



# **Establishing a Bank Ombudsman in Romania**

**A Background Study  
Prepared for the SPI Committee**

**By:**

**Shkelqim Cani, Country Senior Advisor**

**December 2006**



# Table of Content

<i>Executive Summary</i>	5
<i>Introduction</i>	6
<i>Section I: Analysis of Consumer Protection in Banking Services</i>	
1. Development of Banking Services in Romania	7
2. Consumer Protection Framework in Financial Services	7
3. Analysis of Survey Findings	9
3.1. Complaint Tracking System	9
3.2. Efficiency of Bank's In-house Dispute Resolution Systems	9
3.3. General Complaint Statistics	10
3.4. Types of Complaints	11
3.5. Process Clarity and Customer's Financial Literacy	13
<i>Section II: Organization of Bank Ombudsman</i>	
1. Scheme Mandate and Organization	15
2. Ombudsman Profile	17
3. Ombudsman's Governing Principles	17
4. Governance Structure of Ombudsman	19
5. Scheme Participation (Rights and Obligations)	22
6. Eligible Complainants	24
7. Ombudsman's Scope: Powers and Duties	25
8. Ombudsman Procedures to Handle Complaints	29
9. Operational and Funding Issues	31
<i>Section III: Recommendations</i>	
1. Benefits Arising from Consumers' Perspective	36
2. Benefits Arising from Banks' Perspective	37
3. Recommendation: To Establish an Independent Bank Ombudsman	38
4. Actionable Steps	41
5. Implementation Plan	43

This work follows on a High-Level Seminar on "Enhancing the Banking Industry Dialogue with Consumers and Authorities" held in Bucharest on September 15, 2006, hosted by the Romanian Banking Association and opened by a keynote speech by the First Vice Governor of the National Bank of Romania, Mr. Florin Georgescu. The seminar featured a presentation by Prof. Riccardo De Lisa, member of FIN-USE, on the EU Commission consumer protection program, including mandate, organization and activities of FIN-USE.

## *Executive Summary*

FIN-USE<sup>1</sup>: “consumer confidence in the financial services industry is the key precondition for building a successful single market”.

National consumer protection systems are a vital component, not an obstacle to an Internal Market.

In Romania, there is no specialized and impartial institution to prevent and address adequately and effectively individual consumers and SMEs complaints against financial service providers. In the wake of Romania’s imminent challenges of becoming part of EU, the country should strengthen compliance with FSAP, FIN-USE and FIN-NET<sup>2</sup> policies.

The rapid development of banking services in Romania, the need to reduce the information asymmetry gap between consumers and service providers and to improve the public image of banks has prompted the SPI Committee<sup>3</sup> to consider a proposal for the establishment of a Bank Ombudsman. The Ombudsman will be a solution for prompt and unbiased resolution of complaints that customers have been unable to resolve satisfactorily with their banks. It will ensure that consumers of such services are protected from negative financial consequences and are warranted an informal, easily accessible alternative to other inconvenient, bureaucratic and time-consuming remedies, such as court proceedings.

In this context, Convergence undertook this background study, which is organized in three main sections.

**The first section** examines the current status of consumer protection in relation to banking services in Romania. The analysis has been largely drawn on the results of confidential surveys conducted in November 2006 by Convergence with the Authority for National Consumer Protection (ANPC) on one side. The subject of the survey was information gathering on the type, volume, time and way of handling of consumer disputes/complaints in the banking industry, etc. Similar information was obtained separately from the National Bank of Romania (NBR) and the banking industry from each individual bank and with the precious assistance of the Romanian Bankers’ Association (RBA). Particular emphasis was placed on the effectiveness and reliability of individual bank’s in-house complaint settlement schemes.

**The second section** outlines the Ombudsman governance structure and major components that ensure scheme independence and impartiality including: the Ombudsman’s mandate and jurisdiction, organizational rules, governing principles, scheme participants, eligible complaints and beneficiaries, funding and other operational issues, etc. This section reflects the main findings discovered from recent visits made to some European Ombudsman schemes in UK, Italy and Germany and other information collected from various European and other international Ombudsman schemes.

**The third section** concludes with formal recommendations to the banking industry on establishing a Bank Ombudsman in Romania as a modern dispute-resolution scheme, backed by evidence of benefits assessed separately from the customers’ and banker’s perspective as drawn upon the experience of other countries.

---

<sup>1</sup> FIN-USE was set up by the EC in 2004 as an expert forum to help the EC meet the pressing need to improve policy-making in the field of financial services by including a user perspective.

<sup>2</sup> FIN-NET is an informal *Consumer Complaints Network for Financial Services*, set up by the European Commission, to help settle cross-border disputes between private retail investors and financial services companies.

<sup>3</sup> The Special Projects Initiative Public-Private Steering Committee (SPI Committee) oversees the Convergence Romania Financial Sector Modernization Program. Its members are: the State Secretary in the Ministry of Public Finance, the First Deputy Governor of the National Bank of Romania, the Chairman of the Romanian Banking Association and the World Bank’s Convergence Program.

## *Introduction*

### **Romania's EU perspective and EU Recommendations in Consumer Protection**

As Romania is approaching the deadline of EU admission, the Romanian banking industry faces challenges to be tuned with EU's recent developments in the financial consumer protection area. To become part of EU, Romania has transposed of the specific "*acquis communautaire*" at the national level and taken respective actions to follow EU recommendation in this respect and to strengthen its compliance with EU's FSAP, FIN-USE and FIN-NET policies. Below is provided the main European framework for consumer protection in the financial services area that will serve the Project Working Group (PWG) as an essential reference to build up their work on the establishment of the Bank Ombudsman:

1. **The EC Recommendation 98/257/EC** of 30 March 1998 supports and supplements the initiatives taken by the EU Member States in order to achieve, in accordance with Article 129a of the Treaty, a high level of consumer protection. This recommendation is addressed to the bodies responsible for the out-of-court settlement of consumer disputes, to any natural or legal person responsible for the creation or operation of such bodies, as well as to the Member States. All Ombudsman schemes of EU have abided by these recommendations. The recommendation establishes common criteria on the minimum governing principles applicable to the redress bodies. In order to give consumers and businesses confidence that their disputes will be handled with fairness, the above bodies will have to respect the following principles: transparency, due process, independence, legality and effectiveness.

2. **"FIN-USE** strongly recommends effective involvement and representation of the user perspective on financial services reform in the EU at all levels of policy making, including the Commission, the Lamfalussy committees as well as national regulators".

3. "The European Commission has supported the creation of **FIN-NET** that links up in a network recognized national dispute-resolution schemes/ombudsman in the European financial services sector"<sup>4</sup>.

The new national ombudsman schemes should be members of Fin-Net and would deal with disputes between a professional financial services provider in one member state and a European regulator/supervisor in another member state. They will deal with problems caused by the uneven enforcement of EU rules and regulations by national regulators. The Ombudsman should be independent: "it is vital that EU financial services firms can bring complaints about the behavior of national regulators without fear of retribution". It will be an imperative for Romania to establish its own Ombudsman with its imminent entry in the EU.

The experience of several EU Member States examined in this study shows that alternative mechanisms for the out-of-court settlement of consumer disputes, provided certain essential principles are respected, have become effective and reputable mechanism for both consumers and banks/service providers, by reducing the cost of settling consumer disputes and the duration of the procedure.

---

<sup>4</sup> (<http://finnet.jrc.it>)

## ***Section I: Analysis of Consumer Protection in Banking Services in Romania***

### **1. Development of Banking Services in Romania**

Financial services are pivotal to consumers and small businesses with an ever increasing importance in today's modern world. The banking and financial services sector contributes to Romania's economy. The banking penetration ratio accounted for approximately 45% of GDP in 2005. At end-2005, household loans accounted for 7.4 percent of GDP and 16.6 percent of total bank assets.

Romanian banks are committed to financial inclusion, increasing the number of ways customers can access their money and increasing the number of people with bank accounts. The banking system had a total number of 33.3 million accounts in May 2005 and reached a total number of clients of 25.2 million, of which 24.2 million individuals. The card business has recently shown substantial potential for growth. In 2005, card penetration in Romania increased to 330 cards/1,000 inhabitants, half of the rate in Poland, Czech Republic and Hungary of around 612. Number of cards in March 2006 was 7.87 million, yet with a low number of credit cards (less than 6%). Although booming in the last three years, retail lending still shows modest levels compared to the other European countries. As such, the retail loans to GDP at the end of 2005 stood at 14% of the EURO zone average<sup>5</sup>. Given the above financial penetration ratios, Romania's potential for future growth is substantial.

### **2. Consumer Protection Framework in Financial Services**

The current boom and the upward trend of people's access to banking services in Romania accompanied with information asymmetry and the introduction of new, complex products, create an imperative for enhanced consumer protection legislation and actions and financial literacy programs. In case of errors, flaws or mistreatment by bank/service provider an average consumer should be able to seek redress, even if his complaint refers to a small amount of money. Currently, the alternatives to settle customer complaints regarding banking services in Romania are direct enquiry submission to respective service providers, lodging a file with consumer protection bodies or banking regulator and in the last resort, bringing the case to the court.

Consumer protection framework in financial services area in Romania consists of several institutions. From the public sector aspect, institutions involved are the National Bank of Romania and the National Authority for Consumer Protection (ANPC), which coordinates and realizes the strategy and policy of the Romanian Government with regard to the enforcement of Consumer Protection in the country. From the banking community there are individual banks only. On the civil partnerships and organizations side, there are consumer protection organizations such as the Association for Consumer Protection (APC). Their roles and interrelationship, however, are not yet up to best practice standards.

The government's strategy in Romania aims at the realization of a consumer's protection in the country similar with the one existing in the Member States of the European Union, including safety, economic interests and consumers' information and education. In this background, the ANPC's strategy for Consumer Protection in 2005-2008 include among other objectives also:

---

<sup>5</sup> Figures have been received from "Deloitte" Study 2005, Roland Berger "Overview of Romanian Banking System", 2006 and NBR Statistics, 2006.

**Objective 2: Effective enforcement of consumer protection rules**

“Resolutions of the consumer complaints”

There are having in view:

2.3.1. to improve the receiving and resolution methods of the complaints and intimations;

2.3.2. to perform control actions regarding the solution of consumers complaints;

2.3.3. to set up the legislative framework in order to solve alternatively the consumers litigation, by issuing of an legal act admitting the mediation as alternative to the court system for consumers complaints;

The current legal framework for consumer protection in financial services area in Romania is scattered among the Consumer Protection Law and some other legal acts, which are regularly revised to bring into line with the *acquis*. There is no self-regulation by the industry to fill the gaps.

Current Consumer Protection Laws <sup>6</sup>	
Government Ordinance Nr. 21/1992	for the protection of the consumer with the following modifications
Law 148/2000	Advertising
Law 193/2000	Unfair terms in consumer contracts
Law 282/2004	Timeshare
Law 289/2004	Consumer credit agreements
GO 85/2004	Distance contracts for financial services
GD 947/2000	Price indications of consumer products
Laws that will come into force on 1 January 2007	
Law 296/2004	Consumer Code
Law 449/2003	Sale of products and associated guarantees
GD 1553/2004	Injunctions for the protection of consumers

To evaluate how well Romanian consumers are placed to complain against a bank and to analyze the level of consumer protection in the banking area, we have conducted a confidential survey on type, volume, time and way of handling of consumer complaints/disputes<sup>7</sup> in the banking industry. Our intention through this survey was to compare two different perspectives: those of consumers with those of banks. To this end, we distributed one survey to ANPC and APC, another one to the NBR and the other survey to individual banks operating in Romania, through the collaboration of RBA. The completed questionnaires by respondents and their centralized results are found in *Annex no.1 attached*.

Preliminary observations indicate that there is no specialized and impartial body to resolve consumer complaints in the banking sector. The complaints are likely to be made directly to the banks through their internal complaint settlement system. In absence of information or unresolved complaints, disgruntled customers address their complaints to either NBR or ANPC and APC and some of them go through litigation processes.

<sup>6</sup> ANPC source

<sup>7</sup> Two concepts are widely used in the Ombudsman’s operational procedure: **complaints** that are made in writing and appear to fall within the Ombudsman’s ToR, but have not been through the relevant bank’s internal complaints process; and **disputes** that are complaints that appear to fall within the Ombudsman’s ToR and have been considered by the relevant bank’s internal complaints process without being resolved.

### 3. Analysis of Survey Findings

Below are highlighted the major findings of our survey:

#### 3.1. Complaint tracking system

Our major observation from examining the data collected is that there are significant flaws and deficiencies in compliant tracking systems from all subjects above:

- i) there were several banks which were unable to respond to our questionnaire due to poor complaint collection (only 14 banks have provided responses);
- ii) others encountered difficulties in completing all the items in our questionnaire; and
- iii) in some cases, where the data were reported, inconsistencies were detected.

