Establishing a Financial Services Ombudsman in Mongolia

Experiences and Lessons from Armenia, Australia, and Singapore

Massimiliano Gangi, Jami Hubbard Solli, and Jennifer Romero-Torres

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Massimiliano Gangi, Jami Hubbard Solli, and Jennifer Romero-Torres

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Massimiliano Gangi is a financial consumer protection expert.

Jami Hubbard Solli is a financial consumer protection law expert.

Jennifer Romero-Torres is a senior finance specialist at the East Asia Department of the Asian Development Bank.
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## ABBREVIATIONS

<table>
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<tr>
<th>Abbreviation</th>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<td>ADR</td>
<td>alternative dispute resolution</td>
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<td>AFCA</td>
<td>Australia Financial Complaints Authority</td>
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<td>FIDReC</td>
<td>Financial Industry Disputes Resolution Centre (Singapore)</td>
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<td>MAS</td>
<td>Monetary Authority of Singapore</td>
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<td>OFSM</td>
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EXECUTIVE SUMMARY

Whether as a single official or as an organization, the financial ombudsman is an effective mechanism that can resolve financial consumer disputes. In the era of digital financial services, complaints have increased exponentially due to consumers’ increased access to and use of more complex financial services. Financial regulators may not have the capacity to handle the tens or even hundreds of thousands of financial sector complaints received annually in an expedient manner. And consumers—including vulnerable populations who have low incomes and low levels of financial and legal literacy—are unlikely to bring an action in a court of law.

Having a financial ombudsman ensures that all financial regulators, financial service providers, and consumers can expect impartial mediation or efficient adjudication of disputes. Having in place a financial ombudsman can ensure that unacceptable market conduct in the financial sector can be addressed by referring evidence to the financial sector regulator. Subsequently, a culture of responsible financial services provision is fostered.

In an ideal situation, the consumer and the financial service provider could resolve disputes directly and amicably. The consumer is almost always in a weaker bargaining position in relation to financial service providers: lacking the funds, time, or capacity and endurance to advocate for their interests. A significant benefit of having a financial ombudsman is that it can issue binding decisions, thereby settling a dispute as an alternative to civil courts, which for all intents and purposes, may not be available to low-income populations.

This paper was prepared as part of the Asian Development Bank technical assistance provided to the Bank of Mongolia and Mongolia’s Financial Regulatory Commission to support the drafting of a financial consumer protection Act and the eventual establishment of a financial ombudsman. Interested in knowing more about the alternative dispute resolution approaches taken in other countries, the Bank of Mongolia and the Financial Regulatory Commission supported a study comparing three countries’ systems: Armenia, Australia, and Singapore. Each country’s case was selected based on the long-standing nature of the system, the variety present in the schemes, and their shared traits (e.g., relatively small populations and size of the economy).

The three ombudsman schemes illustrate a variety of approaches, differing in part due to the type of jurisdiction in place: common law or civil code. Some schemes were created explicitly by statute (e.g., Armenia) and others by virtue of the inherent authority of the financial sector regulator (e.g., Australia and Singapore). Decision-making may be delegated to a sole decision-maker, or decisions could be taken by a panel of experts depending upon the complexity of the issue (e.g., Australia).

All three systems share crucial features that may appeal to other countries seeking a model to have in place a financial ombudsman or establish an alternative dispute resolution system. First, all three systems require that the consumer direct an initial complaint to the provider at issue, and only then can the consumer file an action with the financial ombudsman. Second, all systems use mediation as an important tool to assist parties in resolving disputes—interestingly, more cases are resolved through mediation than by the final adjudication of the ombudsman. Decisions from the ombudsman are treated as legally binding if accepted by the consumer in the countries reviewed. Such legally binding decisions ensure that financial services providers do not simply use the system to delay and obfuscate.

Additionally, costs to consumers are purposefully set very low or are not charged at all. It is more common to charge the financial service providers for using the scheme, adding a premium to financial service providers with a high volume of complaints. It is also common for systems to allow both natural
persons and micro, small, and medium-sized enterprises to avail themselves of the dispute resolution service (only Singapore does not allow small and medium-sized enterprises to use its alternative dispute resolution system, but the door is open to allowing these enterprises to utilize the system in the future).

The financial ombudsman is also commonly used as a communications tool. Publishing ombudsman case decisions can incentivize better market behavior. Data can highlight both patterns in consumer behavior as well as provider conduct, and thus inform financial awareness campaigns and deliver early warnings to the regulator of potential systemic issues. Ombudsman offices not only ensure consumers’ right to access redress, but can contribute to financial literacy efforts, and support market conduct regulators with timely data to inform policy interventions.

The authors hope that the country snapshots of the three ombudsman schemes and comparative analysis can assist Mongolian policymakers and other countries considering adopting such financial dispute resolution schemes. These systems represent an array of solid, time-tested alternative dispute resolution strategies ultimately beneficial to financial consumers and financial markets.
I. INTRODUCTION

A. The Importance of Consumer Right to Redress

Growing expectation to ensure the right of consumer redress in financial markets. A consumer’s right to redress is the right to a fair settlement of just claims, including compensation for misrepresentation, the poor quality of goods, or unsatisfactory services. This right is recognized as a fundamental element of consumer protection as per guidelines adopted by the General Assembly of the United Nations in 1985 (and reaffirmed in 2015).1 The 2007–2008 global financial crisis, brought about in a large measure by a failure to protect financial services consumers, also highlighted the importance of systemically safeguarding consumers’ rights. After the global financial crisis, the G20 and the Organisation for Economic Co-operation and Development (OECD) issued guidance on how governments can better protect consumers and help shield financial markets from systemic risk.

Addressing vulnerability of consumers. Consumers with low income and low financial capacity are exposed to considerable harm when financial consumer protection is weak. For those with ample financial resources, a low-value dispute with a financial service provider may seem insignificant; but for individuals in lower socioeconomic brackets, a minor dispute can have dire consequences on their household. Lacking the resources to pursue a claim through regular legal channels, these individuals are left with no recourse when there is no affordable alternative dispute resolution (ADR) system in place.

New mechanisms needed to fill the consumer protection gap. Entrenching protections and affordable, fair, and efficient access to redress for all financial consumers, regardless of their socioeconomic status, require new systems and institutions. An ombudsman can offer unique value in filling these needs, complementing market conduct regulation, and complementing the judicial system in providing redress and protecting consumers.

