

THE OMBUDSPERSON FOR FINANCIAL SERVICES BILL

(No. XXI of 2018)

Explanatory Memorandum

The object of this Bill is to provide for the establishment of the Office of the Ombudsman for Financial Services and for matters related thereto.

2. The Ombudsman for Financial Services shall, with a view to giving better protection to consumers of financial services, receive and deal with complaints from consumers of financial services against financial institutions and may make an award for compensation, where appropriate, and give such directives as he may determine to financial institutions.

3. The Office of Ombudsman for Financial Services shall, inter alia –

- (a) inform and educate the general public on investments in financial services offered by financial institutions; and
- (b) assist the Ombudsman in dealing with complaints made by consumers of financial services against financial institutions.

D. SESUNGKUR

*Minister of Financial Services and
Good Governance*

23 November 2018

THE OMBUDSPERSON FOR FINANCIAL SERVICES BILL
(No. XXI of 2018)

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A BILL

**To provide for an Ombudsperson for Financial Services, an Office
of Ombudsperson for Financial Services, and
for matters related thereto**

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Ombudsperson for Financial Services Act 2018.

2. Interpretation

In this Act –

“bank” has the same meaning as in the Banking Act;

“cash dealer” has the same meaning as in the Banking Act;

“CDS” has the same meaning as in the Securities (Central Depository, Clearing and Settlement) Act;

“central bank” has the same meaning as in the Banking Act;

“Commission” has the same meaning as in the Financial Services Act;

“complainant” means a person who lodges a complaint under section 7(1);

“financial institution” means –

- (a) any bank, non-bank deposit taking institution or cash dealer licensed by the central bank;
- (b) any provider of financial services regulated under any relevant enactment;
- (c) a participant;
- (d) such other institution as may be prescribed;

“financial services” –

- (a) means any financial services or financial business activities regulated under the relevant enactments; and
- (b) includes any services provided under the Securities (Central Depository, Clearing and Settlement) Act by a participant; but
- (c) does not include –
 - (i) services provided, or any business activity conducted, by an entity licensed or authorised under Part X of the Financial Services Act;
 - (ii) services provided from outside Mauritius;
 - (iii) services provided by a financial institution to an entity licensed or authorised under Part X of the Financial Services Act;

“financial year” has the same meaning as in section 2A of the Finance and Audit Act;

“Minister” means the Minister to whom responsibility for the subject of financial services is assigned;

“Ministry” means the Ministry responsible for the subject of financial services;

“non-bank deposit taking institution” has the same meaning as in the Banking Act;

“Office” means the Office of Ombudsperson for Financial Services referred to in section 3;

“officer” –

(a) means any officer appointed or designated under section 6; and

(b) includes the Ombudsperson;

“Ombudsperson” means the Ombudsperson for Financial Services appointed under section 5;

“participant” has the same meaning as in the Securities (Central Depository, Clearing and Settlement) Act;

“relevant enactments” means the enactments specified in the First Schedule;

“Stock Exchange” means the Stock Exchange of Mauritius Ltd or such other securities exchange licensed by the Commission and operating in Mauritius;

“supervising officer” means the supervising officer of the Ministry.

PART II – OFFICE OF OMBUDSPERSON FOR FINANCIAL SERVICES

Sub-Part A – Office

3. Office of Ombudsperson for Financial Services

There shall be an Office of Ombudsperson for Financial Services which shall be a public office and shall be administered and managed by an Ombudsperson.

4. Functions and powers of Office

(1) The Office shall, in particular, with a view to giving better protection to consumers of financial services –

- (a) inform and educate the general public on investments in financial services offered by financial institutions;
- (b) assist the Ombudsperson in dealing with complaints made by consumers of financial services against financial institutions.

(2) The Office shall, in the exercise of its functions, act without fear or favour and shall not be subject to the directions or control of any other person or authority.

Sub-Part B – Ombudsperson for Financial Services and Staff of Office

5. Ombudsperson for Financial Services

(1) (a) There shall be an Ombudsperson for Financial Services who shall have wide knowledge and experience in the field of financial services and the laws relating thereto.

