

The German Private Banks' Ombudsman Scheme

Rules of Procedure of the Ombudsman Scheme of the German private banks¹

Preamble

The Association of German Banks (Bundesverband deutscher Banken) has established for its member banks an entity to resolve disputes between banks and consumers (Ombudsman Scheme).

¹ Translation of the original German text, which is binding in all respects.

Section 1 Organisation of the dispute resolution entity

- (1) The German private banks' Ombudsman Scheme is a consumer dispute resolution entity approved by the Federal Office of Justice (Bundesamt für Justiz), comprising the ombudspersons appointed to resolve disputes and an office set up by the Association of German Banks to run the Ombudsman Scheme (Ombudsman Scheme Office).
- (2) Dispute resolution proceedings shall be conducted by an ombudsman/ombudswoman supported by the Ombudsman Scheme Office.

Section 2 Appointment of the ombudspersons

(1) Appointment and removal by the Board of Directors

The ombudsman/ombudswoman shall be appointed by the Board of Directors of the Association of German Banks at the recommendation of the Management Board for a term of three years. They may be reappointed twice. Ombudspersons may only be removed by the Association's Board of Directors before expiry of their term of office if facts are known indicating that fair, independent or impartial dispute resolution is no longer likely, if they are prevented not only temporarily from performing their duties, or for similar good cause. The ombudsman/ombudswoman shall notify the Association's Board of Directors without undue delay of any grounds for their removal.

(2) Participation of the Federal Office of Justice and consumer organisations

Before appointing the ombudspersons, the Association of German Banks shall submit to the Federal Office of Justice and the Federation of German Consumer Organisations

(Verbraucherzentrale Bundesverband [vzbv]) the name and professional curriculum vitae of the person proposed. If, within a period of two months, no facts are presented in writing which call into question the qualifications or impartiality of the person proposed or if any objections raised in this respect have been dealt with, the ombudsperson may be appointed pursuant to subsection 1, sentence 1.

(3) Qualifications, independence and impartiality

Ombudspersons must be qualified to hold judicial office. They must not have been employed by either the Association of German Banks or a bank during the last three years prior to taking up office, unless they were employed by the Association solely as an ombudsperson. In their capacity as dispute resolvers, the ombudspersons shall be independent and not bound by any instructions. They shall resolve disputes fairly and impartially.

(4) Appointment of several persons, deputisation and case assignment plan

Two or more persons shall be appointed ombudspersons. Another person shall be appointed for each as their deputy. The ombudspersons shall jointly determine the case assignment plan, including deputising arrangements, before each business year. The case assignment plan may only be altered during the business year for good cause.

(5) Bias

Ombudspersons shall not resolve a dispute if there are grounds that justify a lack of confidence in their independence or impartiality. Instead of the ombudsman/ombudswoman, their deputy shall resolve such disputes.

Section 3 Jurisdiction

(1) The German private banks' Ombudsman Scheme shall have jurisdiction for disputes between banks which are affiliated to the scheme (banks/bank) and consumers (applicants) concerning any of the products and services offered by banks, particularly disputes pursuant to Section 14 (1) of the German Prohibitory Injunctions Act (Unterlassungsklagengesetz).

(2) This jurisdiction shall not be confined to consumers if the dispute falls within the scope of the statutory provisions on payment services (Sections 675c to 676c of the German Civil Code [Bürgerliches Gesetzbuch]).

Section 4 Grounds for refusal to deal with a dispute

(1) The ombudsman/ombudswoman shall refuse to conduct dispute resolution proceedings if

- a) an inadequate application was made,
- b) the Ombudsman Scheme has no jurisdiction for the dispute and the application does not have to be handled in accordance with Section 5 (4), sentence 1 or 2,
- c) if the same dispute has already been dealt with or is currently being dealt with by a consumer dispute resolution entity,
- d) in the case of disputes concerning the right to open a basic payment account under the German Payment Accounts Act (Zahlungskontengesetz) administrative proceedings pursuant to Sections 48 to 50 of the German Payment Accounts Act to assert this right are pending or if such proceedings have produced an unchallengeable decision,
- e) in connection with the dispute an application for legal aid has been rejected because the intended litigation had little prospect of success or appeared frivolous,

-
- f) the dispute is already pending before a court of law, has been brought before a court of law in the past or is brought before a court of law by the applicant during the dispute resolution proceedings or a court of law has already issued a judgement on the dispute,
 - g) the dispute has been resolved by way of an amicable agreement or in some other manner, or
 - h) the claim involved in the dispute is already time-barred under the statute of limitations and the bank has pled the statute of limitations.

If the ombudspersons find that there are grounds for refusing to conduct dispute resolution proceedings in accordance with sentence 1, the decision on such refusal shall be communicated without undue delay to the parties, indicating the grounds for the refusal.

(2) The ombudspersons may refuse to conduct dispute resolution proceedings if

- a) a fundamental legal issue that plays a significant role in assessment of the dispute has not been settled or
- b) facts that have a crucial bearing on the content of a proposal for resolution of a dispute remain contentious during the dispute resolution proceedings because they cannot be clarified by the ombudspersons.