Worldwide trend to establish financial ombudsman schemes. Offices of the financial ombudsman for banking, credit, insurance, and investment services have been established in many countries. For instance, the European Union Directive on Consumer Dispute Resolution requires European Union members and candidate countries to establish consumer redress schemes for all goods and services. Members of the International Network of Financial Services Ombudsman Schemes also have redress schemes, including in the three countries included in this review.2 Mongolia also intends to establish its financial ombudsman. The Bank of Mongolia and the Financial Regulatory Commission began drafting a new financial consumer protection act in 2020 with technical assistance from the ADB.

B. Benefits of a Financial Ombudsman3

Provides an accessible, effective alternative to the courts for resolving disputes. Aggrieved consumers often prefer the use of an ombudsman because it is simple, efficient, low-cost, and impartial. These systems are easy to navigate, and lawyers are not necessary. In fact, in some schemes lawyers are not allowed to represent consumers (e.g., Singapore). Governments frequently require that all registered

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3 As a general term, the financial ombudsman refer to all alternative dispute resolution mechanisms utilized to resolve financial disputes; be it called an arbiter, mediator, financial complaints authority, or financial ombudsman.
financial service providers participate in the financial dispute resolution scheme and often make legally
binding decisions on the financial service provider, provided the consumer accepts the decision. If the
consumer does not accept the decision, he or she can take the issue to the courts or utilize other ADR
schemes.

**Complements the work of financial regulators.** Financial legal regulatory frameworks assign some
functions exclusively to regulators but allow others to be delegated to a financial services ombudsman.
Financial regulators seek to (i) enact and enforce market conduct regulation to ensure transparency
and fairness; (ii) provide compensation or insurance arrangements to benefit customers; (iii) provide
consumer education to promote understanding and awareness of financial matters; and (iv) support
efforts to provide consumers’ redress through an efficient, low-, or no-cost resolution of disputes.
Ombudsman offices can support all these regulatory activities.

**Transparent decision-making incentivizes better market conduct.** Published case studies and
decisions alert consumers and providers as to what is acceptable or unacceptable practice by providers.
This incentivizes better market behavior by financial service providers, which nurtures the public
confidence required to deepen financial systems.

**Deploys resources efficiently as a unified mechanism.** Governments commonly empower ombudsman
offices to resolve disputes across all categories of products and services across the banking, nonbank
financial, securities and investment, insurance, and pensions subsectors, although there can be
exceptions. The logic of a single mechanism has become clearer as the lines between different types of
financial services and service providers have blurred (e.g., banks often offer insurance and investment
products in addition to their traditional deposit and lending services).

**Delivers early warnings of potential systemic risk.** The volume and types of complaints an ombudsman
receives can illustrate risks, which can be communicated to regulators. The regulator can then intervene
to stop improper market conduct before it spreads throughout the entire financial system.

**Can facilitate the resolution of micro, small, and medium-sized enterprises’ disputes with financial
service providers.** The jurisdiction of ombudsman offices can also include micro, small, and medium-sized
enterprises as well as individual consumers. This is beneficial because sole proprietorships and micro
businesses play an important role in lower middle income countries (LMIC), accounting for a large share
of gross domestic product and employment. Also, micro, small, and medium-sized enterprises often
have more in common with individual consumers as relates to low financial literacy and capacity than
with larger corporations, which may be better positioned to protect corporate interests.

**Mitigates digital finance risk.** Although digital financial inclusion is expanding at great speed, only a
minority of the world’s population is financially literate—many people who can now access financial
services are often not able to distinguish between sound and affordable services and those that are
risky, complicated, or even predatory. Ombudsman schemes can assist both with dispute resolution and
consumer awareness raising.

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ombudsman—A practical guide based on experience in western Europe*. The World Bank Global Program on Consumer
Vol10Fundamentals.pdf.

definition%20of%20financial%20concepts.
Educates consumers and industry. Governments, financial service providers, and consumer advocates promote ombudsman schemes widely to ensure use. Data gleaned from ombudsman case files can demonstrate patterns in consumer behavior, which then informs financial literacy campaigns. Such data can also lead to new regulations that nudge financial service providers and financial consumers toward improved behavior.6

Offers an affordable and fair dispute channel for low-income and vulnerable consumers. Free or low-cost ombudsman services can incentivize people to pursue redress, which in turn may inspire friends and family members to do the same. Low-income consumers lack the ability to pay court filing fees or legal fees. The commercial court process is also long and cumbersome. Consumers are almost always in a weaker bargaining position, even in advanced OECD economies. Consumers often hit a dead end when the service provider is unwilling to settle a complaint or refuses to discuss the matter. Knowing access to redress through the courts is unlikely, many consumers may become apathetic and thus take no action to obtain their legal rights. Such a situation increases the risk of impunity by providers and can damage the financial system as a whole. Further, it risks normalizing socioeconomic inequities whereby only the wealthy have access to justice.

II. COMPARISON OF COUNTRY SYSTEMS AND FEATURES

The following working paper includes a comparative review conducted by the ADB technical assistance team of the ADR mechanisms established in three countries. The study looks at ADR systems in Armenia, Australia, and Singapore, and extracts key lessons regarding how to effectively provide redress to financial service consumers; complementing the role of the financial sector regulator.7 The following topics were explored in a series of interviews and follow up with each system to ensure a clear understanding:

(i) By what authority was the system established?
(ii) What is the organizational and governance structure of the financial ombudsman? For example, is there one ultimate decision maker, or are there several? What is the composition of the board of the ombudsman; and to what government body is the system ultimately responsible?
(iii) What are the primary rules of use and who can access the system?
(iv) What are the main steps in the dispute resolution process from filing to the issuance of a decision.
(v) What is the effect of the decision (i.e., binding or appealable?)
(vi) How is the system funded?

Country selections for a deeper review were made based on a desire to represent an array of options from countries of varying sizes and different levels of economic development, and to illustrate the different organizational arrangements of the financial ombudsman. Each of the countries selected for review has a mature financial services ADR system. The examples also include more sophisticated systems which can be used as models to emulate over longer-term periods, recognizing that some ADR systems have taken decades to establish and mature.

Distinctive features of each of the three country systems:

(i) Armenia models an ADR system with a broad capacity in a middle-income country. It also exemplifies a system underpinned by statute developed in a formerly planned economy which has transitioned to a market-oriented economy.