On one side, these conditions have certainly impaired our ability to come up with accurate conclusions but, on the other hand, have reinforced our view that consumer protection in Romania's banking sector requires an impartial body to gather evidence, keep track and resolve consumer complaints.

A few banks cite in the questionnaire a couple of measures to be taken as necessary system improvements such as complaint prevention, clients information and improvement of their service quality, strengthening monitoring and controlling systems, automating application and organizing the "Mystery Shopper".

#### 3.2. Efficiency of bank's in house dispute resolution systems

With regards to *existence* of banks' 'in house' offices/units/departments, our responses indicate that all banks have these systems up and running. The systems are relatively new: all but two set up during 2004-2006.

Banks also report *customer awareness* of their internal in-house settlement system (2.1.3)<sup>8</sup>. The way they inform their customers on these complaint-handling offices is diverse, some use "general terms and conditions", some others "verbal communication from branch personnel", a few "mail-outs" and the rest "direct contact" with respective customer service department (2.1.4).

According to consumer protection bodies and NBR, less than one third of complaints submitted to them have been referred first to banks internal dispute resolution units (1.2). The low number of complaints referred directly to the bank implies that either consumers are simply unaware of the existence of the bank's internal complaint systems (banks' promotion has not been effective in notifying their customers of the existence of their systems) or they do not trust banks' employees judgment in treating their complaints fairly and objectively. From the angle of consumer protection bodies, 58% of customers who have submitted complaints to them are not aware of the existence of bank's internal complaint resolution systems (4.2).

In terms of *system efficiency*, banks display a rosy picture. They consider their systems, though relatively new, as "very effective"/"effective" (2.1.10). As opposed to banks optimistic perception on the efficiency of their systems, the consumer protection bodies report their clients having a "weak" perception on the efficiency of these systems (1.4).

System *quickness* to provide response to customers has been also rated in our survey as an indicator of efficiency. All banks, except for one, report providing response to their initial customer complaints within a week. Conversely, according to consumers, only less than ¼ of complainants directly referred to the banks, have received a response from the latter.

---

<sup>8</sup> The number in brackets refers to the related question in the respective survey.

In addition to such criteria as system existence, awareness, fairness and quickness to provide response, another indicator of bank's internal system efficiency would be the **amount of compensation** banks award to customers, if their complaints are found righteous. However, when asked on the amount of compensation awarded to their customers as a redress during the last year (1.7), the vast majority of banks and NBR have given no answer. Among those few (three), which responded to this question, the amount of compensations were very small.

### 3.3. General Complaint Statistics

#### 3.3.1. Overall complaint figures

From banks' reported statistics with one exception, it results that there are a relatively low number of complaints.

**Fig.1: Complaint statistics by banks**

No. of complaints by reporting banks	Three large reporting banks	Total
2004	125	213
2005	3,933	4,106
2006 (Oct.)	8,827	9,535
<b>Total</b>	<b>12,885</b>	<b>13,856</b>

Some may regard this relatively low number as an evidence of low public discontent with banking services. However, this claim ignores a combination of factors that might have contributed to this: insufficient customer awareness, low drive of banks to encourage use of their complaint systems, weak customer's confidence on bank's employees to resolve their complaints and poor financial/banking information. Moreover, when considering customer's **system accessibility** we have to factor also the fact that around 40% of Romanian population lives in the countryside, where banks are lacking offices, making difficult the access of people to banking services in general and their respective complaint handling units.

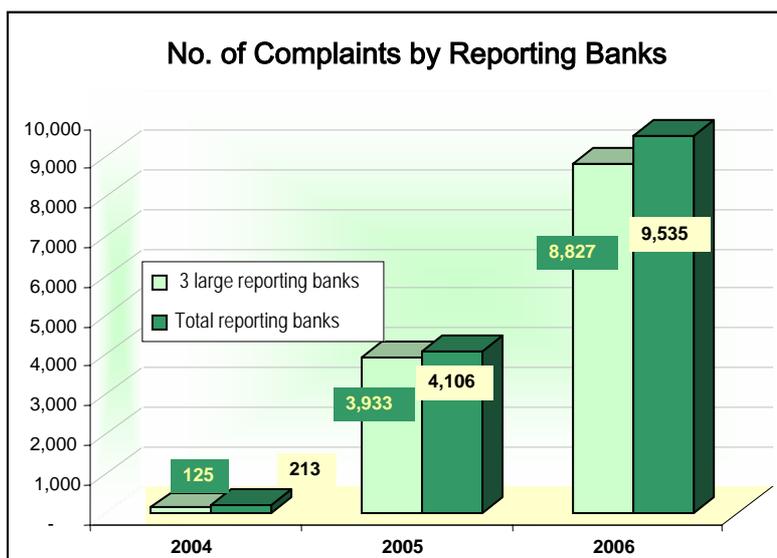
#### 3.3.2. Complaint trends

For the period 2004 - October 2006 data collected from consumer protection bodies, NBR and individual banks confirm *a significant increase in the number of complaints* received over the years. Centralized bank's complaints surged by 132% from 2005 to 2006 (until October) - refer to *Fig.1* and *Fig.2*. Out of the total number of complaints, according to ANPC and NBR data, over 50% represent new complaints (1.1).

With respect to the areas of business from which the complaints came, both *complaints/disputes about lending products and deposit/savings accounts have increased* from 2004 to 2006 (this subject of limited information from NBR and banks which had set up in-house complaint system as early as 2004).

Some of the *major and foreign banks* in terms of market share report a much higher number of complaints (*over 90% of the total of bank reported complaints* in the survey - *Fig.1* and *Fig.2*). This figure concurs with the much higher number of transactions and volume of business that large banks perform, but especially with a more efficient/automated complaint tracking system put in place by them. However, to make a more accurate conclusion, we would need to have the number of disputes, which is generally a good indicator of the effectiveness of a bank's internal complaints procedures, especially when compared to the number of complaints.

Fig.2:

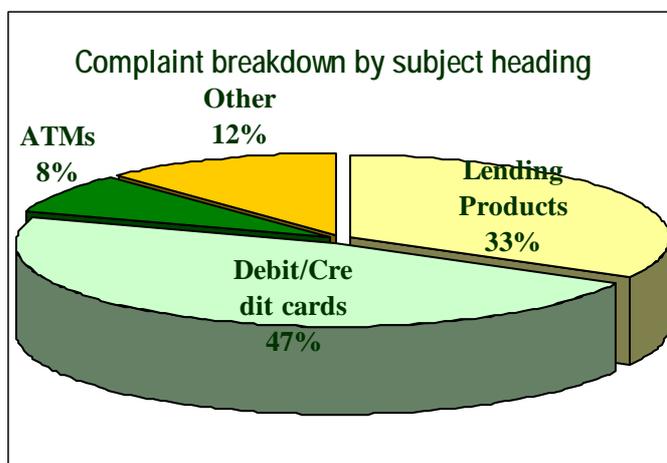


### 3.4. Type of Complaints

#### 3.4.1. Area of business

Until September 2006, as per centralized bank data, complaints about *lending products, debit/credit card business and ATMs* account for respectively 33%, 47% and 8% of total complaints (please see Fig.3). Reports on percentage of lending complaints from other-than bank respondents match those of banks. For other type of complaint breakdown, differences are observed (usually lower than those of banks) due to the fact that card and ATM complaints are directly referred to the service provider.

Fig.3:



In our view, *lending or mortgage complaints* and those of customers having difficulties meeting their repayment commitments are not easily resolved through banks' own processes and there is a proportionately greater likelihood that they will become disputes. Consequently, this further prompts the need for an Ombudsman. Moreover, "exposure to households of the Romanian banking sector is still very small compared with other European countries. Nevertheless, if growth of indebtedness outpaces that of incomes..."<sup>9</sup>, it might erode the household ability to meet debt servicing. This may lead to increased possibility of receiving more disputes in the future from over indebted customers.

<sup>9</sup> NBR Financial Stability Report, 2006

A similar pattern with lending is observed in relation to complaints about *debit and credit cards*. Card business is becoming increasingly popular in Romania. The dynamics of e-payments in retail outlets, via internet or directly at ATMs for utility bills show signs of considerable growth. Electronic payments volume has displayed an upward trend over the past years going from 11,136 in 2003 to more than 25,000 as of March 2006.

A typical problem among card complaints is the issue of the theft credit cards and personal information. Holders of credit cards still do not always display the necessary level of care, resulting in a continuing rise in the number of cases of such crimes. This will continue to become more widespread as more people use the net in Romania with consequential increase in the number of complaints for breach of privacy and disclose of any confidential information to third party marketers.

### **3.4.2. Customers' main complaint request**

When asked about the customer's main request in their complaints, the answers from NBR and consumer bodies (3.3) are: "*information or advice*" 33%; 5.4%, "*honoring of bank commitments*" 26%; 12.1%, "*proper service delivery*" 17%; 14.7% and "*reimbursements of costs and damage incurred*" 11%; 7%. Bank data are not reliable. These figures infer that many of these complainants are seeking information on banking products and explanations of apparent discrepancies in their accounts or the refund of wrongly charged fees and interest. Such complaints are usually easily resolved and they normally do not convert into disputes, if internal bank systems function effectively and in case an Ombudsman scheme would have been available assisting with its information and mediation services.

Additionally, consumer protection bodies state that *customer's main complaints* more specifically refer to: absence or insufficient information before conclusions of contracts, use of contract forms with very small, even almost illegible letters, practice of misleading advertising, consumer's lack of knowledge with financial terminology associated with bank staff declining help and use of specialized bank terminology, difficult to understand by customers.

### **3.4.3. Type of complainants**

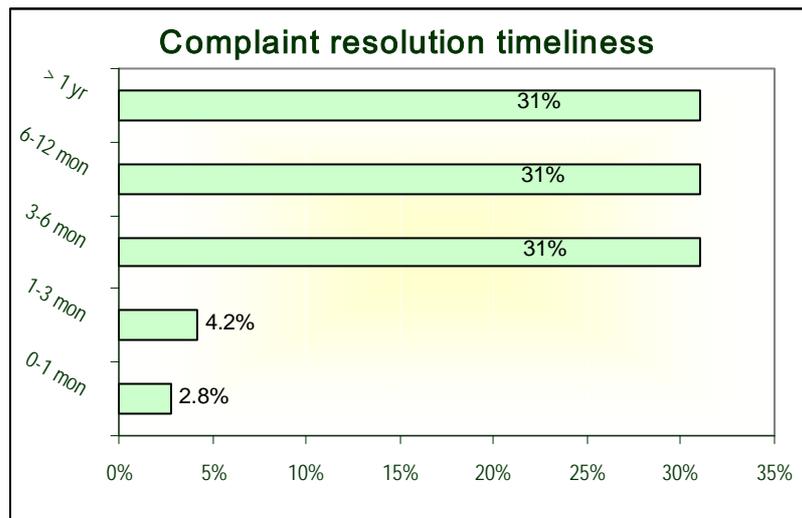
Information gathered by NBR and banks (3.2) on cases by type of complainants converges, indicating that 80-90% of complaints are presented by individuals and the rest from businesses, mostly small ones (10%). Hence, the bulk of complaints come from *individuals*, which shows that if the Banking Ombudsman is created, it has to address first the natural persons' complaints/disputes.

### **3.4.4. Timeliness in resolving complaints**

The average time taken by the banks to resolve the complaints seems to be too short (0-1 month) from the NBR and bank answers (3.4). This answer is in contrast with customers' perception in the questionnaire of consumer bodies that report only 2.8% of cases settled from 0-1 month, while **62% take an average of 3-12 months** and the remaining 31% over 1 year to finalize.

The differences in evaluation may arise also due to improper tracking system from the banks and NBR. Another reason might be the fact that many complaints referred to consumer protection bodies comprise complaints not resolved from internal bank systems on time or satisfactorily to customers' interest that normally require long time to resolve. However, the customer's opinion is further substantiated by the answers given by banks on the main customer's complaints (5.3.2) about customers' level of satisfaction with banks, as observed from their respective surveys. Customers have mostly complained in these surveys on bank's "bureaucracy" and provision of "partial solution" to their complaints.

**Fig.4: ANPC Data**



### 3.4.5. Way of complaint resolution

**Mediation** from other-than bank bodies has proved to be a successful way in handling customers' complaints. ANPC and NBR report that banks and the complainants have reached a mutually acceptable settlement (1.5) in more than 40% of the cases they have been aware of. This indicates a high potential for Ombudsman's involvement and success in the future.

