

Convergence Romania Financial Sector Modernization

Special Projects Initiative Public-Private Steering Committee



TERMS OF REFERENCE

Project: Ombudsman and consumer education

Project Owner: Radu Negrea, RBA General Secretary (on behalf of RBA)

Project Manager: Monica Iovu, Director, Alphabank Romania

Deputy Project Manager: Alis Avramescu (an NBR manager)

Technical Anchor: Convergence Program

I- Background

In Romania, there is a perceived need to adequately address the complaints made by individual consumers or businesses against the financial service providers and to improve the public image of the banks. Unsatisfied clients send their complaints to the financial institution itself and, if they are not resolved satisfactorily, they submit them to the National Authority for Consumers Protection (NAPC), National Consumers' Association (APC), or to the National Bank of Romania (NBR). Hence, there is no specialized and impartial institution or process in charge of the protection of bank customers.

Most European countries have established successful Banking Ombudsman schemes in the past 30 years, either financed by banks or set up as external organizations. Their increasing popularity lies in their ability to settle a large volume of specialized cases in a flexible way and within a short period of time, as compared to bureaucratic and time-consuming remedies, such as court proceedings. For example, the Italian Banking Ombudsman received about 4,700 complaints in 2004 and addressed a large majority of them.

As Romania is about to join the EU, the Romanian banking industry needs to be tuned with European recent developments in the financial consumer protection area. The European Commission has supported the creation of an informal network of national ombudsmen - Fin-Net to help settle cross-border disputes between private retail investors and financial services companies. Another EU benchmark is the FIN-USE independent forum of experts, which responds to the Commission's requests for opinions on initiatives affecting users of financial services and seeks to identify key financial services issues which affect users.

To inform the project planning decisions of the PMG, Convergence prepared a background study to highlight the current status of consumer protection in the Romanian banking industry, the benefits of establishing an Ombudsman, and options for institutional setting up and operating principles, based on international experience.

The PMG prepared a recommendation to the banking industry that a Banking Ombudsman is created in Romania based on evidence of potential benefits for banks and consumers and international experience that was discussed in the SPI Committee meeting in December 2006.

II - Project Objective

To prepare a set of comprehensive proposals for establishing the Romanian Bank Ombudsman (RBO) together with a detailed implementation plan.

III – Intended Strategy

The PWG, supported by the SPI Secretariat, acts based on the mandate received from the SPI Committee to prepare a position paper that covers all governance, functional, operational and funding issues for the RBO and the implementation plan.

The PWG will consider the possible options for institutional setting up and operating principles of the RBO, and will draft RBO scheme options suitable to the Romanian environment. Starting from the identified schemes, the PWG establish the legal necessary arrangements for the establishment of the institution. Finally, the PWG will prepare a set of comprehensive proposals for establishing the Romanian Bank Ombudsman (RBO) together with the implementation plan. The proposal will be presented to RBA General Assembly for approval and to SPI Committee for endorsement.

IV- Methodology: from kick off to the accomplishment of the project

Preparatory work: (January 2007)

Convergence prepared a memorandum on a possible simplified scheme of the Romanian Banking Ombudsman and SPI Secretariat prepared a note to be discussed in a PWG meeting regarding the necessary steps for the rapid implementation of the proposed scheme.

1st PWG meeting – February 2nd, 2007

The PWG members attending the meeting discussed the proposal and expressed their concerns on the credibility, respectability and acknowledgement that such a simplified scheme would enjoy. They consider that the Romanian public needs a well-founded, trust-worthy and visible institution, and that it is very unlikely that a simplified scheme would ensure all these. The PWG agreed to work to the accomplishment of the objective set up by the SPI Committee and to prepare a comprehensive proposal for the RBO.

Homework:

SPI Secretariat:

- will send the PM's study to the PWG members;
- will search for the FIN-NET study mentioned in the first meeting and will share it with the PWG members;

- will prepare a table containing Ombudsman scheme, governing principles and standards, scheme participants, scope of the Ombudsman, eligible beneficiaries, staffing, operations, funding, etc in different countries;
- will gather individual contributions.

PWG members: will analyze the findings of the documentation sent by SPI Secretariat. PWG members will look for other relevant international experience (for example, the Austrian one), filling in the respective elements in the table prepared by the SPI Secretariat.

2nd PWG meeting – February 13th, 2007

1. PWG endorses the revised TORs prepared by the SPI Secretariat, approving the action plan;
2. PWG analyzes the findings of the studies;
3. PWG identifies possible options for the RBO scheme;
4. PWG members will analyze how the identified possible solutions fit into the Romanian realities and customs, and the national legal framework (for example, the law on the mediators and mediation activities).

Homework:

PWG members with legal background will identify all legal requirements and all other governance needs for the solution(s).

PWG members with economic background will prepare indicative budget(s) for the identified solution(s).

SPI Secretariat will gather the individual contributions. PM/SPI Secretariat will prepare the outline of the position paper.

3rd PWG meeting – February 23rd, 2007

1. PWG members will discuss and decide on the legal requirements and all other governance needs for the solution(s);
2. PWG members will discuss and approve the indicative budget(s);
3. PWG members will discuss and agree on the position paper outline and will set up the individual contributions.

Homework:

PWG members will prepare their individual contributions to the position paper.

SPI Secretariat will gather the individual contributions in a single document.

PM and DPM will revise and refine the draft document.

4th PWG meeting – March 12th, 2007

1. PWG members will approve the position paper.

V- Output

PWG 1st meeting

- o PWG analyzes the findings of the studies prepared by Convergence, by the PM and the FIN-NET study;

- PWG members will look for other relevant international experience.

PWG 2nd meeting

- PWG identifies possible options for the RBO and the legal and governance requirements;
- PWG analyzes how the identified possible solutions fit into the Romanian realities and customs, and the national legal framework;

PWG 3rd meeting

- PWG discusses and decides on the legal requirements and all other governance needs for the solution(s);
- PWG discusses and approves the indicative budget(s);
- PWG discusses and agrees on the position paper outline and sets up the individual contributions.

PWG 4th meeting

- PWG approves the position paper.

VI - Project Team

Banks:

- Daniela Copoiu, Unicredit
- Aurora Stancu, BCR
- Catalina Clinci, Raiffeisenbank
- Ioana Bosinceanu, ING Romania
- Bogdan Stanica, NBR

The team will be chaired by the Project Manager and co-chaired by the Deputy Project Managers. Convergence will be the technical anchor for the project.

PM/DPM have to report to PO at least after each meeting of the PWG.

Convergence Romania Financial Sector Modernization

Special Projects Initiative Public-Private Steering Committee



SPI Project: Ombudsman and consumer education

Summary Status Report

Project Owner: Radu Negrea, RBA Secretary General (on behalf of RBA)

Project Manager: Mirela Iovu, Director, Alpha Bank

Deputy Project Manager: Alis Avramescu, Deputy Director, NBR

Project Working Group:

Mihai Meiu, Director, National Authority for Consumers' Protection

Daniela Copoiu, Legal Advisor, Unicredit

Marilena Fedes, Legal Advisor, BRD-GSG (TBC)

Project Technical Anchor:

Mr. Shkelqim Cani, Country Senior Advisor, Convergence Program

SPI Secretariat:

Oana Nedelescu, SPI Director for Analytics and Policy

Ramona Bratu, SPI Director for Bank Products and Services

SPI Committee Meeting

December 20, 2006

I. Introduction

The first SPI Committee Meeting of September 15, 2006 gave its endorsement to the project proposal on the “Ombudsman and Consumer Education”. The expected completion date of the project is June 2006. The corresponding project terms of reference (TORs) stipulate as project objective “*the preparation of a background study to support a formal recommendation to the banking industry that a Bank Ombudsman is created in Romania based on evidence of potential benefits for banks and consumers*”. In addition, a “*white paper*” will be prepared on the benefits of financial education, including elements of a nation-wide financial literacy campaign.

II. Steps completed so far

a. Preparation of the study on “Establishing a Banking Ombudsman in Romania”

According to the TORs, Convergence Technical Anchor has prepared a comprehensive background paper on banking Ombudsman (November 2006). The paper constitutes an important reference for the Romanian banking community and authorities on the importance, mandate, organization principles, and procedures of a Banking Ombudsman and included references to relevant EU experience on the matter. At the same time, the document represents a valuable support for the project working group that was established for the undertaking of the SPI project on “Ombudsman and consumer education”.

The paper made an assessment of the current status of consumer protection in the Romanian banking sector, drawing from the results of a confidential survey conducted in November 2006 by Convergence with relevant authorities (consumer protection bodies and the NBR) and banks.

Also, the study made a comprehensive review of the banking Ombudsman governing principles; scheme mandate and organization; governance structure; jurisdiction - powers and duties; eligible complainants; scheme participation; profile; procedures to complaint handling; operational & funding issues. The study has also offered information on budget consideration, schemes’ main legal documents and procedures, and relevant EU recommendations.

In view of:

- i)** Considerable flaws in the current Romanian consumer protection;
- ii)** Romania’s EU membership;
- iii)** Benefits of scheme creation from user’s and supplier’s perspective;

Convergence recommended to the PWG that: *In order to ensure that Romanian consumers are served fairly and well across Romania, “an independent and effective Bank Ombudsman scheme be established modelled after the European schemes examined by this study”.*

b. Organization of a technical workshop

The study findings and recommendations were presented in a technical workshop in Bucharest, on November 30, 2006 with the aim to provide support to the PWG in charge of the SPI project on “Ombudsman and consumer education” and gather feedback.

The roundtable gathered a diverse audience: representatives of the banking industry, as well as delegates from the National Bank of Romania, the National Authority for Consumers' Protection, and the Ministry of Public Finance.

In addition to the presentation delivered by Mr. Cani, the project manager made a presentation of the study on the "Hellenic Ombudsman for Banking and Investment Services".

It was also outlined that a concrete offer for assistance on establishing a Romanian banking Ombudsman has been received from the UK Financial Ombudsman Service.

The participants demonstrated a great interest in discussing about the opportunity of setting up a Banking Ombudsman in Romania. Also, the roundtable has proven to be a catalyst for the project working group activities. Some banks representatives have also expressed availability to be part of the project working group.

c. Activities undertaken so far by the project working group

The project manager has established a list of priorities that will be discussed at the project strategy meeting to be held in early January, as follows:

Short term:

- To finalize the construction of the PWG, consisting of specialist from legal, PR and retail business - *by early January, 2007;*
- To endorse the TOR by PMG - *by early January, 2007 ;*
- To circulate the Background Studies among the PWG for comments and feedback-*by mid January, 2007;*

Long term:

- The PMG/SPI Secretariat will consult with relevant stakeholders (NBR, RBA and individual banks) on the possible options for institutional setting up and operating principles of the Banking Ombudsman;
- The PMG will prepare a recommendation to the banking industry that a Banking Ombudsman is to be created in Romania based on evidence of potential benefits for banks and consumers and international experience;
- Following the SPI Committee discussion, the PMG will consider the budget considerations for establishing the Ombudsman based on a study prepared by SPI Secretariat (supported by Convergence). Likewise, the PMG will outline a strategy for a nation-wide financial literacy campaign based on a white paper on the benefits of financial education prepared by the SPI Secretariat (supported by Convergence);
- In order to achieve a broad acknowledgement of the benefits of the financial literacy, the SPI Secretariat could organize, with the support of RBA and NBR, an exhibition on how bankers' associations and central banks actively promote financial education of the public;
- The SPI Committee should make a public endorsement for a nation-wide financial literacy campaign.

d. Recommendation to the SPI Committee that a banking Ombudsman is created in Romania

The project management group has reached an agreement that a banking Ombudsman should be created in Romania, based on evidence of potential benefits for banks and consumers and international experience (see attached Recommendation to SPI Committee). Also, a formal recommendation regarding the necessity of setting up the banking Ombudsman has been received from the NACP.

The project management group would therefore like to have the endorsement of the SPI Committee to proceed further with the initiative of setting up the banking Ombudsman. Further consultations will be held with all relevant stakeholders (Romanian Banking Association, National Bank of Romania, Ministry of Public Finance, consumer protection authorities, individual banks, and Ministry of Justice) on the possible options for institutional setting up and operating principles of the Banking Ombudsman.

