



**BANK NEGARA MALAYSIA**  
CENTRAL BANK OF MALAYSIA

# **Financial Ombudsman Scheme**

## Concept Paper

Issued on: 29 August 2014

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As part of efforts to enhance dispute resolution arrangements for financial consumers, Bank Negara Malaysia (the Bank) is proposing the establishment of a financial ombudsman scheme aimed at promoting more effective and fair handling of disputes against financial service providers. For this purpose, the Bank invites interested parties to provide their written feedback on the specific questions set out in this concept paper as well as any general comments on the proposals. In addition, interested parties may identify specific issues / areas for clarification and highlight alternative proposals for the Bank to consider. Respondents are encouraged to provide clear arguments, accompanying evidence or illustrations as appropriate with the feedback submitted to facilitate the Bank's assessment. Please respond to the Bank by 29 September 2014 addressed to:

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## **A. INTRODUCTION**

1. The Financial Services Act 2013 (FSA) and Islamic Financial Services Act 2013 (IFSA) provide for the approval of a financial ombudsman scheme (FOS) for purposes of ensuring effective and fair handling of complaints and for the resolution of disputes with financial service providers (FSPs) in connection with financial services or products.
2. The FOS will be a scheme that provides financial consumers with an inexpensive and effective independent redress mechanism with minimum formality to resolve their disputes with FSPs quickly. The service offered will be an alternative to, and not a replacement for, the courts.
3. In Malaysia, the Financial Mediation Bureau (FMB), which commenced operations in 2005, currently provides consumers with an avenue for the objective and timely resolution of disputes, claims and complaints arising from services or products provided by FSPs that are supervised by the Bank. This scheme, which has been operating under a voluntary arrangement by FSPs as its members, is funded entirely by such FSPs via an annual levy, and the service is free to complainants.
4. The existing arrangements and operations of the FMB are being reviewed with a view to transform the FMB into an FOS approved under the FSA and IFSA. This transformation of the FMB into the approved FOS aims to enhance access for complainants to an independent arrangement for resolving their disputes and complaints involving member FSPs. As part of the transformation, the current governance and operational arrangements of the FMB will be enhanced in line with international best practices, to promote a fair, effective and independent dispute resolution process.
5. This concept paper therefore sets out the key aspects of the proposed FOS framework, which have been formulated based on six underlying principles, namely independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness.

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6. In line with the above underlying principles, the FMB, on its transformation to, and as the approved FOS:
- (i) will be required to comply with any regulations issued pursuant to sections 260 of the FSA and 271 of the IFSA. The purpose of such regulations will be to stipulate requirements for the approved FOS to be administered in a fair, accessible and effective manner;
  - (ii) shall have members which will be all the FSPs identified under Part E of this concept paper as per the requirements in subparagraphs 126(1)(a) of the FSA and 138(1)(a) of the IFSA;
  - (iii) will be able to issue directions to member FSPs to take certain steps for the resolution of a specific dispute as appropriate having regard to the circumstances of the dispute; and
  - (iv) in respect of awards granted or directions which it issues, any failure to comply with the awards or directions by the member FSPs will be deemed breach of the FSA or IFSA, as the case may be.

7. The approved FOS is expected to commence operations in the second half of 2015.

8. The terms and expressions used in this concept paper are to have the same meanings assigned to them in the FSA and IFSA, as the case may be, unless otherwise defined. For the purposes of this concept paper:

**“approved financial ombudsman scheme (FOS)”** means a dispute resolution scheme approved by the Bank under subsections 126(2) of the FSA and 138(2) of the IFSA for the resolution of disputes between an eligible complainant and a member FSP in connection with financial services or products;

**“Board”** means the board of directors of the FOS operator;

**“FOS operator”** means a body corporate which operates the approved FOS; and

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“**ombudsman**” means an adjudicator in an approved FOS.

