

The ombudsman scheme of the  
german private commercial banks

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## Rules of procedure for the settlement of customer complaints in the German private commercial banking sector<sup>1</sup>

The Association of German Banks (Bundesverband deutscher Banken, referred to in the following as “the Association”) has established for its member banks a conciliation scheme to settle disputes between banks and customers. A list of the banks participating in the scheme can be found at [https://bankenverband.de/media/file/Angeschlossenene\\_Mitgliedsinstitute\\_Stand\\_02-2015.pdf](https://bankenverband.de/media/file/Angeschlossenene_Mitgliedsinstitute_Stand_02-2015.pdf).

<sup>1</sup> Translation of the original German text, which is binding in all respects.

## 1 Appointment of the Ombudsman

### (1) Appointment by the Board

The conciliation proceedings shall be conducted by an Ombudsman<sup>2</sup>. durchgeführt. The Ombudsman shall be appointed by the Board of the Association on the recommendation of the management for a term of three years. He may be reappointed. The Ombudsman may only be removed before expiry of his term of office if there are facts which indicate that he will no longer be able to exercise his office independently, if he is prevented not only temporarily from exercising his office, or for similar good cause.

### (2) Participation of the consumer associations

Before appointing the Ombudsman, the Association shall submit to the German Federation of Consumer Offices and Consumer Associations (Verbraucherzentrale Bundesverband (vzbv)) the name and professional curriculum vitae of the person proposed for the office of Ombudsman. If, within a period of two months, the vzbv does not present any facts in writing which call into question the qualifications or impartiality of the person proposed for the office of Ombudsman or if any objections raised in this respect have been dealt with, the Ombudsman may be appointed pursuant to Section 1 (1), sentence 2.

### (3) Qualifications and impartiality

The Ombudsman must be qualified to hold judicial office. He must not have been employed by either the Association or a bank during the last three years prior to taking up office. In

<sup>2</sup> Irrespective of whether the Association appoints ombudsmen or ombudswomen, the term "Ombudsman" is used throughout the present Rules of Procedure for simplicity's sake.

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his capacity as conciliator, the Ombudsman is independent and not bound by instructions.

#### (4) Appointment of more than one person

Two or more persons shall be appointed Ombudsmen. The Board of the Association shall establish the division of jurisdiction, including deputisation arrangements, in agreement with these persons at least before each business year. The division of jurisdiction may only be altered during the business year for good cause.

#### (5) Bias

An Ombudsman may not settle disputes if he himself was involved in handling these at some point in the past. These shall be settled by his deputy.

## 2 Admissibility of the proceedings

### (1) Complainant

The Ombudsman may be called upon to settle complaints

- a) if the complainant is a consumer; the present procedure shall thus not be applicable where the matter in dispute is seen as appertaining to the commercial or independent professional activity of the complainant;
- b) without restriction to consumers if the complaint falls within the scope of the statutory provisions on payment services (Sections 675c – 676c of the German Civil Code (Bürgerliches Gesetzbuch)).

### (2) Cases excluded from the Ombudsman Scheme

Ombudsman proceedings shall not take place if

- a) an action in connection with the subject of the complaint 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 complainant during the Ombudsman proceedings. The same shall apply if the dispute has been resolved by way of an out-of-court settlement or an application for assistance with litigation costs has been rejected because the intended litigation is seen as having no chance of success;

- b) the matter is already being dealt with or has already been dealt with under proceedings conducted by a conciliation body pursuant to Section 14 of the German Prohibitory Injunctions Act (Unterlassungsklagengesetz) or by another dispute settlement board;
- c) when application is made to the Ombudsman the customer's claim was already barred under the Statute of Limitations and the bank pleads the Statute of Limitations.

The Ombudsman shall not conduct conciliation proceedings where such proceedings would hinder the settlement of a general legal issue.

