



FMB

Financial
Mediation
Bureau | Biro
Pengantaraan
Kewangan



annual
report
2012

Annual Report Cover Design

The design and symbols used signify FMB's vision to be the preferred alternate channel for dispute resolution. The "jigsaw" pieces symbolise FMB's mission to resolve "puzzles" (financial disputes) by fitting interlocking pieces (information) together. The "bricks" in the background depict FMB's role in building and strengthening consumer confidence in the financial sector.

It is said that mediation is like a "jigsaw" puzzle – you have lots of little interlocking pieces that do not look like they will ever fit together! So you work patiently on them – one piece at a time - paying close attention to each piece in your hand, while never losing sight of the desired outcome.

Litigation, on the other hand, is like a game of chess. You have two warring armies backed up with its squadron of helpers – and the two sides go to war. It is a game of cat and mouse, a competitive game, a game with only one winner!

Contents

2	Message from the Chairman
5	From the Desk of the CEO
8	Our Board
13	Our Members
17	Our Organisation and People
24	Our Background and Business
27	Overview of 2012
40	Case Studies
60	Consumer Awareness
62	Tribute to Mr John Thomas
63	FMB Staff Activities
64	Terms of Reference



Message from the Chairman



The Financial Mediation Bureau (FMB) started operations on 20 January 2005. Over the last eight years, FMB has grown from strength to strength as an alternative dispute resolution channel, both in terms of the number of enquiries received and the number of complaints registered and resolved by FMB. In line with the principle of accessibility, the services provided by FMB continue to be free of charge to complainants. FMB is now well recognised as an independent and impartial alternative dispute resolution channel and has emerged as an important component of the dispute resolution landscape in Malaysia.

Strategic Development

The success of FMB in resolving complaints contributes towards a sound, stable and competitive financial sector. FMB is expected to play an even bigger role with the establishment of the Financial Ombudsman Services (FOS) Scheme by Bank Negara Malaysia as outlined in Bank Negara Malaysia's Financial Sector Master Plan 2011 – 2020, and more so with the passing of the Financial Services Bill 2012 and the Islamic Financial Services Bill 2012 in December 2012. It is envisaged that FMB will be transformed into the operator of the FOS Scheme with expanded responsibilities and wider mandate to undertake broader range of disputes against the financial service providers (FSPs) when these Bills come into force during 2013.

Under the proposed legislation, Bank Negara Malaysia is empowered to issue regulations:

- for purposes of ensuring effective and fair handling of complaints and for the resolution of disputes in connection with financial services or products;
- requiring any class, category or description of FSPs to be a member of the FOS Scheme and to comply with the terms of membership at all times; and,
- setting out the scope including types of disputes that may be referred to the FOS Scheme, the eligible complainants, membership requirements, application, operations, procedures, the fees that may be charged and the type of awards which may be granted under the FOS Scheme.

Details of the FOS Scheme are currently being formulated by Bank Negara Malaysia in consultation with FMB and the industry. It will include the review of issues such as the need to introduce a levy structure which is more equitable, appeal mechanism, membership of the board of directors, scope of jurisdiction and type of awards to be granted under the FOS Scheme.

Once the broad parameters for the above review have been finalised, Bank Negara Malaysia is expected to engage with relevant stakeholders, including the FSPs and non-profit organisations which represent consumers' interests, to solicit feedback and comments on the FOS Scheme.

Impact on FMB

We would expect the FOS Scheme to have a direct impact on FMB's mandate and its financial resources, and would require substantial changes in the way FMB operates. Among others, FMB will have to undertake the following:

- review and amend its Memorandum and Articles of Association;
- put in place new corporate governance and structure for dispute resolution;
- reassess its complaint handling processes and IT infrastructure requirements; and
- engage qualified personnel as Ombudsmen and Case Managers.

FMB's Performance in 2012

On the operational aspects of FMB, I am happy to inform that in 2012, FMB received close to 14,000 enquiries from the general public through letters, emails, telephone calls and in-person (walk-ins), of which, 35 percent were enquiries on banking matters while 65 percent related to insurance. A total of 1,919 new complaints were registered by FMB, representing a decline of 13.7 percent (2011: 2,224 cases). The decline is likely due to, among others, improvements in handling of complaints and in resolving them by FSPs, and awareness programmes conducted to educate consumers.

A total of 2,718 cases were closed in 2012, of which, 1,161 cases related to banking and the remaining 1,557 cases were on insurance. The bulk of the cases were resolved by mediation (49.2 percent) and adjudication (32.7 percent) while the rest were attributed to withdrawal of complaints and those that fell outside the jurisdiction of FMB. The number of cases resolved over the last three years as a percentage of the total number of cases brought forward and new cases received during the corresponding period has been increasing steadily from 35.9 percent in 2010 to 52.7 percent in 2011 and subsequently to 60.9 percent in 2012.

As at 31 December 2012, 1,741 registered cases remained outstanding compared to 2,540 cases in 2011 and 3,150 cases in 2010. This represents the lowest number of cases outstanding over the last three years. This positive development (reduction in number of outstanding cases) is mainly due to greater efforts undertaken by FMB to resolve complaints expeditiously despite a reduction in the number of mediators.



Appreciation and Acknowledgement

I wish to commend the FSPs, who are members of the FMB, for their financial contributions by way of the annual levy and for extending their fullest cooperation and assistance to FMB, especially in providing all the information requested by FMB for purposes of resolving complaints. With such support, FMB is able to carry out its mandate in resolving complaints in the most effective and timely manner. On behalf of the Board of Directors and management of FMB, I wish to record our appreciation to all the FSPs for their generous and undivided support since the inception of FMB.

On behalf of the Board of Directors, I wish to extend my deepest appreciation to the management and staff of FMB for their commitment and dedication in resolving complaints expeditiously. We look forward to your support and cooperation in ensuring that the FOS Scheme would be successfully implemented in the near future.

I also wish to thank other stakeholders, especially Bank Negara Malaysia and the Securities Commission of Malaysia for the collaboration and opportunity to work together closely in promoting a culture of mutual responsibility by consumers and FSPs.

Last but not least, I wish to thank members of the Board of Directors for their active participation and valuable contributions throughout 2012. Your corporate experience, knowledge and able leadership at the various meetings of the Board and Board Committees have indeed brought about greater clarity in setting policy direction for FMB. I am confident that the Board will be able to continuously guide FMB to greater heights of achievement.



Tan Sri Dato' Seri Siti Norma binti Yaakob
Chairman

From the Desk of the CEO



It has been just over eight months since my appointment as Chief Executive Officer of the Financial Mediation Bureau (FMB). I have been on a steep learning curve since day one and I would like to thank my predecessor, John Thomas, for his guidance, and the support of the Board of Directors during the transition period.

Moving forward, the journey ahead would be equally challenging for FMB, especially in preparing ourselves to undertake a bigger role as the operator of the Financial Services Scheme (FOS) which necessitates legal, structural and organisational changes.

Against this background, close to 14,000 enquiries were received from the general public by FMB in 2012 – of which 1,919 (2,224 in 2011) new cases were registered – while 2,718 (2,833 in 2011) cases were closed. Of the 2,718 cases closed – 49.2 percent were by way of mediation – 32.7 percent through decision made by mediators – and the remaining 18 percent were withdrawn by the complainants or were eventually found to be outside the jurisdiction of FMB.

The number of cases outstanding as at 31 December 2012 was 1,741 – being the lowest over the last three years (2,540 in 2011 and 3,150 in 2010). FMB will continue to focus on reducing the time taken to resolve outstanding and new cases, notwithstanding the reduction in the number of mediators from seven to five in the middle of the year.

Complaint Handling and Processes

We need to take into account the shifting social media environment typified by Facebook and Twitter to ensure we remain effective in the way we communicate with our stakeholders, in particular, the financial consumers.

These shifts have altered the way in which financial consumers now want to engage with Financial Service Providers (FSPs) and FMB, as well as, the levels of service they expect from both. Financial consumers are becoming increasingly discerning and confident. They feel more empowered to ask questions, shop around, assert their rights, and share information with others, and to complain when they are not happy. Increasingly, more financial consumers expect a two-way dialogue – not one-way communication. FSPs whose decisions were previously regarded as unassailable, can now expect to be questioned and challenged.

There is, therefore, a continual need for FMB to develop a more efficient and effective dispute resolution service and this has always been our top priority. FMB faces constant challenges all the time, due to the volatility of caseloads, the rising volume of complaints and the growing complexity of disputes referred to us. Once FMB takes on the role as an approved FOS, challenges of similar nature are expected to be heightened due to its expanded mandate.



To further improve our efficiency and effectiveness, we have standardised the broad timeline to resolve cases. We have also carried out improvements to our complaints handling system, quality and accuracy of our data, and have begun streamlining our processes, without compromising on standards of service or quality. A Complaints Management System (CMS) was fully implemented in February 2012 by a dedicated team to efficiently generate reports and track status of cases online.

Our ability to settle complaints efficiently depends on a wide range of factors including – in each individual case – the extent of the factual issues that are in dispute, the complexity of the technical questions, the strength of legal arguments, and the willingness or otherwise of the parties involved to cooperate. A large part of the delay is found in the investigation process which requires submission of evidence (documentary or otherwise) from the parties.

Stakeholder Engagement

Our other priority is to enhance our public role and stakeholder engagement work. A new priority for the coming year is to continue to build public awareness of what we do and to reach out to all sections of the community.

We have also invested significant amount of time to engage FSPs to enable them to better understand our concerns on issues of common interest, the kind of feedback and information which would be helpful to us to resolve disputes and our decision-making process.

From various meetings with the financial consumers and FSPs, I have been encouraged by the general support on the role of FMB. Our strategic focus is to impress upon financial consumers and FSPs that mediation is the preferred method of dispute resolution as it delivers fast and fair dispute resolution.

Complaints Management Unit

During the year, we have also significantly strengthened our accessibility to ensure every complaint is looked into quickly, fairly and equitably. Towards this end, we have developed a pool of dedicated officers under the newly established Complaints Management Unit, who have handled close to 14,000 initial enquiries and complaints during the year. Of these, 65 percent of the queries/complaints were related to insurance matters and the remaining 35 percent to banking matters.

Other Operational Matters

a) Finance

In 2012, the levy collected from each member amounted to RM48,000.00 (2011: RM50,000.00) or RM5.14 million in aggregate (from 107 members) to finance FMB's operations. Total operating expenses incurred was RM5.58 million (2011: RM5.08 million), representing an increase of about 9.9 percent mainly attributed to increase in staff costs consisting of salaries, bonuses, gratuities and staff benefits.



The Management of FMB wishes to assure all its members that FMB's budgetary process is a robust one. FMB's policy has always been to adopt prudence and responsible spending based on substantiated operational needs. The bulk of the budget was to finance staff costs, office rental expenses and upgrading of IT infrastructure. As in any other organisation, FMB's annual budget as proposed by the Management was tabled and endorsed by the Board Audit Committee before it was approved by the Board of Directors.

b) Human Resources

As at 31 December 2012, FMB had a total of 40 staff, of which, 27 staff were in the Mediation Section (banking team and insurance team), comprising 5 Mediators, 14 Assistant Mediators, and 8 Administrative Assistants. The remaining 13 staff were from the IT, Human Resource, Corporate Affairs and Administrative sections. FMB continually evaluates its human resource requirement to ensure that it has sufficient resources to operate effectively and capable of achieving its mandate as an independent and effective dispute resolution channel.

Conclusion

At FMB, we strive to improve our performance and continually assess our resources and infrastructure to ensure we are able to deliver our mandate for the benefit of all our stakeholders. The immediate training and development of our staff and their welfare is paramount to the continued development and success of FMB and expected to be more so in the years ahead. We look forward to playing a bigger role in alternate dispute resolution especially when FMB is transformed into the operator of the FOS in the months ahead. FMB, jointly with Bank Negara Malaysia, is actively involved in the Working Group to transform FMB into the approved FOS. Consultation with members and the Board of Directors will be carried out by FMB and Bank Negara Malaysia in due course.

On this note, I wish to record my utmost appreciation to all our members for their undivided support and cooperation throughout 2012 in ensuring that FMB is able to carry out its mandate effectively and efficiently.

I also wish to record my heartfelt thanks to the Board of Directors for their invaluable guidance and trust given to FMB throughout 2012; in particular, the dedicated members in the Audit Committee, Mediation Oversight Committee and the Remuneration and Establishment Committee.

I also want to take this opportunity to wish John Thomas a long and happy retirement and all the best in his future endeavours. And finally, I wish to thank my fellow colleagues in FMB for their dedication, commitment and commendable performance in 2012.



Jeremy Lee Eng Huat
Chief Executive Officer
Financial Mediation Bureau



Our Board



Chairman

Tan Sri Dato' Seri Siti Norma binti Yaakob was appointed as Chairman, Board of Directors of the Financial Mediation Bureau in April 2009. Tan Sri Dato' Seri also holds positions in the following:

- Chairman of RAM Holdings Berhad
- Chairman of RAM Rating Services Berhad
- Chairman of RAM Ratings (Lanka) Limited
- Chairman of the Malaysia Competition Commission
- Director of Tenaga Nasional Berhad

Tan Sri Dato' Seri was called to the English Bar in 1962 and was the first woman appointed to an executive position in the Judicial and Legal Service in 1963.

She was elevated to the High Court Bench in 1983 and in 1994 became a Court of Appeal Judge. In 2001, she was made a Federal Court Judge and in February 2005 was appointed as Chief Judge of Malaya. She retired from the Judiciary in 2007.

In November 2007, she was appointed as the Chairperson of CIMB Foundation and in 2008, the Government of Dubai appointed her a Judge of the Dubai International Financial Centre (DIFC) Courts, the first female Judge to be appointed in the United Arab Emirates.

Tan Sri Dato' Seri's accolades include the Women Development Institute Fellowship in 1988, an international award as an Eisenhower Exchange Fellow in 1990, and the 'Anugerah Nur Gemilang 2001 – Guaman' in 2001. In November 2011, Tan Sri Dato' Seri was awarded the BrandLaureate Brand ICON Leadership Awards 2010-2011 and in November 2012, the "Tokoh Wanita Ikon 2011/2012 Award" by the Magazine "Wanita".



Deputy Chairman

Tan Sri Dato' Sri Tay Ah Lek was appointed to the Board of Directors of the Financial Mediation Bureau in December 2004.

Tan Sri Dato' Sri has 52 years' experience in the banking and finance industry. He holds a Master's degree in Business Administration from Henley, United Kingdom and attended the Advanced Management Program at Harvard Business School. He is an Emeritus Fellow of the Malaysian Institute of Management and is a Fellow of CPA Australia, the Financial Services Institute of Australasia, and the Institute of Bankers Malaysia.

Tan Sri Dato' Sri is currently the Managing Director of Public Bank. He was the Executive Vice-President of Public Bank from 1995 to 1997 and prior to that, Executive Vice-President of Public Finance.

Tan Sri Dato' Sri is presently the Chairman of the Association of Hire Purchase Companies Malaysia, a Member of the National Payments Advisory Council, and directors of Cagamas Holdings Bhd and ASEAN Finance Corporation Ltd.



Independent Director

Tan Sri Dato' V.C. George was appointed to the Board of Directors of the Financial Mediation Bureau in December 2004. Prior to that, he served as Chairman of the Council of the Banking Mediation Bureau (BMB) and the Insurance Mediation Bureau (IMB).

Tan Sri Dato' V.C. George was called to the English Bar from Lincoln's Inn in 1956. He was a legal practitioner at the Bar in Malaysia from 1957 until 1980, during which he was largely involved in commercial litigation matters. He was Chairman of the Bar Council from 1974 to 1976.

In 1981, he was elevated as judge of the High Court of Malaya and later served as Head of the Commercial Division of the Kuala Lumpur High Court. In 1993, he was appointed a Court of Appeal Judge, and retired in 1995. Tan Sri Dato' V.C. George has been an arbitrator since 1996 and is involved in both domestic and international arbitrations arising from commercial disputes.



Independent Director

Mr Ong Chong Hye was appointed to the Board of Directors of the Financial Mediation Bureau in December 2004.

He is a Fellow of the Chartered Institute of Bankers (England) and a Fellow of the Chartered Management Institute (UK). Mr Ong holds a Master's degree in Business Administration and is a Certified Financial Planner.

Mr Ong served Standard Chartered Bank PLC and its Malaysian subsidiary for 36 years where he held several senior positions in domestic and international banking before retiring as Head of Banking Services. During that time, he was involved in business continuity and crisis management as part of the Group Operational Risk Management team. He was the Chief Inspector of the bank in Malaysia and a member of the Group HR Assessment Centre. He also attended the Pacific Rim Banking Programme at the University of Washington.

Mr Ong sat on the Rules Committee of the Association of Banks in Malaysia (ABM) for over two decades. In addition, he had worked with the International Banking Commission, ICC Paris, in the development of the Uniform Customs and Practice for Standby Guarantees. He was also a member of the Panel of Experts in DOCDEX Rules, ICC Paris, on dispute resolution relating to international trade. Mr Ong is also Chairman of the Planters Benevolent Trust Malaysia and a Trustee of the Malaysian Estates Staff Provident Fund.



Independent Director

Encik Mohd Radzuan bin Abdul Halim was appointed to the Board of Directors of the Financial Mediation Bureau in December 2004.

He holds professional qualifications in Economics, Finance and Law. He holds a MBA (finance and investments) from UCLA and is a Barrister of Lincoln's Inn.

Encik Radzuan has 15 years' experience in the commercial and merchant banking sectors where his banking knowledge and experience saw him involved in two local bank rescues. Encik Radzuan has also served as a lecturer at the University of Malaya and the National University of Singapore. He is a regular contributor since 1998 to The Edge, Malaysia's leading financial journal.

In 2009, he was appointed by the Honourable Minister of MITI to the Academic Advisory Council, Economic Research Institute for ASEAN and East Asia (ERIA).





Independent Director

Datuk Dr Marimuthu Nadason was appointed to the Board of Directors of the Financial Mediation Bureau in December 2004.

Datuk Dr Marimuthu is a well-known consumer activist, social worker and campaigner in Malaysia. Among his current positions, he is Chief Executive Officer of ERA Consumer Malaysia, Vice Chairman of Institute of Marketing Malaysia (IMM), President of the Federation of Malaysian Consumer Association (FOMCA) and President of Malaysian Association of Standards Users.

At the international arena, Datuk Marimuthu is a council member of Consumers International (CI) since 2007. He has continuously supported CI's global work as well as extending support to the regional office for Asia Pacific and the Middle East, based in Malaysia.

He acts in an advisory role for a number of organisations and committees including being Chairman of National Consumer Complaints Centre, Chairman of the Consumer Research and Resource Centre, Commissioner for the National Water Services Commission and Chairman of the Industrial Standards Committee for Organisational Management Department of Standards, Ministry of Science, Technology and Innovation. He was also appointed as the council member of National Economic Consultative Council under the Prime Minister's Department in year 2004 and the council member of the National Standard and Accreditation Board under the Department of Standards Malaysia. He is also Chairman of the National Consumer Advisory Council since 2011.

Among his academic qualification, he holds a Doctor of Business Administration (DBA) from International American University and Double Master's Degree in Business Administration (with a Concentration in Human Resource Management). He is also an Accredited Public Relation Practitioner (APR) and a Certified Professional Marketeer (CPM) from Asian Marketing Federation.



Independent Director

Mr Wong Teck Kat was appointed to the Board of Directors of the Financial Mediation Bureau from 2005 to 2009, and reappointed in 2012. He currently represents the General Insurance Association of Malaysia (PIAM) as an Independent Member in the Joint Insurance-Takaful Council.

He is a Chartered Insurer, Associate of the Chartered Insurance Institute and Master of Business Administration from Henley Management College/ Brunel University, United Kingdom.

Mr Wong began his career in General Insurance in 1970, with the Commercial Union Group. In 1974, he became the first trained Fire Surveyor in Malaysia. Subsequently, he was appointed as the Chief Executive Officer of Malaysia & Nippon Insuran Bhd and Zurich Insurance Malaysia respectively and retired in 2009.

