

DECISION
On the Banking Ombudsman
(OGM 15/09 of 27 February 2009, 02/12 of 11 January 2012)

1. GENERAL PROVISION

Subject matter

Article 1

This Decision shall define more in details conditions to be fulfilled by the protector of clients' rights and rights of financial institutions (hereinafter: the Banking Ombudsman), principles of the Banking Ombudsman work, procedure for protection of clients' rights before the Banking Ombudsman, and manner of providing material and technical conditions for his work.

Banking Ombudsman seal

Article 1a

Banking Ombudsman shall have seal.

Banking Ombudsman seal shall be rounded in shape and the following written on the outside rim of the seal: "Zaštitnik prava klijenata banaka, mikro kreditnih finansijskih institucija i kreditnih unija, Podgorica", a u sredini tekst "BANKARSKI OMBUDSMAN" (*"The protector of clients of banks, micro-credit financial institutions and credit unions, and the words "BANKING OMBUDSMAN" in the centre"*).

2. CONDITIONS FOR THE ELECTION OF THE BANKING OMBUDSMAN

Relation to Banks

Article 2

The Banking Ombudsman may be a person who is not related to banks, branches of foreign banks, micro-credit financial institutions and credit unions which have licence, that is, work permit issued by the Central Bank (hereinafter: banks and financial institutions) and who has significant experience in the banking business.

Pursuant to paragraph 1 of this Article, the following persons shall be considered as persons related to banks and financial institutions:

- 1) a person who has share in capital and voting rights in the bank and/or the financial institution;
- 2) a person whose immediate family members (spouse and children) have share in capital and voting rights in the banks and/or the financial institution;
- 3) a person who controls a person with the qualified share in the bank and the financial institution;
- 4) a person whose immediate family members control a person with the qualified share in the bank and/or the financial institution.

Pursuant to paragraph 1 of this Article, a person holding a university degree, with, at least, five years of the working experience in the banking business, including the supervision of the banking business shall be considered as a person with the significant experience in the banking business.

Election Limitations

Article 3

The Banking Ombudsman may not be a person:

- 1) who was sentenced for the act which makes him unworthy for performing the function of the Banking Ombudsman;
- 2) who was, according to the protective measure imposed by the competent court, prohibited to perform his vocation, activities and duties;
- 3) to whom the bank has total exposure higher than 2% of the own assets amount;
- 4) whose property has been subject to significant execution, due to outstanding liabilities;
- 5) who was a manager in the bank and/or the financial institution or other corporate company, in the period when the bankruptcy or liquidation proceedings against that company started.

3. PROCEEDINGS OF PROTECTION OF CLIENTS' RIGHTS AND AUTHORIZATION AND RESPONSIBILITIES OF THE BANKING OMBUDSMAN

Right to Initiate the Proceedings

Article 4

Proceedings before the Banking Ombudsman may be initiated by the client of the bank and/or the financial institution who considers that the act, activity or failing to act of the bank and/or the financial institution referring to the use of banking product and services, have caused the violation of his rights.

Proceedings before the Banking Ombudsman are free of charge.

Manner of Initiating the Proceedings

Article 5

The client shall start the proceedings before the Banking Ombudsman by submitting a written request for the protection of rights, or by reporting a dispute in direct

communication with the Banking Ombudsman, in case of which the Banking Ombudsman shall make a written statement on the initiation of the proceedings.

The Banking Ombudsman shall introduce client with his rights and ask from the client documentation and evidences which represent a precondition for conducting the proceedings and regular determination of actualities.

If the client refuses to submit the requested documentation and evidences from the paragraph 1 of this Article, the Banking Ombudsman may refuse to take in consideration the request of the client.

Determining Prejudicial Question

Article 6

The bank and/or the financial institution shall, upon the request of the Banking Ombudsman, submit information and evidences on whether an internal proceedings on the subject of dispute was conducted, and if so, whether, during that proceedings, it assessed disputable facts and decided upon the client's request for the protection of his rights, in accordance with the law and internal acts.

The Banking Ombudsman shall conduct the proceedings for the resolution of the dispute occurred between the client and the bank and/or the financial institution, in case he prejudged that the client already used all legal possibilities for protection in the proceedings before the bank and/or the financial institution.

Authorizations in Proceedings

Article 7

During the proceedings, the Banking Ombudsman may request from the bank and/or the financial institution additional documentation and evidences which he assesses as necessary for regular and complete determination of actualities and for assuming an attitude in dispute resolution.

In case the bank does not submit requested documentation from paragraph 1 of this Article, the Banking Ombudsman shall make a written statement and deliver that statement to the clients together with written attitude or advice to the client on his further rights.

Manner of Deciding

Article 8

After proceedings, the Banking Ombudsman shall assume an attitude on the manner of dispute resolution between the client and the bank and/or the financial institution and deliver it in the form of the suggestion for dispute resolution to the client and to the bank and/or the financial institution.

For the purpose of dispute resolution between the client and the bank, the Banking Ombudsman may:

- 1) suggest settlement between the client and the bank;
- 2) recommend to the bank to amend the act, take actions or remove drawbacks which have influenced the dispute between the client and the bank, or
- 3) advise the client in relation to the finalization of the dispute.

Advices to Clients

Article 9

In the process of dispute resolution between the client and the bank and/or the financial institution, the Banking Ombudsman may advise the client on his rights before the competent authority, without formal written suggestion for dispute resolution.

Engagement of Other Parties in the Proceedings

Article 10

In the process of dispute resolution between the client and the bank and/or the financial institution, the Banking Ombudsman may ask for the expert opinion from the acknowledged banking and judicial experts.

Cessation of Proceedings

Article 11

The Banking Ombudsman may cease the proceedings when:

- 1) he determines that the bank and/or the financial institution has removed the violation of the client's rights;
- 2) the client has refrained from the request or has withdrawn the request;
- 3) he determines that the client has initiated the proceedings for the rights protection before the competent court.

Right to Institute an Initiative with the Bank

Article 12

On the basis of information and findings gathered in the proceedings he conducted, the Banking Ombudsman shall give recommendations to the bank for the improvement of the relations with clients.

In case the Banking Ombudsman determines that violation of clients' rights are influenced by negligent and illegal acts of employees in the bank and/or the financial institution, he may recommend the bank and/or the financial institution to impose corresponding measures.

Obligation of Maintaining Secrecy

Article 13

The Banking Ombudsman shall maintain as secret all data, information and findings he collected from the client, the bank and/or the financial institution during the proceedings

and shall not use them neither for the personal stake nor make them available to other persons, apart from the persons protected by the law as persons to whom these data may be available.

Keeping Records and Reporting

Article 14

The Banking Ombudsman shall keep the special record on all clients' submitted requests, on proceedings he carried out, on suggestions or given advices.

The Banking Ombudsman shall, at least on a three-month basis, inform the Central Bank on type and causes of disputes, banks' acts upon clients' objections, conducted activities upon the client's request and given suggestions and recommendations for the resolution of dispute between clients and banks.

4. PROVIDING WORKING CONDITIONS FOR THE OMBUDSMAN'S ACTIVITIES

Material and Technical Conditions for the Ombudsman's Activities

Article 15

The Central Bank shall provide premises and other material and technical working conditions for the Banking Ombudsman.

Employees of the Central Bank shall perform administrative-technical activities for the Banking Ombudsman.

5. CLOSING PROVISION

Article 16

This Decision shall enter into force on the eighth day upon its publication in the Official Gazette of the Republic of Montenegro.

THE COUNCIL OF THE CENTRAL BANK OF MONTENEGRO