

**THE LAW RELATING TO THE ESTABLISHMENT AND OPERATION OF A
SINGLE AGENCY FOR THE OUT OF COURT SETTLEMENT OF DISPUTES OF
FINANCIAL NATURE (FINANCIAL OMBUDSMAN)**

For the purposes of harmonization with the European Community Act entitled "Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes."

The House of Representatives enacts as follows:

PART I - INTRODUCTION

Short title

1. This Law is referred to as the Law Relating to the Establishment and Operation of a Single Agency for the out of Court Settlement of Disputes of Financial Nature of 2010.

Definitions

2. In this Law, unless the context otherwise requires-

"Competent supervisory authority" means:

- (a) in relation to a bank or electronic money institution or a legal person who holds a license to provide intermediary services regarding the transfer of money to and from the Republic, the Central Bank of Cyprus;
- (b) in relation to an Investment Firm (EPEY) or a Management of Mutual Funds Firm (EDAK), the Cyprus Securities and Exchange Commission, and
- (c) in relation to any insurance undertaking or a legal or a natural person who carries on the business of insurance intermediary, the Superintendent of Insurance;

"Insurance Company" has the meaning attributed to this term by Section 2 of the Insurance Services and Other Related Issues Law;

"Deputy Financial Ombudsman" means the person appointed in accordance with section 7 as Assistant Financial Ombudsman;

"Settlement" means the out of court amicable settlement by means of mediation by the Financial Ombudsman, provided that the parties involved have accepted the binding nature of his decision in accordance with the provisions of this Law;

"Cross-border dispute" means the dispute between a consumer and a financial services provider, where the provider is established in a Member State other than that in which the consumer resides;

"Financial Ombudsman" means the person appointed in accordance with section 7 as a Financial Ombudsman;

"Investment Firm" or in identical meaning "IF" has the meaning attributed to this term by Section 2 of the Investment Services and Activities and Regulated Markets law;

"Insurance intermediary" has the meaning attributed to this term by Section 2 of the Insurance Services and other Related Matters Law.

"Management of Mutual Funds Company" or in identical meaning 'EDAK' means a management company as defined in Section 41 of the Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Matters Law .

"Superintendent of Insurance" means the public officer appointed to act as the Superintendent of Insurance, in accordance with Section 4 of the Insurance Services and other Related Matters Law.

"Superintendent for the Supervision and Development of Cooperative Societies" means the Superintendent of the Supervision and Development of Cooperative Societies Service, as defined in Section 4 of the Cooperative Societies Law;

"Electronic money institution" has the meaning attributed to this term by Section 2 of the Electronic Money Institutions Law;

"Payment institution" has the meaning attributed to this term by Section 2 of the Payment Services Law;

"Consumer" means, subject to the provisions of Section 10, a natural or legal person or a charity foundation or association or association of persons or trust or provident fund, but does not include a competent supervisory authority or, subject to the proviso of paragraph (a) and the first proviso of paragraph (b) of Section 10, any financial undertaking;

"Member State" means a member state of the European Union or any other State party to the Agreement on the European Economic Area signed at Oporto on 2 March 1992, and adjusted by the Protocol signed in Brussels on 17 May 1993, as the Agreement is from time to time amended;

"Complaint" means a written submission to the Agency of protest or objection or dispute against a financial undertaking, the amount of which does not exceed the amount of one hundred and seventy thousand euro (€ 170.000):

Provided that from the definition of the term "complaint" for the purposes of this Law, complaints by third parties are exempted, except in cases where the complainant is a person to whom the benefit of the claim is assigned under an insurance against the undertaking, on the basis of a contract concerning the assignment of rights or a contract of substitution or by law;

"Directives" means the Directives issued by the Board under section 21;

"Board" means the Board of Directors of the Agency appointed in accordance with section 5;

"connected persons" means, in relation to a member of the Board or in relation to the Financial Ombudsman or the Deputy Financial Ombudsman-

- a) second-degree relatives by blood or the spouse.
- b) the employer of a member of the Board or the group of companies to which the employer belongs.
- c) firms controlled by a member of the Board or the Financial Ombudsman or the Deputy Financial Ombudsman or by the persons referred to in paragraphs (a) and (b), in which they hold at least twenty percent (20%) of the share capital or the voting rights;

"Bank" has the meaning assigned to this term by Section 2 of the Operation of Banking Law.

"Third country" means a country other than the Member States of the European Union;

"Agency " means the Single Agency for the Out of Court Settlement of Financial Disputes, established in accordance with Section 3;

"Financial undertaking" means:

- a) a Bank;
- b) an electronic money institution;
- c) a payment institution;
- d) a legal person who holds a license to provide mediation services for the transfer of money to and from the Republic;
- e) an insurance undertaking;
- f) Investment Firm (EPEY);
- g) EDAK; or
- h) Any other natural or legal person operating in the Republic in accordance with a license issued by a competent supervisory authority or in accordance with the freedom of establishment under:
 - (i) the Central Bank Law;

- (ii) the Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Matters Law;
 - (iii) the Investment Services and Activities and Regulated Markets Law;
 - (iv) the Insurance Services and Other Related Matters Law;
- and includes a legal or natural person who falls within the definition of "insurance intermediary" as this is defined in section 2 of the Insurance Services and Other Related Matters Law and carries on business of insurance intermediation;.