He has served as a Member of the Management Committee of Persatuan Insurans Am Malaysia (PIAM) for over 10 years and held distinguished positions in the following:

- Board Member of ISM Insurance Services Sdn Bhd
- Chairman of Motor Insurance Bureau of West Malaysia
- Chairman of the Board of Directors of the Insurance Mediation Bureau





Non-Executive Non-Independent Director

Ms Chuah Mei Lin was appointed to the Board of Directors of the Financial Mediation Bureau in August 2009.

Ms Chuah, who serves as an Executive Director of the Association of Banks in Malaysia (ABM), represents ABM on the Board of Directors of the Financial Mediation Bureau. She is also the alternate director on the Board and Executive Committee of ASEAN Finance Corporation Limited, Singapore.

A lawyer by training, Ms Chuah has extensive experience in financial services and the securities industries. Prior to this appointment, she headed the Corporate Strategy Division of Affin Bank Berhad and in her interesting career path was at one time a member of the senior management of Bursa Malaysia Securities Berhad.



Non-Executive Non-Independent Director

Mr Lim Chia Fook was appointed to the Board of Directors of the Financial Mediation Bureau in October 2009.

Mr Lim holds a Bachelor of Science degree (1st Class Honours in Genetics, UM – 1980), a Master of Philosophy (UM – 1983), and is a Graduate of the Insurance School of Japan (Tokyo – 1987). He is an Associate of the Malaysian Insurance Institute (AMII) since 1990.

Mr Lim was the Executive Director/Secretary of the Persatuan Insurans Am Malaysia (PIAM) since 1996. He retired from the Association in December 2012.

Mr Lim has contributed significantly to the technical and strategic development of the general insurance industry in Malaysia after more than 29 years of service with PIAM.

He is also a member of the following bodies:

- Member of the Board of Directors, Malaysian Rating Corporation Bhd
- Member of the Board of Directors, Kiwanis Kidney Dialysis and Stroke Foundation
- Member of the Board of Trustees, MNRB Scholarship Fund
- Member, Investigating Tribunal, Advocates & Solicitors' Disciplinary Board
- Executive Committee Member, ASEAN Insurance Council
- Executive Board Member, East Asian Insurance Congress





Non-Executive Non-Independent Director

Datin Veronica Selvanayagy was appointed to the Board of Directors of the Financial Mediation Bureau in October 2011.

Datin Veronica was called to the Bar in 1991 and was in private practice for a period of 6 years handling both litigation and conveyancing matters. She subsequently joined the insurance industry as Head of the legal team of AIA Malaysia. Datin Veronica has 15 years' experience and expertise in the local insurance industry that include corporate mergers and acquisitions, joint ventures and general consultation. She also had legal responsibility for the AIA entities in India, Sri Lanka and Indonesia.

Datin Veronica is currently the General Counsel in AIA Malaysia overseeing the legal, compliance and company secretarial functions for AIA Bhd, AIA Shared Services and AIA AFG Takaful Bhd. Datin Veronica is also active in the legal field and local insurance industry where she holds the following positions:

- Member of the Malaysian Financial Planning Council (MFPC) Disciplinary Committee
- Member of the Bar Council Disciplinary Committee Panel since 2008
- Member of the Administration and Finance Committee of Life Insurance Association Malaysia (LIAM)
- Chairman of the Task Force on Personal Data Protection Act 2010 of the Life Insurance Association Malaysia (LIAM)



Non-Executive Non-Independent Director

Dato' Syed Moheeb bin Syed Kamarulzaman was appointed to the Board of Directors of the Financial Mediation Bureau in April 2012. He was a non-independent Executive Director and also the President and Chief Executive Officer of Takaful IKHLAS. He retired from Takaful IKHLAS in 2012.

Dato' Syed Moheeb has over 38 years' experience in the insurance, reinsurance and Takaful industry.

He is currently a Board member of the MII and sits on its Executive Committee. He sits on the Board of the Asian Institute of Finance and also the Islamic Banks and Financial Institution Malaysia. He is a member of the Professional

Development Committee of the International Centre for Islamic Finance, a global university for Islamic Finance.

He was appointed to the Board of the International Cooperative and Mutual Insurance Federation (ICMIF), chaired the Takaful Network of ICMIF, and currently provides advisory services on Takaful and Microtakaful.



Our Members

INSURANCE AND TAKAFUL (as at December 2012)

Life Insurance Companies

- 1 Allianz Life Insurance Malaysia Berhad
- 2 AmLife Insurance Berhad
- 3 AXA Affin Life Insurance Berhad
- 4 CIMB Aviva Assurance Berhad
- 5 Great Eastern Life Assurance (Malaysia) Berhad
- 6 Hong Leong Assurance Berhad
- 7 Manulife Insurance Berhad
- 8 Tokio Marine Life Insurance Malaysia Bhd
- 9 Uni.Asia Life Assurance Berhad

General Insurance Companies

- 10 ACE Jerneh Insurance Berhad
- 11 AIG Malaysia Insurance Berhad
- 12 Allianz General Insurance Company (Malaysia) Berhad
- 13 AmG Insurance Berhad
- 14 AXA Affin General Insurance Berhad
- 15 Berjaya Sompo Insurance Berhad
- 16 Kurnia Insurans (Malaysia) Berhad
- 17 Lonpac Insurance Bhd
- 18 MSIG Insurance (Malaysia) Bhd
- 19 Multi - Purpose Insurans Bhd
- 20 Overseas Assurance Corporation (Malaysia) Berhad
- 21 Pacific & Orient Insurance Co. Berhad
- 22 Progressive Insurance Bhd
- 23 QBE Insurance (Malaysia) Berhad
- 24 RHB Insurance Berhad
- 25 The Pacific Insurance Berhad
- 26 Tokio Marine Insurans (Malaysia) Berhad
- 27 Tune Insurance Malaysia Berhad
- 28 Uni.Asia General Insurance Berhad



Composite Insurance Companies

- 29 American International Assurance Bhd
- 30 Etiqa Insurance Berhad
- 31 ING Insurance Berhad
- 32 MCIS Zurich Insurance Berhad
- 33 Prudential Assurance Malaysia Berhad
- 34 Zurich Insurance Malaysia Berhad

Takaful Operator

- 35 AIA AFG Takaful Bhd
- 36 CIMB Aviva Takaful Berhad
- 37 Etiqa Takaful Berhad
- 38 Great Eastern Takaful Sdn Bhd
- 39 Hong Leong MSIG Takaful Berhad
- 40 HSBC Amanah Takaful (Malaysia) Sdn Bhd
- 41 ING PUBLIC Takaful Ehsan Berhad
- 42 MAA Takaful Berhad
- 43 Prudential BSN Takaful Berhad
- 44 Syarikat Takaful Malaysia Berhad
- 45 Takaful Ikhlas Sdn Bhd

General Reinsurance Company

- 46 Malaysian Reinsurance Berhad

CONVENTIONAL AND ISLAMIC BANKS (as at December 2012)

Commercial Banks

- 47 Affin Bank Berhad
- 48 Alliance Bank Malaysia Berhad
- 49 AmBank (M) Berhad
- 50 Bangkok Bank Berhad
- 51 Bank of America Malaysia Berhad
- 52 Bank of China (Malaysia) Berhad
- 53 Bank of Tokyo-Mitsubishi UFJ (Malaysia) Berhad
- 54 BNP Paribas Malaysia Berhad
- 55 CIMB Bank Berhad
- 56 Citibank Berhad
- 57 Deutsche Bank (Malaysia) Berhad
- 58 Hong Leong Bank Berhad

Commercial Banks

- 59 HSBC Bank Malaysia Berhad
- 60 Industrial and Commercial Bank of China (Malaysia) Berhad
- 61 J. P. Morgan Chase Bank Berhad
- 62 Malayan Banking Berhad
- 63 Public Bank Berhad
- 64 OCBC Bank (Malaysia) Berhad
- 65 RHB Bank Berhad
- 66 Standard Chartered Bank Malaysia Berhad
- 67 Sumitomo Mitsui Banking Corporation Malaysia Berhad
- 68 The Bank of Nova Scotia Berhad
- 69 The Royal Bank of Scotland Berhad
- 70 United Overseas Bank (Malaysia) Bhd

Islamic Banks

- 71 Affin Islamic Bank Berhad
- 72 Alliance Islamic Bank Berhad
- 73 Al Rajhi Banking & Investment Corporation (Malaysia) Berhad
- 74 Amlslamic Bank Berhad
- 75 Asian Finance Bank Berhad
- 76 Bank Islam Malaysia Berhad
- 77 Bank Muamalat Malaysia Berhad
- 78 CIMB Islamic Bank Berhad
- 79 Hong Leong Islamic Bank Berhad
- 80 HSBC Amanah Malaysia Berhad
- 81 Kuwait Finance House (Malaysia) Berhad
- 82 Maybank Islamic Berhad
- 83 OCBC Al-Amin Bank Berhad
- 84 Public Islamic Bank Berhad
- 85 RHB Islamic Bank Berhad
- 86 Standard Chartered Saadiq Berhad



Investment Banks

- 87 Affin Investment Bank Berhad
- 88 Alliance Investment Bank Berhad
- 89 AmInvestment Bank Berhad
- 90 CIMB Investment Bank Berhad
- 91 HwangDBS Investment Bank Berhad
- 92 KAF Investment Bank Berhad
- 93 Kenanga Investment Bank Berhad
- 94 Maybank Investment Bank Berhad
- 95 MIDF Amanah Investment Bank Berhad
- 96 OSK Investment Bank Berhad
- 97 Public Investment Bank Berhad
- 98 RHB Investment Bank Berhad

Development Financial Institutions

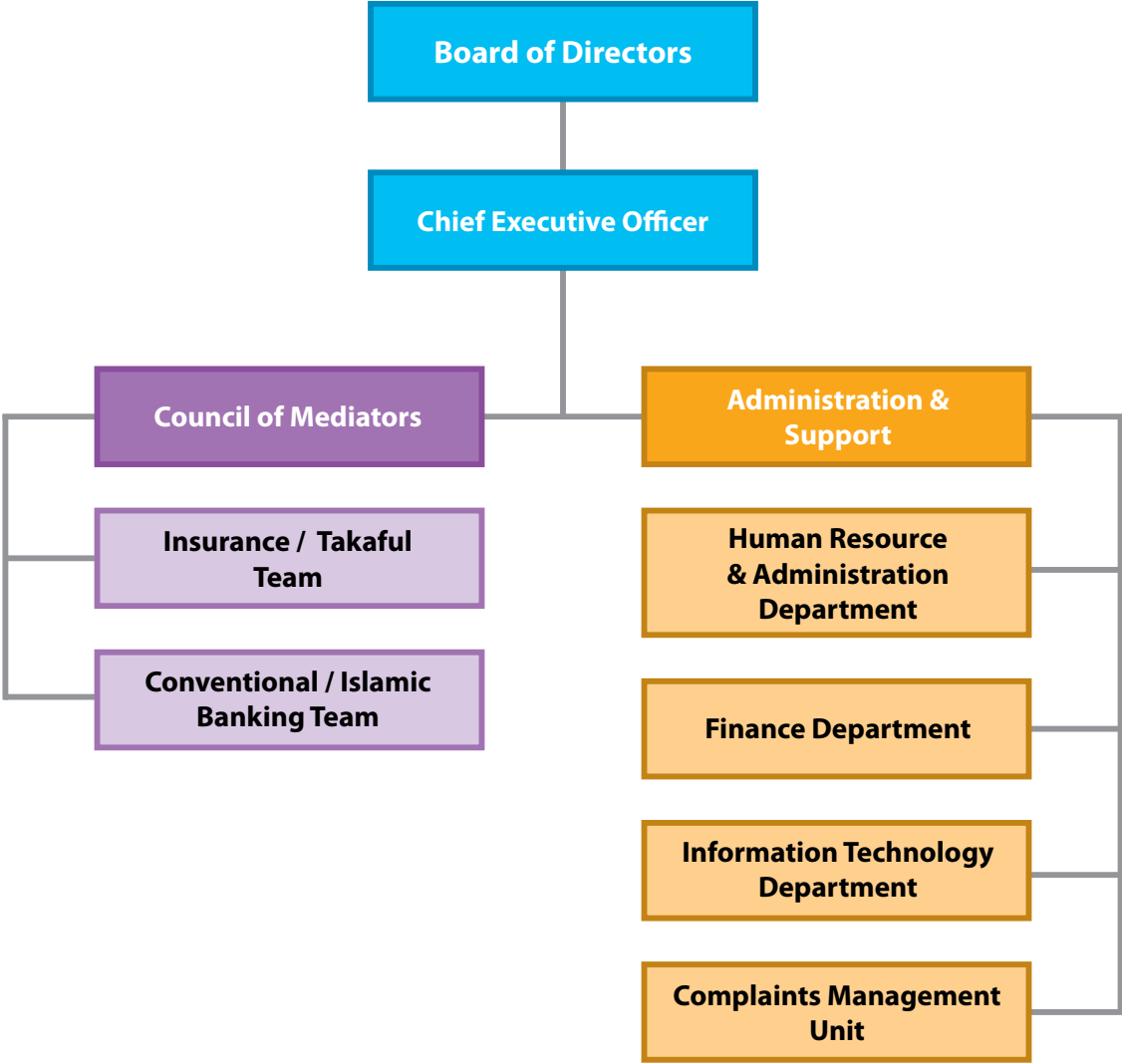
- 99 Bank Kerjasama Rakyat Malaysia Berhad
- 100 Bank Pembangunan Malaysia Berhad
- 101 Bank Perusahaan Kecil & Sederhana Malaysia Berhad (SME Bank)
- 102 Bank Simpanan Nasional
- 103 Export-Import Bank of Malaysia Berhad (EXIM Bank Malaysia)

Payment System Operators & Payment Instrument Issuers

- 104 AEON Credit Service (M) Berhad
- 105 Diners Club (Malaysia) Sdn Bhd
- 106 MBF Cards (M'sia) Sdn Bhd



Our Organisation



Our People



Left to Right: Kumar, Jenny, Jeremy, Marina, Ganesan and Nair



- **Chief Executive Officer**

Jeremy Lee Eng Huat was seconded from Bank Negara Malaysia (BNM) as the new CEO of Financial Mediation Bureau (FMB) with effect from 1 August 2012.

He obtained bachelor degrees in Economics and Jurisprudence from the University of Malaya, respectively. He successfully obtained the Certificate in Legal Practice (CLP) in 2000. Thereafter, Jeremy read law at Boston University School of Law, Massachusetts, USA in 2001 where he subsequently graduated with LL.M (International Banking and Financial Laws).

Jeremy has over 26 years' central banking experience, during which he held senior positions in various departments in BNM. This includes overseeing and regulating the banking and insurance industries and representing Malaysia for trade in financial services negotiations at various levels ranging from multi-lateral level (World Trade Organisation), regional (ASEAN + 3 Platform) and bilateral (Malaysia - Japan FTA, Malaysia - Australia FTA, Malaysia - USA FTA).

Jeremy served as the Director for the Financial Intelligence Unit (August 2006 - November 2008), Legal Department (December 2008 - September 2011) and Special Investigation Unit (October 2011 - July 2012) of BNM.

As CEO of FMB, Jeremy currently heads the Council of Mediators of FMB and provides strategic direction, leadership and guidance to the Bureau's 40-strong team comprising Mediators, Assistant Mediators and Operations staff.



- **Mediator**

Ganesan Somasundram was appointed as a Mediator in July 2009.

He holds an Honours Degree in Laws (LL.B) from the University of London and a Master's Degree in Comparative Laws (MCL) from the International Islamic University, Malaysia. Ganesan also holds a Certificate in Legal Practice from University of Malaya. He was admitted to the Malaysian Bar as an Advocate & Solicitor of the High Court of Malaya in 1997.

Ganesan served as an Administrative Officer in the Malaysian Civil Service before being transferred to the Judicial and Legal Service. His judicial appointments included serving as Magistrate, Senior Magistrate and Senior Assistant Registrar of the High Court. He subsequently served as a Deputy Public Prosecutor in the Attorney General's Chambers before opting for early retirement. He then joined the Legal Department of Bank Negara Malaysia (BNM) and served as BNM's Prosecutor for 9 years before being appointed as a Mediator in the Financial Mediation Bureau.

Ganesan currently heads a team of Assistant Mediators handling all disputes related to General Insurance, Takaful and Third-Party Property Damages that are within the jurisdiction of FMB.



- **Mediator**

Kalyana Kumar Sockalingam was appointed as a Mediator in July 2009.

He graduated with a LLB (Hons) from University of East Anglia, Norwich, UK in 1987. He was called to the Malaysian Bar in 1990.

Kumar served in the Malaysian Judicial and Legal Services for 18 years during which time he held appointments as Magistrate, Senior Assistant Registrar of the High Court (Bankruptcy Division), Deputy Registrar of the High Court (Commercial Division) and Deputy Registrar of the Federal Court.

Kumar is the author of the book Halsbury's Laws of Malaysia on Bankruptcy Law. Kumar currently heads a team of Assistant Mediators handling all insurance disputes related to Life and Medical claims that are within the jurisdiction of FMB.



- **Mediator**

Marina Baharuddin was appointed as a Mediator in October 2010.

She holds a Bachelor of Business Degree with major in Finance from Edith Cowan University, Perth, Western Australia and Bachelor of Laws (LL.B Hons) from the University of Hertfordshire, United Kingdom.

Marina joined the Banking Mediation Bureau as an Assistant Mediator in 1998 and was subsequently promoted to the post of Mediator. Prior to that, she had served five years in a financial institution and was a branch manager prior to joining FMB. She has vast experience in banking operations, loans supervision, credit and marketing.

She is an Accredited Mediator and is an Affiliate member of the Financial Services Institute of Australasia (FINSIA).

She currently heads a team of Assistant Mediators handling all banking disputes related to operations (savings, current, FD, cheques etc.), contract and electronic payments issues that are within the jurisdiction of FMB.





- **Mediator**

Kunju Krishnan Chathu Nair was appointed as a Mediator in February 2011.

He holds a Bachelor of Science degree from the University of Malaya (1975) and worked as a research officer with the Ministry of Science for 5 years. Thereafter, he served as a senior prosecuting officer with the Customs Department for 10 years.

He joined the Judicial and Legal Service in 1990 as a Magistrate after obtaining his Bachelor of Laws (Hons) degree from the University of London and was admitted to the Malaysian Bar in 2005. He served as a Deputy Registrar in the High Court from 1996 – 2003 and was subsequently appointed as a Sessions Court Judge in 2004. He retired from the bench in 2010.

He currently heads a team of Assistant Mediators handling all banking disputes related to Electronic Payments, Card-Based issues and Unauthorised ATM Withdrawals that are within the jurisdiction of FMB.



- **Mediator**

Jenny Lee was appointed as a Mediator in March 2011.

She holds a Bachelor of Laws (with Honours) from the University of London and was admitted as an Advocate & Solicitor of the High Court of Malaya in 1997.

Jenny has been in legal practice for over 15 years and was a founding partner of a legal firm (2000 - 2010). There she specialised in land, banking, insurance and corporate law and gained valuable experience in banking products, claims procedures and management. While her expertise lies in civil litigation and arbitration, her skills also include negotiation and dispute resolution through mediation.

She currently heads a team of Assistant Mediators handling disputes related to Motor Insurance matters that are within the jurisdiction of FMB.



the Mediation Team

Left to Right: Intan, Masni, Kalyani, Sim, Noorul, Nehrman, Suryati, Suresh, Yusdinar, Thevan, Kamsimah, Chin and Uma

Assistant Mediators (Insurance Team)



Uma Devi Nadarajan joined FMB in October 2007. She obtained her Bachelor of Laws (Hons) degree from the University of Sheffield Hallam, England and was admitted to the Malaysian Bar in 1998.

She began her career in legal practice before joining the insurance industry. She has 8 years' experience in motor-related claims prior to joining FMB.

Uma currently handles insurance disputes and complaints related to Motor Insurance claims.



Intan Khadiza Mohamad Amin joined FMB in January 2010. She graduated from the International Islamic University, Malaysia with a Bachelor of Laws (Hons) and was admitted as an

Advocate and Solicitor of the High Court of Malaya in 1999.

She holds a Diploma of the Malaysian Insurance Institute (DMI) and LOMA's Associate Customer Service. She was in the Insurance industry for 8 years prior to joining FMB.

