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<td>83</td>
<td>The Pacific Insurance Berhad</td>
</tr>
<tr>
<td>84</td>
<td>Tokio Marine Insurans (Malaysia) Berhad</td>
</tr>
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<td>Tune Insurance Malaysia Berhad</td>
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**COMPOSITE INSURANCE COMPANIES (5)**

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<td>87</td>
<td>Etiqa Insurance Berhad</td>
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<td>MCIS Insurance Berhad</td>
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<td>Prudential Assurance Malaysia Berhad</td>
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<td>Zurich Insurance Malaysia Berhad</td>
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**TAKAFUL OPERATOR (10)**

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<td>AIA PUBLIC Takaful Berhad</td>
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<td>92</td>
<td>Etiqa Takaful Berhad</td>
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<tr>
<td>93</td>
<td>Great Eastern Takaful Berhad</td>
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<td>94</td>
<td>Hong Leong MSIG Takaful Berhad</td>
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<td>95</td>
<td>HSBC Amanah Takaful (Malaysia) Berhad</td>
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<td>96</td>
<td>MAA Takaful Berhad</td>
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<td>97</td>
<td>Prudential BSN Takaful Berhad</td>
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<td>98</td>
<td>Sun Life Malaysia Takaful Berhad</td>
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<td>Syarikat Takaful Malaysia Berhad</td>
</tr>
<tr>
<td>100</td>
<td>Takaful Ikhlas Berhad</td>
</tr>
</tbody>
</table>
Our Organisation

Board of Directors

Chief Executive Officer

Council of Mediators
  - Insurance / Takaful Team
  - Conventional / Islamic Banking Team

Administration & Support
  - Human Resources & Administration Department
  - Finance Department
  - Information Technology Department
  - Complaints Management Unit
A. JURISDICTION

Disputes on financial matters include:

(a) Insurance/Takaful claims; and
(b) Conventional/Islamic banking transactions including credit/debit/charge card claims.

The Mediator has jurisdiction:

To consider any complaint (including a dispute or claim) referred to him in connection with or arising out of a policy (or proposed policy) of insurance or takaful certificate and/or the transaction/facility of a conventional banking, Islamic banking, credit/debit/charge card with a Member of the Bureau and governed by the law of Malaysia but subject to these conditions:

(i) The policy/certificate on insurance and takaful must be taken out by or on behalf of or for an individual or corporate body and underwritten within Malaysia.

(ii) The facility on conventional banking, Islamic banking and credit/debit/charge card must be taken or utilised by an individual or corporate body.

(iii) The complaint must:

(a) concern a claim under the policy/certificate or the marketing or administration, but not the underwriting of the policy/certificate; and

(b) have been considered by the senior management of the Member and his offer or observations (which contain the mediation clause for insurance and takaful claims) not accepted by the complainant; and

(c) be referred by the original policyholder/participant (or a successor in title otherwise than for value) in insurance and takaful claims, the person(s) involved with the conventional banking facility, Islamic banking facility; credit/debit/charge card holder (or a successor in title) who must be ordinarily resident in Malaysia or have been when the policy/certificate was effected and/or conventional banking facility, Islamic banking facility, credit/debit/charge card was taken and utilised by the complainant; and

(d) be referred to the Mediator within six months after such offer or observations (or later if the Member agrees); and

(e) not concern fraud cases involving insurance policies or takaful certificates or third party claim for personal injury; and

(f) not concern fraud cases other than fraud cases involving payment instruments, credit/debit/charge cards, Automated Teller Machine (ATM) cards and cheques of value RM25,000.00 and below; and

(g) not concern complaints against staff of the Members; and

(h) not concern complaints by the staff of a Member against his employer or by insurance agents or takaful agents against their principals; and
(i) not be brought after the expiration of six (6) years from the date on which the cause of action accrued; and

(j) not concern the actuarial standards, tables and principles which the Member applies to its long term insurance business (including the method of calculation of surrender values and paid up policy values and the bonus system and bonus rate applicable to the policy/certificate in question) for insurance and takaful claims; and

(k) not concern general pricing, product policies, services of Members, credit decisions (approval, rejection and rescheduling of loans) for conventional banking, Islamic banking and credit/debit/charge cards matters; and

(l) not be the subject of proceedings in or decision of any court of law (or arbitration); and

(m) not have been previously referred to the Mediator unless new evidence is available.

