

## **FINANCIAL SERVICES OMBUDSMAN SCHEME AGREEMENT WITH THE INSURANCE COMPANIES**

The under-mentioned insurance companies, hereby agree to participate in the Financial Services Ombudsman Scheme annexed to this agreement and marked "A" (in this Agreement referred to as "Scheme") and the Central Bank of Trinidad and Tobago agrees to accept the participation of the said insurance companies in the Scheme subject to their compliance with this agreement and the conditions set forth in the Scheme.

The said insurance companies hereby undertake to comply with the Scheme and in particular with the following paragraphs of the Terms of Reference under the Scheme:

- (a) Paragraph 14(b), which makes provision for funding of the annual recurrent expenditure of the Scheme, excluding expenditure relating to the employment of the Financial Services Ombudsman, to be shared by the financial institutions and the insurance companies participating in the Scheme.
- (b) Annual recurrent expenditure for the operation of the Office of the Financial Services Ombudsman is computed as the total expenditure less direct operating expenses for services rendered to financial institutions and direct operating expenses for services rendered to insurance companies and the cost of promotional material that will be funded by the Central Bank in the first year.
- (c) The share for the insurance companies in the first year of operation shall be calculated at the rate of fifty (50%) percent of the annual recurrent expenditure as defined in (b) above plus direct operating expenses for services rendered to insurance companies.
- (d) This method of apportionment of expenses will be subject to review after the first year and from time to time as may be necessary.
- (e) Paragraphs 33 to 38, which provide for an award to be made by the Financial Services Ombudsman to a complainant(s) against an insurance company about which a complaint has been received.

The conditions under which such an award is to be made are as follows:

- 1) The Financial Services Ombudsman has made a recommendation to the parties involved in a complaint for its resolution and this has not been accepted by them within the time specified under paragraphs 29 & 30 of the Terms of Reference of the Scheme.

- 2) The amount of the claim cannot exceed TT\$500,000 in respect of first party complaints and TT\$25,000 in respect of third party property damage claims under a motor policy.
  - 3) The award is binding on the insurance company provided that the complainant gives his acceptance in writing, within one month of the date of the award, as full and final settlement of the subject matter.
    - a. The award must be in writing and must state the summarized reasons for making it.
    - b. The insurance company must comply with the award within fifteen days of its receiving the written acceptance of the complainant.
- (f) Paragraph 42 which provides that the Office of the Financial Services Ombudsman may require from insurance companies information and certified copies of documents relating to complaints received against them and that the Office of the Financial Services Ombudsman has a duty to maintain confidentiality in respect to all such information and documents acquired by it in the course of carrying out its duties SAVE AND EXCEPT that the Office of the Financial Services Ombudsman may disclose all such information and documents to the Central Bank of Trinidad and Tobago for the purpose of regulatory or supervisory oversight

The said insurance companies further undertake to comply with the following to give effect to the Terms of Reference of the Scheme and to ensure its proper operation:

- 1) To establish and implement internal procedures for handling customer complaints at all branches, agencies and any other places of business and the head office of the insurance company and to ensure that customers are made aware of the existence of these complaint procedures. To make every effort to resolve customer complaints internally at an early stage. When all efforts by the insurance company to resolve the matter have failed or a period determined in accordance with paragraph 15(c) (ii), (iii) or (iv) has elapsed since the receipt of the complaint by the insurance company and the matter remains unresolved, the insurance company will inform the customer in writing of the existence of the Financial Services Ombudsman and of the 180 days time limit for referring the matter to the Financial Services Ombudsman for consideration.
- 2) To inform the Financial Services Ombudsman in writing of the general arrangements established to deal with complaints, the name and position of an officer at the institution with whom the Financial Services Ombudsman may communicate on matters related to complaints and any changes thereto.

- 3) To display in a prominent position within each branch, agency and any other place of business of the insurance company advertisements provided by the Financial Services Ombudsman publicizing his Office and to place consumer complaints pamphlets from the Financial Services Ombudsman in a position within each branch, agency and any other place of business of the insurance company that is easily accessible to customers; to be responsible for the distribution of pamphlets, etc. to branches, agencies and any other places of business upon delivery of these by the Financial Services Ombudsman at the head office.