Intan currently handles insurance disputes and complaints related to Life and Medical claims.





Kamsimah Mohamed joined FMB in August 2008. She graduated from the International Islamic University, Malaysia in 1991 with a second class upper degree of the Bachelor of Laws. She was admitted to the

Malaysian Bar in 1992 and practised civil litigation for six years. She was a Human Resource Officer cum Legal Advisor with a non-profit organisation before joining FMB.

Kamsimah currently handles insurance disputes and complaints related to Conventional Insurance Third-Party Property Damage.



Nadzeerah Abdullah joined FMB on 1 April 2009. She holds a Degree in Law from the International Islamic University, Malaysia and was admitted to the Malaysian Bar as an Advocate and Solicitor

of the High Court of Malaya in 1993. She was called to the High Court of Sabah and Sarawak (Kota Kinabalu) in 1994. She practised law in several legal firms specialising in conveyancing matters and civil litigation prior to joining FMB.

Nadzeerah handles insurance disputes and complaints related to General Medical claims.



Thevantharen Muniandy joined FMB in December 2010. He obtained his Bachelor's degree in Social Administration (BA Hons) from the University of Malaya. He was in the insurance industry for

more than 10 years, managing all motor-related claims such as Own Damage, Windscreen, Third Party Property Damage and Theft.

Thevantharen is an Accredited Mediator who currently handles insurance disputes and complaints related to Motor Insurance claims.



Masni Sulaiman joined FMB in January 2011. She graduated from Staffordshire University, United Kingdom with a Bachelor of Laws (Hons) and upon graduation, worked in the insurance industry.

She has more than 10 years' experience in general claims.

Masni currently handles insurance disputes and complaints related to Life and Medical claims.



VG Nehrman joined FMB in January 2011. He obtained his Bachelor Degree in Banking & Finance from the University of London (External). He is an Associate Member of the Malaysian Insurance

Institute (AMII). Nehrman served as a Loss Adjuster with several Loss Adjusting companies and was a Claims Executive with a leading insurance company before joining FMB. He is also an Accredited Mediator with the Malaysian Bar Council.

Nehrman currently handles insurance disputes and complaints related to non-motor/non- medical General Insurance claims.



Noorul Ashekin Hamidun joined FMB in January 2011. She holds a Degree in Law from the International Islamic University, Malaysia and was called to the Malaysian Bar as an Advocate and Solicitor of the High

Court of Malaya in 1995. Noorul subsequently worked in a legal firm before joining an insurance company for 3 years, followed by 10 years in the Takaful industry specialising in claims and project management office.

Noorul currently handles disputes and complaints related to Takaful matters.

Assistant Mediators (Banking Team)



Chin En Ai joined FMB in November 2007. She holds a Bachelor of Laws (Hons) from University of London. She was admitted to the Malaysian Bar as an Advocate and Solicitor of the High Court of Malaya and

has practiced law relating to conveyancing, banking matters and civil litigation prior to joining FMB.

She is an Accredited Mediator who currently handles banking disputes and complaints related to Electronic Payments.



Kalyani Sankaranarayanan joined FMB in January 2010. She holds a Masters in Law in Alternative Dispute Resolution (LLM), Certificate in Legal Practice (CLP), Bachelor Degree in

Law (LLB), and a Diploma in Banking & Finance (IBBM). She has served the banking industry in various positions for over 30 years and was the Customer Experience Manager handling complaints in a foreign bank prior to joining FMB.

She is an Accredited Mediator who currently handles banking disputes in relation to complaints on Contractual and Operational issues.



Sim Boon Kee joined FMB in January 2011. He obtained his Bachelor's Degree in Business Administration from RMIT University, Australia. He holds certification in accounting, banking

and financial planning and was a Branch Manager in a local bank prior to joining FMB.

Sim currently handles banking disputes and complaints relating to Electronic Payments, Contractual and Operational matters.



Yusdinar Yaacob joined FMB in March 2011. She obtained her degree in Bachelor of Science (Hons) Actuarial Science from City University, London. She has 17 years of working experience in various

departments in banking and insurance industries covering sales and operational matters.

Yusdinar currently handles banking disputes and complaints related to Credit Cards and unauthorised ATM withdrawals.



Suresh Thillynathan joined FMB in April 2011. He obtained his Bachelor's Degree in Science (Hons) in Computing from Staffordshire University, UK. His prior experience, before joining FMB,

was in the banking sector specialising in banking services and operations for 8 years. He is an Accredited Mediator with the Malaysian Bar Council.

Suresh currently handles banking disputes and complaints related to Internet Banking.



Suryati Hamzah joined FMB in May 2011. She holds a Bachelor of Laws (Hons) from the University of London and University Of Institute Technology Mara. She was called to the Malaysian Bar

in 2002 as an Advocate and Solicitor of the High Court of Malaya and practised law with several legal firms for 9 years, specialising in banking and civil litigation.

Suryati currently handles banking disputes and complaints related to Credit Cards.



Our Background and Business

The Financial Mediation Bureau (FMB) was incorporated on 30 August, 2004 and officially commenced operations on 20 January, 2005. It is a company limited by guarantee.

FMB is a non-profit organisation set up by Bank Negara Malaysia (BNM) as an alternative avenue to resolve complaints between the Financial Service Provider (FSP) and the customer, without having to go to court. FMB prides itself on being fair and independent in handling disputes with the FSPs, which are under the supervision of BNM, in banking (conventional and Islamic) and insurance/takaful related disputes.

FMB is headed by the Chief Executive Officer who reports to the Board of Directors. A team of professionally qualified and experienced Mediators handle disputes that fall within the jurisdiction of FMB.

Our Vision

To be an independent, well respected and renowned organization for providing fair, impartial and timely mediation to the consumers of services in the financial services industry.

Our Mission

- To provide free, effective and prompt resolution of disputes, claims and complaints arising from services provided by financial service providers (which presently comprise the commercial banks, Islamic banks, merchant banks, finance companies, insurance companies, takaful operators and card issuers).
- To deal with all the disputes, claims and complaints in an independent, impartial and fair manner.
- Endeavour to dispose off all disputes, claims and complaints within 3 calendar months, from the date we receive the required complete documentation for each of the disputes, claims and complaints referred to us by the consumers.

Our Shared Values

FMB's shared values are based on integrity and independence of its decisions, professionalism in handling disputes, competence and knowledge to carry out duties in an impartial manner, and courtesy in engaging with both the FSPs and complainants.

Overview of FMB's Jurisdiction (refer to page 64 for details)

Conventional and Islamic Banking

- Personal & Housing Loans
- Automated Teller Machines (ATM) & Cash Deposit Machines
- Credit & Charge Cards
- Hire Purchase
- Savings & Current Accounts
- Fixed Deposit / General Investment Accounts
- Remittances
- Electronic Banking/Internet Banking

Complaints must not exceed RM100,000.00 for the above products/services; however, for fraud cases involving payment instruments (Credit Cards, Charge Cards, ATM Cards & Cheques) the limit is not more than RM25,000.00.



Insurance/Takaful

- Motor and Fire Insurance/Takaful products where complaints do not exceed RM200,000.00
- Other insurance/Takaful products (life, medical, burglary claims etc.) not exceeding RM100,000.00
- Third Party Property Damage (TPPD) not exceeding RM5,000.00

Exclusions

FMB is not empowered to handle complaints regarding:

- General pricing & product policies
- Services of Members
- Complaints against Non-Members
- Credit decisions (approvals, rejection & rescheduling of loans)
- Fraud cases in general, other than those for which the limit is not more than RM25,000.00
- Cases which are time-barred or more than 6 years
- Cases which have been referred to the courts and/or for arbitration
- Actuarial matters

Our Business — Mediation

The manner of resolution of complaints by the Mediator comprises two stages:

I. Caucus/Mediation

The Mediator facilitates discussions between FSP and its customer (the complainant) and assists parties to work towards an amicable settlement.

II. Decision Stage

Where there is an impasse, the Mediator will issue a decision which is binding on the FSP [Article 55 (f) of the Memorandum and Articles of Association]. If the complainant does not accept the decision by the Mediator, it is not binding on the complainant as it is made without prejudice to his legal rights of action via other channels or avenues.

The Memorandum and Articles of Association of the Financial Mediation Bureau does not provide an appeal procedure whereby a dissatisfied party may appeal to a higher authority within the Bureau.

The Mediation Process

- Upon receipt of complete documentation from the complainant, the complaint is registered.
- The Mediation team will commence investigation by seeking clarification from the FSP on the issues raised by the complainant. The FSP has to explain the basis of its decision and also forward the relevant documentary evidence that was relied on. At the same time, a holding reply is sent to inform the complainant on the commencement of the investigation process.
- Upon receipt of the FSP's response and based on all evidence available, an assessment is made. At this juncture, further clarification may be sought from parties, where necessary.
- If the complaint is recommended for mediation, arrangements will be made to bring parties together.
- If the Mediation team feels that it would be more productive to meet with one party, a caucus session will be arranged.
- During mediation/caucus facilitated by the Mediator, the parties will have full opportunities to present their facts, ask questions, explore issues, strengths and weaknesses of the matter in dispute and negotiate a settlement. The mediation process may also take place through an exchange of correspondence with both parties.
- If the dispute is resolved amicably between the parties, a settlement agreement is drawn up and executed by the parties. The complaint is resolved and the case is "closed". This may happen at any stage during the mediation process.



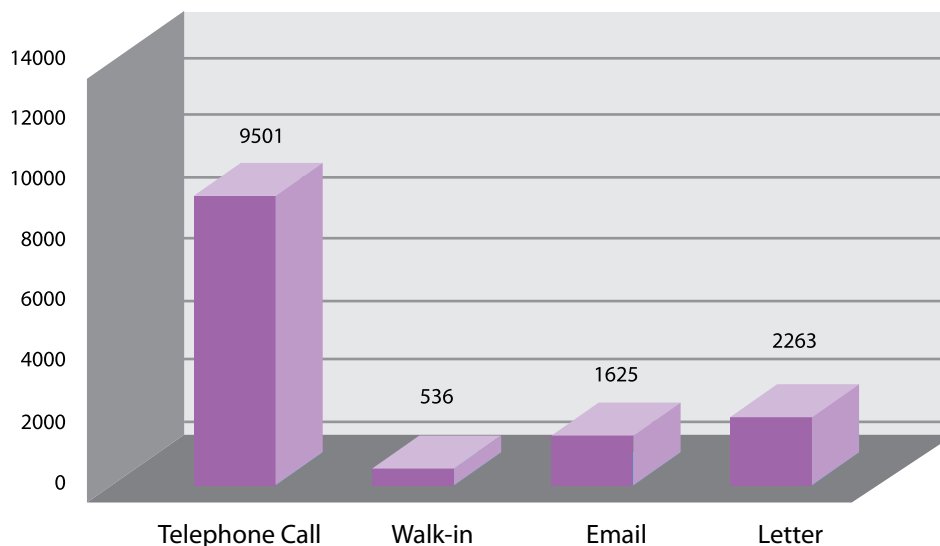
- Where there is an impasse between the parties in reaching a settlement, the Mediator will issue a written decision (Decision Stage).
- In certain typical and clear-cut complaints, where liability is certain for one party, the complaint may be disposed off without mediation. A written decision will be issued by the Mediator and communicated to relevant parties.

Note: In making a decision, the Mediator will look at all available evidences, documentary or otherwise, and give due consideration to the terms of the contract, any applicable rule of law, judicial authority and statutory provision, good insurance and banking practices, investment and marketing practices, Bank Negara Malaysia's Guidelines, etc. The powers of the Mediator are elaborated in the Terms of References at page 64.

Complaints Management Unit

FMB continues to receive a high number of enquiries and complaints from consumers on the services of FSPs. In 2012, a total of 13,925 enquiries and complaints were received by FMB through various channels such as telephone calls (68.2 percent), e-mails (11.7 percent), letters (16.3 percent) and walk-in complainants (3.8 percent).

Enquiries & Complaints Received in 2012



In view of the high number of enquiries received coupled with the imminent increase in enquiries once the Financial Ombudsman Services (FOS) is implemented in 2013/2014, a new Complaints Management Unit (CMU) was set up in May 2012 to provide 'frontline' and case management services that complement the mediation services provided by the Mediation team.

Roles & Responsibilities

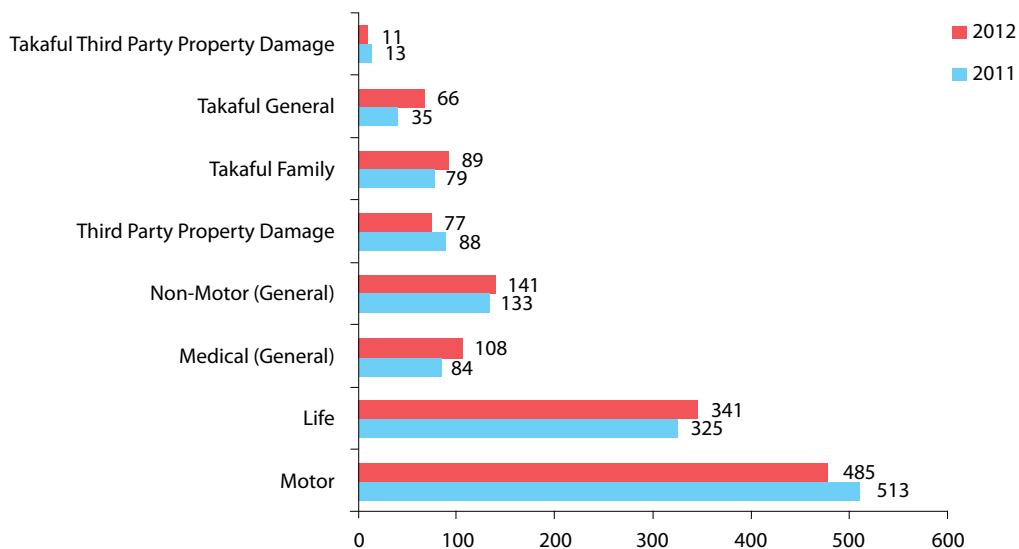
- Frontline services to handle all enquiries by the public on new complaints and status of registered cases (whether through telephone calls, e-mail or walk-ins).
- Assessment of all new complaints to determine if they fall within FMB's jurisdiction.
- Advising complainants on the right procedure and timeframe to lodge a complaint (forms to fill and documents to be attached etc.).
- Referring complainants to other relevant agencies or organisations (e.g. BNM LINK) for matters not within FMB's jurisdiction.

Overview of 2012

A. INSURANCE (INCLUDING TAKAFUL) CASES

Categories	2011			2012			
	Brought Forward	Received	Resolved	Brought Forward	Received	Resolved	Pending
Conventional							
Motor	481	513	550	444	485	567	362
Life	492	325	386	431	341	458	314
Medical (General)	238	84	154	168	108	133	143
Non-Motor (General)	244	133	204	173	141	119	195
Third Party Property Damage	139	88	144	83	77	94	66
Takaful							
Family	102	79	74	107	89	118	78
General	76	35	53	58	66	59	65
Third Party Property Damage	0	13	5	8	11	9	10
Total	1772	1270	1570	1472	1318	1557	1233

Comparison of Insurance & Takaful Disputes in 2011 & 2012 (Cases Received)



On the whole, there was a marginal increase in the total complaints received in 2012 from all types of insurance risk coverage with the exception of Third Party Property Damage (Conventional and Takaful) which declined by 12.9 percent and Motor by 5.5 percent. This reflects a greater engagement of the FSPs with their customers in claims handling. The 12.7 percent increase in complaints under the Takaful Family is reflective of the rapid growth in the customer base of the Takaful business, but miniscule when compared with the business underwritten over the past 12 months.



• Motor

Motor insurance cases recorded a 5.5 percent drop in complaints, with 485 cases registered in 2012 compared to 513 in the previous year. However, the Motor insurance category continued to record the highest number of complaints received in 2012 (36.8 percent) compared to the other categories, including Takaful. The slight reduction in the number of Motor-related complaints registered in year 2012 may be attributed to more FSPs taking cognizance of Bank Negara's Guidelines on 'Claims Settlement Practices', as well as greater awareness of the many factors considered by FMB in assessment of complaints and its investigative approach in cases of a specific nature.

Breach of policy terms and conditions contributed largely to the high number of complaints in the Motor insurance category. This included delays or late notifications of incidents for which ignorance of the standard claims procedure is not an acceptable defence or reason for such delays. Not possessing a valid driving licence at the time of an accident, which is required by law and failure to take reasonable precautions to safeguard the insured vehicle from loss or damage (breach of Policy Condition 7 (c)), also featured in the common complaints lodged by complainants. In cases of rejection of claims arising from failure to take reasonable precautions to safeguard the insured vehicle, it is felt more attention should be placed on the factual matrix of each case. Cases mediated by FMB indicate that it is sufficient if the insured had taken "reasonable precautions/steps" to safeguard the insured property (*Refer to Case Studies – Cases A01 & A04*).

An area of concern in the past year was the increase in disputes involving the market valuation of insured vehicles. The Motor policy basically provides that the market value is to be determined by the franchise holder and failing which, the value may be determined by a licensed Loss Adjuster. Although it is appreciated that many FSPs face difficulties in obtaining a valuation from the franchise holders due to the reluctance of many franchise holders to issue valuations, the specific terms of the standard motor policy places a duty on the FSP to show failed attempts to procure the franchise holder's valuation, before resorting to a licensed loss adjuster.

Most of the disputes are centred on the determination of the market value at the time of loss. Some FSPs refer to the ISM Automotive Business Intelligence System (ISM-ABI database) as a reference for determining the sum insured for coverage. In a dialogue between PIAM and FMB, it was noted however that reference to the ISM-ABI database is voluntary and hence not practiced by all FSPs. To ensure consistency in the market value of an insured vehicle at the point of insurance and subsequent claim, it is good insurance practice that reference is made to the same source to determine the market value of the vehicle for both instances. Disputes of this nature would certainly be reduced if there is more certainty in the determination of the market value by the industry.

• Life & General Medical

Life & General Medical insurance cases recorded a 9.8 percent increase in complaints, with 449 cases registered in 2012 compared to 409 in the previous year. This category recorded the second highest number of complaints received in 2012 (34 percent) compared to the other categories, including Takaful, a trend consistent with previous years. The majority of complaints can be grouped under disputes arising from breach of policy terms and conditions and non-disclosure of material information by complainants.

Terms of Policy

Overall, 64.4 percent of all complaints under Life & General Medical were due to breaches or disputes in the Terms of Policy related to the following types of claims:

- Hospitalisation & Medical/Surgical
- Total & Permanent Disability (TPD)
- Critical Illness
- Death
- Personal Accident

A recurring issue arising from Hospitalisation & Medical claims was the rejection of claims for reimbursement of medical bills on the grounds of non-submission of original medical bills/receipts. In such cases, it often falls upon FMB to request for a Statutory Declaration from the complainant to declare that the original bill/receipt had indeed been lost or misplaced and the latter had not lodged a similar claim with other FSPs. The FSP will then proceed to validate the claim within the industry before approving such claims. It is routinely observed that this often results in delays in processing of such complaints. To minimise the delay in resolving such complaints, it is recommended that FSPs:

- be more proactive by requesting for the Statutory Declaration from the Insured and perform the necessary validation with other FSPs before the complaint is referred to FMB; and,
- communicate more effectively with other FSPs to expedite the search and validation of the bill/receipt after the Statutory Declaration is obtained; at present, this process can occasionally take up to two months to complete

Complaints relating to rejection of TPD claims comprised 20 percent of cases in 2012. The common basis of repudiation in TPD cases is the contention that the Assured's condition did not fulfill the definition of TPD in the policy. FMB has frequently emphasised to the FSP that the definition of 'Total and Permanent Disability' should be understood in the context of the actual business or occupation of the insured or some other substituted occupation for which he is qualified mentally or physically, by age, experience, education or training. (*Pacific & Orient Insurance Co Sdn Bhd v R Kathirvelu (1992) 1 CLJ 251* and the case of *Pocock v Century Insurance Sdn Bhd (1960) 2 LJR 150*). Hence, total and permanent disability does not mean a state of absolute helplessness, as would be true under the literal interpretation of the policy terms, and should be viewed as such when processing such claims (*Refer to Case Studies – Case A10*).