## **B. LEGAL PROVISIONS**

9. The provisions governing the FOS can be found in sections 126 of the FSA and 138 of the IFSA.
10. Pursuant to subsections 126(2) of the FSA and 138(2) of the IFSA, the Bank is empowered to approve an FOS for the purposes of ensuring effective and fair handling of complaints and for the resolution of disputes in connection with financial services or products. The Bank is also empowered to make regulations on the following:
  - (i) requiring any class, category or description of FSPs to be members of the approved FOS and comply with membership terms at all times;
  - (ii) matters that the Bank may have regard to when approving a FOS;
  - (iii) terms of the approved FOS setting out its scope including types of dispute that may be referred to it and eligible complainants, membership requirements, applications, operations, procedures, the fees that may be charged and the types of award which may be granted;
  - (iv) appointment of directors of the FOS operator;
  - (v) documents and information to be submitted by the FOS operator; and
  - (vi) withdrawal or suspension of the approval granted under the above provisions to the approved FOS.
11. The members of the approved FOS will have an obligation under subsections 126(4) of the FSA and 138(4) of the IFSA to:
  - (i) provide documents or information as required by the approved FOS for the resolution of disputes referred to the FOS; and
  - (ii) comply with any award granted by the approved FOS, including a direction that requires a member FSP to take steps or actions necessary for resolution of a specific dispute.

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Failure to comply with these obligations will constitute a breach of the FSA or IFSA, as the case may be, for which the Bank can take administrative actions against the non-compliant member FSP.

12. Subsections 126(5) of the FSA and 138(5) of the IFSA provide that where a dispute has been referred to the approved FOS, the complainant will not be entitled to lodge a claim on the same dispute with the Tribunal for Consumer Claims. This is to preserve certainty in the decisions made by the approved FOS and avoids undesirable practices associated with “forum shopping” by complainants which could undermine the efficiency, use of resources and the integrity of the dispute resolution mechanism. Nevertheless, complainants will continue to be entitled to pursue their disputes further through the courts if they are not satisfied with the approved FOS’s resolution.
13. The FSA and IFSA, together with any regulations to be made by the Bank under these Acts, set out the broad regulatory requirements of the approved FOS. The conduct of business and affairs of the approved FOS will be the responsibility of the Board.

## **C. UNDERLYING PRINCIPLES**

14. An FOS operator will be required to observe the following principles in its operations for dealing with disputes:

### **(i) Independence**

The operations of the approved FOS will be subject to the oversight of the Board which will be independent of those subject to the investigation of disputes under the FOS. The Board will be responsible for ensuring the integrity of the operations of the approved FOS and its ability to provide effective and independent services to the complainants. The approved FOS’s decision making process must be objective and independent of both member FSPs and complainants.

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**(ii) Fairness and Impartiality**

In dealing with disputes, the FOS operator must act fairly and impartially. The ombudsman must ensure that information provided by both member FSPs and complainants is carefully and objectively considered in reaching a well-reasoned decision, while having regard to the law, the Bank's standards and/or guidance as well as industry best practices. The ombudsman must at all times have no conflict of interest with any of the disputing parties, and provide fair, adequate and intelligible reasons for any decisions given.

**(iii) Accessibility**

The FOS operator must promote easy and affordable access to its services by creating awareness on its services, maintaining easy to understand, clear and transparent procedures for complainants to bring a dispute to the approved FOS.

**(iv) Accountability**

The FOS operator must publish an annual report on its activities and operations to promote public accountability for its decisions and actions, including its financial management. The FOS operator will also commission a periodic independent review to assess the effectiveness of the operations of the approved FOS.

**(v) Transparency**

The FOS operator must publish information on the services and scope of coverage. This would include the types of disputes and awards, and approach in handling disputes and arriving at decisions. In a dispute of public significance, the FOS operator should also publish relevant information on the manner and reasons for arriving at a particular decision with a view to educate the public and member FSPs. However, the identities of the disputing parties shall remain anonymous.



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**(vi) Effectiveness**

The FOS operator must have the necessary resources, coverage and powers to be able to resolve disputes in a timely and effective manner. This includes ensuring an adequate number of suitably qualified and competent case managers and ombudsmen to reflect the volume and complexity of disputes handled. Decisions on disputes and reasons for the decision must be clearly communicated to the disputing parties. In this respect, the FOS operator shall establish a service charter in handling disputes.