"Financial Sector" means:

- (a) the sector within which legal or natural persons operate in the Republic in accordance with the authorization granted by the competent supervisory authority or under the freedom of establishment as provided for in the Central Bank of Cyprus Law; or
- (b) the sector within which legal or natural persons operate in the Republic in accordance with the authorization granted by the competent supervisory authority or under the freedom of establishment as provided in the Insurance Services and other Related Matters Law and includes a legal or natural person which falls within the definition of "intermediary" as defined in Section 2 of the latter law and carries on the business of insurance intermediation; or
- (c) the sector that includes legal or natural persons that operate in the Republic in accordance with the authorization granted by the competent supervisory authority or under the freedom of establishment as provided for in the Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Matters Law or in the Investment Services and Activities and Regulated Markets Law.

PART II - ESTABLISHMENT AND OPERATION OF THE AGENCY

Establishment of the Agency

3. (1) It is hereby established, a legal person governed by public law titled as "Single Agency for the Out of Court Settlement of Financial Disputes" (Financial

Ombudsman) which consists of the Board of the Agency, the Financial Ombudsman, the Deputy Financial Ombudsman and the staff employed by the Agency.

(2) The Agency is managed by the Board, as set out in Part IV of this Law.

(3) The head office of the Agency is located in Nicosia.

PART III - PURPOSE OF THE AGENCY

Purpose of the Agency

4. (1) The Agency undertakes the examination of complaints by consumers against financial undertakings, in accordance with the provisions of this Law, with a view to settle the complaints of consumers of the services of financial undertakings, against the financial undertakings.

(2) The Agency in the performance of its duties, acts fairly and impartially, follows transparent, speedy and effective procedures, in order to safeguard the interests of the consumers.

PART IV - BOARD OF THE AGENCY

Board of the Agency

5. (1) The Agency is managed by an eight-member Board, which consists of the President, two Vice-Presidents and five other members appointed by the Council of Ministers, as follows:

(a) The, from time to time, head of each competent supervisory authority or their representative, is appointed in the position of the President and Vice-Presidents of the Board ;

(b) The following are appointed as members of the Board:

(i) a representative of the Ministry of Commerce, Industry and Tourism,

- (ii) a representative of the banks, on the recommendation of the Association of Cyprus Banks ,
- (iii) a representative of Insurance Companies, on the recommendation of the Insurance Association of Cyprus,
- (iv) a representative of Investment Firms, on the recommendation of the legally established organizations or associations representing these firms,
- (v) a consumer representative.

(2) The Board members are citizens of the Republic, with the highest moral standards, of known repute and honesty and known experience and training of legal or financial nature.

(3) The term of the Board members is for five years:

Provided that, exceptionally, the term of office of the Board members that will be appointed immediately after the entry into force of this Law, shall be for three years for the members referred to in paragraph (a) and subparagraph (i) of paragraph (b) of subsection (1), and, four years for the members referred to in subparagraphs (ii), (iii), (iv) and (v) of paragraph (b) of subsection (1).

- (4) The position of a member of the Board shall be vacated in case of -
- (a) death,
 - (b) resignation,
 - (c) revocation of the member's appointment :

Provided that, the Council of Ministers may, at any time before the expiration of the term of any member of the Board, revoke the appointment in the case of-

- i. breach of any of the provisions of subsection (5);
- ii. conviction for the offense of breach of the duty of confidentiality and professional secrecy as provided in section 22; and

(d) loss of the executive or employee status under which the member was appointed, in the case of a member appointed under paragraph (a), of subsection (1), or subparagraph (i), of paragraph (b), of subsection (1):

Provided that, in the case of a vacant position before the expiration of the relevant member's term, subject to the provisions of subsection (1), a person is appointed in that member's place for the rest of the term of office of the member whose position has become vacant.

(5) It is prohibited to any member of the Board to participate or be present in discussions and decision-making of the Board, on matters related to persons connected to them.

(6) A quorum at a meeting of the Board of the Agency is the presence of at least six (6) of its members.

(7) The decisions of the Board are taken by a majority of the members present and in case of a tied vote, a second voting follows, in which the member chairing the meeting has the casting vote.

(8) Subject to the provisions of this Law, the Board regulates the conduct of its operation and in particular, the way of convening the meetings, the procedures to be followed during the meetings and the way of keeping and validating of the minutes of the meetings.

(9) Board members receive compensation, the amount of which is determined by the Council of Ministers.

(10) Board members or persons connected to them are not entitled to benefit from contracts entered into, transactions made or services rendered in connection with the needs of the Agency.

(11) The Board with the participation of the Financial Ombudsman or, in his absence, the Deputy Financial Ombudsman recruits, terminates and promotes the staff members of the Agency and exercises disciplinary control over them.

Responsibilities of the Board

6. (1) The Board superintends the work of the Agency and has responsibility for the management of its assets and management personnel, as defined in this Act and directions made thereunder:

Provided that the members of the Board are not personally liable for any act or omission in the performance of their duties, unless such an act or omission was proved to be intentional.