With regard to policy exclusions, it is pertinent to note that the burden of proof is on the FSP to establish that a claim falls within the exclusion clause. In the absence of sufficient proof, the benefit of doubt should be given to the Assured. It is common to rely on the opinion of the Assured's doctor who is medically qualified and has the advantage of personally examining or treating the Assured (*Refer to Case Studies – Case A09*).

In assessing accident claims, in particular those related to Temporary Total Disablement/Temporary Partial Disablement, it was observed that the disability period as determined by the Insurer was often inconsistent with the Assured's doctor certification of disability period. FMB wishes to stress that FSPs should rely on the certification of the doctor who is medically qualified and who had the benefit of personally examining and treating the Assured, and the approval of the weekly indemnity claim should be in accordance with the attending doctor's opinion.

Non-Disclosure of Material Information

Non-disclosure of pertinent information by the prospective Assured regarding a known medical condition/background/history in the insurance proposal form, which led to the subsequent rejection of claims by the FSP, was a common and systemic issue raised in 2012.

The consequences of failing to disclose truthful and accurate information when entering into a contract of insurance is often underestimated. It is imperative that the proposer carefully considers all questions and responds accurately and honestly when completing the insurance proposal form. The reasons for non-disclosure were varied and numerous, often honest and well-intentioned but sometimes deliberate and dishonest.

Occasionally, the Assured fails to provide complete and accurate answers to the questions which later become the basis or ground for repudiation by the FSP. The common reasons given by the Assured in such cases was the medical condition had been disclosed to the agent, or they had executed the proposal form that was completed by the agent without reading the contents, or had signed a blank form! It is important that the prospective Assured understands all the questions in the form and is duty bound to check and ensure that the details are correctly filled up before signing the proposal form. Following Bank Negara Guidelines on Proper Advice Practices for Life Insurance Business [BNM/RH/GL/003-13], FSPs should also ensure that their agents are mindful of the importance and effect of non-disclosure in the proposal form. It is the essential duty of the agent to explain the questions and notices in the proposal form to their prospective client and the effect thereof, as the failure to do so will only weaken the defence available to the FSP in the event of a claim.



Cases involving repudiation due to non-disclosure of a medical condition(s) should be better substantiated by the FSP. For instance, when the FSP had relied on diagnosis test results to repudiate on non-disclosure, it should be corroborated by the attending doctor (*Refer to Case Studies – Cases A11 & A13*).

- **Non-Motor (General)**

Out of 141 complaints received in the Non-Motor (General) insurance category, 53 (37.6 percent) were related to travel policy complaints. This constitutes the highest number of complaints in this category. FSPs or their agents, who are generally travel agents' ticketing staff, should exercise due care to explain to prospective purchasers, the scope of coverage and the procedures to lodge claims and provide supporting documentation.

A common issue under the Non-Motor (General) category is the extent of the investigation carried out by the FSPs to substantiate the grounds for repudiation of claims. There were certain instances where better and timely investigation of house-owner policy complaints, for example, would have provided stronger grounds for either rejecting or settling such claims (*Refer to Case Studies – Case A16*).

Timely reporting is also important because the core function of the loss adjuster, whether they are handling auto, liability, property or workmen compensation claims, is to collect information as quickly as possible and to make the best decisions based on the facts of the investigation. In a slip and fall accident, the loss adjuster will probably want to visit the location of the accident as soon as possible to photograph the area, interview witnesses and compile any information that might shed light on how the accident occurred. Surveillance cameras that are installed at many business premises can provide clear evidence of what had occurred. The quality of information may deteriorate through the passage of time; witness's memories falter, physical evidence and other pertinent information may not be accessible or available. Moreover, surveillance videotapes are also often erased or recycled after 30 days resulting in the loss of critical evidence.

- **Takaful**

Overall, Takaful cases recorded a 30.7 percent increase in complaints, with 166 cases registered in 2012 compared to 127 in the previous year. The Takaful Family category represents the highest number of cases reported in the Takaful category with 89 cases registered, with Takaful General the next highest at 66 cases.

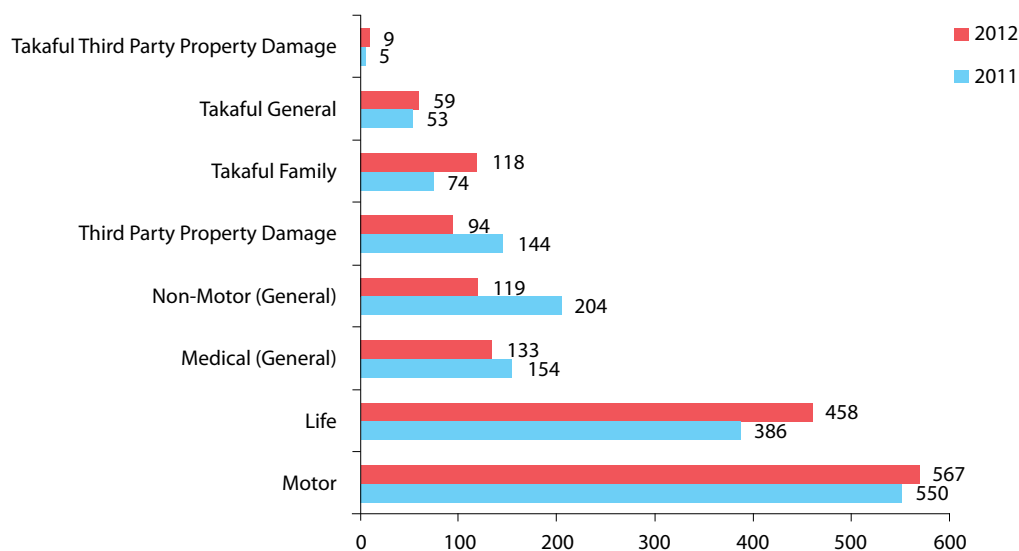
The Takaful Family cases are predominantly related to breach of the Certificate's terms and conditions, the definition of Total Permanent Disability, non-disclosure of pre-existing illness and the hospital benefits claims; whereas, the Takaful General category comprises cases for loss of money, damage to property due to flood/heavy rain and motor cases.

It is generally observed that in some Takaful cases the grounds and reasons for repudiation are often not provided to the complainant. On this note, Clause 4.4.2.1 BNM Guidelines on Claims Settlement Practices imposes an obligation on the Takaful Operators to explain their grounds of rejection/repudiation to the complainant. Nevertheless, it is encouraging to note that more FSPs are complying with the BNM guidelines to ensure complainants clearly understand the grounds of repudiation of their claims.

Cases Resolved in 2012

Categories	Cases Brought Forward	Cases Received in 2012	Cases Resolved in 2012		Total Cases Resolved
			B/f from Previous Years	Cases Received in 2012	
Motor	444	485	388	179	567
Life	431	341	336	122	458
Medical (General)	168	108	113	20	133
Non-Motor (General)	173	141	95	24	119
Third Party Property Damage	83	77	66	28	94
Takaful Family	107	89	90	28	118
Takaful General	58	66	46	13	59
Takaful Third Party Property Damage	8	11	7	2	9
TOTAL	1472	1318	1141	416	1557

Comparison of Insurance & Takaful Disputes in 2011 & 2012 (Cases Resolved)



There was an overall 0.8 percent drop in cases resolved in 2012: 1,557 cases compared to 1,570 in 2011. Nevertheless, the number of cases resolved in 2012 for Takaful cases increased significantly by 40.9 percent (186:132 cases), 9.4 percent for Life and General Medical (591:540), and 3.1 percent for Motor (567:550). The slight overall decrease in number of cases resolved was due mainly to the non-Motor and Third Party Property Damages category which recorded a 41.7 percent and 34.7 percent dip respectively in cases resolved in 2012.

It should also be noted that 73.3 percent of all cases resolved in 2012 consisted of outstanding cases from previous years. This contributed to a lower number of Insurance/Takaful cases in progress as at the end of December 2012 (1,233), compared to December 2011 (1,472 cases), and was in line with FMB's goal to clear as many backlog cases in 2012 as possible. At the same time, FMB managed to resolve 31.6 percent of all new cases registered in 2012.



Manner of Disposal

Categories	Settlement Through Mediation <i>(Includes decisions revised by FSP)</i>	Decision by Mediator		Others (No Response, Withdrawn)	Total
		Mediator Upheld FSP Decision	Mediator Revised FSP Decision		
Motor	271	134	42	120	567
Life	81	243	1	133	458
Medical (General)	22	71	7	33	133
Non-Motor (General)	44	46	2	27	119
Third Party Property Damage	57	17	3	17	94
Takaful Family	37	34	4	43	118
Takaful General	9	30	2	18	59
Takaful Third Party Property Damage	1	2	1	5	9
TOTAL	522	577	62	396	1557

A total of 1,161 registered complaints (excluding those withdrawn, out of reference) were resolved by FMB in 2012. Of these, 522 complaints (45.0 percent) were resolved amicably between complainant and FSP through negotiated settlements between parties, facilitated by FMB. Of significance, is the high number of Motor-related complaints (271 cases) that were settled through mediation in 2012.

The remaining 639 cases (55.0 percent) were decided by FMB by either upholding or revising the decision of the FSP. Decisions are normally made after a comprehensive mediation process and only when an impasse arises between parties in failing to reach an agreement. It is significant to note that only 5.3 percent (62 cases) of all decisions by FSPs needed to be revised by FMB.

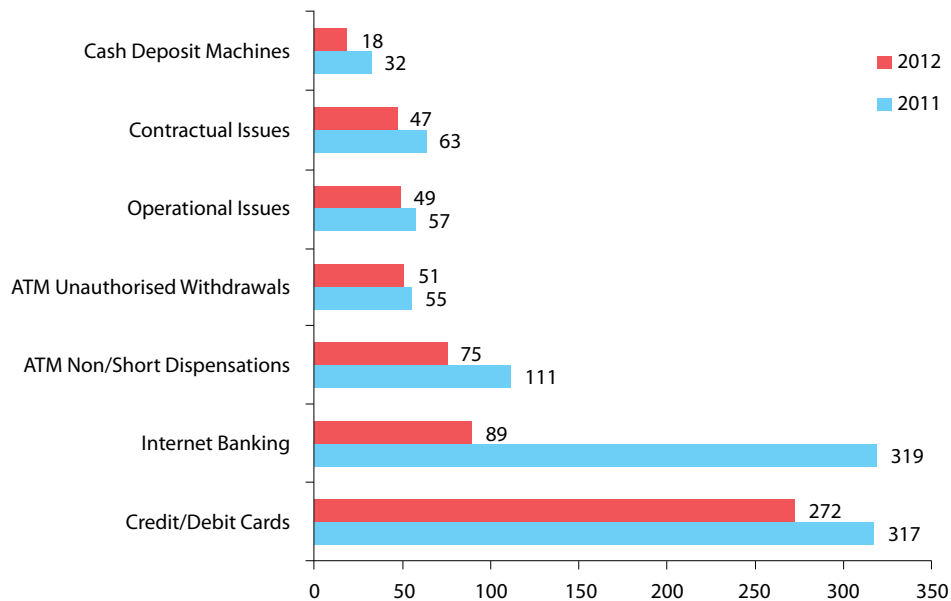
396 (25.4 percent) cases were closed due to non-response or withdrawal of complaints, or cases found to be outside of FMB's jurisdiction, after such cases were registered by FMB.

FMB is pleased to observe that FSPs in the insurance sector have responded favourably and positively to resolution through mediation. Insurers and Takaful Operators, through active engagement and caucus sessions with FMB, are now more aware of how complaints are investigated and decided by the latter. Mediation, as opposed to court proceedings, is now viewed favourably as the preferred dispute resolution channel, as it nurtures goodwill and confidence in consumers and FSPs alike.

B. CONVENTIONAL & ISLAMIC BANKING

Categories	2011			2012			
	B/f	Received	Resolved	B/f	Received	Resolved	Pending
Credit/Debit Cards	331	317	497	151	272	284	139
Internet Banking	246	319	195	370	89	350	109
ATM Non/Short Dispensations	327	111	254	184	75	197	62
ATM Unauthorised Withdrawal	230	55	142	143	51	132	62
Operational Issues	43	57	26	74	49	64	59
Contractual Issues	77	63	57	83	47	80	50
Cash Deposit Machines (CDM)	124	32	93	63	18	54	27
Total	1378	954	1264	1068	601	1161	508

Comparison of Banking Disputes in 2011 & 2012 (Cases Received)



For the year 2012, there was a notable drop in complaints against the banking sector. The significant reduction in the cases from 954 in 2011 to 601 in 2012 is attributed to a drop in complaints registered under Internet Banking (IB) disputes, as shown above.

• Internet Banking

Internet Banking (IB) cases recorded a significant drop in complaints received in 2012 with 89 cases registered compared to 319 in the previous year. The marked drop in IB scams reported to FMB in 2012 may be due in part to awareness campaigns conducted by the banking sector over the last few years to ensure their customers are aware and educated on the risks of Internet Banking, and the need to be vigilant against potential frauds and scams perpetuated by fraudsters.



Most IB cases involved scams such as 'phishing' for personal information, and short-message-services (SMS)/ phone-call scams. Using this common modus operandi, fraudsters gain illegal access to their victim's banking account without the latter's knowledge.

In SMS/phone-call scams, the victim would receive a SMS/phone-call informing them that they had won a cash prize from a certain contest. The victim, guided by the fraudster, would then be lured into performing certain functions at an Automated Teller Machine (ATM), purportedly to enable the winnings to be credited into his account; instead, the victim would unknowingly perform an Internet banking application that would potentially give the fraudster access to the victim's account.

Phishing cases involved the fraudster (impersonating a bank) sending an e-mail to the victim to update his profile online, so as to ensure no disruption of services and access to his bank account. This would result in customers' essential credentials such as username, password and Transaction Authorisation Code (TAC) being compromised and used by the fraudster to perform internet banking transactions without the victim's knowledge.

It is comforting to note that banks are continuously enhancing the security features on their websites, self-service terminal areas and branches by introducing more sophisticated prompts and alerts, and also by monitoring transaction patterns of their customers. These proactive measures could limit customer losses through early detection of "abnormal" activities and potential fraud.

- **Automated Teller Machines (ATM) & Cash Deposit Machines (CDM)**

The number of complaints arising from cash dispensation issues at ATMs (non/short-dispensation) and CDMs dropped by approximately 32.4 percent and 43.8 percent respectively in 2012. The significant drop suggests the success of remedial action taken by FSPs to reduce the occurrence of such incidents at their ATMs and CDMs and the increase in amicable settlements reached between FSPs and complainants without the need to refer such cases for mediation by FMB.

There was a marginal decrease in the number of complaints related to unauthorised ATM withdrawals in 2012 (51) compared to 2011 (55). Most of the complaints involved the loss or theft of ATM cards either through well-organised scams such as "shoulder-tapping", or crimes such as robbery and kidnapping, where victims were forcibly relieved of their ATM card and PIN, which were then used for unauthorised cash withdrawals.

[The "shoulder-tapping" scam modus operandi normally consists of a group of two to three individuals. One of the fraudsters would scatter a few currency notes on the floor near their intended victim while the victim was in the midst of making a withdrawal, while another would be observing and remembering the PIN typed in by the victim. One of the fraudsters would then momentarily distract the victim by calling out and tapping the victim on the shoulder to say that he had dropped some money. As the victim turns around and stoops to pick up the money, an accomplice would quickly swap the victim's ATM card with a similar-looking card. The unsuspecting victim would then collect the cash dispensed from the ATM and walk away with someone else's ATM card while his own card was in the syndicate's possession. The fraudster would then immediately perform a cash withdrawal using the victim's ATM card and PIN] (Refer to Case Studies - Case B12).

Unauthorised ATM withdrawal complaints, though relatively low in number, thus continue to be an area of grave concern as consumers continue to fall victim to scams and other criminal actions that result in huge financial losses to the victim.

Card-based disputes arising from unauthorised usage of credit, debit and charge cards and transactions with merchants accounted for 45.2 percent of banking complaints received by FMB in 2012, the highest number of complaints in the banking sector. Although the total number of cases received in 2012 is less than the previous year by 14.2 percent, unauthorised, fraudulent usage of credit/debit cards continues to be quite prevalent and of concern to FMB (the other area being Internet Banking).

On the positive side, the drop in the number of card-based cases in 2012 appears to be a trend that is somewhat encouraging, and may be partly attributed to growing industry compliance with Bank Negara Guidelines (Clauses 15.2 and 15.3) and the High Court decision in *Diana Chee Vun Hsai v Citibank Berhad [2009] 6 CLJ 774* which limited the maximum liability for unauthorised card transactions to RM250.00 for lost/stolen credit cards.

The bulk of credit/debit card complaints in 2012 arose from loss or theft of cards, compromised usage of cards, online transactions and ATM cash withdrawals and PIN-related security issues. Disputes with merchants were mostly related to chargeback issues, fraud, processing of orders (duplicate charges) and dissatisfaction with the quality of merchandise delivered.

• Contractual & Operational Issues

The number of complaints registered with regard to contractual as well as operational disputes, dropped by approximately 20 percent in 2012. The main contractual issues faced by consumers involved complaints and disputes related to excessive fees, interest and charges by FSPs, hire purchase and loans. The main operational issues comprised issues relating to cheques, fixed deposits (FD), unit trusts and wrongful debits/credits.

The decrease in the total number of complaints received may be attributed partly to FSPs directly resolving disputes with their consumers based on previous cases mediated and decided by FMB. It is likely that proactive and corrective action taken by FSPs to avoid recurrences of a similar nature, based on previous experiences and lessons learnt, has also contributed to the drop in similar complaints received.

For instance, disputes regarding FDs often involve the discovery and presentation of an original FD receipt by a beneficiary to the FSP, but for which the FSP has no record of the account. The FSP may also not be able to furnish proof that the deposit has already been withdrawn or Letters of Indemnity (LI) obtained from the depositor previously for missing or lost FD receipts, and a new receipt issued in lieu. In the absence of such evidence, the original receipt held by the beneficiary is valid. To avoid such incidents, FSPs should take appropriate measures to ensure LIs are properly executed and kept in perpetuity (*Refer to Case Studies - Case B06*).

Complaints related to cheques remained low in 2012 (13 compared to 11 in 2011) and involved stolen and forged or fraudulently altered cheques paid into 3rd party accounts. It is trite law that any fraudulent alteration on a cheque is construed as material alteration, and based on case law and statutory requirement under Section 64 of the Bills of Exchange Act 1949, the fact that an alteration has occurred vitiates the cheque. The FSPs failure to prove that they have exercised due diligence in scrutinising the cheque when performing verification and validation will result in the FSP being negligent and held liable under the Bills of Exchange Act 1949. Verification calls made by the FSP to its customer to confirm payment of cheques should be recorded as proof of the call being made and what had transpired during the conversation.

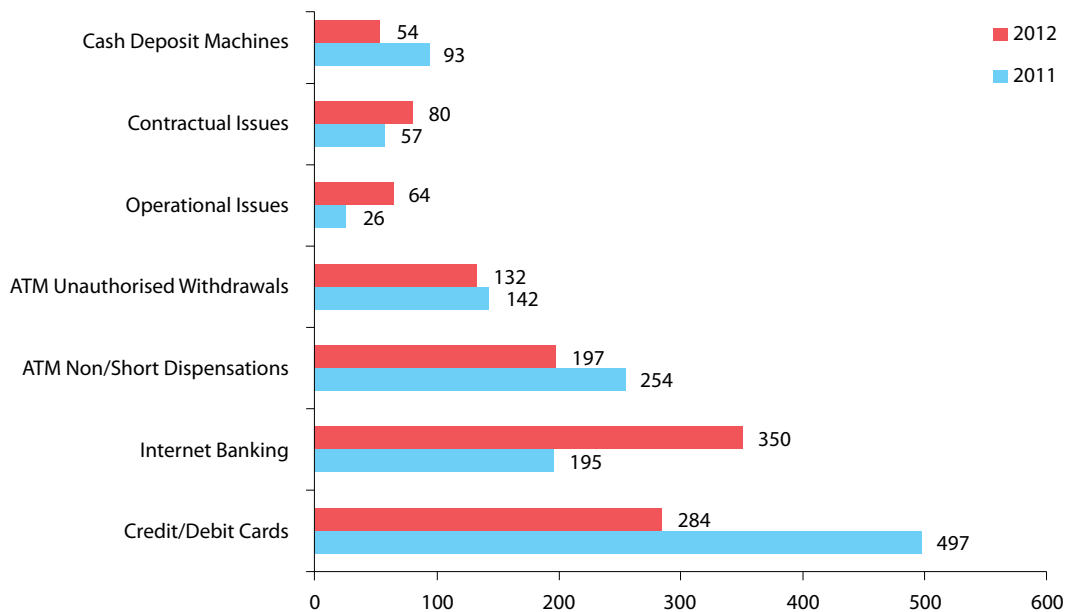
Operational issues relating to unit trusts and shares remained relatively low in 2012. The complaints received generally involved misleading advertisements, allegations of misrepresentation and mis-selling of unit trusts by FSPs. An example is where customers performing online share trading transactions using the FSPs share trading portal (e.g. e-Broking system) were not aware of a blanket 'higher trading limit' temporarily set by the FSP. As a result, the complainant's online trading of shares was allowed above the usual trading limit approved by the FSP. This unfortunately resulted in financial losses to the trader which would have not have been so high, had the trading limit not been increased.