(b) The Ombudsperson shall be appointed by the President, acting on the advice of the Prime Minister, on such terms and conditions as the Prime Minister may determine.

(c) The Prime Minister shall, before tendering advice under paragraph (b), consult the Leader of the Opposition and such other persons as he considers appropriate.

(2) The Ombudsperson shall –

- (a) hold office for a term not exceeding 4 years and shall be eligible for reappointment for one further term not exceeding 4 years;
- (b) not be subject to the direction or control of any other person or authority;
- (c) not engage in any trade, business, other profession or political activity.

(3) The Ombudsperson may, in the exercise of his functions –

- (a) issue guidelines to financial institutions in order to avoid disputes, and minimise the risks of disputes, between them and consumers of financial services; and
- (b) share information and, where appropriate, enter into a memorandum of understanding, with any relevant

supervisory or regulatory authority or law enforcement agency.

(4) Where, in the discharge of his functions and exercise of his powers under this Act, the Ombudsperson becomes aware of improper practices or financial fraud in relation to any activity in the financial services sector, he shall immediately refer the matter to the central bank, Commission, CDS or Stock Exchange, as the case may be.

(5) (a) Where a complaint cannot be heard by the Ombudsperson pursuant to section 14, the President shall, in the manner provided for in subsection (1)(b) and (c), appoint any person having wide knowledge and experience in the field of financial services and the laws relating thereto and whom he considers appropriate to deal with the complaint.

(b) The person appointed under paragraph (a) shall, for the purpose of determining the complaint, have all the powers and functions of the Ombudsperson under this Act.

(6) The President may, at any time, on the advice of the Prime Minister, terminate the appointment of the Ombudsperson –

- (a) for unsatisfactory performance of his duties or for any other reason which would warrant the termination of his appointment;
- (b) on the ground of misconduct, default or breach of trust in the performance of his duties; or
- (c) where he is subject to any proceedings of such nature which render the termination of his appointment desirable.

6. Staff of Office

(1) (a) The Ombudsperson shall, with the approval of the supervising officer, appoint such officers as it may determine to assist him in the discharge of his functions.

(b) Any officer appointed under paragraph (a) shall –

- (i) have wide knowledge and experience in the field of financial services or other relevant fields and the laws relating thereto; and
- (ii) be appointed on such terms and conditions as the supervising officer may approve.

(2) The Secretary to Cabinet and Head of the Civil Service may, subject to the approval of the Public Service Commission, designate such public officers as may be necessary to assist the Ombudsperson in the discharge of his functions.

(3) Every officer shall be under the administrative control of the Ombudsperson.

(4) Before assuming the duties of his office –

(a) the Ombudsperson shall take, before the President, the oath specified in Part I of the Second Schedule; and

(b) every officer shall make, before the Ombudsperson, the declaration specified in Part II of the Second Schedule.

PART III – COMPLAINT PROCEDURE

7. Complaint to Ombudsperson

(1) Subject to this Act, any person who –

(a) in respect of written representations made by him to a financial institution regarding any financial services provided by the financial institution, is aggrieved by –

(i) the decision of the financial institution; or

(ii) the non-receipt of a decision from the financial institution within 3 months from the date of the written representations made to it; or

(b) is aggrieved by any failure in the provision of any services provided by a participant under the Securities (Central Depository, Clearing and Settlement) Act,

may himself, or through his authorised representative, lodge a complaint in writing with the Ombudsperson in such form and manner as the Ombudsperson may determine.

(2) A complaint lodged under subsection (1) shall –

(a) include the name and address of the complainant;

(b) include the name and address of the financial institution against which the complaint is made;