#### 4) **FUNDING ARRANGEMENTS**

Pursuant to paragraph 14(b) of the Terms of Reference of the Scheme, to fund the annual budgeted recurrent expenditure of the scheme attributable to insurance companies by way of a general levy based on the total gross premium income less premiums attributable to group Pension Plans. The levy will be payable in advance either at the start of the financial year or in not more than four (4) equal quarterly instalments during the year as the Financial Services Ombudsman may determine. A minimum contribution of \$10,000 will first be applied to all participating insurance companies before apportionment of the budgeted recurrent expenditure.

Insurance companies joining the Scheme after the start of the financial year will pay a proportion of their annual contribution for that year calculated on a monthly basis and treating the month in which they joined as a full month.

No refund will be made to an insurance company which opts to leave the Scheme during the financial year and such insurance company must give at least two months notice of its intention to leave the Scheme.

- 5) To provide data to the Financial Services Ombudsman on a quarterly basis in respect to the number of complaints handled by the insurance company's final stage of its complaint handling procedures stating the number of cases which were resolved. The Financial Services Ombudsman may determine categories in which these should be reported and may publicize this data in aggregate form without identifying the insurance company.
- 6) To generally co-operate with the Financial Services Ombudsman on and lend support to matters relating to the operation of the Scheme.

**SIGNED** by the Central Bank of Trinidad and Tobago and the following participating insurance companies:

Central Bank of Trinidad and Tobago .....  
Ewart Williams

American Life and General Insurance  
Company (Trinidad and Tobago) Limited .....  
Mark Hansen

Bancassurance Caribbean Limited .....  
Douglas Camacho

Bankers Insurance Company  
of Trinidad and Tobago Limited .....  
Krishna Ramrattan

The Beacon Insurance Company Limited .....  
Gerald Hadeed

British American Insurance  
Company (Trinidad) Limited .....  
Brian Branker

Capital Insurance Limited .....  
Yacoob Ali

Citizen Insurance Company Limited .....  
Harry Gobin

Colonial Fire and General Insurance  
Company Limited .....  
Robert Ng Chow

Colonial Life Insurance  
Company (Trinidad) Limited .....  
Claudius Dacon

Cuna Caribbean Insurance Society Limited .....  
Anthony Hall

Furness Anchorage General  
Insurance Limited .....  
Donna-Maria Ferreira-Rajpaulsingh

Goodwill General Insurance  
Company Limited

.....  
Edwin Charles

Guardian General Insurance Limited

.....  
Richard Espinet

Guardian Life of the Caribbean Limited

.....  
Douglas Camacho

Gulf Insurance Limited

.....  
John Barkley

Maritime General Insurance  
Company Limited

.....  
John Smith

Maritime Life Caribbean Limited

.....  
John Smith

Mega Insurance Company Limited

.....  
Albert Tom Yew

Motor and General Insurance Limited

.....  
Winston Murray

The New India Assurance  
Company Limited

.....  
Srinivasan Gopalan

The Presidential Insurance  
Company Limited

.....  
Esau Mohammed

The Reinsurance Company  
of Trinidad and Tobago Limited

.....  
Rani Lakhani Narace

Sagicor General Inc.

.....  
Alan Cabral

Sagicor Life Inc.

.....  
Ken Marshall

ScotiaLife Trinidad and Tobago Limited

.....  
Gillian Poon Ting

Tatil Life Assurance Limited

.....  
Paul Traboulay

Trinidad and Tobago Insurance Limited

.....  
Paul Traboulay

United Insurance Company Limited

.....  
Dennis Benisar

Dated this 29 day of April, 2005

**“A”**

This is the Scheme marked “A” referred to in the hereto annexed Financial Services Ombudsman Scheme Agreement with the Insurance Companies dated 29 day of April, 2005 and made between the Central Bank of Trinidad and Tobago and the insurance companies named therein.

**THE SCHEDULE**

**FINANCIAL SERVICES OMBUDSMAN SCHEME  
Terms of Reference**

**Preamble**

The main object of the Office of the Financial Services Ombudsman is to receive complaints about the provision of financial services to small businesses and personal financial services customers, and to facilitate the settlement of these complaints. The aim is to provide independent and prompt resolution of complaints using the criteria of best practice in the financial services sector and the insurance industry in particular and fairness in all circumstances. It is recognized that the primary recourse for aggrieved small business and personal financial services customers is the internal complaint-handling mechanisms of the insurance companies.

**Purpose**

1. These Terms of Reference set out the jurisdiction, powers and duties of the Financial Services Ombudsman, and provide a general statement of the procedures to be followed in filing a complaint against an insurance company, subject to the Financial Services Ombudsman’s discretion as described in the Terms of Reference.

