

Memorandum to SPI Secretariat

January 22, 2007

Now that the Bank Ombudsman Project has received the RBA Board approval and the endorsement of the SPI Committee to act for the Ombudsman establishment, you have to make sure that the Project Working Group (PWG) is proceeding according to Project's implementation plan.

Even if the advantages of Bank Ombudsman establishment are significant to all stakeholders as outlined in the Convergence Background Study and the preliminary Regulatory Impact Assessment, cost concerns may weaken the RBA's resolve for quick implementation of the Bank Ombudsman (BO) structure.

It is therefore important that you help the PWG design the lowest cost possible BO while preserving its essential independence feature.

First, I would suggest that you develop an indicative budget for the first 18 months of operations based on the following principles:

1. Immediate establishment of a Code of Ethics that would govern the banks' relationship with users.
2. Enhancement of the internal complaints handling procedures to reduce the need to resort to an outside appeal procedure.
3. Policy decision to deal solely with individuals complaints in the first 18 months and for disputed amounts in excess of Euro 1,000 equivalent. The other option for the PWG could be: the Ombudsman will consider complaints/disputes where the claim for loss does not exceed the limit amount of Euro 1,000
4. Possible policy decision to restrict eligible complaints on one family of issues that poses the greatest consumer protection concerns (based perhaps on a bank survey).

Second, I would suggest that you propose a funding scheme as much as possibly aligned to making the banks that generate the BO complaints incur the bulk of its operating costs.

These two elements combine will go a long way to removing the present hesitation to fund the BO operations.

Third, you should help the PWG design the independence feature of the BO function based on the following considerations:

The issue of independence in this model is a rather delicate issue. Its significance should be seen from two angles:

- 1) The Bank Ombudsman's functioning should be detached completely from the RBA's Board influence to secure customers' confidence in the process;
- 2) Complete objectivity and fairness should be guaranteed while exercising the Bank Ombudsman's powers and activities.

On the other side, the banking industry itself might show some resistance to a completely neutral Ombudsman (due to fears of potential corruption).

To ensure successful application of this model, the PWG may consider:

- a. The creation of an independent governing body (Board) with representatives from all stakeholders. This Board will be composed of 3 or 5 members with equal participation of representatives of NBR, RBA, consumer protection bodies, academia, etc. In case of 3-member composition, the Board Chairman may be nominated by the Governor of NBR and the two other members might come from the RBA and consumer protection bodies.

If the Board is composed of five members, the two additional ones will have to be nominated from the RBA and academia. Remuneration of Board Members should be modest.

- b. The PWG should define a very clear profile of Bank Ombudsman and preview a rigorous selection of Ombudsman. The proposed Board may create a short list of potential candidates, who may be former senior judges (now retired); whose personality and proven expertise could ensure impartial proceedings. The Ombudsman is selected by the Board from this list for a specified number of years. These candidates must be qualified to hold judicial office. They must not have been employed by either the RBA or a commercial bank during the last three years prior to taking up office. The part-time Ombudsman is not paid a fixed salary, but a modest remuneration for the work performed. Other eligible candidates from the above list might be called upon for specialized cases or if the number of complaints grows beyond the normal workload of the part-time Ombudsman. The EC recommendations in the Annex 5 of the Background Study may serve as a guideline for Ombudsman's qualifications.
- c. The RBA and its member banks have to ensure the enforcement of their rights and obligations deriving from this voluntary scheme in a binding interbank agreement that will serve as terms of reference.

Fourth, please provide some guidance to the PWG on operational aspects of the BO function.

Without entering into details, the proposed part-time Bank Ombudsman's tasks would not differ much from a permanent Ombudsman. Its main functions and client judging procedures would rather be the same. The peculiarity would rest only with administrative, reporting and logistic tasks.

To ensure maximum cost-efficiency in case of a part-time Ombudsman scheme, the RBA could pay to a retired, senior and reputable judge (the candidate appointed by the Board) a fee for his working from home (after the German model). One or two RBA employees can perform advisory and secretary functions and be domiciled in the SPI Secretariat to ensure a minimum of independence from the RBA. The part-time Ombudsman should have a PC, a telephone line and a valid e-mail address for correspondences, while the RBA-paid staff would handle correspondence with clients and hand over the files to the Ombudsman. The staff supporting the Ombudsman would take instructions for their work only from the Ombudsman himself and no information on the files is disclosed to the RBA.

This approach would certainly contribute to holding the costs down compared to other models and safeguard independence principles.

Fifth, it may be a good investment for the RBA to retain the counsel of Mr. David Thomas, the Principal Ombudsman of British FOS, in validating the PWG implementation plan, before it is submitted to the RBA Board for final approval.

Convergence stands ready to continue to support the BO PWG as it designs the implementation plan.



Shkelqim Cani