Complaints not resolved through mutual settlement or not satisfactorily resolved through bank's internal systems go to the court. Consumer protection bodies respond that almost 74% of the cases have been in **court litigations** for less than a year, whereas banks report resolution of all customer disputes through court procedures after one year. This is a proof that the time necessary to bring a case to conclusion in Romania is long, causing the process to become expensive for the customer.

From the survey results, about 13% of complainants have been **legally aided** to take legal action in the court. This raises issues of customer's difficulties to find the right lawyer with affordable fees (2.4). This answer is slightly different from the banks (4.4), which claim that lawyers have been hired by the majority of clients in litigation processes.

In terms of **court decisions**, consumer protection bodies state that 43% of disputes in court have been resolved in favor of banks and **57% in favor of customers** (2.2). It is still safe to assume that there may be many clients in the grip of litigation, ignorant of any alternative, with no prospect of knowing whether their lawyers represent their best interests or not. Moreover, the clients who are legally aided may face delaying and time-wasting tactics from some of their solicitors, viewing them as a source of long-term income. Nearly all banks have not responded to the question "how many cases from those closed in the court have been won by the customers" (4.2), leading indirectly to a conclusion that they do not have a system to keep good track of the status of their customer's disputes.

### 3.5. Process Clarity and Customer's Financial Literacy

When asked whether consumers have provided clear evidence of the complaint, supported by respective documents, ANPC and NBR answers (1.9) show that in almost 55% of cases consumers presented either insufficient documentations or no evidence at all. From the banks' perspectives, this figure is considerably higher (1.9). This leads to the conclusion that consumers' education and protection is urgently required in provision of banking

services. This finding is further sustained by answers given from banks in (1.3), where from an evaluation of three years' complaints, the cause of complaint in over 30-40% of cases was cited as "customers' lack of banking knowledge/information". Consumer protection bodies provide even a higher figure (59%) for customers' lack of banking knowledge (4.1).

**In summary,**

- ↪ Bank's internal dispute resolution systems are rated as partially efficient to provide satisfactory resolution of their customer complaints in terms of the European protection standards: customer's awareness, system accessibility, quickness to provide response, and fairness given the compensation amount.
- ↪ Consumer protection bodies and industry lack effective complaint tracking system in the financial area.
- ↪ Consumers' financial literacy is inadequate.

**Conclusion:** the Romanian consumer protection system in the banking area does not provide the proper standards required by EU to keep consumers and small businesses aware of its existence or, for those aware of the procedure, to make it less time-consuming, less expensive, more convenient and independent. A particular weakness in the process is the lack of either voluntary or compulsory industry standards on client services, and the complete absence of a neutral comprehensive dispute resolution mechanism. All of these factors encourage the creation of a specialized, neutral, out-of-court dispute resolution scheme in the form of a Bank Ombudsman system.

## ***Section II: Organization of Bank Ombudsman***

Most European countries have established successful Bank Ombudsman schemes in the past 30 years, either private or public. They are either limited to bank membership only or organized as one-stop service, i.e. including under one roof settlement of disputes on banking, mortgage, investment, insurance services, etc. Their increasing popularity lies in their ability to settle a large volume of specialized cases in a flexible way and within a short period of time that no single court could do using normal court practice.

This section is composed of the following components:

1. Scheme mandate and organization
2. Ombudsman profile
3. Ombudsman's governing principles
4. Governance structure of Ombudsman
5. Scheme participation (rights & obligations)
6. Eligible complainants
7. Ombudsman's scope: powers and duties
8. Ombudsman procedures to complaint handling
9. Operational & funding issues.

### **1. Scheme Mandate and Organization**

In the vast majority of the Ombudsman schemes analyzed (in different European countries as well as in Canada and Australia), the Ombudsman services have been established as independent bodies with the aim to resolve out-of-court disputes between consumers and banking/financial services firms fairly, reasonably, quickly and informally. These bodies range from public to private, from statutory to non-statutory, compulsory or voluntary.

Over half of European schemes (please see Annex 2) were established in the 1990's. Finland has the oldest scheme, having established it in 1978. In most cases the schemes were established by the industry as a self-regulatory initiative. They are members of FIN-NET, the European Commission-sponsored network of out-of-court redress bodies, designed to ease the handling of cross-border disputes in financial services. In the majority of schemes, only banks may have membership.

The Financial Ombudsman Services (FOS) scheme in UK is *public<sup>10</sup> and statutory*. The Public Ombudsman Scheme operates under the legal form of a public limited company. It was created as part of the government's legislation for the financial services market in December 2001 and derives its statutory authority from the Financial Services and Markets Act (FSMA) 2000. It is the largest scheme of its type in the world and the founder of FIN-NET. The Financial Services Authority ("FSA"), an independent non-departmental public body that regulates the financial services industry in the UK appoints all board members of FOS. The FOS was incorporated in 1999 to consolidate into a single statutory body the complaints handling and ombudsman services formerly provided by a number of statutory and voluntary schemes. It is part of the statutory arrangements for underpinning confidence in financial services. In the case of statutory regulations, all respective scheme participants are legally obliged to comply.

---

<sup>10</sup> It is considered public from the way of incorporation, but the financing is completely private.

Public and statutory schemes operate elsewhere in Canada, Spain (the scheme is owned and run by the Central Bank of Spain, responsible for bank supervision), Luxembourg (the scheme is set up by law and is run by the supervisory authority of financial sector), Czech Republic (the Financial Arbiter has been elected by the Chamber of Deputies to harmonize Czech legislation with EU directives according to the Act on the Financial Arbiter), etc. In Germany, a public scheme owned and operated by Deutsche Bundesbank (besides several parallel privately run and funded schemes) is recognized under the name “The Arbitration Board for Credit Transfers and Distance Marketing of Consumer Financial Service”.

The rest of Bank Ombudsman schemes analyzed in Europe are *privately* organized institutions, *voluntarily* established by the Bankers’ Associations. Their common characteristic is their creation at the initiative of Banking Associations based on a voluntary agreement between members of the association. Voluntary arrangements imply voluntary participation, usually developed and designed primarily in the interest of the industry itself. Such examples can be drawn from Austria, Italy, Germany, Poland, and Greece (until mid-2005). The latter was merged with the Investment Ombudsman in July 2005 to operate as a single, self-regulatory, non-profitable, civil partnership covering member banks of the Greek Bank Association and brokerage firms and investment companies<sup>11</sup>. Similarly, the Swiss Banking Ombudsman was established in 1993 as a voluntary, industry self-regulatory plan. It is sponsored by the Swiss Banking Ombudsman Foundation set up by the Swiss Banking Association and functioning as a non-profit organization. Schemes in Germany and Italy are part of respective Banking Associations. They are not registered as legal entities and all their administrative functions are run by the Association.

In other countries (France, Finland, Belgium, Norway, Estonia) we see some sort of *hybrid schemes* that are jointly run through agreements among various stakeholders. They are established as separate legal entities, governed by boards consisting of representatives from bank associations, central bank, finance, investment and/or mortgage associations, financial regulators, or/and Consumers’ Associations/Administrations. They are all funded through cost-sharing formulas by the industry.

In UK, we further see the distinction between the so-called "**compulsory jurisdiction**" and "**voluntary jurisdiction**". The first type automatically covers most FSA-regulated firms, including today some 26,000 firms. The British FOS "voluntary jurisdiction" covers firms and activities that are not regulated by the FSA. The *Consumer Credit Act 2006* will give the FSO in 2007 a much more expanded jurisdiction covering up to 100,000 licensed consumer credit firms.

Despite the various scheme natures, labels or ownership, the **Ombudsman’s mandate** and governing principles are pretty much similar across the countries. The Italian Banking Ombudsman (“Ombudsman-Giurì Bancario”) was created in 1993 at the initiative of ABI (the Italian Banking Association) in an endeavour to improve relations between banks and their customers. The German private commercial banks recognized “that conciliation is better than litigation” by setting up the Ombudsman Scheme on a voluntary basis in 1992. The Scheme was conceptualized as the centerpiece of the private commercial banks’ overall consumer policy concept, which rests on three pillars: prior information, transparent contract arrangements and out-of-court dispute-resolution facilities.

In UK, the FOS is set up by law as an independent and impartial process for the investigation and resolution of individual disputes between businesses providing financial services and their customers. The UK scheme considers complaints about financial issues ranging from insurance and mortgages to savings and investments. In Canada, the Ombudsman for Banking Services and Investment (OBSI) mandate involves “dealing with complaints, made by persons having requested or received products or services from its

---

<sup>11</sup> Annual Report of “Hellenic Ombudsman for Banking - Investment Services”, 2005

member financial institutions” that were not resolved satisfactorily at the financial-institution level. In Australia, the Financial Co-operative Dispute Resolution Scheme (FCDRS) is an independent dispute resolution service that considers disputes between individuals or small businesses and credit unions, building societies and other financial service providers.

## 2. Ombudsman’s Profile

What Can the Ombudsman Do:	What Can the Ombudsman Not Do:
<ul style="list-style-type: none"> <li>• provide a dispute resolution service as an alternative to the court</li> <li>• offer its service free to bank/financial service customers</li> <li>• bring parties together to clarify the issues</li> <li>• help parties to explore options for agreement and solutions</li> <li>• keep service confidential - not publish the names of businesses or consumers, whose complaints it handles</li> <li>• contribute to and maintain the quality and consistency of the complaint handling process and ensure that they are resolved fairly and reasonably</li> <li>• act independently and objectively in resolving disputes and is not influenced by anybody in making decisions</li> <li>• make the decision binding to the service provider up to the amount of Ombudsman’s jurisdiction and sometimes to the customer itself, once they accept the decision.</li> <li>• decide on individual cases, without making rules as authorities</li> <li>• encourage best practice</li> <li>• provide specialized knowledge and informal procedures</li> </ul>	<ul style="list-style-type: none"> <li>• be a regulator /"watchdog", a trade body or a consumer champion</li> <li>• play the advocate for either the financial services industry or consumers - i.e. taking sides</li> <li>• accept customers’ complaints before they are lodged first with the bank/ financial services company itself</li> <li>• deal with systemic issues, such as the general pricing of products, interest rates or branch closures</li> <li>• make management decisions - it is limited by its mandate as an informal dispute resolution mechanism</li> <li>• provide assistance on matters already involved in litigation, arbitration, or mediation - unless there is a process breakdown</li> <li>• give personal legal, accounting or other professional advice on financial matters and debt issues</li> <li>• force the customers to accept any decision it makes - they are always free to pursue the matter with the court instead.</li> <li>• provide general information on the banks or banking services</li> <li>• make the bank change its products, staff or procedure</li> </ul>

## 3. Ombudsman’s Governing Principles

From all the Ombudsman schemes observed, we have identified several **governing principles** that comprise any standards, including performance standards, adopted by the Ombudsman’s governing bodies from time to time for the handling and resolution of complaints.

### **a. Objectivity and independence**

Objectivity and independence are the main governing principles of the Ombudsman scheme. They are mainly guaranteed by the institution's organizational structure, which operates generally at arm's length from the government, member banks, and other financial service providers.

The Ombudsman scheme guarantees fairness and neutrality in terms of the approach taken to both the consumer and the financial institution involved in the particular circumstances of the case. It examines facts and arguments of both sides and balances them to form its own impartial and independent opinion.

Service decision is based on the facts of each complaint, not on the way the complainant presents the case. No professional expertise or representation is required to help customers bring their complaint to the Ombudsman. The Ombudsman findings, conclusions, recommendation, decisions on a particular case are also fair and impartial.

### **b. Accessibility**

Ombudsman service is available to everyone as per its terms of reference. In the vast majority of European schemes examined, and those in Canada and Australia, services are offered free of charge, thus ensuring wide accessibility<sup>12</sup>.

The consumers can easily contact the service for lodging a complaint and ensure follow-up. It does not discriminate consumers against their education, race, language, etc. This includes, for example, communications in the preferred format or language they need.

### **c. Consistency**

As compared to a court dispute handling, the Ombudsman judgment ensures both the customer and the service provider similar treatment for similar concerns throughout the system.

### **d. Timeliness**

In terms of response the service offered from the Ombudsman ascertains compliance with the time limits stipulated in its complaint handling procedures. The average time to handle a complaint for most European schemes is from 2 - 12 months at maximum. In UK the resolution of complaints by time taken in 2005 was: 32% within 3 months; 64% within 6 months; 80% within 8 months and 90% within 12 months. In Italy the average time for Ombudsman's decision is 90 days.

### **e. Courtesy**

Every consumer is treated with respect, courtesy and professionalism. Every Ombudsman staff ensures not to cause any unnecessary delays in resolving the customer disputes.

