I was appointed Chairman of the Financial Mediation Bureau (FMB) in April 2009. How time flies! Over the last five years, I have had the privilege and opportunity to lead and work with a group of distinguished, qualified and competent individuals who have contributed to the development and growth of FMB. Their significant contributions, coupled with their unwavering dedication and commitment have made it possible for me to lead and progressively move FMB’s agenda forward and to carry out its mandate as an independent and impartial alternative dispute resolution channel for consumers and the financial industry.

Appointment and Retirement of Board Members

2013 saw the appointment of two new Non-Executive Non-Independent Directors of the Board, namely Encik Chua Seck Guan and Encik Zainudin bin Ishak, who represent the interests of the insurance and takaful industries. They fill the positions vacated by Mr. Lim Chia Fook and Y.Bhg. Dato’ Haji Syed Moheeb bin Syed Kamarulzaman, who have since retired from the industry. I take this opportunity to record the Board’s gratitude and appreciation for their services and valuable contributions throughout their tenure as Members of the Board.
Implementation of Financial Ombudsman Scheme

Bank Negara Malaysia (BNM) is empowered under the Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA), which came into force in June 2013, to enhance the framework for consumer redress and ensure effective and fair handling and resolution of complaints arising from the financial services and products. Work is in progress to progressively transform FMB into a financial ombudsman scheme (FOS). In this regard, the Board was briefed and consulted on the proposed FOS framework formulated by a joint-working group, comprising representatives from BNM and FMB. The proposed framework covers broad principles for the effective functioning of the FOS, the governance structure and the dispute resolution process, the scope and range of remedies and awards to be granted, the fee structure, and the transitional arrangements for FMB once the scheme is approved and implemented. The Board has submitted its preliminary views on the proposed framework to BNM and highlighted that it is critical for BNM to consult all relevant stakeholders for their views on the financial (and other) implications once FOS is introduced. BNM is expected to issue a Consultation Paper on the FOS in the second quarter of 2014 and relevant stakeholders, including FMB and all Members will have the opportunity to provide feedback to BNM.

In this regard, the Board has conveyed to BNM its full commitment to the new scheme and assurance that FMB will put in place the necessary manpower and other resources to implement the FOS successfully. We expect FMB’s jurisdiction to be expanded under the scheme. It is, therefore, critical that FMB is capable of attracting, sustaining and growing the best talents for the challenges ahead. As such, a holistic review needs to be conducted on the existing organisation structure and rewards management system, human resource development, IT infrastructure enhancements and amendments to FMB’s Memorandum and Articles of Association. This preparatory ground work will start as soon as the final framework for the FOS is approved by BNM.

FMB Performance in 2013

The number of enquiries and complaints received by FMB in 2013 through various channels increased to 15,142 (2012:13,925) due to a greater level of awareness by the general public through various stakeholder engagement sessions. Telephone calls and email remained the main communication channels with less than 5.0% of enquiries and complaints received directly from walk-in customers. As in previous years, the bulk of enquiries and complaints received from the general public was on insurance matters (9,345 cases or 61.7%) and the remaining on banking (5,797 cases or 38.3%).

Out of the 15,142 enquiries and complaints received in 2013, only 1,881 cases which fell within FMB’s jurisdiction were registered as formal disputes, as compared to 1,919 cases in 2012 and 2,224 in 2011. Consumers with complaints which were found to be outside FMB’s jurisdiction were advised to approach the relevant ministries, regulatory and supervisory authorities or agencies, including the Ministry of Domestic Trade, Cooperatives and Consumerism, BNM, the Securities Commission, Consumer Tribunal and Agensi Kaunseling dan Pengurusan Kredit, depending on each case.
The declining trend of new cases registered yearly by FMB over the last few years augurs well for the financial industry. It is very encouraging to witness concerted efforts by our Members to further improve and strengthen their complaints management and decision making processes. FMB will continue to provide Members with relevant feedback on complaints handling from our observation of cases handled by us from time to time, while at the same time intensifying stakeholders’ engagement sessions with the purpose of enhancing consumer awareness. The Board is delighted to note that 71.6% of the total number of cases brought forward from the preceding year and the number of new cases registered during the year was resolved as compared to 60.9% in 2012. Consequently, as at 31 December 2013, the number of outstanding cases was 1,030 (2012: 1,741), the lowest since the last three years.

**2014 and Beyond**

Looking ahead, FMB will focus on putting in place the necessary resources and infrastructure needed for the smooth transformation of FMB as the operator of the FOS. FMB will also continue to ensure that the quality and timeliness of decisions made by the Mediators are consistently maintained for the benefit of consumers and Members alike.

**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 Industry Associations for their valuable contributions through periodic engagement and dialogue with FMB.

Let me also record my deepest appreciation to the management and staff of FMB for their continued commitment, dedication and hard work in driving FMB forward. The Board and I join you in anticipating a positive development with the appointment of FMB as the operator of the FOS once it is approved by BNM.

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

The 2013 Financial Stability and Payment Systems Report published by Bank Negara Malaysia (BNM) on 19 March 2014 highlighted, amongst others, the continued growth and development of the financial sector to better serve the needs of the economy. Financial inclusion initiatives continued to be supported by a wider range of distribution channels, and the offering of new products and services by financial service providers (FSPs) to meet the needs of a diverse and evolving consumer base. Against this background, it is very encouraging to note that BNM is ahead of the curve in regulating and supervising the FSPs, in particular, ensuring that the FSPs conduct their business fairly, responsibly and professionally at all times, as well as to protect the interests of financial consumers.

The Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA), which came into force in June 2013, provide BNM with a wide range of supervisory, regulatory and enforcement powers and instruments to enable BNM to achieve its principal objects and perform its primary functions effectively. Of direct relevance to the Financial Mediation Bureau (FMB) is BNM’s power under the FSA/IFSA to approve a financial ombudsman scheme (FOS) for the purpose of ensuring effective and fair handling of complaints and resolution of disputes between financial consumers and the FSPs. During the year, a joint-working group of representatives from FMB and BNM completed a review of FMB’s current functions, operations and funding arrangements and formulated initial proposals to transform FMB into a FOS. Work is still in progress and FMB will continue to collaborate closely with BNM to strengthen and enhance the proposed framework for the FOS.
Complaints Handling in 2013

Public Enquiries and Complaints

During the year, FMB handled a total of 15,142 enquiries and complaints (2012: 13,925) from the general public, of which 9,345 (61.7%) related to insurance matters and the remaining 5,797 (38.3%) to banking matters. The bulk of the enquiries and complaints were made through telephone calls (64.5%) followed by email/letters (30.7%) and walk-in customers (4.8%). Out of the 15,142 enquiries and complaints received, 1,881 new cases within the jurisdiction of FMB were registered in 2013, as compared to 1,919 in 2012.

The lower number of cases registered by FMB in 2013 partly reflects the improvements in complaints handling by the FSPs and FMB’s engagement with its stakeholders, which include the general public, FSPs and their industry associations, and BNM. The engagement sessions with FSPs and their industry associations served as platform for FMB to highlight:

(i) major observations on complaints handling by FSPs;
(ii) issues of specific and common interest to FSPs;
(iii) challenges faced by FMB in resolving complaints; and,
(iv) the basis and rationale for FMB’s decisions.

FMB is of the view that such engagement sessions are useful in enhancing awareness and increasing the stakeholders’ understanding about FMB’s mandate, its jurisdiction and the Terms of Reference for the Mediators.

Cases Handled and Resolved

FMB handled a total of 3,622 cases during the year: 1,741 cases brought forward from 2012 and 1,881 new cases registered in 2013. As at 31 December 2013, a total of 2,592 cases were resolved (2012: 2,718 cases), of which 1,852 cases were related to insurance/takaful (71.5%) and the remaining 740 cases (28.5%) to banking. The number of disputes resolved during the year, as a percentage of the total number of cases brought forward from previous years and new cases registered during the year, continues to improve; over the last few years, it has increased steadily from 52.7% in 2011 to 60.9% in 2012, and 71.6% in 2013.

Manner of Disposal

Out of the 2,592 cases closed in 2013, 950 cases (36.7%) were resolved amicably by way of negotiated settlements (2012: 49.2%), 1,221 cases (47.1%) settled by the Mediator upholding the decision of the FSP (2012: 26.7%), and 100 cases (3.8%) closed by revising the decision of the FSP (2012: 6.0%). The remaining 321 cases (12.4%) were closed due to non-response or withdrawn by complainants (2012:18.0%).
Outstanding Cases

FMB’s focus on efforts to resolve and reduce the number of cases from earlier years yielded positive results with the number of outstanding cases as at 31 December 2013 dropping to 1,030 – the lowest in three years (2012: 1,741, 2011: 2,540 and 2010: 3,150). Of significance is that out of the 1,030 outstanding cases in 2013, only 186 (18.1%) were from previous years compared to 483 in 2012 (27.7%). This is encouraging and FMB will continue to collaborate with the FSPs and consumers to settle outstanding cases in an efficient and timely manner.

Stakeholders’ Engagement

Stakeholders’ engagement continues to be an important communication strategy and focus as FMB actively engages its stakeholders through multiple channels and in partnership with BNM, the Perbadanan Insurans Depositi Malaysia Berhad, Agensi Kaunseling dan Pengurusan Kredit, Federation of Malaysia Consumers’ Association, Persatuan Keselamatan Pengguna Kuala Lumpur and other non-profit organisations. The objective of the stakeholders’ engagement sessions is to reach a wider segment of the general public and the FSPs. Future engagement sessions will focus on the FOS, its scope and mandate in ensuring effective and fair handling of complaints, insight into the types of disputes that may be referred to FMB and the awards which may be granted under the new scheme.

Other Operational Matters

Levy and Funding Mechanism

During the year under review, the amount of levy collected from Members was RM5.17 million as compared to RM5.14 million in 2012. Total operating expenses incurred by FMB to finance its operations in 2013 was RM5.39 million (2012: RM5.58 million), a decrease of about 3.4%. The reduction was mainly due to lower expenses incurred for IT support, office maintenance, printing and stationary, maintenance of motor vehicles, publicity and communications, legal fees, and directors’ meeting allowances.

The annual FMB’s budgetary process is a robust one and all expenses were substantiated. FMB’s policy has always been to adopt prudence and responsible spending without compromising on efficiency in providing quality services to its stakeholders, in particular, the general public. Our corporate governance requires the annual budget be tabled and endorsed by the Board Audit Committee before it is submitted to the Board of Directors for approval.

The existing funding mechanism, whereby each Member pays a flat levy (same amount regardless of the Member’s size and the number of complaints received against the Member), is expected to be revamped once the FOS is fully implemented. As of now, the proposed framework for the FOS, including its funding mechanism, is being finalised by BNM and a Consultation Paper on the new scheme is expected to be issued by BNM in the second quarter of 2014.
Human Resources and Capacity Building

FMB’s human resources remained unchanged from the previous year. We have a total of 41 staff, of whom, 27 are involved in mediation work: 5 Mediators, 14 Assistant Mediators, and 8 Administrative Assistants. The remaining 14 staff are in the Complaints Management Unit (6), IT Support Services (3), and Human Resource and Corporate Affairs/Administration Unit (5).

We foresee a need to conduct a holistic review on the capacity, adequacy and suitability of FMB’s human resources in anticipation of the implementation of the FOS. FMB will need to evaluate its human resource requirements and put in place sustainable development programmes to enhance the knowledge, skills and competencies of its staff. It is crucial for FMB to have a pool of qualified and competent personnel who are capable of taking FMB’s agenda forward, especially in managing complaints efficiently and effectively under the FOS.

Conclusion

I wish to express my deepest appreciation to the Chairman and Board of Directors for their excellent leadership in steering FMB’s agenda forward. Their support, commitment and valuable guidance during the year have made it possible for me to discharge my role effectively.

On behalf of the Board, I wish to record our sincere appreciation to all our Members and their industry associations for their undivided support and co-operation throughout 2013, without which we would not have been able to discharge our role effectively and efficiently. I look forward to continue working closely with BNM, all our Members, their industry associations and our other stakeholders in the coming years, in particular, in implementing the FOS and in moving FMB’s agenda forward as an independent and impartial alternative dispute resolution body.

Last but not least, I wish to acknowledge and thank all my colleagues, without doubt the most valuable assets of the organisation, for their continued loyalty, commitment, dedication and professionalism in the discharge of their duties.

Lee Eng Huat
Chief Executive Officer
Financial Mediation Bureau
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

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

Encik Zainudin bin Ishak (Islamic Banks & Takaful Operators)  
Non-Executive Non-Independent Director
Our Background and Business

The Financial Mediation Bureau (FMB) was incorporated on 30 August 2004 as an alternative channel to resolve disputes between financial service providers (FSPs) and their customers (financial consumers).

How we can help you?

• We provide free service to financial consumers
• We have a professionally qualified and experienced mediation team to handle financial disputes received from financial consumers
• We provide effective and prompt resolution of financial disputes arising from products and services provided by FSPs which presently comprise commercial banks, Islamic banks, investment banks, development financial institutions, insurance companies, takaful operators and card issuers
• We deal with disputes, claims and complaints in an independent, impartial and fair manner
• We are committed to resolving all disputes within 3 to 6 calendar months provided the required documentation for the disputes, claims and complaints that are submitted to us are complete

Our ‘shared values’

• Integrity
• Professionalism
• Independence and impartiality
• Courtesy

What we are empowered to do (within FMB’s ‘jurisdiction’)

A. We mediate all disputes arising from the following conventional and Islamic banking products and services, where claims do not exceed RM100,000.00:

• Personal and Housing Loans
• Automated Teller Machines (ATM) and Cash Deposit Machines (CDM)
• Credit, Debit and Charge Cards
• Hire Purchase
• Savings and Current Account
• Fixed Deposit and General Investment Account
• Remittances
• Electronic Banking and Internet Banking
B. We mediate all disputes arising from the following insurance policies and takaful certificates that include:

- Motor and fire insurance and takaful products where claims do not exceed RM200,000.00
- Other insurance and takaful products (life, medical, burglary claims, etc.) not exceeding RM100,000.00
- Third-party property damage (TPPD) not exceeding RM5,000.00

What we are not empowered to handle (out of FMB’s ‘jurisdiction’)

- General pricing and product policies
- Services of Members
- Complaints against non-Members
- Credit decisions (approvals, rejection and rescheduling of loans)
- Fraud cases in general, other than cases involving payment instruments (Credit/Charge Cards, ATM/Debit Cards and Cheques) not exceeding RM25,000.00
- Cases which are time-barred (more than 6 years)
- Cases which have been referred to the courts and/or for arbitration
- Actuarial matters

Our Business - Mediation

Overview

All disputes and claims received by us generally go through the following stages:

I. Mediation

The Mediator initiates and facilitates discussions between the FSP and its customer (the complainant) and assists parties to work towards an amicable settlement.

II. Decision Stage

Where parties fail to reach an agreement or settlement, the Mediator will, after a thorough investigation, issue a decision. The Mediator’s decision, whether to uphold or revise the decision of the FSP is binding on the FSP only, and not on the complainant. If the complainant does not accept the Mediator’s decision, the complainant is free to seek legal redress.
In making a decision, the Mediator will look at all available evidence, documentary or otherwise, and give due consideration to the terms of the contract, any applicable rule of law, judicial authority and statutory provision, good insurance and banking practices, investment and marketing practices, Bank Negara Malaysia’s Guidelines, etc. The duties and powers of the Mediator are elaborated in FMB’s Terms of Reference (refer to APPENDIX III).

The Memorandum and Articles of Association of the FMB do not provide an appeal procedure whereby a dissatisfied party may appeal to a higher authority within the Bureau.

Mediation/Decision Process

• The complaint is registered upon receipt of the complete documentation from the complainant.

• The mediation team will commence investigation by seeking information, clarification from the FSP on the dispute raised by the complainant. The FSP is required to explain the grounds of its decision and also forward all relevant documentary evidence that was relied on in rejecting or repudiating the claim. A holding reply is sent to inform the complainant of the commencement of the mediation process.

• Upon receipt of the FSP’s response and based on all information available, an assessment is made; further clarification may be sought from parties, where necessary.

• Arrangements will then be made to bring parties together for a mediation session or if the Mediator feels that it would be more productive to meet with one party, a caucus session will be held instead. The mediation process may also take place through an exchange of correspondence with both parties.

• At the mediation/caucus session facilitated by the Mediator, all parties will have full opportunity to present their case, ask questions, systematically isolate issues in the dispute, and explore options for a negotiated settlement. If the dispute is resolved amicably between the parties, a settlement agreement is drawn up and executed by the parties. The complaint is resolved and the case is ‘closed’. This may happen during any stage of the mediation process.

• Where there is an ‘impasse’ between the parties and no settlement is achieved, the Mediator will issue a written decision (decision stage).