III. Suggested roadmap for further actions

The following concrete steps could represent a roadmap of the project working group's further actions:

- ↪ The PWG agrees on the *form of the new scheme*, the desired composition of the *Scheme's Board* and its main operating principles (e.g. budget and funding) and submits it for approval to relevant stakeholders (RBA, NBR, consumer protection bodies); These actions (as well as any of the following) could be developed under technical guidance received from the UK Financial Ombudsman Service and possibly from the Hellenic Ombudsman for Banking and Investment Services;
- ↪ Relevant stakeholders (RBA, NBR and consumer protection bodies) approve the plan for the setting up of the Ombudsman Board and make *nominations for the Board* (tentative date: January 2007);
- ↪ The designated Board gathers to determine the scheme's main jurisdictional issues, consider and approve scheme strategy on the design and structure of the new scheme, location, logistics, staffing;
- ↪ The Board develops the rules of the new service, policy and practices (manuals, procedures, etc.), makes decisions on the qualifications and appointment of the Ombudsman, location, etc;
- ↪ The Ombudsman hires staff and starts staff professional and management training;
- ↪ Following necessary setting up approvals, official launch of the new scheme is expected to be on July 2007;
- ↪ The new scheme makes application to become a FIN-NET member.

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Bank Ombudsman

<http://www.spi-romania.eu/program-2007/ombudsman/>

SPI Committee July 25, 2007 Meeting

Project Objective:

To prepare a formal recommendation to the banking industry that a Bank Ombudsman be created in Romania, backed by evidence of benefits for banks and consumers in the experience of other countries. The second phase of the project entails the implementation phase – the establishment of the Bank Ombudsman.

Project Working Group Activities

PWG members: 7

PWG meetings: 8

Public stakeholders

- National Bank of Romania.

Private stakeholders

- Banking sector (4 banks).

Project Main Steps

Nov. 30 2006: Convergence presents its comprehensive background study at a Technical Workshop, outlining the relevant international experience and its implications for Romania
Feb. 2 – Mar. 14, 2007: The project working group outlines the possible options for the establishment of the Ombudsman and its recommendation for a voluntary/private scheme
Mar. 15-16, 2007: The position of the project working group is submitted to the RBA Board and to the NBR, NACP, and MEF SPI Committee members
Mar. 22, 2007: The General Assembly of the RBA endorses the recommendation of the working group and requests it to proceed with the establishment of the Ombudsman
Apr. 27, 2007: SPI Committee endorses the detailed implementation plan
May 15, 2007: PWG starts preparing the implementation package
June 27, 2007: David Thomas, Project TAN sends his feedback to the draft Mediator ToRs

Summary of Impact Assessment:

RIA under elaboration

For more information, please contact:

1. SPI Secretariat: Ms. Oana Nedelescu and Ramona Bratu, tel: +40 21 323 66 10; e-mail: oana.nedelescu@convergence-see.eu, ramona.bratu@convergence-see.eu
2. Project Management Group: Ms. Monica Iovu, OTP Bank, tel: +40 72 674 4857; e-mail: monica.iovu@otpbank.ro.

Project Team

Project Management Group

Project Owner (PO): Radu Negrea, RBA Secretary General (on behalf of RBA)

Project Manager (PM): Mirela Iovu, Director, OTP Bank Romania

Deputy Project Manager (DPM): Alis Avramescu, Deputy Director, NBR

Project Working Group:

Aurora Stancu, Quality Manager, BCR

Catalina Clinci, Manager, & Dorin Octavian Bortoi, Raiffeisen Bank

Ioana Bosinceanu, Head of Legal Department, ING Bank

Bogdan Stanica, Legal Advisor, NBR

Project Technical Anchor:

Shkelqim Cani, Country Senior Advisor, Convergence Program

Project Peer Reviewer:

David Thomas, Principal Ombudsman, UK

Individual and Collective Contributions

This document has been prepared based on the following contributions:

Individual

PM: draft legal documents

Aurora Stancu: proposed budget

Catalina Clinci: examples of ToRs for Ombudsman

SPI Secretariat: draft ToRs for Romanian Mediator

Peer Reviewer: input on draft ToRs

PM, Ioana Bosinceanu, Bogdan Stanica, Dorin Bortoi: input on draft ToRs

Collective

Discussions within the PWG meetings

Document cleared by: Project Manager (Mirela Iovu, OTP Bank)

SPI Project on Bank Ombudsman

I. Summary of actions undertaken so far

The first SPI Committee Meeting of September 14, 2006 gave its endorsement to the project proposal on the “Bank Ombudsman”, with the objective of preparing a formal recommendation to the banking industry that a Bank Ombudsman is created in Romania based on evidence of potential benefits for banks and consumer.

The Decision

On March 22, 2007 the RBA general Assembly approved the PWG recommendation to establish the Romanian Banking Mediator as a **voluntary, private and independent scheme**, by **November, 2007**.

SPI Committee Endorsement

In its third meeting, SPI Committee endorsed the detailed implementation plan agreed by the PWG and decided to release communications to NBR Governor and to MEF Minister in order to raise awareness on the banking community’s initiative and gain a general support.

Since the April SPI Committee Meeting

As the establishment of the Romanian Banking Mediator depends on the Mediation Council for the selection process of the mediator and of his deputy and for overseeing the mediation activity, SPI Committee addressed a letter to the Council notifying its members on the progress of the initiative and on its planning.

PWG and SPI Secretariat have also drafted, discussed and agreed on the implementation documents – legal documents (Annexes 2 and 3) and by-laws (Annex 4) - and on the detailed budget of the Romanian Banking Mediator (Annex 5). Mr. David Thomas, principal ombudsman in UK and member of the FIN-NET Steering Committee, offered again his support in order to ensure that the terms of reference in full compliance with the European best practice. NACP pointed out some issues that need to be clarified in order to avoid overlapping between the two complaint schemes while observing the current legal framework and proposed the conclusion of a protocol between the two institutions in order to address these concerns.

II. Further steps of the implementation process

After SPI Committee endorsement on the implementation documents, SPI Secretariat will send the package to RBA Board for approval and for setting up the date when the RBA General Assembly will be called to establish the RBM association. The further tentative implementation schedule is presented in Annex 1, with a special mention on the highly dependence of its feasibility on the activity of the Mediation Council.

III. Short description of the implementation documents

1. Legal documents of the Romanian Banking Mediator (RBM)

Membership

The by-laws provide that the Romanian Banking Ombudsman is a non-for-profit organization whose associates are credit institutions, Romanian legal entities and branches of foreign credit institutions.

Objectives

The scope of the association is to set up a scheme for prompt and unbiased resolution of complaints that customers have been unable to resolve satisfactorily with their banks. It will ensure that consumers of such services are protected from negative financial consequences and are warranted an informal, easily accessible alternative to other inconvenient, bureaucratic and time-consuming remedies, such as court proceedings.

The association is targeting at improving the public image of banks, enhancing consumer confidence in banks, improving customer retention rates, lowering costs for complains resolution and at promoting an ongoing educational process.

Rights of the associates

The RMB associates have the rights to: be elected or to nominate candidates for the management, participate to various initiatives as seminars, conferences, roundtables, etc, be informed on the Scheme's general and mediation activity.

Associates' obligations

The main obligations of the associates, as stated in the by-laws, refer to:

- observe the RBM Terms of Reference;
- create complaint resolution internal departments and procedures;
- provide any information required. The Ombudsman may request the bank to submit information that it reasonably considers necessary for, or of assistance in, exercising the dispute resolution powers;
- display notices on the RBM;
- comply with requests made by the Ombudsman in line with Terms of Reference and Operational Procedures;
- pay within the specified timeframe the annual membership fee.

Management and supervision bodies

- General Assembly
- **Board** – NBR and NACP are represented here by two persons; the main responsibilities of the board refer to *administrative* issues as the annual report, level of the annual contributions, new membership, engaging the association in legal acts. In order to secure the independence of the mediation activity per se from the financing parties, Board powers were shifted to the Trust Council as much allowed by the current legal framework.
- **Trust Council** – is the *supervisory* body of the scheme, where independent members (NBR and NACP representatives) have majority ensuring thus an objective oversight of the mediation activity. Trust Council will be in charge with endorsing the Terms of Reference, selecting and appointing the mediator and the deputy mediator, with

establishing the remuneration policy and approving the reports on the mediation activity.

- Auditor

2. By laws of the Romanian Banking Mediator

Governing principles

By laws state the principles governing RBM activity (independence and objectivity, transparency, effectiveness and accessibility, legality, liberty, representation, confidentiality, consistency, reasonableness, clarity and accuracy), detailing on the ways to follow them in the day-to-day activity.

Powers and duties of the mediator and deputy mediator

The main powers and duties of the mediator and deputy mediator refer to the handling of mediation procedures and to reporting and disclosing information on the mediation activity

Eligible complainants

The mediator or deputy mediator will consider disputes brought by individuals who are clients or potential clients or have certain connections with clients (such as providing securities) of the credit institutions.

Eligible complaints

By laws provides the features of the complaints to be considered by the mediator or deputy mediator: disputes related to any act or omission by a credit institution in relation to bank service or confidentiality/privacy concerning a branch in Romania or elsewhere in the European Economic Area, where the amount in issue does not exceed EUR 50,000, that were prior considered by the credit institutions, etc. The exclusions are presented in detail.

Procedures for complaint handling

The complaint handling activity comprises the following stages: receipt and verification of a complaint, investigation /assessment and mediation, and recommendation.

Operational issues

In order to respond and handle the complaints, RBM starts operating with one mediator, a deputy mediator, two experts and an executive assistant. ***As the mediator and the deputy mediator should be in charge only with the mediation activity, another person, appointed by the Board, should take care of the other aspects of RBM functioning - administrative, functional and operational management.***

Relationship with other institutions

RBM may co-operate with other *Industry Ombudsman Service* in the investigation of a complaint. In case of systemic issues and serious misconduct (unethical behavior from bank staff) from the credit institutions, RBM should report the cases to the regulatory bodies and the scheme Board/Trust Council or the Banking Association. The mediator and deputy mediator will report to the Mediation Council and keep up with the professional standards set up by the Council. RBM will cooperate with *consumer protection associations and agencies* and will apply in order to become a member of FIN-NET.

Funding Arrangements

The activity of the Scheme will be funded by the member credit institutions. The annual contributions of a credit institution consist of equal contributions plus variable contributions depending on the market share. After a relevant period of time, the variable contributions will be set up in relation with the number of complaints.

For the Scheme establishment and first year of operations, the proposal is to have equal contributions from all the banks. After one year of functioning, based on the number of disputes handled and the time consumed for them, variable contributions can be calculated. The detailed budget for the RBM establishment and one year activity shows a necessary amount of about RON 750,000 for an extended version (with 15 members and 7 members in the Board and in Trust Council) and about RON 700,000 for a version with 8 members and 3 members in the Board and Trust Council respectively (Annex 5). This would translate in an individual annual fixed contribution of about RON 19,500/bank or about RON 17,500/bank in case all RBA members will register as associates in the RBM (RON 18,500 as an average).

IV. Proposed SPI Committee Decision

SPI Committee endorsed the package of documents for establishing the Romanian Banking Mediator in order to be sent for approval to RBA Board and for further approval and implementation to RBA General Assembly.

Annexes

Annex 1 - Detailed Implementation Plan

Annex 2 – Legal document 1

Annex 3 – Legal document 2

Annex 4 – By laws of the Romanian Banking Mediator

Annex 5 - Detailed budget of the Romanian Banking Mediator

Detailed Implementation Plan

Deadline	Actions	Responsibles
August 07	<p>General Assembly to approve the by-law, the budget, and the individual contributions of banks</p> <p>General Assembly appoints the Board members and invites NBR and NACP to appoint their representatives</p> <p>General Assembly empowers a Board member to represent it in the relations with different institutions for the legal procedures</p> <p>General Assembly appoints its representatives in the Trust Council and invites NBR and NACP to appoint their representatives in the Trust Council</p> <p>General Assembly appoints the censors</p>	Romanian Bank Mediator General Assembly
September 07	Establishment - legal procedures	The person empowered by the Board
	Appointment of the representatives in the Board and Trust Council	NBR NACP
	Approval of the selection criteria and salary level for the mediator and deputy mediator	Trust Council
	Selection and appointment of the mediator and deputy mediator	Trust Council, out of the list provided by Mediation Council
	Preparation of the draft Deontology Code	Mediator and deputy mediator
October 07	Signing the rental contract for RBM	Board
	Revision of internal regulations	mediator and deputy mediator
	Acquisition of office equipment	Board
	Staff selection	Trust Council and mediator
	Notification to NAPDP as personal data operator	mediator
November 07	Hiring and training of personnel	mediator and deputy mediator
	Finalizing internal regulations	RBM staff
	Approval of internal regulations	Trust Council
	Official launch of the Bank Mediator	Bank Mediator, RBA, NBR, NACP

Legal document 1

(available in Romanian only)

ACTUL CONSTITUTIV

**AL "ASOCIATIEI DE MEDIERE BANCARA DIN ROMANIA-
MEDIATORUL BANCAR"**

Subscrisele:

- 1.
- 2.
- 3.
-
- n.

si-au exprimat vointa de asociere prin înfiintarea unei asociatii neguvernamentale cu denumirea **ASOCIATIA DE MEDIERE BANCARA DIN ROMANIA SAU "MEDIATORUL BANCAR"**, în scopul desfasurarii unor activitati de interes general destinate a servi medierii pe cale amiabila, a disputelor dintre consumatorii de servicii si produse bancare, persoane fizice si membrii fondatori, institutii de credit, persoane juridice romane si sucursale din Romania ale unor institutii de credit din state membre si state terte, ale carei obiective sunt detaliate in Statut.