- (c) include the nature of the complaint and the facts and circumstances giving rise to the complaint;
 - (d) include a declaration as to whether the financial institution against which the complaint is made, replied to the written representations referred to in subsection (3)(a);
 - (e) include the relief sought;
 - (f) include such other information and particulars as may be specified in the complaint form, if any;
 - (g) include a written declaration to the effect that the complaint satisfies the requirements of subsection (3)(a) and (b);
 - (h) be accompanied by a copy of the reply, if any, from the relevant financial institution to which written representations were made; and
 - (i) be accompanied by a copy of the documents on which he proposes to rely.
- (3) No complaint shall be entertained –
- (a) unless the complainant had, before making the complaint, made written representations, by registered post, with advice of delivery, to the relevant financial institution;
 - (b) unless the complainant has sufficient interest in the subject matter of the complaint;
 - (c) where it is made more than 3 months from the date of receipt of the decision of the financial institution;
 - (d) where, following the non-receipt of the decision of the financial institution within the delay referred to in subsection (1)(a)(ii), the complaint is made more than 3 months from the expiry of the delay of 3 months referred to in subsection (1)(a)(ii);
 - (e) where it is made after the expiry of any prescribed period for monetary claims relating to the complaint, where such period does not exceed the time limit referred to in paragraph (c) or (d), as the case may be;

- (f) where it is in respect of a matter that has been disposed of by the Ombudsperson and where the complainant was a party; or
- (g) where it pertains to a subject matter which is the same as a subject matter which is, has been or may be the subject of proceedings before, or has been determined by the Commissioner for the Protection of Borrowers, a Court, a tribunal or an arbitrator.

(4) (a) The Ombudsperson shall not hear and determine a complaint under this Act unless the complainant has voluntarily made a sworn statement, in such form as may be prescribed, that he has waived his right to initiate civil proceedings before any Court in Mauritius in respect of the facts that form the subject matter of the complaint.

(b) A waiver referred to in paragraph (a) shall constitute a bar to subsequent civil proceedings being initiated by the complainant before any Court in Mauritius in respect of the subject matter of the complaint.

(c) In this subsection –

“civil proceedings” does not include an application made under section 17 or 83 of the Constitution or an application for judicial review under section 12.

8. Mediation

The Ombudsperson may, at any stage after receipt of a complaint and subject to the agreement of the complainant and the financial institution against which the complaint is made, attempt to settle the dispute by mediation.

9. Investigation into complaint

(1) Where a complaint is not rejected under section 10 or where a dispute is not settled by mediation under section 8, the Ombudsperson shall proceed with or continue the investigation of the complaint.

(2) Where the Ombudsperson investigates into a complaint –

- (a) he shall notify the financial institution of the complaint against it;
- (b) he may summon –
 - (i) the financial institution;

- (ii) the complainant or his authorised representative; or
- (iii) such other person as he may consider relevant for the purposes of his investigation,

to attend the Office and to provide such information and documents as he may require;

- (c) he may examine witnesses on oath; and
- (d) may call for the communication or production of any relevant information, record, document or article.

(3) The Ombudsperson shall, when investigating a complaint, keep a proper record of its proceedings.

(4) (a) Where, in the course of an investigation, any person refuses to communicate or produce any information, record, document or article on the ground of confidentiality, the Ombudsperson may apply to a Judge in Chambers for an order directing that person to communicate or produce the information, record, document or article required for the purpose of the investigation.

(b) Where the Judge in Chambers is satisfied that the information, record, document or article sought is bona fide required for the purpose of the investigation, he may make an order directing that person to communicate or produce the information, record, document or article required for the purpose of the investigation.

(5) The Ombudsperson shall, when investigating into complaints –

- (a) follow such procedures as he may determine, without being bound by rules of evidence, and he shall avoid formality in proceedings before him;
- (b) take into account –
 - (i) the evidence adduced by the parties;
 - (ii) the laws governing financial institutions and any other relevant legislation;
 - (iii) practice directions, instructions, rules, procedures, guidelines and guidance notes issued by the central bank, Commission, CDS or Stock Exchange; and
 - (iv) such other factors which he considers relevant to the complaint.

10. Rejection of complaint

- (1) The Ombudsperson may –
 - (a) at any stage, reject a complaint where, in his opinion –
 - (i) the complaint is frivolous, vexatious or made in bad faith; or
 - (ii) the complaint is made without any sufficient cause; or
 - (b) after investigation into a complaint, reject the complaint.

(2) The Ombudsperson shall, by registered post, notify the complainant and the financial institution of the rejection of the complaint, stating briefly the reasons thereof.