**D. GOVERNANCE STRUCTURE**

**Board**

15. The approved FOS will be governed by the Board, whose directors are to be approved by the Bank. The Board will comprise individuals with appreciation of sound governance practices and have broad experience in or knowledge of consumer protection issues and/or financial services, and capable of providing an objective perspective on consumer issues or interests. Individuals on the Board should also have experience in strategic decision making and board level governance. In this respect, board members should possess experience and knowledge in at least one or more of the following disciplines: law and the wider judicial system, finance, audit and accountancy, customer insight, government and public policy.
16. The number of directors of the Board should be commensurate with the nature and scope of the approved FOS and shall consist of 7 to 11 individuals at all times. The majority of the Board will consist of independent directors who must not be in the active employment or service of, or have a significant interest in, any member FSP. The Chairman of the Board shall be an independent director.
17. The Board must act in the best interest of the approved FOS. While individual directors on the Board may be drawn from consumer groups or the industry,

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their duty will always be to safeguard and promote the integrity of the approved FOS above the interest of any particular group or the financial services industry.

18. The main responsibilities of the Board will include:
  - (i) providing the strategic direction, and setting policies and the long-term objectives of the approved FOS in accordance with its mandate;
  - (ii) establishing, implementing and overseeing procedures to ensure that the approved FOS will be able to carry out its functions in line with the underlying principles outlined in Part C;
  - (iii) ensuring that the approved FOS is financially sound by outlining an appropriate funding strategy and approving the budget;
  - (iv) appointing ombudsmen in line with the principles, terms of reference and mandates approved by the Bank;
  - (v) ensuring the sufficiency of competent resources and infrastructure to enable the smooth and effective operations of the approved FOS;
  - (vi) keeping under review the efficiency and effectiveness of the approved FOS;
  - (vii) monitoring compliance with the regulations governing the approved FOS; and
  - (viii) putting in place procedures to receive information on, and appropriately escalating identified systemic industry problems to the Bank.
  
19. The Board shall not be involved in handling individual disputes filed by complainants.
  
20. The Board will determine the terms of appointment (e.g. remuneration package and tenure of service) of the ombudsmen. The Board is responsible to ensure that the employment terms do not in any way affect the independence of the ombudsmen in performing their duties. This includes providing for a reasonable term of office that protects an ombudsman from termination without proper cause, setting out a clear ground for termination where appropriate and ensuring that the performance of an ombudsman is reviewed independently of specific interest groups.

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## **E. MEMBERSHIP**

21. FSPs which have direct dealings with retail consumers will be required to be members of the approved FOS to ensure that their customers have access to an independent avenue to resolve disputes with the FSPs. The following FSPs shall be members of the approved FOS:

- (i) licensed banks;
- (ii) licensed Islamic banks;
- (iii) licensed insurers (excluding reinsurers and the financial guarantee insurer);
- (iv) licensed takaful operators (excluding retakaful operators);
- (v) approved designated payment instrument issuers (including non-bank e-money issuers);
- (vi) approved designated Islamic payment instrument issuers (including non-bank Islamic e-money issuers);
- (vii) approved insurance and takaful brokers; and
- (viii) approved financial advisers and Islamic financial advisers.

It is anticipated that prescribed development financial institutions offering retail products will also become members of the approved FOS in due course.

22. The Bank will keep under review developments in the nature of the business of the member FSPs which currently are excluded from participating in the approved FOS and mandate their participation should the need arise.<sup>1</sup>

## **F. FUNDING**

### **Funding strategy and fee structure**

23. The approved FOS will be funded by its members which are the FSPs listed in paragraph 21.

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<sup>1</sup> The participation of money changers, remittance operators and payment system operators as part of the FOS membership has been excluded at this point in time based on an examination of the nature of the complaints against these entities that are more appropriately dealt with through regulatory responses. In addition, investment banks have also been excluded from the FOS membership due to (i) the nature of business and clientele that largely deals with products with monetary value of more than the FOS's threshold; and (ii) are members of the Securities Industry Dispute Resolution Scheme (SIDREC).

