

# Ombudsman Malaysia to boost transparency, accountability



by  
Dafizeck Daud

The formation of Ombudsman Malaysia, which is set to replace the Public Complaints Bureau (PCB), will result in greater transparency and accountability as the country moves into the era of a new Malaysia.

The ombudsman will be empowered by The Ombudsman Act, which is expected to be tabled in Parliament soon, to play a more effective role in addressing a wide range of public complaints.

Prime Minister Tun Dr Mahathir Mohamad had, on Sept 22, announced the proposed establishment of Ombudsman Malaysia to replace the PCB. Concurrently, he also announced the formation of the Independent Police Complaints and Misconduct Commission (IPCMC).

"It's a natural progression in a democracy and a logical evolution from the current avenue provided by the Public Complaints Bureau (to have the ombudsman set-up for public complaints in Malaysia)," says Sujatha Sekhar Naik, CEO of Securities Industry Dispute Resolution Centre (Sidrec).

"It's part of the check and balance of the whole ecosystem of public governance. This is to ensure that citizens have access to an independent body to address complaints or disputes relating to misconduct, maladministration or lack of due process issues, among other things,

- **Ombudsman** Malaysia is an elevation of PCB's status to make it more independent and efficient
- **Should** be empowered to deal not only with public and quasi-government bodies, but also the private sector



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relating to public authorities such as government departments or agencies, when needed.

"And importantly, one that is not overly cumbersome and provides the assurance of impartiality and fair treatment," she tells *FocusM*.

She adds that the existence of an independent ombudsman would usually also act as a deterrent or as a check to temper any overreach or other administrative misconduct by public officials or public institutions. It supports

the existing public governance and enforcement fabric and promotes accountability.

"So what do you (have to) put into place? We do not as yet have details on the proposal so we should wait for that, but I would assume that the proposed legislation will provide the mandate and scope of the ombudsman and will set out its powers, independence, and oversight by Parliament among others," she explains.

Sujatha adds that in some countries, the power and authority of the ombudsman have gradually evolved as a result of changes initiated by their governments after they realised the important role it played and the valuable independent and objective insight and feedback the ombudsman was also able to contribute to the legislative and executive branches.

Sujatha is of the view that the critical factors of independence and accountability will make the proposed Ombudsman Malaysia a welcome avenue for the public to lodge any complaints regarding the public sector. Perceived independence is in practical terms, as important as actual independence in gaining public confidence.

## No overlap

Ombudsman for Financial Services (OFS) CEO Shahariah Othman welcomes the effort to establish Ombudsman Malaysia and believes its role will not be redundant.

"It's a good move ... it's just that we still don't have much detail on this proposed scheme after the initial announcement,"

Shahariah tells *FocusM*.

"Based on our understanding from media reports, the Ombudsman Act will be tabled in Parliament. As far as we're concerned, there wouldn't be overlaps because the OFS role is very focused on financial services."

Shahariah explains that an ombudsman system will commonly be based on several guiding principles. In the case of OFS, they are globally-accepted principles; independence, fairness, transparency, accountability, accessibility and effectiveness.

Comparing OFS' role in dispute resolution, she notes that OFS (an affiliate of the central bank) is essentially an alternative dispute resolution for consumers to lodge complaints on banking products and services so that "people can come to us to resolve disputes instead of going to the court. We're supposed to provide an effective and efficient dispute resolution avenue because if you go to court, there will be other restrictive factors such as costs."

Meanwhile, Sujatha says Ombudsman Malaysia is an elevation of PCB's status to make it more independent and efficient in attending to public complaints. "What they are doing is elevating it to another level and it is a powerful addition to public governance," she adds.

## Umbrella body?

Asked if Ombudsman Malaysia will become the umbrella body for existing dispute resolution organisations such as Sidrec (approved by the Securities Commission Malaysia) and OFS (approved by Bank Negara), Sujatha says it is unlikely.

"It's because we are set up specifically for the financial and capital markets by the regulators with regulations that provide for the regulatory oversight of both Sidrec and OFS as approved dispute resolution bodies, and clearly sets out the purview of the bodies.

"What is important for the people to understand is that they will be getting independent and

impartial assistance in a very fair process through the ombudsman," Sujatha notes.

As such, she adds it is pertinent for an ombudsman to be accessible to the public. The centre should ideally be in an easy-to-reach location with online accessibility. In addition, there will presumably be plans for intensive awareness programmes.

## Effective structure

The structure of Ombudsman Malaysia needs to be effective too because "if you make it too difficult, too cumbersome, it's not going to help the person making the complaint. As such, some level of timeliness is also important," Sujatha points out.

In addition, the appointed ombudsman has to be fair and reasonable, taking into account all the circumstances of a particular case. And he/she must have that sense of transparency and accountability.

When all these are in place, a complainant will be getting access to a process that is independent and fair. The ombudsman will look into the complaint based on facts presented while the proceedings will be more informal when compared to a court process.

It doesn't have the formality and will not incur as much cost and time as having to go through the court process, which can be intimidating.

"A lot of people can't afford or don't have the emotional strength to go through a court process," Sujatha says.

Shahariah adds that Ombudsman Malaysia will become an independent body as it will be answerable to Parliament.

Without an ombudsman, a person who wants to file a complaint might just have to rely on the court system where he has to understand and think through a lot of matters. A complainant has to make sure he has proper complaint and documentation, a process which could be challenging to a layman. *FocusM*

## Ombudsman in politics

An ombudsman is a state official appointed to provide a check on government activity in the interests of the citizen, and to oversee the investigation of complaints of improper government activity against the citizen.

If the ombudsman finds a complaint to be substantiated, the problem may get rectified, or an ombudsman report is published making recommendations for change.

Further redress typically involves financial compensation.

Ombudsmen in most countries do not have the power to initiate legal proceedings or prosecution on the grounds of a complaint.

This role is sometimes

referred to as a "tribunician" role, and has been traditionally fulfilled by elected representatives.

The ombudsman chosen would usually be a very senior, experienced and accomplished individual who is independent and commands respect across political lines.

The major advantage of an ombudsman is that he or she examines complaints from outside the offending state institution, thus avoiding the conflicts of interest inherent in self-policing.

Critics describe the ombudsman as "relics of absolutism, designed to iron out the worst excesses of administrative arbitrariness while keeping the power structures intact".



**Shahariah says Ombudsman Malaysia will be based on several universally accepted guiding principles**



**The ombudsman would be the preferred avenue for the public to lodge any complaints regarding the public sector, says Sujatha**