ART. 1.DENUMIREA ASOCIATIEI.

Denumirea asociatiei este "**ASOCIATIA DE MEDIERE BANCARA DIN ROMANIA-MEDIATORUL BANCAR**", denumire rezervata prin dovada disponibilitatii denumirii cu numarul _____ din _____ eliberata de catre Ministerul Justitiei - Directia pentru Relatii cu Publicul si Evidenta ONG.

- 1.1. Denumirea Asociatiei poate fi scrisa atat in limba romana, cat si in limba engleza "**ROMANIAN BANKING MEDIATION ASSOCIATION – THE BANKING OMBUDSMAN**".
- 1.2. Asociatia se va identifica in toate documentele si corepondenta ulterioara prin elementele de identificare ulterioare cum sunt denumirea Asociatiei, sigla, sediul, numarul de inregistrare in registrul asociatiilor si fundatiilor, numarul de identificare fiscala, care vor fi mentionate in limba romana.

ART. 2. SEDIUL ASOCIATIEI.

- 2.1. Sediul asociatiei este în Bucuresti, _____.
- 2.2. Sediul asociatiei poate fi schimbat în baza hotararii Consiliului Director.

ART. 3. DURATA DE FUNCTIONARE A ASOCIATIEI.

- 3.1. Asociatia se constituie pe o durată de functionare nedeterminata.
- 3.2. Durata de functionare poate fi modificată în baza Hotărârii Adunării Generale a asociatilor.

ART. 4. PATRIMONIUL ASOCIATIEI.

- 4.1. Activul patrimonial la data constituirii Asociatie este de _____ lei, vârsat în totalitate la data constituirii asociatiei de catre membrii fondatori, fiecare varsand cate _____ lei.
- 4.2. Patrimoniul initial al asociatie va fi completat cu veniturile obtinute de asociatie.
- 4.3. Veniturile obtinute de asociatie pot proveni din:
 - 4.3.1. cotizatiile anuale si suplimentare ale membrilor ;
 - 4.3.2. donatii, sponsorizări sau legate;
 - 4.3.3. resurse ce pot fi obtinute de asociatie de la bugetul de stat si / sau de la bugetele locale ;
 - 4.3.4. alte venituri prevăzute de lege.
- 4.4. Asociatia poate desfasura orice activitati economice directe daca acestea au caracter accesoriu si sunt in stransa legatura cu scopul asociatiei.

ART. 5. ACTIVITĂȚI ECONOMICE ALE ASOCIATIEI.

Asociatia poate desfășura orice alte activități economice directe, dacă acestea au caracter accesoriu si sunt în strânsă legătură cu scopul acesteia.

ART. 6. CADRUL LEGAL AL DESFASURARII ACTIVITATII DE MEDIERE

Mediatorul bancar este persoana fizica, independenta de membrii si organele de conducere ale Asociatiei, care isi va desfasura activitatea potrivit prevederilor Legii nr. 192/2006 privind medierea si profesia de mediator, in baza Regulamentul de organizare si functionare si a Codului de etica si deontologie profesionala.

ART. 7. ORGANELE DE CONDUCERE, ADMINISTRARE, SUPRAVEGHERE SI CONTROL ALE ASOCIATIEI.

7.1. Organele de conducere, administrare si control ale asociatiei sunt:

- 7.1.1. Adunarea Generală;
- 6.1.2. Consiliul Director;
- 6.1.3. Consiliul de Incredere ;
- 6.1.4. Cenzorul.

Consiliul Director este compus din cinci până la cincisprezece membri si va fi ales de Adunarea Generala pentru o perioadă de patru ani, cu posibilitatea realegerii. Dintre membrii Consiliului Director pot face parte si persoane care nu au calitatea de asociati, respectiv cate un reprezentant al Bancii Nationale a Romaniei si al Autoritatii Nationale Pentru Protectia Consumatorilor, în limita a cel mult o pătrime din componența sa. De asemenea, nu poate fi membru al Consiliului Director, iar dacă era, pierde această calitate, orice persoană care ocupă o funcție de conducere în cadrul unei instituții publice, dacă asociația are ca scop sprijinirea activității acelei instituții publice.

6.2. Primul Consiliu Director, ales pe o perioada de 4 ani, este format din :

- 1.
- 2.
- 3.

- 15.
- 6.3. Consiliul de Incredere este un organ de supraveghere care are drept principal scop asigurarea independentei Mediatorului Bancar fata de membrii asociatiei si organele de conducere ale acesteia, in deplina concordanta cu principiile profesiei de mediator stabilite prin Legea nr. 192/2006 si practica internationala in materia medierii bancare.
- 6.4. Consiliul de Incredere este format din cinci pana la sapte membri, care nu pot fi in acelasi timp si membri ai Consiliului Director sau Cenzori, ales pentru un mandat de trei ani, putand fi realesi. Membrii Consiliului de Incredere, vor fi numiti de catre Banca Nationala a Romaniei, ANPC si Consiliul de Mediere, din randurile functionarilor acestor institutii si a membrilor sai, iar ca reprezentant al institutiilor de credit, Adunarea Generala va numi unul pana la doi membri dintre angajatii institutiilor de credit, sub conditia ca reprezentantii Consiliului din afara sistemului financiar-bancar, sa asigure majoritatea.
- 6.5. Primul Consiliu de Incredere, ales pe o perioada de 3 ani, este format din :
- 1.
 - 2.
 - 3.
 -
 - 5.
- 6.6. Cenzorul Asociatiei este _____, cu domiciliul in _____, identificat cu _____ seria _____, nr. _____, emisa de Sectia _____ la data de _____, CNP _____, fiind ales pe o perioada de 4 ani, cu posibilitatea realegerii.
- 6.7. Atributiile Adunarii Generale, ale Consiliului Director, ale Consiliului de Incredere si ale Cenzorului sunt prevazute in Statutul Asociatiei.

ART. 7. DISPOZITII FINALE SI TRANZITORII.

In vederea dobândirii personalității juridice, asociatii încheie Actul constitutiv si Statutul asociatiei, în formă atestata de avocat.

Subsemnatii, membri fondatori, împuternicim următoarele persoane:

- 1.
- 2.

, care, actionand separat, să desfășoare procedura de inregistrare a Asociatiei in vederea dobândirii de catre Asociatie a personalității juridice respectiv in vederea inregistrarii fiscale a Asociatiei, semnatura fiecaruia dintre acestia, fiindu-ne opozabila.

Prezentul Act constitutiv a fost redactat de parti, fiindu-i atestata data, de catre avocat _____, în ____ (-) exemplare, din care ____ (-) exemplare s-au eliberat părților si 1(un) exemplar pentru arhiva Cabinetului individual de avocatura _____.

MEMBRII FONDATORI :

Legal document 1
(available in Romanian only)

STATUTUL
« ASOCIATIEI DE MEDIERE BANCARA DIN ROMANIA-
MEDIATORUL BANCAR »

"ASOCIATIA DE MEDIERE BANCARA DIN ROMANIA-MEDIATORUL BANCAR" , este persoana juridica de drept privat cu scop nepatrimonial, independenta, neguvernamentala, care isi va desfasura activitatea potrivit OG nr. 26/2000 cu privire la asociatii si fundatii, astfel cum a fost aprobata si modificata prin Legea nr. 246/2005, carei membri fondatori conform Actului Constitutiv sunt:

- 1.
 - 2.
 - 3.
-

n.

si care si-au exprimat vointa de asociere prin înfiintarea unei asociatii, în scopul desfasurarii unor activitati de interes general destinate a servi medierii cale amiabila, a disputelor dintre consumatorii de servicii si produse bancare, persoane fizice si membrii fondatori, institutii de credit, persoane juridice romane si sucursalele din Romania ale unor institutii de credit din state membre si state terte, ale carei obiective sunt detaliate in cuprinsul prezentului Statut.

ART. 1. DENUMIREA ASOCIATIEI.

- 1.1. Denumirea asociatiei este "**ASOCIATIA DE MEDIERE BANCARA DIN ROMANIA-MEDIATORUL BANCAR**", denumire rezervata prin dovada disponibilitatii denumirii cu numarul _____ din _____ eliberata de catre Ministerul Justitiei - Directia pentru Relatii cu Publicul si Evidenta ONG.
- 1.2. Denumirea Asociatiei poate fi scrisa atat in limba romana, cat si in limba engleza "**ROMANIAN BANKING MEDIATION ASSOCIATION – THE BANKING OMBUDSMAN**".
- 1.3. Asociatia se va identifica in toate documentele prin elementele de identificare precum: denumirea Asociatiei, sigla, sediul, numarul de inregistrare in registrul asociatiilor si fundatiilor, numarul de identificare fiscala, care vor fi mentionate in limba romana.

ART. 2. SEDIUL ASOCIATIEI

- 3.1. Sediul asociatiei este în Bucuresti, _____.
- 2.2. Sediul asociatiei poate fi schimbat în baza hotararii Consiliului Director.

ART. 3. DURATA DE FUNCTIONARE A ASOCIATIEI.

- 3.1. Asociatia se constituie pe o durată de functionare nedeterminata.
- 3.2. Durata de functionare poate fi modificată în baza Hotărârii Adunării Generale a asociatilor.

ART. 4. SCOPUL ASOCIATIEI

- 4.1. Asociatia are ca scop desfasurarea unor activitati de interes general , destinate a servi medierii pe cale amiabila, a disputelor dintre consumatorii de servicii si produse bancare, persoane fizice si membrii fondatori, institutiile de credit, persoane juridice romane sau sucursale din Romania ale unor institutii de credit din state membre si state terte
- 4.2. Modul de organizare, functionarea mediatorului bancar si procedurile de mediere vor fi prevazute in Regulamentul de organizare si functionare, respectiv in codul de etica si deontologie profesionala, in conformitate cu Legea nr. 192/2006 privind medierea si profesia de mediator.

ART. 5. OBIECTIVELE ASOCIATIEI:

- 5.1. Prin infiintarea Mediatorului Bancar, Asociatia urmareste in principal urmatoarele obiective:
 - 5.1.1. Stabilirea unei proceduri extrajudiciare, obiective, impartiale, accesibile, eficiente, nebirocratice de mediere a disputelor dintre consumatori si institutiile de credit, fara interventia instantelor de judecata sau a altor institutii publice cu activitate jurisdictionala si fara costuri pentru consumatori, respectiv costuri substantial mai mici pentru institutiile de credit;
 - 5.1.2. Administrarea corespunzatoare de catre institutiile de credit a riscului reputational si operational prin evitarea publicitatii negative si solutionarea disputelor in fata instantelor de judecata sau prin interventia altor institutii cu activitate jurisdictionala ;
 - 5.1.3. Sprijinirea protectiei consumatorului mai ales in contextul aparitiei de produse si servicii financiare complexe, care il expun pe consumator la mai multe riscuri si presupun cunoasterea unor noțiuni bancare si financiare complexe.
 - 5.1.4. Asigurarea unui proces educational permanent atat pentru furnizorii, cat si pentru consumatorii de servicii financiare, Mediatorul Bancar incurajand prevenirea reclamațiilor prin publicarea studiilor de caz care pot servi ca puncte de reper utile pentru consumatori si pentru industria financiar bancară deopotrivă.
 - 5.1.5. Sporirea încrederii consumatorului în institutiile de credit ;
 - 5.1.6. Îmbunătățirea ratei de retenție a clienților.
- 5.2. Obiectivele Asociatiei, asa cum sunt stipulate in articolul de mai sus, vor fi atinse in principal prin crearea unui statut total independent al Mediatorului Bancar fata de membrii asociatiei si stabilirea unor principii care vor governa activitatea desfasurata de Mediatorul Bancar, in concordanta cu practica internationala si recomandările Comisiei Europene 2001/310/EC privind inlesnirea accesului consumatorilor la solutionarea disputelor prin proceduri alternative celor judiciare.