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24. The funding strategy, which would determine the quantum of fees to be imposed on each member FSP, must be fair, administratively simple to implement and be guided by two main objectives as follows:
- (i) the fee structure should incentivise member FSPs to resolve complaints effectively and expediently through their own dedicated complaints function; and
  - (ii) the fee structure should provide a reasonable degree of certainty in covering the overhead and administrative costs of operating the approved FOS.

### **Equal Membership Levy plus Case Fee**

25. In line with these objectives, a fee structure with an equal membership levy for member FSPs which are licensed institutions plus case fee for all member FSPs is being considered. Unlike current funding arrangements for the FMB, which only adopt an annual fixed levy applied to all members equally regardless of utilisation, the new fee structure will take into account an individual member FSP's level of utilisation of the approved FOS's services i.e. the number of cases referred to the approved FOS. The proposed fee structure is as follows:
- (i) The fee applicable to member FSPs which are licensed institutions<sup>2</sup> is proposed as:
    - (a) an annual levy shared equally by all such members, the quantum of which will be computed annually based on the approved FOS's budget requirements; and
    - (b) a specific case fee on per case basis referred to the approved FOS.
  - (ii) The fee applicable to member FSPs which are approved institutions<sup>2</sup> is proposed as a case fee only which will be based on the actual number of cases referred to the approved FOS against the particular member FSP. The quantum is to be differentiated depending on the resolution stage as follows:

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<sup>2</sup> Refer to paragraph 21. This will include prescribed development financial institutions offering retail products when they become members of the approved FOS in due course.

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- where the disputing parties are able to reach a mutually satisfactory settlement by way of mediation, the member FSP will only be required to pay a fee based on each case; and
- where the disputing parties are unable to reach a negotiated settlement by way of mediation, and choose to refer the case to the ombudsman for adjudication or decision, then the member FSP will be required to pay an additional fee for the case.

Under this fee structure, the overhead costs for the operations of the approved FOS will be fully covered by the annual levy applied equally to all member FSPs which are licensed institutions. Any additional amount collected through case fees will go towards reducing the budget requirements in the following year of operations. An illustration of the fee structure is given in the Appendix.

### **Implementation of the new fee structure**

26. The new fee structure is to be implemented effective from January 2017.
27. The Board will be responsible for ensuring prudent financial management by the approved FOS through its role in approving the annual operating budget for the FOS as well as maintaining oversight over its expenditure in line with the approved budget. This will be further reinforced through the publication of annual financial statements by the FOS operator and proceedings at the Annual General Meeting where the financial statements shall be tabled to the members no later than 6 months after the financial year closes.

## **G. SCOPE OF FOS**

### **Eligible Complainants**

28. The Bank proposes that the approved FOS may consider disputes referred to it from eligible complainants who are:
  - (i) financial consumers i.e. any person who uses or has used any financial product or service:
    - (a) for personal, domestic or household purposes; or

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- (b) in connection with a small business<sup>3</sup>,  
subject to the monetary thresholds set out in paragraph 35. For the avoidance of doubt, a financial consumer will also include persons insured under group insurance / persons covered under group takaful where the premiums / contributions are paid by the persons insured / persons covered, as the case may be; and
- (ii) third parties who are:
- (a) insurance / takaful claimants for motor third party property damage;
  - (b) guarantors for credit facilities granted by member FSPs;
  - (c) nominees / beneficiaries of member FSPs' customers including beneficiaries under group insurance / group takaful where the premium / contribution is paid by the persons insured / persons covered, as the case may be; and
  - (d) persons insured and their beneficiaries under group insurance / persons covered and their beneficiaries under group takaful where the premiums / contributions are paid by the Federal and/or State Government and the group insurance / group takaful provides for the persons insured / persons covered to deal directly with the member FSP which is an insurer / takaful operator, as the case may be, in the event of a claim.