11. Award by Ombudsperson

(1) Where the Ombudsperson is satisfied, after investigating into a complaint, that the complainant has suffered any loss, financial or otherwise, he may make an award in accordance with this section.

- (2) An award made under this section –
 - (a) shall specify the amount, if any, which the financial institution shall pay to the complainant as compensation for loss suffered; and
 - (b) may give such directives as the Ombudsperson may determine to the financial institution.

(3) The Ombudsperson shall, when determining the amount of compensation, if any, take into account any loss, financial or otherwise, suffered by the complainant.

(4) The Ombudsperson shall send a copy of the award to the complainant and the financial institution and the award shall be binding on the financial institution.

12. Review of decision of Ombudsperson

Any person aggrieved by any decision of the Ombudsperson under section 10 or 11, including an award, may apply to the Supreme Court for a judicial review of the decision or award, as the case may be.

PART IV – MISCELLANEOUS

13. Confidentiality

(1) No officer shall, during or after his tenure of office, use or disclose any matter which came to his knowledge in the discharge of his functions, except –

- (a) for the purposes of this Act; or
- (b) where he is so required by a Court or under any enactment.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

14. Conflict of interest

(1) Where any officer, his spouse or next of kin has any direct or indirect interest in relation to –

- (a) any complaint referred to the Ombudsperson; or
- (b) any matter which he has to deal with in the discharge of his functions,

he shall disclose forthwith, in writing, to the supervising officer, the nature of his interest.

(2) Every disclosure of interest made under subsection (1) shall be chronologically recorded in a register kept by the supervising officer.

15. Protection from liability

(1) No liability, civil or criminal, shall be incurred by any officer in respect of any act done or omitted, in good faith, by him in the discharge of his functions or exercise of his powers under this Act.

(2) This section shall be in addition to, and not in derogation from, the Public Officers' Protection Act, and for the purposes of that Act, the Ombudsperson or any officer appointed under section 6(1) shall be deemed to be a public officer.

16. Display of contact information of Ombudsperson

Every financial institution shall ensure that the contact information of the Ombudsperson is prominently displayed in a conspicuous place at each of its business premises where complaints may be lodged.

17. Annual report

(1) The Ombudsperson shall, not later than 3 months from the end of every financial year, cause to be published an annual report on his activities in respect of the preceding financial year.

(2) The Ombudsperson shall forward a copy of the annual report referred to in subsection (1) to the Minister.

(3) The Minister shall, at the earliest available opportunity, lay a copy of the annual report before the Assembly.

18. Offences

(1) Any person who –

- (a) otherwise than in the performance of his duty, directly or indirectly, by himself or by any other person, in any manner influences or attempts to influence the decision of the Ombudsperson with regard to any complaint made to him or to any investigation made by him;
- (b) refuses to answer to the best of his knowledge any question put to him in the course of an investigation;
- (c) willfully fails to attend a hearing after having been summoned;
- (d) refuses, without reasonable excuse, to provide any information, record, document or article during an investigation;
- (e) gives false evidence, or evidence which he knows to be misleading, during an investigation;
- (f) obstructs the proceedings of an investigation;
- (g) molests or insults any officer during an investigation;
- (h) willfully fails to comply with section 11(2) (b);
- (i) wilfully interrupts the proceedings of an investigation; or
- (j) in any other manner contravenes this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

19. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under this Act may provide –

- (a) for the amendment of the Schedules;
- (b) for the taking of fees and levying of charges; and
- (c) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

20. Consequential amendments

(1) The Bank of Mauritius Act is amended –

(a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“Ombudsperson for Financial Services” has the same meaning as in the Ombudsperson for Financial Services Act 2018;

(b) in section 26(4), by adding the following new paragraph, the full stop at the end of paragraph (d) being deleted and replaced by the words “; or” and the word “or” at the end of paragraph (c) being deleted –

(e) the disclosure by the Bank of any information, documents and particulars to the Ombudsperson for Financial Services to enable him to discharge, or assist him in discharging, his functions under the Ombudsperson for Financial Services Act 2018.