### **f. Reasonableness, clarity and accuracy**

All communications with consumers (information seeking, reasons for decision, recommendation) are clear and terminology-free to be easily understood by a normal person. Any information and direction provided by the Ombudsman office is accurate.

Ombudsman makes public its knowledge, experience and assistance to help consumers and firms settle disputes without the need for its involvement. As a not-for profit organization, it is not interested in making money. On the contrary, it tries to help prevent the need for complaints in the first place.

---

<sup>12</sup> In rare cases, like in Germany and Italy telephone and mail costs are borne by the customer, while in Poland a small fee of circa EUR 12 is paid by the customer upon filing of complaint, reimbursed if the case is won by the customer.

#### **g. Confidentiality**

The Ombudsman's dispute resolution process is confidential. The scheme protects from disclosure for all purposes the personal and company information recorded in Ombudsman files. Documentation relating to discussions, correspondence with the complainant, the service provider and the Ombudsman that form part of the dispute resolution process (including assessment, recommendation, determination, etc.) will not be disclosed or admissible in a court of law. Similarly, the Ombudsman's personnel will not be called to give evidence in any legal or other proceeding relating to the matter. Moreover, Ombudsman does not publish the names of businesses or consumers subject of a certain complaint.

#### **h. Quickness**

Due to heavy caseload (ranging from tens to thousands of disputes per week depending on the country where the scheme operates and the scheme nature), the Ombudsman service has to be practical and business-like in terms of producing a fair outcome quickly.

#### **i. Informality**

The service is an informal alternative to the courts. The ombudsman approach is very flexible, non bureaucratic and completely different from the court, for example, not having usually formal hearings or face-to-face cross-examinations.

### **4. Governance Structure of Ombudsman**

In comprehensive and large schemes (UK, Canada, Australia, etc.), where the Ombudsman is incorporated and registered as a separate legal entity, the **By-laws** (articles of association) of the Ombudsman and the **Terms of Reference** set out the governance structure of the organization in greater details. In case of public schemes, the bylaws are approved by the respective authority, which appoints the governing body of the Ombudsman (Board or Council) and Terms of Reference are generally approved by the Board. A copy of the British FOS By-Laws and Memorandum of Association are included in *Annex 3* attached.

In most private and voluntary schemes established by the Board or General Assembly of Bankers' Associations (Italy, Germany, etc.), the Association enacts a **regulation**, which constitutes the by-laws of the Ombudsman. In Italy, terms of reference are replaced by **Inter bank Agreements**<sup>13</sup>. In the remaining part of this study, for simplicity reasons, we shall refer as By-Laws and Terms of Reference, without making any distinction between schemes.

The By-laws, in general, define the rules governing the calling and proceeding of Board/Council meetings, voting rights, the election, power and responsibilities of officers and directors, and execution of documents. They may be amended on several occasions to improve the governance of the organization and to allow for an expanding mandate. The Terms of Reference define the scope of Banking/Financial Ombudsman, i.e. issues that fall within and outside the Ombudsman's jurisdiction. They also describe the principal powers and duties of the Ombudsman, the nature of complaint and the Ombudsman process for receiving, investigating and seeking a resolution of a complaint against a service provider.

Great care has been taken by all schemes in their by-laws to design a governance structure that warrants the independence and impartiality of the Ombudsman, as its major governing principle. The composition of the Board (where pertinent), the mandate of the Ombudsman

---

<sup>13</sup> A copy of the Italian Banking Ombudsman Inter bank Agreement is attached in *Annex 4*

and the organizational rules that establish the functions and responsibilities of scheme members are clear indications of scheme objectivity and independence.

The Ombudsman schemes are generally overseen by a Council or Board, which have mixed composition with representatives from the industry, consumer groups, etc. to preserve the independence of the scheme and the dispute resolution process. The Council/Board performs the following tasks: a) appoints the Ombudsman; b) approves the annual budget for the scheme and c) approves and amends the ToR from time to time after appropriate consultation.

Almost all European models have been designed in accordance with the requirements of the *European Commission's Recommendation 98/257*, which guarantees the independence and effectiveness of the Bank Ombudsman scheme<sup>14</sup>.

Illustrations of several scheme organizations in different countries have been provided below.

### **A) United Kingdom**

The British Banking Ombudsman scheme (1986-2001), which is the current scheme predecessor, was private, non-statutory, voluntary and independent. The independence was secured from an independent Council and the Board (most members were independently elected with various backgrounds -- academic, consumer advocate, public personality, and the rest appointed by banks). The Ombudsman was appointed by the Council with Board's approval. However, he/she was responsible solely to the Council in his general management of the Scheme and only the Council could dismiss him. Furthermore, the Ombudsman was not responsible to anyone for his decisions in individual situations. Another indication of organization's independence was the financing of the scheme. It was sought by the Council, and therefore was not under the control of the banks. The Bank Ombudsman was responsible for preparing a draft annual operating budget, subject of Board approval. It was the Board also which levied the costs from the member banks.

Today's Financial Ombudsman Service (FOS) operating as a single statutory scheme from 2001 is governed by the FOS Board. The Board Directors are appointed by the FSA, which delegates its powers to them by the Memorandum of Understanding. The terms of appointment of each Board Director must be such as to secure his independence from the FSA in the operation of the scheme. The FOS board members are "non-executive", which means that they have no involvement in individual complaints. Currently the Board Members of FOS hold top positions in various non-profit organizations. Their job as "public interest" directors is to ensure that the ombudsman service is properly resourced and is able to perform its functions effectively and independently.

The Ombudsmen are appointed by the FOS Board. The Ombudsman is 'an independent person'. The principal Ombudsman is appointed on a fixed term (three year) renewable contract. There are no formal qualifications, but in practice, and to be credible, the Ombudsman must be someone of experience, integrity and commanding of respect.

### **B) Italy**

The Ombudsman was set up as a collegial organ (Board) by a special regulation enacted from ABI in 1993, in compliance with provisions of the Italian Civil Code. The regulation sanctioned the establishment of Complaint Departments for customer complaints at individual banks and of the Ombudsman. The latter has no separate legal status, but it is created as a self-regulatory body with by-laws/constitution approved by ABI.

---

<sup>14</sup> A copy is included in *Annex 5* attached

This organizational structure was adopted for being independent of anyone. The scheme is governed by a Board of five highly qualified individuals with abilities, experience and competence in the fields of law, economics and banking. The five-member board is composed by the Chairman, appointed by the Governor of the Bank of Italy; two members nominated by the chairman of ABI and from January 1<sup>st</sup>, 2006, one member nominated by ABI President upon designation of Consumers Associations and another one nominated by ABI President upon designation from entrepreneurs' associations (industry, agriculture and commerce). These experts are appointed for a renewable three year term. They should have not been working during the last three years for a bank or the ABI. They do not receive a salary, but only an attendance fee for each meeting.

The Board is the judging body, which makes a decision based on each file prepared by other staff and the Technical Secretary of the Ombudsman, who works exclusively and confidentially for the Ombudsman upon ABI's appointment. ABI runs the administrative functions and expenses the cost of the Ombudsman among its members.

### **C) Germany**

Since the public scheme in Germany handles only customer complaints for credit transfers and misuse of payment cards and their data, we shall deal in this study only with the private and voluntary scheme established by the German Banks' Association.

The scheme is established in accordance with the Federal Ministry of Justice-approved Rules of Procedure for the settlement of customer complaints in the German private commercial banking sector. The Ombudsman is appointed by the Board of the Association on the management recommendation for a three year term with the option of reappointment. Prior to making final decision on Ombudsman's appointment, the Association submits his/her name, background and qualifications to the Federation of Consumer Offices and Consumer Associations for their consent regarding Ombudsman's impartiality and qualifications.

Though the scheme from an outsider's perspective seems to be dependent from the Association, the actions of ombudsmen are perceived as largely independent. The high level of public acceptance that the private commercial banks' Ombudsman Scheme enjoys is due to a great extent to the quality of the ombudsmen themselves. These are former senior judges, whose personality and proven expertise ensure impartial proceedings. They are not working at the Association's premises. They all work from home, supported for any secretarial work from the Association. They are not paid salaries, but instead a modest remuneration for the work performed.

The Ombudsman should settle disputes independently and should not be bound by instructions. He/she may be removed from his office before expiry of his term, if there are facts which indicate that he/she will no longer be able to exercise his functions independently. The Ombudsman must be qualified to hold judicial office. He must not have been employed by either the Association or a bank during the last three years prior to taking up office.

More scheme organizations on Canada, Greece and Czech Republic could be found on *Annex 6*.

As a conclusion, in most schemes examined (except Germany), the Board stands at the top of the Ombudsman's organization structure. The fundamental functions of the Board are to:

- secure the Ombudsman's independence;
- create public confidence in the process;
- ensure that the organization is well managed and appropriately funded;

- approve, amend the Terms of Reference (subject to ratifications by member banks);
- appoint the Ombudsman and establish the terms of office, including remuneration and Ombudsman's termination;
- approve the budget and calculate member fees (where applicable);
- consider in special cases any concerns about the complaint-handling process or the conduct of an employee or officer of the Ombudsman

However, from the review of By-Laws and ToRs of various schemes we conclude that:

- While accountable only to the Board, the Ombudsman has full responsibility in complaint findings, conclusions, recommendations and decisions without any interference/influence from the Board.
- The Board plays absolutely no role in reviewing or advising on specific complaints. The final decision concerning complaints rests with the Ombudsman.
- The Board shall not consider a request to hear an appeal of any recommendation made by the Ombudsman or of the rejection of a complaint by the Ombudsman.
- The Board shall not seek the identity of any complainant who has made complaint to the Ombudsman and shall not seek information relating to any complaint to the Ombudsman.

## **5. Scheme participation**

Nearly all Bank Ombudsman institutions have been initially unveiled as separate dispute resolution schemes for organizational, funding and simplicity reasons. This surmises an active membership from the bankers' associations and their member banks. Generally the participating members of bank associations have voting powers in the scheme. However, the Ombudsman Board or Council, depending on the scheme structure, may also accept other service providers to join the scheme on a voluntary membership basis. Non-voting membership may be open in some Ombudsman models to other financial service providers. In Germany, the procedure of member banks affiliation to the Ombudsman is simple and it is carried out by signing a document called "Declaration of Affiliation with the Ombudsman Scheme". The scheme is not extended on a voluntary jurisdiction basis to non-member banks.

If we refer to *Annex 2*, we can see that Ombudsman scheme participants are: all credit institutions in Austria; all member banks and financial firms of the German Banking Association in Germany and Italy (95% of banks in the country); all members of French Association of Finance Companies (AFC) in France; all banks, mortgage banks, pension, insurance, security and investment companies, credit unions in UK; members of the Polish Bankers' Association and 11 small cooperative banks on voluntary agreement in Poland. According to the Canadian model, current participating members include: banks and other deposit-taking organizations, investment dealers, mutual fund dealers and mutual fund companies.

### **5.1. Rights and Obligations of Scheme Members**

Rights and obligations of scheme members are defined in the Terms of Reference or Inter bank Agreement.

**The member banks are entitled to:**

- (i) act within the Ombudsman's Terms of Reference, according to Rules and Procedures for Complaints Handling;
- (ii) abide by law (Germany) or/and provisions of the industry's self-regulatory standards, such as the Banking Practice Code, Consumer Credit Code or Electronic Funds Transfer Code (where applicable), etc.;
- (iii) create Complaint Units/Offices at their banks;
- (iv) provide to the Ombudsman any information required. The Ombudsman may request the bank to submit information that it reasonably considers necessary for, or of assistance in, exercising the dispute resolution powers;
- (v) display notices in a prominent position in all their branches stating that they are part of the Bank Ombudsman scheme and if available, make copies of the Code of Banking Practice available; compile and make readily available brochures or other materials advising customers of complaint procedures and train staff to provide the necessary information;
- (vi) comply with requests made by the Ombudsman in line with Terms of Reference and Operational Procedures;
- (vii) pay within the specified timeframe the annual membership fee or/and service fees (whichever is applicable) in the amount determined by the Ombudsman Board for schemes funded by members;
- (viii) if the member bank has agreed to take certain actions to resolve a dispute, or has been required by an Ombudsman's determination to take such action, it must do so promptly within the time frame agreed upon by the parties.

**The member banks shall not:**

- (i) resort to litigation while a complaint is being dealt with by the Ombudsman unless the Ombudsman gives his/her written approval on the application of a bank whose rights would otherwise be prejudiced;
- (ii) prevent a customer who would otherwise be eligible to use the services of the Ombudsman from doing so through the use of an arbitration clause in a contract;
- (iii) provide the Ombudsman with any misleading information or answer;
- (iv) provide any customer with any misleading information regarding the operation of the Ombudsman scheme.