(iv) A complaint may also be made by a third party provided:-

(a) the insured party has notified in writing to his insurer/takaful operator with full details as soon as possible after an event which may become the subject of the claim;

(b) the claim does not exceed RM5,000.00; and

(c) the claim is for damage or loss to property arising from motor insurance policy or takaful certificate issued by a Member.

(v) The Mediator may investigate any complaint to see whether it is within his jurisdiction.

B. DUTIES

The Mediator’s duties are:

(i) To have regard to and act in conformity with

(a) the terms of any contract

(b) any applicable rule of law, judicial authority or statutory provision; and

(c) the general principles of good insurance, investment or marketing practice, the Bank Negara Malaysia’s Guidelines on Claims Settlement Practices for insurance/takaful matters; but with (c) prevailing over (b) in favour of the complainant.

(d) the general accepted principles of good banking practice for conventional banking and Islamic banking matters including credit/debit/charge cards.

(ii) To have regard to (without being bound by) any previous decision of any Mediator.

(iii) In the light of (i) and (ii) to assess what solution would be fair and reasonable in all the circumstances.

(iv) To attend as required any meeting (or part) of Board to provide reports, information and assistance.

(v) To provide each Board Member a copy of his report for the period coextensive with the accounting financial year of the Bureau and for the Members.

(vi) In the event that any question concerning a Syariah matter arises in the mediation process, to refer such question to the Syariah Advisory Council established under subsection 51(1) of the Central Bank of Malaysia Act 2009.

(vii) Not to disclose any confidential information (except to persons properly entitled to such disclosure).
C. FUNCTIONS

The Mediator’s functions are:

(i) To act as a counsellor or conciliator in order to facilitate the satisfaction, settlement or withdrawal of the complaint.

(ii) To act as an investigator and adjudicator in order to determine the complaint by upholding or rejecting it wholly or in part.

(iii) Where the complaint is upheld, wholly or partially, to make a monetary award against the Member binding up to a maximum of RM200,000.00 in relation to motor and fire insurance policies and takaful certificates, RM100,000.00 in relation to other types of insurance policies or takaful certificates, and RM5,000.00 in relation to third party claims.

(iv) Where the complaint is upheld, wholly or partially, to make a monetary award against the Member binding up to a maximum of RM100,000.00 (except for fraud cases involving payment instruments, credit/debit/charge cards, ATM cards and cheques for which the limit is not more than RM25,000.00) in relation to conventional banking and Islamic banking matters including credit/debit/charge cards.

D. POWERS

The Mediator’s powers are:

(i) On giving reasonable notice to attend any meeting (or part) of Board to address Board on any matter specified in the notice.

(ii) Subject to the approval of the Board:

(a) to determine the methods and procedures to be adopted as expedient for considering and determining complaints impartially and fairly.

(b) to appoint (on such terms as to remuneration or otherwise as he shall think fit) any person who seems to him to be suitably qualified (whether as a professional adviser or as an expert) to act in conjunction with him; and

(c) to delegate such of his functions, duties and powers to an Assistant or such other staff of the Bureau as he shall think appropriate.

(iii) To encourage research in and to carry out or commission such investigation or research as may seem necessary in connection with any of the objects of the Bureau.

(iv) To decline to entertain or proceed with any complaint which he considers frivolous or vexatious or more appropriately dealt with by a court of law, by arbitration or by another independent complaints procedure.

(v) To require the complainant or the Member concerned (and request any other person) to provide any information relevant to a complaint within such time as he considers reasonable.

(vi) To consult within the insurance/takaful/conventional & Islamic banking industry and with other experts where he considers it appropriate about current insurance/takaful/conventional & Islamic banking matters, investment or marketing practice or about any other matter relevant to any complaint.

Approved by the Board of Directors on 29 April 2005
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Operating Hours
Monday - Thursday
8.30am - 1.00pm
2.00pm - 5.30pm

Friday
8.30am - 12.15pm
2.30pm - 5.30pm