(2) The Board –

(a) represents, through its Chairman or one of the its Vice-Chairmen, the Agency before the Courts and other authorities:

Provided that, by decision of the Chairman of the Board and if the matter concerns the powers of the Financial Ombudsman , the Board may be represented before the Courts and other authorities by the Financial Ombudsman or, in his absence, by the Deputy Financial Ombudsman;

(b) defines the guiding principles for the smooth functioning of the Agency;

(c) appoints and dismisses the Financial Ombudsman, Deputy Financial Ombudsman and, subject to the provisions of subsection (11) of Section 5, the employees who consist the staff of the Agency;

(d) conducts investigations and exercises disciplinary authority over the Financial Ombudsman, Deputy Financial Ombudsman and, subject to the provisions of subsection (11) of section 5, of employees who act as staff of the Agency and impose disciplinary sanctions;

(e) provides for the keeping of accounts and the preparation and submission of reports and financial statements as required under Part VIII;

(f) takes all necessary measures for the proper and orderly conduct of the work of the Agency;

(g) prepares and issues directions under Section 21;

(h) defines the procedures for handling complaints and settlement of disputes;

(i) determines the administrative structure of the Agency; and

(j) is generally responsible for any action, which according to this Law, the directions issued thereunder and the legislation in force, is akin to the purposes and functions of the Agency as defined under this Law:

Provided that the Board has no authority over the way the Financial Ombudsman, the Deputy Financial Ombudsman or staff employed by the Agency, handle a complaint or a dispute, unless it ascertains that there has been non-compliance with the provisions of this Law or of any of the Directives issued under it.

PART V - APPOINTMENT OF FINANCIAL OMBUDSMAN, DEPUTY FINANCIAL OMBUDSMAN AND STAFF OF THE AGENCY

Financial Ombudsman and Deputy Financial Ombudsman

7. - (1) The Board appoints as the Financial Ombudsman and the Deputy Financial Ombudsman citizens of the Republic of the highest moral standard , of known prestige and honesty, who, in the opinion of the Board have either knowledge and experience in economic or financial matters and are holders of a Law degree or have knowledge and experience in legal matters and are holders of a degree in economics and finance.

(2) Subject to the provisions of subsection (3), the term of office of the Financial Ombudsman and the Deputy Financial Ombudsman shall be five years and may be renewed for another term:

Provided that the Board shall proceed to appoint the Deputy Financial Ombudsman, when in its opinion this is necessary for the appropriate functioning of the Agency.

(3) The Financial Ombudsman and the Deputy Financial Ombudsman during their term, cannot have their term terminated and cannot leave the office, except on the same grounds and the same way, as those applicable for the termination or leaving the office of a Judge of the Supreme Court.

(4) The remuneration and other conditions of service of the Financial Ombudsman and the Deputy Financial Ombudsman are defined in writing by the Board for the entire term.

(5) The position of the Financial Ombudsman and the Deputy Financial Ombudsman is a full time post and the person who holds the position shall not engage in any other professional activity.

(6) The Deputy Financial Ombudsman replaces the Financial Ombudsman in his absence or in case of any impediment in the exercise of his duties or in the case of vacancy of his position.

(7) No appointment shall be made to the position of the Financial Ombudsman or the Deputy Financial Ombudsman of- :

- (a) a Member of the House of Representatives,
- b) a Member of the European Parliament,
- (c) a mayor or member of a municipal council,
- (d) a member of the Council of Ministers ,
- (e) a civil servant or an employee of a legal person governed by public law,
- (f) independent officer of the Republic,

(g) a person who, in the opinion of the Council, has, either himself or a person connected to him or in any other way, substantial interest in a financial undertaking in the Republic or in an undertaking affiliated to that undertaking, or has been employed by or provided services to a financial undertaking in the Republic or to an undertaking affiliated to that undertaking, during the last (2) two years prior to his nomination for appointment as a Financial Ombudsman or Deputy Financial Ombudsman,

(h) an officer or board member of a competent supervisory authority, and

(i) a person who has been convicted of a criminal offense or an offense involving dishonesty or moral turpitude.

(8) The Financial Ombudsman and the Deputy Financial Ombudsman shall not be entitled for a period of two (2) years after the expiry of their term of office or their resignation to be employed by, or provide services to, or to become board members of a financial undertaking.

(9) The Financial Ombudsman and Deputy Financial Ombudsman bears no liability in the event of any lawsuit, action or any other legal proceeding for damages in relation to any act or omission in the exercise of powers of the Agency in accordance with the provisions of this law or any Directives issued thereunder, unless it is proved that the act or omission was not in good faith or was the result of gross negligence.

(10) The Financial Ombudsman may authorize the Assistant Financial Ombudsman or any member of the staff of the Agency to perform any functions conferred by this Act to the Financial Ombudsman:

Provided that the Assistant Financial Ombudsman and staff perform their duties and exercise their powers independently and impartially.

(11) The Assistant Financial Ombudsman and officials who constitute the staff of the Agency follow the instructions of the Financial Ombudsman and inform him about the course of the examination of complaints assigned to them.

Agency staff

8. - (1) The staff of the Agency is employed on a full-time basis and shall not engage in any other employment activity.

(2) The Board of the Agency shall decide on the terms of employment of the staff of the Agency and shall issue relevant Directives under paragraph (e) of subsection (2) of Section 21.

(3) The staff of the Agency bears no liability in an action, suit or other legal proceeding for damages for any act or omission in the exercise of powers of the Agency under the provisions of this Law or any Directives issued there under, unless prove that the act or omission was not in good faith or was the result of gross negligence.

**PART VI - COMPETENCES OF THE FINANCIAL OMBUDSMAN AND
PROCEDURE FOR SUBMISSION AND EXAMINATION OF COMPLAINTS**

Jurisdiction of Financial Ombudsman

9. - (1) The Financial Ombudsman undertakes complaints against financial undertakings, in respect of which the following conditions are met cumulatively:

(a) The complaint is submitted by a consumer;

(b) before submitting the complaint against a financial undertaking to the Financial Ombudsman, the consumer submitted the complaint to relevant financial undertaking, in accordance with section 11;

(c) the financial undertaking against which the complaint is submitted, operated at the time the complaint referred to, on the basis of a lawfully issued license or operated by virtue of the freedom of establishment:

Provided that, if the financial undertaking against which the complaint is submitted, operates in the Republic under freedom to provide services, the Financial

Ombudsman does not consider the complaint, but refers it to the competent authority of the Member State responsible for the out of court settlement of the complaint and informs the consumer of this action.