**5.2. Recent Developments in Ombudsman Scheme Participation**

Mulling over the convergence process taking place in the financial sector of many developed financial centers in Europe in the last decade, it has become increasingly hard for the customers to distinguish between the services offered by a bank, a life insurance company, a credit union or an investment dealer. Examples could be drawn from the jurisdictional issues encountered when a major investment bank and life insurance company are cross-selling products, or a financial planning group is issuing a credit card, etc. It is natural that consumers would find it very confusing if they had to choose between a variety of slightly different dispute resolution processes, or if they have to use more than one process in a dispute crossing jurisdictional lines.

In response to these developments in the financial markets, the unification of financial authorities and the expanded scope of the authority's responsibilities have already occurred

in some countries. On the other side, to close gaps for consumers, an emerging need for one-stop service has arisen, followed by the establishment of silo/integrated schemes, which bring under one roof all financial service providers (mortgage, insurance, pension, investment companies), including banks. The rationale behind the merging process is justified with the compatibility of separate scheme objectives, similarity of their Terms of Reference and the frequent overlap of competences. The United Kingdom is the front runner in this development, where the corresponding scheme has already been in place for 5 years. Ireland adopted the scheme about one year ago. Greece followed the pattern in July 2005, while the proposal is under examination in some other European countries.

### **Advantages of a single Ombudsman Scheme**

The advantages emerging from the operation of an integrated scheme with a comprehensive coverage of the financial sector have been rehearsed as follows:

- ↯ despite increasing number of complaints, benefits are clearer access procedures, a less confusing structure and a better understanding by consumers of what they can expect under the system;
- ↯ closing the obvious gaps to customers arising from separate dispute resolution schemes;
- ↯ greater efficiency of operation due to the standardization of procedures, improvement of IT systems, and the streamlining of management structures;
- ↯ a flexible one-stop service to settle a high volume of specialized disputes every week under one roof, is something that logistically no single court of law could do using normal court practice;
- ↯ as a result of the previous advantage, reduction of operational costs through achieving economies of scale and the reinforcement of reliability and efficiency;
- ↯ improvement of the quality of the dispute handling process on account of increased consistency and more uniform access to the new scheme;
- ↯ better information flow and more transparency in dealings between the public and the financial sector in general;
- ↯ fairer competition as all regulated firms participate in the scheme.

## **6. Eligible complainants**

According to Bank Ombudsman's jurisdiction, the Ombudsman may consider a complaint brought by a consumer of a bank/financial service provider.

A consumer is usually defined as an individual, a self-employed (professional) or a small business owner, a guarantor of such an individual, and a person treated by the service provider as acting for a consumer or guarantor or a deceased consumer or guarantor. In various schemes there are clear definitions on what is considered an individual and a small business from the perspective of the Ombudsman.

### **Who is considered an individual?**

An *individual* is considered to be a natural person (i.e. not a corporation or other legal entity). Based upon various definitions found in the terms of references of various schemes, an executor or beneficiary of a trust or estate in respect of which a banking service has been provided may be qualified as an individual. Similarly, the provider of a security for a

mortgage or loan or a person whose information is the subject of a dispute relating to confidentiality are also considered individuals.

In many schemes, in order to have a dispute considered, an individual must sign an authority that allows the Ombudsman to obtain information from, and disclose information to, the bank or financial service provider. If the account is held in joint names, all account holders will generally be required to sign the authority.

### **What is a small business?**

Depending on the country where the Ombudsman operates, there are certain rules that apply to qualify a business as a small business. Small business in general includes a sole proprietor or trader, a juristic person, partnership or trust that have a certain turnover (according to various country rules) in the last financial year. In the UK and Ireland, unlike Canada, businesses must comply with maximum size tests to be eligible for the services offered. In UK the annual turnover for small businesses is less than one million pounds. In Australia the criteria for small business eligibility is the number of employees.

Eligibility to lodge a dispute to the Ombudsman varies from one scheme to another. All seven of the European Redress Schemes summarized on *Annex 2* are available to consumer customers. Until recently about 60% of European schemes did not accept complaints from businesses and professionals with exception of cross-border cases, when scheme is accessible to all the above subjects. British complainants include individuals, small businesses and professionals. In Greece the scheme covered only individuals until 2005, to expand later with professionals and small businesses. Same in Italy, where starting from January 2006 all customers are eligible to complaint with the Ombudsman. In Poland and Estonia only individual private consumers (natural persons) are considered as eligible complainants. Similarly, in Germany the scheme is designed solely for *private customers*. Conversely, no restrictions apply to consumer complaints on cross-border payment disputes within the European Union.

## **7. Ombudsman's Scope: Powers and Duties**

The principal powers and duties of the Ombudsman are described in the organization's Terms of Reference. The Ombudsman has an absolute discretion to decide whether or not to consider a dispute by determining whether or not it falls within its jurisdiction. The Ombudsman should comply with all applicable legislation protecting the privacy of personal information as well as the privacy policies and procedures of the Ombudsman.

### **The Ombudsman's Principal Powers & Duties:**

- a. consider disputes within Terms of Reference and to facilitate the satisfaction, settlement or resolution of such disputes by agreement/by making recommendations or determinations/by other means defined in Terms of Reference and the Operational Procedures;
- b. advise the public about the complaint making procedures;
- c. issue bulletins or other information notes regarding banking practice;
- d. require a bank or complainant involved in a dispute to provide any information which in its view is necessary for complaint's resolution;
- e. follow and implement any procedures and in the absence of an agreement between the parties, make recommendations and determinations;

- f. decline to consider a dispute if it is outside the Terms of Reference or the information provided indicates that the Ombudsman could not fairly and reasonably exercise the dispute resolution powers;
- g. dismiss a complaint, at any stage of the procedure, on the grounds that the complainant has misled the Ombudsman or has failed to cooperate in the process, or to respond to requests for information or comments within a reasonable time;
- h. determine, prepare, publish, and from time to time amend dispute resolution procedures which will apply to disputes.

### **Other Powers and Duties of the Ombudsman are:**

#### **a) Publication of Annual Report**

The Ombudsman must submit for approval to the Council/Board or to the Bankers' Association (Italy) an annual report which contains details of the operation of the scheme and compliance with the Terms of Reference. It must be published and made available to the public on request.

#### **b) Reporting**

The Ombudsman prepares and provides various reports containing statistics, case studies of complaints for educational purposes (with all personal identifiers removed), and other information that the Board considers appropriate to the interests of concerned parties and the general public. It is the Ombudsman's task to report to the Board or the Association any material or persistent non-compliance with the Terms of Reference or Operational Procedures arisen during the dispute-handling process by a member bank. It also reports to the Board regarding complaints which have not been completed within a time laid down by the Board.

#### **c) Consumer Awareness**

The Ombudsman must ensure that the existence of the scheme is actively promoted. In particular, the Ombudsman should be promoted to consumers who are under-represented for example consumers in rural areas and minorities.

The Ombudsman must publish and promote details about the way it functions and how the consumers can lodge a complaint with it, including time limits specified by the procedure. It also prepares information leaflets and case studies on a regular basis. Manuals and brochures outlining the scheme's services, procedures, policies and guidelines are provided to all participating banks and consumer bodies, and are available to consumers on request. Another important source of information is the Ombudsman's website, which in many countries allows the customer to file a complaint online.

ABI in Italy publishes leaflets explaining the Banking Ombudsman's activities and the President and the Secretary of Ombudsman regularly release interviews on press about activities carried out by the Ombudsman.

In UK, the FSA rules require service providers to tell their customers about the ombudsman when they first do business with them, and when the customer subsequently has a complaint. Consumer awareness in UK comes from the following sources: 36 % from banks/service provider, 29% from media, 11% relative and friends, 5% internet. In Italy also the main source is information provided from the bank or financial institution itself.

The Terms of Reference outline the types of disputes that Ombudsman can and cannot consider.

## A) What are the disputes falling within Ombudsman's Jurisdiction?

A dispute can be defined as a *complaint* by a consumer to the bank/financial provider, concerning the provision of *a product or service or a privacy issue* (in UK, Germany, etc.), only after the bank's internal complaint resolution processes have been exhausted. In this case, the service provider has either rejected the complaint or has made a recommendation for complaint resolution, which has not been accepted by the complainant. Another possibility is that in the opinion of the Ombudsman the case has reached deadlock with the complainant.

*Eligible complaints* could be differentiated:

I) With respect to **complaint nature** they may relate to:

(a) Any *act or omission* by a bank/service provider which includes *offering, withholding, providing and administering a product or service to consumers* such as a deposit, loan, a payment instrument, or other facility, product or financial service. The Ombudsman cannot consider disputes relating to a bank in its capacity as an employer or anything arising from a commercial relationship between parties such as selling a bank property or procurement service.

(b) Any *acts or omissions* about *the breach of consumers' confidentiality and privacy*. E.g. the act of releasing information about consumers' financial situation, or account details to a third party without their knowledge; or failure to conform to a consumer's request not to disclose his telephone number and name to telemarketers.

II) With respect to **complaint amount**:

The Ombudsman may investigate any complaint received by a complainant to whom the bank/service provider has provided a banking/financial service up to an amount not exceeding a certain limit. In Germany the maximum amount of dispute is €5,000, in Czech Republic and Greece is €50,000. In Italy, and Austria the cap for Bank Ombudsman complaint amounts has been increased since January 1, 2006, respectively from €10,000 and €5,000, to €50,000 (value of the amount claimed by the customer). This seems to be the amount prevailing in most European schemes. The limit amounts in UK and Canada are respectively £100,000 and CAD260,000.

## Typical Complaints to the Bank Ombudsman

Generally the Bank Ombudsman receives and considers complaints of the following nature:

- non-observance of bank's official working hours by branches;
- complaints pertaining to refusal of open deposit accounts without any valid reason for refusal;
- complaints relating to the operations in any savings, current or any other account maintained with a bank, such as delays, non-credit of proceeds to parties' accounts, non-payment of deposits, etc.
- errors and miscalculations to bank's rate of interest on deposits, saving account, etc.;
- complaints in relation to delays and inappropriate charges to customer's money transfers, deposits and other bank-related matters;
- non-issue of drafts to customers and others;
- failure to honor guarantee/letter of credit commitments by banks;
- complaints from exporters such as delays in receipt of export proceeds, handling of export bills, collection of bills, etc.;

- claims in respect of unauthorized or fraudulent withdrawals from deposit accounts, or fraudulent encashment of a cheque or a bank draft, etc;
- disputed cash withdrawal at branch counter, when the customer did not make or authorize withdrawal or when the signed withdrawal slip is disputed by customer;
- lender gives confusing and unclear information about interest rate on a loan;
- demanding penalty payments from customers who paid off mortgages early, a practice which was declared unlawful in many countries;
- Erroneous stop of consumers' credit cards (cases when consumer were stranded abroad and unable to obtain funds in the short term to allow them to continue their trip as planned);
- a consumer is denied access to funds in an account because of an error in the electronic funds transfer system or the bank gives the consumer's money to another person;
- practices of some deposit-takers slashing interest rates on obsolete deposit accounts and profiting from those savers, who do not keep a check on the interest rate they are receiving;
- A customer discovers that a considerable amount of money had been withdrawn from his account. His PIN had been involuntarily disclosed to a thief, who then stole his bank card and made bank machine withdrawals.
- Cases when a lender intentionally encourages a client to take out a loan to re-finance the debt. But once the new loan had gone through, the client found he was being charged a very high rate of interest.

## **B) Disputes falling outside Terms of Reference**

The following disputes represent limits on the Ombudsman's powers (jurisdiction):

### **a. disputes about banks not affiliated to the Ombudsman's schemes**

If the Ombudsman finds that the dispute refers to a bank not affiliated to the scheme, it shall refer it to the appropriate conciliation body (Germany). An affiliated bank effectively means a bank/service provider that has entered into an agreement with the Ombudsman, which makes the Ombudsman decision binding on that organization.

### **b. disputes that have not been first considered by the bank/service provider**

As a rule, the Ombudsman cannot consider the dispute if it is not first considered by the service provider and all the procedures of internal dispute resolution have been used out (everywhere).

### **c. disputes that are outside various time limits**

These disputes may be claims prescribed by respective law or represent an act or omission which occurred more than a certain time period prior to the date when the complaint was lodged with the Ombudsman (UK, Italy, Germany, etc.).

### **d. disputes about systemic issues**

Some examples of systemic issues are poor disclosure or communications, administrative or technical errors, product flaws, and improper interpretation or application of standard terms. Systemic issues comprise:

- **commercial judgment in decisions about lending or security**

*Commercial judgment* means the exercise of financial or commercial risk analysis in decision making. This judgment involves cases related to institution's decision to lend and its maladministration. E.g. the bank refuses to lend funds as requested by the consumer or lends funds to the consumer where they had no reasonable prospect of repaying the loan (UK, Germany, and Italy).