### **Eligible Disputes**

29. The approved FOS will consider disputes against the member FSPs (including agents or representatives of the member FSP under a principal / agent relationship) for claims up to the prescribed monetary limit and which are not expressly excluded from the financial contract, such claims shall be limited to claims for a direct financial loss.
30. The approved FOS will handle eligible disputes filed against a member FSP regardless of whether the FSP was a member at the time of the act / omission.

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<sup>3</sup> Small business refers to small and medium enterprises (SMEs) as defined in the 'Guideline for New SME Definition' dated October 2013, issued by SME Corp. Malaysia, Secretariat to the National SME Development Council.

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31. A dispute must be referred to the approved FOS within six months from the date of final response from the member FSP, or it has been more than 60 calendar days from the date the complaint was filed with the relevant member FSP and the complainant has not received a final written response from the member FSP.

### **Exclusion List**

32. The approved FOS will not consider the following:
- (i) disputes that are beyond the prescribed monetary limit under the respective categories;
  - (ii) disputes that are referred after a period of more than six months after the member FSP's final response;
  - (iii) disputes on general pricing, credit or underwriting decisions, or on applications to restructure or reschedule a loan or financing which are within the discretion of a member FSP;
  - (iv) disputes that are being filed before a court or has been decided by a court. In this regard, a member FSP shall not file a case to the court if the case is being handled by the approved FOS unless the case will otherwise be time barred;
  - (v) disputes relating to contracts of employment or agency matters;
  - (vi) disputes that are time barred, i.e. after the expiry of six years from which cause of action accrued;
  - (vii) disputes that have been previously considered by the FMB or approved FOS unless there is new evidence available;
  - (viii) disputes on investment performance of a financial investment product except in relation to non-disclosure of facts or misrepresentation;
  - (ix) disputes that involve more than one eligible complainant and have been referred to the approved FOS without the consent of the other complainant, and the FOS is of the view that it would be inappropriate to deal with the complaint without that consent;
  - (x) disputes involving claims arising from bodily injury or death; and
  - (xi) disputes relating to the payment of life policy moneys / takaful benefits under family takaful certificates made in accordance with the provisions set out in Schedule 10 of the FSA and IFSA.

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33. In addition, the approved FOS may at its discretion exclude or dismiss any dispute (without making a recommendation or decision) that it considers as frivolous, vexatious or has no basis for a claim, or which would be more suitably dealt with through the legal process. This includes, among others, disputes with an element of fraud which are under the purview of law enforcement agencies<sup>4</sup>.
34. Decisions by the approved FOS to exclude or dismiss a dispute, under paragraph 33, must be documented, supported with written reasons and be subject to a review by the Board. The Board is responsible to ensure that the approved FOS is operating in a manner consistent with the underlying principles.

### **Monetary Threshold**

35. Eligible disputes referred to the approved FOS must be within the following monetary thresholds:
- (i) disputes on banking and insurance / takaful products or services – RM250,000;
  - (ii) disputes on motor third party property damage insurance / takaful claims – RM10,000; and
  - (iii) unauthorised transactions involving payment instruments and payment channels – RM25,000.
36. A higher monetary threshold has been proposed to take into account the increasing value of financial services or products obtained from member FSPs over time so as to ensure that the approved FOS will continue to be as widely accessible as possible.
37. Disputes above the monetary threshold of the approved FOS may be accepted by the FOS operator but subject to the mutual agreement of both complainant and member FSP.

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<sup>4</sup> Except for unauthorised transactions involving payment instruments or payment channels up to the prescribed monetary threshold.