Provided further that, if in that Member State a competent body responsible for the out of court settlement of the complaint is not established, the Financial Ombudsman refers the complaint to the competent supervisory authority of the Member State that issued the license of the relevant undertaking and informs the consumer of this action.

(2) With the submission of a complaint, the consumer may complain against more than one financial undertakings under the same procedure, on condition that the complaint against each financial undertaking is directly related to the subject of the complaint.

(3) The Financial Ombudsman does not undertake the examination of a complaint which-

(a) relates to transaction that does not fall under the competences of the competent supervisory authorities;

(b) on the day of its submission, in accordance with the procedure provided in Section 12, a court of the Republic has already issued a decision on the same complaints or litigation procedures are in progress as regards the same complaint;

(c) is submitted to the Financial Ombudsman after twenty-two months (22), from the date on which the consumer became aware, or ought reasonably according to the opinion of the Financial Ombudsman to have become aware of the harmful action or omission of the financial undertaking or of the fact that he had a basis for the submission of a complaint; or

(d) according to the opinion of the Financial Ombudsman, did not result in significant loss.

Right of submission of Complaint

10. A consumer may submit a complaint to the Financial Ombudsman in accordance with the procedure laid down in section 12, if the consumer is-

(a) a natural person:

Provided that, a natural person within the definition of the term "financial undertaking" as defined in Section 2, may submit a complaint to the Financial Ombudsman against another financial undertaking, only if the complaint relates to services that the person concerned does not offer to its customers;

(b) a legal person whose annual turnover in the year preceding the year in which the complaint is submitted to the Financial Ombudsman, did not exceed two hundred and fifty thousand euro (€ 250.000):

Provided that a legal person within the definition of the term "financial undertaking" as defined in Section 2, may submit a complaint to the Financial Ombudsman against another financial undertaking, only if the complaint relates to services that it does not itself offer to its customers:

Provided further that in case the legal person was established in the year preceding the year in which the complaint is submitted to the Financial Ombudsman, the annual turnover is estimated as the turnover for the period from 1 January of the year in which the complaint is submitted until the date the complaint is submitted to the Financial Ombudsman, by extrapolation in analogy to twelve months;

(c) a charity foundation or association or a society of persons, whose annual revenues in the year preceding the year in which the complaint is submitted to the Financial Ombudsman, do not exceed two hundred and fifty thousand euro (€ 250.000):

Provided that, in case the charity foundation or association or society of persons was established in the year preceding the year in which the complaint is submitted to the Financial Ombudsman, the annual revenue is estimated as the revenue for the period from 1 January of the year in which the complaint is submitted to the date the complaint is submitted to the Financial Ombudsman, extrapolated in analogy to twelve months;

(d) a trust, the net assets of which on 31 December of the year preceding the year in which the complaint is submitted to the Financial Ombudsman, does not exceed two hundred and fifty thousand euro (€ 250.000):

Provided that, in case the trust was established during the year in which the complaint is submitted to the Financial Ombudsman, the net assets of the trust at the date of the complaint shall not exceed two hundred fifty thousand euro (€ 250.000);
or

(e) a provident fund, the net assets of which on 31 December of the year preceding the year in which the complaint is submitted to the Financial Ombudsman, does not exceed two hundred and fifty thousand euro (€ 250.000):

Provided that, in case the provident fund was established during the year in which the complaint is submitted to the Financial Ombudsman, the net assets of the fund at the date the complaint is submitted does not exceed two hundred and fifty thousand euro (€ 250.000).

Submission of Complaint to Financial Undertaking

11. - (1) A consumer who has a complaint against a financial undertaking, may submit the complaint in writing to the financial undertaking within a period of fifteen months (15) from the date he became aware or reasonably ought to have become aware of what in his opinion constitutes a harmful action or omission of the financial undertaking or of the fact that he had a basis for the submission of a complaint.

(2) The financial undertaking acknowledges receipt of the complaint within a deadline of fifteen days (15) from the date of receipt of the complaint and responds to the consumer on the complaint within three months (3) from the date of receipt:

Provided that, the deadline for the acknowledgment of the receipt of the complaint does not apply in case that the financial undertaking responds to the consumer in relation to the complaint itself within the prescribed fifteen (15) days.

(3) In case the financial undertaking :

(a) responds within the deadline specified in subsection (2) and the consumer is not satisfied with the response, the latter may, within four (4) months from the date of receipt of the response of the financial undertaking firm, submit his complaint to the Financial Ombudsman in accordance with the procedure laid down in Section 12;

(b) does not respond to the consumer within the deadline specified in subsection (2), the consumer may, within four (4) months from the date the financial undertaking ought to reply to the consumer, submit his complaint to the Financial Ombudsman according to the procedure laid down in Section 12.

Submission of Complaint to the Financial Ombudsman

12. - (1) Subject to the provisions of subsection (3) of section 11, a consumer may submit a signed complaint to the Financial Ombudsman.

(2) The complaint is submitted to the Financial Ombudsman by hand or by post or fax or email and, where possible, accompanied by a copy of the complaint submitted to the financial undertaking and the response that may have been given.

(3) Subject to the provisions of this section, the type and the way of submission of complaints is determined by Directives issued under section 21.