- **disputes about interest rate policy and general practice or policy**

The Ombudsman may not consider a complaint or dispute that relates to a practice or policy of a bank including (UK, Germany - in Italy, it can do so only from a judicial perspective, i.e. to check if the law regarding changes of rates, tariffs and fees has been observed):

- *bank's general interest rate policy*, e.g. a dispute about an increase to the interest rate on a variable home loan product;
- *policy on fees and charges*, unless it relates to a fee or charge being incorrectly applied by the bank having regard to any scale of charges generally applied by that bank. A general dispute about the fairness of fees and charges or the amount of the fee or charge levied in accordance with the bank's policy and its terms and conditions, is not within the Ombudsman's jurisdiction;
- *bank's general management practice or policy*, e.g., a dispute about mergers of banks or ATM location would be outside the Terms of Reference.

**e. disputes already considered by the Ombudsman**, unless new information becomes available (Italy, UK, Germany, etc.);

**f. disputes that are more appropriately dealt within another forum**

The Ombudsman may not consider a complaint or dispute that is the subject of any proceedings in any court or other independent dispute resolving body or an investigation by a statutory Ombudsman of any jurisdiction. In addition, if a consumer can make an allegation of fraud, conspiracy or theft by a bank staff, this issue could be better dealt with by the police or a court instead of the Ombudsman (UK, Germany, Italy);

**g. disputes that are considered to be unreasonable (frivolous or vexatious)**

The Ombudsman may, at its sole discretion, determine that a dispute should not be considered on the grounds that the complainant is pursuing it in an unreasonable manner, or in a frivolous, vexatious, offensive, threatening or abusive manner (UK, Australia, etc.);

**h. disputes where the claim for loss exceeds the limit amount**

By definition the Ombudsman may not consider a complaint or dispute that involves an amount that exceeds the limit amount of complaint as specified in the respective Terms of Reference, unless the bank concerned has agreed in writing to this limitation being exceeded. When complaint proceedings involve a higher amount than the limit (in Germany €5,000, Italy €50,000 and in UK £100,000) the Ombudsman decisions are not binding on either party.

**i. disputes where the consumer has not waived confidentiality rights** to enable the Ombudsman to access otherwise confidential information;

**j. disputes in which the Ombudsman has been involved in the past or has a material interest in it** (Germany, UK).

## **8. Ombudsman Procedures to Complaint Handling**

From an examination of complaint handling procedures in UK, Italy, Germany and some other countries, the main steps that complaint processing go through the Ombudsman scheme have been summarized in *Annex 7*<sup>15</sup>, despite slight differences from one model to

---

<sup>15</sup> This annex includes also some Case Studies addressed by Banking Ombudsman of different countries

another. In general, if consumers complain to the Ombudsman before they have given the service provider the opportunity to put things right, the Ombudsman will refer the consumer to the service provider (providing the references) to lodge the complaint. There are five major steps that a complaint follows from the receipt of an enquiry from the Ombudsman Scheme until its Final Recommendation or Determination is released.

#### **a. Nature of Ombudsman's decision**

From the schemes analyzed in various countries (Italy, UK, Poland, Czech Republic, Germany, etc.), in 70% of the processes, a recommendation from the redress scheme is binding on the bank/company provided that the amount involved in the dispute does not exceed the maximum limits stipulated in the Complaint Handling Procedure of respective schemes. Only in the Netherlands is the recommendation binding on the customer. Based on the information that was collected, all except one of the schemes have a limit on the size of the award that they can recommend that the bank pay to a customer.

In this case, the banks/financial service providers have no recourse to a court of law. Conversely, the customer is free to pursue the matter further with the court. However, for complaints where the amount involved exceeds the maximum limit, the Ombudsman's decisions are non-binding on any party. In Greece, either party may bring the case to the court, in case they disagree with the Ombudsman's decision, while in France the Ombudsman's decision is non binding on any party.

#### **b. Enforcement of Ombudsman's decision**

If the customer accepts an ombudsman's decision, the rules require the business to comply promptly with any money award or other direction that the ombudsman makes. If it does not do so, the customer can, if necessary, go to court to enforce the award or direction.

In Italy the enforcement of Ombudsman's decision is secured through the inter-bank agreement, which is part of the ombudsman system requiring the banks to comply with the decision. The Ombudsman cannot impose a bank/financial intermediary to abide by its decision. However, in case a bank is not compliant, the Ombudsman has the right to publish the delinquency on newspapers at the bank's cost. This circumstance has never occurred.

The German Banking Ombudsman survey (1992-2006) referred above indicates that, on average, around half of all complaints taken during a 15 year period have been settled in favor of banks (49% directly in bank's favor and 3% with compromise) and 48% in favor of customers. Same is true for Italy, where 50% of Ombudsman's decisions are in favor of the complainant.

#### **c. Scheme Compensation**

The Ombudsman may investigate a complaint involving claims for any monetary amount, provided that they fall within the Ombudsman's mandate. It can make a recommendation or determination up to a maximum amount (including, amounts awarded for damages, interest, amounts for distress and inconvenience, etc.). Likewise, the Ombudsman can make an award up to a certain fixed amount in favor of a complainant, when a bank unnecessarily delays the proceedings or fails to respond to an Ombudsman's request (Italy, UK).

In order to obtain an award the consumer should be able to prove the loss or damage caused by the service provider. This may have a "financial" or "non-financial" nature. "Financial loss or damage" is considered any loss suffered by the complainant from the service provider that can be quantified as a monetary sum. In some circumstances, the

Ombudsman may award a consumer compensation for “non-financial loss” caused by the bank’s conduct. Non-financial loss includes personal inconvenience, anxiety, stress, breach of privacy. Examples may be cases when consumers are denied access to their funds in a retail shop due to malfunction of bank’s internal electronic system or the dishonor of a consumer’s cheque in error etc. Nevertheless, the award for non-financial loss in Europe is very modest (U.K. and Germany, if the law allows). In Italy, the Ombudsman can rule only on economic damages stemming from the provision of banking/financial services, i.e. not on any customers’ non-financial loss.

The FOS in UK can make the firm: pay compensation, interest and rarely costs. Additionally, or alternatively, they can make the firm take ‘appropriate’ action. The Ombudsman, however, may not make a recommendation that a service provider pays an amount greater than a maximum limit in respect of any single complaint. If a complaint pertains to the same subject, it can not be divided into two or more complaints for the purpose of bringing the amount within the Ombudsman’s mandate.

If an FSA-regulated firm threatens to penalize a customer for exercising the right to refer a complaint to FOS, the FSA has indicated that it may treat the firm as having failed to meet certain conditions of its Principles for Business. This may have regulatory consequences for the firm.

#### **d. Termination by complainant**

A complainant may, at any time prior to the issuing of a determination, terminate the Ombudsman's handling of the complaint and resort to litigation or other dispute resolution process by withdrawing the complaint in writing.

#### **e. Legal Costs**

All costs associated with the conduct and resolution of a dispute in accordance with the Terms of Reference must be borne by the Ombudsman and the bank/service provider in accordance with general payment procedures and cost arrangements determined by the Ombudsman’s Council or Board. The consumer cannot be charged, even if a complaint or dispute is dismissed, for any professional or administrative costs.

Consumers do not usually need professional help from a solicitor or legal representative to bring a complaint to the Ombudsman (Italy, UK, Germany, etc.). If consumers or the service provider are permitted to be legally or separately represented or assisted in relation to the Ombudsman’s procedure, the costs associated with that representation and assistance must be met respectively by the consumers or the service provider (Germany, UK, etc.).

The use of legal representatives in disputes is strongly discouraged as every effort is made to ensure the dispute resolution process is as speedy and non-legalistic as possible. Consumers are at liberty to reject the Ombudsman’s determination and take legal action to resolve the matter.

## **9. Operational and Funding Issues**

### **A. Daily Operations**

In schemes where the Ombudsman is registered as a separate entity, the Ombudsman is responsible for its administrative functions. Otherwise, as stated in former paragraphs, it is the Banker’s Association in charge of these functions. In general, the Ombudsman’s day-to-day management has to do with the proper exercise of all the *administrative, functional*

and operational powers stated in the Terms of Reference. The Ombudsman must attend meetings of the Board/Council and provide them on request with any necessary information and assistance.

One of the regular operational tasks of the Ombudsman scheme (UK, Italy, Germany, etc.) is *collection and recording of data*, such as the number of complaints received, demographics of complainants, the number of complaints received that fall outside the Terms of Reference, the scheme's current caseload, including the age and status of the open cases, time taken to resolve complaints and a profile of complaints to enable identification of the type of financial product or service involved, the product or service provider, the underlying cause of the complaint, etc.

To process and record the above information, the scheme develops its own *Management Information System (MIS)*, which is a database from which all complaint and enquiry related information is extracted. The system captures not only written complaints, but also information provided over the phone from the complainant. The MIS reports generate information about consumers (name and personal details, type of complainant), banks, type of disputes, the status of dispute, dates in the resolution process, decisions taken with respective electronic records and timeframe, etc.

The Ombudsman needs to have a fast and accurate MIS in order to produce timely statistical reports to the banks at any time, to its Board, to the regulators, consumer groups and the public.

## **B. Staffing**

In order to respond and handle a large volume of daily complaints FOS in UK has employed 1 chief ombudsman, 2 principal ombudsmen, 27 ombudsmen and 1,000 other staff. The UK has a large traffic of complaints on an average day: 2,750 consumers contacts, 3,250 people logging on to get information through the website, responding to 2,500 items of post, 6,700 emails and 7,500 phone calls and producing 6,500 documents and sending out 3,500 items of post.

The scheme productivity in UK is measured by the average number of cases resolved by each adjudicator per week. This figure was 4.4 in 2005. The unit cost for a case in the same year was £496.

Currently the Ombudsman in Italy is composed of 12 people, nominated by ABI: 1 Secretary, 7 expert officials, 4 administrative assistants. Disputes are investigated by the Secretariat of the Ombudsman. For independence purposes, the expert officials prepare files of complaint but no information is disclosed to ABI on who is dealing with which file/complaint and the secretary is no longer an ABI employee. Ombudsman's premises are in a different location from ABI and the costs of premises, equipment and staff are paid by ABI. In its first year of operation the scheme had only 2000 complaints. Now the number has more than doubled.

In Germany, the secretariat functions of the private Bank Ombudsman are executed by the Association's staff composed of a secretary and some customer consultants working at the customer complaint office. The number of complaints in Germany has grown from 500 per year in 1992 to almost 3,000 at the end of September 2006.

From meetings held with British and German Ombudsman scheme, their recommendation, given the initial caseload for Romania, was to start the scheme at its minimum maintenance: one ombudsman, one secretary and one customer expert/adviser. For specialized cases, outside lawyers and bank expert assistance may be called in.

### **C. Relationship with other institutions**

The Ombudsman scheme may co-operate with other *Industry Ombudsman Service* in the investigation of a complaint and may, if appropriate, make a joint recommendation. This happens when the subject matter of a complaint is one in which another Industry Ombudsman Service has expertise and the complainant and the bank/service provider give their consent.

*The banking/financial service industry* values the ombudsman service for boosting the consumer confidence in financial products and services. If Ombudsman detects patterns of complaints, it brings them to the attention of the banks, association and other concerned institution in order to have them dealt with through Codes of Conduct, etc. This leads to changes in the bank-customer relationship, including provision of better quality information to customers and preventing future complaints.

*The regulators* are also interested in Ombudsman's affairs and both institutions benefit from the excellent working relationships developed among them. In case of systemic issues and serious misconduct (unethical behavior from bank staff) from the banks, the Ombudsman should report the cases to the regulatory bodies and the scheme Board/Council or the Banking Association. In such cases the Ombudsman cooperates closely with the banks/service providers to make identification of all consumers affected by this problem and to provide appropriate compensation to them in case of any financial loss they may have suffered. For complex systemic issues, the Ombudsman works with the industry and the regulator to put in place a strategy to remedy the systemic problem.

*Consumer protection associations and agencies* naturally take a strong interest in the health of the ombudsman organization and close contacts are maintained with their work. The *media* form an important source of information about Ombudsman's work. Certainly, *politicians and parliamentarians* are naturally interested in Ombudsman's work, both at a general level and in relation to individual constituents' complaints. For this reason, the Chief Ombudsman of public schemes is called for hearings regularly in Parliament.

The Ombudsman does not appear as a party in relation to other organizations, in schemes where it is not incorporated as a legal entity (Germany, Italy), since institutional relations are maintained by the Association.