Note:

For certain typical and clear-cut complaints, where liability is certain for one party, the complaint may be resolved without mediation. A written decision will be issued by the Mediator and communicated to the relevant parties.
Complaints Management Unit

The Complaints Management Unit (CMU) was set up in May 2012 as a ‘frontline’, one-stop centre in FMB, to handle all enquiries and complaints from the public against financial service providers who are Members of FMB.

CMU’s primary role and responsibilities include:

- Responding to enquiries by the public on our organisation, services, jurisdiction and procedures to lodge complaints, etc. This is done via telephone, email/fax, letters and our ‘walk-in counter/customer service desk’.
- Preliminary investigation and assessment of disputes, claims and complaints to ensure they fall within FMB’s jurisdiction and all basic documents have been furnished by the complainant, before a complaint is accepted for mediation.
- Referring cases to other appropriate agencies, such as BNM, if FMB is not empowered to handle such cases.

In 2013, CMU received a total of 15,142 enquiries and complaints compared to 13,925 in 2012, an increase of 8.7%. Phone calls accounted for 64.5% of these enquiries and complaints, while the remaining enquiries and complaints were sent through letters/email/fax (30.7%) or lodged by walk-in customers (4.8%).

A comparison of the enquiries and complaints received during the year is shown in the following Table and Chart:

### Enquiries and Complaints Received in 2013

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Enquiries via Phone Calls</td>
<td>5,887</td>
<td>3,614</td>
<td>9,501</td>
<td>5,833</td>
<td>3,940</td>
<td>9,773</td>
</tr>
<tr>
<td>Enquiries/Complaints via Walk-Ins</td>
<td>355</td>
<td>181</td>
<td>536</td>
<td>370</td>
<td>351</td>
<td>721</td>
</tr>
<tr>
<td>Enquiries/Complaints via Email/Letter/Fax</td>
<td>2,722</td>
<td>1,166</td>
<td>3,888</td>
<td>3,142</td>
<td>1,506</td>
<td>4,648</td>
</tr>
<tr>
<td>Total</td>
<td><strong>8,964</strong></td>
<td><strong>4,961</strong></td>
<td><strong>13,925</strong></td>
<td><strong>9,345</strong></td>
<td><strong>5,797</strong></td>
<td><strong>15,142</strong></td>
</tr>
</tbody>
</table>
Enquiries and Complaints Received in 2013

Out of 15,142 enquiries and complaints received by CMU, 1,881 fell within FMB’s jurisdiction (12.4%), 12,905 were mere enquiries (85.2%) whilst 356 (2.4%) were declined for the following reasons:

- Complaints received more than 6 months after FSPs’ decisions (100 cases)
- No written decisions by FSPs (62 cases)
- Concerns services of FSPs (23 cases)
- Cases already referred to Court (12 cases)
- Concerns general pricing, product policy of FSPs (76 cases)
- Amount claimed exceeds FMB’s jurisdiction (45 cases)
- Others (38 cases)
While the number of complaints which are out of FMB’s jurisdiction is small there is, nevertheless, room for greater consumer awareness and understanding of FMB’s role and jurisdiction as an alternative dispute resolution channel.

FSPs should, in this respect, provide clear guideline to their customers on how to proceed and in particular the customer’s avenue for dispute resolution when a dispute or claim is repudiated by them. It is a mandatory requirement under Bank Negara Malaysia’s (BNM) Guideline on Complaints Handling (BNM/RH/GL/000-4) for FSPs to include the following statement prominently in all their decisions to customers, where 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’.*

Customers should be reminded that they must submit their claims/disputes to FMB for mediation within six months of receiving a decision from their FSP.
Overview of 2013

A. INSURANCE (INCLUDING TAKAFUL) CASES

Cases Handled

Table A1 – Comparison of Cases Handled in 2012 and 2013

<table>
<thead>
<tr>
<th>Categories</th>
<th>Cases Handled in 2012</th>
<th>Cases Handled in 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B/f</td>
<td>Received</td>
</tr>
<tr>
<td><strong>Conventional</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Insurance (Motor)</td>
<td>444</td>
<td>485</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>431</td>
<td>341</td>
</tr>
<tr>
<td>General Insurance (Medical)</td>
<td>168</td>
<td>108</td>
</tr>
<tr>
<td>General Insurance (Non-Motor)</td>
<td>173</td>
<td>141</td>
</tr>
<tr>
<td>Third-Party Property Damage</td>
<td>83</td>
<td>77</td>
</tr>
<tr>
<td><strong>Takaful</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family</td>
<td>107</td>
<td>89</td>
</tr>
<tr>
<td>General</td>
<td>58</td>
<td>66</td>
</tr>
<tr>
<td>Third-Party Property Damage</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,472</td>
<td>1,318</td>
</tr>
</tbody>
</table>

Comparison of Insurance and Takaful Disputes in 2012 and 2013
(Cases Received)
There was a marginal decrease of 6.8% in the overall number of complaints received for all types of insurance/takaful risk coverage, from 1,318 cases in 2012 to 1,229 in 2013. The exceptions were Takaful General which increased by 40.9%, Takaful Family by 29.2% and General Insurance (Non-Motor) by 7.8%.

The total number of complaints handled in 2013 (cases brought forward from 2012 plus new cases registered in 2013) was 2,462 compared to 2,790 in 2012, a drop of 11.8%. The bulk of complaints handled in 2013 relate to the General Insurance (Motor) (32.3%), General Insurance (Non-Motor) (14.1%), Life Insurance (24.1%), and General Insurance (Medical) (9.0%).

The decrease in complaints received by FMB in 2013 is attributed partly to the close collaboration between FMB, Life Insurance Association of Malaysia (LIAM), Persatuan Insurans Am Malaysia (PIAM) and Bank Negara Malaysia (BNM) to assist insurers identify recurring systemic issues and the proactive development of preventive strategies by insurers to address such issues. On the other hand, the increase in complaints under the takaful category is reflective of the continued growth in the customer base of the takaful business in 2013.

* General Insurance (Motor)

The number of motor insurance complaints continued to drop in 2013 with 432 cases recorded during the year compared to 485 in 2012, a reduction of 10.9%. 73.9% of all cases handled in 2013 (cases brought forward from 2012 plus new cases registered in 2013) were resolved compared to 61.0% in 2012. The number of cases remaining outstanding as at end of December 2013 dropped significantly by 42.8% to 207 cases in 2013 compared to 362 in the previous year.

In 2013, there was a reduced number of motor disputes related to breach of policy terms and conditions such as delays in notification of loss or damage, non-possession of driving licence and failure to take ‘reasonable precautions’ to safeguard the insured vehicle from loss or damage.

However, recurring disputes involving delays in notification of incident (theft/accident) and non-possession of driving licences by the driver at the time of accident continues to be a cause for concern. The common reason cited for the delay in notification by the insured was the ignorance of insurance claims procedures which is not an acceptable reason (Refer to Case Studies – Case A05). In cases arising from non-possession of a driving licence, the issue commonly raised by the complainant was that the possession of a driving licence was not listed as a requirement at the time of purchase of the vehicle and insurance coverage (Refer to Case Studies - Case A06).

During our dialogue with PIAM, FMB’s recommendation to refine and amend certain policy wordings was well received. The proposed amendments are expected to provide greater clarity and to assist faster resolution of motor-related disputes.
• **Life Insurance and General Insurance (Medical)**

Life Insurance and General Insurance (Medical) disputes which made up 29.1% of the total number of insurance/takaful complaints registered in 2013, dropped by 20.3% with 358 cases registered in 2013 compared to 449 in 2012. The reduction in the number of complaints in 2013 is likely due to, among others, improvements in the handling of complaints by the insurers and better appreciation of the terms and conditions of policies by the insured parties. The number of pending cases as at end of December 2013 also dropped from 457 cases as at December 2012 to 123 cases in 2013 - a significant drop of 73.1%. This is largely attributed to the high percentage of cases resolved (84.9%) against the total number of disputes handled in 2013.

The main cause of disputes remained the same as in previous years and revolved around the terms and conditions of the policy. It includes claims falling under explicit policy exclusions, and non-fulfillment of policy definitions and conditions.

It is noted that some insurers continued to refer their customers to FMB in their letter of rejection even though the dispute or claim amount exceeded FMB’s jurisdiction. Such issues were only highlighted to FMB after the mediation process had commenced, resulting in unnecessary delays in the resolution of the dispute. In order to ensure all complaints by the insured parties are conducted fairly, professionally and in a timely manner, insurers should adhere strictly to **BNM’s Guideline on Complaints Handling (BNM/RH/GL/000-4)** which requires insurers to inform their customers to seek FMB’s assistance to resolve disputes, provided the dispute falls within the latter’s jurisdiction.

During the year, the mediation team initiated a meeting with LIAM for a general discussion on how to improve complaints handling by insurers. One of the issues discussed was the continuing trend in the insurance industry to repudiate medical claims on the grounds of non-submission of original medical bills/receipts. A few insurers still insist on the original receipts for settlement of the claim despite the fact that the claimant has misplaced or lost the original receipt. It is prudent for insurers in such cases to insist for a statutory declaration from the claimant/insured as well as to carry out the due diligence search before the matter is referred to FMB.

The insurers are reminded to adhere to **BNM’s Guideline on Claims Settlement Practices (BNM/RH/GL/003-9)** which states:

> **4.4.2 Repudiation of Liability**

> **4.4.2.2** An insurer should not repudiate a claim on the following grounds:-
> 1. technical breaches of warranty or policy conditions which are not material or unconnected to the circumstances of the loss.................
• **General Insurance (Non-Motor)**

General Insurance (Non-Motor) cases which comprised 12.4% of the total number of insurance/takaful complaints registered in 2013, increased slightly by 7.8% with 152 cases registered in 2013 compared to 141 in 2012. The total number of complaints handled in 2013 (cases carried forward from 2012 plus new cases registered in 2013) increased by 10.5% from 314 in 2012 to 347 in 2013. Despite the increase, the number of cases that remained outstanding as at end of 2013 decreased to 155.

Of the various policy types under this category, complaints related to travel insurance continued to rise with 75 cases registered in 2013 compared to 45 in 2012. The disputes mainly arose from:

• Claims by policyholders alleging that they did not receive a copy of the policy jacket for their reading and understanding;
• Coverage of the policy, limits, terms and conditions that were not explained clearly to prospective clients by the agents or intermediaries who promote and sell travel insurance; and
• Failure of the policyholder to read and understand the coverage, exceptions, and terms and conditions contained in each policy.

In this regard, it is important that insurers and their agents ensure that the policyholders are given policy documents and the terms and conditions of the policy explained to them.

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

TPPD disputes decreased slightly by 9.1% with 70 cases registered in 2013 compared to 77 in 2012. The total number of complaints handled in 2013 decreased by 15.0% from 160 in 2012 to 136 in 2013. The number of cases remaining outstanding as at end of the year decreased significantly by 57.6%. This is attributed to the high percentage of cases resolved in 2013 (79.4%) compared to 2012 (58.8%).

The drop in complaints in 2013 for TPPD is partly attributed to the improvements in claim settlement practices by the insurers, in particular the discretionary practice to include an additional seven (7) working days for unforeseen delays in ‘loss of use of vehicle’ claims by third-parties.

Most of the complaints in 2013 involved disputes on the rates payable for loss of use of vehicles. Others stemmed from repudiation of claims due to non-possession of driving licence, third-party claimant falling within the ‘household’ exception category, betterment charges, driving under the influence of alcohol/drugs and having no insurable interest in the insured vehicle.
• **Takaful (Family, General and TPPD)**

Takaful complaints, which comprised 17.7% of the total number of insurance/takaful complaints registered in 2013, increased by 30.7% with 217 cases registered in 2013 compared to 166 in 2012. The increase in complaints received may be attributed to the growth in the customer base of the expanding takaful business in 2013.

There was a high percentage of takaful cases resolved in 2013 (73.8% of total takaful cases handled) compared to 2012 (54.9% of total cases handled). The number of cases that remained outstanding as at end of December 2013 dropped by 36.6% from 153 cases in December 2012 to 97 cases in 2013.

A high percentage of all takaful disputes were related to Takaful Family and Takaful General complaints. The Takaful Family cases involved breach of terms and conditions, the definition of total permanent disability, non-disclosure of pre-existing illness and hospital benefits claims; whereas Takaful General cases were mainly related to claims for loss of money, damage to property due to flood/heavy rain, late notification for motor claims, no valid driving licence, theft and cheating/criminal breach of trust.
## Cases Resolved

### Table A2 – Comparison of cases Handled and Resolved in 2013

<table>
<thead>
<tr>
<th>Categories</th>
<th>Cases Handled in 2013</th>
<th>Cases Resolved in 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cases Brought Forward</td>
<td>Total Cases Handled</td>
</tr>
<tr>
<td></td>
<td>Cases Registered in 2013</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cases Brought Forward</td>
<td>Total Cases Resolved</td>
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<td></td>
<td>Cases Registered in 2013</td>
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<tr>
<td><strong>Conventional</strong></td>
<td></td>
<td></td>
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<tr>
<td>General Insurance (Motor)</td>
<td>362</td>
<td>794</td>
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<tr>
<td></td>
<td>432</td>
<td>320</td>
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<tr>
<td>Life Insurance</td>
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<tr>
<td></td>
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<tr>
<td>General Insurance (Medical)</td>
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<td>222</td>
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<tr>
<td></td>
<td>79</td>
<td>139</td>
</tr>
<tr>
<td>General Insurance (Non-Motor)</td>
<td>195</td>
<td>347</td>
</tr>
<tr>
<td></td>
<td>152</td>
<td>176</td>
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<tr>
<td>Third-Party Property Damage</td>
<td>66</td>
<td>136</td>
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<tr>
<td></td>
<td>70</td>
<td>66</td>
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<tr>
<td><strong>Takaful</strong></td>
<td></td>
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<tr>
<td>Family</td>
<td>78</td>
<td>193</td>
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<tr>
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<td>115</td>
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<tr>
<td>General</td>
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<td>158</td>
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<td></td>
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<td>19</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,233</td>
<td>2,462</td>
</tr>
<tr>
<td></td>
<td>1,229</td>
<td>1,145</td>
</tr>
</tbody>
</table>

### Comparison of Insurance and Takaful Disputes in 2012 and 2013 (Resolved Cases)

- General Insurance (Medical): 203 (2013)
The overall number of insurance/takaful cases resolved in 2013 increased by 18.9%, i.e. 1,852 cases compared to 1,557 cases in 2012 despite the lesser number of cases handled during the year (2,462 compared to 2,790 in 2012). As a result, the percentage of cases resolved against the total number of cases handled during the year increased significantly to 75.2% in 2013 compared to 55.8% in 2012 (Refer to Tables A1 and A2).

FMB’s objective and focus in 2013 was to resolve and reduce the cases brought forward from previous years. Out of the 1,233 cases brought forward from 2012, 92.9% (1,145 cases) were resolved during the year. In addition, 57.5% of all new cases registered in 2013 were resolved within the year compared to 31.6% in 2012. As a result, the outstanding cases as at 31 December 2013 dropped to 610, comprising 88 cases brought forward from 2012 and 522 new cases registered in 2013 (Refer to Table A2).

• **General Insurance (Motor)**

The number of resolved cases for General Insurance (Motor) increased marginally by 3.5%, from 567 cases in 2012 to 587 in 2013, and this comprised 88.4% of cases brought forward to 2013 and 61.8% of new cases received in 2013. The ratio of cases resolved to cases handled in 2013 increased to 0.7:1 (average of 70 files closed for every 100 handled) compared to 0.6:1 (average of 60 files closed for every 100 handled ) in the previous year.

The higher number of cases resolved in 2013 is attributed to closer collaboration between FMB and the industry either via mediation sessions or caucus (private meeting), and initiatives by the insurers to review and reconsider their own decisions. Based on the feedback received from the complainants, FMB is pleased to note that certain insurers have taken proactive steps to improve their internal complaints handling processes and as a result, a higher number of cases were resolved at the early stages of mediation.

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

The number of resolved cases for Life Insurance and General Insurance (Medical) increased by 17.1%, from 591 cases in 2012 to 692 in 2013 and this comprised 96.5% of cases brought forward to 2013 and 70.1% of new cases resolved in 2013. In comparison, 75.0% of cases brought forward to 2012 and 31.6% of new cases were resolved in 2012.

The percentage of cases resolved against the total number of disputes handled during the year increased significantly to 84.9% in 2013 compared to 56.4% in 2012. The ratio of cases resolved to cases handled in 2013 increased to 0.8:1 (average of 80 files closed for every 100 handled) compared to 0.6:1 (average of 60 files closed for every 100 handled) in the previous year.