Cases Resolved in 2012

Categories	Cases Brought Forward	Cases Received in 2012	Cases Resolved in 2012		Total Cases Resolved
			B/f from Previous Years	Cases Received in 2012	
Credit/Debit Cards	151	272	133	151	284
Internet Banking	370	89	333	17	350
ATM Non/Short Dispensations	184	75	167	30	197
ATM Unauthorised Withdrawals	143	51	125	7	132
Operational Issues	74	49	45	19	64
Contractual Issues	83	47	63	17	80
Cash Deposit Machines (CDM)	63	18	50	4	54
TOTAL	1068	601	916	245	1161

Comparison of Banking Disputes in 2011 & 2012 (Cases Resolved)



There was an overall 8.1 percent drop in cases resolved in 2012: 1,161 cases compared to 1,264 in 2011. However, the number of cases resolved for Internet Banking (350) and contractual and operational matters (144) increased significantly by 79.5 percent and 73.5 percent respectively in 2012, mainly due to negotiated settlements between FSPs and complainants, mediated by FMB.

It should also be noted that 78.9 percent of cases resolved in 2012 consisted of outstanding cases from previous years. Out of a total backlog of 1,068 cases carried forward to 2012, 916 were resolved in 2012, leaving behind 152 pending cases. This is in line with FMB's focus to clear the backlog cases from previous years, and contributed, in part, to the lower number of banking cases (508) in progress as at the end of December 2012. At the same time, FMB managed to successfully resolve 40.8 percent of all new cases registered in 2012.

Manner of Disposal

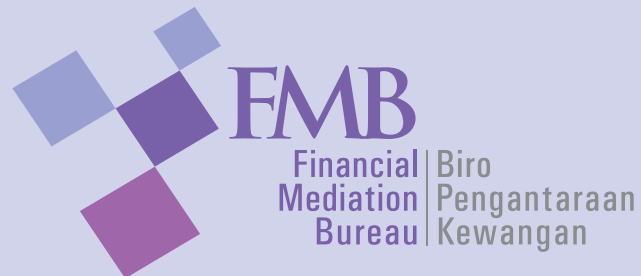
Categories	Settlement Through Mediation (Includes decisions revised by FSP)	Decision by Mediator		Others (No Response, Withdrawn)	Total
		Mediator Upheld FSP Decision	Mediator Revised FSP Decision		
Credit/Debit Cards	153	65	41	25	284
Internet Banking	328	3	5	14	350
ATM Non/Short Dispensations	153	3	12	29	197
ATM Unauthorised Withdrawal	45	60	17	10	132
Operational Issues	51	3	8	2	64
Contractual Issues	58	5	12	5	80
Cash Deposit Machines (CDM)	28	10	7	9	54
TOTAL	816	149	102	94	1161

A total of 1,067 registered complaints (excluding those withdrawn, out of reference) were resolved by FMB in 2012. Of these, 816 complaints (76.4 percent) were resolved amicably between complainants and FSPs through negotiated settlements facilitated by FMB. As a result, only 251 cases (23.5 percent) required a decision issued by the Mediator and these were instances where there was an impasse between the parties during the mediation process and/or at the negotiation stage.

Out of the 251 decisions issued, 149 (59.4 percent) comprised FSP decisions that were upheld by the Mediator while only 102 (40.6 percent) were revised by the Mediator in favour of the complainants. The FSPs are to be commended for working closely with FMB to clear the voluminous backlog of cases through grouping of common cases which proved to be a cost effective dispute resolution process, while effectively promoting good customer relations and brand awareness.

Only 94 (8.1 percent) out of the total 1161 cases resolved last year were closed due to non-response or withdrawal of complaints, or cases found to be outside of FMB's jurisdiction, after such cases were registered by FMB.





Case Studies 2012

- **Insurance
(including Takaful)**
- **Banking
(including Islamic Banking)**

Insurance

Motor Cases

Case A01: Breach of Condition 7(c): Failure to Take All Reasonable Precautions

The Insured had parked her vehicle at a parking lot near her workplace. After work, when she was about to drive off, a stranger suddenly approached and informed her that her vehicle's right, rear tyre, was punctured. The Insured, gravely concerned, unsuspectingly alighted from her vehicle to check the tyre. The stranger, a seemingly good Samaritan, offered to change the tyre for RM10.00. The Insured gladly accepted the offer of help from the stranger as she had an ankle injury and could not squat comfortably to replace the tyre herself. The stranger, on the pretext of having to move the vehicle, due to space constraints at the parking lot, then entered the Insured's vehicle and drove off.

The Insurer declined the claim by the Insured for loss of vehicle on the grounds that the Insured had breached Policy Condition 7(c), whereby she had failed to take all reasonable precautions to safeguard her vehicle from loss or damage, as she had left the ignition key inside the vehicle with the engine running, when she alighted the vehicle.

Breach of Policy Condition 7(c): The issue in question was whether the Insured had taken all reasonable precautions to safeguard her vehicle, and taking into account the legal duty imposed is not an absolute one. It is sufficient if the Insured had taken "reasonable precautions/steps" to safeguard the insured property. The test is whether the Insured had acted recklessly or exposed herself to a risk after the risk becomes obvious to her¹.

Looking at the facts of the case and the conduct of the Insured under the said circumstances, it was not unreasonable for the Insured with the injuries she had, and the task at hand, to allow someone, even a stranger, to assist her to change the tyre. Hence, there is no issue of breach of Policy Condition 7(c) and the repudiation on this ground is baseless.

The Insurer agreed with the observations of the Mediator and accordingly settled the claim amicably with the Insured.

Case A02: Dispute on Cost of Repairs

The Insured was not satisfied with the Insurer's cash-in-lieu offer of RM67,400.00 for cost of repairs to the Insured's vehicle as the amount offered was insufficient to repair the vehicle. The Insured had requested for the vehicle to be treated as a total loss and be compensated accordingly.

The Insurer had declined the Insured's request based on the adjuster's report that the vehicle could be repaired to roadworthy condition but that the panel workshop was not interested in repairing the vehicle. The Insurer's offer, as an alternative to settling cost of repairs, was made on "cash-in-lieu" basis.

During a caucus held with the Insurer, several avenues of settlement were discussed. Since the panel workshop and the Insured were not on good terms, it was at first suggested that the Insurer assists the Insured to liaise with the workshop to repair the vehicle. However, it was realised that the Insured may not be satisfied with the repair job, which could lead to further delays in settlement of the claim.

The Insurer agreed to review its initial offer and finally made an offer of RM90,000.00 on Beyond Economic Repair (total loss) basis to the Insured. The revised offer was accepted by the Insured and the complaint amicably settled.

¹ Lim Chin Yok Co. Ltd v. Malayan Insurance Co [1975] 1 MLJ 101, affirmed in Hong Leong Assurance Bhd v. Teoh Seow Chiew [2004] 8 CLJ 247

Case A03: Foreign Driving Licence

The insured vehicle was involved in an accident whilst being driven by the Insured, who is a foreigner. The Insurer had repudiated the Insured's claim on the ground that the Insured driver (foreigner) did not possess a valid Malaysian driving licence at the material time of loss².

During the investigation stage by the Mediator, the Insured showed proof of having a valid driving licence by producing a valid driving licence of his country. The Insurer had submitted a copy of the same to FMB. The Mediator observed that by virtue of Section 28 of the Road Transport Act 1987, the Insured was clearly in possession of a valid driving licence³.

This was brought to the attention of the Insurer during a caucus and the Insurer subsequently revised its decision and settled the claim.

Case A04: Failure to Take Reasonable Precautions

The Insured had disputed the Insurer's rejection of his claim for the loss of his vehicle on grounds of failure to take reasonable precautions to safeguard the Insured's vehicle (Mercedes Benz), which is a breach of the Policy Condition 7(c) of the private car policy. The Insurer's contention was that the Insured's house was robbed four days prior to the loss of the Insured's vehicle and the vehicle's ignition key was one of the item that was stolen. Despite knowledge of the loss of the ignition key, the Insured had subsequently failed to take steps to protect the vehicle by immediately replacing the ignition key, disabling/securing the vehicle from operating with the stolen key or parking the vehicle in a secured location. The Insurer maintained that the Insured's negligence had resulted in the theft and loss of the vehicle.

During mediation, the Insured explained the difficulty and efforts taken and the unavoidable delay in acquiring a set of replacement ignition keys for the Mercedes Benz. The Insured explained that he had tried to purchase replacement keys the very next day but the delivery from Germany took two weeks. Meanwhile, the vehicle was kept in the compound of his house. The Insured argued that the circumstances merited the Insurer's consideration and appealed for a review of the Insurer's decision.

After negotiations between parties, facilitated by the Mediator, the Insurer offered to settle the outstanding loan balance of the Insured's vehicle as a gesture of goodwill. This was duly accepted by the Insured and the complaint was resolved amicably.

Case A05: Betterment and Excess

The Insured was dissatisfied with the Insurer's discretion and decision to apply 'betterment' and 'excess' in the approval of cost of repairs to the Insured's vehicle that had been involved in an accident.

The Insured's vehicle was 6 years old (2005 Model) at the time of the accident and was repaired at a franchised Honda workshop using original replacement spare-parts. It was observed that the application of 'betterment' by the Insurer at his discretion, and as provided for in the private car policy, was in accordance with the principle of indemnity⁴ that operates to compensate the insured for his loss; no more, no less. In addition, the excess clause of RM700.00, imposed by the Insurer, was also expressly provided for under the terms and conditions of the private car policy.

Under the circumstances, the Mediator upheld the decision of the Insurer.

² **General Exception 1:** We will NOT pay for any liability under the following circumstances:

1. If You or any person with Your consent are not licensed to drive the vehicle except if You or any person with Your consent has held and is not disqualified from holding or obtaining such a licence to drive Your Vehicle under any required laws, by-laws and regulations."

³ **Section 28 of the Road Transport Act 1987** provides:

A driving license issued under the corresponding provisions of any law in force in any country which is a party to a treaty to which Malaysia is also a party and which purports to recognise domestic driving licenses issued by the contracting countries shall, so long as such licence remains in force in that country, be deemed to be a driving licence granted under this Part."

⁴ *Castellain v Preston And Others* (1881-5) All ER Rep 493 dan *Chip Fong (Kuala Lumpur) Sdn Bhd & Ors v Guardian Royal Exchange Assurance (Malaysia) Sdn Bhd* (1992) 1 MLJ 598]



Case A06: Criminal Breach of Trust

The Insurer declined the Insured's claim for the loss (theft) of the Insured vehicle on the ground that it fell under Exception 4(e) to Section A of the Motor Policy, Criminal Breach of Trust (CBT)⁵. The Insurer's decision was based on the recommendation of a licensed loss adjuster. The Insured was said to have voluntarily handed over the keys of the vehicle to his driver/employee. The said driver/employee, who was involved in a planned robbery, was subsequently detained and charged by the police. At the mediation, the element of entrustment was discussed⁶ and the latest Federal Court decision was applied in favour of the Insured. However, the Insurer maintained its stand. In view of an impasse, both parties requested for a decision by the Mediator.

The issue to be determined is whether the factual circumstances of the case constituted "theft" or "CBT". Illustration (d) of Section 378 of the Penal Code defines 'theft' as: A, being Z's servant and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate without Z's consent. A has committed theft.

In the context of illustration (d) Section 27 of the Penal Code, when the driver of the Insured was instructed to deliver the consignment, the said driver had taken the Insured lorry in the capacity of a servant of the Insured. The possession of the Insured lorry through the servant is construed as the possession of the Insured. In this case, the trust or consent granted to the custodian was limited to the performance of his duties in the capacity of a lorry driver.

The factual matrix of *Taisho Marine and Fire Insurance (M) Sdn Bhd v Secure Guards Sdn Bhd*⁷ is similar to this case. KC Vohrah, J (as he then was) stated,

"The court may presume having regard to human conduct when the servant did not return that day with the van or at all to the plaintiff's premises he had dishonestly run away with it.... In the context of "Illustration (d) read with Section 27 of the Penal Code, the servant had dishonestly taken the van out of the plaintiff's possession without the plaintiff's consent. Thus the loss of the motor-van was due to theft committed by the security guard..."

In *Malaysian Motor Insurance Pool v Naza Motor Trading Sdn Bhd*⁸, the Federal Court had affirmed the Taisho Marine case and concluded that the loss is due to theft, and not cheating. The Federal Court further added at page 617 of the judgement that "the court ought not to interpret the clauses of the insurance policy which would result in the insured losing the benefits of the coverage what it appears to have granted under the coverage clause by applying the exclusion clause to exclude liability".

Based on the above decided cases, the Insurer's repudiation is untenable because the claim arose from theft, not CBT. The complaint was upheld and the Insurer was required to indemnify the Insured for the loss.

Case A07: Insurer's Offer Less than Amount Recommended by Loss Adjuster

In a Third Party motor claim, the claimant was unhappy with the offer made by the Insurer for a claim on cost of repairs and compensation for assessed repair time (loss of use) of the claimant's vehicle. The offer was less than the amount recommended by a loss adjuster appointed by the claimant.

The Mediator highlighted to the Insurer that they were required to adhere to Clause 4.4.1.3 of the JPI/GPI 14 (Consolidated) Bank Negara Malaysia Guideline on Claims Settlement Practices which states that "Any dispute with the adjuster's final report should be resolved with the adjuster before making an offer of settlement to the Claimant".

⁵ Exception 4(e): We will not pay for any loss or damage caused by or attributed to the act of cheating/criminal breach of trust by any person within the definition of the offence of cheating/criminal breach of trust as set out in the Penal Code.

⁶ The Penal Code stipulates that the following elements must be present in CBT:

- i) entrustment of property to a person
- ii) the person entrusted:
 - a) dishonestly misappropriate/convert to his own use the property; or
 - b) dishonestly use or dispose the property in violation of any direction in which property is to be used.

⁷ [2000] 1 LNS 142

⁸ [2011] 9 MLJ 605



The Insurer defended its decision based on grounds that it was not appropriate for them to adhere to Clause 4.4.1.3 of the said Guideline because the loss adjuster was appointed by the claimant, and hence not subject to queries by them.

FMB sought clarification from the Association of Malaysian Loss Adjusters (AMLA) who advised that the loss adjuster would respond to queries on their findings, on condition that this is done with the consent of their client (in this case, the claimant). It would be unethical if the loss adjuster responded to queries without the client's consent. Based on AMLA's advice, the Mediator requested the Insurer to prepare a list of the disputed items in the Loss Adjuster's report and to liaise with the loss adjuster, through the claimant.

However, the Insurer subsequently revised their offer which was duly accepted by the claimant, and the complaint was resolved amicably.

Case A08: Claim for Total and Permanent Disability (TPD)

A TPD claim under a Family Takaful plan by a participant for her son (person covered) was repudiated by the Takaful Operator on the ground that her son had violated the law for not possessing a valid driving licence at the time of accident.

During the investigation process, the participant had confirmed in writing that her son had failed in his driving test and did not possess a valid driving licence at the time of the accident. The Mediator upheld the decision of the Takaful Operator as there was clear evidence that the participant's son (person covered) did not possess a driving licence at the time of the accident, and was therefore in violation of Section 26 of the Road Transport Act 1987⁹.

Life/Medical Cases

Case A09: Hospitalisation Claim: Policy Exclusion

The Assured's hospitalisation claim was declined by the Insurer on the ground that the Assured's admission for treatment of 'Keratoconus-Cornea Collagen Cross Linking' is a corrective treatment for refractive errors, which is excluded in the policy.

The Insurer had relied on Exclusion 7¹⁰ in the policy to dismiss the claim but did not establish beyond doubt that the treatment of 'Keratoconus-Cornea Collagen Cross Linking' is a corrective treatment for refractive errors, and hence excluded in the policy. The Assured, on the other hand, had submitted a medical report where the attending doctor had concluded that treatment of 'Keratoconus-Cornea Collagen Cross Linking' is a therapeutic procedure/treatment to halt the progression of Keratoconus, and not a corrective treatment for refractive errors.

It is the duty of the Insurer (in declining the Assured's claim) to establish that the Assured's claim came within the policy exclusion relied on. In the absence of such evidence, the Mediator was of the view that the attending doctor, who is medically qualified and had the advantage of personally examining the Assured, was the best person to give an opinion on the matter.

By reasons of the above, the Mediator found the Insurer liable to settle the Assured's claim in accordance with the terms and conditions of the policy and revised the Insurer's decision accordingly.

⁹ Section 26 of the Road Transport Act 1987 prohibits any person to drive a motor vehicle unless he is the holder of a driving licence.

¹⁰ Exclusion 7: No benefit shall be payable for any of the following services, products or conditions or injuries resulting from: 20. Any corrective treatment for refractive errors inclusive of but not limited to the following such as Orthoptics, Visual stimulation, Radial Keratotomy, Lasik, Intralase, Xyoptics, phacik, IOL implant or intraocular lense replacement surgery.



Case A10: Total and Permanent Disability (TPD): 2nd Instalment

The Insurer had repudiated the Assured's claim for his 2nd Total and Permanent Disability instalment on the ground that the Assured's condition did not fulfil the definition of Total and Permanent Disability in the policy.

The Assured was diagnosed with secondary depression in schizophrenia in May 2007 and it was reported that the Assured's physiological condition would permanently affect his return to employment if he was not compliant with medication. The Assured has since retired from service. The Assured's 1st claim was approved by the Insurer and the 1st instalment was paid.

However, upon submission of the Assured's claim for the 2nd instalment (supported by a second medical report), the Insurer repudiated the claim although it was medically reported that the Assured was still suffering from 'Major Depression Disorder with Psychosis features'.

The second medical report continued to state that the Assured would be able to perform all the activities of daily living without assistance and his prognosis would be good if he is compliant with medication. As such, the Insurer was unconvinced that the Assured was physically disabled. The Insurer also contended that the Assured intentionally did not want his condition to improve.

'Total and Permanent Disability' is defined in the policy¹¹ as a state of incapacity which should be understood in the context of the actual business or occupation of the insured or some other substituted occupation for which he is qualified mentally or physically, by age, experience, education or training¹². This would mean that total and permanent disability does not mean a state of absolute helplessness, as would be true under the literal interpretation.

The nature of the Assured's illness i.e. secondary depression in schizophrenia concerns the state of mind of the Assured, not physical movement and ability to handle daily living activities. The Assured, who was medically boarded out after the second medical report, is mentally incapacitated and suffers from a major depression disorder which affects his behaviour and judgment.

The Mediator, upon perusal of the facts of the case and all available medical reports (first and second medical reports), found there was nothing to suggest that the Assured was employable, able to work and earn income after the second medical report. The Mediator was also unable to find any evidence to suggest that the Assured intentionally did not want his condition to improve, as contended by the Insurer.

Based on the above, the Mediator found the Insurer liable to settle the Assured's 2nd instalment and revised the Insurer's decision accordingly.