**Definitions**

2. In these Terms of Reference and in the annexed Financial Services Ombudsman Scheme Agreement with the Insurance Companies:

- a. the following expressions have the following meanings:

“Central Bank” means the Central Bank of Trinidad and Tobago.

“Complainant” means any small business or personal financial services customer or their authorised representative making a complaint to the Financial Services Ombudsman in respect of any Insurance Services provided by the insurance company.

“Financial Institution” means a company licensed by the Central Bank of Trinidad and Tobago to carry on the business of banking or business of a financial nature and that has agreed to participate in this Scheme.

“First party” means the complainant to whom a service has been provided by the insurance company complained against under a policy or contract of insurance

“Insurance company” means a company licensed by the Central Bank of Trinidad and Tobago to carry on the business of insurance and that has agreed to participate in this scheme.

“Insurance company named in the complaint,” means any insurance company against which a complaint is made.

“Insurance Services” means all insurance services and products provided by insurance companies in Trinidad and Tobago to a Complainant save and except for those services detailed under paragraph 17

“Maladministration” means an act or omission in breach of any obligations or duty owed by the insurance company to the Complainant for Insurance Services between an Insurance Company and the Complainant.

“Ombudsman” means the person appointed from time to time to exercise the powers and duties of that office in the Financial Services Ombudsman’s Office.

“Ombudsman’s Office” means the Office established to administer the Financial Services Ombudsman scheme.

“Personal financial services customer” means any individual making a complaint to the Ombudsman in respect of insurance services received in a personal capacity.

“Small Business” means any business possessing assets valued up to \$1,500,000.00 (excluding the value of land and buildings) at the time the subject of the complaint originated.

“Third party property damage” means the physical damage caused to a motor vehicle arising out of a motor vehicle accident and falling under the Motor Vehicles Insurance (Third-Party Risks) Act Chap. 48:51 and the insurance company complained against is a participating member of the Financial Services Ombudsman scheme

- b. references to the provision of Insurance Services include, where the context admits, references to their non-provision.

- c. references to the singular number (including without limitation references to “individual” “Complainant” “Insurance Company” and the Ombudsman) include, where the context admits, the plural number and vice versa and wherever to gender he or she as the case maybe; and
- d. references to paragraphs are to paragraphs of these Terms of Reference.

### **Powers and Duties**

- 3. The Financial Services Ombudsman shall:
  - a. act within these Terms of Reference;
  - b. receive complaints relating to the provision of Insurance Services, subject to paragraph 17, by an Insurance Company to any Small Business or Personal Financial Services Customer;
  - c. consider such complaints and facilitate their satisfaction, settlement or withdrawal whether by agreement, by making recommendations or awards, or by such other means as seem expedient;
  - d. adhere to the performance standards established by the Central Bank.
- 4. The Financial Services Ombudsman shall advise the public on the procedure for making a complaint to the Financial Services Ombudsman’s Office. The Financial Services Ombudsman shall not provide general financial or insurance advice about Insurance Companies or Insurance Services.
- 5. The Financial Services Ombudsman may delegate all or any of his powers and duties to appointed officers (e.g power to investigate matters and request information from Insurance Companies on a matter) of the Financial Services Ombudsman’s Office, except the Financial Services Ombudsman cannot delegate the power to make a recommendation or award and the Financial Services Ombudsman’s delegate cannot further delegate any of the Financial Services Ombudsman’s powers and duties delegated to him.
- 6. During any period in which the Financial Services Ombudsman is unable to fulfill his duties due to absence, incapacity or death, or in a circumstance in which a conflict of interest may arise, the Central Bank may appoint a Deputy Financial Services Ombudsman to act in place of the Financial Services Ombudsman.

7. The Financial Services Ombudsman shall have overall responsibility for the conduct of business of the Financial Services Ombudsman's Office.

### **Appointment**

8. The Central Bank in consultation with the Bankers Association and Insurance Companies may appoint a person to be known as the Financial Services Ombudsman to carry out the functions entrusted to him by or under the Terms of Reference. The Financial Services Ombudsman shall hold office for such period as agreed with the Central Bank of Trinidad and Tobago.

### **Territorial Jurisdiction**

9. The authority of the Financial Services Ombudsman is limited to complaints pertaining to the Trinidad and Tobago operations of licensed banking institutions and insurance companies and who are members of the Scheme.