Acknowledging the challenges to resolve outstanding cases brought forward from previous years as soon as reasonably practical, greater efforts were made to optimise resources with the objective of clearing outstanding cases as well as cases received in the current year. The strategy met its objective with the increase of resolved cases in 2013 and significant decrease in the cases that remained outstanding at the end of December 2013.
The insurers are commended for the improved quality of decisions observed from the cases registered with FMB which ultimately contributes to faster settlement of cases mediated by FMB. It is observed that the quality of decisions by the insurers has greatly improved over the years and insurers have also taken the initiative to explain the rationale and grounds for rejecting claims. This ensures that the assured/claimant is well informed about the insurer’s decision and has further contributed to faster resolution of disputes.

• General Insurance (Non-Motor)

The number of cases resolved for General Insurance (Non-Motor) category increased significantly by 61.3%, i.e. from 119 cases in 2012 to 192 cases in 2013. This comprised 90.3% of cases brought forward from 2012 and 10.5% of new cases registered in 2013. Despite an increase in new cases registered in 2013, there was an overall increase of cases resolved compared to 2012. One of the reasons for the increase was the redistribution of cases according to two main areas of specialisation, namely General Insurance (Non-Motor) and Third-Party Property Damage (TPPD). This specialisation initiated in 2013, made it possible for speedier processing and disposal of cases. Another contributing factor for increased disposal of cases was the use of email which resulted in speedier communication between FMB and the insurers and complainants, to explain issues related to the complaints.

• Third-Party Property Damage (TPPD)

The number of cases resolved for TPPD increased by 14.9%, i.e. from 94 in 2012 to 108 in 2013. This is attributed to specialisation in handling similar cases, as mentioned above.

• Takaful (Takaful Family, General and Third Party Property Damage)

The number of cases resolved for takaful increased significantly by 46.8%, from 186 cases in 2012 to 273 in 2013 and this comprised 92.8% of cases brought forward from 2012 and 60.4% of new cases registered in 2013. In 2012, 82.7% of cases brought forward from 2011 and 25.9% of new cases registered in 2012 were resolved. The percentage of cases resolved against the total number of takaful disputes handled during the year increased to 73.8% in 2013 compared to 54.9% in 2012.

The higher number of cases resolved in 2013 was a result of joint efforts by FMB and the takaful operators through discussions and mediations which led the takaful operators to review and reconsider their own decisions. Another contributing factor is the recurrence of similar nature of cases received involving Takaful Family and Takaful General (Motor) such as delay in notification of incident (theft/accident), non-possession of valid driving licence, and not fulfilling the certificate’s definition of total and permanent disability and critical illnesses which were resolved quickly.
Manner of Disposal

A total of 1,599 registered complaints (excluding cases with no response or withdrawn) were resolved by FMB in 2013. Of these, 526 complaints (32.9%) were resolved amicably via negotiated settlements facilitated by FMB. The remaining 1,073 cases were decided by the Mediators by either upholding the decision of the FSPs (1,042 cases: 97.1%) or revising the decision of the FSPs (31 cases: 2.9%). A total of 253 cases were closed due to non-response or withdrawn by complainants.

It is significant to note that 49.3% of General Insurance (Motor), 33.1% of General Insurance (Non-Motor) and 74.7% of Third-Party Property Damage disputes were resolved via mediation respectively whilst 85.6% of Life Insurance and General Insurance (Medical) disputes required decisions by the Mediator.

Decisions by Mediators (either in upholding or revising decisions by FSPs) are normally made after a comprehensive investigation and mediation process and only after parties fail to reach an agreement. It is significant to note that only 2.9% of decisions by insurers were revised by FMB and this is attributed generally to the quality of FSPs’ decisions that has improved over the years.
In retrospect, it is encouraging to note that FSPs have sought FMB’s advice on numerous occasions especially in new and unsettled areas where potential problems are anticipated. The close relationship established has made it easier for FMB to bring parties together to the mediation table where the parties are in control of the outcome and are able to achieve an amicable settlement with minimum involvement of the Mediator.

In summary, in 2013, insurers/takaful operators and consumers continued to respond favorably to resolution of disputes through active engagement and caucus sessions facilitated by FMB. Parties are now more aware of FMB’s mediation process, of how complaints are investigated and settled through negotiated settlements or (where there is an impasse) decided by FMB in a fair and impartial manner.

Mediation is viewed as the preferred financial dispute resolution channel as it builds confidence and promotes goodwill between parties.
B. CONVENTIONAL AND ISLAMIC BANKING

Cases Handled

Table B1 – Comparison of Cases Handled in 2012 and 2013

<table>
<thead>
<tr>
<th>Categories</th>
<th>Cases Handled in 2012</th>
<th>Cases Handled in 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B/f</td>
<td>Received</td>
</tr>
<tr>
<td>Credit/Charge and Debit Cards</td>
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<td>272</td>
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<tr>
<td>Internet Banking</td>
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<td>89</td>
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<tr>
<td>Operational Issues</td>
<td>74</td>
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<tr>
<td>Contractual Issues</td>
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<td>47</td>
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<tr>
<td>ATM Non/Short Dispensations</td>
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<tr>
<td>ATM Unauthorised Withdrawals</td>
<td>143</td>
<td>51</td>
</tr>
<tr>
<td>Cash Deposit Machines (CDM)</td>
<td>63</td>
<td>18</td>
</tr>
<tr>
<td>Total</td>
<td>1,068</td>
<td>601</td>
</tr>
</tbody>
</table>

Chart B1 – Comparison of Cases Received in 2012 and 2013

There was an increase of 8.5% in the overall number of complaints against the banking sector, from 601 cases in 2012 to 652 cases in 2013. However, the total number of cases handled by FMB in 2013 (cases brought forward from 2012 plus new cases registered in 2013) was 1,160 compared to 1,669 in 2012, a drop of 30.5%. The bulk of the cases received in 2013 were related to credit/charge and debit card disputes (318 cases or 48.8%).
• **Credit/Charge and Debit Cards**

There was an increase of 16.9% in credit/charge and debit card related disputes in 2013, from 272 cases in 2012 to 318 cases in 2013. This is mainly due to more credit/charge and debit cards being issued arising from Bank Negara Malaysia’s initiative towards cashless transactions. In tandem with the increased credit/charge and debits cards, the disputes had also increased accordingly in 2013. The bulk of these credit/charge and debit card disputes were related to the loss or theft of physical cards, compromised usage of card and PIN (personal identification number), unauthorised online transactions and cash advances. Disputes relating to online credit/charge and debit card transactions continued to drop significantly. In part, the decline was attributed to the introduction of the One-Time Password (OTP) by banks to provide greater protection for online transactions and greater consumer awareness.

• **Internet Banking**

There was a slight decrease in the total number of internet banking (IB) cases received in 2013 (79 cases), compared to 2012 (89 cases). The total number of IB cases handled in 2013 dropped significantly by 59.0%, from 459 cases in 2012 to only 188 cases in 2013. The lower number of IB cases received in 2013 is attributed to greater consumer awareness and education on the risk and best practices of online/e-banking adopted by banks.

Most of the IB cases received in 2013 involved ‘phishing’ email scams where fraudsters, impersonating a bank, send emails to their customers requiring them to urgently update their personal information, so as to avoid disruption of online banking services and access to their accounts. The customers are directed to a fraudulent website and deceived into revealing information such as username (login ID), password and transaction authorization code (TAC), and these credentials are then used to perform unauthorised transactions without the customer’s knowledge.

• **Operational and Contractual**

The total number of complaints arising from operational and contractual issues rose from 96 in 2012 to 118 in 2013, an increase of 22.9%. Of these 118 new cases, 48.3% were related to operational issues while 51.7% comprised contractual issues. The main disputes revolved around banking products and facilities such as bank cheques, savings accounts, fixed deposits, alleged misselling of unit trusts/structured products, and transfer of funds to wrong accounts. There was, in particular, a marked increase in the number of cases arising from interbank giro transfers (IBG), fixed deposits and savings accounts.
Operational Issues – Interbank Giro [IBG] Transfers

Complaints regarding IBG transfers performed over the counter, via ATMs or online banking generally involved funds being transferred to a wrong account because of an error in the beneficiary’s account number.

The normal IBG process involves transfer of funds into the beneficiary’s account based solely on the name and account number of the latter. We note that while banks also include the recipient’s identity card number as a second level verification, the completion of this field is optional. To minimise the risk of funds being credited to the wrong account, it is opined that a second level verification be made mandatory, and the recipient bank to verify the account name and number against the recipient’s identity card before the transaction is approved.

In regard to IBG transfers performed over the counter, we encountered an instance when a customer, who had used the IBG facility to fully settle a loan, was not informed when the transaction was cancelled, due to limitations of the bank’s system and its failure to automatically generate a notification. This resulted in the customer being unnecessarily charged interest on his loan which he mistakenly thought he had successfully settled in full via the IBG transfer of funds. (Refer to Case Studies – Case B13).

Operational Issues - Fixed Deposits [FD]

A common and recurring FD issues are the ‘legacy claims’ whereby the estate of the deceased account holder presents an original FD receipt to the bank for redemption. Generally, in such a situation, the bank is unable to dispute such claims due to the destruction or unavailability of supporting transaction documents (example, withdrawal slips) based on its record retention policies. However, if the bank is able to furnish a Letter of Indemnity (LI) executed by the account holder, as evidence that the original FD was lost and the deceased account holder had given an undertaking to the bank that the original FD, if found will be returned by the account holder, then the bank’s decision to reject such a claim is usually upheld by FMB (Refer to Case Studies – Case B10).

Where a claim on a FD is made based on a photocopy of the FD receipt, the claim is generally dismissed in the absence of the original FD receipt (Refer to Case Studies – Case B11).
Operational Issues – Cheques

Although the number of complaints relating to cheques remained the same as in 2012, disputes with regard to alteration of post-dated cheques continued to be an area of concern.

In one instance, a property agent introduced a potential tenant to his customer (the victim) who was then persuaded to issue a post-dated cheque to the agent as commission for the deal. In return, the agent gave the victim a cheque for the 2 to 3 months rental deposit purportedly issued by the tenant. The agent then fraudulently altered the date on the post-dated cheque issued by the victim to an earlier date (e.g. from 11/01/2013 to 01/01/2013), and quickly encashed the cheque over the counter or deposited the cheque into his account. The victim later realised that he had been scammed when he unsuccessfully tried to encash the cheque for the rental deposit received from the agent and with the agent nowhere to be found. (Refer to Case Studies – Case B15).

Contractual Issues

One of the common issues in 2013 was the penalty interests imposed by property developers on house buyers because of the delay in the release of the loan by the bank. It is observed that the reason for the bank’s failure to release the progress payment billed by the developer in a timely manner and within the schedule of payments in the Sale and Purchase Agreement is generally due to the delay in the preparation of loan documentation. (Refer to Case Studies – Case B08).

Other contractual issues involved disputes on exit penalty fees imposed on early redemption of loans, excessive interest charged due to calculation errors, and treatment of lump sum loan repayments as advance instalments and not principal reduction of the loan.

• Automated Teller Machine (ATM) and Cash Deposit Machine (CDM)

The number of cases relating to ATM cash withdrawal (non/short dispensation) issues dropped by 10.7% in 2013 while cases related to cash deposits made via CDM remained the same as in 2012.

A recurring issue at ATMs involved customers not waiting long enough for the machine to dispense cash after a withdrawal had been made. In one instance, closed circuit television (CCTV) recordings furnished by the bank revealed that the customer had left the ATM booth after retrieving the ATM card, without waiting to collect the cash dispensed by the ATM.
One of the factors taken into account during the investigation of disputes concerning dispensation of cash at ATMs is the availability of CCTV at the location where the disputed withdrawal was transacted. Unfortunately, in many cases, CCTV recordings are unavailable due to the non-installation of CCTV by the banks at certain ATM locations. As for instances where CCTV is available, we are often faced with the issue of non-preservation of the CCTV recordings or malfunction of the CCTV equipment. Bank Negara Malaysia’s Guideline on the Provisions of Electronic Banking (e-banking) Services by Financial Institutions (BNM/RH/GL/008-10) stipulate that banks should install CCTV at strategic locations to capture clear images of the cardholder performing the transactions. In the absence of the CCTV recording, we were unable to determine what had transpired during the transaction, the demeanour of the customer performing the withdrawal, and the identity of the person(s) who allegedly took the cash dispensed by the ATM.

The number of disputes relating to unauthorised ATM withdrawals remained consistent with 52 cases reported in 2013 compared to 51 in 2012. The bulk of the disputes arose from ‘lost/stolen’ cards, as well as compromised usage of the ATM card and PIN.

The common CDM issues dealt with are cash ‘jammed’ in the machine whereby the amount deposited was not fully accounted for by the CDM. The other issue involved a situation whereby cash was successfully received by the CDM but the complainant left the machine without completing the deposit transaction. In such instance, a ‘Confirmation Time Out’ occurred because the complainant had failed to confirm the deposit transaction within the required time frame. Therefore, the cash was automatically returned by the CDM and the amount was not credited into the complainant’s account since the transaction was not fully completed. It is highly likely that the cash ‘returned’ by the CDM was taken by a third party.

1 Bank Negara Guideline on the Provision of Electronic Banking (e-banking) Services by Financial Institutions Section 25.1.7: Financial Institutions should install close circuit cameras or transaction triggered camera at strategic locations with adequate lighting in order to capture clear images of cardholder performing a transaction.
Cases Resolved

Table B2 – Comparison of Cases Handled and Resolved in 2013

<table>
<thead>
<tr>
<th>Categories</th>
<th>Cases handled in 2013</th>
<th>Cases resolved in 2013</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Cases brought forward</td>
<td>Cases registered in 2013</td>
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<tr>
<td>Credit/Charge and Debit Cards</td>
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<tr>
<td>Internet Banking</td>
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<td>79</td>
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<tr>
<td>Operational Issues</td>
<td>59</td>
<td>57</td>
</tr>
<tr>
<td>Contractual Issues</td>
<td>50</td>
<td>61</td>
</tr>
<tr>
<td>ATM Non/Short Dispensations</td>
<td>62</td>
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<tr>
<td>ATM Unauthorised Withdrawals</td>
<td>62</td>
<td>52</td>
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<tr>
<td>Cash Deposit Machines (CDM)</td>
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<td>18</td>
</tr>
<tr>
<td>Total</td>
<td>508</td>
<td>652</td>
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</tbody>
</table>

Chart B2 – Comparison of Cases Resolved in 2012 and 2013
Overall, there was a 36.3% drop in the number of resolved cases in 2013. Only 740 cases were resolved in 2013 compared to 1,161 cases resolved in the previous year. This is partly attributed to the lower number of cases remained outstanding which were brought forward from 2012 (508) compared to cases brought forward from 2011 (1,068) and marginal increase in new cases registered in 2013. The total number of cases handled in 2013 was 1,160 compared to 1,669 in 2012.

The clearing of the cases brought forward from previous years and the timely resolution of newly registered cases remained the focus of FMB in 2013. Out of the 508 cases brought forward from 2012, 80.7% were resolved in 2013 (2012: 85.8%) while 50.6% of the new cases registered in 2013 were resolved during the year, compared to 40.8% in 2012.

• Credit/Charge and Debit Cards

The number of cases resolved in 2013 remained fairly consistent. A total of 286 cases were resolved in 2013 compared to 284 cases in 2012 despite a 16.9% increase of new cases received in 2013.

The bulk of cases resolved in 2012 were based on the High Court decision in Diana Chee Vun Hsai v Citibank Berhad [2009] 6 CLJ774, which limited the maximum liability for unauthorised card transactions relating to lost/stolen credit cards to RM250.00. However, in 2013, as a result of enhanced security features put in place by banks to secure transactions performed using credit/charge and debit cards (e.g. post transaction SMS alert notifications, One-Time password for online transactions, close scrutiny of transaction patterns), most complaints were mediated and settled on a case-by-case basis.

• Internet Banking

The number of cases resolved dropped significantly by 74.3%, from 350 cases in 2012 to 90 cases in 2013. In 2012, cases were amicably resolved by way of bulk settlement since a large number of cases involved a single bank in the absence of adequate security features and alert mechanisms. Bulk settlement was not possible in 2013 since the banks had enhanced their security features, alert mechanisms and the banks have also improved in their consumer awareness programs. Thus, most cases were resolved on a case-by-case basis in 2013.