ART. 6. MEMBRII ASOCIATIEI

- 6.1. Calitatea de membru al Asociatiei se bazeaza pe exprimarea vointei de libera asociere a fiecarui membru.
- 6.2. Membrii asociatiei pot fi institutiile de credit autorizate sa functioneze in Romania si sucursale din Romania ale unor institutii de credit din state membre si state terte, care accepta acest Statut si Actul Constitutiv.

ART. 7. ACCEPTAREA MEMBRILOR

- 7.1. Cererea privind dobandirea calitatii de membru asociat va fi aprobata de Consiliul Director.
- 7.2. Solicitantii pot deveni membrii ai Asociatiei, in baza urmatoarelor conditii:
- 7.2.1. prin adresarea unei cereri scrisa catre Consiliul Director, in care candidatul declara ca isi insuseste si accepta continutul actelor juridice de infiintare (Actul Constitutiv si Statutul), isi exprima acordul cu privire la alte documente specifice in legatura cu structura Asociatiei si principiile de organizare si functionare a Mediatorului Bancar. Cererea scrisa poate fi transmisa prin posta, fax sau e-mail pe adresa Asociatiei;
- 7.2.2. prin plata cotizatiei anuale stabilita de Asociatie, calculate pro rata de la data acceptarii cererii si perioada de timp ramasa pana la sfarsitul anului in curs ;
- 7.3. Fiecare membru, poate solicita emiterea unui certificat, care este valabil pentru anul calendaristic curent, facand dovada platii integrale/pro rata a taxei de membru pentru anul curent,. Acest certificat certifica calitatea de membru al Asociatiei. Un astfel de certificat va fi semnat de Presedintele Consiliului Director si va purta stampila Asociatiei.

ART.8. DREPTURILE MEMBRILOR ASOCIATI

- 8.1. Fiecare membru al Asociatiei are urmatoarele drepturi:
- 8.1.2. un vot in Adunarea Generala;
- 8.1.3. sa fie ales sau sa nominalizeze candidati pentru Consiliul de Incredere, Consiliul Director, respectiv Cenzor;
- 8.1.4. sa participe la orice alte initiative ale Asociatiei (conferinte, seminarii, mese rotunde, proiecte);
- 8.1.5. sa fie informat de catre Consiliul Director, Cenzor, Secretarul Executiv si personalul administrativ al Asociatiei in legatura cu toate aspectele referitoare la activitatea acestora;
- 8.1.6. sa fie informat in legatura cu hotararile Consiliului de Incredere, Consiliului Director si cele ale Cenzorului;
- 8.1.7. sa propuna in scris sau verbal Consiliului Director sugestii si proiecte ce privesc activitatea Asociatiei;
- 8.1.8. sa obtina documente ce atesta calitatea de membru al Asociatiei;
- 8.1.9. sa fie informat anual in legatura cu recomandarile facute de Mediatorul Bancar in cazurile primite spre mediere, cu pastrarea confidentialitatii asupra identitatii partilor, in baza unui raport anual privind cazuistica supusa medierii si recomandarile facute.

ART. 9. OBLIGATIILE MEMBRILOR

- 9.1. Fiecare membru al Asociatiei are urmatoarele obligatii:
- 9.1.1. sa se supuna prevederilor Actului Constitutiv si a Statutului;
- 9.1.2. sa intruneasca conditiile de membru specificate in prezentul Statut si in Actul Constitutiv;
- 9.1.3. sa indeplineasca hotararile Adunarii Generale si ale Consiliului Director, dupa caz;
- 9.1.4. sa coopereze sis a sprijine Asociatia in vederea aducerii la indeplinire a scopului si obiectivelor Asociatiei;
- 9.1.5. sa plateasca cotizatia de membru anuala si suplimentara astfel cum au fost acestea stabilite de Adunarea Generala;
- 9.1.6. sa pastreze confidentialitatea activitatilor Asociatiei si ale Mediatorului Bancar, in concordanta cu standardele de etica si conduita bancara;
- 9.1.7. sa demonstreze o atitudine respectuoasa in relatia sa cu alti membri ai Asociatiei, cu Mediatorul Bancar si consumatorii care s-au adresat acestuia in vederea medierii disputelor;
- 9.1.8. sa nu aduca atingere imaginii si reputatiei Asociatiei si Mediatorului Bancar,
- 9.1.9. sa popularizeze in randul clientilor sai scopul si obiectivele Asociatiei si sa-i incurajeze sa se adreseze Mediatorului Bancar in vederea solutionarii pe cale amiabila a disputelor dintre

acestia si institutia de credit respective, in cazul in care plangerea clientului adresata institutiei de credit respective nu s-a solutionat in sensul solicitat de client.

- 9.1.10. sa-si creeze un sistem propriu/emita o reglementare interna de solutionare a plangerilor, reclamatilor si sesizarilor clientilor si a altor persoane care desi nu sunt clienti, s-au adresat institutiei de credit in vederea obtinerii unui produs distribuit de banca/serviciu oferit de banca, reglementare interna care va fi facuta cunoscuta mediatorului bancar la solicitarea acestuia;
- 9.1.11. sa faca cunoscute prin afisare la loc vizibil in unitatile lor teritoriale, datele si persoanele de contact abilitate cu rezolvarea interna a reclamatilor si sesizarilor clientilor si a altor persoane, descrise la pct. 9.1.10 de mai sus;
- 9.1.12. sa informeze in scris clientii, prin afisare la loc vizibil in unitatile lor teritoriale, respectiv prin inserarea in cuprinsul contractelor incheiate cu clientii, a Conditiei Generale de Afaceri despre faptul ca au dreptul sa adreseze Mediatorului Bancar in vederea medierii disputelor, reclamatiloir si sesizarilor pe care acestia din urma le au fata de institutia de credit, dupa ce in prealabil s-au adresat institutiei de credit;
- 9.1.13. sa furnizeze orice informatii, date si documente solicitate de mediatorul bancar, daca acestea au legatura cu cazul dedus medierii;
- 9.1.14. in cazul in care au agreeat urmareea procedurii de mediere in vederea rezolvarii pe cale amiabila a disputei cu un client sau cu alta persoana dintre cele indicate la art. 9.1.10., sa respecte Regulamentul de Organizare si Functionare a Mediatorului Bancr si procedurile aferente de mediere.

ART. 10. SITUATII CARE CONDUC LA EXCLUDEREA MEMBRILOR

- 10.1. Un membru al Asociatiei va fi exclus prin hotararea Consiliului Director in urmatoarele cazuri:
 - 10.1.1. nu mai corespunde conditiilor de a accede la calitatea de membru astfel cum sunt acestea specificate in prezentul Statut;
 - 10.1.2. nu isi indeplineste obligatiile stabilite si incalca prevederile Actului constitutiv, ale Statutului si ale Regulamentului de organizare si functionare a Mediatorului Bancar;
 - 10.1.3. discrediteaza Asociatia sau pe membrii acesteia, discrediteaza si submineaza autoritatea Mediatorului Bancar;
 - 10.1.4. nu a indeplinit o obligatie importanta pe care si-a asumat-o voluntar, sau care a fost votata de catre Adunarea Generala a Asociatiei, prin care a deteriorat imaginea Asociatiei, sau care ar putea sa-i impiedice acesteia indeplinirea scopului si obiectivelor;
 - 10.1.5. distribuie informatii false despre Asociatie si Mediatorul Bancar, sau informatii ce se aflau in pastrare acestora, avand caracter confidential;
 - 10.1.6. si-a folosit calitatea de membru al Asociatiei pentru scopuri profitabile;
- 10.2. Pentru excluderea membrului datorata motivelor de mai sus si Cenzorul poate face propuneri motivate catre Consiliul Director.
- 10.3. Un membru exclus poate aplica din nou pentru statutul de membru al Asociatiei dupa un an de la momentul excluderii sale, daca intruneste conditiile de acces specificate in prezentul Statut.

ART. 11. INREGISTRAREA MEMBRILOR

- 11.1. Asociatia va tine un registru cu membrii sai. Acest registru va fi usor accesibil membrilor, la cerera acestora. Persoanele interesate pot primi referinte si/ sau certificate pe baza acestui registru.
- 11.2. Membrii Asociatiei au datoria de a furniza Asociatiei datele lor de identificare necesare completarii registrului, precum si de a actualiza aceste date.

ART. 12. INCETAREA CALITATII DE MEMBRU

- 12.1. Calitatea de membru inceteaza:
 - 12.1.1. prin libera vointa a membrului, sens in care va transmite o notificare scrisa adresata Consiliul Director;
 - 12.1.2. prin excludere decisa de catre Consiliul Director; in caz de excludere pentru neplata sumei anuale si suplimentare de membru, calitatea de membru inceteaza in termen de 15 zile de la data notificarii privind neplata taxei de membru. Incetarea calitatii de membru va fi inscrisa in registrul de membri de catre Secretarul Executiv.
 - 12.1.3. prin falimentul acestuia;
 - 12.1.4. la data dizolvarii Asociatiei.
- 12.2. In caz de incetare a calitatii de membru al Asociatiei, cotizatia initiala si suplimentara nu se vor rambursa.

ART. 13. PATRIMONIUL ASOCIATIE.

- 13.1. Activul patrimonial la data constituirii Asociatie este de _____ lei, vârsat în totalitate la data constituirii asociatiei de catre membrii fondatori, fiecare varsand cate _____ lei.
- 13.2. Patrimoniul initial al asociatie va fi completat cu veniturile obtinute de asociatie.
- 13.3. Veniturile obtinute de asociatie pot proveni din:
 - 13.3.1. cotizatiile anuale si suplimentare ale membrilor;
 - 13.3.2. donatii, sponsorizări sau legate;
 - 13.3.3. resurse ce pot fi obtinute de asociatie de la bugetul de stat si / sau de la bugetele locale;
 - 13.3.4. alte venituri prevăzute de lege.
- 13.4. Asociatia poate desfasura orice activitati economice directe daca acestea au caracter accesoriu si sunt in stransa legatura cu scopul asociatiei.

ART. 14. CONTRIBUTIILE MEMBRILOR

- 14.1. Toti membrii Asociatiei vor plati o cotizatie. Adunarea Generala va aproba la propunerea Consiliului Director, contributiile membrilor necesare pentru atingerea scopurilor si indeplinirea obiectivelor Asociatiei si va hotarare cuantumul, termenul si modalitatea de plata a acesteia.
- 14.2. Cotizatia membrilor poate fi: initiala- pentru membrii noi, calculata pro-rata; anuala – calculata pentru un an financiar; aditionala- stabilita prin hotararea Adunarii Generale, in concordanta cu prevederile Statutului.
- 14.3. Cotizatia initiala va fi platita impreuna cu formularul de aplicare sau cel mai tarziu 15 zile de la acceptarea sa;

ART. 15. DONATII SI SPONSORIZARI

- 15.1. Donatiile si sponsorizarile in favoarea Asociatiei vor fi acceptate de Presedintele Consiliului Director sau de catre Vicepresedinte. Donatiile sau sponsorizarile vor avea destinatie corespunzatoare cu scopul si obiectivele Asociatiei, in caz contrar aceste fonduri nu vor fi

acceptate. Fondurile respective vor fi folosite doar pentru scopul in care ele au fost furnizate.

- 15.2. Donatorii si sponsorii sunt in drept sa determine destinatia fondurilor, denumirea programelor, activitatilor, proiectelor, etc., in vederea atingerii scopului pentru care au furnizat fondurile, cu respectarea scopului si obiectivelor Asociatiei.