### **Location of Office**

10. The office of the Financial Services Ombudsman will be located at such place as may be specified by the Central Bank.

### **Qualification**

11. The Financial Services Ombudsman must be well respected within the financial community. The individual should be of impeccable integrity and should have good negotiating and diplomatic skills. The following additional qualifications are required:
  - Professional or degree level qualification in either Insurance, Business Law, Accounting or Finance.
  - At least fifteen years experience in the financial services sector.
  - Previous experience in dispute resolution, handling legal disputes or customer complaints.
  - A background in a senior role in an environment where judgement and high-level decision-making are required.
  - Characteristics which satisfy the Fit and Proper Criteria as defined in the Financial Institutions Act, 1993.

The retirement age limit shall be 75 years with the possibility of review by the Central Bank for extensions beyond this limit.

### **Tenure**

12. The Financial Services Ombudsman will be appointed for a period not exceeding five years and be eligible for extensions for further periods

of three years at a time. Consequent on appointment, the Financial Services Ombudsman shall devote his whole time to the affairs of his office. Provided that the Central Bank may permit the Financial Services Ombudsman to undertake such part time honorary work as is not likely to interfere with his duties as Financial Services Ombudsman.

### **Remuneration**

13. The remuneration and other perquisites payable/extended to the Financial Services Ombudsman will be determined by the Central Bank from time to time and borne by the Central Bank.

### **Staffing of the Office of the Financial Services Ombudsman**

14. (a) The Financial Services Ombudsman shall be provided with a secretariat drawn from or approved by the Central Bank, who will be placed on duty with the Office of the Financial Services Ombudsman.
- (b) The Central Bank will bear the costs of expanding the Financial Services Ombudsman Scheme in respect of promotional material in the first year only. Recurrent operational costs of the Office of the Financial Services Ombudsman, excluding depreciation, will be shared by members of the Financial Services Ombudsman Scheme in such proportion as may be determined by the Financial Services Ombudsman in consultation with the participating financial institutions and Insurance Companies.

### **Financial Services Ombudsman's Jurisdiction**

15. Subject to paragraphs 17, 18, and 19, the Financial Services Ombudsman may consider any complaint made to him if the Financial Services Ombudsman is satisfied that:
  - (a) the complaint is made to the Financial Services Ombudsman by the Complainant or the Complainant's personal representative to whom or for whom the insurance services in question were provided; or
  - (b) the complaint is made to the Financial Services Ombudsman by or on behalf of all the persons who are or may be entitled to make (whether or not to the Financial Services Ombudsman) the specific claim that constitutes the complaint, and all such persons are (or were) Small Businesses or Personal Financial Services Customers; however, the personal representative(s) of any person so entitled may stand in the Complainant's place after the Complainant's death or incapacity; and moreover, the Financial Services Ombudsman may waive the participation of

any person if the Financial Services Ombudsman sees just cause to do so;

- (c) the Insurance Company named in the complaint has:
  - (i) rendered a decision on, or completed a review of, the complaint, but the Complainant has not accepted any observations made or conditions of settlement or satisfaction offered by the Insurance Company; or
  - (ii) failed to provide a reasonable answer within sixty (60) days of the event/accident or date when the matter was reported after supplying all the relevant information to enable a decision to be made whichever is the later; or
  - (iii) made a final decision denying liability; or
  - (iv) failed to achieve a resolution within a specific time period to be determined by the Central Bank in conjunction with the Financial Services Ombudsman;
- (d) the complaint is made to the Financial Services Ombudsman not later than 180 days after:
  - (i) the Insurance Company has completed its review, and has informed the Complainant of the Insurance Company's decision; or
  - (ii) the Insurance Company has failed to achieve resolution with the Complainant within the time limit determined pursuant to 15(c)(ii) (iii) or (iv); and
  - (iii) the Insurance Company has informed the Complainant in writing of the existence of the Financial Services Ombudsman.
- (e) the event giving rise to the complaint:
  - (i) first occurred on or after 1<sup>st</sup> January 2004; or
  - (ii) first occurred before the applicable date in (i), but the applicant did not become aware of it, and could not with reasonable diligence have become aware of it, until on or after that date;
- (f) the subject matter of the complaint was not contained in a complaint by the same Complainant (or any one or more of them) previously considered by the Financial Services Ombudsman, except where, in the opinion of the Financial Services Ombudsman, relevant new evidence is available;