(ii) Australia boasts 30 years of experience in establishing, refining, and reorganizing as a unified financial services ombudsman. This model demonstrates how an ombudsman can be developed within a modern common law framework based on the authority of the financial sector regulator.

(iii) Singapore is a small, yet high-income country, with an independent financial services ADR body. Its scheme is unique in that it is managed by the financial industry yet falls under the supervision of the Monetary Authority of Singapore. The system was recently digitized during the global pandemic.

Findings presented in two parts. Part 1 offers detailed country-by-country snapshots of the fundamental aspects of the nations’ ombudsman frameworks, systems, and practices, including legal foundations; corporate governance and organization; ombudsman access, coverage, use, and overall processes (i.e., investigation, mediation, and adjudication); the effect of decisions; and funding. Part 2 compares the systems and analyzes key elements and experiences across the three countries.

A. Part One: System Snapshots

1. Armenia

   a. History of the Office of Financial System Mediator

Filling a gap. Armenia’s financial services ombudsman—the Office of the Financial System Mediator (OFSM) —was established pursuant to legislation adopted by the National Assembly in June 2008. At the time, Armenia lacked an extrajudicial body to resolve disputes between consumers and financial service providers and it had no small claims court. Public confidence in the financial industry had fallen to an all-time low due to the harm caused by losses on bank deposits, pyramid schemes, and other forms of financial fraud. The OFSM was established to restore consumer confidence as part of a series of reforms effected from 2006–2008 to modernize the financial sector legal and regulatory framework.

   b. Corporate Governance and Organization

Ombudsman scheme under board management. Armenia’s law governing the financial services ombudsman defines the OFSM as a “...non-commercial entity, the main goal of which is to support the activities of the financial system mediator and to raise awareness about financial matters....” The OFSM is managed by a board of trustees and by the chief financial system mediator, who is also the chief executive officer.

Board of trustees. The board of trustees reviews the financial system mediator’s financial reports and approves the OFSM budget but cannot interfere with the mediator’s day-to-day work. Nor can it influence how complaints are handled or resultant decisions. The board must convene at least quarterly
with a quorum of four. All board members vote, with decisions based on a simple majority. In the event of a tie, the chairperson’s vote is decisive. The chief mediator attends the meetings but has no vote.

**Board membership weighted toward providers.** Four of the seven board members are appointed by financial service provider associations, plus one by the government, one by the Central Bank of Armenia, and one by consumer protection organizations. The members are not remunerated and elect their chair for 3-year terms. The majority representation given to the financial industry (but only one vote for consumer protection advocates) could raise concerns about the OFSM’s actual independence or the perception of neutrality.

**Financial system mediator.** The financial system mediator adjudicates the disputes. The board appoints the mediator for renewable 4-year terms based on a five-member majority vote. The mediator is also responsible for adopting internal rules, managing the OFSM’s organizational structure and office, and preparing a provisional budget for board approval. As of mid-2022, the mediator was the former head of the central bank’s legal department.

**Structure, staff, and budget.** The OFSM’s budget for 2020 was $1.1 million. Its 50 staff members are a mix of lawyers and economists, four of whom deal with financial education. Interviewed employees and OFSM representatives felt this mixture provided a good balance of perspectives and expertise. The staff work primarily in four departments. The strategic development and administrative group handles administration, day-to-day operations, and financial education. Consumers are also assisted with filing their claims. An early resolution group is responsible for negotiations between parties where disputes are simple and can be settled consensually. Disputes that cannot be resolved quickly go to the investigation group, which decides and drafts final decisions.

c. **Access, Coverage, Use, and Terms**

**Microenterprises covered.** Although the law establishing Armenia’s OFSM originally limited the right to submit complaints to individual consumers only, it has since been amended to cover microenterprises and guarantors as well.

**Financial entities covered.** The OFSM has authority over most of the financial service providers licensed by the central bank, including online financial service providers, as well as entities licensed by the Bureau of Motor Insurers of Armenia. Organizations with licenses for certain types of financial services are excepted, such as foreign exchange trading, the processing and clearing of payments and financial instruments, insurance brokers that provide services exclusively to insurance companies, and entities defined by the central bank as refinancing institutions.

**Internal complaint rules mandatory.** The financial service providers subject to OFSM authority must adopt internal consumer complaints procedures and publish these rules on their websites. The central bank has the power to set minimum standards on how financial service providers deal with such complaints. The provider must be clear when responding to a consumer complaint about whether it accepts or rejects the basis for the complaint. Financial service providers are required to review all consumer complaints received within 1 year of when the consumer discovered the violation of his or her rights. The financial service provider must provide a written response within 10 working days from the date the complaint is submitted.

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Complaint requirements for consumers. Consumers can file a complaint with the OFSM only after they have first filed the complaint with the financial service provider and are required to present the following information in writing to the ombudsman:

(i) consumer’s name and biographic information;
(ii) a description of the complaint, the identity of the provider involved, and the amount sought;
(iii) a copy of the complaint to the provider and the provider’s response to the complaint, if available; and
(iv) a statement that the complaint has not been the subject of a prior court ruling or arbitration decision, and that the court or other arbitration venue are not currently examining the same dispute.

Overrides contractual constraints. Complaints can be submitted to the OFSM regardless of any restrictions included in the underlying contract between the consumer and the financial service provider. Further, Armenia’s law deems such contractual clauses invalid (i.e., those that seek to prevent the consumer from submitting a complaint to the OFSM). This law responds to a recent global trend among financial service providers to insert a mandatory arbitration clause in contracts limiting consumers’ right to pursue redress in the courts. All financial services agreements with consumers must inform them of their right to complain to the OFSM, and of the financial institution’s waiver of a right to appeal an OFSM decision (if indeed this is the case).

Complaint dismissals. The OFSM can dismiss a complaint under the following circumstances:

(i) The consumer has not submitted the complaint to the provider first, as required by law.
(ii) The complaint was not filed within 1 year from the time that the consumer learned about the violation of his or her rights.
(iii) A court or arbitration ruling exists on the same dispute (i.e., res judicata), or another court or forum is currently examining the same dispute between the parties.
(iv) The OFSM has already examined and decided the case.
(v) The license of the provider has been revoked.

Suspension of investigation. The OFSM can stop an ongoing investigation related to a complaint when (i) it finds that the complaint is not subject to review pursuant to the law; (ii) a court or arbitration ruling on the same matter exists, or a court is examining the same dispute; or (iii) the consumer withdraws the complaint.