### **D. Ombudsman's Funding Arrangements**

In general, funding arrangements are simple in voluntary schemes operated by the Banking Associations, where the Ombudsman is not an organization per se. Hence, the Banking Ombudsman in Italy and Germany is funded by the respective Banking Associations from their own budget, sharing expenses among its members. Similarly, in Finland, and Greece the schemes are private and funded by the respective Bank Associations. No fees are charged to customers.

The scheme in Poland is funded by the member banks of the Polish Banking Association. The general principle of covering costs are the number of complains concerning a given bank. As opposed to the above schemes, here the customer pays an initial fee of circa Eur12 (in PLN) to file an application with the Ombudsman. The Ombudsman does not act unless the fee is paid. The fee will be returned to the customer if the Ombudsman rules in his/her favor.

The Bank Ombudsman in Spain is statutory and public, assigned to the Bank of Spain and is publicly funded. Likewise, the Czech National Bank provides administrative support for the Financial Arbiter's activity costs from the state budget. In Belgium, where the organization of the Ombudsman scheme is voluntary and private and the Ombudsman is registered independently, the funding is private, with a fixed contribution from each of the

financial service organizations that take part in the scheme, and a contribution which is proportional to the number of complaints. In Ireland and Norway, the organization is privately funded by the industry and levy depends on the number of personal customers.

The most sophisticated financing formula is the one applied by the Australian and British Ombudsman organizations, which represent also the largest and the most comprehensive Ombudsman models.

The Australian FCDRS is an industry-funded service, where costs are met by contributions from participating scheme members. Like elsewhere, there is no cost for individuals or small businesses to lodge a dispute. The cost coverage is spread among each member financial service provider, which pays:

1. an annual participation fee
2. a set fee for each dispute referred to the FCDRS about that particular service provider and
3. an additional amount based on the time taken by the FCDRS to investigate and resolve disputes between a consumer and the service provider

In U.K. before 2000, the funding of the British Banking Ombudsman was required by the Council adding more independence to the scheme compared to Association-funded schemes. It was the responsibility of the Bank Ombudsman to prepare a draft annual operating budget for submission to the Board. The Board approved the budget and levied the cost from the member banks. Small banks paid a flat fee plus a further sum for each complaint. Large banks met the rest of the cost, one quarter pro-rata to the number of accounts which they had and three quarters pro-rata to the number of complaints which came to the Ombudsman from them.

The legislation that set up the FOS in UK in 2000 does not contain any power to charge consumers for using FOS service. The British Parliament decided that the Ombudsman should be funded by the financial services industry and that business, not consumers, should meet the costs of resolving disputes. The funding of the new FOS by the financial services industry is currently arranged by funding arrangements applicable to firms authorized by the FSA which are subject to the FOS on a compulsory basis. The arrangements apply also to unauthorized financial services firms which join the FOS voluntarily. In summary, the aim of these arrangements is to secure funding schemes that are fair and efficient, simple to administer and that provide the FOS with certainty and flexibility in budget planning and financial management. Another benefit of these arrangements is to encourage firms to resolve complaints at an early stage, without discouraging them from using the FOS, where appropriate.

The FOS is currently funded by a combination of a general levy paid by all firms under the FOS's jurisdiction and a user pay element (i.e. a case fee) paid by firms for individual complaints.

The main components of this financing model have been further explained below:

### **1. General levy/case-related charge ratio**

Currently the scheme is financed through a 25:75 split between general levy and case-related charge. The allocation of the general levy is related to the budgeted costs of handling complaints in each industry sector, to reflect the way that different sectors generate different levels of complaints. This will mean that each firm will pay a contribution more exactly related to its volume of activity. Each year in January the FOS consults publicly its proposed budget for the financial year ahead, receiving feedback on the amount it needs to raise through the levy and on the proposed level of the case fee.

Cost calculations for allocation purposes are based either on turnover or on a transaction-based approach. Currently, the number of accounts is used as a unit measure for deposit-taking institutions.

The portion of the FOS's yearly budget not covered by the general levy is raised from case-related fees, paid by individual firms at a flat rate per case closed. The scheme has been collecting 100% of budgeted annual operating costs on account at the beginning of the year. As part of the budget process, the FOS will estimate the number of complaints which it expects to close during the charging period (i.e. 'chargeable cases').

**Weighted scale for smaller firms:** There are cases when smaller firms are treated in a way to pay a proportionately lower amount in relation to their unit of measure than larger firms.

## **2. How is the money raised?**

To help simplify administration, the FSA collects the general levy at the same time that it collects its own regulatory fees. The FOS will then set the case fee at the amount necessary to raise the portion of the budget which is not raised by the general levy. The FOS finance staff sends out an invoice for the case fee to the business concerned at the end of the month in which the case is closed.

A complaint is not chargeable under FOS rules until the latter receives a completed and signed complaint form from the consumer along with supporting information. Fewer than one in six of the initial complaints and enquiries that FOS receives at its front-line customer contact division become chargeable cases. A case fee becomes chargeable when the FOS Customer Contact Division passes a complaint to one of the casework teams of adjudicators. However, the fee does not actually become payable until the case is settled and closed, whatever the outcome, even in cases when FOS discovers after investigations that it is outside its jurisdiction.

It is the policy of FOS not to currently charge businesses for the first two chargeable cases closed during the financial year, but charge them instead only for the third (and any subsequent) case. The standard case fee as per above definition is currently £360. This fee has not increased in the last five years. In fact, only around 5% of businesses covered by FOS currently pay case fees, the other 95% have fewer than three complaints a year referred to FOS.

A special case fee (currently £475 per case - after the first two cases, for which there is no charge) applies where the business complained about is no longer regulated (and therefore no longer pays a levy) or the complaint is from a small business.

## **3. Reserves**

In the interests of striking an appropriate balance between a prudent level of flexibility and avoiding imposing undue burdens on firms, the FOS has built up reserves of 5% of its yearly operating costs over a three-year period.

### ***Section III: Recommendations***

From the analysis conducted in this study, we conclude that the Romanian banking industry:

- has been faced with mounting consumer complaints over the past years;
- needs to improve the public image of the banks and increase customers confidence;
- has not been adequately vocal to promote the customer awareness of its internal dispute settlement system;
- has been subject of criticism by consumers, who have generally rated their internal resolution systems as weak in terms of efficiency;
- offers currently time-consuming, inconvenient, costly and partial administrative complaint resolution procedures to the customers;
- to harmonize Romanian legislation with EU Directives and developments, government regulation might be necessary (as in the Czech Republic) if the industry does not regulate itself in the financial consumer protection area;
- is experiencing a current boom and an upward trend of people's access to banking services (especially the popularity of e-banking, telephone banking and card business and the boom of household lending), which accompanied with information asymmetry and the introduction of new, complex products, create an imperative for enhanced consumer protection legislation and actions and financial literacy programs.
- does not provide the proper standards and recommendations required by EU to keep consumers and small business aware of its consumer protection policy.

Romania's current status of consumer protection in the banking area and the experience of several EU Member States examined in this study bring clearly to evidence the advantages of out-of-court redress schemes for consumers and the banking industry.

#### **1. Benefits arising from consumers' perspective:**

- Consumer's benefits are double: from the existence of in-house complaint processing schemes/offices and the existence of an independent third party, the Ombudsman to deal fairly and impartially with any dispute unresolved with a bank/service provider.
- The impartiality, objectivity and transparency of the out-of-court mechanism boosts consumer confidence to do more financial services business.
- Consumers benefit from common standards applicable across the banking/financial industry, which encourage efficient competition between firms, both new entrants and long-established operators.
- The fact that in majority of the cases the Ombudsman's rulings are binding on the banks and that the service is free of charge to consumers provides a significant incentive to bank clients to pursue matters with the ombudsman.
- Provides an incentive to consumers to pursue with the scheme even small amount complaints, which are not economically viable to bring to the court due to costs offsetting the benefits.

- Out-of-court procedures facilitate consumer access to justice with their quickness, informality and fee-free handling of conflicts. They usually remedy certain problems associated with court procedures, such as expensive fees, time-consuming, cumbersome procedures and inconvenience.
- The difficulties inherent in court procedures, notably in the case of cross-border conflicts, discourage consumers from exercising their rights in practice;
- The scheme does not encourage the use of legal representatives, reducing costs on the economically weaker party (the consumer) and putting the parties on par; however, scheme flexibility allows the parties to require the legal advice of a third party to defend and protect their rights more effectively, in special cases.
- Ensures protection especially in the framework of development of new complex products that combine various financial services, which expose the consumer more to risks and require more protection.
- The Ombudsman scheme with its experts provides to consumers and small businesses a less bureaucratic and jargon-free way of handling complaints arising from lack of information, time and expertise needed to even begin the evaluation process.
- The scheme is advantageous over the court as it offers specialized knowledge and uses mediation and investigation of facts.
- There are no risks involved for consumers. If they do not accept the Ombudsman's decision, they are still free to go to a court of law.

## **2. Benefits arising from banks' perspective:**

- Private commercial banks are aware "that conciliation is better than litigation" due to high costs involved and reputation problems. The informality and confidentiality of the out-of-court procedure is more encouraging for the bank/financial industry as the publicity given by court could be far more damaging to the business's bottom line.
- Better customer retention rates, since the bank/service provider has the chance to learn, when a customer is dissatisfied through complaint submission to its in-house complaint office or the Ombudsman, giving the bank an option to rectify the error and improve relationship.
- If banks are not fully convinced of the righteousness of their position, they will be more interested in resolving client complaints through in-house settlement, rather than seeing the matter referred to the Ombudsman, as the decision of the latter is binding on the banks.
- The costs banks usually pay to the ombudsman per case are likely to be much less than the legal costs that might otherwise be involved in defending a claim in court.
- Ombudsman encourage complain prevention through the publication of case studies, which serve as educational materials for consumers and bank/financial industry alike.

### 3. *Recommendation: To Establish an Independent Bank Ombudsman*

- **In view of:**
  - i) **Considerable flaws in the current Romanian consumer protection;**
  - ii) **Romania’s EU membership;**
  - iii) **Benefits of scheme creation from user’s and supplier’s perspective;**
- **We recommend to the Ombudsman Project Working Group (PWG) that:**

**In order to ensure that Romanian consumers  
are served fairly and well across Romania,**
- **“An independent and effective Bank Ombudsman scheme be established modeled after the European schemes examined by this study”.**

The scheme objective would be to ensure fair and impartial complaints resolution between consumers and banks. Likewise most European schemes, the Ombudsman should have the power to require banks to pay compensation to complainants for financial loss and breach of privacy. Depending on future developments in the Romanian financial markets, the scheme may be upgraded to include other financial services, where appropriate.

1. In preparing for the establishment of the Bank Ombudsman scheme, the RBA should consult with its members and the NBR to establish the role that the existing scheme will play in the future.

#### *Issues to consider on deciding the scheme status:*

- A) The PWG will have to determine whether the **scheme jurisdiction will be compulsory or voluntary, private or government-run.**

From the analysis conducted in this study, compulsory or statutory regulation implies legal obligations of all scheme participants to comply. A voluntary scheme with voluntary participation works best according to most European experiences for separate industry schemes, in our case for the banking industry. But they contain the risk that a certain number of market participants may not comply with the scheme obligations, making difficult for consumers to distinguish between compliant and non-compliant banks (practice has demonstrated flaws with these schemes even in modern countries like Canada) and leading practically to “no-regulation”. Besides, it is a recognized fact that voluntary schemes best protect the industry interests rather than protecting the interests of all stakeholders (consumer associations, etc.) and the main decisions rests with the industry. Another danger is that no legal base exists to ensure scheme enforcement as opposed to statutory regulation. The compulsory regulations offset the risks inherent in the voluntary schemes, but they lose credits when compared with voluntary schemes in terms of flexibility. When business associations play the role of regulators they are not tied to the lengthy and complex processes of state regulation, thus responding rapidly and flexibly to market developments.

From our study it also results that most schemes organizations are private and not run by the government. Generally, in fragile and underdeveloped markets, where self-regulation is difficult and not reliable, the government steps in to perform these functions. This is supported by the argument that governments are accountable to all stakeholders (including industry and consumer organizations), who are given the right to provide their input into the development of statutory regulation. In many government-run schemes the funding of the schemes comes from the state budget. Certainly, the government as the regulator of banking services would be interested in industry's regulation and consumer protection, but it would not be rational for the state to cover the costs of a service (Bank Ombudsman), which brings many advantages to the banks themselves.

The final say will rest with the PWG, which will have to select from the possible alternatives set forth in this study the one which is best tailored to country's background, traditions and reality.

## **B) Safeguard of the Ombudsman's independence**

The organization's impartiality and objectivity are essential for safeguarding the protection of consumer rights and for strengthening consumer confidence in alternative mechanisms for resolving consumer disputes (*as observed in Section II*).