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## **H. RESOLUTION PROCESS BY FOS**

38. Prior to referral of a dispute to the approved FOS, an eligible complainant must first refer his complaint for resolution through the concerned member FSP's own dedicated complaints channel. The member FSP must try to resolve the complaint through its dedicated complaints channel and issue a final decision no later than 60 calendar days from the date the complaint was filed.
39. The member FSP must in its letter conveying the final decision to the complainant, provide clear and accurate information on the next stage of redress through the approved FOS. This process is available if the complaint is an eligible dispute which falls within the FOS's scope of coverage.
40. The eligible complainant may refer his dispute to the approved FOS within 6 months from the date of the final decision from the member FSP, or after 60 calendar days from the date the complaint was filed with the relevant member FSP for which no reply was received.
41. The approved FOS must have in place a process to facilitate objective, fair and speedy resolution of disputes, with an emphasis to resolve the disputes as early as possible via mediation by a case manager. An adjudication by an ombudsman would become necessary should an agreed settlement is not reached at the mediation stage.

### **Resolution Process**

42. Before admitting or accepting a dispute for registration, an officer of the approved FOS (i.e. an employee) must confirm whether the dispute is within the scope of the FOS i.e. qualify as an eligible dispute. If the dispute does not fall within the approved FOS's scope, the officer shall advise the complainant accordingly.

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43. If a dispute falls within the scope of the approved FOS, the FOS shall proceed to handle the dispute, first under a case management stage followed by adjudication if necessary.

#### *Stage 1: Case Management*

44. An eligible dispute will be handled by a case manager<sup>5</sup>, where the case management is mainly aimed at facilitating the resolution of disputes between member FSPs and eligible complainants, through negotiation, mediation or a conciliation process. Mediation is a process by which the case manager will facilitate communication and negotiation between the disputing parties in reaching an agreement on the dispute. This process is to facilitate dispute resolution in a timely manner.
45. If the disputing parties fail to reach an amicable agreement, the case manager will make a recommendation on the manner in which the dispute should be resolved, taking into account all the information provided by both the disputing parties.
46. If the recommendation made by the case manager is accepted by both the disputing parties within the specified timeframe, i.e. 30 days from the date of the written recommendation, the dispute will be considered as resolved and closed.

#### *Stage 2: Adjudication*

47. If either of the disputing parties does not accept the recommendation by the case manager, the dispute shall be reviewed by an ombudsman<sup>6</sup>, who shall issue a final decision. An ombudsman must review the dispute independently, based on all available and any additional information provided by either party.
48. In coming up with a final decision, the ombudsman may conduct a hearing or make a decision based on available documents. Should the ombudsman

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<sup>5</sup> Case managers shall be appointed by the Board of the FOS.

<sup>6</sup> Ombudsmen shall be appointed by the Board of the FOS. The Board shall ensure that the FOS has sufficient number of suitably qualified ombudsmen to function effectively.

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decide to hold a hearing, it shall be conducted in such a way that all parties are given a fair hearing. The ombudsman may ask questions to either party, set appropriate time limits for the hearing, where necessary and ensure that the hearing is confined to matters which are material.

49. When issuing the final decision, the ombudsman must give his reasonings and state a time limit, i.e. 30 days from the date of written decision, within which the eligible complainant must indicate acceptance or rejection of the decision.
50. If the final decision is accepted by the eligible complainant within the time limit, it will be final and binding on both the eligible complainant and the member FSP.
51. However, if the eligible complainant does not accept the final decision within the specified timeframe, it will not bind either party and the complainant is free to pursue the matter through the courts against the member FSP.
52. The dispute resolution process adopted by the FOS operator shall be in line with international best practices including having in place several stages to provide an opportunity for parties to agree at an early stage. For example, at the case management stage, the disputing parties will be given ample opportunity to review the relevant facts, issues and disagreements in the attempt to reach an amicable agreement. In the event that the dispute cannot be resolved by mutual agreement, the case manager shall make a recommendation and the disputing parties are given sufficient time to accept or reject the recommendation. Disputes that cannot be resolved at the case management stage will be considered by an ombudsman. Once a decision is made by the ombudsman, the decision is final and cannot be appealed. The finality of decision is a critical element to ensure that the approved FOS provides an effective and efficient alternative dispute resolution system.
53. The Board shall also put in place procedures to accept referrals from member FSPs for an internal review of cases subject to clearly defined circumstances. This may include circumstances where a decision by an ombudsman is

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inconsistent with established industry conventions or the reasoning provided for the ombudsman's decision does not appear to address specific issues considered by the member FSP to be relevant to the dispute. Such a review shall be for the sole purpose of improving the process in reaching a decision to provide lessons for similar cases in future. The Board is not obliged to communicate the outcome of its review but may provide further feedback to the member FSP on the manner the ombudsman reached his final decision.