Little recourse following rejection of complaint. The OFSM will notify the consumer in writing within 7 days of any decision not to review a complaint and provide the grounds for rejection. The complainant could, in theory, proceed to civil court and there are simplified procedures for low-value claims. But accessing civil court presents numerous obstacles for most consumers; for instance, the court system was overwhelmed, and the pandemic has aggravated the situation. Armenia also lacks a consumer-friendly, small claims court.

Speed of ombudsman’s case resolution. The OFSM is a model of efficiency compared with the courts. It is required to review all complaints submitted within 6 months from the consumer’s receipt of the provider’s reply (or its lack of response). The OFSM is required to notify the financial institution when a consumer files a complaint.
d. Investigation, Mediation, and Adjudication Processes

Time-bound investigation. After the OFSM has verified that the complaint falls within its jurisdiction, it forwards the claim to the financial service provider at issue. It requests a written response detailing the provider’s position within 14 working days. Other time limits are set for the provider’s response to any communication from the OFSM, including the initial notice of the complaint investigation and any requests from the OFSM for supporting information and evidence related to the complaint. OFSM may also request that parties appear to provide testimony. Armenia’s ombudsman can also seek input from external experts.

Some flexibility in relation to deadlines. A late reply within a reasonable period may be allowed if justified by the circumstances, and the 14-working day deadline can be extended by 7 working days when the provider makes a valid request. Inadequate cooperation by the provider, however, can result in a warning from the OFSM. Repeated delays or uncooperative behavior may result in the OFSM issuing its decision without further input from the financial service provider.

Adjudication timeline is also tight. When the OFSM cannot obtain a settlement through mediation—its primary objective—it generally has 14 working days to adjudicate the dispute. This timeline is shorter than those allocated to the other ombudsman schemes reviewed, even though adjudication only starts after OFSM has received all the information and/or documentary evidence requested from the parties. In particularly complex cases, the adjudication deadline can be extended by 14 working days.

Financial industry inputs on complex cases. When a complex dispute is particularly difficult, according to an OFSM official, the office has occasionally convened representatives of financial services institutions (other than the provider directly involved) to hear how other companies would have behaved in a similar set of circumstances.

e. The Ombudsman’s Decisions

Consumer’s right of rejection. The OFSM’s decisions in disputes are based on applicable law, existing market conduct rules, and prevailing industry standards. The OFSM may reject the consumer’s claim or accept it in part or in full, and then specify the remedial action the provider should take and by what date. If the consumer accepts the OFSM decision within 30 days, the decision becomes binding on both parties, and the provider is notified. A consumer who rejects the decision may still take the dispute to court but cannot later change his or her mind and decide to accept the adjudication finding (e.g., consumer cannot lose in court and then decide to accept the initial OFSM partial award in his or her favor which is better than the court outcome).

Award cap. Reimbursement sought in the average OFSM dispute case is about $2,000. The awards cap of approximately $20,000 is set high enough to ensure that consumers will be adequately compensated.

Provider noncompliance and effective right of appeal. If the provider fails to comply with the decision, the consumer can apply to a competent court for an enforcement order. The court examining the request either grants the enforcement order or rejects the application within 3 days.
f. Funding

**Mandatory industry contributions.** The OFSM is funded through mandatory contributions in the form of membership fees from regulated financial service providers. The central bank oversees these contributions, which are set relative to the size and the type of financial service provider. When contributions exceed the approved OFSM budget, the surplus may be refunded pro rata, or used to fund financial education activities for consumers. The OFSM has in the past issued refunds.

**Double jeopardy or just reward?** The funding method is governed by the law that established the OFSM, which is a point of contention. The financial services industry objects to both paying for the OFSM's expenses, as well as potentially bearing the financial costs of the adverse decisions the ombudsman might deliver.

**The choice between funding by law or by regulations.** OFSM representatives suggested that it might have been better to deal with the ADR scheme's funding arrangements through the central bank or OFSM regulations, rather than entrenching them in the legislation itself. This would allow more flexibility for adjusting funding contributions, because it is easier to amend such regulations than the underlying legislation.

2. Australia

a. History of the Australian Financial Complaints Authority

**Internal dispute resolution mechanisms required by law.** Australia's 2001 Corporations Act requires financial firms to have a dispute resolution system. The institutions covered include holders of financial services licenses, credit licenses, unlicensed financial product issuers, secondary sellers, and credit representatives; all must have internal dispute resolution procedures that meet the standards set by the Australian Securities and Investment Commission. They must be members of the Australian Financial Complaints Authority (AFCA), the unified ombudsman for the entire financial services sector.

**Multiple ombudsman offices at the start.** Prior to AFCA's creation, Australia had three distinct ombudsman schemes. Each dealt with a distinct financial services subsector: banking, insurance, and credit. In 2008, the unified Australian Financial Ombudsman Service was established following the merger of the Financial Industry Complaints Service with the Banking and Financial Services Ombudsman and Insurance Ombudsman Service. The Credit Union Dispute Resolution Centre and the Insurance Brokers Disputes Limited joined the Financial Ombudsman Service in 2009.

**Unified approach adopted.** A 2016 government-mandated review recommended the merger of the three previously separate ADR mechanisms dealing with financial services subsectors to create a unitary system. Thus, the AFCA launched in 2018 as the consolidated ombudsman service for all financial complaints, replacing all predecessor schemes, including the Financial Ombudsman Service, the Credit and Investments Ombudsman, and the Superannuation Complaints Tribunal. This reflected the growing crossover in the financial services offered by once distinctly different types of financial institutions. The merger simplified access to ADR for Australian consumers.

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b. Corporate Governance and Organization

The board. The board of Australia's AFCA has an independent chairperson and may have up to 11 directors with a balance of individuals with consumer advocacy and financial industry backgrounds. In addition to overseeing compliance with the rules the government has set for the ombudsman, the AFCA's board regularly commissions independent reviews of its operations and procedures. Directors are remunerated. Australia's minister responsible for financial services appointed the inaugural independent AFCA chairperson and four directors. Following a transition period, the board assumed the power to choose directors, including future chairpersons. The board also appoints the chief ombudsman and chief executive officer who manages the AFCA operations and delegates the distribution of consumer complaints and cases to the AFCA decision-makers.