(4) Following the submission of the complaint by the consumer, the Financial Ombudsman informs in writing the financial undertaking for the submission of a

complaint against it, and at the same time provides the data of the consumer involved and a description of the complaint.

(5) The Financial Ombudsman, prior of initiating the examination procedure of the complaint, informs the consumer and the financial undertaking in writing that his decision is not binding and requests that they state in writing, up to the date of completion of the examination of the complaint (the date of completion of the examination of the complaint included) and before the issuing of his decision, whether they expressly accept the binding nature of his decision:

Provided that, if any of the parties involved does not state in writing the acceptance or non-acceptance of the binding nature of the decision, the Financial Ombudsman regards that party as not accepting the binding nature of his decision:

Provided further that, the decision of the Financial Ombudsman is binding only if both parties accept its binding nature.

(6) A consumer who submitted a complaint to the Financial Ombudsman may, by a written notice thereto, withdraw the aforementioned complaint and, in such a case, he cannot submit a new complaint to the Financial Ombudsman on the same matter as the initial complaint. t.

Examination of a complaint by the Financial Ombudsman

13. - (1) The Financial Ombudsman examines the complaints under its jurisdiction, in accordance with the Directives issued under the provisions of section 21.

(2) In case, after the submission of a complaint to the Financial Ombudsman, the consumer initiates a lawsuit on the same issue as the complaint submitted against the financial undertaking firm, the consumer notifies the Financial Ombudsman for this action on the same day:

Provided that, upon receipt of such notification or of information in any other manner relating to the initiation of judicial proceedings, the Financial Ombudsman

terminates the examination process of the complaint and so notifies the financial undertaking.

(3) In case that the parties involved in the complaint reach an agreement to their dispute, they so notify the Financial Ombudsman, providing details of the agreement reached:

Provided that, upon receipt of all notifications, the Financial Ombudsman terminates the examination process of the complaint provided that Financial Ombudsman ascertains that any amount of compensation that has been agreed between the parties involved in the complaint, has been paid to the consumer.

Decision on the complaint

14. - (1) When the Financial Ombudsman completes the examination of the complaint, he issues his final decision, taken in accordance with the provisions of this Law and the Directives issued pursuant to this Law, in writing and communicates it to both the consumer who submitted the complaint and the financial undertaking against which the consumer had submitted the complaint:

Provided that, the Financial Ombudsman reaches his final decision, taking into account the legal framework within which financial undertakings operate, the relevant professional codes of conduct and the generally accepted business practice followed, aiming at the mediation for the settlement of complaints submitted to him.

(2) The Financial Ombudsman in his written decision, which should be justified and bear his signature, includes the following:

(a) the settlement achieved by the method of mediation or, depending on the case, that no settlement has been achieved by the method of mediation;

(b) in the case where the parties involved had not accepted the binding nature of the decision in accordance with the provisions of this Law, a request towards the

interested parties to notify him in writing within two (2) months, whether they accept the decision issued;

(c) the deadline within which the parties involved must comply with the decision;

(d) that the acceptance by both parties of the binding nature of the decision, renders it final and not subject to appeal before the Court.

(3) If within the deadline of two (2) months specified in the decision, the consumer or the financial undertaking or both decline the decision and/or do not notify in writing the Financial Ombudsman as referred to in paragraph (b) of subsection (2), the Financial Ombudsman may, immediately after the lapse of the deadline, regard that the consumer and the financial undertaking have declined his decision and therefore that decision is no longer regarded as binding on anyone.

(4) Subject to the provisions of subsections (2) and (3), after the lapse of the two months deadline specified in the decision, the Financial Ombudsman notifies the financial undertaking whether the consumer accepted or declined the decision and the consumer, whether the financial undertaking accepted or declined the decision and that the examination of the complaint is deemed completed.

(5) In case that a complaint is examined in accordance with the provisions of this Law and the final written decision is issued in favour of the consumer and against the financial undertaking, subject to the provisions of subsection (2), the Financial Ombudsman in his decision:

(a) determines the payable, by the financial undertaking to the consumer, monetary compensation which the Financial Ombudsman considers fair for the actual financial loss suffered by the consumer, which, may not exceed the amount of fifty thousand euro (€ 50.000); and

(b) may:

(i) make a recommendation to the financial undertaking to take, what in his opinion is regarded as, fair and appropriate measures to remedy the problem or dispute and the avoidance of the creation of a similar dispute in the future;

(ii) to impose the payment by the financial undertaking to the Financial Ombudsman of the cost, up to the amount of three hundred euro (€ 300), for services that may have been provided to the Agency by an expert during the examination of the complaint.

(6) Subject to the provisions of subsection (5), the Directives may determine the maximum amount to be imposed pursuant to subsection (5) as fair compensation for the specific type of loss or damage, which may not exceed the amount of fifty thousand euro (€50.000).

(7) The Financial Ombudsman may, if he considers that the fair compensation for a complaint entails the payment of a higher amount than the maximum amount specified in subsection (5), recommend to the financial undertaking to pay voluntarily and additionally to the consumer, the difference between the maximum amount specified in subsection (5) and the largest monetary sum that the Financial Ombudsman considers as a fair compensation.

(8) Subject to the provisions of subsection (5), the Financial Ombudsman may, in his decision determine that financial compensation includes the payment of interest specifying the date from which the calculation of interest begins:

Provided that, the interest rate is determined under section 33 of the Courts Law.

