

<b>BANKING SERVICES OMBUDSMAN SCHEME</b>
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## **AGREEMENT WITH THE FINANCIAL INSTITUTIONS**

The under-mentioned financial institutions, hereby agree to participate in the Banking Services Ombudsman Scheme annexed to this agreement and marked “A” (in this agreement referred to as “Scheme”) and the Banking Services Ombudsman and the Central Bank of Trinidad and Tobago agree to accept the participation of the said financial institutions in the Scheme subject to their compliance with this agreement and the conditions set forth in the Scheme.

The said financial institutions 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 Ombudsman, to be shared by the financial institutions participating in the Scheme.
- (b) Paragraphs 33 to 38, which provide for an award to be made by the Ombudsman to a complainant(s) against a financial institution which a complaint has been received.

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

- 1) The 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 award cannot exceed TT\$500,000.
  - 3) The award is binding on the financial institution provided that the complainant gives his/her/ its acceptance in writing, within one month of the date of it, as full and final settlement of the subject matter.
  - 4) The award must be in writing and must state the summarized reasons for making it.
  - 5) The financial institution must comply with the award within fifteen days of its receiving the written acceptance of the complainant.
- (c) Paragraph 41 which provides that the Ombudsman may require from financial institutions information and certified copies of documents

relating to complaints received against them and that the Ombudsman has a duty to maintain confidentiality in respect to all such information and documents acquired by him/her in the course of carrying out his/her duties.

The said financial institutions 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 and the head office of the institution 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 financial institution to resolve the matter has failed or a period determined in accordance with paragraph 15(c)(ii) has elapsed since the receipt of the complaint by the institution and the matter remains unresolved, the financial institution will inform the customer in writing of the existence of the Ombudsman and of the 180 days time limit for referring the matter to the Ombudsman for consideration.
- 2) To inform the 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 Ombudsman may communicate on matters related to complaints and any changes thereto.
- 3) To display in a prominent position within each branch of the institution advertisements provided by the Ombudsman publicizing his/her Office and to place consumer complaints pamphlets from the Ombudsman in a position within each branch of the institution that is easily accessible to customers. To be responsible for the distribution of pamphlets, etc. to branches upon delivery of these by the 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 by way of a general levy based on the average number of deposit and loan accounts of personal customers in the institutions. The levy will be payable in advance either at the start of the financial year or in four (4) equal quarterly instalments during the year as the Ombudsman may determine. For the purpose of calculating the average number of accounts, the quarterly average for the past two calendar years will be used. A minimum contribution of \$35,000 will first be applied to all participants before apportionment of the budgeted recurrent expenditure.

Financial institutions 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 a financial institution which opts to leave the Scheme during the financial year and such institution must give at least two months notice of its intention to leave the Scheme.

- 5) To provide data to the Ombudsman on a quarterly basis in respect to the number of complaints handled by the institution's final stage of its complaint handling procedures stating the number of cases which were resolved. The Ombudsman may determine categories in which these should be reported and may publicize this data in aggregate form without identifying the institution.
- 6) To generally co-operate with the Ombudsman on and lend support to matters relating to the operation of the Scheme.
- 7) Within one (1) month of the end of each calendar quarter, financial institutions participating in the Scheme shall provide to the Ombudsman, in writing, data relating to the volume of consumer deposit and loan accounts held with them at the end of that quarter.

**SIGNED** by the Banking Services Ombudsman, the Central Bank of Trinidad and Tobago and the following participating financial institutions:

Banking Services Ombudsman	.....	Judy Chang
Central Bank of Trinidad and Tobago	.....	Ewart Williams
Citibank (Trinidad and Tobago) Limited	.....	Steve Bideshi
First Citizens Bank Limited	.....	Larry Howai
Intercommercial Bank Limited	.....	Varun Maharaj
Republic Bank Limited	.....	Ronald Harford
RBTT Bank Limited	.....	Suresh Sookoo
Scotiabank Trinidad and Tobago Limited	.....	Richard Young

Dated this 18 day of July 2003

“A”

This is the Scheme marked “A” referred to in the hereto annexed *Agreement with the Financial Institutions* dated July 18 2003 and made by the Banking Services Ombudsman, the Central Bank of Trinidad and Tobago and the financial institutions named therein.

## **THE SCHEDULE**

### **BANKING SERVICES OMBUDSMAN SCHEME Terms of Reference**

#### **Preamble**

The main object of the Banking 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 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 Financial Institutions.