Transparency and independent review. The Australian Securities and Investment Commission regulations require the AFCA to produce an annual report, while the ombudsman also submits quarterly reports to the financial sector regulator. Like the UK, but unique among the four ADR mechanisms reviewed for this study, AFCA has an independent assessor to investigate complaints about the quality of its services. This is not an opportunity to appeal a decision but rather a system to ensure adequate customer service is provided to AFCA users and publishes information regarding its decision-making to inform both the industry and consumers regarding key issues.

Case load, staff, and consumer debt distress. The AFCA's more than 800 staff members deal with about 80,000 cases a year. Around 10% of these cases are classified as related to consumers in debt distress. The AFCA intervenes in these cases on behalf of overextended financial consumers who seek help to restructure their debts or find some other form of debt relief. This is unique among the countries examined. When interviewed, AFCA representatives expected these debt-related consumer complaints to increase substantially following the global pandemic and considering inflation as well as the termination of state subsidies.

c. Ombudsman Access, Coverage, Use, and Terms

Consumer and small businesses eligible. The AFCA accepts complaints by eligible persons, which include small businesses along with individual consumers. Complaints must involve financial firms that are members of the AFCA at the time the complaint is lodged and be brought within the established time limits from consumers who have sufficient connection with Australia. (i.e., the complaint must arise from a customer relationship or another circumstance that brings the complaint within the AFCA's jurisdiction).

Court and other options remain open. Australia's financial services consumers have various options for resolving disputes. Australia has small claims courts, something consumers in Armenia and Singapore lack. In addition, Australia's civil society consumer advocacy organizations assist people to bring their financial sector complaints.

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13 This applies even if the firm was not an AFCA member at the time of the events giving rise to the complaint occurred.
15 The small claims tribunals and consumer advocacy organizations available to Australian consumers are not common in developing countries.
Complaint rejections explained. The AFCA provides a complainant with a written explanation when it rejects a complaint and sets a deadline by which the complainant may object to this decision. The ombudsman reviews such objections through a process laid down in rule A.4.6 of the AFCA’s rules, and as explained in its operational guidelines that further elaborate on these rules.

No charges, no legal counsel required. Consumer use of the AFCA’s ADR scheme is free. Complainants do not need legal representation but may retain legal counsel if they choose.

d. Investigation, Mediation, and Adjudication Processes

Complaint submissions facilitated. Consumers in Australia can submit a complaint to the AFCA online, by writing directly, or by telephone. When necessary, the ombudsman will help compile the complaint. Time limits apply, although may vary according to complaint type. Submission is often required by the first of the following to occur: (i) within 6 years of the complainant first becoming aware they suffered the loss (or can reasonably be expected to have become aware), or (ii) within 2 years after the financial firm provided a formal response to the complaint.

Cases dropped or terminated. The consumer can abandon a complaint at any time, and the AFCA can infer that the case has been dropped when the complainant fails to respond to its requests for information. The ombudsman will stop considering a complaint when it lacks merit, the complainant has suffered no loss, the complainant has already been adequately compensated, or the financial firm has committed no error.

Timely information is required of both parties. Both parties must provide the AFCA with the requested information within a specified time frame and meet all other reasonable requests to facilitate the AFCA review and decision-making. These include requests for a party to participate in an interview and/or for the financial services firm involved to investigate the complaint further, or the appointment of an independent expert to investigate a particular issue and report back to the AFCA.

Process stages. The AFCA process can involve up to four stages:

(i) Referral (back) to the financial service provider. The ombudsman communicates to the financial service provider that a complaint has been submitted by the consumer and gives the firm a deadline for either resolving the dispute or providing the AFCA with a response justifying the firm’s position.

(ii) Negotiation and conciliation. If no direct agreement between the parties’ results from this referral, the AFCA investigates the complaint and tries to resolve it using negotiation, e.g., through a conciliation conference.

(iii) Preliminary assessment and draft decision. When mediation is unsuccessful, the AFCA can choose to provide the parties with a preliminary assessment of the dispute and an interim decision on the complaint’s merits. In effect, this is a recommendation on how it would most likely resolve the complaint. The AFCA informs the parties that they can settle the dispute by accepting its preliminary decision or requesting a full-fledged adjudication and then it sets a time limit for them to make their choice.

(iv) Final decision. If no response is forthcoming by the deadline, or either party opts for adjudication, a final binding decision is issued from AFCA.

Most cases are resolved by simply referring the issue back to the financial service provider (phase 1). The AFCA resolves the bulk of complaints during the first three phases; 25% of the cases are resolved during phase 1. Only 6% of all cases require a formal adjudication (phase 4).
e. The Ombudsman’s Decisions

Decision processes tailored to case types. AFCA decision-makers are required to determine the outcome of cases based on what they decide to be fair under the circumstances; while considering legal principles, applicable industry codes, good industry practice, and previous relevant determinations by the AFCA, or the ombudsman schemes that preceded it. The chief ombudsman or the ombudsman’s delegates allocate cases to internal decision-makers according to (i) the complexity of the issue, (ii) the amount at issue, and/or (iii) whether the complaint raises a systemic issue. A complaint may be determined by an ombudsman, an adjudicator, or, when the issues are complex, by an AFCA panel. The ultimate decision explains the supporting reasoning as applied to the fact pattern.

Consumer right of rejection. The complainant may choose to accept the AFCA decision or reject it. If the complainant accepts it, the determination becomes binding on the financial service provider. A consumer who does not accept the AFCA decision is not bound by it and can bring an action in the courts.

Remedial actions required of a provider. AFCA case determinations can require financial services firms to take any of the following remedial actions or combinations thereof:

(i) paying a sum of money;
(ii) forgiving or altering the terms of a debt obligation;
(iii) releasing security over a debt;
(iv) repaying, waiving, or adjusting a fee or other amount paid to the firm, including adjusting the applicable interest rate on a loan;
(v) specific performance of a contract in whole or in part;
(vi) adjusting the terms of a credit contract in cases of financial hardship; and
(vii) honoring a claim pursuant to an insurance policy.

Award cap. The AFCA can award up to A$542,500 per claim. In some cases, such as claims arising from credit facilities provided to small businesses, awards can exceed A$1,000,000.