(9) In the case where-

(a) a complaint is examined by the Financial Ombudsman in accordance with the provisions of this Law,

(b) a written decision is issued by the Financial Ombudsman in favour of the consumer,

(c) the consumer and the financial undertaking against which the complaint had been submitted, accepted the binding nature of the decision of the Financial Ombudsman pursuant to the provisions of this Law, and

(d) the financial undertaking does not comply with the decision of the Financial Ombudsman within the period provided in that decision,

the consumer may take legal measures against the financial undertaking whilst in parallel informing in writing the Financial Ombudsman of this action.

(10) In the case where, after the issue of the decision, both parties expressly state that they accept the binding nature of the decision under paragraph (b) of subsection (2), but the financial undertaking does not comply with the decision of the Commission within the deadline laid down in that decision, the consumer may take legal measures against the financial undertaking whilst in parallel informing in writing the Financial Ombudsman of this action.

(11) The final written decision of the Financial Ombudsman is issued within six (6) months from the date of receipt of the complaint by the Agency:

Provided that the Financial Ombudsman exceptionally, and provided that this is justified under the circumstances, may extend the six-month period by a further period of three months.

PART VII – FUND, REVENUE AND INVESTMENT POLICY OF THE AGENCY

Fund and resources of the Agency

15. - (1) The Board, upon the commencement of the operation of the Agency, , establishes a Fund, to which all revenues of the Agency shall be deposited and from which all expenses incurred shall be paid, hereinafter refer to as the " Fund".

(2) The revenues of the Agency derive from -

(a) the payment of a fee of twenty Euros (€ 20) by the consumer per complaint at the time of submitting the complaint to the Financial Ombudsman; and

(b) the payment by every financial undertaking to the Agency of a fixed annual contribution in accordance with the Directives issued by the Board:

Provided that the Board, in the context of its annual budget, determines the total annual contribution of each financial sector, which shall be broken down as follows:

(i) at the rate of seventy percent (70%), in proportion to the contribution of each sector to the gross domestic product which corresponds to the total number of the financial undertakings; and

(ii) at the rate of thirty percent (30%), in proportion to the number of complaints lodged by sector, during the previous financial year, and for which the written decision of the Financial Ombudsman is against the financial undertakings:

Further provided that the Board determines the contribution of each financial undertaking, based on the total amount undertaken by each sector separately, taking into consideration the recommendations of the representative of each sector:

Still further provided that, the amount of the fixed annual contribution of each sector is determined by after taking first into account the total revenue and expenditure as well as any surplus accumulated in the previous years.

(c) the payment by each financial undertaking to the Agency -

(i) of the sum of three hundred and fifty euro (€ 350) for each complaint submitted to the Agency, in which the decision of the Financial Ombudsman is directed against the financial undertaking :

Provided that the above mentioned amount is paid by the financial undertaking, even if the financial undertaking does not accept the decision or in the meantime the complaint has been settled.

(ii) the cost of the services which may have been provided to the Agency by an expert during the examination of the complaint; and

(d) the penalty charges payable in the event that a financial undertaking fails to pay to the Agency the amounts specified in paragraphs (b) and (c) of this subsection.

(3) Subject to the provisions of subsection (2), the Agency may have additional revenues from -

(a) Income from investments of the Fund as defined in Section 17; and

(b) state subsidies paid to the Fund.

Payment of a fixed annual contribution, individual contributions and charges

16. - (1) All financial undertakings are required to pay to the Fund the fixed annual fee as specified in subsection (2) of Section 15.

(2) Subject to the provisions of paragraph (a) of subsection (1) of section 28, in relation to financial undertakings already operating at the time of the entry into force of this Law, the competent supervisory authorities shall within thirty (30) days of the granting of the license to a financial undertaking, shall inform the Agency in writing for the issuance of the authorization to operate for the particular financial undertaking.

(3) In the case of non-compliance with the requirement set out in subsection (1), the Agency may-

(a) take legal action against the financial undertaking for the payment of the amounts owed by the undertaking to the Agency;

(b) impose on the financial undertaking:

- (i) a penalty charge equal to ten percent (10%) on the fixed annual contribution to be paid;
- (ii) interest at the rate as specified in Section 33 of the Law Courts, on the fixed annual contribution:

Provided that, the penalty charge and the interest, constitute exclusively a revenue of the Fund of the Agency.

(4) Each financial undertaking against which the Financial Ombudsman issued a written decision after examining the complaint of the consumer, shall pay to the Fund the amount specified in subparagraph (i), of paragraph (c), of subsection (2) of section 15 and where applicable, the cost of the services of an expert in the examination of the complaint referred to in subparagraph (ii), of paragraph (c), of subsection (2), of section 15 within thirty (30) days from the date of the issuance of the decision of the Financial Ombudsman .

(5) failure to pay the amounts specified in subsection (4) within the period specified therein, the Agency may:

- (a) take legal action against the financial undertaking for payment of the amounts owed by the financial undertaking to the Agency;
- (b) impose on the financial undertaking;

- (i) a penalty charge equal to ten percent (10%) of the amount specified in subparagraph (i) of paragraph (c) of subsection (2) of section 15,
- (ii) a penalty charge equal to ten percent (10%) of the cost of the services of an expert in the examination of the complaint as provided in subparagraph (ii), of paragraph (c) of subsection (2) of section 15;
- (iii) interest at a rate as specified in Section 33 of the Courts Act, on the amounts referred to in subparagraphs (i) and (ii), of paragraph (c), of subsection (2) of section 15:

Provided that the financial penalty charge and the interest, constitute exclusively a revenue of the Fund of the Agency.