#### **Purpose**

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

#### **Definitions**

2. In these Terms of Reference:
  - 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 Ombudsman in respect of any Financial Services provided by the Financial Institution;

“Credit Decisions” include commercial judgements, which means the assessment of risk, the application of financial or commercial criteria, or assessment of character, as well as decisions about lending or security, including any decision (or the consequences thereof) concerning any advance or similar facility, guarantee or security, whether or not actually made, provided or taken;

“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.

“Financial Institution named in the complaint,” means any Financial Institution against which a complaint is made.

“Financial Services” means all financial services and products provided by Financial Institutions in Trinidad and Tobago to a Complainant.

“Maladministration” means an act or omission in breach of any obligations or duty owed by the Financial Institution to the Complainant for Financial Services between a Financial Institution and the Complainant.

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

“Ombudsman’s Office” means the body corporate established to administer the Ombudsman scheme.

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

- b. references to the provision of Financial Services include, where the context admits, references to their non-provision;
- c. references to the singular number (including without limitation references to “individual” “Complainant” and “Financial

Institution”) include, where the context admits, the plural number and vice versa; and

- d. references to paragraphs are to paragraphs of these Terms of Reference.

### **Powers and Duties**

3. The Ombudsman shall:
  - a. act within these Terms of Reference;
  - b. receive complaints relating to the provision of Financial Services, subject to paragraph 17, by a Financial Institution 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 by such other means as seem expedient;
  - d. adhere to the performance standards established by the Central Bank.
4. The Ombudsman shall advise the public on the procedure for making a complaint to the Ombudsman’s Office. The Ombudsman shall not provide general information about Financial Institutions or Financial Services.
5. The Ombudsman may delegate all or any of his or her powers and duties to appointed officers (e.g power to investigate matters and request information from Financial Institutions on a matter) of the Ombudsman’s Office, except the Ombudsman cannot delegate the power to make a recommendation and the Ombudsman’s delegate cannot further delegate any of the Ombudsman’s powers and duties.
6. During any period in which the Ombudsman is unable to fulfill his or her 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 Ombudsman to act in place of the Ombudsman.

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

**Appointment**

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

**Territorial Jurisdiction**

9. The authority of the Ombudsman is limited to complaints pertaining to the Trinidad and Tobago operations of licensed financial institutions.

**Location of Office**

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

**Qualification**

11. The Banking 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 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 Ombudsman shall devote his whole time to the affairs of his office. Provided that the Central Bank may, permit the Ombudsman to undertake such part time honorary work as is not likely to interfere with his duties as Ombudsman.

### **Remuneration**

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

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

14. (a) The 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 Ombudsman.  
  
(b) The Central Bank will bear the costs of establishing the Ombudsman Scheme. Recurrent operational costs of the Office of the Ombudsman, excluding depreciation, will be shared by Financial Institutions in such proportion as may be determined by the Central Bank in consultation with the Financial Institutions.

### **Ombudsman's Jurisdiction**

15. Subject to paragraphs 17, 18, and 19, the Ombudsman may consider any complaint made to him or her if the Ombudsman is satisfied that:
  - (a) the complaint is made to the Ombudsman by the Complainant or the Complainant's personal representative to whom or for whom the Financial services in question were provided;
  - (b) the complaint is made to the Ombudsman by or on behalf of all the persons who are or may be entitled to make (whether or not to the 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 Ombudsman

may waive the participation of any person if the Ombudsman sees just cause to do so;

- (c) the Financial Institution 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 Financial Institution; or
  - (ii) failed to achieve a resolution within a specific time period to be determined by the Central Bank in conjunction with the Ombudsman;
- (d) the complaint is made to the Ombudsman not later than 180 days after:
  - (i) the Financial Institution has completed his or her review, and has informed the Complainant of the Financial Institution's decision; or
  - (ii) the Financial Institution has failed to achieve resolution with the Complainant within the time limit determined pursuant to 15(c)(ii); and
  - (iii) the Financial Institution has informed the Complainant in writing of the existence of the Ombudsman and of the time limitation.
- (e) the act or omission giving rise to the complaint:
  - (i) first occurred on or after 1<sup>st</sup> January 2003; 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 Ombudsman, except where, in the opinion of the Ombudsman, relevant new evidence is available;