Provider noncompliance. Financial service providers in Australia must be members of the AFCA to be licensed by the financial sector regulator. Expulsion from the AFCA can effectively put them out of business. This is a strong incentive to comply with AFCA decisions, whether they involve paying consumer financial awards or providing other forms of redress.

f. Funding

Industry levies and user fees. The AFCA is funded by an annual membership levy on the roughly 40,000 financial service providers that belong to the organization, as well as user charges for providers against which complaints are filed. The requirement that a financial service provider belongs to the AFCA to be licensed is a strong incentive for members to pay the organization’s dues.

Charges scaled. Membership levies are calculated based on factors such as industry type and business size. User charges are assessed by financial institutions based on the number of complaints registered against the member per year, and case fees, based on how long it takes to resolve each complaint (all members qualify for five free complaints per year). This approach rewards members who have fewer consumer complaints and/or have more effectively handled consumer complaints internally.

Free to Consumers. AFCA does not charge any fee for consumers to use the system.

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3. Singapore

a. History and Legal Foundation

Ombudsman established by financial regulator. The act governing the Monetary Authority of Singapore (MAS) gives the financial sector regulator the authority to approve ADR schemes for financial services and requires that registered and licensed financial institutions participate in a scheme. Acting under this legislation, the MAS established detailed guidance for schemes to resolve financial disputes in 2007. Subsequently, the Financial Industry Disputes Resolution Centre (FIDReC) was established by the MAS by way of a steering committee and following intensive public consultations. The FIDReC remains the sole ADR scheme in Singapore and handles all financial consumer services complaints.

Terms of reference. The FIDReC aims to provide an affordable avenue for complainants who lack the resources to go to court, or do not want to incur substantial legal fees. It was also created to promote more a professional, transparent, and customer-centric financial services sector. Its terms of reference specify

(i) the types of disputes that can be considered;
(ii) the FIDReC’s principal powers and duties;
(iii) the duties and obligations of the financial service providers and the eligible complainants; and
(iv) the procedure for receiving, investigating, and resolving a dispute, as well as the type of awards that can be made.

b. Corporate Governance and Organization

Board with finance sector expertise. The FIDReC board has seven members—the chair; two directors with backgrounds in law, accounting, and public service; and four directors with financial industry backgrounds. Directors with financial industry experience are appointed not to represent the interests of individual financial service providers, but rather to provide in-house expertise and for their holistic understanding of the financial eco-system. The board is responsible for

(i) supervising the FIDReC and monitoring its activities;
(ii) appointing the adjudicators—external decision makers, who are generally lawyers from commercial law firms—and ensuring that they adhere to FIDReC’s rules; and
(iii) approving the FIDReC’s annual budget.

Adjudicators are assigned based on subject and complexity of case. The FIDReC selects and appoints adjudicators to hear disputes based on their expertise to investigate the matter. Up to three adjudicators can be assigned to a single dispute. An adjudicator, acting either alone or as a panel, is required to comply with a code set out in the FIDReC terms of reference. Singapore is the only country that uses external adjudicators who are not employees of FIDReC but generally lawyers in private law firms.

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c. Ombudsman: Access, Coverage, Use, and Terms

Sole legally recognized dispute resolution scheme. The FIDReC covers disputes on complaints brought by individuals and sole proprietors brought against financial service providers that are its members, and financial service providers will not be licensed if they do not belong to an ADR scheme. The FIDReC is the only legally recognized scheme in Singapore.

Other options. Singapore has small claims courts, but they may not be able to handle all types of financial disputes. Consumers can file cases involving less than S$250,000 in commercial court or approach the Consumers Association of Singapore for assistance. The association, however, does not handle disputes related to investments in stock or capital markets. There are other ADR schemes provided by Singapore's law society and the Singapore Mediation Center, but low-income consumers would unlikely be able to afford these services when their claims are low-value. In addition, participation in other mediation or arbitration schemes is not mandatory for financial service providers. Consumers may thus face additional challenges convoking service providers to these venues.

No charge for mediation. The FIDReC mediates disputes for free, but charges flat fees in most cases when mediation fails and a dispute must be adjudicated—S$50 for the consumer and S$500 for the financial service involved.

No lawyers for complainants. Uniquely among the ombudsman offices reviewed, the FIDReC does not allow the parties to be represented by lawyers in the ADR process. This is problematic because financial service providers can be expected to use their in-house counsel to help prepare their defenses. According to the FIDReC's chief executive officer, the rationale behind this restriction is to keep costs low for the consumer and to ensure that the ombudsman's services are truly accessible.

No small businesses included yet. Including small and medium-sized businesses in FIDReC's coverage was discussed during the public consultations that preceded its establishment, but stakeholders agreed to postpone a final decision on the matter.

Small insurance cases. The FIDReC has a non-injury motor accident claims scheme and is required by statutes adopted in 2008 and amended in 2011 to hear disputes between consumers and insurers for amounts below S$3,000 before the matter can proceed to courts. This too is a feature unique to Singapore; mandating the consumer to first use an ADR system before approaching the courts for certain types of insurance disputes.

Case submission and qualification. FIDReC will not review a case until after a complainant has first tried to resolve the dispute directly with the financial service provider. The consumer may lodge the complaint with the FIDReC through the FIDReC's dispute resolution form if the customer does not receive a reply from the provider within 4 weeks of making a complaint, or if the customer is not satisfied with the response received. FIDReC will not review the dispute if it involves what it views as a commercial decision (e.g., pricing, interest rates, and fees) or a dispute that is already the subject of a court judgment or order.

The FIDReC can also dismiss a case at a preliminary stage if it considers the complaint frivolous or vexatious, or if the dispute was previously considered and excluded by the FIDReC's predecessor schemes, or if it finds other compelling reasons why it is inappropriate for the FIDReC to decide the matter.

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Compensation capped. The FIDReC cannot award more than S$100,000 per claim, although it can issue guidance when requested to do so by parties in larger disputes.

d. Investigation, Mediation, and Adjudication Processes

Singapore’s FIDReC handles disputes through stages very similar to those of the other systems reviewed. These stages are as follows:

(i) Preliminary review. Once the complaint submitted is accepted, FIDReC case managers inform the financial service provider in writing that a complaint has been received, and it requests the provider to give its response and any supporting information or documents within 21 days.

(ii) Mediation. Case managers, who cannot determine or make monetary awards, encourage the parties to resolve the dispute through an amicable and equitable settlement.