The decision on refusal to conduct dispute resolution proceedings in accordance with sentence 1 shall be explained to the parties without undue delay.

(3) A decision on refusal to conduct dispute resolution proceedings in accordance with subsection 1 or subsection 2 shall only be possible up to three weeks after the point in

time at which the ombudsman/ombudswoman had all the information required for the proceedings at their disposal.

Section 5 Preliminary examination procedure

(1) Application for dispute resolution

The application for dispute resolution should be made to the German private banks' Ombudsman Scheme in text form (e.g. by letter, fax or email). It should contain a detailed account of the dispute that is to be resolved and indicate a specific claim. Copies of the documents needed to understand the dispute should be enclosed with the application. The applicant must affirm that

- a) the same dispute has neither already been dealt with nor is currently being dealt with by a consumer dispute resolution entity,
- b) in the case of disputes concerning the right to open a basic payment account neither administrative proceedings pursuant to Sections 48 to 50 of the German Payment Accounts Act are pending nor an unchallengeable decision on this right has been issued in such proceedings,
- c) the dispute has neither been judged by a court of law nor is pending before a court of law,
- d) the dispute has been resolved neither by way of an amicable agreement nor in any other manner and
- e) in connection with the dispute an application for legal aid has not been rejected because the intended litigation had little prospect of success or appeared frivolous.

(2) Representation

The parties shall be free to appoint representatives to act on their behalf in the dispute resolution proceedings. The Ombudsman Scheme Office shall inform the parties at the

start of the proceedings that they may at any stage in the proceedings seek advice from or representation by a lawyer or any other person authorised to provide legal services. Proof of such right of representation shall be required.

(3) Formal preliminary examination

The Ombudsman Scheme Office shall ascertain whether the bank is affiliated to the Ombudsman Scheme. If so, it shall confirm receipt of the application for dispute resolution to the applicant. It shall then examine the application and the documents submitted along with it. If the application fails to fulfil the requirements referred to in subsection 1, the Ombudsman Scheme Office shall draw the applicant's attention to its inadequacies and request the applicant to remedy these within a period of one month. The applicant shall be informed that the ombudsman/ombudswoman will refuse to conduct dispute resolution proceedings if the inadequacies of the application are not remedied within this period.

Once the application for dispute resolution has been rejected, the applicant cannot contact the German private banks' Ombudsman Scheme again regarding the same dispute.

(4) Referral and forwarding of an application for dispute resolution in the event of non-jurisdiction

If the Ombudsman Scheme does not have jurisdiction for a dispute pursuant to Section 14 (1) of the German Prohibitory Injunctions Act, the Ombudsman Scheme Office shall refer the application for dispute resolution to the competent consumer dispute resolution entity, notifying the applicant at the same time.

If the opposing party does not have a branch in Germany but one in another country that is a signatory to the Agreement on the European Economic Area, the Ombudsman Scheme Office shall inform the applicant of the possibility to obtain out-of-court dispute resolution in this signatory country. At the applicant's request, the Ombudsman Scheme Office shall forward the application to a competent out-of-court dispute resolution entity in the other signatory country.

Section 6 Dispute resolution proceedings

(1) Refusal to deal with a dispute

If the Ombudsman Scheme Office comes to the conclusion that dispute resolution proceedings in accordance with Section 4 (1) a) to h) must be refused, it shall submit the case to the ombudsman/ombudswoman for a decision on refusal. If the ombudsman/ombudswoman does not find any grounds for refusal, the dispute resolution proceedings shall be continued.

(2) Forwarding of an application for dispute resolution to the bank

If the German private banks' Ombudsman Scheme has jurisdiction for the application for dispute resolution and if such application fulfils the requirements of Section 5 (1) of the present Rules of Procedure, the Ombudsman Scheme Office shall forward the application to the bank, requesting it to comment within one month of receipt of the application. The Ombudsman Scheme Office shall forward the bank's comments to the applicant. If, according to its comments, the bank is unwilling to satisfy the applicant's claim, the Ombudsman Scheme Office shall advise the applicant to respond to the bank's comments

within one month. The periods referred to in sentence 1 and sentence 3 may, on request, be extended by one month. On expiry of the deadline for a response by the applicant, the Ombudsman Scheme Office shall submit the case to the ombudsman/ombudswoman, unless the bank has satisfied the applicant's claim or the dispute resolution proceedings have been concluded in some other manner.

(3) Ombudsperson proceedings

The ombudspersons may, in order to clarify the facts of the case and the issue in dispute, request additional comments from the parties or they may obtain information from the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht), the Deutsche Bundesbank or an entity within the European Economic Area responsible for out-of-court resolution of similar disputes. The ombudspersons shall only take evidence if such evidence can be furnished through the presentation of documents. If the ombudsman/ombudswoman does not require any further comments, documents or other information, the parties shall be informed without undue delay of the point in time at which all the information needed for dispute resolution was available.

(4) Proposal for resolution of a dispute

A proposal for resolution of a dispute within the meaning of the German Financial Dispute Resolution Schemes Regulation (Finanzschlichtungsstellenverordnung) may be:

- a) a dispute resolution decision
- b) an amicable agreement.