Case A11: Critical Illness and Hospitalisation Claim: Non-Disclosure

The Assured's claim for critical illness benefits was repudiated on the ground of non-disclosure of abnormal per vaginal bleeding for five months prior to her Endometrial Hyperplasia treatment. The Assured was subsequently diagnosed of Cervical Cancer.

The Insurer had relied on the attending physician's statement wherein it was reported that the Assured was presented with prolonged menses for five months.

The Assured had been experiencing irregular menses for a long time even after giving birth to her three children. She did not think it was an abnormal condition and was not relevant to disclose in the proposal form. Only in 2010, when her menses was heavy and prolonged, she decided to consult a doctor. Even then, she thought it was a common ailment and did not take it seriously until the tests results revealed that she had Stage 3 Cervical Cancer.

¹¹ "Total and Permanent Disability" is defined as a state of incapacity which is: (a) total and permanent and such that there is neither then nor any time thereafter any work, occupation or profession that the Life Assured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit; or "

¹² see Pacific & Orient Insurance Co Sdn Bhd v R Kathirvelu (1992) 1 CLJ 251 and Pocock v Century Insurance Sdn Bhd (1960) 2 LI R 150



The issue in this case is whether the Assured had failed to disclose a material fact in the proposal form, i.e. prolonged menses prior to treatment in 2010. In simple terms, did the Assured have the knowledge and intentionally omit to declare the same in the proposal form?

The law on this was amended by Parliament in 1996 to prevent injustice to an Assured and the test now under Section 150(1) of the Insurance Act 1996¹³, as propounded by the Federal Court case of *Pacific & Orient Co v Kathirvelu*¹⁴ is that of a 'reasonable person in the circumstances would know to be relevant'.

A decision to decline a claim based on non-disclosure of pre-existing condition must be based on proper medical record or documentary evidence as a result of medical test or examination. There must be clear medical evidence that the Assured had been diagnosed as suffering from a particular illness prior to completing the application form.

It was apparent, that the Assured, being a layperson, considered the vaginal bleeding as something common and trivial, and therefore not relevant to disclose in her proposal form.

She did not even consult a doctor until she had excessive vagina bleeding. Further, the diagnosis of her cancer was done much later. As such, the Mediator was of the view that the Assured was not aware and not reasonably expected to disclose her condition when she completed the proposal form.

It was also observed that:

- i. There were no specific question(s) in the proposal form which clearly required the Assured to disclose her condition i.e. prolonged menses.
[We wish to stress that it is the duty of the Insurer to frame questions in the proposal form clearly and accurately. Otherwise, the Assured is entitled to take the questions posed by an Insurer in a proposal form on their face value]
- ii. The genuineness of the Assured's claim can be seen from her disclosure of her removal of stones under health details in the proposal form.

Based on the above, the Mediator found the Insurer liable to settle the Assured's claim and revised the Insurer's decision accordingly.

Case A12: Critical Illness Claim: Definition of 'Other Serious Coronary Artery Disease'

The Assured's claim for waiver of premium under the critical illness benefit was declined by the Insurer on the ground that his condition did not fulfill the definitions of "Other Serious Coronary Artery Disease" of the policy.

The Assured had two policies with the same Insurer and with the following definitions for 'Other Serious Coronary Artery Disease'¹⁵.

The Insurer relied on the medical report prepared by the Assured's attending doctor which states that the Assured was diagnosed with 'Anteroseptal Myocardial Infarction' and the Assured's coronary angiogram findings are as follows:

LAD – Tight stenosis: 70 percent
LCX – Dominant Vessel, Minor proximal irregularities
RCA – Irregularity mid-distal segments

¹³ Section 150(1): Duty of disclosure (1) Before a contract of insurance is entered into, a proposer shall disclose to the licensed insurer a matter that – (a) he knows to be relevant to the decision of the licensed insurer whether to accept the risk or not and the rates and terms to be applied; or (b) a reasonable person in the circumstances could be expected to know to be relevant.

¹⁴ [1992] 1 MLJ 249

¹⁵ **Policy A:** The narrowing of the lumen of at least three major arteries by a minimum of 75 percent as proven by coronary arteriography carried out in Malaysia, Singapore or Brunei, regardless of whether any form of coronary artery surgery has been performed.

Policy B: The narrowing of the lumen of a least three major arteries i.e. Circumflex, Right Coronary Artery (RCA), Left Anterior Descending Artery (LAD), by a minimum of 60 percent or more as proven by coronary arteriography. This benefit is payable regardless of whether or not any form of coronary artery surgery has been performed.



It was explained to the Assured that based on the policy definitions, a claim for critical illness under 'Other Serious Coronary Artery Disease' it requires a blockage of three major arteries. Both definitions have clearly stipulated the intention and parameters of the condition¹⁶. From the medical report, the Assured had only experienced a blockage in one of his major artery, i.e. LAD, as evidenced from the Assured's angiogram findings.

As such, the Mediator was of the view that the Insurer's repudiation of the claim was in accordance with the terms of the policy and upheld the decision of the Insurer.

Case A13: Non-Disclosure of Material Fact (Medical History)

The Insured's hospitalisation treatment claim for the condition of Benign Positional Paroxysmal Vertigo, Hypertension & Sphenoid Sinusitis was declined on the ground of non-disclosure of a material fact. The Insured had a medical history of hypertension which was not disclosed in her proposal form.

The Insured claimed that she had gone to see the doctor for treatment of fever and cold. She denied her visit to the doctor was due to hypertension. She stressed that the doctor did not advise her that she was hypertensive or that she required long term medication to control her hypertension.

The issue to be determined is whether the Insured, being a lay person and not medically trained is expected to know that hypertension (if she was aware of the condition or informed by the doctor) is relevant to be disclosed in the proposal form¹⁷.

Section 150(1) of the Insurance Act 1996¹⁸ lays down the test for non-disclosure where the Insured is required to disclose matters which a reasonable person in the circumstances would know to be relevant.

In this regard, the Bank Negara Malaysia's 'Guideline on Claims Settlement Practices' also provides that the Insurer should not repudiate a claim on non-disclosure of material fact, unless the policy owner deliberately or negligently misrepresents/omits to disclose. The policy owner is not reasonably expected to know it is necessary to disclose.

During the mediation process, the Insurer obtained the doctor's medical report which stated that the Insured had complained of headache and her blood pressure was 140/100 mmHg. She was then prescribed with a short course of antihypertensive for 15 days. Though the Insured subsequently visited the same clinic 7 times over the next 8 years, based on her records from the clinic, there was no further diagnosis of hypertension nor was there any prescription of antihypertensive medication given to the Insured.

The Insurer agreed that in the absence of any further medical evidence to establish hypertension in the Insured, other than the one occasion on 19 May 1992, which was probably a transient elevation of blood pressure, the Insured might not have known it was necessary to disclose her visit to the doctor on 19 May 1992.

The Insurer revised their decision and approved the claim accordingly.

¹⁶ Chiew Swee Chai v. British American Insurance Co. (M) Sdn Bhd [1987] 1 MLJ 53: it was held that where the words of the policy are crystal clear, it is the view of the court that the sanctity of the contract should be upheld.

¹⁷ Karthirvelu v Pacific Orient Insurance Co Sdn Bhd [1990] 3MLJ 12: it was held that where the insured does not know that he is suffering from a particular disease, he has not failed in his duty to disclose if subsequently (after the contract is concluded) he discovers he is suffering from a disease.

¹⁸ Ibid., p.8

Case A14: Death due to Illness not Accident

The Claimant who was the son of the Insured (deceased) had filed for a death claim under the Personal Accident policy of the Insured. The Insurer had declined the claim as the Death Certificate stated that the Insured had passed away due to Basal Ganglia Bleed. The ground of repudiation was the cause of death; Basal Ganglia Bleed is an illness and not an accidental injury.

The Insurer had relied on the definition of 'Accident' and 'Injury' as provided in the policy¹⁹ to repudiate the claim.

The Claimant contended that the Insured was a healthy 77 year old man who did not suffer from any illness. The Insured had hit his head against the corner of the table while performing his morning prayer and fainted. He was sent to the hospital immediately. Whilst an operation was being performed, he had passed away. The Claimant averred that the fall had caused the Basal Ganglia Bleed and it was not due to any illness.

Apart from the Death Certificate where Basal Ganglia Bleed was the cause of death, there was no other medical evidence to support the Claimant's contention. The Mediator informed the Claimant that the duty is on him to prove that the Insured's death was due to an accident. Subsequently, the Claimant submitted a medical report by the attending doctor which confirmed the underlying cause of the disease was spontaneous bleeding and not an accident.

The Mediator upheld the Insurer's decision and dismissed the complaint as the Claimant could not prove that the cause of death was due to an accident.

Case A15: Hospitalisation Claim: Co-Payment of Room and Board Charges

The Participant's hospitalisation claim was paid partially by the Takaful Operator. The Participant was asked to bear 20 percent charges on her upgraded room and board because her claim was for a room that was above her entitlement limit, i.e. RM120.00 per day. The Takaful Operator's decision was based on a provision in the Certificate which states that "If the Participant is hospitalised at a published room and board rate which is higher than his/her eligible benefit; the Participant shall bear 20 percent of the other eligible benefit..."

The Participant, in submitting her claim, had submitted a letter from the hospital which clearly stated that the room within her entitlement limit was not available at the material time, but once the said room was available, she would be transferred to it. The Mediator was of the view that the availability of the room (within the entitlement limit) was beyond the control of the Participant. It was also noted that the Participant did not request for an upgrade of the room. The attending doctor had given a note stating the urgency of the admission to the hospital was due to the Participant's kidney condition. If left untreated, she would have suffered severe kidney infection.

On the balance of probabilities, the Mediator opined that this was a genuine case and there was no evidence of fraud involved. The Mediator found that the Takaful Operator did not give due consideration to the Participant's medical condition and the availability of the hospital rooms at the material time.

Relying on the evidence submitted, the Mediator was of the view that the Participant's claim had merit and applying the principle of fair, just and reasonableness, the Participant should not be made to bear the 20 percent charges for room and board charges. The Mediator found the Takaful Operator liable to settle the Participant's claim and revised the Takaful Operator's decision accordingly.

¹⁹ 'Accident' is defined as unforeseen and involuntary event which causes an injury. 'Injury' refers to bodily injury sustained in an accident and is effected directly and independently of all other causes.



General Insurance cases

Case A16: Water damage to Premises and Household Contents

The Insured was a Singaporean who owns an apartment in Kuala Lumpur. The Insured and her husband would visit their apartment on a regular basis. On one occasion, the Insured found that the plaster ceiling of the apartment had collapsed and caused damage to the household contents. The insurance agent was notified and he visited the apartment on the same day to take photographs of the damages. The Insurer was notified accordingly.

The Insurer subsequently repudiated the claim on the ground that the policy had lapsed at the time the loss was discovered; in addition, the exact time of loss could not be ascertained and the cause of the damage was due to a windstorm. Based on the photographs taken by the insurance agent, fungus growth was noticed on the household contents such as bed sheets, etc. This evidence strongly suggested that the damage could not have happened overnight, but had occurred earlier. It was not possible to discount the fact that the actual time of loss could have occurred within the policy coverage period. During the mediation process, the Insurer was requested to appoint a loss adjuster to establish the cause.

From the loss adjuster's findings, the damage was established to be due to water overflowing from the roof gutter, which was an insured peril. Based on the weather reports, the loss adjuster concluded that the loss could have happened within the policy coverage period.

At this juncture, the Insurer had attempted to amend their grounds of repudiation. However, the Mediator rejected the request as the Insurer should have conducted a proper and thorough investigation before making a decision. Furthermore, the Insurer had elected not to appoint the loss adjuster at the time the claim was notified.

The Mediator concluded that the delay in appointing an adjuster at the time of discovery had prejudiced the Insured's right to claim against the Building Management's Insurer. Under the circumstances and based on the principles of fair, just and reasonableness, the Mediator held the Insurer liable to indemnify the Insured for the damages to the apartment.

Case A17: Claim for Loss of Money in a Vehicle

The claim was repudiated under Exception 7 of the Certificate whereby the Takaful Operator is not liable against any loss arising from an unattended vehicle.

Based on the Loss Adjuster's findings, a thief had stolen and run away with an envelope containing RM10,000.00 in cash that was placed on the front passenger seat of the car belonging to the Participant's manager, Mr X. At the material time, Mr X was at a stall a few feet away from his car which was left unattended with the engine running. Mr X appealed for the claim to be honoured as the unfortunate incident was a first occurrence and that he was under a spell (pukau).

Based on the evidence provided, the Mediator was of the view that the loss of RM10,000.00 was directly due to the negligence of Mr X. He did not exercise reasonable care in leaving that amount of cash on the front passenger seat of an unlocked car, left unattended. There was also no evidence to support Mr X's assertion that he was under a spell.

Based on the available evidence and on the balance of probabilities, the Mediator was convinced that the loss was attributed to the negligent conduct of Mr X and upheld the Takaful Operator's decision.

Banking

Contractual Issues

Case B01: Auction Deposit for Property

Mr X was the successful bidder for a property auctioned by ABC Bank and he had paid a 10 percent deposit to secure the transaction. Immediately upon payment of the deposit, Mr X approached ABC Bank to apply for a housing loan. Mr X was informed by the bank that it would be difficult for him to obtain a loan as there were some issues with the properties in the same precinct.

When Mr X investigated further, he found out that there was no water and electricity supply to the said property due to non-issuance of the Certificate of Fitness. Mr X contended that ABC Bank should not have put up the said property for auction, and requested for a refund of the deposit.

During the mediation process, ABC Bank agreed to refund the auction deposit to Mr X and the complaint was resolved amicably.

Case B02: High Interest Charges Due to Failure to Convert Overdraft Facility

Mr Y secured a housing loan facility with XYZ Bank, to enjoy a lower interest rate as compared to an existing overdraft facility with the same bank, which he sought to convert. A Supplemental Agreement was executed and the legal fees were paid by Mr Y. However, Mr Y claimed that XYZ Bank had subsequently failed to complete the conversion of the overdraft facility to the housing loan facility. He was very unhappy because he had to continue paying high interest on the existing overdraft. As such, Mr Y wanted XYZ Bank to refund the difference in the interest charged on the overdraft facility and the lower rate offered for the new housing loan.

XYZ Bank rejected Mr Y's request for the following reasons:

- i. The bank was unable to proceed with the conversion of the overdraft facility to the housing loan facility because a private caveat was lodged on the same property charged as security for the overdraft facility Mr Y had taken with XYZ Bank.
- ii. According to XYZ Bank, another bank had granted a loan to Mr Y for which Mr Y had offered the same property as security for the said loan. Although Mr Y did not take up the loan, the other bank would only withdraw the private caveat upon settlement of certain fees and disbursements by Mr Y.
- iii. Several reminders were made by XYZ Bank's solicitors requesting Mr Y to deal with the private caveat lodged by the other bank; nonetheless, the private caveat was not removed.
- iv. As monthly current account statements and the monthly notices of the overdraft facility were addressed to Mr Y, the bank felt strongly that Mr Y should have been aware that the overdraft facility had not been converted to the housing loan facility.

During the Inquiry, the Mediator had ascertained pertinent facts surrounding the dispute, inter alia,

- i. Failure to complete the conversion from the overdraft facility to the housing loan facility was not properly communicated by XYZ Bank and/or its solicitors;
- ii. XYZ Bank's inability to show proof that a notice was sent to Mr Y that the loan conversion cannot be done.

After a lengthy but fruitful discussion between the parties, facilitated by the Mediator, both parties eventually understood the circumstances that gave rise to the dispute. The Mediator assisted the parties on various settlement options and it was agreed that XYZ Bank waives 50 percent of the overdraft interest. The dispute was amicably resolved.



Case B03: Penalty Interest Charges by Developer Due to Delay in Loan Disbursement by Bank

Mr Z had successfully secured a housing loan from ABC Bank to finance the purchase of a shophouse. The loan was approved and the Letter of Offer was accepted by Mr Z, but there was a delay in disbursements resulting in penalty interest charges by the Developer. Mr Z alleged that the bank's failure to release the loan to the Developer in a timely manner had caused him to suffer the penalty charges.

ABC Bank however claimed that the delay was attributed to both the Developer and Mr Z himself. According to ABC Bank, the construction work on the project was already 35 percent completed at the time when Mr Z approached the bank for the loan. Besides, the loan granted to Mr Z was under Bank Negara Malaysia's (BNM) FSM12 Funding Scheme, whereby BNM's approval had to be obtained before the funds are released to the Developer. ABC Bank claimed that some of the delay was due to the time taken in obtaining BNM's approval and the oversight by the Developer in mailing progressive billings to the wrong department, despite being informed of the correct address by ABC Bank's solicitors.

During the inquiry and after a lengthy discussion to ascertain the cause of the delay, Mr Z was convinced and accepted that the Developer had also contributed to the delay. ABC Bank also accepted that a portion of the delay was contributed by the bank's solicitors. Hence, ABC Bank agreed to reimburse part of the penalty interest charged to Mr Z. The dispute was resolved amicably.

Operational Issues

Case B04: Forged Signature on Stolen Cheque

Mr Y maintains a current account with XX Bank. Mr Y's house was burgled and among other things, his cheque book was stolen. However, Mr Y did not immediately realise that his cheque book was missing.

It was only when Mr Y checked his account via the internet that he found that RM3,000.00 was debited from his account without authorisation. On checking with XX Bank, he was informed that a cheque for RM3,000.00 was presented and paid to a charitable organisation. At that juncture, Mr Y realised that his cheque book was missing and had been stolen. He requested XX Bank for a refund of RM3,000.00 as the cheque was not issued by him. According to the XX Bank, the disputed cheque was not tagged by the collecting bank and the bank maintained its stand that the cheque was paid in good faith and within the ordinary course of business.

However, on a cursory examination of the signature on the disputed cheque, the Mediator observed that the signature on the cheque differed from Mr Y's specimen signature card furnished by the bank.

In light of this discovery, XX Bank agreed to reimburse the sum of RM3,000.00 to Mr Y.

Case B05: Money Transferred to Wrong Account via Online InterBank GIRO

Ms U, a savings account holder of AA Bank had performed an online fund transfer to a third party account maintained with BB Bank via Interbank GIRO. However, a wrong digit was inadvertently entered by Ms U, resulting in the funds being credited to the wrong beneficiary's account.

Ms U was surprised that both AA Bank and BB Bank had allowed the funds to be credited into the wrong account despite a mismatch between the account name and account number. BB Bank explained that their system does not trigger an alert should there be a mismatch between the beneficiary's name and the account number.

A meeting was held with both the banks to address the issues raised by Ms U. To avoid funds from being transferred to the wrong account due to a mismatch or error, appropriate alerts should be in place to protect the customer. In this case, the matter was resolved amicably between parties.

Case B06: 1988 Fixed Deposit Receipt

Mr P, the Executor of the Estate of his late father, had presented a Fixed Deposit (FD) receipt that belonged to his deceased father, for withdrawal at CC Bank. The FD was placed in 1988 for tenure of 2 years.

CC Bank refused to accede to Mr P's request because the FD was no longer in the bank's records. The physical records were destroyed in line with the bank's record retention policy. The bank was of the view that the depositor could have withdrawn the FD, and the FD account could have been closed prior to his demise.

CC Bank informed that at the time the account was opened, the depositor is required to give instructions to the bank to renew the FD. During that time, the FD system was not computerised and thus, the FDs are not automatically renewed. The depositor is required to go personally to the bank for renewal. If and when the FD receipt is updated, the details of the FD renewal would be printed on the reverse of the FD receipt.

In the present case, the details on renewals are not reflected on the reverse of the receipt. According to CC Bank, the FD was not transferred to the Registrar of Unclaimed Monies. Thus, it is highly probable that the FD was withdrawn on maturity. However, CC Bank was unable to produce proof that the FD was renewed upon its maturity.

As there was an impasse, the parties agreed to submit to a decision by the Mediator. The Mediator was of the view that the relationship between the bank and the depositor does not come to an end upon expiry of the FD.

The relationship continues until the funds are repaid to the depositor and time begins to run against the depositor from the time the bank refuses to pay on presentation of the FD. The FD receipt produced by Mr P is an original receipt. As the FD receipt constitutes *prima facie* evidence against the bank of a debt owing to the customer, the burden of proof is on the bank to show that the FD receipt, a piece of "primary evidence", is not valid and of no value.