• Operational and Contractual

The number of resolved cases for operational and contractual disputes increased by 27.1%, from 144 in 2012 to 183 cases in 2013. In 2013, 85.3% of cases brought forward from 2012 and 76.3% of new cases registered during the year were resolved. In 2012, only 68.8% of cases brought forward from 2011 and 37.5% of new cases registered in 2012 were resolved. The ratio of cases resolved to cases handled in 2013 increased to 0.8:1 (average of 80 files closed for every 100 handled) compared to 0.6:1 (average of 60 files closed for every 100 handled) in the previous year, which is attributed to a more structured approach and improvements in the mediation process, and also the banks’ willingness to amicably resolve disputes after mediation.
• Automated Teller Machine (ATM) and Cash Deposit Machine (CDM)

The number of resolved cases for ATMs and CDMs dropped by 52.7%, from 383 cases in 2012 to 181 cases in 2013. This is mainly because cases were mediated and resolved on a case-by-case basis in 2013 and as such, longer time was required to resolve each case.

FMB was able to resolve a large number of ATM (non/short dispensation) and CDM disputes via bulk settlement with the banks in 2012. This was because many banks then did not fully comply with the Bank Negara Guideline on the Provisions of Electronic Banking (e-banking) Services by Financial Institutions (BNM/RH/GL/008-10) which require installation of CCTVs at strategic locations to monitor ATM machines and were also not able to provide critical documentary evidence to support their decisions. In 2013, most banks had taken steps to comply with the Guideline and were able to adduce the required evidence to support their decision. As such, each case required in-depth review and investigation and the resolution was based on the merits of each case.

The number of ATM cases (unauthorised withdrawals), dropped by 60.6% from 132 in 2012 to 52 in 2013. This is attributed to the lower number of cases brought forward to 2013 (62) compared to 2012 (143) and also due to cases being resolved via bulk settlement arrangement in 2012. However, cases resolved in 2013 were mediated on a case-by-case basis since banks had enhanced their security features particularly on the availability of CCTV and ATM electronic journal.
Manner of Disposal

A total of 672 cases were closed in 2013 (excluding cases with no response or withdrawn). Out of 672 cases, 424 (63.1%) were settled amicably between the banks and the complainants through negotiated settlements facilitated by FMB. The remaining 248 cases were decided by the Mediator by either upholding the decision of the banks (179 cases: 72.2%) or revising the decision of the banks (69 cases: 27.8%).

It is significant to note that 72.6% of credit/charge and debit card disputes were resolved via mediation compared to 59.1% in 2012 whilst for internet banking the percentage of disputes resolved via mediation remained high at 92.0% compared to 97.6% in 2012.

In the case of ATM/CDM related issues, 64.8% of disputes required a decision by the Mediator compared to 32.5% in 2012 as most cases involved usernames and passwords and compromised card and account information, leading to unauthorised transactions and withdrawals.

The high number of disputes resolved via mediation in 2013 clearly indicates and reaffirms FMB’s success in facilitating and resolving complaints amicably between consumers and banks. It also shows public confidence in FMB to resolve their disputes and the positive and favourable response by banks to resolution through mediation.
Case Studies 2013

INSURANCE (including Takaful)

BANKING (including Islamic Banking)
INSURANCE (including Takaful)

Motor Cases

Case A01: Failure to Take Reasonable Precaution

Background

The insured had left her vehicle with the engine running in front of her house, and gone into her house. The unattended vehicle was subsequently driven away by an unknown person. The insured submitted a ‘theft claim’ under her motor insurance policy to the insurer.

The insurer declined the claim on the grounds of failure to take ‘reasonable precautions’ to safeguard the vehicle from loss or damage, in breach of policy condition 7(c). The insurer contended that the insured should not have left the vehicle unattended with the engine running when she went into her house. Her failure to take reasonable precautions to safeguard the vehicle had led to the loss of her vehicle.

Investigation and Findings

The insurer’s in-house investigation report revealed that the vehicle was parked about 5 to 6 meters away from the house at around 11.00 pm. The insured did not have a clear view of the vehicle. During a caucus session with the Mediator, the insured denied that she was negligent or had taken unnecessary risks, as the unattended vehicle was parked just outside her house. According to the insured she occasionally parks her car in that manner.

The Mediator reviewed the facts of the case and was of the view that the insured was reckless in leaving her vehicle unattended with the engine running, especially with the increasing risk of car thefts. The Mediator referred to a leading case, ‘Starfire Diamond Rings Ltd v. Angel’ (1962) 2 LLR 559 where it was held that for a vehicle to be attended, ‘there must be someone able to keep it under observation, that is, in a position to observe any attempt to interfere with it, and who is so placed as to have a reasonable prospect of preventing any unauthorised interference with it’. It was emphasised that it is a question of fact in each case as to whether the vehicle has been ‘left unattended’.

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2 Policy condition no. 7:
OTHER MATTERS:
This Policy will only be operative if:
(c) You have taken all reasonable precautions to safeguard your vehicle from loss or damage

3 (1962) 2 LLR 559
In regard to condition 7(c) raised by the insurer, the Mediator observed that the said condition is a general clause and does not expressly exclude the insurer’s liability for cases involving keys left in the car or the ignition and unattended vehicles. The Mediator highlighted to the insurer that as the clause in the policy is a general condition, it is unreasonable to expect policyholders to be aware of their duty to safeguard their vehicles unless it was expressly made known to them at the point of sale or renewal. On this note, the Mediator drew the insurer’s attention to the following Ombudsman news in support of her findings:


The policy wordings should specifically state that leaving a vehicle with the engine still running or keys in the ignition is deemed reckless and the insured’s claim will not be allowed under such circumstances.

Decision

The mediation facilitated by the Mediator initially met a deadlock and parties voluntarily submitted to a decision by the Mediator. Based on all available evidence, the Mediator revised the insurer’s decision and decided that it was only fair and reasonable that the liability be apportioned equally between the parties.

Case A02: No Insurable Interest

Background

The insured sold his vehicle to a friend. The vehicle was subsequently stolen while in the custody of the friend (the custodian), and the insured submitted a ‘theft claim’ for the loss of the vehicle to the insurer. The insurer repudiated the claim on the grounds that there was no ‘insurable interest’. This was based on their investigation and findings which revealed that the insured had sold the vehicle to his friend.

Investigation and Findings

The insurer’s independent loss adjuster’s report revealed that the custodian of the vehicle had provided a written statement to confirm the purchase of the said vehicle from the insured. However, the loss adjuster was unable to interview or obtain a similar statement from the insured to confirm the sale. The Mediator noted that there were inconsistencies in the custodian’s written statement and the insured’s explanation on the sale of the vehicle in the complaint form.
At a caucus session with the Mediator, the insured clarified that he was still the legal owner of the vehicle as he had not received the full payment from the buyer. It had been agreed that the ownership of the vehicle would only be transferred to the buyer after full settlement of the purchase price. The Mediator noted that the insurer had not supported their reasons for repudiation with the relevant documentary evidence, which is a written confirmation from the insured on the sale of the vehicle, statutory declaration, payment receipts or sales agreement. On the other hand, the custodian’s clarification contradicted the statements in the loss adjuster’s report and the ‘Sales Agreement’.

**Settlement**

The dispute was resolved amicably between the parties (insured and insurer) through negotiations facilitated by the Mediator, where the insurer’s offer to settle a portion of the market value of the said vehicle was accepted by the insured.

**Case A03: Dispute on Cost of Repair**

**Background**

The insured was dissatisfied with the sum reimbursed by the insurer for the cost of repairs to his vehicle. The insured alleged that he had paid RM180,999.00 in advance to repair the vehicle, but he was only reimbursed RM116,000.00 on a lump sum basis instead of itemised approval for the cost of repairs. The insurer declined the insured’s appeal as their approval was based on the loss adjuster’s recommendation. Further, the adjuster had verified the prices of parts with reliable suppliers prior to their recommendation; thus, the parts prices were deemed accurate.

**Investigation and Findings**

The Mediator observed that the insured had furnished a franchise holder’s quotation for parts which significantly varied from the insurer’s recommendation based on an approved parts list obtained from a local supplier. The Mediator had requested the insurer to verify the parts list with the franchise holder, but the latter was unable to comply. The Mediator also observed that the compensation of RM116,000.00 by the insurer was not equitable or reasonable as some essential items may have been omitted from their approved parts list.

The loss adjuster was unable to source the franchise parts or confirm when they would be able to provide the same. The adjuster was only able to provide the quotation obtained from the local suppliers that varied significantly from the one furnished by the insured.

**Settlement**

The insurer agreed with the Mediator’s observation and the dispute was amicably resolved after the insured agreed to accept the insurer’s settlement offer.
Case A04: Dispute on Cost of Repair

Background

The insured’s vehicle was involved in an accident and the vehicle was sent to a franchise workshop. The insurer had approved the replacement of all the damaged parts except the front bonnet, which the adjuster had recommended to be repaired. However, the insured disagreed and appealed to the insurer for the bonnet to be replaced instead. The appeal was rejected by the insured based on the loss adjuster’s recommendation that the front bonnet should be repaired instead of being replaced.

Investigation and Findings

The insured had furnished the franchise workshop’s written recommendation that the Volvo car’s damaged aluminium bonnet should be replaced. However, the insurer contended that the front bonnet had only sustained a minor dent which could be repaired at the franchise workshop; it was argued that they should not be compelled to replace the bonnet just because the particular franchised workshop did not possess the equipment to perform the repairs. The insurer further substantiated the argument with an article from a website claiming that the Volvo car’s aluminium bonnet can be repaired.

During the mediation session with all parties (insured, insurer, adjuster and franchise workshop), the franchise workshop confirmed they did not have the equipment or skills to repair the aluminium bonnet which is normally replaced when damaged. It was also revealed that the insured had gone ahead and arranged for the bonnet to be replaced at her expense as she urgently needed to use the vehicle.

Settlement

The dispute was amicably resolved after the insured agreed to the insurer’s settlement offer to equally apportion the cost of replacing the bonnet.
Case A05: Delay in Notification of Claim

Background

The insured’s vehicle was stolen on 27/9/2012. The insured submitted a theft claim to the insurer on 8/1/2013.

The insurer had declined the claim on the grounds that the theft of the insured vehicle was notified to them more than three (3) months after the date of its loss. Thus, the insured had breached policy condition 2(a).

Investigation and Findings

The date recorded in the claim form (‘Claim Form Taken on 8/1/2013’) submitted by the insured confirmed that the claim was only notified 3 months after the loss of the vehicle. The insured claimed that he was unaware of the claims procedures for loss of vehicle and hence the delay in the notification of the claim.

The Mediator stressed that the insured had a duty as the policyholder to read, understand and comply with all the terms and conditions of the policy. Furthermore, the insured could have sought the assistance of the insurer’s agent or the branch office regarding the claims procedures if he was not aware and had no knowledge of the claims procedures. The delay in notification had prejudiced the insurer’s position to investigate the circumstances leading to the loss of the vehicle.

Decision

The Mediator upheld the insurer’s decision.

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*Policy Condition 2(a): ACCIDENTS AND CLAIMS PROCEDURE

(a) 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 policy:

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

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

(iii) Other than (i) and (ii), a longer notification period may be allowed subject to specific proof by you.*
Case A06: Driving Licence

Background
The insured’s motorcycle was stolen and a theft claim was submitted to the insurer. The insurer rejected the claim on the grounds that the insured did not possess a valid motorcycle driving licence at the material time of loss and the claim was excluded under General Exception 1 of the policy.5

Investigation and Findings
The insurer’s decision was based on the insured’s police report which revealed that the insured was the last person to use the motorcycle prior to the loss. The insured admitted that he did not have a valid motorcycle licence. However, the insured contended that the possession of a driving licence was not a requirement for the purchase of the motorcycle and the insurance coverage.

The Mediator noted that the General Exception 1 of the policy is in accordance with Section 26 of the Road Transport Act 1987 which requires a person to hold the relevant class of driving licence before using the vehicle on a road.

Although it is not mandatory for a person who purchases a vehicle and/or the insurance coverage to have a valid driving licence for that class of vehicle, the law nevertheless requires the person to have a valid driving licence for him to drive the said vehicle on the road.

Decision
The Mediator upheld the insurer’s decision.

Case A07: General Exception No. 5 - Storm

Background
On 13/6/2013, whilst the insured was driving his vehicle, an object from a building fell on the said vehicle. It was windy and raining heavily at the material time. The said vehicle sustained extensive damages. The insured submitted an ‘Own Damage’ claim to the insurer which was rejected.

5 General Exception 1:
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 insurer had declined the claim on the grounds that the claim fell within the General Exception No. 5\(^6\) of the private car policy as the nature of loss/accident was due to a storm. The insurer’s decision was based on a newspaper article on the storm at the material date and time of the accident.

A storm is defined as a very strong wind (48-55 knots), a ‘10’ on the ‘Beaufort scale’ of 0-12, and accompanied by heavy rain, snow, hail or sleet. The Beaufort scale was devised in 1805 by a British Admiral, Sir Francis Beaufort (1774-1857) and is the accepted standard method of assessing wind speed. In *Oddy v Phoenix Assurance Co Ltd*\(^7\), Veale J decided that the word ‘storm’ referred to a situation where there were some abnormal weather conditions, namely where violent wind was accompanied by rain, hail or snow.

In this instance, the Mediator emphasised that it is the duty of the insurer to establish that the claim fell within a policy exception by referring to a meteorological report. The weather report sourced from [http://www.wunderground.com](http://www.wunderground.com) showed that the wind speed was 29.6 km/h and wind gust speed was 55.6 km/h at the time of the accident. According to the Beaufort scale such weather conditions are categorised under No. 7 (high wind, moderate gale, near gale), and not a storm.

Settlement

The insurer concurred with the Mediator’s observations and the dispute was resolved between the parties.

Case A08: Non-Disclosure

Background

The insured vehicle was involved in an accident on 22/9/2013 whilst being driven by the insured driver. The insured submitted an ‘Own Damage’ claim to the insurer. The claim was rejected on the grounds that the insured had breached policy condition 1 - Duty of Disclosure\(^8\).

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\(^6\) General Exception 5: We will NOT pay for any liability under the following circumstances:

5. If the loss, damage or liability is directly or indirectly caused by or contributed to by or arising from flood, typhoon, hurricane, storm, tempest ……………………... or other convulsion of nature is involved.

\(^7\) (1966) 1 Lloyds Rep

\(^8\) Policy Condition 1:

1. Duty of Disclosure: If you fail to disclose to us fully and faithfully, all the facts which you know or ought to know, or if you misrepresented any fact to us before the policy was entered into, we may avoid this policy.
Investigation and Findings

The investigation by the licensed loss adjusters appointed by the insurer revealed that the insured had sold the insured vehicle to a friend. However, he had failed to notify the insurer of the sale during the renewal/purchase of the insurance policy.

Decision

The Mediator upheld the insurer’s decision.

Third-Party Property Damage

Case A09: Loss of Use of Vehicle - Compensation for Vehicle Rental

Background

The claimant was dissatisfied with the amount reimbursed by the insurer for the car rental charges while her car was under repair at the workshop. She had submitted a claim for 12 days but the sum offered by the insurer for the loss of use of vehicle was for 10 days totaling RM2,293.80.

The claimant contended that the insurer should pay the amount shown in the original receipts and vehicle rental agreement. The claimant referred to condition 2 of Appendix II, Bank Negara Malaysia's (BNM) JPI/GPI 14 (Consolidated) Guideline on Claims Settlement Practices (the Guideline) which stipulates as follows:

‘In cases where receipts can be produced for vehicle rentals, insurers shall pay the amount shown in the original receipts and original car rental agreement subject to the principle of indemnity and subject always that the claimant shall only be entitled to the rental of a vehicle of an equivalent nature to the damaged vehicle. Such rental must be only from a rental agency/company duly registered and licensed by the relevant authority’.

Investigation and Findings

Clarification was sought from BNM on the above Guideline, who advised that ‘the insurer shall pay the amount shown in the original receipts’ as stated in condition 2 which refers to vehicle rental rate per day and not the total amount shown in the original receipts.

The maximum number of days that the claimant should be awarded is subject to the adjuster’s recommendation on the number of days required for the repair of the damaged vehicle, and this is covered under condition 3 in Appendix II of the said Guideline which reads:
‘The number of days for computation of CART\textsuperscript{*} shall be based on the independent loss adjuster’s recommendation on the number of days for repair of the damaged vehicle subject to the insurer’s discretion to apply an additional seven working days grace period for unforeseen delays.’

The Mediator observed that the insurer’s computation of the 10 days rental period was based on the loss adjuster’s recommendation that six working days were required to repair the vehicle and an additional four days for unforeseen delays.

**Decision**

The Mediator upheld the insurer’s decision which was in accordance with the said Guideline.

**Life/Medical Cases**

**Case A10: Critical Illness Claim: Definition of Heart Attack**

**Background**

The assured experienced chest pain which lasted for 30 minutes accompanied by mild shortness of breath in October 2010. She was diagnosed with myocardial infarction and one vessel coronary artery disease.