54. Throughout the resolution process, neither the member FSPs nor the eligible complainants will be represented by legal counsel. This restriction aims to ensure a level playing field between the member FSPs and the eligible complainants given that the complainants may not have the financial capacity to obtain the services of a legal counsel. This places an important obligation on case managers or ombudsmen to ensure that both member FSPs and eligible complainants are given a fair hearing, through various methods deemed appropriate. This does not prevent the approved FOS from exercising its discretion to allow the eligible complainants to be assisted by third parties, for example due to communication barriers, but this discretion is subject to clearly defined procedures.

## **I. AWARDS BY FOS**

### **Type of awards**

55. In ensuring the effectiveness of the approved FOS, the adequacy of the available remedies is an important consideration. In this connection, if a dispute dealt with by the ombudsman is determined in favour of the eligible complainant, the ombudsman may:
- (i) make or grant a monetary award against the member FSP, of an amount that the ombudsman considers a fair compensation for loss suffered by the eligible complainant;
  - (ii) direct the member FSP to take certain steps for the resolution of the dispute as the ombudsman considers appropriate;

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- (iii) order the reimbursement of an amount that the ombudsman considers fair, to cover some or all of the costs reasonably incurred by the eligible complainant in respect of the dispute, subject to a small threshold specified by the Bank. It is proposed that the limit be set at RM3,000; and
- (iv) order the member FSP to pay interest on the amount payable under the monetary award (after the specified payment timeline) computed based on the 1-year average fixed deposit rate published by the Bank (or participant's risk fund rates) + 1%.

56. The approved FOS shall not award any compensation to serve as punitive, exemplary and aggravated damages.

#### **Compliance to the award**

57. The FSA and IFSA impose an obligation on the member FSPs to comply with any award granted by the approved FOS, including a direction that require specific steps to be taken in relation to the dispute. In this regard, the approved FOS shall outline procedures for dealing with any non-compliance by a member FSP. The procedures may include the issuance of a notice outlining the act of non-compliance and determining reasonable time for a member FSP to comply with regard to the award. The FOS should also highlight the implications of failure to comply.

58. The FOS shall escalate any non-compliance by a member FSP to the Bank for further action. Under such circumstances, the Bank may:

- (i) issue a direction of compliance requiring the member FSP to comply with any award issued by the approved FOS; and/or
- (ii) impose an administrative monetary penalty for breach of the FSA and IFSA.

59. In addition to actions by the Bank in the event of non-compliance, a monetary award issued by the ombudsman can be sued for and recovered by the complainant as a contractual debt in the courts. For this purpose, the

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approved FOS shall maintain a register of each monetary award granted by an ombudsman.

## **J. INDEPENDENT REVIEW**

60. To ensure that the approved FOS meets the expectations of the various stakeholders as an efficient and cost effective redress avenue, the FOS shall commission a review of its administration by an independent party after 3 years from commencement date and every 5 years thereafter, or at any other interval as directed by the Bank.
61. The scope of the review will be determined by the Board in consultation with the Bank, and may include the following or any other areas of focus required by the Bank:
- (i) qualitative assessment of the operations and procedures of the FOS operator;
  - (ii) quality and effectiveness of the FOS operator in its engagement with the public and relevant stakeholders;
  - (iii) practices of transparency by the FOS operator; and
  - (iv) financial management by the FOS operator.
62. The Board is responsible to appoint the reviewer which must meet any criteria for appointment as may be specified by the Bank, which include among others, the reviewer's:
- (i) experience, expertise and reputation in conducting such reviews; and
  - (ii) ability to demonstrate independence and impartiality in discharging its duties.
- Prior notice of the proposed appointment of a reviewer must be given by the Board to the Bank. The Bank may object to the appointment on the grounds that the reviewer has not met the criteria specified by the Bank or it is likely that the review would not achieve the intended objectives.