- (g) except where the Insurance Company named in the complaint consents in writing to the Financial Services Ombudsman considering it, neither the complaint made to the Financial Services Ombudsman nor any other complaint by the same Complainant (or any one or more of them) in respect of the same subject matter has been, is, or becomes, to the knowledge of the Financial Services Ombudsman, the subject of any proceedings in or before any court of law, tribunal or arbitrator, or any other independent reconciliation body;
  - (h) the Complainant, and any other person to whom any Insurance Company named in the complaint owes a duty of confidence in respect of any information which the Financial Services Ombudsman may request that the Insurance Company produce to the Financial Services Ombudsman for the purpose of the Financial Services Ombudsman's consideration of a complaint, have waived in writing that duty of confidence; and
  - (i) the complaint is being pursued reasonably by the Complainant and not in a frivolous, vexatious or threatening manner, as the Financial Services Ombudsman may determine in his sole discretion.
16. Where a dispute is before the Financial Services Ombudsman and the Financial Services Ombudsman is satisfied that the expiry of a period of limitation for the commencement by one of the parties of an action, arising from the subject matter of the dispute, in a court or tribunal, is imminent:
- (a) The Financial Services Ombudsman will seek to expedite consideration of the dispute and seek to resolve the dispute prior to the expiry of the period. For this purpose the Financial Services Ombudsman may shorten the period set out in paragraph 27 for the making of a recommendation prior to the making of an award and the period set out in paragraphs 29 and 30 for the acceptance of an award;
  - (b) if the matter cannot be sufficiently expedited, the Financial Services Ombudsman will attempt to ensure the legal rights do not lapse by seeking agreement from the parties that the expiry of the limitation period will not be relied upon in any subsequent litigation of the dispute if it is not resolved before by the Financial Services Ombudsman;
  - (c) if agreement cannot be reached or, due to the nature of the limitation period, would not be sufficient to preserve the parties' positions, then commencement, by the party whose right of action is subject to the limitation period, of formal proceedings in relation to the matter in dispute will not affect

the jurisdiction of the Financial Services Ombudsman under these Terms of Reference to consider the matter.

17. The Financial Services Ombudsman has no jurisdiction to consider a complaint to the extent that the complaint relates to:
  - (i) premium rates and/or underwriting decisions
  - (ii) actuarial tables, surrender values, paid up values, bonuses or investment rates as they apply to life and long-term insurance policies
  - (iii) pensions under Group Pension Plans and Deposit Administration Schemes
  - (iv) alleged false or misleading marketing practices
  - (v) unacceptable service except where it relates to service of a monetary nature
  - (vi) third party personal injury claims arising out of a motor accident
  - (vii) matters barred by law
  - (viii) a claim where the amount is more than TT\$500,000 in respect of first party matters and TT\$25,000 in respect of third party property damage under a motor policy
18. Where the Financial Services Ombudsman determines that it is more appropriate that the complaint be dealt with by a court of law, through an arbitration procedure or through any other dispute resolution process, the Financial Services Ombudsman may decline to deal with the complaint. Where an Arbitration Condition might appear in a policy of insurance this will not act as a bar to a Complainant referring a matter to the Financial Services Ombudsman.
19. The Financial Services Ombudsman shall have no power to make a recommendation in respect of a complaint to the extent that the complaint related to a practice or policy of an Insurance Company that does not itself give rise to a breach of any obligation or duty owed by the Insurance Company to the Complainant.
20. In consultation with the Financial Services Ombudsman, the Central Bank shall set performance standards for resolving complaints to ensure that service is easily accessible, prompt and effective.
21. Subject to the other provisions of these Terms of Reference, the Financial Services Ombudsman shall, in the Financial Services Ombudsman's own discretion, decide the procedure to be adopted for filing a complaint with the Financial Services Ombudsman's Office, and the procedure to be followed in considering complaints.

The Financial Services Ombudsman shall also decide whether or not a complaint falls within the Terms of Reference and, in reaching this decision, may consider representations from the Complainant and from the Insurance Company named in the complaint.

22. After investigation of a matter, the Financial Services Ombudsman may reject and cease to consider a complaint if it does not appear to the Financial Services Ombudsman that there has been Maladministration by the Insurance Company named in the complaint and, as a result, some loss, damage or inconvenience suffered by the Complainant.