ART .16 DOCUMENTELE CONTABILE

- 15.1. Asociatia va avea propriul buget, propria activitate financiara si contabila, conturi bancare in lei si valuta.
- 16.2. Bugetul Asociatiei pentru anul urmat va fi adoptat de Adunarea Generala la propunerea Consiliului Director, pana cel tarziu 31 decembrie al anului precedent.
- 16.3. Asociatia va fi raspunzatoare pentru indeplinirea obligatiilor asumate din patrimoniul propriu insa nu va fi raspunzatoare pentru neindeplinirea obligatiilor patrimoniale ale membrilor sai sau indeplinirea necorespunzatoare.
- 16.4. Membrii vor fi raspunzatori pentru obligatiile Asociatiei, proportional cu cuantumul contributiei, astfel cum este stipulata in Actul constitutiv. Niciun membru nu poate fi tinut personal raspunzator pentru obligatiile Asociatiei.
- 16.5. Asociatia nu va aloca profit.
- 16.6. Documentele contabile vor fi tinute conform legii si vor fi tinute la sediul Asociatiei pentru verificarea/auditul membrilor Consiliului Director sau a Cenzorului.

Art. 17. ORGANELE DE CONDUCERE, ADMINISTRARE, SUPRAVEGHERE SI CONTROL ALE ASOCIATIEI

17.1. Organele de conducere, administrare, supraveghere si control ale Asociatiei sunt:

- 17.1.1. Adunarea Generala;
- 17.1.2. Consiliul Director;
- 17.1.3. Consiliul de Incredere;
- 17.1.4. Cenzorul.

ART. 18. ADUNAREA GENERALA

- 18.1. Adunarea Generala reprezinta structura suprema a Asociatiei, la care au dreptul sa participe toti membrii sai.
- 18.2. Adunarea Generala are in principal urmatoarele atributii:
 - 18.2.1. aproba bugetul de venituri si cheltuieli si bilantul contabil si raportul de activitate al Consiliului Director;
 - 18.2.2. stabileste strategia si obiectivele generale ale Asociatiei;
 - 18.2.3. alege si revoca membrii Consiliul Director si Cenzorul;
 - 18.2.4. modifica Actul Constitutiv si Statutul;
 - 18.2.5. adopta alte acte interne referitoare la activitatea Asociatiei, cu exceptia regulamentului de organizare si functionare a mediatorului bancar, a codului de etica si deontologie profesionala si a procedurilor de mediere, care se aproba exclusiv de Consiliul Director la propunerea Consiliului de Incredere ;
 - 18.2.6. adopta hotarari cu privire la contributia initiala si cotizatia anuala platibila de membri, precum si hotarari referitoare la orice contributii materiale;

- 18.2.7. dizolvarea si lichidarea asociatiei, precum si stabilirea destinatiei bunurilor ramase dupa lichidare;
- 18.2.8. orice alte atributii prevazute de lege sau in Statut
- 18.3. Drepturile prevazute la art. 18.2. nu pot fi delegate altor structuri ale Asociatiei.
- 18.4. Hotărârile luate de adunarea generală, în limitele legii, ale actului constitutiv și/sau ale statutului sunt obligatorii chiar și pentru asociații care nu au luat parte la adunarea generală sau au votat împotriva. Hotărârile adunării generale, contrare legii, actului constitutiv sau dispozițiilor cuprinse în statut, pot fi atacate în justiție de către oricare dintre asociații care nu au luat parte la adunarea generală sau care au votat împotriva și au cerut să se insereze aceasta în procesul-verbal de ședință, în termen de 15 zile de la data când au luat cunoștință despre hotărâre sau de la data când a avut loc ședința, după caz.
- 18.5. Cererea de anulare se soluționează în camera de consiliu de către judecătoria în circumscripția căreia asociația își are sediul. Hotărârea instanței este supusă numai recursului.
- 18.6. Adunarea Generala se va intruni cel puțin odată pe an la convocarea Consiliului Director, convocarea realizându-se prin intermediul unui ziar de largă circulație sau după caz prin transmiterea unei convocări scrise fiecărui membru, cu cel puțin o lună înainte de data propusă pentru intrunirea Adunării Generale. Convocatorul va conține data, locul și ora la care ședința va avea loc, ca și ordinea de zi, putând fi, totodată, publicat pe web site-ul Asociației.
- 18.7. Adunarea Generala Extraordinara se va convoca de catre Consiliul Director sau la sesizarea Cenzorului respectiv la cererea a cel puțin o treime din numărul total al membrilor Asociației. Consiliul Director va informa în scris data, ora, locul și ordinea de zi a Adunării Generale Extraordinare.
- 18.8. Cererea unei treimi din membrii Asociației va avea formă scrisă și va fi trimisă Consiliului Director al Asociației. În cazul în care Consiliul Director nu convoacă Adunarea Generala într-o perioadă de o lună, membrii mai sus menționați vor putea solicita instanței de la sediul acesteia organizarea adunării.
- 18.9. Adunarea Generala va fi considerată legal intrunită atunci când sunt prezenți cel puțin 51% din membri înregistrați în registrul membrilor.
- 18.10. Adunarea Generala va adopta hotărâri prin majoritate simplă, cu excepția cazurilor în care, prin lege sau prin acest Statut, este necesară majoritate absolută sau calificată. Hotărârile menționate la Articolul 18.2, lit. b), c) d) și g) vor fi adoptate cu o majoritate de 3/4 din numărul total al membrilor Asociației.
- 18.11. Nici o hotărâre nu va putea fi adoptată privind alte subiecte decât cele incluse în agenda menționată în convocare.
- 18.12. Fiecare membru va avea dreptul la un vot în cadrul Adunării Generale.
- 18.13. Membrii participanți sau reprezentați la Adunarea Generala nu vor putea să voteze în probleme privind entitățile legale unde membrul îndeplinește o funcție de conducere sau unde poate impune sau preveni adoptarea rezoluțiilor.
- 18.14. O persoană nu poate reprezenta mai mult de trei membri în cadrul Adunării Generale. Această reprezentare va putea fi inițiată în baza unei procuri autentice speciale .
- 18.15. Votul este deschis și poate fi confidențial doar în situația în care în Adunarea Generala alege organele de conducere.
- 18.16. Acei membri care sunt restanți cu plata cotizației de membru nu vor avea dreptul să voteze. Secretarul Executiv al Asociației va fi obligat să urmărească respectarea acestei reguli și să prezinte un raport la fiecare sesiune a Adunării Generale a Asociației.

- 18.17. Adunarea Generala va fi prezidata de Presedintele Consiliului Director daca Adunarea Generale nu va desemna un al Preşedintele de Şedinţă, care va prezida sesiunea respectivă. Presedintele sedintei va solicita Secretarului Executiv sa verifice indeplinirea conditiilor legale pentru tinerea adunarii si care va intocmi minuta sedintei, respectiv va alege dintre memebrii prezenti una sau doua persoane responsabile cu numararea voturilor si intocmirea listei de prezenta .
- 18.18. Hotararile Adunarii Generale vor fi incluse în minutele semnate valabil de Preşedintele Şedinţei si de Secretarul Executiv si vor fi comunicate Consiliului Director pentru implementare.

ART. 19. CONSILIUL DIRECTOR

- 19.1. Consiliul Director este compus din cinci până la cincisprezece membri si va fi ales de Adunarea Generala pentru o perioadă de patru ani, cu posibilitatea realegerii. Dintre membrii Consiliului Director pot face parte si persoane care nu au calitatea de asociati, respectiv cate un reprezentant al Bancii Nationale a Romaniei si al Autoritatii Nationale Pentru Protectia Consumatorilor, în limita a cel mult o pătrime din componenţa sa. De asemenea, nu poate fi membru al Consiliului Director, iar dacă este, pierde această calitate, orice persoană care ocupă o funcţie de conducere în cadrul unei instituţii publice, dacă asociaţia are ca scop sprijinirea activităţii acelei instituţii publice.
- 19.2. Remuneratia membrilor Consiliului Director va fi de _____ RON pt. fiecare participare la sedinta, dar nu mai mult de _____ RON/an.
- 19.3. Consiliul Director organizează și conduce activitatea Asociaţiei în perioadele dintre sesiunile Adunarii Generale, având următoarele responsabilităţi:
- 19.3.1. asigura punerea in executare a hotararilor Adunarii Generale;
- 19.3.2. prezinta adunarii generale raportul annual de activitate, inclusiv raportul activitatii specifice realizate de mediatorul bancar exprimat in termeni statistici, intr-un format ce va fi stabilit impreuna cu mediatorul si Consiliul de Incredere, executarea bugetului de venituri si cheltuieli, bilantul contabil, proiectul bugetului de venituri si cheltuieli si proiectul programelor asociati
- 19.3.3. incheie acte juridice in numele si pe seama asociatiei
- 19.3.4. stabileste modalitatea de plata și propune quantumul taxei adiţionale de membru după primirea aprobării din partea Cenzorului;
- 19.3.5. autorizează Preşedintele Consiliului, Vice Preşedintele sau alt membru al Consiliului Director pentru efectuarea unor activităţi specifice si incheierea unor acte juridice
- 19.3.6. selectează și numește Secretarul Executiv, determină remuneraţia sa și aprobă programul său de lucru
- 19.3.7. decide schimbarea sediului Asociaţiei
- 19.3.8. propune dizolvarea Asociaţiei, specificând și un lichidator dacă este cazul
- 19.3.9. acceptă noi membri
- 19.3.10. ia decizia de a adera/participa în alte organizaţii cu scop si obiective asemanatoare
- 19.3.11. indeplineste orice alte atributii prevazute in statut sau stabilite de adunarea generala;
- 19.3.12. aproba organigrama si politica de personal a asociatiei cu exceptia mediatorului bancar si a adjunctilor acestuia, a caror organizare si procedura de selectare si angajare este de compeeta exclusiva a Consiliului de Incredere;
- 19.4. Şedinţele Consiliului Director vor fi convocate de Preşedinte cel putin trimestrial, iar membrii vor fi convocati în scris cu şapte zile înainte de data şedinţei. Convocatorul va conţine data, locul și ordinea de zi a sesiunii. Convocatorul poate fi, de asemenea, trimis prin fax sau e-mail fiecărui membru. Preşedintele va fi obligat să convoace o şedinţă a Consiliului Director la primirea unei cereri scrise a o treime din membrii săi. În eventualitatea în care o şedinţă nu este convocată de Preşedintele Consiliului, aceasta poate fi iniţiată și organizată de oricare dintre membrii Consiliului Director.

- 19.5. Sedintele vor fi prezidate de către Președintele Consiliului și dacă acesta este absent, obligațiile vor fi asumate de către Vice Președinte sau de către un membru desemnat de Consiliul Director
- 19.6. Sedința Consiliului Director va fi considerată legal intrunită atunci când există cvorum de 50%+1 din totalul membrilor sai. Consiliul Director poate adopta hotărâri cu majoritatea absolută a membrilor prezenți. În caz de paritate de voturi, Președintele are vot decisiv;
- 19.7. Cenzorul va participa la întrunirile Consiliului, având drept de vot consultativ
- 19.8. Oricare membru al Consiliului Director care are conexiune telefonică duală online sau alta conexiune care garantează identitatea și permite participarea la negocieri și adoptarea de hotărâri, va fi considerat ca fiind persoana prezentă. Votul și semnătura acestei persoane vor fi înscrise totuși în minutele sedințelor la o dată ulterioară
- 19.9. Consiliul Director poate adopta hotărâri prin corespondență, în sensul că aceste hotărâri pot fi adoptate prin semnarea electronică a minutelor sau prin utilizarea unor echipamente de transmitere a datelor la distanță (e-mail sau fax)
- 19.10. Membrii Consiliului Director nu vor putea delega unui alt membru sau unei alte persoane exercitarea atribuțiilor lor și nici votul.
- 19.11. Consiliul Director va alege un Președinte și un Vicepreședinte dintre membrii sai. O persoană nu poate fi numită în funcția de Președinte pentru mai mult de două mandate succesive.
- 19.12. Președintele va avea următoarele atribuții:
 - 19.12.1. va reprezenta Asociația în fața terților și a justiției;
 - 19.12.2. va semna documentele emise de Asociație și va încheia acte juridice în numele și pe seama asociației în baza mandatului dat de Consiliul Director.
 - 19.12.3. va organiza și conduce sedințele Consiliului Director;
 - 19.12.4. va asigura implementarea hotărârilor adoptate de către Adunarea Generală și de către Consiliul Director;
- 19.13. În lipsa Președintelui, responsabilitățile și atribuțiile acestuia sunt preluate de Vicepreședinte. În cazul în care poziția Președintelui devine vacantă înainte de expirarea mandatului său, poziția va fi automat preluată de către Vicepreședinte până la următoarea sesiune a Adunării Generale, când un nou Președinte va fi ales. În eventualitatea în care Vicepreședintele nu va fi disponibil pentru preluarea funcției de Președinte sau o refuză, Consiliul Director va desemna temporar un membru pentru preluarea atribuțiilor Președintelui și va convoca imediat o sesiune extraordinară a Adunării Generale pentru alegerea unui nou Președinte al Consiliului Director.