- (g) except where the Financial Institution named in the complaint consents in writing to the Ombudsman considering it, neither the complaint made to the 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 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 Financial Institution named in the complaint owes a duty of confidence in respect of any information which the Ombudsman may request that the Financial Institution produce to the Ombudsman for the purpose of the 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 Ombudsman may determine in his or her sole discretion.
16. Where a dispute is before the Ombudsman and the 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 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 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 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 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 Ombudsman under these Terms of Reference to consider the matter.
17. The Ombudsman has no jurisdiction to consider a complaint to the extent that the complaint relates to a Financial Institution's general interest rate policies, risk policies, credit decisions and the pricing of products and services.
18. Where the 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 Ombudsman may decline to deal with the complaint.
19. The 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 a Financial Institution that does not itself give rise to a breach of any obligation or duty owed by the Financial Institution to the Complainant.
20. In consultation with the 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 Ombudsman shall, in the Ombudsman's own discretion, decide the procedure to be adopted for filing a complaint with the Ombudsman's Office, and the procedure to be followed in considering complaints.

The 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 Financial Institution named in the complaint.

22. After investigation of a matter, the Ombudsman may reject and cease to consider a complaint if it does not appear to the Ombudsman that there has been Maladministration by the Financial Institution 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 a Financial Institution, may make a complaint to the 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 of the Financial Institution 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 Ombudsman.

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

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

28. The Ombudsman's recommendation shall not be binding on the Financial Institution named in the complaint or the Complainant.
29. The recommendation by the 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 Financial Institution 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 Ombudsman shall cause a letter of acceptance received from the Complainant to be forwarded to the Financial Institution. The Financial Institution shall, if the recommendation is acceptable to it, comply with the terms of the recommendation and inform the Ombudsman of the settlement in terms of his recommendation. If the recommendation is not acceptable to the Financial Institution, it shall inform the Ombudsman within a period of four (4) weeks from the receipt of the letter of acceptance.
31. In making any recommendations the 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 financial services sector, equity and any relevant code of practice or conduct applicable to the subject matter of the complaint. In determining what are the principles of best practice, the Ombudsman, where he considers it appropriate, may consult with the financial services industry or elsewhere.
32. The Ombudsman will make a reasonable effort to ensure that his recommendations are consistent with any previous recommendations by the Ombudsman but the Ombudsman shall not be bound by any previous recommendation made by the Ombudsman or by any predecessor in the office of the Ombudsman.

**Award by the Banking 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 Ombudsman's recommendation or such extended date

as may be considered necessary by him, the Ombudsman shall inform the parties of his intention to make an award. An award shall comprise a money sum not exceeding TT\$500,000. No award shall be of a greater amount than in the opinion of the Ombudsman is appropriate to compensate the Complainant for direct loss or damage suffered by him by reason of the acts or omissions of the Financial Institution 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 notice referred to in Paragraph 33 hereof.
35. The 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 banking 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 Ombudsman's reasons for making the award. The award shall state the direction/directions, if any, to the Financial Institution 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 Financial Institution against which it is made.
37. The Ombudsman shall issue a copy of the award to the Complainant and the Financial Institution named in the complaint and shall issue to the Complainant a form (addressed to the Ombudsman and the Financial Institution) to be completed by the applicant 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 a Financial Institution against which it is passed unless the Complainant furnishes to it, within a period of one (1) month from the date of award a letter of acceptance of the award in full and final settlement of its claim in the matter. Within fifteen (15) days from the date of receipt by it of the acceptance in writing of the award by the Complainant the Financial Institution shall comply with the award and intimate the compliance to the Ombudsman.

38. The Ombudsman shall report to the Central Bank the non-compliance of any Financial Institution of an award which became binding on it pursuant to paragraph 37.

#### **Rejection of the Complaint**

39. The 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 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 Financial Institution named in the complaint.

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

40. (a) The 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 Ombudsman during the preceding financial year and a policy statement from the Ombudsman, and shall furnish such other information as the Central Bank may direct. The 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 Ombudsman shall publish annually for the benefit of the general public, a consolidated report on the activities of the Office of the Ombudsman.

#### **Power to Call for Information**

41. (a) For the purpose of carrying out his duties under this scheme, the Ombudsman may require the Financial Institution 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 a Financial Institution to comply with the requisition made under this subparagraph the Ombudsman may, if he sees fit, draw the inference that the information, if provided or copies if furnished, would be unfavourable to the Financial Institution.

- (b) The Ombudsman shall maintain confidentiality of any information or document coming into his knowledge or possession in the course of discharging his 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 Ombudsman from disclosing information or document furnished by a party in a complaint to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings.
  
- (c) The Ombudsman may take account of a Financial Institution's proprietary system and security measures of which the Ombudsman has knowledge, notwithstanding that no disclosure of these systems and measures has been or will ever be made to the Complainant.

July 18 2003