## **Procedures for Settlement of Disputes**

### **Complaint**

23. Any person who has a grievance against an Insurance Company, may make a complaint to the Financial Services Ombudsman.
24. The complaint shall be in writing duly signed by the Complainant or his authorised representative and shall state clearly the name and address of the Complainant, the name and address of the Branch or Agency of the Insurance Company against which the complaint is made, the facts giving rise to the complaint supported by documents, if any, relied on by the Complainant, the nature and extent of the loss caused to the Complainant and the relief sought from the Financial Services Ombudsman.

### **Settlement of Complaint by Agreement**

25. As soon as it may be practicable so to do the Financial Services Ombudsman shall cause a notice of the receipt of any complaint along with a copy of the complaint to be sent to the Insurance Company named in the complaint and shall endeavour to promote a settlement or withdrawal of the complaint by agreement between the Complainant and the Insurance Company concerned.
26. For the purpose of promoting a settlement of the complaint by agreement, the Financial Services Ombudsman may follow such procedure as he or she may consider appropriate and he or she shall not be bound by any legal rule of evidence.
27. If there is no such agreement, the Financial Services Ombudsman, at the request of the Complainant or the Insurance Company concerned, may make a recommendation for settlement or withdrawal of the complaint. However, he or she shall first give the Complainant and the Insurance Company at least one (1) month's notice of his intention to make a recommendation; and during the period of that notice (or such longer period as the Financial Services Ombudsman may agree) the Complainant and the Insurance Company may make further representations to the Financial Services Ombudsman in respect of the complaint. A recommendation shall be in writing and shall include a summary of the Financial Services Ombudsman's reasons for making his recommendation.

28. The Financial Services Ombudsman's recommendation shall not be binding on the Insurance Company named in the complaint or the Complainant.
29. The recommendation by the Financial Services Ombudsman shall be open to acceptance by the Complainant only if he accepts all terms of the recommendation in full and final settlement of his claim against the Insurance Company and he shall, if he accepts the recommendation, within four (4) weeks from the date of the receipt of the recommendation send his acceptance in writing stating clearly that he is prepared to accept a settlement in the terms of the recommendation as full and final settlement of his complaint.
30. The Financial Services Ombudsman shall cause a letter of acceptance received from the Complainant to be forwarded to the Insurance Company. The Insurance Company shall, if the recommendation is acceptable to it, comply with the terms of the recommendation and inform the Financial Services Ombudsman of the settlement in terms of his recommendation. If the recommendation is not acceptable to the Insurance Company, it shall inform the Financial Services Ombudsman within a period of four (4) weeks from the receipt of the letter of acceptance.
31. In making any recommendations the Financial Services Ombudsman shall do so by reference to what is in his opinion fair in all circumstances and shall have regard to general principles of best practice in the insurance industry, equity and any relevant code of practice or conduct applicable to the subject matter of the complaint. In determining what the principles of best practices are, the Financial Services Ombudsman, where he or she considers it appropriate, may consult with the insurance industry or elsewhere.
32. The Financial Services Ombudsman will make a reasonable effort to ensure that his recommendations are consistent with any previous recommendations by the Financial Services Ombudsman but the Financial Services Ombudsman shall not be bound by any previous recommendation made by the Financial Services Ombudsman or by any predecessor in the office of the Financial Services Ombudsman.

#### **Award by the Financial Services Ombudsman**

33. Where the complaint is not settled by agreement or recommendation as provided in Paragraphs 25 to 32 hereof, as the case may be, within a period of two (2) months from the date of the issue of the Financial Services Ombudsman's recommendation or such extended date as may be considered necessary by him, the Financial Services Ombudsman shall notify the parties of his intention to make an award. An award shall comprise a money sum not exceeding **TT\$500,000** in the case of

first Party matters and **TTS25,000** in respect of third party property damage claims arising out of a motor vehicle accident. No award shall be of a greater amount than in the opinion of the Financial Services Ombudsman is appropriate to compensate the Complainant for direct loss or damage suffered by him by reason of the acts or omissions of the Insurance Company against which the award is made.