### 3 Preliminary Examination Procedure

#### (1) Customer Complaints Office at the Association

A Customer Complaints Office shall be established at the Association. Complaints should be addressed to this Office together with a brief account of the facts of the case and the necessary documentation. The customer must confirm that he has not yet referred the dispute to a court of law, conciliation body or dispute settlement board and has not yet reached any out-of-court settlement with the bank. The Customer Complaints Office shall acknowledge receipt of the complaint and send the customer details of the further procedure.

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## (2) Formal preliminary examination

The Customer Complaints Office shall ascertain whether the bank is affiliated to the Ombudsman Scheme. It shall then examine the documentation and, if required, request the complainant to provide further details. Should it not be possible to determine the subject of the complaint from the customer's account thereof and the attached documentation, including the comments of the bank involved, the proceedings cannot be conducted. The Customer Complaints Office shall inform the customer thereof. The proceedings shall thus be terminated, unless the customer rectifies the situation within a period of one month. The customer shall be free to submit a new complaint, providing additional and more specific information.

## (3) Non-jurisdiction

If the Customer Complaints Office finds that the bank is not affiliated to the Ombudsman Scheme, it shall refer the complaint to the appropriate conciliation body and notify the complainant thereof. If the complainees is not affiliated to the Ombudsman Scheme and does not have a branch in Germany but operates one in another European Economic Area (EEA)<sup>3</sup> member country, the Customer Complaints Office shall inform the complainant about any dispute resolution arrangements in place there. At the complainant's request, it shall refer the complaint to the competent conciliation body.

<sup>3</sup> Current EEA member countries are Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland.

If no competent conciliation body exists, the complaint shall be returned to the complainant.

## **4 Conciliation procedure**

### **(1) Verification of admissibility**

If the Customer Complaints Office finds on the strength of the documentation furnished by the complainant that the complaint is inadmissible under Section 2 of the present Rules of Procedure, it shall refer the complaint to the Ombudsman for a decision as to its admissibility. The Customer Complaints Office shall proceed likewise if, during the further processing of a complaint, grounds for its inadmissibility are established. If the Ombudsman concurs with the Customer Complaints Office in its opinion, he shall reject the complaint as inadmissible, giving notice to this effect. If, on the other hand, he finds it to be admissible, the complaint proceedings shall be continued.

### **(2) Forwarding of complaints to the bank**

Complaints which are admissible on the strength of the documentation provided by the customer shall be forwarded by the Customer Complaints Office to the management of the bank concerned by the complaint or to a person or office named beforehand by the management who/which accepts such complaints for in-house settlement. The bank shall be required to comment on the customer's account of the matter within a period of one month after receipt of the complaint. If necessary, the Customer Complaints Office shall extend this period by a further month. The bank's comments shall be passed on to the complainant. Unless the bank provides redress in respect to the complaint, the customer shall be advised

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that he may respond to the bank's comments within a period of one month after receipt of these.

### (3) Referral of complaints to the Ombudsman

Unless the bank provides redress in respect to the customer's complaint or settles it in some other manner, the Customer Complaints Office shall refer the matter to the relevant Ombudsman on expiry of the deadlines referred to in paragraph 2 above.

### (4) Ombudsman proceedings

The Ombudsman may, where he deems it necessary in order to clarify the facts of the matter and the status of the dispute, request the parties concerned to provide additional comments or he may obtain information from the parties, the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht), the Deutsche Bundesbank or a conciliation body within the EEA responsible for out-of-court settlement of similar disputes; he may also hear the parties concerned. He shall not conduct a formal taking of evidence unless such evidence can be furnished through the presentation of documents. If the Ombudsman finds that the complaint is inadmissible or can only be settled after taking further evidence in the matter, he shall reject it, giving notice to this effect. Otherwise he shall render a decision on the basis of the statutory provisions in force, with due regard to principles of fairness and justice. If a consumer complains that a bank has refused to open a current account for him, even on a credit-only basis, the Ombudsman shall check whether the bank complies with the recommendation made by the joint committee of the central associations of the German



banking industry (Deutsche Kreditwirtschaft (DK)) in this connection. The Ombudsman's decision shall be rendered in writing and shall include a brief explanation of the reasons for the decision in plain language. The Ombudsman shall communicate his decisions directly to the parties concerned without undue delay.