Investment Policy of the Fund

17. The assets of the Fund, over and above of the fixed assets necessary for the operation of the Agency, are invested as follows:

(a) in bonds, bills or other government securities, or other equivalent securities issued by a member state, which can be easily liquidated;

(b) in interest-bearing accounts held in banks operating in the Republic or in any other Member State.

PART VIII – BOOKEEPING, BUDGET, REPORTS AND GUIDANCE

Liabilities of the Agency

18. - (1) The Agency shall keep proper books and accounts of its activities, in accordance with the international financial reporting standards.

(2) The Board shall secure that a report on financial management is drawn, for the financial management of each financial year.

(3) The accounts of the Agency are controlled by the General Auditor of the Republic.

(4) The accounting records and other documents of the Agency shall be kept for a period of six (6) years after the end of the financial year to which they relate to, and, after the expiry of that period, the Board may decide whether these continue to be retained or destroyed in a manner it considers appropriate.

Annual budget

19. - (1) The Agency shall for each financial year, which begins on January 1 and ends on December 31 of the same year , compile the budget of revenue and expenditure.

(2) The budget covers the revenue and expenditure of the Agency for the financial year which follows the year in which the budget is submitted to the House of Representatives.

(3) The budget shall be adopted in accordance with the provisions of subsection (5) from the Board and shall be submitted to the Council of Ministers for approval by 1 July of each year, and not later than three (3) months before the commencement of the financial year to which it relates, is submitted to the House of Representatives for the approval of the provided expenditure and its enactment into law.

(4) The method of preparation of the annual budget is done in analogy with the method used for the preparation of the state budget.

(5) Notwithstanding the provisions of subsection (7) of section 5, the Agency's annual budget is approved by a decision of the the Board which is taken by a majority vote of the members present:

Provided that for the first three years of operation of the Agency, and in case that the projected expenditure of the budget, include increases in excess of fifteen per cent (15%) compared to the previous year's budget, the budget is adopted by a decision taken by a simple majority, provided that it is supported by two of the three members of the Board representing the banks, the insurance companies and IFs:

Provided further that, after the first three years of operation of the Agency , and in the case that the projected expenditure of the budget include increases which, after the deduction of the undertaken obligations of the Agency, exceed five percent (5%) over the budget of the previous year, the budget is approved by a decision taken by a simple majority, provided that it is supported by two of the three Board members representing the banks, the insurance companies and IFs:

Provided still further that, in the case of non-approval of the budget in accordance with this sub section, the Board shall adopt the budget of the previous year, adjusted accordingly to the total undertaken expenditure of the Agency, as well as to the diversification of the consumer price index.

(6) Notwithstanding the provisions of this Section, the budget for the first year of the operation of the Agency, covers the revenue and expenditure of the Agency for the financial year commencing from the date of the commencement of the operation of the Agency and ending on 31 December of the same year and is submitted to the Council of Ministers within fifteen (15) days from the date of the commencement of the operation of the Agency and is submitted to the House of Representatives within thirty (30) days from that date.

Reporting

20. - (1) The Financial Ombudsman shall submit to the Board within three (3) months from the date of expiry of each financial year, a report of activities for the year in question, including financial results.

(2) The Board shall submit to the competent authorities, the Council of Ministers and the House of Representatives for information, within one month of completion of the audit of the accounts and the publication of the report of the General Auditor's a report on the financial management, which is released on the website of the Agency.

(3) The Financial Ombudsman within three (3) months from the end of each financial year shall publish a report which shall record for that year, the number of complaints received, the number of complaints that have been examined, the results of the examination, the number of decisions whose binding nature has been accepted by the financial undertakings and the number of decisions whose binding nature has not been accepted, by sector of the financial undertakings. :

Provided that in the above report, the name of each financial undertaking which although it accepted the binding nature of the decision of the Financial Ombudsman, it does not comply with it, the number of complaints in relation to which the relevant financial undertaking accepted the binding nature of the decision of the Financial Ombudsman and complied with, and the number of complaints that the relevant financial undertaking accepted the binding nature of the decision of the Financial Ombudsman and has not complied with, is published.

(4) The Financial Ombudsman may publish the information referred to in subsection (3), more than once per year if it considers that this is necessary for reasons of public interest.

(5) The Financial Ombudsman may, with the approval of the Board, issue any other reports as he deems necessary, in relation to the activities of the Agency.

Issuance of Directives

21. - (1) The Board may issue Directives of an executive nature which are published in the Official Gazette of the Government, for the better implementation of this Law.

(2) Without prejudice to the general provisions of subsection (1), the Board issues Directives, which regulate in particular-

(a) the internal procedural rules of the Agency,

(b) the procedure for the submission and examination of the complaints in accordance with section 12,

(c) the procedure and the manner of collection of all payable fees, in accordance with the provisions of this Law and the Directives issued under it, in relation to the examination of complaints

(d) the procedure of record keeping and the submission of reports to the Agency from the financial undertakings,

(e) the terms and conditions of employment of all the staff members of the Agency, their powers and duties as well as on issues related to the recruitment, promotion and exercise of disciplinary control.

PART IX - CONFIDENTIALITY

Confidentiality

22. - (1) The Financial Ombudsman, the Deputy Financial Ombudsman, any member of the Board, the staff members of the Agency and any other person who has in any way access to the registry of the Agency, is prohibited from providing, communicating, disclosing or using for his own benefit any information regarding the account or a contract of a consumer who complained against a financial undertaking, both during the employment or professional relationship with the Agency, depending on the case, as well as after its termination.