The assured’s claim under critical illness benefits for heart attack was declined by the insurer on the grounds that the assured’s medical condition did not fulfil the policy definition of heart attack which is defined as follows:

‘The death of a portion of the heart muscle as result of inadequate blood supply to the relevant area. The diagnosis in respect of this illness must be based on the meeting of all the following criteria:

(i) History of typical chest pain
(ii) New electrocardiographic changes; and
(iii) Elevation of cardiac enzymes’

The insurer’s decision was based on a medical report from the assured’s medical doctor which stated that:-

(i) There was no evidence of elevation of cardiac enzymes; and
(ii) Electrocardiographic changes were not conclusive.

\textsuperscript{*}CART: Compensation for Assessed Repair Time.
Investigation and Findings

The Mediator observed the presence of ‘Q waves’ at lead aVR and aVL of the assured’s ECG report. The Mediator referred the insurer to a medical article which stated that several studies have shown that ‘Q wave infarcts are associated with higher peak enzyme levels, suggesting greater myocardial necrosis.’ The Mediator highlighted that based on the article, the most important wave patterns to diagnose and determine the treatment of a heart attack are ST elevations and Q waves, while blood tests, which shows elevated levels of troponins and CK-MB, indicate heart damage. Furthermore, the assured’s critical illness claim with another insurer had been approved.

Settlement

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

Case A11: Accident Claim: Late Notification

Background

The assured met with an accident on 1/10/2012 which caused him to be ‘temporary disabled’ until 30/10/2012. He submitted his accident claim on 5/8/2013. The insurer repudiated the claim because the claim documents were not submitted within 90 days after the date of loss. The insurer had referred to the policy provision, which states:

‘FILING PROOF OF LOSS
Proof of loss must be furnished to the Company in case of claim for disability within ninety days after termination of the period of disability for which the Company is liable, and in case of claim for any other loss, within ninety days after the date of such loss’.

Investigation and Findings

The Mediator noted from the medical report that the assured had met with an accident on 1/10/2012 and due to the injury suffered, he was temporarily disabled until 30/10/2012. Neither the accident nor the disability period was disputed by the insurer. The claim was repudiated on the grounds of late notification only.

The Mediator highlighted the following provision in the Bank Negara Malaysia’s Guideline on Claims Settlement Practices (BNM/RH/GL/003-9) which states:

BNM Guideline:-

‘4.4.2 Repudiation of Liability
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……………………………………’
Based on the above Guideline, the Mediator requested the insurer to explain how the late notification had prejudiced their rights to assess the loss.

**Settlement**

The insurer agreed to review their decision pursuant to their internal legal opinion and settled the claim with the assured.

**Case A12: Total and Permanent Disability Claim: Pre-Existing Condition**

**Background**

The assured was diagnosed with Rod Cone Dystrophy on 11/10/2012 which caused blindness in both eyes. He filed a claim under the total and permanent disability benefit.

The assured’s claim was repudiated on the grounds that it falls under the policy exclusion which states that a waiver of premiums and advance payment of disability benefits shall not be made for total and permanent disability of the assured’s life which, inter alia, existed at the effective date or at the date of reinstatement of his assurance under the policy.

**Investigation and Findings**

The Mediator observed that the policy exclusion refers to ‘total and permanent disability’ which existed at the effective date of the policy, being 1/5/2002 in the present case. Even though the underlying cause for the assured’s disability was congenital, he was only diagnosed of Rod Cone Dystrophy on 11/10/2012. The assured was certified as being ‘totally and permanently disabled’ with blindness in both eyes on 11/10/2012, which is after the policy effective date.

The Mediator was of the view that if the insurer intended to exclude total and permanent disability due to congenital or pre-existing illness, the same should be clearly stated in the policy exclusion. In this case, the Mediator concluded that the assured did not suffer from total and permanent disability at the policy effective date, but rather after the policy effective date.

**Settlement**

The insurer agreed with the observations of the Mediator and accordingly settled the claim with the assured.
Case A13: Hospitalisation Claim: Pre-hospitalisation Treatment

Background

The assured was admitted to the hospital on 18/2/2013 due to ‘Right Anterior Cruciate Ligament (ACL) and Meniscus Tear’. Prior to his admission, he had sought pre-hospitalisation claim treatment on 6/12/2012.

The insurer repudiated the assured’s claim for pre-hospitalisation treatment charges based on the policy terms that allowed reimbursement of pre-hospitalisation treatment charges only if it fell within 60 days of admission to the hospital. In the assured’s case, the pre-hospitalisation treatment was more than 60 days prior to the assured’s admission. The insurer had referred to the policy provision which states:

‘4.4.9 Pre-Hospitalisation Specialist Consultation
Reimbursement of the Reasonable and Customary Charges incurred within sixty (60) days preceding Hospitalisation, for Medically Necessary first time consultation by a Specialist in connection with a Disability provided that such consultation has been recommended in writing by the attending general practitioner, subject to the limits stated in the Schedule of Benefits. No Payment shall be made for clinical treatment (including medications and subsequent consultation after the Illness is diagnosed) or where the Life Assured does not result in Hospitalisation for the treatment of the medical condition diagnosed.’

Investigation and Findings

The Mediator observed from the evidence adduced by the assured that the reason for the assured’s admission on 18/2/2013, more than 60 days after the pre-hospitalisation treatment, was due to the doctor’s operation theatre (OT) schedule.

The Mediator was of the view that the assured should not be penalised for the delay in admission arising from the doctor’s OT schedule. The Mediator highlighted to the insurer clause 4.4.2.2 of the Bank Negara Malaysia’s Guideline on Claims Settlement Practices (BNM/RH/GL/003-9) which states:

‘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 loss, unless it has prejudiced the interest of the insurer or has exceeded time bar as provided under the law’

Settlement

The insurer agreed with the observations of the Mediator and settled the claim with the assured.
Case A14: Critical Illness Claim: Other Serious Coronary Artery Diseases

Background

The assured was admitted to a hospital after he was diagnosed with Coronary Artery Disease. He subsequently underwent non-surgical treatment of angioplasty and stenting. He submitted a claim under the critical illness benefit.

The insurer repudiated the claim as the assured’s medical condition was not covered under ‘Other Serious Coronary Artery Disease’ which was defined as the blockages (occlusion) of at least three (3) major coronary arteries by a minimum of 75%. The three (3) major arteries were identified by the Insurance Company as Right Coronary Artery (RCA), Left Anterior Descending Artery (LAD) and Circumflex (LCX).

The insurer’s repudiation was based on the assured’s medical report which revealed as follows:

1. The occlusions in assured’s major coronary arteries are as per below:

   i) Right Coronary Artery (RCA)
      - mid-right artery occlusion of 95%,
      - distal right occlusions of 90%,
   ii) Left Anterior Descending Artery (LAD)
      - left anterior descending proximal of 85%, and
   iii) Circumflex (LCX)
      - No occlusions detected.

Investigation and Findings

The Mediator observed that the wordings in the policy document did not require blockages at major arteries. The Mediator further observed that the word ‘major’ was omitted in the policy definition of ‘other serious coronary artery disease’. However, the insurer contended that the critical illness plan was intended to cover the narrowing of at least three major coronary arteries.

The Mediator concluded that the assured was entitled to the claim in accordance with the terms and conditions of the policy, based on the following:

   i) The phrase ‘Other Serious Coronary Artery Disease’ (OSCAD) printed on the Life Assured’s policies purchased in 1991 and 1996 was defined as:

      ‘The narrowing of the lumen of at least three coronary arteries by a minimum of 75% as proven by coronary arteriography carried out in Malaysia or Singapore, regardless of whether any form of coronary artery surgery has been performed.’

   ii) However, the same phrase found in the company’s current/revised policy terms is defined as:
‘The narrowing of the lumen of at least three major coronary arteries by a minimum of 75% as proven by coronary arteriography carried out in Malaysia or Singapore, regardless of whether any form of coronary artery surgery has been performed.’

The Mediator highlighted to the insurer that a term or clause must be construed in the context of the entire contract and if an ambiguity or doubt as to the extent of the policy arises, then the contra proferentem rule will be applicable. Relying on the judicial authorities, the Mediator observed that the contra proferentem rule would apply in this case, i.e. since the policy was prepared by the insurer, the ambiguity in the clause should be construed in favour of the assured. With the omission of the word ‘major’ in the policy definition in the assured’s policies taken in 1991 and 1996, the blockages should not be limited to the major arteries but also include the branches of the arteries.

Decision

The Mediator revised the insurer’s decision.

Case A15: Accidental Claim: Death

Background

The insured who has a personal accident policy was involved in a motorcycle accident and died. He was 15 years old at the time of the accident.

The insured’s death claim was repudiated as it fell within the policy exclusion which states that ‘we will not pay benefits due to or expenses incurred for violation of law’.

The insurer had relied on the police report wherein it was reported that the insured was involved in an accident while riding a motorcycle to the school. The insurer rejected the claim as it was an offence under section 26 (1 and 2) of the Road Transport Act 1987 (Act 333) to drive a motor vehicle without a licence. Furthermore, section 39 of the Act restricts a young person under the age of sixteen to drive a motor vehicle.

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11 Section 26 of the Road Transport Act 1987 (Act 333) & Commercial Vehicle Licensing Board Act 1987 (Act 334), which states:

1) Except as otherwise provided in this act, no person shall drive or ride a motor vehicle of any class description on a road unless he is the holder of a driving license authorizing him to drive a motor vehicle of that class or description”

2) Any person who contravenes subsection(1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both such fine and imprisonment”

12 Section 39 of the Road Transport Act 1987 (Act 333): Restriction on driving by young persons

1) No person under sixteen years of age shall drive a motor vehicle on a road.
Investigation and Findings

It was noted from the investigation that the deceased person was not the rider. The claimant furnished a statutory declaration that was duly executed by the insured’s friend which stated that he was the rider of the motorcycle at the time of the accident whereas the insured was the pillion rider.

The claim was reassessed by the insurer based on the supporting documents received from the claimant and the police investigation which confirmed that the deceased person was only a pillion rider at the material time of loss.

Settlement

The insurer revised their decision and settled the claim with the claimant.

General Insurance (Non-Motor) Case

Case A16: Travel Insurance

Background

The insured and her travel partner (whose name was also included in the travel policy) had booked and paid for an overseas trip through a travel agent. The travel policy was purchased a few days after the full payment for the tour was made. Before the commencement of the trip, the insured suffered a mild stroke. The insured sought treatment at her family doctor’s clinic and was referred to a private MRI scanning service provider to confirm her condition. The MRI results confirmed that the insured had suffered a mild stroke and the attending doctor certified that the insured was unfit to travel. As a result, the insured and her travel partner had to cancel the planned trip. The insured claimed for the loss of deposit or cancellation benefit.

The insurer repudiated the claim on the grounds that the insured was required to seek treatment at a hospital. The private MRI scanning service provider is not considered a hospital as it only provides imaging services.

The insurer referred to section 11 – Loss of Deposit or Cancellation which states:

"We will reimburse you up to the limit stated in the schedule of benefits, for loss of irrecoverable deposits or charges paid in advance or contracted to be paid for your trip only in the event of necessary and unavoidable cancellation by you arising from causes beyond your control after this insurance has been effected which is as a result of:
a. Your death, serious injury or serious illness or the death, serious injury or serious illness of your immediate family member. A death certificate must be obtained or written advice from the attending physician treating you or your immediate family member confirming the advisability to cancel the trip due to serious injury or serious illness....'

The said policy defines ‘serious injury’ or ‘serious illness’ as:

‘Serious injury’ or ‘serious illness’ whenever applied to you, is one which requires treatment by a medical practitioner in a hospital and which results in you being certified by that medical practitioner as unfit to travel or continue with your planned trip. When applied to the immediate family member, it shall mean injury or illness certified as being dangerous to life by a medical practitioner and which results in your discontinuation or cancellation of your planned trip’

However, the insured stated that the doctor had referred her to the private MRI scanning service provider as it was the fastest and most accurate way to diagnose her condition. The uncertainty in the availability of a hospital to conduct an immediate MRI scan was a major factor that influenced the doctor’s decision.

Investigation and Findings

The Mediator observed that there were two insured persons under the policy. However, the insurer had failed to consider the entitlement of the other insured who was also unable to travel as he had to look after the insured who was medically unfit to travel.

The Mediator further observed that a certified medical practitioner had confirmed that it was medically unsafe for the insured to travel and the insured was prescribed medication and also advised to rest. Hence, the insured was forced to cancel the planned trip in accordance with her doctor’s advice. The insured had also sought traditional treatment for her condition and could not proceed with the trip. The Mediator was of the view that the insurer had only focused on the fact that the insured did not seek treatment in a ‘hospital’ and ignored other factors such as the insured being referred to the MRI scanning service centre by the medical practitioner.

The Mediator noted that there was no clear definition of what constituted a ‘hospital’ in the policy jacket for the insured’s reference and understanding.

Settlement

The insurer agreed with the observations of the Mediator and accordingly revised their decision.
Takaful Cases

Case A17: Takaful Family - Claim not Within Certificate’s Definition of Accident

Background

The participant claimed that she had suffered injuries to her back as a result of a fall and claimed for accidental benefits under the Certificate.

The takaful operator repudiated the participant’s claim based on the radiologist’s report from ABC hospital which stated that the participant had ‘degenerative disc changes affecting especially C5-6 and C6-7 and lesser extent C4-5’ segments and this disability was not within the definition of Temporary Total Disability (TTD) or Temporary Partial Disability (TPD) as stated in the Certificate. The takaful operator was of the view that the disability had not resulted from an accident and thus the participant’s claim did not fulfil the Certificate’s definition of TTD or TPD. The Certificate defines TTD and TPD as follows:

3. Definitions:

3.1 Temporary Total Disability
Temporary Total Disability means that the person covered during the period of disability being wholly and continuously disabled and as a result of the disability, the person covered is unable to perform each and every material duty pertaining to the person’s covered occupation or business as of the date of the said accident.

3.2 Temporary Partial Disability
Temporary Partial Disability means that the person covered during the period of disability being partially and continuously disabled and as a result of the disability, the person covered is unable to perform one or more material duties pertaining to the person’s covered occupation or business as of the date of the said accident.

Investigation and Findings

The Mediator observed from the terms and conditions of the Certificate that the benefit (accidental benefit) is only payable if the TTD or TPD had resulted from an accident which directly or independently affected the participant and the participant is wholly or partially and continuously disabled to perform each and every material duty pertaining to her occupation or business.

The Certificate defined ‘accident’ as ‘caused by external and visible means resulting directly and independently of any other cause by a sudden, unintentional, unexpected, unusual and specific event that happens at an identifiable time and place.’ Therefore, in order for the benefit to be payable under the Certificate, the participant must show that the event which led to the claim fell within the definition of ‘accident’.
Based on the supporting documents submitted, the Mediator was unable to find or observe any external sign of injury sustained to indicate the occurrence of an accident notwithstanding the fact that the participant claimed that the injuries sustained was due to a fall. From the radiologist’s report prepared by the consultant radiologist of ABC hospital, the participant was diagnosed with ‘degenerative disc changes affecting especially C5-6 and C6-7 and lesser extent C4-5’ segments.

According to a medical website, ‘Degenerative disc disease’ is a disease of aging, and though for most people is not a problem; in certain individuals a degenerated disc can cause severe chronic pain if left untreated’. Thus, it can be inferred that the ‘degenerative disc’ is a disease and not a disability resulting from an accident.

In the absence of sufficient evidence to demonstrate that the disability was directly due to an accident, the Mediator was of the view that, based on medical evidence, the disability was actually due to degenerative disc changes.

Decision

The Mediator upheld the takaful operator’s decision.

Case A18: Takaful General (Non-Motor) – Theft Claim under All Risk Takaful

Background

The participant claimed for the loss of two (2) units of generator sets. The takaful operator offered to pay the participant a sum of RM22,920.00 as full and final settlement of the claim. The participant was dissatisfied with the settlement amount.

The participant contended that the settlement amount or compensation offered by the takaful operator should be based on the market value of the items stolen and that the depreciation applied must be fair and reasonable.

On the other hand, the takaful operator stated that the settlement amount of RM22,920.00 was arrived at after deducting the depreciation of 28% for wear and tear of the stolen items.

Investigation and Findings

The Mediator reviewed the supporting documents which also included the adjuster’s report and noted that the takaful operator’s decision to offer settlement at RM22,920.00 was not in accordance with the adjuster’s recommendation. According to the adjusters, the Certificate required that the settlement amount should be based on the market value less deductible amount, totalling RM27,000.00. However, the takaful operator had deducted the depreciation of 28% which is not spelt out in the Certificate.
The Mediator drew the takaful operator’s attention to the Bank Negara Malaysia’s Guideline on Claim Settlement Practices [JPI/GPI 14 (Consolidated)] where Para 4.3.1 states: “...a licensed loss adjuster provides independent professional assessment of the loss giving rise to a claim and ensures fair compensation to the claimants”. Para 4.4.1.2 of the said Guideline states “where there is no dispute as to liability, accept the recommendation made in the adjuster’s report”.