ART. 20. CENZORUL

- 20.1. Cenzorul va fi ales de Adunarea Generală pentru un mandat de 4 ani.
- 20.2. Cenzorul este organul de control al Asociației și va prezenta rapoarte de activitate în fața Adunării Generale cel puțin o dată pe an. Cenzorul nu va putea fi membru în Consiliul Director și nici angajat al Asociației.
- 20.3. Cenzorul are următoarele atribuții:
 - 20.3.1. controlează respectarea prezentului Statut și implementarea hotărârilor adoptate de Adunarea Generală și de Consiliul Director al Asociației;
 - 20.3.2. verifică și controlează situația financiară, precum și detinerea și utilizarea potrivită a

- fondurilor asociatiei;
- 20.3.3. inspecteaza contractele semnate, documentele si arhivele contabile ale asociatiei in orice perioada a anului. In cazul in care descopera neglijente sau incalcari ale legii, Cenzorul va elabora un raport care va contine masurile si recomandarile privind remedierea acestora;
 - 20.3.4. inspecteaza notificările si obiectiile membrilor impotriva organelor de conducere cu referire la deciziile nestatutare sau nelegale;
 - 20.3.5. inspecteaza membrii asociatiei care nu respecta prevederile prezentului Statut, care nu isi indeplinesc obligatiile sau care denigreaza imaginea si interesele legale ale Asociatiei si a membrilor sai;
 - 20.3.6. dupa descoperirea unei incalcari grave a intereselor Asociatiei de catre membrii sai, Cenzorul poate conveni organizarea unei sesiuni extraordinare a Consiliul Director sau poate solicita o sesiune extraordinara a Adunarii Generale;
 - 20.3.7. in cazul nerespectarii obligatiilor Cenzorului, Consiliul Director va propune Adunarii Generale aplicarea sanctiunilor sau excluderea acestuia;
 - 20.3.8. propune introducerea de regulamente interne in cadrul structurii si activitatii proprii;
 - 20.3.9. Cenzorul va prezenta un raport privind inspectiile sale cel putin odata pe an.

ART. 21. CONSILIUL DE INCREDERE

- 21.1. Consiliul de Incredere este un organ de supraveghere, care are drept principal scop asigurarea independentei Mediatorului Bancar fata de membrii asociatiei si organele de conducere ale acesteia, in deplina concordanta cu principiile profesiei de mediator stabilite prin Legea nr. 192/2006 si practica internationala in materia medierii bancare.
- 21.2. Consiliul de Incredere este format din cinci pana la sapte membri, care nu pot fi in acelasi timp si membri ai Consiliului Director sau Cenzori, ales pentru un mandat de trei ani, putand fi reales. Majoritatea membrilor Consiliului de Incredere, vor fi numiti de catre Banca Nationala a Romaniei, ANPC si Consiliul de Mediere, din randurile functionarilor acestor institutii si a membrilor sai, dupa caz, cu respectarea legilor speciale privind incompatibilitatea, restul membrilor vor fi numiti de catre Consiliul Director din randul reprezentatilor institutiilor de credit.
- 21.3. Consiliul de incredere, poate alege dintre membrii sai un Presedinte si un Vicepresedinte, care il va reprezenta in relatia cu organele de conducere ale Asociatiei si care vor semna contractele de colaborare cu mediatorul bancar si adjunctii acestuia. O persoana nu poate fi numita in functia de Presedinte pentru mai mult de doua mandate succesive.
- 21.4. Consiliul de Incredere are urmatoarele atributii:
 - 21.4.1. selecteaza, numeste sau revoca mediatorul bancar si adjunctii acestuia;
 - 21.4.2. aproba si modifica regulamentul de organizare si functionare, codul de etica si deontologie profesionala, procedurile de mediere ale mediatorului bancar, la propunerea Mediatorului Bancar
 - 21.4.3. aprobă organigrama si politica de personal a Mediatorului Bancar si a adjunctilor acestuia;
 - 21.4.4. stabileste conditiile de remuneratie a mediatorului si adjunctilor acestuia;
 - 21.4.5. avizeaza raportul anual al mediatorului bancar in vederea includerii acestuia in raportul anuaal de activitate al asociatiei;
- 21.5. Sedințele Consiliului de Incredere vor fi convocate de Președinte cel puțin trimestrial, iar membrii vor fi convocati în scris cu șapte zile înainte de data ședinței. Convocatorul va conține data, locul și ordinea de zi a sesiunii. Convocatorul poate fi, de asemenea, trimis prin fax sau e-mail fiecărui membru. Președintele va fi obligat să convoace o ședință a Consiliului de Incredere la primirea unei cereri scrise a o treime din membrii săi. În eventualitatea în care o ședință nu este convocată de Președintele Consiliului, aceasta poate fi inițiată și organizată de oricare dintre membrii Consiliului de Incredere.

- 21.6. Sedintele vor fi prezidate de către Președintele Consiliului și dacă acesta este absent, obligațiile vor fi asumate de către Vice Președinte sau de către un membru desemnat de Consiliul de Incredere;
- 21.7. Sedința Consiliului de Incredere va fi considerată legal intrunită atunci când există cvorum de 50%+1 din totalul membrilor sai. Consiliul de Incredere poate adopta hotărâri cu majoritatea absolută a membrilor prezenți;
- 21.8. Oricare membru al Consiliului de Incredere care are conexiune telefonică duală online sau alta conexiune care garantează identitatea și permite participarea la negocieri și adoptarea de hotărâri, va fi considerat ca fiind persoana prezentă. Votul și semnătura acestei persoane vor fi înscrise totuși în minutele ședințelor la o dată ulterioară;
- 21.9. Consiliul de Incredere poate adopta hotărâri prin corespondență, în sensul că aceste hotărâri pot fi adoptate prin semnarea electronică a minutilor sau prin utilizarea unor echipamente de transmitere a datelor la distanță (e-mail sau fax);
- 21.10. Membrii Consiliului de Incredere nu vor putea delega unui alt membru sau unei alte persoane exercitarea atribuțiilor lor și nici votul.
- 21.11. Remuneratia membrilor Consiliului de Incredere va fi de _____ RON pt. fiecare participare la ședință, dar nu mai mult de _____ RON/an.

ART. 22. SECRETARUL EXECUTIV

- 22.1. Secretarul Executiv va avea următoarele atribuții:
 - 22.1.1. raportează direct numai Consiliului Director și Consiliului de Incredere;
 - 22.1.2. întocmește ordinea de zi a ședințelor Adunării Generale, a Consiliului Director și a Consiliului de Incredere, transmite membrilor acestora convocarea însoțită de ordinea de zi și pregătește ședințele acestora în baza deciziilor Consiliului Director și a Consiliului de Incredere și sub coordonarea Președinților acestor Consilii;
 - 22.1.3. organizează implementarea hotărârilor adoptate de Adunarea Generală, Consiliul Director și Consiliul de Incredere;
 - 22.1.4. organizează, întocmește și păstrează în bună ordine minutele ședințelor organelor de conducere ale Asociației;
 - 22.1.5. întocmește și păstrează registrul privind membrii Asociației;
 - 22.1.6. întocmește și păstrează corespondența Asociației;
 - 22.1.7. susține întreaga activitate a organelor de conducere și supraveghere ale Asociației;
- 22.2. Drepturile și obligațiile suplimentare ale Secretarului Executiv vor fi stabilite de Consiliul Director și de către Consiliul de Incredere.

ART. 23. INCETAREA ȘI DIZOLVAREA ASOCIAȚIEI

- 23.1. Asociația se dizolvă de drept prin:
 - 22.1.1. realizarea sau, după caz, imposibilitatea realizării scopului pentru care a fost constituită, dacă în termen de 3 luni de la constatarea unui astfel de fapt nu se produce schimbarea acestui scop;
 - 22.1.2. imposibilitatea constituirii adunării generale sau a constituirii consiliului director în conformitate cu statutul asociației, dacă această situație durează mai mult de un an de la data la care, potrivit statutului, adunarea generală sau, după caz, consiliul director trebuia constituit;
 - 22.1.3. reducerea numărului de asociați sub limita fixată de lege, dacă acesta nu a fost completat timp de 3 luni.

- 22.2. Constatarea dizolvării se realizează prin hotărârea judecătoreiei în a cărei circumscripție se află sediul asociației, la cererea oricărei persoane interesate.
- 22.3. Prin hotărâre judecătorească, la cererea oricărei persoane interesate , după caz:
- 22.3.1. când scopul sau activitatea asociației a devenit ilicită sau contrară ordinii publice;
 - 22.3.2. când realizarea scopului este urmărită prin mijloace ilicite sau contrare ordinii publice;
 - 22.3.3. când asociația urmărește un alt scop decât cel pentru care s-a constituit;
 - 22.3.4. când asociația a devenit insolvabilă;
 - 22.3.5. în alte cazuri prevazute de lege.
- 22.4. Prin hotărârea adunării generale. În termen de 15 zile de la data ședinței de dizolvare, procesul-verbal, în formă autentică, se depune la judecătoria în a cărei circumscripție teritorială își are sediul, pentru a fi înscris în Registrul asociațiilor și fundațiilor.
- 22.5. În cazul dizolvării asociației , bunurile rămase în urma lichidării nu se pot transmite către persoane fizice. Aceste bunuri pot fi transmise către persoane juridice de drept privat sau de drept public cu scop identic sau asemănător. Data transmiterii bunurilor este cea a întocmirii procesului-verbal de predare-preluare, dacă prin acesta nu s-a stabilit o dată ulterioară.
- 22.6. În cazurile de dizolvare de drept sau prin hotarare judecatoreasca, lichidatorii vor fi numiți prin însăși hotărârea judecătorească. În cazul dizolvării hotarate de adunarea generala, lichidatorii vor fi numiți de către adunarea generală, sub sancțiunea lipsirii de efecte juridice a hotărârii de dizolvare. În toate cazurile, mandatul consiliului director încetează o dată cu numirea lichidatorilor.
- 22.7. După terminarea lichidării, lichidatorii trebuie să ceară radierea asociației sau fundației din Registrul asociațiilor și fundațiilor.

ART 24. EMBLEMA, STAMPILA SI PUBLICATII

- 23.1. Asociația poate avea propria emblema, care va fi aprobată de Adunarea Generală, la propunerea Consiliului Director.
- 23.2. Formularele și tipizatele Asociației, amprenta stampilei, precum și creația și conținutul site-ului web al Asociației vor fi aprobate de Consiliul Director. Formularele sau alte tipizate necesare asigurării exclusive a activității Mediatorului Bancar vor fi întocmite de Consiliul de Încredere la propunerea Mediatorului Bancar.
- 23.3. Asociația poate edita propriile publicații, precum și orice alte publicații tipărite în concordanță cu legile în vigoare.

ART. 25. MODIFICARI ALE ACTULUI CONSTITUTIV SI ALE STATUTULUI ASOCIATIEI

Orice propunere a membrilor Asociației privind modificarea Actului constitutiv și a Statutului va fi luată în considerare de Consiliul Director al Asociației, urmând a fi prezentată împreună cu recomandările sale Adunării Generale anuale sau Extraordinare a Asociației, cu 14 zile înainte de data stabilită pentru ținerea adunării.

ART. 26. SOLUTIONAREA DISPUTELOR

Eventualele neînțelegeri între membrii Asociației și între Asociație și alte persoane vor fi rezolvate pe cale amiabilă. În situația în care neînțelegerile nu vor fi rezolvate pe cale amiabilă, competența de soluționare aparține instanțelor judecătorești române .

Art. 27. DISPOZITII FINALE SI TRANZITORII

- 26.1. În situația în care există aspecte nereglementate de prezentul Statut, se vor aplica prevederile legii române.
- 26.2. Diferențele asupra modului de aplicare a prezentului Statut, sunt dezbătute și soluționate de Adunarea Generală.
- 26.3. La prezentul Statut sunt anexate tabelul nominal cu membrii Consiliului Director, Consiliului de Încredere și Cenzorul.