(iii) Adjudication. If mediation fails, the consumer is given the option to refer the case to a FIDReC adjudicator or a panel of adjudicators. The FIDReC must notify the parties within 21 days of the appointment of the adjudicator or panel of adjudicators.

e. The Ombudsman's Decisions

Strong privacy protections in decision process. When it issues decisions, FIDReC must consider all relevant facts, written submissions, and oral testimonies of both parties. Its procedures are governed by the FIDReC’s terms of reference of 2001. FIDReC prepares the “Grounds of Decision,” laying out its determination and reasoning. This written document is not provided to the parties, but merely read to them at a hearing. The decision is not made public. This approach to confidentiality was the result of advocacy by the financial industry and extends to the consumer complainants who must agree to adhere to the FIDReC’s confidentiality rules before their cases are reviewed.

Some general case information revealed for educational purposes. FIDReC’s annual reports do not provide details, either of the nature of its cases or its adjudicated decisions. However, it has begun publishing general information about its approach to help its members and consumers better understand what the ombudsman regards as acceptable and unfair conduct in the financial services market. FIDReC regards itself as an educator for all stakeholders and participates in radio talk shows, articles, and webinars to help it fulfill this role.

Consumer right of rejection. When a complainant accepts a FIDReC determination, both parties to the dispute must sign a settlement agreement. When the complainant rejects the determination and/or award, he/she is then free to pursue the case through the courts or arbitration. If the complainant accepts the award and determination, then the financial service provider is bound by the decision.

Right of appeal denied. The Monetary Authority of Singapore (MAS), which governs ADR schemes, rejected early arguments by financial service providers that they should have the right to appeal FIDReC decisions. The MAS decided that such a right would diminish the authority of adjudicators, lengthen the time to settle disputes and be inconsistent with the objective of providing consumers with a quick and affordable alternative to formal court proceedings.

Provider noncompliance. The FIDReC is empowered to take steps it deems necessary to cure a breach within 14 days of noncompliance with a FIDReC decision by a financial service provider. This can include escalating financial penalties for each day that financial service providers fail to comply with a FIDReC decision.
f. Funding

Although Singapore’s financial industry provides funding for the FIDReC, the MAS emphasized during public consultations that this should not influence FIDReC operations or the adjudicators’ decisions in any way. All regulated financial institutions that deal with retail consumers are required to be FIDReC members and pay levies and case fees to ensure that the ADR mechanism is sustainable. Case fees depend on the complexity of the dispute. Although consumers are not charged for filing a complaint or when one is resolved through mediation, the S$50 fee consumers must pay for an actual adjudication also contributes to the ombudsman’s operating budget.

B. Part Two: Key Lessons


The ombudsman schemes reviewed each have clear, sound, and comprehensive legal and regulatory frameworks that seek to ensure the financial consumer’s rights are protected. Financial service providers should be bound by rules on how they promote, sell, and service their banking, insurance, and investment products. Consumers need protection from abusive debt collectors and data privacy violations. They also need protection from over-indebtedness and financial fraud. The financial ombudsman performs best when financial consumer protection rules are reinforced by financial services regulators—with adequate checks and balances by strong civil society consumer advocacy organizations and access to an efficient judicial system. Central banks and financial regulatory authorities must develop clear market conduct rules and supervise financial service providers accordingly. The financial ombudsman can both complement and strengthen market conduct supervision; providing data regarding the status quo and relative health of the financial ecosystem.

2. Anticipate Resistance from the Financial Service Providers

A financial service ombudsman’s powers can seem quasi-judicial when decisions are binding, and there is no right of appeal to the courts. Financial service providers can challenge this authority, arguing that ADR mechanisms restrict their right to due process and that the ombudsman’s functions are reserved for the courts. Consumer advocates see these arguments as an attempt to evade or weaken an ADR mechanism, as well as a way for service providers to leverage resources over their clients in the formal judicial system. All systems reviewed have faced these industry challenges, and mitigated by having strong political will.

3. Establish a Solid Legal Foundation for Ombudsman Schemes to Legitimize its Authority

Ombudsman offices have operated in some form in Australia since 1998, in Singapore since 2005, and in Armenia since 2008. They have been established either by an ad hoc law (Armenia)\(^{19}\) by general legislation (Australia)\(^{20}\) or by a mandate assigned to the financial services regulatory body through

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legislation (Singapore). Their legal status also varies. Offices of an ombudsman are public institutions in Armenia, and private entities in Australia and Singapore. Even as private entities in Australia and Singapore, they remain accountable to the financial regulators.

4. Corporate Governance Should Be Balanced and Independent to Ensure Effective and Impartial Redress

Choose board members carefully. Ombudsman schemes have board members appointed either by the financial regulator or the government. The boards are responsible for guaranteeing the ombudsman's independence. A transparent selection process, including public advertisement for candidates, helps ensure the choice of highly qualified members.

Balance the board composition. Legislation should ensure a balanced ombudsman board, including representatives from industry, government, and civil society organizations. Organizations that advocate for consumers should be nurtured by national governments through budget allocations. Law professors who specialize in contracts and consumer law, and journalists who cover financial markets and consumer protection, could also be invited to join the board. Alternatively, if a balanced representation from both industry and consumer organizations is not possible, board members could be appointed by the financial regulators or by Parliament. The term limits for board members are important for sustaining an ADR scheme's impartiality and independence and preventing conflicts of interest. Armenia and Australia limit the terms of their ADR mechanisms' managers to 3–5 years.

Let demand dictate the number of decision makers. The number required should reflect the size of the country and the complexity of its financial services industry. ADR cases are determined either by individual experts engaged as decision-makers as in Armenia; or by multiple decision-makers operating on a rotating basis, as in Australia and Singapore. Smaller economies with new financial ombudsmen such as Mongolia may want to start simple, small, and grow as needed.

Use annual reports strategically. The three countries use annual reports for a variety of purposes. They inform the public about ADR decisions, spotlight the importance of the ombudsman, help financial service providers understand market conduct rules, alert consumers to their legal rights, and illustrate industry practices about which consumers should be aware. Annual reports can also be used to monitor financial service industry performance. Australia also conducts a system review by an external reviewer. This could be an additional quality assurance tool if resources permit.

Use varied approaches for financial education. Where consumer financial literacy rates are low, ombudsman offices should do as much as possible to raise awareness of financial consumer rights and how to access and use dispute resolution systems. Additional financial education programs can be designed using evidence of common consumer errors identified by the ombudsman. Armenia has a program that informs the public about both financial services and the ombudsman's operations.