The Mediator questioned the takaful operator’s rationale in applying the depreciation of 28% based on the above Guideline and the case of Cheng Heng Loong13 where the Court of Appeal held that the insurer is bound by the adjuster’s report.

**Settlement**

The takaful operator agreed with the observations of the Mediator and accordingly settled the claim amicably with the participant.

**Case A19: Takaful General (Motor) – Theft Claim (participant passed away prior to the loss)**

**Background**

The participant obtained a motor certificate from the takaful operator. Upon the demise of the participant, his wife could no longer afford to pay the loan instalments for the motorcycle and surrendered the vehicle to her nephew. The motorcycle was stolen while it was in the custody of the nephew. The participant’s wife claimed for the loss of the motorcycle that was still registered in her late husband’s name.

The takaful operator repudiated the claim based on their findings that the participant’s death on 2/1/2012 (prior to the renewal of the motor certificate) was not disclosed to the takaful operator at the time of renewal of the motor certificate.

**Investigation and Findings**

The Mediator noted from the evidence adduced that the participant had passed away on 2/1/2012. As the hire purchase loan was still outstanding with the bank, the legal ownership of the motorcycle was not transferred to the participant’s nephew and therefore remained in the name of the participant. However, the participant’s wife had renewed the motor certificate’s coverage for a one year period, i.e. from 9/4/2012 to 8/4/2013. Based on the police report lodged by the nephew, the loss of the insured motorcycle had occurred on 22/10/2012, that is, after the demise of the participant on 2/1/2012.

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13 In the case of Cheong Heng Loong Goldsmiths (KL) Sdn Bhd & Anor v. Capital Insurance Bhd & Anor [2004] 1 MLJ 353, the Court of Appeal held that the adjuster had prepared their report in their capacity as the insurer’s agent. Thus, the law regards the adjuster’s report as the insurer’s own document and any finding therein bound the insurer. In that instance, the adjuster found that the claim was genuine/not fraudulent and the court held that the insurer was bound by the finding accordingly.
The Mediator observed from the vehicle registration card that the legal owner of the insured motorcycle was the participant and there was no evidence of transfer of ownership. The participant’s wife, who had no insurable interest in the insured motorcycle, had nevertheless renewed the road tax and the motor certificate after the demise of the participant.

The participant’s wife alleged that she was advised by the takaful operator that she could renew the motor certificate even though the participant had passed away. In this regard, the Mediator had requested the participant’s wife to provide proof, i.e. the name of officer in charge, agent’s name, etc. on her allegation to enable further investigation to be carried out with the takaful operator. However, the participant’s wife could not show any documentary evidence to support her allegation against the takaful operator. The Mediator was of the view that mere allegation would not suffice to indicate that the takaful operator’s personnel had given the wrong advice to their customers.

**Decision**

The Mediator upheld the takaful operator’s decision.

**BANKING**

**Cash Deposit Machine (CDM)**

**Case B01: Excess Money Credited to Account Due to Faulty CDM**

**Background**

Ms Y alleged that she made three separate cash deposits of RM5,000.00 each at ABC Bank’s CDM. She claimed that the three deposits were successful and the receipts issued by the CDM showed that the sum of RM15,000.00 was credited to her savings account. However, ABC Bank informed Ms Y that the bank’s records revealed that only one deposit of RM5,000.00 was successful. ABC Bank proceeded to recover the excess sum of RM10,000.00 from Ms Y which the bank stated was erroneously credited to her account. Ms Y claimed that she had successfully deposited a total sum of RM15,000.00 and produced the receipts as proof of the sum deposited.

**Investigation and Findings**

ABC Bank’s investigation revealed that a ‘system error’ had occurred during a system enhancement exercise that was performed at some of ABC Bank’s CDMs at the material time. The error, which occurred for a period of two hours, had affected the particular CDM where Ms Y had performed her deposits and several other CDMs too. The Mediator examined the CDM electronic journal and found that Ms Y had made three deposits of RM5,000.00 each at the affected CDM. The first and second deposit attempts were rejected and the CDM had returned the cash. However, due to the temporary system error, the amount that was credited to Ms Y’s account on the first two attempts (totalling RM10,000.00) was not automatically reversed from her account. Only the final deposit of RM5,000.00 was successful and the amount was credited to her account. The cash position of the CDM was balanced and there was no excess cash.
The closed circuit television (CCTV) recording of the transactions performed by Ms Y was viewed by the Mediator. The CCTV footage revealed that during the first deposit attempt, the cash of RM5,000.00 was returned by the CDM. Ms Y collected the ‘returned’ cash and reinserted it into the CDM. The CDM processed the transaction and again returned the cash. The ‘returned’ cash was reinserted into the CDM for the third time and was successfully accepted. The CCTV recording clearly showed that only one deposit attempt was successful as reflected in the CDM’s electronic journal. It was therefore obvious that only RM5,000.00 was accepted and deposited into Ms Y’s account and not RM15,000.00.

**Decision**

The Mediator upheld ABC Bank’s decision.

**Case B02: Cash Deposited at CDM not Credited into Account**

**Background**

Mr X’s brother deposited RM1,000.00 into Mr X’s savings account at KCP Bank’s CDM. Mr X’s brother claimed that the deposit was successful but the CDM had failed to issue a receipt. When Mr X checked his statement of account, he discovered that the amount was not credited to his savings account. He lodged a complaint at KCP Bank. KCP Bank rejected the claim on the basis that the deposit transaction of RM1,000.00 was cancelled by the depositor, Mr X’s brother.

**Investigation and Findings**

On examination of the CDM’s audit trail, the Mediator noted that a sum of RM1,000.00 was successfully inserted and processed by the CDM. At the final stage of the transaction, the CDM had requested for a confirmation of the deposited amount. However, no response was received within the allocated time, and as a result the transaction was ‘timed-out’ and cancelled. As the transaction was incomplete, the CDM automatically returned the deposited cash of RM1,000.00. The cash position of the CDM which was balanced showed there was no excess cash. The Mediator concluded that Mr X’s brother had most likely left the CDM without completing the transaction and the cash ‘returned’ by the CDM was taken by a third-party.

**Decision**

The Mediator upheld KCP Bank’s decision on the grounds that the onus is on the depositor to ensure that he completes the transaction within the stipulated time allowed. When the transaction is successfully completed, it is in the interest of the depositor to collect the deposit receipt issued by the CDM.
Automated Teller Machine (ATM)

Case B03: Cash Partially Dispensed by ATM

Background

Mr C, a customer of DEF Bank, attempted to withdraw RM1,000.00 at one of DEF Bank’s ATM. After inserting his ATM card and entering the details of the transaction, Mr C received only RM500.00. On checking his account balance, he discovered that RM1,000.00 had been deducted from his account.

Investigation and Findings

DEF Bank’s investigation revealed that Mr C’s withdrawal of RM1,000.00 was successful and 20 pieces of RM50.00 notes were dispensed. The ATM journal report and audit trail also revealed that the ATM had operated smoothly with no indication of mechanical fault at the material time. DEF Bank’s ATMs are equipped with a cash retract function whereby dispensed cash that is not removed from the dispenser is retracted by the ATM after 30 seconds. In the case of Mr C, there was no record of any cash retracted by the ATM, and there was no excess cash found in the ATM.

The Mediator, upon examining the ATM Control Log Report, noted that several incidents such as ‘no notes dispensed’ and ‘bills dispensed, but not detected’ were recorded by the ATM. There were also a high number of soiled/rejected notes found in the purge bin.

The closed circuit television (CCTV) recording of the disputed transaction showed that Mr C had removed cash from the dispenser before he left the area and the cash dispenser was empty at that juncture. It was also observed 2 to 3 seconds later, another customer had approached the same ATM and was seen removing cash from the cash dispenser, before he commenced his transaction. The Mediator observed that only a part of the total sum withdrawn was dispensed by the ATM to Mr C and the remaining cash was only dispensed a few seconds later, after Mr C had left the ATM. It was likely that a mechanical fault at the dispenser could have caused the partial dispensation of cash.

Decision

The Mediator revised DEF Bank’s decision and instructed the bank to pay Mr C the balance sum of RM500.00.
Case B04: Delay in Retraction of Cash by ATM

Background

Mr P attempted to withdraw RM1,600.00 at TFC Bank’s ATM at a Hypermarket. The withdrawal was rejected as the transaction amount had exceeded the maximum dispensation amount of RM1,000.00 allowed per transaction. He then made a second attempt to withdraw RM1,200.00, but the transaction was also unsuccessful. His third withdrawal attempt for RM1,000.00 was accepted, but Mr P alleged that the ATM did not dispense any cash and he did not ‘hear the sound of the cash being counted’ by the said ATM. Suspecting that the ATM was faulty, Mr P moved to another ATM to perform a withdrawal. On checking his savings account balance, he discovered that RM1,000.00 had been deducted from his savings account.

Investigation and Findings

The ATM’s records indicated that Mr P’s first and second withdrawals were unsuccessful. According to TFC Bank’s ATM electronic journal, Mr P’s third attempt to withdraw RM1,000.00 was successful and 20 pieces of RM50.00 notes were dispensed. The cash was dispensed 3 seconds after the card was retrieved by Mr P but the cash was only taken 35 seconds later. There was no record of any irregularities or cash retractions during Mr P’s third withdrawal attempt.

The Mediator noted that TFC Bank’s ATM retraction function would only be activated if the dispensed cash was not taken within 40 seconds, while the time set by other bank’s for cash retraction was normally 30 seconds. The Mediator was of the view that the retraction function of TFC Bank should also be set to 30 seconds to provide adequate protection for customers performing cash withdrawals at TFC Bank’s ATMs.

TFC Bank confirmed that the closed circuit television (CCTV) recording of the disputed withdrawal had been overwritten. On this note, the Mediator brought to attention the Bank Negara Malaysia’s Guideline on the Provision of Electronic Banking (e-banking) by Financial Institutions (BNM/RH/GL-008-10), which prescribes that banks should install closed circuit camera or transaction-triggered cameras at strategic locations with adequate lighting, and the retention period of recordings should be established and maintained. TFC Bank had failed to preserve the CCTV footage of the disputed transaction making it impossible for the Mediator to ascertain what had transpired during Mr P’s cash withdrawal at the ATM.

The Mediator was of the view that the error messages displayed on the ATM screen during Mr P’s first two unsuccessful withdrawal attempts had led him to think that the ATM was out of order. Thus, Mr P must have left the ATM without waiting for the cash, and the cash that was eventually dispensed could have been taken by a third-party.

Decision

The Mediator revised TFC Bank’s decision and the claim was apportioned between the parties.
Case B05: Customer Leaves ATM without Waiting for Cash to be Dispensed

Background

Mr Z, a customer of LYL Bank, attempted to withdraw RM2,000.00 from TUV Bank’s ATM, through the shared ATM network (MEPS). When his first withdrawal attempt was unsuccessful, he made a second attempt to withdraw RM1,500.00. The second withdrawal was also rejected and the ATM screen displayed the message ‘exceeded the permitted amount’. Mr Z left the ATM thinking that the withdrawal was unsuccessful based on the message displayed and also because he did not ‘hear the sound of the cash being counted’ by the said ATM. However, upon checking his account balance at another ATM, Mr Z discovered that RM1,500.00 had been deducted from his savings account.

Investigation and Findings

TUV Bank’s ATM records revealed that Mr Z’s first withdrawal attempt for RM2,000.00 was unsuccessful as it exceeded the maximum dispensation amount of RM1,500.00 allowed per transaction. According to the ATM electronic journal records, Mr Z’s second withdrawal was successfully executed and 30 pieces of RM50.00 notes totaling RM1,500.00 were dispensed. The cash was dispensed 4 seconds after the card was retrieved and it was taken 8 seconds later. There were no discrepancies or cash retraction recorded during the withdrawal and the ATM cash balancing showed no excess cash.

The closed circuit television (CCTV) recording revealed that after Mr Z had retrieved his card from the ATM, he immediately moved to the next ATM without waiting for the cash to be dispensed. The CCTV recording showed that the dispensed cash was taken by an unknown party.

The Mediator concluded that Mr Z did not wait for the ATM to dispense the cash and was therefore responsible for the loss of RM1,500.00.

Decision

The Mediator upheld TUV Bank’s decision.

Case B06: Delay in ATM Transaction

Background

Mr C attempted to withdraw RM600.00 from DEF Bank’s ATM located at a petrol station. Mr C claimed that he waited for some time at the ATM for the cash to be dispensed but the cash and the transaction slip were not dispensed by the ATM. He did not ‘hear the sound of the cash being counted’ by the said ATM. Mr C left the ATM after a petrol attendant informed him that the said ATM was ‘out-of-service’. Mr C discovered later that RM600.00 had been deducted from his savings account when he checked his account statement.
**Investigation and Findings**

According to DEF Bank’s ATM electronic journal records, Mr C’s withdrawal was successfully executed and 12 pieces of RM50.00 notes, totaling RM600.00, were dispensed by the ATM. The ATM Journal and the host report revealed that there was no occurrence of dispenser error or cash retraction at the material time. The ATM cash balancing also showed no excess cash.

The Mediator examined the ATM electronic journal and noted a 2½ minute gap between the start of the transaction and the ATM prompt for the withdrawal amount. It is likely that the unusual length of time taken to process the transaction had led Mr C to assume it was unsuccessful, and he left the ATM immediately after retrieving his card. Furthermore, the electronic journal also showed that an ATM error had occurred prior to the disputed transaction.

DEF Bank was unable to furnish the closed circuit television (CCTV) footage of the disputed transaction due to a system malfunction on that day. The CCTV recording is vital as it could have shown what had transpired at the ATM during Mr C’s cash withdrawal attempt, and the identity of the third-party who had probably taken the cash.

**Settlement**

DEF Bank agreed with the Mediator’s observations and the dispute was amicably resolved between the parties.

**Case B07: Unauthorised ATM Withdrawal Performed Overseas**

**Background**

Mr A returned to Malaysia from the Philippines on 21/1/2013. On 30/1/2013, he discovered several unauthorised ATM withdrawals totalling RM20,204.87 performed in the Philippines from 21/1/2013 to 30/1/2013. Mr A disputed the unauthorised transactions and claimed for the loss of RM20,204.87 withdrawn from his account. He contended that CDE Bank should have detected the irregularities based on the abnormal cash withdrawal patterns and had failed to alert him immediately. Mr A claimed that he did not lose his ATM card and he had never authorised anyone else to use his ATM card. However, Mr A admitted that he had performed a few withdrawal transactions at ATMs while he was in the Philippines.

CDE Bank rejected the claim based on their investigations which revealed that the disputed ATM withdrawals performed at three banks in the Philippines were done using a valid ATM chip card and an authorized PIN, which was known to the cardholder only. However, CDE Bank was unable to produce the closed circuit television (CCTV) recordings for any of the disputed transactions.
Investigation and Findings

The Mediator, after reviewing the available evidence, observed that the disputed withdrawals totaling RM20,204.87 had occurred continuously over nine days in the Philippines, after Mr A had returned to Malaysia. CDE Bank confirmed that the ATMs in the Philippines had read the customer’s data from the magnetic-stripe of the ATM card which could be cloned, instead of the chip. The bank’s records further revealed that there were ATM withdrawals performed around the same time on 24/1/2013 and 28/1/2013 in Malaysia as well as in the Philippines using the same ATM card.

The Mediator noted that after Mr A had returned to Malaysia, he had performed ATM withdrawals on a particular day and these were not disputed. The Mediator opined that it was not possible for Mr A to perform ATM withdrawals, using the same card, both in the Philippines and in Malaysia on the same day, and within a short time gap of one and a half hours. There were also no alerts from CDE Bank to notify Mr A of the unusual cash withdrawal patterns. It was further noted that the ATM electronic journals provided by the three overseas banks were inadequate to determine whether the disputed transactions were performed using a genuine ATM card or a cloned card. In light of the above, the Mediator opined that CDE Bank had failed to take adequate precautionary measures to safeguard their customers’ accounts from unauthorised withdrawals at overseas ATMs. The Mediator concluded that Mr A did not breach the ATM card terms and conditions as his ATM card and PIN were not compromised at the material time.

Decision

The Mediator revised CDE Bank’s decision and allowed the claim.