Whilst CC Bank confirmed that the FD was never transferred to the Registrar of Unclaimed Monies, it was unable to show proof that the FD was withdrawn by the depositor. On the other hand, Mr P is able to establish that the FD is still in existence by virtue of the original FD receipt being in his possession.

The Mediator revised the CC Bank's decision and allowed Mr P's claim for the principal FD sum of RM5,000.00, in accordance with the Rules governing the FD (found on the reverse of the FD receipt), inter alia, payment will be made to the depositor on production of the receipt and; interest on this FD will cease at due date unless renewed²⁰. As there is no evidence to show that a renewal instruction was given, the Mediator awarded interest to be paid at the FD prevailing rate for 2 years.

Cash Deposit Machine

Case B07: Shortfall in Cash Deposited

Company A maintains a corporate current account with XYZ Bank. The daily takings of the company are usually deposited at the Cash Deposit Machine (CDM) of XYZ Bank at the end of the business day. At around midnight, one of the company's staff deposited cash amounting to RM20,000.00 in 4 transactions. She alleged that one of the deposit transactions amounting to RM5,000.00 that was executed at 12:02am, was not accounted for as the CDM went out of service. There was no receipt issued.

²⁰ Rules:

- (a) Payment will be made to the Depositor on production of this Receipt duly endorsed;
- (b) Interest on this FD will cease at due date unless renewed



XYZ Bank conducted their investigation and could not find any deposit transaction for RM5,000.00 at 12:02 am. According to the bank's CDM Electronic Journal which records the deposit transactions in detail, there were a total of three successful deposit transactions totalling RM15,000.00 performed by Company A from 11:56 pm until 11:59 pm. There is no record of subsequent cash deposit made at 12:02 am as the CDM had shut down for daily batch run at 11:59pm. XYZ Bank clarified that should there be any deposit transaction captured during this period, it would be rejected under the "Host Time Out".

XYZ Bank further conducted cash balancing at the CDM to confirm that the amount of physical cash received tallied with the amount credited into the respective accounts on the day in particular. The cash balancing report showed there was no excess cash.

Having examined the documentary evidence received, the Mediator concluded that the total cash deposited by Company A was RM15,000.00 and not RM20,000.00, and upheld the decision of XYZ Bank.

Case B08: Machine "Jam" During Cash Deposit

Ms G maintains a sole-proprietorship current account with JJ Bank. Ms G deposited cash amounting to RM2,000.00 into the current account. She stated that she had counted the notes before inserting them into the Cash Deposit Machine (CDM). As soon as the notes were inserted, the CDM had gone out of service with a message "Out of Order" displayed on the screen. Ms G immediately contacted the JJ Bank's Hotline to lodge a complaint on the unsuccessful transaction. She was assured that the amount deposited by her would be credited into her account by the following day.

When JJ Bank conducted their investigation, they could not find any cash deposit for RM2,000.00, as alleged by Ms G. Based on the CDM Electronic Journal records, the bank claimed that the deposit transaction was not successfully executed because the cash that was inserted by Ms G was jammed. The CDM subsequently went out of service.

JJ Bank conducted cash balancing on the CDM and found an excess cash of RM1,350.00 inside the CDM, which was refunded to Ms G accordingly. However, the balance of RM650.00 was not refunded.

The Mediator had examined the CDM Electronic Journal and found that the incident had occurred at about 9 seconds after the notes were inserted into the CDM. Furthermore, the CDM Electronic Journal did not reflect the actual number of notes inserted/deposited by Ms G before the cash was jammed at the CDM. Therefore, the burden is on the bank to prove the actual number of notes that was inserted and processed by the CDM at the material time, to refute Ms G's allegation that the sum of RM2,000.00 was inserted into the CDM.

In the absence of such evidence, the benefit of the doubt was given to Ms G and the Mediator revised the decision of JJ Bank.

ATM Issues

Case B09: Non-Dispensation of Cash from ATM

Mr K maintains a savings account with ABC Bank with an ATM card issued. Mr K attempted to withdraw RM400.00 from an Automated Teller Machine (ATM) of ABC Bank but no cash was dispensed. He subsequently moved to the second ATM and attempted to withdraw RM500.00. He waited at the ATM for about 10 seconds but no cash was dispensed. He then moved to the third ATM to check the account balance and discovered that RM500.00 was already deducted from his account.

According to ABC Bank's record, the withdrawal of RM400.00 from the first ATM was successful. As the dispensed cash was not removed within 30 seconds, it was retracted into the ATM. There was excess cash of RM400.00 found and the sum was duly refunded to Mr K.

As for the withdrawal of RM500.00, the transaction was successfully executed and 10 pieces of RM50.00 notes totalling RM500.00 were dispensed. The ATM Electronic Journal showed that the cash was dispensed 17 seconds after the card was retrieved by Mr K. There were no irregularities or dispenser errors recorded during Mr K's withdrawal at the second ATM. The ATM cash balancing confirmed that there was neither excess cash nor discrepancies.

The Mediator had viewed ABC Bank's closed circuit television (CCTV) recording of Mr K's transactions and observed that cash was dispensed from the second ATM about 5 seconds after Mr K had retrieved the ATM card, by which time he had moved to the third ATM. He apparently did not wait long enough for the cash to be dispensed at the second ATM. It was highly probable that the dispensed cash was taken by a third party. The Mediator upheld the decision of ABC Bank.

Case B10: ATM Not in Good Working Order

Mr S maintains a savings account with XYZ Bank and was issued an ATM card. Mr S withdrew RM1,400.00 from XYZ Bank's ATM but he only received one piece of RM50.00 note. However, he received a transaction receipt which showed that his account was debited for RM1,400.00. XYZ Bank rejected Mr S's claim because the records showed that RM1,400.00 was properly dispensed.

Based on further investigation and evidence received, the Mediator noted that a subsequent withdrawal performed by another customer at the same ATM was also unsuccessful due to an error. This was an indication that the error that occurred during Mr S's cash withdrawal was likely caused by a machine malfunction or short dispensation problem. There was no clarification from the engineer regarding the error and the entry of service mode that had occurred shortly after the withdrawal.

The Mediator also found that the number of notes dispensed as per the Host Report did not tally with the ATM record. The Cash Balancing Register revealed that a high number of notes were found in the ATM's purge bin. This indicates that the ATM was probably not functioning well on that day.

XYZ Bank confirmed that there was no CCTV camera installed at their ATM terminal. The Mediator stressed that the CCTV recording was vital in this instance as the Guideline on the Provision of Electronic Banking (e-banking) by Financial Institutions issued by Bank Negara Malaysia (BNM) prescribes that banks should install close-circuit cameras or transaction-triggered cameras at strategic locations with adequate lighting in order to capture clear images of a cardholder performing a transaction.²¹ Although a complaint was lodged by Mr S, the XYZ Bank did not preserve the CCTV recording. This is a non-compliance of the BNM guidelines.

The absence of the CCTV recording made it impossible to ascertain what had transpired during Mr S's withdrawal and whether his action and demeanour would corroborate his contention. The Bank should have preserved the CCTV recording as material evidence since Mr S lodged a report the day after the disputed transaction occurred.

Following the Mediator's observation, XYZ Bank agreed to resolve the matter amicably and made a full refund to Mr S.

Case B11: Case-Dispensing Sequence

Madam H maintains a savings account with PQR Bank and was issued with an ATM card. Madam H attempted to withdraw a sum of RM1,400.00 from ABC Bank's Automated Teller Machine (ATM) at the Shared ATM Network (MEPS). According to Madam H, she waited for some time for the cash to be dispensed at the ATM upon retrieving her ATM card. However, she did not receive any cash. Madam H said that she did not hear the sound of the cash being counted at the said ATM. When she checked her account balance at another ATM, she found that RM1,400.00 was deducted from her savings account.

According to PQR Bank, their investigation with ABC Bank revealed that Madam H's withdrawal was successfully executed, and 28 pieces of RM50.00 notes totalling RM1,400.00 was dispensed by ABC Bank's ATM. There was no indication that ABC Bank's ATM was experiencing any mechanical problems at the material time. ABC Bank's ATM Electronic Journal and the Host Report revealed that there were no irregularities or occurrence of cash retraction at the time when Madam H had performed her withdrawal transaction at ABC Bank's ATM. According to PQR Bank, ABC Bank's ATMs are equipped with retraction function whereby the dispensed cash will be retracted into the machines if it is not taken within 30 seconds. The ATM cash balancing showed that there was no excess cash.

²¹ Clause 17 of Bank Negara Malaysia's Guideline on Minimum Security Standards for Automated Teller Machines (ATMs) : Availability of Video Camera

(a) Banking Institutions should install close circuit camera or transaction triggered camera at strategic locations with adequate lighting in order to capture clear images of cardholder performing a transaction.



ABC Bank's CCTV recording of the disputed transaction performed by Madam H was not available as the recording has been recycled. The said recording was only kept in ABC Bank's system for a period of 3 months.

The Mediator examined ABC Bank's ATM Electronic Journal records and made the following observations:

- i. The withdrawal transaction of RM1,400.00 by Madam H was successful.
- ii. After Madam H removed the ATM card, the ATM had selected the notes from the cartridge to be dispensed. The cash was presented 17 seconds after the ATM card was retrieved and the cash was removed 10 seconds thereafter.

The Mediator was of the view that the different dispensing sequence that was assigned to the said ATM had triggered the delay in the cash dispensation and this had largely contributed to the loss of RM1,400.00. Under normal circumstances, the ATM would select the notes to be dispensed before the ATM card is ejected, and cash would be dispensed about 1 to 3 seconds after the ATM card is removed. Madam H, being a customer of PQR Bank was unfamiliar with the different dispensing sequence of ABC Bank. Therefore, she cannot be penalised for not waiting longer for the cash to be dispensed.

ABC Bank was unable to furnish the CCTV recording of Madam H's transaction because it has been recycled. The CCTV recording is vital as it would determine what had actually transpired at the ATM and ascertain the identity of the person who took the cash. The Guideline on Minimum Security Standards for Automated Teller Machine (ATM) by Bank Negara Malaysia (BNM) requires banks to install closed-circuit cameras or transaction - triggered cameras at strategic locations with adequate lighting in order to capture clear images of a cardholder performing a transaction and the retention period on the recorded information should be established²².

PQR Bank accepted the Mediator's observations and findings and refunded the sum of RM1,400.00 to Madam H.

Case B12: "Shoulder Tapping" Scam at ATM

Whilst Mr A was performing his ATM cash withdrawal transaction at DEF Bank's Self-Service Terminal area (SST), a lady had tapped his shoulder and informed him that he had dropped his money. When Mr A turned to pick up the money, another man quickly swapped Mr A's ATM card with another card. Without suspecting anything, Mr A then took the ATM card, cash and transaction slip and left the bank.

According to Mr A, there was no security guard around at the SST area at the material time. Mr A only realized that there were 12 unauthorised withdrawal transactions totalling RM7,900.00 from his account when he wanted to perform another withdrawal on the next day. Mr A then reported the matter to DEF Bank.

Mr A sought for compensation on his losses as he was duped by the syndicate in the SST area and DEF Bank had failed to ensure high level of security within its premise that could have deterred such activity.

DEF Bank on the other hand rejected Mr A's claim as the investigations revealed that the withdrawals were performed using a valid ATM chip card and an authorised PIN which was known only to Mr A. DEF Bank was of the view that Mr A had failed to comply with the card security measures that required all cardholders to take reasonable steps to safeguard the ATM card and ensure the PIN is kept confidential at all times.

Upon hearing the submissions from both parties, the Mediator revised DEF Bank's decision as Mr A was clearly a victim of the syndicate who preyed on customers' ATM card and PIN with a well-planned *modus operandi* within DEF Bank's premises. DEF Bank's CCTV recording revealed that several other attempts were also made by the syndicate to distract other customers during the time using the same *modus operandi*.

The Mediator is of the view that Mr A could not identify or realise his ATM card has been swapped as there was no embossment of his name on it. It was further observed that the absence of security guard in DEF Bank's SST area had given the opportunity for the syndicate to carry out their activities within the bank's premises.

²² *ibid* (n.21)

The Mediator held that DEF Bank had a duty to ensure the ATM services were operating in a safe and sound manner with the highest possible standard in service availability and security in accordance with the Bank Negara Guidelines on Minimum Security Standard for ATM Services, to avoid such incidents.

Mr A's claim was allowed based on DEF Bank's failure to put in place a combination of preventive and safety measures. There was no breach of the card terms and conditions as Mr A's PIN was not intentionally compromised.

Case B13: Unauthorised Withdrawals with Stolen ATM Card

One morning, Mr H found that his car had been broken into. His wallet containing his identity card and RST Bank's ATM card that was kept in his car was stolen. When Mr H checked his saving account online, he found that there were 4 unauthorised ATM withdrawals totalling RM5,000.00. Mr H reported the unauthorised transactions to RST Bank and his ATM card was immediately cancelled.

Mr H contended that the amount withdrawn had exceeded his ATM daily withdrawal limit of RM1,000.00 and demanded an explanation from RST Bank. Mr H stated that his PIN was not recorded anywhere for reference and the PIN assigned was based on his favourite numbers. Mr H sought compensation for the losses as he alleged that his ATM card was stolen and used to withdraw an amount in excess of his daily limit.

RST Bank's investigation revealed that the transactions were successfully performed using a valid ATM chip card and an authorised PIN which was known only to Mr H. The daily withdrawal limit was increased to RM5,000.00 the same morning as the fraudster did not only have access to Mr H's ATM card and PIN, but he also had Mr H's identity card number. Thus, the fraudster was able to change Mr H's daily withdrawal limit. Based on these facts, the bank was unable to accede to Mr H's request for compensation.

The Mediator upon hearing submissions from the parties was of the view that the fraudster had Mr H's identity card number to increase the daily withdrawal limit and managed to obtain the correct PIN on the third attempt. This indicated that the PIN in all probability was closely connected to Mr H's identity card number. ATM withdrawal transactions could only be executed with presence of a genuine ATM chip card and a valid PIN combination. It is the responsibility of all cardholders to safeguard the custody and the confidentiality of their ATM card and PIN at all times. Mr H's negligence in leaving his wallet unattended in his car had led to the losses. He also could have chosen a strong combination of PIN for apparent reasons. The Mediator upheld the decision of RST Bank.

Internet Banking Fraud

Case B14: Username, Password and TAC Compromised

Ms Z, an air stewardess, had applied for BB Bank's online banking facility prior to her departure to Dubai. She was guided on steps and procedures for online banking procedures, and the relevant terms and conditions were advised before she had signed up for the facility with the bank.

When Ms Z returned from Dubai, she attempted to withdraw some cash from the ATM machine located at Bukit Bintang, but the transaction failed. When she made some balance inquiries to check her account balance and found that her account balance was incorrect, Ms Z then contacted the bank for clarification on the discrepancies in her account balance.

On the following day, Ms Z visited the BB Bank to report on the alleged missing monies from her account. She was informed that the monies in her account were transferred via internet banking to a 3rd party account in two transactions amounting to RM5,000.00 and RM1,600.00 respectively. She disputed these transactions as it was done without her knowledge and consent.

In regard to the Transaction Authorisation Code (TAC) sent by BB Bank to Ms Z's mobile, Ms Z said that she had removed her local sim card from her mobile and replaced it with her Dubai sim card during her stay at Dubai. Therefore, it was impossible for her to receive the TAC which was sent to her local sim card to complete the transaction. She claimed that she was not in Malaysia at the time of the disputed transactions.

She informed that she had never given her username and password to access her internet banking account. She denied receiving or responding to phishing e-mails requesting to update her account details.



BB Bank's investigation revealed there was neither system failure nor breach of security in their website during the said transactions and that the disputed transactions were successfully executed with Ms Z's valid username and password which is known only to her. BB Bank furnished a confirmation report from the Telecommunication Company that the TAC was successfully sent to Ms Z's Malaysia mobile number.

BB Bank's Internet Protocol (IP) search results revealed that the IP address used to transact both the 3rd party fund transfers appeared to be a local and genuine address.

BB Bank clarified that this is not a phishing case related *modus operandi* scam whereby the username and password were compromised to the fraudster in a manner of responding to scam sort of e-mails or clicking on any URL or links via e-mails purportedly from the bank.

BB Bank strongly believed that the username and password was compromised resulting in her essential credentials being used by a person that may be known or unknown to her to transact the disputed transactions. Based on the above, BB Bank rejected the claim.

To access Ms Z's internet banking account, all three essential personal credentials, that is username, password and TAC must have been compromised. It is the duty of the customer to ensure and observe all security measures prescribed by the bank relating to her username and password.

In this regard, the Mediator observed that MS Z had compromised her username and password which is in breach of the Bank Negara Malaysia Guidelines on Consumer Protection on Electronic Fund Transfer²³. The Mediator upheld the decision of BB Bank.

Credit Card

Case B15: Unauthorised Cash Advances through Stolen Credit Card

Mr T, after attending a club function, found his car broken into. Among the things that were stolen were his identity card (IC), driving licence, several credit cards and ATM cards from different banks. Upon discovering the theft, Mr T lodged a police report on the break-in and theft of his credit cards and other personal items. He also lodged a report with the banks and requested them to block all his credit and ATM cards.

Mr T was subsequently informed by AB Bank (one of the credit card banks) that there were three ATM withdrawals for cash advances, totalling RM3,000.00 that were made using one of his AB Bank Visa credit cards with a credit limit of RM50,000.00

Mr T denied making the three withdrawals claiming that he only used his AB Bank credit card for retail purchases and that his PIN number was never kept in his wallet. Furthermore, there were no unauthorised transactions performed using any of the other credit cards that were also stolen when his car was broken into. Mr T contended that he should not be liable for the unauthorised withdrawals as he had immediately reported the theft of his credit cards to AB Bank and also the police.

AB Bank's investigation revealed that the three cash withdrawals totalling RM3,000.00 were performed just prior to Mr T's report to the AB Bank on the day of the theft. Thus, it was impossible for AB Bank to block the unauthorised transactions. According to the bank's ATM journal records, there were no errors or invalid PIN attempts recorded in the ATM journal for the three unauthorised cash withdrawals.

AB Bank concluded that Mr T's PIN must have been compromised in some way as the PIN number is required to perform cash advance withdrawals through the ATM, and the PIN is confidential and only known to the cardholder. Mr T's PIN number must have been closely connected to his IC (which was one of the items stolen), that enabled the fraudster to guess and enter the PIN correctly. AB Bank argued that it is the duty of the cardholder to safeguard his credit card and his PIN at all times. AB Bank held Mr T fully liable for the unauthorised transactions as he had failed to use a strong combination in his PIN so that it would be difficult for the fraudster to guess the PIN correctly at his first attempt.

²³ BNM guidelines on Consumer Protection on Electronic Fund Transfer [BNM/GP11] dated 10 December 1998, Clauses 15(1) and (2) of the Guidelines: A customer shall not "directly or indirectly disclose to any person the access code of his card or any electronic device used to effect an electronic fund transfer" or "fail to take reasonable care to keep the access code secret" and "a financial institution is discharged from any liability if it is proven that the customer has breached the duty imposed by subparagraph(1)

The Mediator, upon examination of all the evidence submitted, concurred with the decision of AB Bank that there was a compromise of Mr T's PIN and that it was reasonable to conclude that the PIN in all probability was closely connected to the particulars in Mr T's IC which made it possible for the fraudster to make the unauthorised cash withdrawals using his PIN.

The Mediator was of the view that AB Bank should therefore not be penalised as it had not contributed in any way to the loss suffered by Mr T and upheld the decision of AB Bank (However, AB Bank agreed to waive all finance and late charges incurred on the disputed amount).

B16: Change of Correspondence Address

Mrs M holds a credit card issued by BBB Bank. She left Malaysia for Scotland in 2008.

In 2012, Mrs M received a SMS from BBB Bank that required her to settle her outstanding payments on her credit card. Upon checking online, she discovered that there were several unauthorised retail and ATM cash advance transactions. She also found out that her Visa Gold credit card had been upgraded to a Platinum credit card without her knowledge. The upgraded credit card was sent to her address in Malaysia.