Prezentul Statut a fost redactat de parti, în _____ () exemplare, din care ____ () exemplare s-au eliberat părților și 1(un) exemplar pentru arhiva Cabinetului individual de avocatură _____, fiindu-i atestată data de avocat _____.

MEMBRI FONDATORI :

Anexa la Statut

Componenta Consiliului Director și Cenzorul:

Nr. Ctr.	Nume și Prenume	Funcția	Date identitate

Componenta Consiliului de Încredere

By Laws of the Romanian Banking Mediator

1. The Romanian Banking Mediator Scheme - overview

1.1. The Romanian Banking Mediator Scheme (hereinafter – Scheme) is an independent and voluntary self-regulatory scheme. It provides an accessible alternative to other remedies, such as court proceedings, for resolving disputes between individuals who use or intend to use banking services (clients or potential clients) and credit institutions.

1.3. The resolution of the disputes is to be performed by a mediator and deputy mediator who shall handle the complaints in accordance with the procedures set out in these Terms of Reference.

1.4. The principal powers and duties of the mediator and deputy mediator are to consider disputes within these Terms of Reference and to facilitate the satisfaction, settlement or resolution of such disputes whether by agreement and by making recommendations. It is not a function of the mediator or deputy mediator to provide general information about banking services providers or banking services.

1.5. The aim of the Scheme is to provide an independent and prompt resolution of the disputes described in these by laws on the basis of what is fair in the circumstances, having regard to:

- (a) law;
- (b) applicable industry codes or guidelines; and
- (c) good industry practice.

1.6. The Scheme is an incorporated non-profit entity, the management bodies of the Scheme being the Board and the Trust Council.

2. Principles governing Scheme's activity

2.1. Principle of independence and objectivity

The independence and the objectivity of the mediator and deputy mediator are ensured in order to guarantee the impartiality of their actions by the following means:

- a.** the persons appointed as mediator and deputy mediator must possess the abilities, experience and competence, particularly in the field of law, required to carry out their function;
- b.** the persons appointed as mediator and deputy mediator must be granted a period of office of at least 4 years in order to ensure the independence of their actions and shall not be liable to be relieved of their duties without just cause;
- c.** the persons appointed as mediator and deputy mediator must not, during the three years prior to assuming their present functions, have worked for the Romanian Banking Associations or for one of its members.
- d.** the mediator and deputy mediator are to be selected by the Trust Council out of the list of licensed mediators released by the Mediation Council;
- e.** the Trust Council assists in assuring that the Scheme is and remains independent;
- f.** the persons appointed as mediator and deputy mediator are entirely responsible for the handling and determination of complaints, accountable only to the Trust Council and Mediation Council for the

effective management of their entire activity (but neither the Trust Council nor the Mediation Council shall be involved in deciding any cases);

g. the mediator and deputy mediator may not be removed from office because of their decisions in cases. They may only be removed from office ahead of term either upon his/her own request or if they fail to duly perform their duties, according in the reasonable opinion of the Trust Council and the Mediation Council;

h. the mediator and deputy mediator shall be independent in their decision making;

j. Should the mediator decline the reviewing of a certain complaint, or should he/she be discharged from settlement thereof, or in case of his/her absence, or on other occasions where objective circumstances prevent him/her from fulfilling his/her duties, the duties of mediator shall be vested to the deputy mediator or a person (complying with **a** to **d** above) appointed by the Trust Council;

k. The Trust Council and the Board will ensure that the Scheme, the mediator and the deputy mediator are adequately resourced to carry out their respective functions.

The mediator's and the deputy mediator's remuneration will be set by the Trust Council.

2.2. Principle of transparency

The measures taken to ensure transparency of the procedure include:

1. The Scheme will provide the following information, in writing or any other suitable form, to any persons requesting it:

a. a precise description of the types of dispute which may be referred to the Scheme concerned, as well as any existing restrictions in regard to territorial coverage and the value of the dispute;

b. the rules governing the referral of the matter to the mediator or deputy mediator, including any preliminary requirements that the complainant may have to meet, as well as other procedural rules, notably those concerning the written or oral nature of the procedure, attendance in person and the languages of the procedure;

d. the type of rules serving as the basis for the mediator's or deputy mediator's decisions (as described in **1.4**),

e. the decision-making arrangements within the Scheme,

f. that the mediator or deputy mediator will issue recommendations, which are not legally binding on either party;

2. the publication by the mediator of an annual report setting out the decisions taken, enabling the results obtained to be assessed and the nature of the disputes referred to the Scheme to be identified.

2.3. Adversarial principle

All the parties concerned will be allowed to present their viewpoint before the mediator or deputy mediator and to hear the arguments and facts put forward by the other party, and any experts' statements.

2.4. Principle of effectiveness and accessibility

The effectiveness and accessibility of the procedure is ensured through the following measures:

a. the complainant will have access to the procedure without being obliged to use a legal representative;

b. the procedure is free of charges to the complainant;

c. the period elapsed between the referral of a matter and the decision will be as short as reasonably possible and, where practicable, of 30 days;

d. the mediator and deputy mediator will take an active role, thus enabling it to take into consideration any factors conducive to a settlement of the dispute.

2.5. Principle of legality

- a. The decision taken by the mediator or deputy mediator may not result in the complainant being deprived of the protection afforded by the mandatory provisions of the Romanian law. In the case of cross-border disputes, the decision taken by the mediator or deputy mediator may not result in the complainant being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which he/she is normally resident in the instances provided for under Article 5 of the Rome Convention of 19 June 1980 (or any provision replacing it) on the law applicable to contractual obligations.
- b. All decisions will be communicated to the parties concerned as soon as possible, in writing or any other suitable form, stating the grounds on which they are based.

2.6. Principle of liberty

- a. The decision taken by the mediator or deputy mediator will be a recommendation only and will not be binding on the parties.
- b. The complainant's retains his/her right to bring an action before the courts for the settlement of the dispute.

2.7. Principle of representation

The procedure will allow the parties the right to be represented or assisted by a third party at all stages of the procedure.

2.8. Principle of confidentiality

The mediation process is confidential. The Scheme will protect from disclosure for all purposes the personal and company information recorded in its files, except so far as it is necessary to quote them in the decision sent to the parties. The Scheme does not publish the names of businesses or consumers subject of a certain complaint.

2.9. Principle of consistency

The mediator and deputy mediator will ensure consistent treatment for both the complainant and the credit institution where the circumstances of cases are the same

2.10. Principle of reasonableness, clarity and accuracy

All communications with consumers will be clear and terminology-free to be easily understood by a normal person. Any information and direction provided by the Scheme must be accurate. The Scheme will make public its knowledge, experience and assistance.

3. Powers and duties of the mediator and deputy mediator

3.1. The main powers and duties of the mediator and deputy mediator are:

- a. to consider disputes within the by laws and to facilitate the satisfaction, settlement or resolution mediation of such disputes by agreement or by making recommendations ;
- b. to require a credit institution or complainant involved in a dispute to provide any information which in the mediator and deputy mediator view is necessary for complaint's resolution, when the purpose for which it is requested is deemed justified (including information related to banking secrecy which may be disclosed in cases when credit institution has a legitimate interest, in accordance with article 113 para. (2), lt. b) of Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy);
- c. to follow and implement any procedures and in the absence of an agreement between the parties, make recommendations;

- d. to decline to consider a dispute if it is outside the by laws or the information provided indicates that the mediator and deputy mediator could not fairly and reasonably exercise the dispute resolution powers;
- e. to dismiss a complaint, at any stage of the procedure, on the grounds that the complainant has misled the mediator and deputy mediator or has failed to cooperate in the process, or to respond to requests for information or comments within a reasonable time;

3.2. The main powers and duties of the mediator also include:

- a. to advise the public about the complaint making procedures;
- b. to issue bulletins or other information notes regarding banking practice;
- c. to determine, prepare, publish, and, from time to time, amend dispute resolution procedures which will apply to disputes;
- d. to publish and make available to the public on request an annual report containing details of the operation of the Scheme and compliance with by laws;
- e. to report to the Trust Council and to the Board on various issues as statistics, case studies of complaints for educational purposes etc;
- f. to adhere to international associations, specialized in mediation matters, in accordance with the provisions of the Act and the Statute of “Romanian Banking Mediator” association;
- g. to refuse the representation in front of ordinary court of justice or arbitration body in behalf of the part;
- h. to solve the complaints from individuals, in accordance with celerity and impartiality principles;
- i. to abide by the legislation in force the Deontology Code.

3.3. The mediator will have also other responsibilities as established by the Trust Council and/or the Mediation Council, in accordance with legislation in force.

3.3. The mediator and the deputy mediator may have also other responsibilities as established by the Trust Council and/or the Mediation Council, provided they are not inconsistent with these by laws and their independence.

4. Eligible complainants

The mediator or deputy mediator may only consider a dispute brought by an individual who:

- (i) has received the bank service that is the subject of the dispute; or
- (ii) has provided security over a bank service and either the security or the bank service is the subject of the dispute; or
- (iii) whose information is the subject of a dispute relating to confidentiality and privacy; or
- iv) has attempted to enter into a customer relationship with a bank for bank services.

5. Eligible complaints

5.1. The mediator or deputy mediator can only, subject to these by laws, consider a dispute which relates to any act or omission by a credit institution in relation to bank service or confidentiality/privacy:

- (a) rendered in Romania or elsewhere in the European Economic Area; and
- (b) where the amount in issue does not exceed EUR 50,000.

5.2. The mediator or deputy mediator cannot consider disputes:

- a. about credit institutions not affiliated to the Scheme;
- b. that have not been first considered by the credit institutions and all the procedures of internal dispute resolution have been completed (unless the credit institution does not complete them within 30 days);
- c. referred to the Scheme more than three years after the complainant knew (or should have known) about the act/omission;
- d. about systemic issues such as poor disclosure or communications, administrative or technical errors, product flaws, and improper interpretation or application of standard terms unless the complainant has suffered loss, damage, distress or inconvenience as a result;
- e. about the legitimate exercise of a credit institution's commercial judgment (the exercise of financial or commercial risk analysis in decision making) in decisions about lending, security, interest rates or general procedures¹ (but they can consider maladministration).²
- f. disputes already considered by the Scheme, unless new information likely to change the outcome has since become available;
- g. that the mediator or deputy mediator considers are more appropriately dealt within another forum³;
- h. that are considered by the mediator or deputy mediator, at their sole discretion, to be unreasonable (frivolous or vexatious or abusive)
- i. disputes where the consumer has not waived confidentiality rights to enable the mediator or deputy mediator to access otherwise confidential information;
- j. disputes in which the mediator or deputy mediator has been involved in the past or has a material interest in it.

5.3. The complaint shall provide at least the following on a complaint form provided by the Scheme (sample herewith attached):

- a. Data about the applicant: name, surname, identity code, residence address – in case of a natural entity;
- b. Name of the credit institution to which the complaint relates;
- c. Contents of the complaint and subject of claim;
- d. Circumstances verifying the complaint;
- e. Confirmation by the applicant to the effect that he/she is familiar with these by laws;
- f. Petition of the applicant to have the complaint reviewed in accordance with the provisions hereof;

¹ *Banks' general interest rate policy*, e.g. a dispute about an increase to the interest rate on a variable home loan product; *policy on fees and charges*, unless it relates to a fee or charge being incorrectly applied by the bank having regard to any scale of charges generally applied by that bank. A general dispute about the fairness of fees and charges or the amount of the fee or charge levied in accordance with the bank's policy and its terms and conditions, is not within the Mediator's jurisdiction; *bank's general management practice or policy*, e.g., a dispute about mergers of banks or ATM location would be outside the Terms of Reference.

² The mediator or deputy mediator can consider whether a lending decision was made on the basis of correct information, but (if it was) they cannot consider the lending decision itself. They can consider whether a charge or interest rate has been correctly applied in accordance with the credit institution's published tariff, but they cannot consider the amount of the charge or interest rate in the published tariff. They cannot consider a bank merger or the location of an ATM.

³ The Mediator may not consider a complaint or dispute that is the subject of any proceedings in any court or other independent dispute resolving body or an investigation by a statutory Ombudsman of any jurisdiction. In addition, if a consumer can make an allegation of fraud, conspiracy or theft by a bank staff, this issue might be better dealt with by the police or a court instead of the Scheme.

- g.** The applicant's authorization to the credit institution to disclose to the mediator and deputy mediator the information about the applicant's account and financial services provided to him/her, to the extent necessary for review of the complaint;
- h.** The applicant's confirmation to the effect that no claim on the subject of complaint has been lodged with the National Authority for Consumer Protection.