(2) The provisions of subsection (1) do not apply where-

(a) The Agency shares information with the competent supervisory authorities or the competent authorities of another Member State responsible for the out of court settlement of complaints or other supervisory authorities of the financial sector in other Member States;

(b) the consumer or its authorised representatives and the financial undertaking provide their written consent for this purpose;

(c) the financial undertaking is subjected to liquidation procedures or the natural person who carries on business of insurance mediation has been declared bankrupt or the consumer is declared bankrupt or the consumer is a company which is under liquidation procedures and the information are disclosed to the liquidator;

(d) legal proceedings have been initiated between the financial undertaking and the consumer as regards the account or contract of the consumer;

(e) the information is disclosed to the police under the provisions of any other law or, to a civil servant duly authorised to receive such information or to a court in the context of prosecution or during trial concerning a criminal offense under the applicable legislation;

(f) the information is requested by the auditor or the legal advisor of the Agency in order to carry out his duties.

(3) Any person who knowingly violates the obligation of confidentiality and professional secrecy referred to in subsection (1), shall be guilty of an offense and on conviction is subjected to imprisonment for a period not exceeding two (2) years or to a fine not exceeding ten thousand euro (€ 10.000) or to both penalties.

(4) Notwithstanding the provisions of subsection (3) of Section 7, if the Financial Ombudsman or the Deputy Financial Ombudsman or other staff member of the Agency knowingly violate the obligation of confidentiality and professional secrecy referred to in subsection (1), commits a disciplinary offense punishable even with the penalty of dismissal from the Agency.

PART X - TRANSITIONAL AND OTHER PROVISIONS

Name of the Agency

23. - (1) It is prohibited to any natural or legal person to use the name "Single Agency for out of Court Settlement of Financial Disputes" or a similar name, which may create confusion among the public.

(2) The name " Single Agency for out of Court Settlement of Financial Disputes" is translated internationally as «The Financial Ombudsman of the Republic of Cyprus».

Cooperation with Member States and institutions with the competent supervisory authorities of the Republic

24. - (1) The Agency shall cooperate with institutions of other Member States which are responsible for the out of court settlement of financial disputes, including cross-border disputes.

(2) The Agency shall cooperate with the competent supervisory authorities and may recommend the implementation of concrete measures to-

(a) improve handling serial complaints against a particular financial undertaking or against a particular kind of financial undertaking,

(b) improve the way to deal with complaints from consumers against financial undertakings, and

(c) effectively address any other matter in relation to the the interests of consumers.

Newsletters

25. The Agency may issue or publish newsletters that provide information or advice as it considers appropriate on the basis of complaints received or its written decisions.

False statements and concealment of data

26. A person who, in supplying information for any of the purposes of this Law or any Directives issued pursuant to this Law, knowingly makes a false, misleading or deceptive statement as to an essential element of such statement, or withholds any essential element or in any way interferes with the investigation of the complaint by the Agency, shall be guilty of an offense and upon conviction shall be subjected to imprisonment for a period of not exceeding two (2) years or to a fine not exceeding ten thousand euro (€ 10.000) or to both such penalties:

Provided that the Financial Ombudsman has the discretion to decide that any party involved in the complaint, may be exempted of any of the consequences of non-compliance with the provisions of this Section, if he considers that the non-compliance is due to an error, omission or other reasonable cause and the decision for exemption is fully justified.

Reservations

27. The provisions of this Law shall apply notwithstanding the provisions of any other law, pursuant to which, it is provided inter alia the consideration of complaints against financial undertaking or the possibility of mediation to resolve disputes which may arise between consumers of the services of financial undertakings and financial undertaking:

Provided that the Financial Ombudsman, depending on the case, shall notify the competent supervisory authority in relation to complaints which relate to a breach of the Banking Operations Law, of the Electronic Money Institutions Law, the Payment Services Law, the Insurance Services and Other Related Matters Law of the Investment Services and Activities and Regulated Markets Law, of the Open-Ended Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Matters Law or any other relevant legislation and any directives or regulations issued pursuant to these laws, , and refers the cases in which a criminal offense may have been committed and the cases that may be related to public interest to the Attorney General.

Transitional provisions

28. - (1) Each competent supervisory authority shall transmit to the Agency within sixty (60) days from the date of entry into force of this Law:

(a) the names and contact details of the financial undertakings which provide financial services in the Republic on the date of entry into force of this Law, under its supervision, specifying the type of services provided by each financial undertaking, and

(b) all complaints submitted to it by consumers, whose examination is not completed by the date of entry into force of this Law.

(2) Upon receipt of complaints by the Agency and if these fall within its jurisdiction, the Financial Ombudsman communicates with the consumers who submitted these complaints and requests them to state whether they wish their complaint to be examined under the provisions of this Law or not ,and informs them that in case that they wish their complaint to be considered by the Agency, the procedure to be followed is the one provided under section 11:

Provided that for complaints that do not fall under the jurisdiction of the Agency or for which the consumer does not wish to be examined by the Agency, the examination process is continued by the competent supervisory authority.

(3) Complaints submitted against a financial undertaking under the provisions of subsection (1) of section 11, after the entry into force of this Law, and which subsequently submitted to the Financial Ombudsman under the provisions of section 12 within a period of twenty two (22) months from the date on which the consumer became aware or, in the opinion of the Financial Ombudsman, ought reasonably to have been aware of the harmful action or omission of the financial undertaking or of the fact that he had a basis for the submission of a complaint, may be examined by the Financial Ombudsman under the provisions of this Law.