Mrs M asserts that she was not informed by BBB Bank on the upgrade of her card from Visa Gold to Visa Platinum. Moreover, she did not request for the credit card to be upgraded. She alleged that she had not used the card for more than a year. She only retained the credit card for emergency purposes and to use when she visits Malaysia. She claimed that the upgraded credit card was sent to the wrong address, thereby enabling the fraudster to activate and use it. She did not receive any call from BBB Bank to verify the unauthorised transactions. Also the amounts transacted were not within her spending pattern. From the CCTV footage, she identified the person who performed the unauthorised transactions as her ex-colleague. As she did not benefit from the unauthorised transactions, Mrs M contended that she should not be liable for the disputed amount.

BBB Bank had sent the upgraded credit card to Mrs M's address as maintained in BBB Bank's records. BBB Bank alleged that Mrs M had the duty to inform the bank of any change to her correspondence address, in accordance with Clause 18 and 19 of the Card Agreement, as she has left the country for more than 5 years²⁴.

BBB Bank clarified that the upgraded credit card was successfully activated through a proper verification process performed by BBB Bank. BBB Bank also received instructions on the change of mobile number and change of address where the monthly statements were to be sent. Upon viewing of the CCTV footage for the cash advance transactions at the ATM, the person who performed the unauthorised transactions was not Mrs M. However, BBB Bank maintained that Mrs M is liable for not notifying the bank of her change of address. Nonetheless, the bank had on goodwill basis, offered to waive 50 percent from the disputed amount. Mrs M rejected the offer.

The Mediator held that BBB Bank should have verified with Mrs M whether she wanted her credit card to be upgraded from Visa Gold to Visa Platinum. Moreover, the Mediator noted that Mrs M's card will only expire in 2014. BBB Bank should confirm the acceptance of the upgraded card before sending it to her by mail. BBB Bank should also have made verifications with Mrs M on the large amount transacted. Such transactions should have triggered the BBB Bank's system, bearing in mind that Mrs M had not used her credit card for more than a year and the average monthly spending pattern was minimal.

The Mediator was of the view that it is a duty of Mrs M to also inform BBB Bank of her current address and latest work place address, whether in Malaysia or overseas. On the facts, Mrs M had left Malaysia since 2008 and did not inform BBB Bank of her overseas address. Had Mrs M informed BBB Bank of the change of address and complied with Clause 18 and 19 of the Credit Card agreement, this problem could have been averted.

²⁴ Terms and conditions of the Card Agreement:

Clause 18 The cardholder is to notify the Bank's Card Services promptly in writing of any changes in

- Employment or business ; or
- his /her office or residential address; or any of the Cardholder's contact particulars provided to the Bank

Clause 19

- (a) If the Cardholder leaves Malaysia for more than one month, he/she should made arrangements to settle the Card Account prior to his /her departure.
- (b) If the Cardholder leaves Malaysia to take up residence elsewhere, the Credit Card and any Supplementary Credit Card(s) are to be returned to the Bank for cancellation/termination prior to the Cardholder's departure and Clause 17 shall apply



It was left to the Mediator to decide the matter as both parties had reached an impasse in reaching a settlement. Based on the above findings and applying the principle of fair and reasonableness, the Mediator apportioned the liability on the basis that Mrs M had failed in her obligation to inform BBB Bank of her change of address. BBB Bank waived all finance and late charges related to the dispute.

Case B17: Credit Card Chargeback

Mr X holds a credit card with ABC Bank. He ordered custom made clothes (4 shirts and 2 pairs of trousers) from a merchant named FF Tailor in Bangkok. The payment was made through his credit card. Mr X was unhappy with FF Tailor, who had only delivered a shirt and a pair of trousers, and found that they were not according to the agreed specifications. The defective items were returned to the merchant. Mr X demanded for a refund which the merchant ignored. Mr X immediately instructed ABC Bank to cancel the transaction and stop payment. However, the ABC Bank went ahead to make payment to the merchant's bank in Bangkok. Mr X stated that he did not authorise the payment and ABC Bank should pursue chargeback rights with the merchant's bank under the dispute resolution process.

ABC Bank, after their investigation confirmed that the transaction was initiated by the complainant himself with the merchant. The bank further contended that the Mr X had signed the order form with the merchant and agreed to make payment via his credit card.

ABC Bank said that chargeback was not possible. To dispute any transaction, it must be brought to the attention of the bank within 120 days from the date of dispute, according to Visa and MasterCard Rules and Regulations. From the facts, it had clearly exceeded the 120 days.

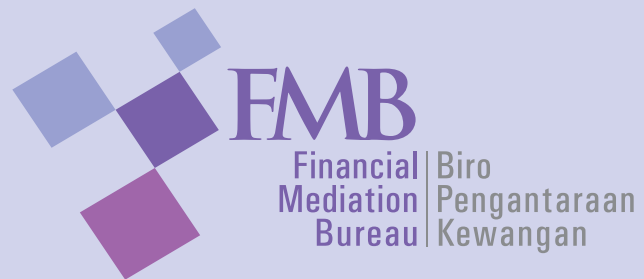
ABC Bank stressed that they only acted as a mode of payment to facilitate the transaction between the merchant and the card holder. Mr X should resolve the dispute on services with the merchant directly in accordance with Clause 12 of the Credit Card Agreement²⁵. Thus, on that basis, ABC Bank held Mr X fully responsible for payment of the disputed amount.

Under the circumstances, the Mediator upheld the decision of ABC Bank and held that Mr X is fully liable for the transaction. ABC Bank however is to waive all finance and late charges. The Mediator agreed that chargeback was not possible as per the conditions stipulated under Visa and MasterCard Rules and Regulations. The merchant's letter stated that Mr X had signed the confirmation order which stated clearly that once the garments are cut, the order can neither be cancelled nor refunded. However, any alteration needed will be attended to. Since Mr X had returned the garments to the merchant, he should deal directly with the merchant for any alteration or replacement.

²⁵ Clause 12 of the Credit Card Agreement

The bank is not liable for any act or omission of any merchant establishment including any refusal to honour the Credit Card or any defect or deficiency in any goods or services supplied to the Cardholder by such merchant. The Cardholder shall resolve all complaints, claims and disputes against the merchants directly and the Cardholder agrees not to involve the respondent Bank in any such claims, disputes or legal proceedings. Any claims and / or disputes which the Cardholder may have against the merchant establishment shall not relieve the Cardholder of the obligation to pay the amounts due to the respondent Bank.





- **Consumer Awareness**
- **A Tribute to Mr John Thomas**
- **FMB Staff Activities**
- **Terms of Reference**

Consumer Awareness

As in the past, FMB continued its efforts to educate and create consumer awareness on its role as an alternate channel for dispute resolution, as well as the responsibilities and rights of consumers and FSPs with regard to banking and insurance products and services.

The year 2012 witnessed FMB's engagement in events, exhibitions and briefings organised by Bank Negara Malaysia (BNM), Perbadanan Insurans Deposit Malaysia (PIDM), Agensi Kaunseling dan Pengurusan Kredit (AKPK), Persatuan Keselamatan Pengguna Kuala Lumpur (PKPKL) and other related agencies. Brochures and other printed materials were handed out to inform consumers and FSPs on matters relating to financial prudence, channels for lodging complaints and settling financial disputes, complaint handling, debt management and financial consumer protection. Besides that, FMB appeared in road shows organised by PIDM in both Peninsular and East Malaysia that reached out to over a dozen towns and attracted over 1,200 participants.

Exhibition/Events Schedule 2012

No	Events	Date
1	MIHAS 2012, Kuala Lumpur Convention Centre	4-7 April 2012
2	MSAM 2012, Kota Kinabalu, Sabah	20-28 April 2012
3	Metaltech 2012, PWTC, Kuala Lumpur	15-19 May 2012
4	Himpunan Sejuta Belia, Putrajaya	23-27 May 2012
5	Bulan Pengguna Kebangsaan 2012, Tesco Semenyih, Selangor	1-3 June 2012
6	Seminar Pemanduan Pengguna Gagasan 1, Kem Ramsar, Tasik Bera, Pahang	17 June 2012
7	SMIDEX 2012, Kuala Lumpur Convention Centre	20-22 June 2012
8	Minggu PKS 2012, SME CORP, KL Sentral	26-28 June 2012
9	Entrepreneurship Expo 2012, Mid Valley, Kuala Lumpur	28-30 June 2012
10	Seminar Pemanduan Pengguna Gagasan 1, Hotel Midah, Kuala Lumpur	18 July 2012
11	Halfest 2012, PWTC, Kuala Lumpur	10-14 October 2012
12	Hari Inovasi Kementerian Kewangan, Putrajaya	1-2 November 2012

Participants:

- Banks, Insurance/Takaful Operators' employees and agents
- Government offices and related agencies
- College and university students
- Small Medium Enterprises (SMEs)
- Public
- NGOs



The positive response from the well-participated events was encouraging. During the face-to-face engagements, FMB addressed and responded to the many issues and concerns that covered the following areas:

The Role & Jurisdiction of FMB

- How to refer a complaint to FMB?*
- What types of complaints are handled by FMB?*
- When and how does FMB make a decision?*
- What type of awards can FMB make?*
- How does "mediation" help parties achieve settlement?*
- How independent and fair is FMB?*
- Do I need to pay any fees to FMB to handle my complaint?*



Motor Claims

In theft/total loss claims, why do the insurers pay the market value of the vehicle at time of the loss and not the sum insured?

How, and on what basis is market value determined?

What is fair market value?

Where there is a "Loss of Use" claim, who will determine the number of days that compensation will be based on?

On what basis will the claim be assessed?

Is it for the entire duration the vehicle was at the workshop or the period of loss of use of the vehicle?

Why is my insurance claim rejected if I do not have a valid driving licence?

Can a person who has no driving licence buy a motor policy?

Should the owner or the driver/rider lodge the police report?

Hospitalization and Medical Claims

What type of reimbursement of hospitalisation/medical claims am I entitled to? Am I entitled to claim for "non-medical items"?

Is there a limit to the room charges and type?

Does the insurer have a right to refuse to pay part of my hospital claim?

Electronic Banking & Credit Cards

Do I have a duty to protect my card and PIN (Personal Identification Number)? Is it safe to do online payments/transfers?

Do I have to pay if someone uses my card without my knowledge or consent?



A Tribute to Mr John Thomas



On 27 October 2012, Mr John Thomas, Chief Executive Officer of the Financial Mediation Bureau (FMB), retired after an illustrious assignment spanning a period of eight years. John was nominated by Bank Negara Malaysia as the first Chief Executive Officer of FMB (previously known as Director of Operations) in May 2004.

John will be remembered as the “*founding father*” of FMB, a visionary who selflessly gave his time, energy and experience to lead and build FMB into what it represents today: an institution of repute, integrity and professionalism.

John was a key member of the task force responsible for merging the Banking Mediation Bureau (1996) and Insurance Mediation Bureau (1992) into a new entity as part of the Central Bank’s efforts to enhance the consumer protection infrastructure and strengthen avenues for consumer redress in the financial sector. The fruits of his labour are clearly seen in the numerous complaints received yearly by FMB, which is reflective of increasing consumer confidence in the Bureau.

John’s vast knowledge of the industry coupled with his patience, perseverance, humility and sense of empathy in dealing with people will be fondly remembered. He was a natural leader who touched the lives of many in his capacity not only as the FMB’s CEO, but also as a mentor and friend with his open-door policy and readiness to listen and counsel.

John left an indelible mark on the organisation and remains an admirable figure to many who had worked with him and who have been touched in one way or another by his charisma and caring disposition; an inspirational leader indeed, John has left behind a legacy and class act that will be hard to emulate.

We wish John a happy, healthy and blessed retirement, and great success in all his future endeavors.

FMB Staff Activities

A number of engaging and fun-filled activities for FMB staff were successfully organised in 2012 with the objectives of fostering teamwork and opportunity for staff to bond and find common ground with one another.

In tandem with the saying “All Work and No Play Makes Jack a Dull Boy”, the year 2012 was filled with a series of social and sporting activities. Celebration of staff birthdays and hosting of farewells for resigning/ retiring staff, were amongst the many activities organised. Fun-filled events such as a Karaoke session and Bowling competition not only helped to discover hidden talents but also drew fierce but friendly competition among staff.

The highlight of the year was, without doubt the “FMB Family Day”, held on 20th & 21st October 2012 at the Avillion Admiral Cove, Port Dickson. Over a 100 people were there comprising staff and families as well as members of the Board that included Tan Sri Dato’ Seri Siti Norma binti Yaakob with her family, Mr Ong Chong Hye and Mr Wong Teck Kat and his wife. Among the fun-filled activities organised for the 2-day event was the outdoor telematches for adults and children, that left everyone exhausted but happy, followed by a sumptuous buffet dinner at the Cove. A farewell tribute was also held for the ex-CEO, Mr John Thomas, who retired from service in October 2012. Many heart rendering speeches in appreciation of John’s contributions were delivered. The night ended with lucky draws (where almost everyone ended up with something), prizes for the winners of the telematches and a musical performance dished out by our very own “FMB Idols”.

The good turnout, support and participation of staff in all events organised was very encouraging and is proof that FMB was successful in achieving its objectives of enhancing and continuously spurring its staff to greater heights of productivity, teamwork and collaboration. In retrospect, the success is attributed to a dedicated, hardworking and committed organising committee, as well as the enthusiastic response and participation of all staff. As one staff enthused on our return journey, “Where are we going for our Family Day next year?”



FINANCIAL MEDIATION BUREAU

TERMS OF REFERENCE OF THE MEDIATOR

A. JURISDICTION

Disputes on financial matters include:

- a. Insurance/Takaful claims; and
- b. Conventional banking/Islamic banking matters including credit/charge card claims.

The Mediator has jurisdiction:

To consider any complaint (including a dispute or claim) referred to him in connection with or arising out of a policy (or proposed policy) of insurance or takaful certificate and/or the transaction/facility of a conventional banking, Islamic banking, credit/charge card with a Member of the Bureau and governed by the law of Malaysia but subject to these conditions:

- (i) The policy/certificate on insurance and takaful must be taken out by or on behalf of or for an individual or body corporate and underwritten within Malaysia.
- (ii) The facility on conventional banking, Islamic banking and credit/charge card must be taken or utilised by an individual or body corporate.
- (iii) The complaint must:
 - a. concern a claim under the policy/certificate or the marketing or administration, but not the underwriting of the policy/certificate; and
 - b. have been considered by the senior management of the Member and his offer or observations (which contain the mediation clause for insurance and takaful claims) not accepted by the complainant; and
 - c. be referred by the original policyholder/participant (or a successor in title otherwise than for value) in insurance and takaful claims, the person(s) involved with the conventional banking facility, Islamic banking facility; credit/charge card holder (or a successor in title) who must be ordinarily resident in Malaysia or have been when the policy/certificate was effected and/or conventional banking facility, Islamic banking facility, credit/charge card was taken and utilised by the complainant; and
 - d. be referred to the Mediator within six months after such offer or observations (or later if the Member agrees); and
 - e. not concern fraud cases involving insurance policies or takaful certificates or third party claim for personal injury; and
 - f. not concern fraud cases other than fraud cases involving payment instruments, credit/charge cards, ATM cards and cheques of value RM25,000 and below; and
 - g. not concern complaints against staff of the Members; and
 - h. not concern complaints by the staff of a Member against his employer or by insurance agents or takaful agents against their principals; and
 - i. not be brought after the expiration of six (6) years from the date on which the cause of action accrued; and
 - j. not concern the actuarial standards, tables and principles which the Member applies to its long term insurance business (including the method of calculation of surrender values and paid up policy values and the bonus system and bonus rate applicable to the policy/certificate in question) for insurance and takaful claims; and
 - k. not concern general pricing, product policies, services of members, credit decisions (approval, rejection and rescheduling of loans) for conventional banking, Islamic banking and credit/charge cards matters; and
 - l. not be the subject of proceedings in or decision of any court of law (or arbitration); and
 - m. not have been previously referred to the Mediator unless new evidence is available.
- (iv) A complaint may also be made by a third party provided:-
 - a. the insured party has notified in writing to his insurer/takaful operator with full details as soon as possible after an event which may become the subject of the claim;
 - b. the claim does not exceed RM5,000; and
 - c. the claim is for damage or loss to property arising from motor insurance policy or takaful certificate issued by a member.
- (v) The Mediator may investigate any complaint to see whether it is within his jurisdiction.

B. DUTIES

The Mediator's duties are:

- (i) To have regard to and act in conformity with
 - a. the terms of any contract
 - b. any applicable rule of law, judicial authority or statutory provision; and
 - c. the general principles of good insurance, investment or marketing practice, the Bank Negara Malaysia's Guidelines on Claims Settlement Practices for Insurance/Takaful matters; but with (c) prevailing over (b) in favour of the complainant.
 - d. the general accepted principles of good banking practice for conventional banking and Islamic banking matters including credit/charge cards.
- (ii) To have regard to (without being bound by) any previous decision of any Mediator.
- (iii) In the light of (i) and (ii) to assess what solution would be fair and reasonable in all the circumstances.
- (iv) To attend as required any meeting (or part) of Board to provide reports, information and assistance.
- (v) To provide each Board Member a copy of his report for the period coextensive with the accounting financial year of the Bureau and for the Members.
- (vi) In the event that any question concerning a Syariah matter arises in the mediation process, to refer such question to the Syariah Advisory Council established under subsection 16B(1) of the Central Bank of Malaysia Act 1958.
- (vii) Not to disclose any confidential information (except to persons properly entitled to such disclosure).

C. FUNCTIONS

The Mediator's functions are:

- (i) To act as a counsellor or conciliator in order to facilitate the satisfaction, settlement or withdrawal of the complaint.
- (ii) To act as an investigator and adjudicator in order to determine the complaint by upholding or rejecting it wholly or in part.
- (iii) Where the complaint is upheld, wholly or partially, to make a monetary award against the Member binding up to a maximum of RM200,000 in relation to motor and fire insurance policies and takaful certificates, RM100,000 in relation to other types of insurance policies or takaful certificates, and RM5,000 in relation to third party claims.
- (iv) Where the complaint is upheld, wholly or partially, to make a monetary award against the Member binding up to a maximum of RM100,000 (except for fraud cases involving payment instruments, credit cards, charge cards, ATM cards and cheques for which the limit is not more than RM25,000) in relation to conventional banking and Islamic banking matters including credit/charge cards.

D. POWERS

The Mediator's powers are:

- (i) On giving reasonable notice to attend any meeting (or part) of Board to address Board on any matter specified in the notice.
- (ii) Subject to the approval of the Board:
 - (a) to determine the methods and procedures to be adopted as expedient for considering and determining complaints impartially and fairly.
 - (b) to appoint (on such terms as to remuneration or otherwise as he shall think fit) any person who seems to him to be suitably qualified (whether as a professional adviser or as an expert) to act in conjunction with him; and
 - (c) to delegate such of his functions, duties and powers to an Assistant or such other staff of the Bureau as he shall think appropriate.
- (iii) To encourage research in and to carry out or commission such investigation or research as may seem necessary in connection with any of the objects of the Bureau.
- (iv) To decline to entertain or proceed with any complaint which he considers frivolous or vexatious or more appropriately dealt with by a court of law, by arbitration or by another independent complaints procedure.
- (v) To require the complainant or the Member concerned (and request any other person) to provide any information relevant to a complaint within such time as he considers reasonable.
- (vi) To consult within the insurance/takaful/conventional & Islamic banking industry and with other experts where he considers it appropriate about current insurance/takaful/conventional & Islamic banking matters, investment or marketing practice or about any other matter relevant to any complaint.

Approved by the Board of Directors on 29 April 2005





Financial Mediation Bureau [664393P]

Level 25, Main Block
Menara Takaful Malaysia
No. 4, Jalan Sultan Sulaiman
50000 Kuala Lumpur

Tel 03 2272 2811

Fax 03 2274 5752 | 03 2274 2322 (25th Floor)
03 2272 1577 (14th Floor)

enquiry@fmb.org.my | www.fmb.org.my

Operating Hours

Monday – Thursday
8.30am – 1.00pm
2.00pm – 5.30pm

Friday
8.30am – 12.15pm
2.30pm – 5.30pm