The ombudspersons shall communicate their proposal for resolution of a dispute to the parties in text form no later than 90 days after the point in time at which all the information

required was available, unless this period was extended. They may extend the period referred to in sentence 2, without the consent of the parties, for disputes that are highly complex or which raise difficult legal issues. The parties shall be informed without undue delay that the period has been extended. The ombudspersons shall make proposals for resolution of disputes on the basis of the statutory provisions in force, paying due regard to the principles of fairness and justice. The proposal for resolution shall include a brief and easily understandable explanation. It may include a recommendation to cover out-of-pocket expenses if this appears apt to resolve the dispute between the parties appropriately.

(5) Binding force

- a) The dispute resolution decision shall be binding on the bank where the amount involved in the dispute does not exceed €10,000; in this case, the bank shall have no recourse to a court of law. If the amount involved in the dispute exceeds €10,000, but only part of this amount is claimed, the total amount shall apply. The dispute resolution decision shall not be binding on the applicant. They can accept the decision within six weeks of its receipt by notifying the Ombudsman Scheme Office in text form. If they do not accept the decision, they shall be free to seek redress through court proceedings.
- b) Dispute resolution decisions in proceedings involving an amount over €10,000 and proposals for an amicable agreement shall not be binding on either party. Such dispute resolution decisions and proposals for an amicable agreement may be accepted within six weeks of their receipt by notification to the Ombudsman Scheme Office in text form.

-
- c) The parties shall be advised thereof and of the fact that they are not obligated to accept such dispute resolution decisions and proposals and that, if they do not, they are entitled to seek redress through court proceedings. They shall also be advised of the legal consequences of accepting a dispute resolution decision or a proposal for an amicable agreement and that a court may decide differently. On expiry of the relevant period, the Ombudsman Scheme Office shall inform the parties of the outcome of the dispute resolution proceedings in text form, indicating the parties and the subject of the dispute. The outcome of the resolution proceedings shall be explained in such notification, which shall effectively terminate the proceedings.
- d) No legal remedy against proposals for resolution of disputes made by the ombudspersons shall be provided for under the present Rules of Procedure.

(6) Confirmation of failure to reach an out-of-court agreement on request

If the applicant wishes to seek redress through court proceedings and if, in order to do so, they require written confirmation of an unsuccessful attempt to reach an agreement before an out-of-court dispute resolution entity, this shall be furnished to them. If the dispute was not settled in dispute resolution proceedings, notification thereof shall be deemed to be written confirmation of an unsuccessful attempt to reach an agreement pursuant to Section 15a (1), sentence 2 of the Introductory Act to the German Code of Civil Procedure (Einführungsgesetz zur Zivilprozeßordnung [EGZPO]).

(7) Withdrawal of an application for dispute resolution

The applicant may withdraw an application for dispute resolution at any time up to conclusion of the proceedings. Withdrawal of the application for dispute resolution means that the proceedings shall be terminated prematurely. If a renewed application for resolution of the same dispute is made to the German private banks' Ombudsman Scheme, dispute resolution proceedings shall be refused pursuant to Section 4 (1) c).

Section 7 Suspension of limitation

Suspension of limitation shall be governed by Section 204 of the German Civil Code.

Section 8 Language of the proceedings

Dispute resolution proceedings shall be conducted in German.

Section 9 Confidentiality of the proceedings

The ombudspersons and the persons employed at the Ombudsman Scheme Office shall be obligated to treat dispute resolution proceedings as strictly confidential.

Section 10 Cost of the proceedings

(1) The cost of dispute resolution proceedings shall be borne by the Association of German Banks.

(2) Out-of-pocket expenses incurred by the parties, such as postage and telephone costs, shall not be reimbursed. If the bank has agreed a foreign contract language with the applicant and/or if foreign law is applicable, it shall reimburse to the Association the expenses incurred by the Association in obtaining translations and necessary legal opinions on the foreign jurisdiction. Before obtaining a translation or a legal opinion, the Association shall give the bank the opportunity to comment.

(3) Where either of the parties arranges for a representative to act on their behalf, they shall bear the cost of such representation themselves.

Section 11 Entry into force/final provision

(1) The present Rules of Procedure shall apply to applications for dispute resolution that are received as of 1 February 2017.

(2) The restriction on reappointment pursuant to Section 2 (1), sentence 2 shall not apply to the ombudspersons already in office on 1 February 2017.

Publishing details | Publisher: Bundesverband deutscher Banken e. V.,
Postfach 040307, 10062 Berlin | Legally responsible: Oliver Santen
Printing: PieReg Druckcenter Berlin | Design: doppel:punkt redaktionsbüro
janet eicher, Bonn | As at: January 2018

by post:

Bundesverband deutscher Banken
Ombudsmann der privaten Banken
Geschäftsstelle
Postfach 040307 | 10062 Berlin

by phone:

+49 30 1663-3166

by email:

ombudsmann@bdb.de

online:

en.bankenverband.de/ombudsman-scheme