6. Procedures for complaint handling

The complaint handling activity shall be regulated by these by laws and by Law on Mediation. The issues not expressly provided for in the above-stated documents and not regulated by laws and other normative acts, shall be decided upon by the mediator or deputy mediator in the spirit hereof.

6.1. Receipt and verification of a complaint

- a.** If the Scheme receives a complaint the mediator and deputy mediator should first ascertain the eligibility of the complainant and of the complaint;
- b.** In ascertaining that a complaint falls within the by laws and, in reaching this decision they may consider representations from both the complainant and the credit institution named in the complaint. The complainant must give a brief account of the facts of the case, enclosing copies of the required documentation.
- c.** If the complaint does not fall within the by laws, it is considered inadmissible by the mediator or deputy mediator and the parties will be notified accordingly about this decision.
- d.** If the complaint is eligible on the strength of documentation provided by the complainant, the complaint will immediately become a dispute and the proceeding shall continue by giving notice to the customer and forwarding the complaint in writing to the complainant's bank. The mediator or deputy mediator will ensure that the credit institution concerned is given full details of the complaint, including copies of relevant documentation submitted to them.
- e.** The credit institution must acknowledge receipt of the notification to the mediator or deputy mediator. From the moment a complaint has been lodged with the Mediator, the credit institution shall have a period of 15 days from receipt of the communication to resolve the dispute with the complainant and provide the Mediator with its proof or repudiate the complaint.
- f.** If the Mediator believes that the credit institution has provided the assistance sought by the complainant or provided an acceptable explanation for its conduct complained of, the Mediator may inform the complainant of this fact and close the file.
- g.** If the credit institution fails to respond to the complaint within the stipulated time limit or informs the mediator or deputy mediator that it cannot resolve the dispute/provide any redress to the customer or it appears from the credit institution's response that the complaint has not been resolved, the complaint turns into a dispute and becomes subject of the Scheme proceedings.

6.2. Investigation / Assessment and Mediation

6.2.1. Investigation and assessment

- a.** The mediator or deputy mediator will investigate the complaint promptly and impartially based on the paperwork provided by the parties.
- b.** The mediator or deputy mediator may request the parties to provide, within 15 days maximum, additional comments and according to the case, release all non-privileged information in their possession or under control relating to the subject matter of the complaint, in order to clarify the matter in dispute. The mediator or deputy mediator will treat strictly confidential all information received.
- c.** The credit institution may ask the mediator or deputy mediator to extend the period for submitting of explanations. The credit institution may support its explanations with copies of the documents relevant to review of the complaint.

d. The mediator or deputy mediator shall receive the full cooperation and assistance of the credit institution the investigation of the complaint.

e. In order to settle a dispute speedily the mediator or deputy mediator may make an assessment of its merits without undertaking an investigation and suggest to the parties how the matter should be settled. They may specify also a 30 days time limit within which the parties must indicate whether or not they agreed to the suggested resolution of the dispute. Should either party disagree with the conclusion reached in the assessment or should either party wish to submit new information it may make further representations to the mediator or deputy mediator. Upon receipt of representations from either of the parties, a final recommendation may be issued without further consultation with either party.

6.2.2. Mediation

a. When the mediator or deputy mediator believes during the investigation process that the complaint is suitable for mediation they may at their sole discretion to ask parties to take part in the mediation and resolve the dispute by agreement between them. If either party declines to participate in the mediation, the complaint shall be dealt with in the usual way (i.e. investigation then recommendation).

b. All parties that take part in the mediation shall sign an agreement to mediate, acknowledging their rights and duties during the mediation.

c. If the complaint is not resolved this way, the mediator or deputy mediator shall complete the investigation of the complaint and proceed with the recommendation.

6.3. Recommendation

- At the end of investigation, if the mediator or deputy mediator uphold the complaint, they shall make a recommendation they deem appropriate to compensate the complainant for loss, damage or harm suffered by the complainant.

- The mediator or deputy mediator will seek a satisfactory resolution of disputes with a view to being fair to both parties: the complainant and the credit institution.

- In exercising their functions, the mediator or deputy mediator will take into account the applicable laws, the applicable industry codes of practice or guidelines of conduct, the banking practices in other jurisdictions and fairness in all the circumstances.

- The recommendation shall be in writing presented as a summary of the mediator or deputy mediator reasons.

- The credit institution and the complainant must advise the Mediator in writing within 10 days from receiving the final recommendation whether they accept the terms of the recommendation or not.

f. In case both parties fail to give advice in writing, the recommendation is presumed accepted.

g. Should either party disagree with the provisional recommendation or should either party wish to submit new information to affect the final decision, it may make further representations to the mediator or deputy mediator. Upon receipt of representations from either of the parties, a final recommendation may be issued without further consultation with either party.

h. The following cases may be observed:

i) If the credit institution does not accept the recommendation of the mediator or deputy mediator, the Scheme shall make that information public.

ii) If the complainant accepts the recommendation and the credit institution fails to respond within the time limit, the mediator or deputy mediator may proceed to issue a determination.

- iii) If the bank responds within the time limit, but the complainant rejects the recommendation or fails to respond within the time limit, the recommendation will fall away.
- iv) If both parties accept the terms of the recommendation, they must comply within the 30 days period of time prescribed in the recommendation.

i. The complaint handling procedures concludes with the submission of final recommendation.

6.4. Other provisions

6.4.1. All the notices and other communications shall be delivered with registered mail or otherwise, provided that the fact of delivery is fixed, or by hand delivery to the addressee against signature. Notices and communications shall be deemed received if delivered to the addressee in person or mailed to the mail address indicated by the addressee, or registered address of the legal entity, or residence address of the natural entity, or to the last known address.

6.4.2. The time limit for resolving a complaint is of 60 days. Should the above-stated period can not be observed for objective reasons, the mediator or deputy mediator may extend it by maximum three months from receipt of the complaint. If establishing of facts requires a longer period, the mediator or deputy mediator may by motivated decision extend the complaint review period to six months from receipt of the complaint, and notify the parties about it.

6.4.3. A complainant may, at any time prior to the issuing of a recommendation, terminate the Scheme handling of the complaint and resort to litigation or other dispute resolution process by withdrawing the complaint in writing.

6.4.4. All costs associated with the conduct and resolution of disputes in accordance with the by laws must be borne by the Scheme and the credit institutions in accordance with general payment procedures and cost arrangements determined by the Board. The consumer cannot be charged, even if a complaint or dispute is dismissed, for any professional or administrative costs.

7. Operational and funding of the Scheme

7.1. Daily Operations

- a. The mediator or deputy mediator must attend meetings of the Board and Trust Council and provide them on request with any necessary information and assistance.
- b. The Scheme will develop its own *Management Information System (MIS)*, which is a database from which all complaint and enquiry related information is extracted. The system captures not only written complaints, but also information provided over the phone from the complainant. The MIS reports generate information about consumers (name and personal details, type of complainant), banks, type of disputes, the status of dispute, dates in the resolution process, decisions taken with respective electronic records and timeframe, etc.
- c. The Scheme can use external services for performing activities such as accounting, payroll, cleaning, etc.

7.2. Staffing

- a. In order to respond and handle the complaints, the Scheme starts operating with one mediator, a deputy mediator, two experts and an executive assistant.
- b. The staffing will be increased according to the volume of complaints handled. The mediator will formulate well grounded proposals for the increase in the number of staff employed and will direct these proposals to the Trust Council for approval. The new staff will be selected by the mediator according to specific requirements and will be confirmed by the Trust Council;

7.3. Relationship with other institutions

- a.** The Scheme may co-operate with other *Industry Ombudsman Service* in the investigation of a complaint and may, if appropriate, make a joint recommendation when the subject matter of a complaint is one in which another Industry Ombudsman Service has expertise and the complainant and the credit institution give their consent.
- b.** If the Scheme detects patterns of complaints, it brings them to the attention of the credit institutions, association and other concerned institution in order to have them dealt with through Codes of Conduct, etc.
- c.** In case of systemic issues and serious misconduct (unethical behavior from bank staff) from the credit institutions, the Scheme should report the cases to the regulatory bodies and the scheme Board/Trust Council or the Banking Association.
- d.** The mediator and deputy mediator will report to the Mediation Council and keep up with the professional standards set up by the Council.
- e.** The Scheme will cooperate with *consumer protection associations and agencies*.
- f.** The Scheme will apply in order to become a member of FIN-NET.

7.4. Scheme's Funding Arrangements

The activity of the Scheme will be funded by the member credit institutions. The annual contributions of a credit institution consist of equal contributions plus variable contributions depending on the market share. After a relevant period of time, the variable contributions will be set up in relation with the number of complaints.

Sample of CONSUMER COMPLAINT FORM

DETAILS OF THE PARTIES

Name:
Address, street, Nr:
Town, post code:
Country:
Tel.:
Fax:
E-mail:
On behalf of* :
Name:
Address, street, Nr:
Town, post code:
Country:
Tel.:
Fax:
E-mail:
Other particulars:

* To be filled in only if the consumer's complaint is presented by a third party and not by himself. In this case, the consumer should put his signature under his name.

INSTRUCTIONS

- In order to identify your problem and your claim, the form offers a multiple choice of answers to each question. Please choose the answers (**one or more**) most appropriate to your case and, where appropriate, provide additional particulars in the space reserved for this purpose.
- It is recommended that this form be accompanied by **copies of supporting documents** and be sent by **registered post with acknowledgement of receipt or any other means making it possible to establish proof of dispatch and receipt** . A copy should be kept.

CONSUMER COMPLAINT

Date on which problem(s) was (were) encountered (day/month/year): / /

Indicate whether the problem has arisen for the first time or not:

Problem connected with:

1 " Product not delivered
2 " Service not provided/partially provided
3 " Delay in delivering product
4 " Delay in providing service
5 " Defective product
6 " Poor service

7 " Product not in conformity with order
8 " Products/services not ordered
9 " Damage suffered
10 " Refusal to honor the guarantee
11 " Refusal to sell
12 " Refusal to provide service
13 " Commercial practices/sales methods
14 " Incorrect information
Duration of delay:
Details:
15 " Inadequate information
16 " Payment arrangements
17 " Price
18 " Price increase
19 " Supplementary charges
20 " Unjustified costs/billing
21 " Terms of contract
22 " Coverage of contract
23 " Assessment of damage
24 " Refusal to pay compensation
25 " Inadequate compensation
26 " Modification of contract
27 " Poor performance of contract
28 " Cancellation / Rescission of contract
29 " Cancellation of service
30 " Loan reimbursement
31 " Interest demanded
32 " Failure to honor commitments
33 " Additional information
34 " Other type of problem:

(Indicate the date and place of purchase or signature of the contract, describe the product or service as well as the price, payment arrangements or any other information which may be useful in assessing your complaint):

35 " Delivery of the product or provision of the service
36 " Repair of the product or service
37 " Exchange of the product
38 " Cancellation of sale
40 " Honoring of commitments
41 " Conclusion of a contract
45 " Correction of assessment of damage
46 " Payment of an indemnification in the sum of:
47 " Reimbursement of a down payment in the amount of:

48	Reimbursement of other payments effected in the amount of:
49	Price rebate in the amount of:
50	Payment facilities
39	Enforcement of the guarantee
42	Cancellation / Rescission of contract
43	Cancellation of invoice
44	Information
51	Other particulars
52	Other type of request:

List of documents attached:

- 1.
- 2.
- 3.
- 4.

If an amicable settlement is not reached or in the absence of a reply within 60 days from dispatch of this complaint, I reserve the right to refer the matter to any competent body

Done at, on

SIGNATURE:

"

Detailed budget of the Romanian Banking Mediator

Budget	Executive	Board		Trust Council		Auditor	Total	
Total expenses							741,018	667,905
I Expenses with personnel, Board, Trust Council and auditor	512,590	96,165	48,696	44,877	19,233	6,411	660,043	586,930
II Administrative expenses							10,104	10,104
III Other expenses							70,871	70,871
Total revenues							741,018	667,905

Hypotheses

monthly gross wages	
mediator and deputy mediator	RON 10,000
expert	RON 5,000
assistant	RON 3,000
Board/Trust Council/Auditor fee per meeting	RON 500

Legend



Executive personnel and auditor - unvariable

Version with 15 Board members and 7 Trust Council members

Version 8 Board members and 3 Trust Council members