(2) The Banking Act is amended –

- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“Ombudsperson for Financial Services” has the same meaning as in the Ombudsperson for Financial Services Act 2018;

- (b) in section 64(3), by adding the following new paragraph, the full stop at the end of paragraph (o) being deleted and replaced by the words “; or” and the word “or” at the end of paragraph (n) being deleted –

- (p) the financial institution is required to provide information, documents and particulars to the Ombudsperson for Financial Services to enable him to discharge, or assist him in discharging, his functions under the Ombudsperson for Financial Services Act 2018.

- (c) by repealing section 96;

- (d) in section 96A –

- (i) in subsection (4) –

- (A) by repealing paragraph (b) and replacing it by the following paragraph –

(b) Where the complainant is dissatisfied with the reply or does not receive a reply within the period referred to in paragraph (a), he may refer the complaint to the Ombudsperson for Financial Services in the manner provided for in the Ombudsperson for Financial Services Act 2018.

- (B) by repealing paragraph (c);

- (ii) by repealing subsection (5).

- (3) The Financial Services Act is amended –

- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“Ombudsperson for Financial Services” has the same meaning as in the Ombudsperson for Financial Services Act 2018;

- (b) by repealing section 32;
- (c) by inserting, after section 32, the following new section –

32A. Obligation of licensee to furnish information to Ombudsperson for Financial Services

Every licensee, other than a person licensed under Part X, shall furnish to the Ombudsperson for Financial Services, when so required by the Ombudsperson for Financial Services, such information, documents and particulars as he may require to enable him to discharge, or assist him in discharging, his functions under the Ombudsperson for Financial Services Act 2018.

- (d) in section 83(7), by adding the following new paragraph, the full stop at the end of paragraph (d) being deleted and replaced by a semicolon –
 - (e) disclosure to the Ombudsperson for Financial Services, pursuant to an agreement or arrangement for the exchange of information.

(4) The Securities (Central Depository, Clearing and Settlement) Act is amended, in section 23, by inserting, after paragraph (h), the following new paragraph –

- (ha) for the purpose of enabling or assisting the Ombudsperson for Financial Services to discharge his functions under the Ombudsperson for Financial Services Act 2018;

21. Transitional provision

(1) Any complaint made, prior to the commencement of this Act, to the central bank pursuant to section 96A(4)(b) of the Banking Act or Commission pursuant section 32 of the Financial Services Act shall, where it has not been determined by the central bank or Commission, as the case may be, on the commencement of this Act, be taken up, continued or completed by the Ombudsperson in accordance with this Act.

(2) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

22. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

FIRST SCHEDULE

[Section 2]

RELEVANT ENACTMENTS

Bank of Mauritius Act

Banking Act

Captive Insurance Act

Financial Services Act

Insurance Act

Private Pension Schemes Act

Protected Cell Companies Act

Securities Act

Securities (Central Depository, Clearing and Settlement) Act

Trusts Act

SECOND SCHEDULE

[Section 6(4)]

PART I – OATH BY OMBUDSPERSON FOR FINANCIAL SERVICES

I, (name), do swear/solemnly affirm/declare* that I shall well and truly serve the Republic of Mauritius as Ombudsperson for Financial Services under the Ombudsperson for Financial Services Act 2018 and I shall faithfully and impartially perform the duties of my office and that I shall not, during or after my tenure of office as Ombudsperson for Financial Services, disclose, on any account and, at any time, except for the purposes of that Act, any information received by me in the performance of my duties or in the exercise of my powers under that Act.

Sworn/solemnly affirmed/declared* by the Before me
abovenamed before me at this
..... day of 20.....

.....
President

**Delete as appropriate*

PART II – DECLARATION BY OFFICER

I, (name), being appointed/designated* as an officer, do declare that I shall not, during or after my tenure of office under the Ombudsperson for Financial Services Act 2018, disclose, on any account and, at any time, except for the purposes of that Act, any information received by me in the performance of my duties or in the exercise of my powers under that Act.

.....
Signature of declarant

.....
Made before me

.....
Signature of Ombudsperson for
Financial Services

.....
Date

**Delete as appropriate*