34. It shall be open to the parties to submit any further representations or evidence in support of their case within a period of fifteen (15) days from the date of notification referred to in Paragraph 33 hereof.
35. The Financial Services Ombudsman shall make an award after affording the parties a reasonable opportunity to present their case. He shall be guided by the evidence placed before him by the parties, the principles of insurance law and practice, directions, instructions and guidelines issued by the Central Bank from time to time and such other factors which in his opinion are necessary in the interest of justice.
36. An award shall be in writing and shall state the amount awarded and a summary of the Financial Services Ombudsman's reasons for making the award. The award shall state the direction/directions, if any, to the Insurance Company for specific performance of its obligation and the amount awarded to the Complainant by way of compensation for the loss suffered by him. The award shall state, that if within one (1) month after its issue the Complainant agrees to accept it in full and final settlement of the subject matter of the complaint, the award shall be binding on the Complainant and the Insurance Company against which it is made.
37. The Financial Services Ombudsman shall issue a copy of the award to the Complainant and the Insurance Company named in the complaint and shall issue to the Complainant a form (addressed to the Financial Services Ombudsman) to be completed by the Complainant whereby he may accept the award in full and final settlement of the subject matter of the complaint. An award shall not be binding on an Insurance Company against which it is passed unless the Complainant furnishes to the Office of the Financial Services Ombudsman within a period of one (1) month from the date of award, the abovementioned form duly completed by him in full and final settlement of his claim in the matter. The Office of the Financial Services Ombudsman shall forward the completed form to the insurance company. Within fifteen (15) days from the date of receipt of the completed form, the Insurance Company shall comply with the award and intimate the compliance to the Financial Services Ombudsman.
38. The Financial Services Ombudsman shall report to the Central Bank the non-compliance of any Insurance Company of an award which became binding on it pursuant to paragraph 37.

## **Fees**

39. (i) The Financial Services Ombudsman shall charge a fee to the Insurance Company not exceeding 10% of the monetary value of the settlement amount but limited to TT\$20,000 per complaint. In no case shall the fee be less than TT\$500.
- (ii) If the matter is settled between the parties within ten (10) working days of such referral by the Financial Services Ombudsman to the Insurance Company no fee will be charged.
- (iii) There is no charge to the Complainant.

## **Rejection of the Complaint**

40. The Financial Services Ombudsman may reject the complaint at any stage if it appears to him that the complaint is made without any sufficient cause or that it is not pursued by the Complainant with reasonable diligence or *prima facie*, there is no loss or damage or inconvenience suffered by the Complainant. The Financial Services Ombudsman shall also decide whether or not the claim falls within the terms of reference and in reaching this decision may consider representations from the Complainant and from the Insurance Company named in the complaint.

## **Annual Report on Functioning and Working of the Financial Services Ombudsman's Office**

- 41(a) The Financial Services Ombudsman shall send to the Governor of the Central Bank, in May every year, a report containing a general review of the activities of the Office of the Financial Services Ombudsman during the preceding financial year and a policy statement from the Financial Services Ombudsman, and shall furnish such other information as the Central Bank may direct. The Financial Services Ombudsman shall also produce quarterly reports which would take the form of simple statistical tables, presenting a breakdown of the number and type of complaints received, the number of complaints resolved and the time taken to resolve complaints during the period.
- (b) The Financial Services Ombudsman shall publish annually for the benefit of the general public, a consolidated report on the activities of the Office of the Financial Services Ombudsman.

## **Power to Call for Information**

- 42(a) For the purpose of carrying out its duties under this scheme, the Office of the Financial Services Ombudsman may require the Insurance Company named in the Complaint to provide any information or furnish certified copies of any document relating to the subject matter of the Complaint which is or is alleged to be in its possession. Provided that in the event of the failure of an Insurance Company to comply with the requisition made under this subparagraph the Office of the Financial Services Ombudsman may, if it sees fit, draw the inference that the information, if provided or copies if furnished, would be unfavourable to the Insurance Company.
- (b) The Office of the Financial Services Ombudsman shall maintain confidentiality of any information or document coming into its knowledge or possession in the course of discharging its duties and shall not disclose such information or document to any person without the consent of the person furnishing such information or document, provided that nothing in this paragraph shall prevent the Office of the Financial Services Ombudsman from disclosing information or documents furnished by a party in a complaint to the other party or parties, to the extent considered by it to be reasonably required to comply with the principles of natural justice and fair play in the proceedings and provided also that the Office of the Financial Services Ombudsman may disclose all such information and documents to the Central Bank of Trinidad and Tobago for the purpose of regulatory or supervisory oversight.
- (c) The Office of the Financial Services Ombudsman may take account of an Insurance Company's proprietary system and security measures of which the Office of the Financial Services Ombudsman has knowledge, notwithstanding that no disclosure of these systems and measures has been or will ever be made to the Complainant.