#### (5) Binding effect of the Ombudsman's decision

- a) The Ombudsman's 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. The complainant, on the other hand, shall be free to go before a court of law. If he wishes to go before a court of law and if he requires written confirmation of failure to reach an agreement before an out-of-court conciliation body, this shall be furnished to him on request.
  
- b) Ombudsman decisions in complaint proceedings involving a higher amount shall not be binding on either party. Such decisions may be accepted by written notice to the Customer Complaints Office of the Association within a period of six weeks after their receipt. The parties shall be advised thereof and of the fact that they are not obliged to accept the decision and that, should they not accept it, they are entitled to go before a court of law. After expiry of this deadline, the Customer Complaints Office at the Association shall inform the parties of the decision, naming the parties concerned and the subject of the proceedings. The proceedings shall thus be terminated.

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c) Ombudsman decisions in connection with complaints by consumers that a bank has refused to open a current account for them, even on a credit-only basis, shall be confined to ascertaining whether the bank has complied with the “Current Account for Everyone” recommendation issued by the joint committee of the central associations of the German banking industry (Deutsche Kreditwirtschaft (DK)).

**(6) Confirmation of failure to reach an out-of-court settlement furnished on request**

If the customer wishes to take legal action before the Ombudsman proceedings have been terminated and if, in order to do so, he requires written confirmation of failure to reach an agreement before an out-of-court conciliation body, this will be furnished to him, if requested in writing, on expiry of a period of three months after receipt of the complaint by the Customer Complaints Office of the Association. This confirmation shall terminate the proceedings.

**5 Cooperation with foreign conciliation bodies**

The Ombudsman shall, on request, provide conciliation bodies within the EEA responsible for out-of-court settlement of similar disputes with information about the law in force in Germany for the proceedings conducted by these.

## 6 Miscellaneous

### (1) Suspension of the statutory limitation period

The statutory limitation period for the complainant's claims shall be suspended for the duration of the conciliation proceedings (preliminary examination procedure and settlement by the Ombudsman).

### (2) Cost of the proceedings

The cost of the preliminary examination procedure (Section 3) and settlement by the Ombudsman (Section 4) shall be borne by the Association.

If the bank has agreed a foreign contract language with the customer and/or if foreign law is applicable, it shall reimburse to the Association the expenses incurred by the Association in obtaining translations and legal opinions on the foreign jurisdiction. Before arranging to obtain a translation or a legal opinion, the Customer Complaints Office shall give the bank the opportunity to comment.

### (3) Representation

The parties shall be free to appoint representatives to act on their behalf during the proceedings. Each party shall bear its own costs and those of its representative. In the event of a decision in favour of the complainant, the bank shall bear the costs incurred by the complainant in attending an Ombudsman hearing.

### (4) Duty of confidentiality

The Ombudsman and the staff of the Customer Complaints Office shall be required to treat as confidential all facts

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and judgements relating to the parties concerned of which they gain knowledge in the course of conciliation proceedings.

**(5) Ombudsman's Report**

The Association shall publish a report on the operation of the Ombudsman Scheme (Ombudsman's Report) annually.

**(6) Transitional arrangements for Section 4 (5) a), sentence 1**

The binding nature of decisions involving amounts up to €10,000 as set out in Section 4 (5) a), sentence 1 shall apply to complaints received by the Association's Customer Complaints Office as from 1 January 2015. For complaints received before 1 January 2015, the amount set out in Section 4 (5) a), sentence 1 of the 10 November 2009 version of the Rules of procedure for the settlement of customer complaints in the German private commercial banking sector shall continue to apply.

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