Contractual Issues

Case B08: Penalty Interest Charged by Housing Developer

Background

Mr J obtained a housing loan from KK Bank to finance the purchase of a condominium from a housing developer. The Letter of Offer was accepted by Mr J and the bank instructed their solicitor to proceed with the loan documentation. However, due to the delay in the disbursement of the loan by KK Bank, penalty interest was imposed by the developer. Mr J claimed that KK Bank’s failure to release the loan in a timely manner to the developer had resulted in the imposition of the penalty charges on him. KK Bank rejected the claim on the grounds that they had adhered to their standard operating procedures on the release of progress payments to the developer, and denied any responsibility for the delay in the loan disbursement.
Investigation and Findings

Upon a detailed review of the chronology of events, the Mediator found that there was a delay on the part of KK Bank’s appointed solicitor in the preparation and execution of the loan documents. Further delays were contributed by discrepancies found in the loan documentation prepared by the solicitor. The delay in the preparation and execution of the loan documentation had resulted in the late disbursement of the progressive payments by KK Bank. The Mediator was of the view that KK Bank was to be held accountable for the delay caused by its solicitor in the preparation and execution of the loan documentation since the solicitor was an agent of KK Bank.

Decision

The Mediator revised KK Bank’s decision and held that the penalty interest imposed on Mr J by the housing developer was to be borne by the bank.

Case B09: Error in Monthly Loan Instalments

Background

Ms G obtained a housing loan for RM80,000.00 from DEF Bank. According to the Letter of Offer issued to Ms G, the stipulated monthly installment was RM700.00 and the loan was to be repaid over a period of 20 years. However, upon full release of the loan to the vendor, DEF Bank had issued a ‘Notice of Drawdown’ to Ms G which erroneously stipulated a lower monthly instalment of RM500.00.

After paying the monthly instalments in accordance with DEF Bank’s ‘Notice of Drawdown’ for almost 10 years, Ms G received a notification from DEF Bank to inform her that the monthly instalments would be reinstated to RM700.00 per month, as per the original Letter of Offer. DEF Bank also requested Ms G to make a lump sum payment of RM10,000.00 to cover the shortfall in the principal payment arising from the lower monthly instalments paid over the past 10 years.

Investigation and findings

DEF Bank acknowledged its error and offered to refund the interest charged on the unpaid principal but it was rejected by Ms G.

Settlement

After several mediation sessions, DEF Bank re-computed the interest charged on the unpaid principal portion and utilised the same towards reduction of the principal portion. Ms G also agreed to pay the said shortfall in the principal amount. The principal loan balance was adjusted downwards and the loan account was restituted as if the correct instalment of RM700.00 had been paid from the commencement of the loan repayments.

As a gesture of goodwill, DEF Bank offered an interest rate reduction which was accepted by Ms G and the dispute was amicably resolved between the parties.
Operational Issues

Case B10: Claim on a 1995 Fixed Deposit Certificate

Background

Mr T found two original fixed deposit (FD) certificates issued by BB Bank in 1995. He presented the two certificates to BB Bank for withdrawal, but his claim was rejected. Mr T was informed by the bank that there were no records of the two FDs in their system as the FDs had most likely been withdrawn. Mr T insisted that the bank furnish him with the relevant evidence to show that the FDs had been withdrawn.

Investigation and Findings

BB Bank was unable to produce the withdrawal vouchers because the transaction records had exceeded the bank’s records retention period of 7 years and the vouchers were no longer available for scrutiny. BB Bank also confirmed that there was no record that the proceeds of the two disputed FDs had been transferred to the Registrar of Unclaimed Monies. However, the bank was able to produce the original Letters of Indemnity executed by Mr T in 1996 declaring that he had lost the two disputed FD certificates and instructing the bank to pay the proceeds of the FDs together with accrued interest to him and undertaking to return the original FD certificates to the bank, if they were found. Based on the bank’s evidence, the two disputed FD certificates were reported lost in 1996 and payments were made pursuant to the Letter of Indemnity. As such, the original certificates presented by Mr T subsequently were no longer valid.

Decision

The Mediator upheld BB Bank’s decision.

Case B11: Photocopy of Fixed Deposit Receipt

Background

Ms P had a photocopy of a fixed deposit (FD) certificate for RM10,000.00 issued by LST Bank in November 1996. The FD was placed on a 12-month tenure, maturing in November 1997. Ms P was unable to produce the original FD as she had given it to her relative for safekeeping, before she left Malaysia. However, she had in her possession photocopies of the FD and pay-in slip as proof that money had been deposited with the bank. Ms P alleged that the FD was withdrawn without her knowledge and consent while she was living abroad for several years. She wanted LST Bank to produce documentary evidence and particulars of the FD withdrawal. LST Bank rejected the claim as Ms P could only produce a photocopy of the FD.
Investigation and Findings

Ms P had revealed to the bank that before she left the country, she had granted a power of attorney (PA) to her relative to manage, in her absence, all her assets and property, including the disputed FD. Ms P also revealed that her relative had only returned the photocopies of the FD and the pay-in slip to her for the FD placement made in 1996.

LST Bank attempted to trace the FD account from their system and audit trails based on the photocopies of the documents, but there was no record of the said FD in the bank’s system. LST Bank was also unable to produce the FD and the withdrawal-slip as such documents were destroyed in accordance with the bank’s record-retention policy. There was also no record to show that the proceeds of the FD had been transferred to the Registrar of Unclaimed Monies. LST Bank concluded that the FD had been withdrawn.

The Mediator after reviewing the evidence furnished by the parties concluded that as the FD produced by Ms P was a photocopy and not the original FD, it was highly likely that the original FD could have been presented for withdrawal based on the PA granted by Ms P to her relative.

Decision

The Mediator upheld LST Bank’s decision

Case B12: Customer Suffers Losses Investing in Bank’s Products

Background

Madam A had established a long-standing relationship with CS Bank for over 30 years, where she maintained various banking and investment accounts. In year 2005, she alleged that a sales staff of CS Bank had recommended her various investment products which promised good returns. Madam A claimed she had no knowledge in investments and was a complete novice in this area. She relied on the sales staff’s advice and proceeded to invest RM600,000.00 in the bank’s various investment products.

As Madam A travelled frequently, she had pre-signed a few ‘Redemption Request’ Forms to enable the bank’s sales staff to redeem her investments during her absence. She alleged that the sales staff had made several fund switches without her consent, resulting in losses of about RM100,000.00. Madam A sought compensation for the alleged misrepresentation and mismanagement of her investments by the sales staff.

CS Bank refuted Madam A’s allegation and explained that the investments were made based on Madam A’s risk appetite. The bank stated that a risk profiling was conducted on Madam A and her risk appetite had changed from conservative to moderately aggressive, whereby she was willing to accept moderate levels of capital growth and higher levels of investment risk and volatility over the short, medium and long term.
Investigation and Findings

CS Bank’s records showed that the risk profiling and the investments documents were endorsed by Madam A to declare that she had sufficient knowledge about the product, its features and associated risks. Madam A had also attended in-house seminars which were held by the bank to share information on certain investments with potential investors. Additionally, fact sheets on the products were given to Madam A before she proceeded with the investments. Madam A had experience in investment prior to this whereby she had invested in unit trusts in 2001.

The Mediator observed that Madam A’s investments had performed well and yielded good returns during the years 2004 to 2007. However, the performance on selected investments had declined resulting in losses of about RM100,000.00 due to the adverse global market conditions in 2008.

The Mediator was of the view that every investment has its own inherent risks and investors, including Madam A, should be fully aware of it. In the case of Madam A, some of her investment portfolios were adversely affected following the global financial crisis in 2008. The global financial crisis and the investment losses were beyond the bank’s control.

Decision

The Mediator upheld CS Bank’s decision.

Case B13: Interbank Giro Fund (IBG) Transfer

Background

Mr Z wanted to settle his hire purchase loan of RM17,000.00 with ABC Bank. In October 2011, Mr Z went to XYZ Bank and made an over-the-counter application to transfer RM11,000.00 from his savings account with XYZ Bank to ABC Bank, to settle part of his loan via an interbank giro (IBG) fund transfer. The following day, Mr Z went to ABC Bank and paid the balance of RM6,000.00 to fully settle his hire purchase loan.

One year later, in October 2012, Mr Z discovered that the said IBG fund transfer was unsuccessful. As Mr Z’s loan with ABC Bank was not fully settled, he incurred additional interest of RM600.00 on the unpaid portion of the loan. Mr Z contended that both ABC Bank and XYZ Bank should be held responsible for their failure to notify him of the unsuccessful IBG transfer, and he should not be held liable for the additional interest incurred on his loan. However, the claim was rejected by the banks on the grounds that IBG fund transfers are system driven and beyond the banks’ control, and Mr Z ought to have monitored and checked with XYZ Bank on the status of the IBG fund transfer.
Investigation and Findings

There were no telephone calls or notices sent to Mr Z by XYZ Bank to notify him that the IBG fund transfer to ABC Bank had failed. XYZ Bank had merely refunded the amount to Mr Z’s account in October 2011.

ABC Bank failed to inform Mr Z that he should wait for the clearance of the IBG fund transfer before he settled his hire purchase loan. Instead, ABC Bank had accepted his over-the-counter payment without establishing the status of the IBG fund transfer.

Decision

The Mediator was of the view that Mr Z was not expected to be aware of the ABC Bank and XYZ Bank’s internal procedures regarding the settlement of loans through IBG fund transfers. From the outset, he was not given proper advice by both the banks in regard to the manner in which the loan could be settled. Mr Z’s only intention was to fully settle his loan balance in October 2011. However, the IBG fund transfer was not successful and he was not properly informed.

The Mediator revised ABC Bank and XYZ Bank’s decisions and apportioned the additional interest incurred on the hire purchase loan equally between the banks on the grounds that the banks’ systems and procedures with regard to IBG transfers were beyond Mr Z’s control and the two banks had failed to advise Mr Z on the unsuccessful transfer.

Case B14: Payment of Cash to a ‘Stranger’ over the Counter

Background

Mr T presented two cheques totaling RM10,000.00 for encashment over-the-counter at CDE Bank. Mr T claimed that CDE Bank wrongfully handed the RM10,000.00 in cash to a ‘stranger’ who stood next to him when he was at the counter. Mr T alleged that the teller had handed only RM500.00 to him being the third cheque that was drawn by him over the counter.

Mr T claimed he only realised that the teller had not paid him the proceeds of his two other cheques amounting to RM10,000.00, after he had left the bank. Mr T went to CDE Bank the following day to lodge a complaint that the RM10,000.00 was not paid to him. CDE Bank informed Mr T that it was his fault for not collecting the cash from the teller and the bank could not be held responsible. Mr T however claimed that he did not authorise the teller to hand over the cash of RM10,000.00 to the ‘stranger’.

CDE Bank rejected Mr T’s claim on the following grounds:

i) The closed circuit television (CCTV) footage showed that Mr T and the ‘stranger’ were seated together at the banking hall, and were engaged in a conversation before they approached the counter together.
ii) The payment of RM10,000.00 in cash to the ‘stranger’ was done in the presence and with the full knowledge of Mr T. CDE Bank averred that Mr T had instructed the teller to hand over the cash of RM10,000.00 to the ‘stranger’. Mr T did not protest when the cash was given to the ‘stranger’ at the material time. Mr T could have stopped the payment of the cash to the ‘stranger’ but he failed to do so. The bank clarified that payments will not be made to another person without the express consent of the customer. In this instance, Mr T had instructed that the cash be handed over to the ‘stranger’ who was with him at the counter.

iii) Mr T had also admitted in his police report that he had brought the ‘stranger’ to the bank and paid the sum of RM10,000.00 in cash to the latter for the purchase of some product.

iv) CDE Bank was of the view that Mr T had no basis to claim the loss of his RM10,000.00 from the bank arising from the failed business deal between him and the ‘stranger’.

Investigation and Findings

At the mediation session, the CCTV recording was viewed in the presence of the parties. It was observed from the CCTV recording, that Mr T and the ‘stranger’ had walked into the banking hall together and they were engaged in conversation throughout the duration of the CCTV recording. Both Mr T and the ‘stranger’ appeared to know each other. It was evident from Mr T’s police report that he had intended to pay the sum of RM10,000.00 to the ‘stranger’ for the purchase of some product.

The Mediator concluded that Mr T had the opportunity to stop the teller from handing the RM10,000.00 to the ‘stranger’ but he did not do so.

Decision

The Mediator upheld CDE Bank’s decision.

Case B15: Alteration to a Post-Dated Cheque

Background

Mr Y alleged that JJ Bank had wrongfully cleared his post-dated cheque for RM1,000.00 that was issued to a real estate property agent for a property rental transaction. According to Mr Y, the date on the cheque written as ‘19/4/2012’ was fraudulently altered by the agent to ‘09/4/2012’.

Mr Y contended that JJ Bank ought to have spotted the fraudulent alteration to the date on the cheque and contacted him to verify the date of the cheque before clearing it. Mr Y lodged a police report alleging that as a result of JJ Bank’s negligence, he had lost RM1,000.00 to the fraudster. JJ Bank on the other hand averred that the alleged alteration on the date of the cheque was not apparent. JJ Bank further stated that the collecting bank did not tag the cheque for any apparent alteration. Therefore, the cheque was paid out in good faith and in the ordinary course of business.
Investigation and Findings

During the mediation session with both parties, JJ Bank produced the physical cheque for RM1,000.00 dated 09/4/12, issued in favour of the agent. The Mediator noted, upon a cursory examination of the physical cheque, that the alleged alteration to the date of the cheque from ’19/04/12’ to ’09/04/12’ was not apparent. The figure ‘0’ in the first box of the date column on the physical cheque (that is, ’09’) was well written with no trace of any deliberate alteration to the figure ‘0’. The cheque was also not tagged for any apparent alteration by the collecting bank.

The Mediator further observed, from JJ Bank’s chronology of events, that the cheque for RM1,000.00 was deposited and cleared on the same day, and the proceeds of the cheque were withdrawn on the following day before Mr Y could place a ‘stop payment’ request to JJ Bank.

The Mediator concluded that JJ Bank had cleared and paid the cheque in good faith and in the ordinary course of business. The Mediator further opined that Mr Y had intended to pay the agent, albeit at a later date; that is, 19/4/2012 instead of 09/4/2012.

Decision

The Mediator upheld JJ Bank’s decision.

Credit Card

Case B16: Stolen Credit Card

Background

Mr A purchased for his wife a branded handbag for RM3,008.00 in December 2011 at XX Store using his CC Bank Master Card, with payment to be settled via 10 interest-free installments. The said handbag was subsequently stolen from his wife’s car on 15/3/2012. Mr A who had already settled three installments refused to pay the remaining seven instalments after the theft of the branded handbag. Mr A contended that CC Bank had failed in its responsibility to advise him to purchase a protection plan or insurance coverage for the purchased handbag. Mr A requested for a waiver on the remaining seven installments. Mr A complained that CC Bank had refused to settle the dispute amicably even though he was a loyal customer of the bank with a good payment record.

CC Bank declined Mr A’s request to waive the disputed amount as the transaction was properly approved in accordance with Master Card International Acceptance Procedures. The bank does not have any purchase protection plan or insurance for items purchased. CC Bank stated that it is the cardholder’s responsibility to purchase his own protection plan or insurance for the branded handbag.
Investigation and Findings

During the mediation session, Mr A offered to settle the dispute by paying RM1,000.00 as a full and final settlement to the bank. However, CC Bank rejected the proposal as the bank was of the view that it is the responsibility of Mr A to purchase the insurance coverage for the branded handbag.

Upon detailed study of the above case, the Mediator disagreed with Mr A’s contention that he was not liable for the further instalments because his wife was unable to use the branded handbag after it was stolen. The Mediator noted that CC Bank had already paid the full purchase price to the merchant and that the bank should not be penalised as they had not contributed in any way to the loss suffered by Mr A.

Decision

The Mediator upheld CC Bank’s decision. However, as a token of goodwill, CC Bank agreed to waive all late payment and finance charges incurred on the disputed amount.

Case B17: Use of Credit Card in Scratch-and-Win Contest

Background

Mr A is the principal credit cardholder of AA Bank with a credit limit of RM10,000.00 and his daughter, Ms B, is a supplementary cardholder. Ms B alleged that she was scammed by fraudsters at the Mid Valley KTM Komuter station, through a ‘scratch-and-win’ contest. Ms B claimed that she was forced to drink some mineral water upon which she became unaware of performing the cash withdrawal at YYY Forex and also purchasing gold at XXX Jewellery using her credit card, as follows:

<table>
<thead>
<tr>
<th>DATE</th>
<th>MERCHANT</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>26/7/12</td>
<td>YYY Forex</td>
<td>RM4,000.00</td>
</tr>
<tr>
<td>26/7/12</td>
<td>XXX Jewellery</td>
<td>RM5,000.00</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>RM9,000.00</td>
</tr>
</tbody>
</table>

Ms B could not recall when she had made the cash advance withdrawal and the gold purchase or when these were handed over to the fraudsters. She claimed that she only realised she was cheated when she arrived at CC Mall to meet her friend, to whom she narrated the entire incident. She admitted that her credit card was still in her possession. Ms B lodged a police report on 26/07/2013 at 10.10 pm. Ms B contended that she should not be liable for the disputed amount of RM9,000.00 as she did not authorize or benefit from the transactions.
Investigation and Findings

AA Bank confirmed that the credit card transactions were performed using Ms B’s genuine EMV chip-based card. The merchant produced the sales draft for the purchase of gold by Ms B on 26/7/2013. The bank succeeded in retrieving the receipt from YYY Forex for the cash advance done on 26/7/2013. The bank stated that in order for Ms B to withdraw cash at YYY Forex, Ms B only needed to produce her identification card (IC) and her credit card, and sign on the receipt. AA Bank contended that Ms B had performed the withdrawal voluntarily and that the cardholder was bound to safeguard her credit card and credentials at all times.