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## **K. OTHER RESPONSIBILITIES**

63. The FOS operator will also be required to undertake the following developmental roles to further improve the services to complainants:
- (i) actively promote and raise public awareness of the approved FOS's services;
  - (ii) provide feedback to member FSPs on ways to improve their complaint management process;
  - (iii) highlight to the Bank cases that may give rise to systemic issues and/or cases involving serious misconduct; and
  - (iv) recommend policy changes to the Bank based on trends of disputes handled.

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**FEEDBACK REQUIRED**

The Bank welcomes any feedback on the proposed FOS framework set out in this paper. Specific feedback is invited on the following:

- (i) The principles governing the operations of the approved FOS;
- (ii) The composition and responsibilities of the Board of the approved FOS;
- (iii) The proposed fee structure for funding the operations of the approved FOS as illustrated further in the Appendix;
- (iv) The scope of eligible complainants and disputes that may be referred to the approved FOS, including the proposed monetary threshold for eligible disputes;
- (v) The resolution process to be adopted by the approved FOS;
- (vi) The specific circumstances under which the approved FOS may accept referrals from the member FSPs for internal review of cases decided by the ombudsman; and
- (vii) The criteria for appointment of an independent reviewer.

Comments on any other specific proposals are also welcomed.

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## APPENDIX

### Illustration of Fee Structure – Equal Membership Levy plus Case Fee

Member FSPs which are licensed institutions under the FSA and IFSA will pay:

- (a) A levy which is computed annually based on the FOS's budget requirement and shared equally by all licensed institutions (ES); and
- (b) Case fee of RM1,500 per case (CF).

Assumptions:

- Budget required in Year 1 (2017) : RM5.936 million
- Total licensed institutions (banking and insurance) : 86
- Total Disputes (TD) : 1,881

#### 2017

Each licensed institution will pay:

Equal share of budget requirement i.e.  $RM5,936,000 / 86 = RM69,023$  (ES)

+ Case fees i.e. number of disputes referred to the FOS x RM1,500 = (CF)

Total fees for each licensed institution =  $RM69,023 + CF$

#### 2018 and subsequent years

In computing the ES to be paid by each licensed institution for 2018 and beyond, the computation is the same except that the budget amount used to compute the ES would be the budget required for the present year less the CF collected in the preceding year.

Hence, for example, assuming that there is no change in the budget required for 2018 and the CF collected in 2017 amounted to RM2.8215 million:

Each licensed institution will pay:

ES i.e.  $(RM5,936,000 - RM2,821,500) / 86 = RM36,215$

+ CF i.e. number of disputes referred to the FOS x RM1,500

Total fees for each licensed institution =  $RM36,215 + CF$

Table 1

Licensed institution	Disputes	Year 1 - 2017 (RM)			Year 2 - 2018 (RM)		
		ES	CF	Total	ES	CF	Total
A	229	69,023	343,500	412,523	36,215	343,500	379,715
B	108	69,023	162,000	231,023	36,215	162,000	198,215
C	43	69,023	64,500	133,523	36,215	64,500	100,715
D	11	69,023	16,500	85,523	36,215	16,500	52,715
E	0	69,023	0	69,023	36,215	0	36,215

Table 1 shows the fees to be paid by licensed institutions in 2017 and 2018 based on the FMB's actual data on disputes for the period from July 2012 to June 2013, and assuming that the number of disputes received against the same licensed institution is at the same level. The fees range from RM69,000 to RM413,000 in 2017 and RM36,000 to RM380,000 in 2018.

Member FSPs which are approved institutions under the FSA and IFSA will pay a case fee only which will be based on the actual number of cases referred to the approved FOS. The quantum is to be differentiated depending on the resolution stage as follows:

- (a) A fee of RM100 per case for disputes resolved at mediation stage; and
- (b) An additional fee of RM500 per case for disputes resolved at the adjudication stage.

The above fee structure will be subject to periodical review.