From the schemes examined, there is no "standard" model for ombudsman's independence. In deciding which scheme better fits to the Romanian model, the PWG will have to balance independence and costs involved. A scheme where the Ombudsman is established and incorporated as a legally separate organization with its own Board/Council seems to guarantee a higher level of independence, but it requires more money to create and maintain. On the other side, Italian and German models where the Ombudsman is part of the Association work well for well-established industries with high ethical standards. To ensure success of these schemes in Romania, we suggest:

- i.** Creation of independent governing body with representatives from all stakeholders (equal participation of representatives of NBR, consumer associations, academia, etc. is an appropriate way of ensuring this independence),
  - ii.** Conclusion of a binding inter-bank agreement (terms of reference) and assurance of Ombudsman's qualifications (please refer to the EC recommendation in the *Annex 5*).
  - iii.** Prudence and attention should be exercised in the process of Ombudsman's appointment. It must be noted that if banks themselves make the ultimate decision to appoint their bank employees to serve as their ombudsmen, the impartiality feature of the scheme is seriously impaired. This is analogous to someone deciding to take a company to court and finding out that the judge assigned the case was an employee of the company being sued.
- 2.** All member banks of RBA should have the option of *participating* in the *Ombudsman system*. For non-members, voluntary jurisdiction may be extended.
- 3.** Since today is difficult to observe schemes that are not open to small businesses and individuals, the PWG, based on a cost-benefit analysis, may consider two options in terms of *eligible complainants*:
  - a.** making the scheme accessible to private consumers only and available to all subjects for cross-border complaints, given the fact that almost 90% of

complaints received currently from NBR, ANPC and individual banks come from individuals; or

- b. making it open since the beginning to individuals, self-employed and small businesses.
4. All banks operating in Romania and affiliated to the RBA should be required to contribute to the ***financing of an independent Ombudsman***. The PWG should explore the most appropriate financing method (flat fee, case fees or combined) for members and those on voluntary jurisdiction (if applicable) and specify method for cost allocations among members after wide-industry consultation.
  5. ***Restructure and promote the in-house complaint-settlement schemes***. A fully intended consequence of the introduction of the Ombudsman Scheme is for most private commercial banks the strengthening of the functioning of bank's in-house complaint resolution schemes to handle customer complaints before they are addressed to the Ombudsman. These in-house complaint-settlement schemes have been a success in all European countries analyzed in the context of this study, because they may settle a considerable number of complaints without the need to go to the Ombudsman. In many cases, easy-to-understand information on banking procedures or complex, abstract banking transactions are handled by these offices, preventing any supposed disputes. The banks should improve their complaint tracking systems, provide more training to their staff and increase promotions to their customers.
  6. Once an independent Ombudsman has been established, the new scheme and all banks should be required to ***design a strategy to increase awareness and provision of information***. They can make joint promotion of the scheme through brochures, flyers in their branches, informing customers of the banks' complaint handling processes and the Ombudsman system. The focus of the promotions framework is to publicize the Scheme amongst young people, older people, small businesses and people in rural and regional areas.
  7. ***Design and adopt the Banking Code***: Since Ombudsman's scope and powers are significantly based on applicable law and industry codes in most European Schemes, we recommend to the RBA the design and adoption of Banking Code, which is currently absent. The Code will set out the banking industry's key commitments and obligations to customers on standards of practice, disclosure and principles of conduct for their banking services.

Adoption of the Code will be a mark of quality and customers should be encouraged to check if their bank subscribes because it is a binding contract between a bank and its customers for which the bank/service provider will be held accountable. To ensure successful compliance with the Code, a Committee may be set up to conduct investigations and monitor standard observance. To this extent, banks should take actions in advance to update their systems, procedures and train their staff accordingly.

#### 4. Actionable Steps

The analysis conducted in this study has confirmed our view that there are strong arguments in favor of the early setting-up of a special unit to manage the Scheme.

- The PWG should press ahead with the set up of a new Scheme's Board, which can make decisions on key issues regarding the form of the new Scheme.
- The initial responsibility of the Scheme's Board will be to work with the RBA, NBR and Consumers Association/Authority in setting up the new Scheme. The Board will therefore play a key role in deciding the design and structure of the new Scheme, the number of staff expected to employ and the estimate budget for the first two years. In consultation with NBR, RBA and banking community, the Board should determine the scheme main jurisdictional issues (scope, procedures, eligibility, participation, limits and awards, financing, etc.)
- Legal expertise should be requested to draft the major scheme documents such as the scheme by-laws/articles of association, the Terms of Reference/Inter-bank Agreement, in accordance with the Romanian applicable laws and regulations, etc.

From meetings conducted with the British Financial Ombudsman Service we have preliminary received an offer of their assistance for helping in establishing a Banking Ombudsman scheme in Romania, including the availability of a senior expert for 10 days<sup>16</sup>.

- Another priority of the new scheme will be developing the rules of the new service, policy and practices (manuals, procedures, etc.).
- Make estimations for the first three years of operational budget based on the expected scheme caseload (*some practical budget considerations on bank ombudsman schemes have been displayed in Annex 8*). Draft the first year budget, consult it with members and approve it.
- Upon appointment, the Scheme Board should make decisions on the qualifications and appointment of the Ombudsman, location, logistic, etc.
- In terms of IT the scheme should create a database for case filing, information collection and providing answers to clients on case status. It should have a telephone line available and a customer specialist to respond to customers.
- Recruiting: The scheme may operate initially at its minimum maintenance: one ombudsman, one secretary and one customer expert/adviser. For specialized cases, outside lawyers and bank expert assistance may be called in. A list of available lawyers and bank experts may be drafted to this purpose.
- Professional and management training of new scheme staff should be also planned and conducted to prepare for operational launch. A detailed program determining the number of training days per person per year, the body of knowledge and technology operations should be drafted.
- The new scheme should prepare a brochure/leaflet to be distributed to customers on how to resolve the disputes. It should draft a template form of complaint<sup>17</sup> to be completed and submitted or mailed out by the customers. Later, the possibility of designing a website and registering complaints over the internet should be explored and implemented.

---

<sup>16</sup> Enclosed is *Annex 9* with the offer of UK FOS for assistance

<sup>17</sup> Attached *Annexes 7.1 and 7.2* of UK and EU Complaint Forms

- At the end of first year of Ombudsman's operation, an independent file audit/assessor for quality purposes may be instigated (a recognized procedure in other Ombudsman schemes). The focus of the audit should be decided at the due time and could be selected from amongst a range of aspects of case management.
- Application for becoming a FIN-NET member should be done once the above steps have been concluded.
- Upon conclusion of its first year of operation or fiscal period (whichever is suitable), the scheme should publish its Annual Report, where statistics and anonymous case studies are published.

5. BANK OMBUDSMAN IMPLEMENTATION PLAN	TIMELINE	RESPONSIBILITY
<p><b>1. 1<sup>st</sup> PWG meeting:</b></p> <ul style="list-style-type: none"> <li>➤ Analysis of findings of the background study;</li> <li>➤ Endorsement of the TORs prepared by the SPI Secretariat.</li> </ul>	Nov. 20 <sup>th</sup> - Dec. 2 <sup>nd</sup> , 2006	PMG PMG
<p><b>2. Discussions with relevant stakeholders</b> (National Bank of Romania, Ministry of Public Finance, Romanian Banking Association, National Authority for Consumers Protection, Association for Consumers Protection, individual banks, and Ministry of Justice) in order to clarify the options agreeable to all stakeholders for institutional set up and operating principles of the Banking Ombudsman;</p>	Dec. 4 <sup>th</sup> – Dec. 15 <sup>th</sup> , 2006	PMG/SPI Secretariat
<p><b>3. Prepare a recommendation</b> that a Banking Ombudsman is created in Romania based on evidence of potential benefits for banks and consumers and international experience, to be endorsed by the SPI Committee in December 2006.</p>	Dec. 4 <sup>th</sup> – Dec. 15 <sup>th</sup> , 2006	PMG/SPI Secretariat
<p><b>4. Presentation of a summary of the Background Paper on Banking Ombudsman</b> in Romania for the SPI Committee discussion.</p>	Dec. 20 <sup>th</sup> , 2006	Convergence
<p><b>5. 2<sup>nd</sup> meeting of PWG</b></p> <ul style="list-style-type: none"> <li>➤ Take note of the SPI Committee endorsement of the interim report and discuss any suggestions received;</li> <li>➤ The PWG agrees on the <b>form of the new scheme</b>, the desired composition of the <b>Scheme's Board</b> and its main operating principles (e.g. budget and funding) and proposes it to RBA, NBR and consumer protection bodies for approval (with possible support from British FOS).</li> </ul>	Jan. 22 - 26, 2007	PMG
<p><b>6.</b> RBA, NBR and consumer protection bodies approve plan and make <b>nominations for the Board.</b></p>	–February 28, 2007	PMG/SPI Secretariat
<p><b>7.</b> Members-designated of Bank Ombudsman (BO) Board meet to appoint [General Secretary-designated] in charge of legal and operational preparations.</p>	March 1, 2007	RBA, NBR, ANPC

<p><b>8. The <i>Board-designate holds its first meeting</i></b></p> <ul style="list-style-type: none"> <li>- The Board-designate determines the scheme's main jurisdictional issues (scope, procedures, eligibility, participation, limits and awards, financing, etc.) in consultation with NBR, RBA, banking community, consumer protection bodies.</li> <li>- Reviews and approves scheme budget.</li> <li>- Considers and approves strategy on the design and structure of the new Scheme, location, logistic and staffing to RBA, NBR and Consumers Association/Authority.</li> </ul>	<p>March 31, 2007</p>	<p>Ombudsman's Board</p>
<p><b>9. <i>Legal expertise is requested to:</i></b></p> <ul style="list-style-type: none"> <li>➤ draft the major scheme documents such as the scheme by-laws/articles of association, the Terms of Reference/Interbank Agreement, in accordance with the Romanian applicable laws and regulations, etc.</li> <li>➤ to develop the new schemes' rules of service, policy and practices (manuals, procedures, etc.).</li> <li>➤ to make decisions on the qualifications and appointment of the Ombudsman,.</li> </ul> <p>Identification of suitable staff is completed. Assistance from the British Financial Ombudsman Service has been already procured for helping in establishing a Banking Ombudsman scheme in Romania, including the availability of a senior expert for 10 days.</p>	<p>March 15. – April 15. 2007</p>	<p>PWG, RBA</p>
<p><b>10. <i>Board-designate holds a second meeting</i></b></p> <ul style="list-style-type: none"> <li>➤ Discuss and approve final documents to constitute Bank Ombudsman function.</li> </ul>	<p>April 15 - 30, 2007</p>	<p>PMG</p>
<p><b>11. <i>Stakeholders formally create BO</i></b> (signing of legal documentation).</p>	<p>–May 15-30, 2007</p>	<p>PWG and Ombudsman's Board +experts</p>
<p><b>12. <i>BO hires staff</i></b> (one ombudsman, one secretary and one customer expert/adviser )</p>	<p>June 1, 2007</p>	<p>Ombudsman</p>
<p><b>13. <i>Start of Operations</i></b> - The scheme may operate initially at its minimum maintenance. For specialized cases, outside lawyers and bank expert assistance may be called in. A list of available lawyers and bank experts may be drafted to this purpose.</p>	<p>June 1, 2007</p>	<p>Ombudsman</p>

<b>14. Professional and management training</b> of new scheme staff are conducted according to a detailed program determining the number of training days per person per year, the body of knowledge, etc. is drafted.	June 2007	Ombudsman
<b>15.</b> Design the <i>MIS</i> infrastructure	June - July 2007	Ombudsman
<b>16. Prepare a brochure/leaflet</b> to be distributed to customers on how to resolve the disputes. The template form of complaint is drafted to be completed and submitted or mailed out by the customers.	July 2007	Ombudsman and staff
<b>17. Official Launch</b> of Ombudsman Scheme and the Consumer Awareness Campaign	July - August 2007	Ombudsman, NBR, RBA, banks, ANPC
<b>18.</b> Application for becoming a FIN-NET member is finalized.	August 2007	Ombudsman
<b>19.</b> Design the <i>website</i> with information and consumer complaint filing.	Sep.- Dec. 2007	Ombudsman
<b>20. An independent file audit/assessor for quality purposes may be instigated.</b> The focus of the audit should be decided at the due time and could be selected from amongst a range of aspects of case management.	At the end of first year of Ombudsman's operation	Ombudsman's Board
<b>21. Publish Annual Report</b> , where statistics and anonymous case studies are published.	At the conclusion of Ombudsman's first year of operation or fiscal period (whichever is suitable)	Ombudsman