The Mediator, upon a detailed study of the dispute, concluded that Ms B was liable for the unauthorized transactions totaling RM9,000.00 as the alleged unauthorized transaction at XXX Jewellery was carried out using Ms B’s genuine EMV chip card. It was also noted that the merchant was able to produce the sales draft, a photocopy of Ms B’s IC and credit card as proof of purchase of the gold. The cash advance of RM4,000.00 at YYY Forex was also in order, based on the IC and credit card verification performed prior to YYY Forex’s approval of the cash advance, and Ms B’s signature on the receipt as proof of the cash being received by her.

The Mediator was of the view that AA Bank was not liable and should not be penalised as the bank had not contributed in any way to the losses suffered by Ms B.

Decision

The Mediator upheld AA Bank’s decision. However, AA Bank agreed to waive all finance and late charges incurred on the disputed amounts.

Internet Banking Fraud

Case B18: Phishing Scam

Background

Mr A, user of XXX Bank’s internet banking facility since 2005, disputed an online money transfer of RM4,909.00 via Western Union on 6/4/2010. Mr A alleged that the said transfer was unauthorised as it was performed without his knowledge and consent. He also denied responding to any phishing e-mails/links.

XXX Bank rejected the claim on the grounds that the disputed transaction was successfully executed with Mr A’s valid credentials (username, password) which are only known to Mr A and the transaction authorization code (TAC) which was sent to Mr A’s mobile phone. Mr A denied receiving the TAC on his mobile phone. Mr A contended that XXX Bank should have alert mechanisms in place to detect suspicious transactions which did not match his usual transaction pattern. Mr A expected XXX Bank to contact him or send a short message service (SMS) to his phone to obtain his confirmation or verification of the unusual transaction, before the money was transferred via Western Union.
Investigation and Findings

XXX Bank’s investigation revealed the following disputed transactions were performed on 6/4/2010.

<table>
<thead>
<tr>
<th>DATE</th>
<th>TIME</th>
<th>TRANSACTION TYPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/4/2010</td>
<td>18:45:37pm</td>
<td>Username and password used to login</td>
</tr>
<tr>
<td>6/4/2010</td>
<td>18:45:59pm</td>
<td>TAC request was made and sent to Mr A’s mobile phone</td>
</tr>
<tr>
<td>6/4/2010</td>
<td>18:48:59pm</td>
<td>RM4909.00 transferred via Western Union</td>
</tr>
</tbody>
</table>

Based on XXX Bank’s records, the money transfer was processed in ‘Real Time Processing’ whereby the funds would be available for withdrawal by the beneficiary 15 minutes after the completion of the transaction. The bank furnished a confirmation obtained from Western Union which stated that the money was withdrawn by the beneficiary an hour after the money was transferred.

During the mediation session, XXX Bank furnished a confirmation from the Telecommunications Services Provider (Telco) that the TAC was delivered to Mr A’s mobile phone number. Mr A was reminded that it was his responsibility to ensure safekeeping of his mobile phone, sim card, and security credentials at all times, to prevent any third-party from accessing his mobile phone and/or sim card without his consent. XXX Bank also confirmed that there was no system failure or breach of security at the material time, and that the disputed transactions were successfully executed with Mr A’s essential credentials which were only known to him.

The Mediator observed during the mediation session that Mr A was unable to recall the circumstances leading to his username and password being compromised. It is Mr A’s duty to ensure and observe all security measures prescribed by XXX Bank to safeguard his credentials. The Mediator referred to Bank Negara Malaysia’s Guideline on Consumer Protection on Electronic Fund Transfer [BNM/GP11] dated 10 December 1998. Clause 15(1) of the Guideline prescribes:

**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.

It was noted that the said transaction did not trigger XXX Bank an alert despite the unusual transaction pattern. The bank ought to have an alert mechanism and a verification process for initial activation or registration of Western Union services. The bank had also allowed the same TAC to be used for both the registration of Western Union services and the transfer of monies.
It was also noted that XXX Bank did not send any post-alert notification to Mr A. This would have enabled Mr A to contact the bank upon the activation of the Western Union services and/or after the transfer was performed. These alerts could have helped to prevent the unauthorized transaction and/or withdrawal by the beneficiary in view of the one hour gap between the transfer and subsequent withdrawal by the beneficiary. The Mediator was of the view that XXX Bank should have put in place a suitable ‘Know Your Customer’ (KYC) measure since Mr A does not perform nor require such ‘Send Money via Western Union’ services.

Decision

The Mediator revised XXX Bank’s decision and apportioned the liability equally between the parties.
Consumer Awareness

Increased consumer awareness on FMB’s role, functions and jurisdiction as an alternative dispute resolution channel, and effective stakeholder engagement to foster closer working relationships with its Members, continued to be a key focus of FMB’s activities in 2013.

FMB participated in various seminars, exhibitions and briefings organised throughout Malaysia by Perbadanan Insurans Deposit Malaysia (PIDM), Persatuan Keselamatan Pengguna Kuala Lumpur (PKP) and Bank Negara Malaysia (BNM). The key objectives were to disseminate information and educate participants on FMB’s role as an alternative dispute resolution channel, the type of complaints which are within its jurisdiction, its operations and organisation setup, common issues faced by consumers in their dealing with financial service providers (FSPs), and the channels for consumers to lodge complaints.

Seminars & Events:

<table>
<thead>
<tr>
<th>No</th>
<th>Events</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Hotel Seasons View, Kuantan, Pahang</td>
<td>5-6 March</td>
</tr>
<tr>
<td>2</td>
<td>Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Ritz Garden Hotel, Ipoh, Perak</td>
<td>18 April</td>
</tr>
<tr>
<td>3</td>
<td>PIDM, Puteri Pacific Hotel, Johor Bahru, Johor</td>
<td>23 May</td>
</tr>
<tr>
<td>4</td>
<td>Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Ancasa Resort &amp; Spa, Port Dickson, Negeri Sembilan</td>
<td>23 May</td>
</tr>
<tr>
<td>5</td>
<td>Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), La Boss Hotel, Melaka</td>
<td>29 May</td>
</tr>
<tr>
<td>6</td>
<td>SMIDEX 2013 - SME’s Changing the Game</td>
<td>12-14 June</td>
</tr>
<tr>
<td>7</td>
<td>PIDM, SSM Building, KL Sentral</td>
<td>13 June</td>
</tr>
<tr>
<td>8</td>
<td>PIDM, RH Hotel Sibu, Sarawak</td>
<td>3 July</td>
</tr>
<tr>
<td>9</td>
<td>PIDM, Hotel Bayview, Melaka</td>
<td>29 August</td>
</tr>
<tr>
<td>10</td>
<td>PIDM, Sunway Hotel Seberang Jaya, Pulau Pinang</td>
<td>4 September</td>
</tr>
<tr>
<td>11</td>
<td>PIDM, The Zenith Hotel, Kuantan, Pahang</td>
<td>11 September</td>
</tr>
<tr>
<td>12</td>
<td>PIDM, SSM Building, KL Sentral</td>
<td>24 September</td>
</tr>
<tr>
<td>13</td>
<td>Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Emerald Puteri Hotel, Sg Petani, Kedah</td>
<td>26 September</td>
</tr>
<tr>
<td>14</td>
<td>3rd Halal Fiesta Malaysia 2013 (HALFEST 2013)</td>
<td>2-6 October</td>
</tr>
<tr>
<td>15</td>
<td>PIDM, Hyatt Regency, Kota Kinabalu, Sabah</td>
<td>8 October</td>
</tr>
<tr>
<td>16</td>
<td>PIDM, Holiday Villa, Alor Setar, Kedah</td>
<td>23 October</td>
</tr>
<tr>
<td>17</td>
<td>PIDM, Swiss Garden Golf Resort &amp; Spa, Lumut, Perak</td>
<td>13 November</td>
</tr>
</tbody>
</table>
Participants:

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

The good turnout and active participation by the above groups during these talks was encouraging with positive feedback on the services rendered by FMB. Many questions were also raised with regard to banking and insurance complaints handled by FMB, its jurisdiction and independence in making decisions, the responsibilities of the FSPs and their agents.

A summary of the main issues raised is listed below.

**General**

- How does a consumer (outstation or local) lodge a complaint with FMB?
- How independent and impartial is FMB?
- Can FMB handle all banking / insurance complaints received from the public? If not, what are its limits?
- What is the timeframe for a case to be ‘closed’ by FMB?
- How many decision by FSPs are ‘upheld’ by FMB and how many are ‘revised or changed’ in favour of the complainant?
- How is mediation handled by FMB? What is the process?
- Where can a consumer find ‘case studies’ of previous complaints handled by FMB?
Banking Matters

• Will an ATM cardholder be compensated by the bank if an unauthorised ATM withdrawal is performed without the cardholder’s knowledge or consent and whilst the ATM card is still in the cardholder’s possession?
• Will complaints related to ATM withdrawals and personal loans (early settlement and bank charges) be entertained by FMB?
• Is FMB bound by the banking secrecy provision?

Insurance Matters

• What is the meaning of ‘time-barred’?
• Will FMB accept disputes on claims which are time-barred (that is, more than 6 years)?
• When can an insured make a claim under a motor policy for ‘total loss’ as against ‘cost of repairs’? In the event the claim is rejected by the insurer, can the insured lodge a complaint with FMB?
• How does one file a claim arising from a ‘hit-and-run’ motor accident when the identity of the driver or vehicle is not known?
• Will FMB register a claim rejected by the insurer on grounds of ‘late submission’?
• What does non-disclosure of ‘material facts’ mean? Is the insurer responsible for explaining such terms and conditions to the insured before the policy (agreement) is entered into?
• Why are ‘exclusions’ in policies not clearly explained or highlighted to the insured parties to avoid disputes in the future?
• Can an insured submit a statutory declaration on lost or misplaced original medical receipts to the insurer, before the matter is referred to FMB for mediation?
In 2013, the new Sports and Welfare Committee (aptly named i-Care) had organised various indoor games, social/welfare events and other activities for FMB Staff to encourage and foster teamwork and bonding, concern for the less privileged, and last but not least, an opportunity for staff to get away from it all - the stress and rigors of everyday work.

Based on its charter and budget, i-Care drew up a comprehensive and action-oriented programme for the year which included the quarterly celebration of staff birthdays, indoor and outdoor games that pitched the skills and creativity of teams against each other in friendly competition, a reach-out activity, a staff dinner and family day outing.

In April 2013, a campaign to collect used items (books and clothes) and cash donations from staff was initiated as part of i-Care's outreach activities. The books and cash were donated for the building of a library for the children of Mabul Island, Sabah (an initiative under the 'Telekung Project'), while the clothes collected were sent to needy families under the ‘Lahad Datu Insaniah Project’.
The highlight of the year was, without doubt the ‘FMB Annual Dinner 2013’, held on 24th November 2013 at the Royal Selangor Club, Kuala Lumpur. It was FMB’s first-ever, annual dinner organised for its staff and their spouses. Invited guests included the Chairman, Tan Sri Dato’ Seri Siti Norma binti Yaakob and other distinguished members of the Board. The arrival of staff and guests, dressed in their elegant best in line with the theme of the evening ‘Glitz & Glamour’, marked the start of an electrifying evening of free flowing food, non-stop entertainment, a karaoke competition and numerous lucky draws that guaranteed all staff went home as ‘winners’.

On 7th December, a half-day outdoor activity that included a treasure-hunt and exciting games for both adults and kids, followed by lunch, was organised at the Tasik Titiwangsa Recreational Park, Kuala Lumpur for the staff and their families. The turnout was excellent despite the drizzle which failed to dampen the spirits of the 60-odd enthusiastic participants, young and old, who joined in the fun and games.

The success of the events organised and huge staff turnout is testimony to the genuine camaraderie among the members of i-Care, the able leadership and commitment of the organising committee and the many unheralded volunteers who contributed to the success of the programmes. If the goal of 2013 was to spur staff to greater heights of productivity and promote bonding and teamwork, then we can indeed proudly vouch that our mission had been accomplished.
Our Members
(as at 31 December 2013)

**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. Alliance Islamic Bank Berhad
27. Al Rajhi Banking & Investment Corporation (Malaysia) Berhad
28. AmIslamic Bank 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 (11)**  
41. Affin Investment Bank Berhad  
42. Alliance Investment Bank Berhad  
43. AmInvestment Bank Berhad  
44. CIMB Investment Bank Berhad  
45. HwangDBS Investment Bank Berhad  
46. KAF Investment Bank Berhad  
47. Kenanga Investment Bank Berhad  
48. Maybank Investment Bank Berhad  
49. MIDF Amanah Investment Bank Berhad  
50. Public Investment Bank Berhad  
51. RHB Investment Bank Berhad  

**DEVELOPMENT FINANCIAL INSTITUTIONS (5)**  
52. Bank Rakyat  
53. Bank Pembangunan Malaysia Berhad  
54. Bank Perusahaan Kecil & Sederhana Malaysia Berhad (SME Bank)  
55. Bank Simpanan Nasional  
56. Export-Import Bank of Malaysia Berhad (EXIM Bank)  

**PAYMENT SYSTEM OPERATORS AND PAYMENT INSTRUMENT ISSUERS (2)**  
57. AEON Credit Service (M) Berhad  
58. Diners Club (Malaysia) Sdn Bhd  

**LIFE INSURANCE COMPANIES (9)**  
59. Allianz Life Insurance Malaysia Berhad  
60. AmLife Insurance Berhad  
61. AXA Affin Life Insurance Berhad  
62. Great Eastern Life Assurance (Malaysia) Berhad  
63. Hong Leong Assurance Berhad  
64. Manulife Insurance Berhad  
65. Sun Life Malaysia Assurance Berhad  
66. Tokio Marine Life Insurance Malaysia Berhad  
67. Uni.Asia Life Assurance 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. Lonpac Insurance Berhad
75. MSIG Insurance (Malaysia) Berhad
76. Multi - Purpose Insurans Berhad
77. Overseas Assurance Corporation (Malaysia) Berhad
78. Pacific & Orient Insurance Co. Berhad
79. Progressive Insurance Bhd
80. QBE Insurance (Malaysia) Berhad
81. RHB Insurance Berhad
82. The Pacific Insurance Berhad
83. Tokio Marine Insurans (Malaysia) Berhad
84. Tune Insurance Malaysia Berhad
85. Uni.Asia General Insurance Berhad

COMPOSITE INSURANCE COMPANIES (5)
86. AIA Berhad
87. Etiqa Insurance Berhad
88. MCIS Zurich Insurance Berhad
89. Prudential Assurance Malaysia Berhad
90. Zurich Insurance Malaysia Berhad

TAKAFUL OPERATORS (11)
91. AIA AFG Takaful Berhad
92. AIA PUBLIC Takaful Berhad
93. Etiqa Takaful Berhad
94. Great Eastern Takaful Berhad
95. Hong Leong MSIG Takaful Berhad
96. HSBC Amanah Takaful (Malaysia) Sdn Bhd
97. MAA Takaful Berhad
98. Prudential BSN Takaful Berhad
99. Sun Life Malaysia Takaful Berhad
100. Syarikat Takaful Malaysia Berhad
101. Takaful Ikhlas Sdn Bhd
A. JURISDICTION

Disputes on financial matters include:
(a) Insurance/Takaful claims; and
(b) Conventional banking/Islamic banking matters including credit/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/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 body corporate and underwritten within Malaysia.

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

(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/charge card holder (or a successor in title) who must be ordinarily resident in Malaysia or have been when the the policy/certificate was effected and/or conventional banking facility, Islamic banking facility, credit/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/charge cards, ATM cards and cheques of value RM25,000 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/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; 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/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 16B(1) of the Central Bank of Malaysia Act 1958.

(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 in relation to motor and fire insurance policies and takaful certificates, RM100,000 in relation to other types of insurance policies or takaful certificates, and RM5,000 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 (except for fraud cases involving payment instruments, credit cards, charge cards, ATM cards and cheques for which the limit is not more than RM25,000) in relation to conventional banking and Islamic banking matters including credit/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