Consult a wide number of financial actors. Ombudsman offices in the three countries regularly consult financial regulators, consumer representatives, and industry trade associations about their plans and activities. They inform the public of these activities through various media outlets, which boosts accountability and transparency. Consultation is particularly helpful when first establishing an ombudsman office, as well as when the office has matured and is considering procedural changes.

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Armenia’s ombudsman’s office also reports that the financial industry is sometimes consulted in complex cases to determine how most of the providers would conduct themselves under similar situations.

A binding redress system for consumer disputes may become more appealing to financial service providers if they can be convinced that helping develop the ombudsman scheme is in their best interests. Achieving this could be easier if it is demonstrated how an efficient ADR mechanism can have a positive impact on the providers’ balance sheets—through better client retention, for example.

**Patience, collaboration, and a learning by doing approach required.** Experience shows that it may take years to establish a financial services ombudsman office, and refine its processes. The systems reviewed underwent fundamental structural, jurisdictional, and legal changes after they were created. However, this process can go more smoothly if all stakeholders; including consumers, civil society, and provider views are engaged regularly from the start. For example, the Monetary Authority of Singapore (MAS) sought to allay industry concerns before establishing the FIDReC in a public consultation process. This technique was supported by inviting a former solicitor general, former financial trade associations representatives, and a representative of Singapore’s civil society consumer advocacy organization to be on the ombudsman board.

5. **Broad mandate and Low Costs Ensure Access for All Financial Consumers**

**Consider accepting complaints from small and medium-sized enterprises as well as individuals.** All but Singapore’s ADR system accept complaints from small or micro enterprises as well as natural persons. These businesses may potentially be disadvantaged by the same information asymmetries and power imbalances in their dealings with financial service providers as those which confront individual consumers.

**Require financial provider participation and allow for additional consumer options.** The legal frameworks in the countries mandate that all regulated financial service providers participate in and be subject to the ombudsman’s decisions. None of the systems mandate that consumers first use the financial ombudsman instead of the civil courts (except for the Singapore motorist compensation scheme which mandates that low-level claims first be filed with FIDReC). Australia and Singapore also have small claims courts and complaints handling assistance provided by consumer advocacy organizations which can smooth access to redress in the civil justice system.

**Offer dispute resolution services at low or no cost.** An ombudsman cannot protect the most vulnerable if they cannot afford that protection. In Armenia and Australia, consumers have free access to the ombudsman. Singapore charges S$50 only if the case cannot be settled through mediation and the consumer requests an adjudication, which is believed to both deter frivolous complaints and offer the majority of consumers affordable ADR. However, many poor and vulnerable consumers may not be able to pay any charge, no matter how low. It is recommended that countries place the burden of funding entirely on the financial services institutions, which also benefit from the ADR mechanisms.

**Remove complaint submission barriers for consumers.** Consumers in the three countries can submit their complaints online, by phone, by mail, or in person. All the schemes have an online presence with information on how consumers can lodge a complaint, with websites in Australia and the UK even providing how-to videos. It is advisable to make it straightforward for systems to differentiate inquiries from more complex or urgent disputes. Each country should also be sensitive to the circumstances of its most vulnerable citizens. Large nomadic populations are also consumers of financial services and products (through herder loans, for example), as are elderly individuals on fixed incomes who are prime targets for the marketing of pension-backed consumer loans.
**Set caps for claims and awards.** Most jurisdictions set caps via statutes or the ombudsman’s rules on the maximum monetary amount their ADR mechanisms can award. Consumers seeking damages above those limits must go to the courts. Award ceilings are justified because a financial services ombudsman operates less formally than a court, and appeals are generally not permitted. The courts are more appropriate for large claims, which typically involve consumers with financial resources that allow them to cover expenses required to go to court. An appropriate cap will allow the ombudsman to adequately compensate consumers for damages suffered.

**Set time limits for filing complaints.** None of the three ombudsman schemes will accept a case beyond a maximum time set for consumers to submit their complaints. This period usually begins to run on the date the dispute first arises or when the complainant should reasonably have discovered the harm.

### 6. Fair Procedural Approaches

**Allow, but do not require, consumers to have legal representation.** Ombudsman schemes approach disputes in a more informal manner than courts, and can rely on principles of equity as well as good industry practices. Legislation and regulations set the rules for representation, but this varies from country to country. For example, consumers do not have to be represented by legal counsel in Armenia or Australia, with Singapore disallowing it altogether. However, fairness demands that a complainant who prefers a lawyer and will pay for it should not be denied this right. The opposing financial institution is likely to have in-house counsel, giving providers an advantage. Blocking consumers from using legal representation removes their only opportunity to level the playing field.

**Require complaint to be presented to the financial provider before involvement with the alternative dispute resolution.** Consumers cannot take complaints to the ombudsman, in any of the countries, without proof that they have first attempted to resolve the dispute with the financial services firm involved. The financial regulators have set clear rules for financial service providers to follow when handling such disputes in-house.\(^\text{22}\) Informing clients on how to file complaints pushes providers toward the practice of fair and efficient internal resolution of disputes and reduces the case burden on the ombudsman.

The ombudsman’s office must acknowledge the receipt of a complaint and indicate whether it qualifies for mediation or adjudication. If the complaint falls within its jurisdiction, it shares the complaint with the financial service provider involved for feedback within a set period. Automated systems that notify the financial institution when a complaint is accepted, and require a response by a specified deadline, work well. Also useful are early review processes that differentiate straightforward complaints from more complex cases that need to be handled by experienced staff or even expert panels.

**Promote mediation settlement as the first choice.** All ombudsman schemes require that mediation be attempted to help the parties resolve their dispute. If a compromise is not possible, they conduct a full investigation that includes oral examination or hearings and opportunities for the parties to present their evidence. Many more cases are resolved through mediation than by adjudication. For example, Australia’s ombudsman issued a final decision in only 7% of the total complaints closed in 12 months ending in October 2020.\(^\text{23}\)

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\(^{22}\) Regulators are now monitoring financial service provider handling of consumer complaints more closely. Regulations requiring providers to prepare clear and timely responses to consumer complaints and explain the reasons for their positions on these matters have become common.

In cases of adjudication, ensure fair access to information. When adjudication is necessary, the ombudsman's offices base their final decisions on a complete review of case details, presentations by the two parties, their respective country's legal and regulatory principles, and the prevailing industry standards. Occasionally, additional information or testimony is requested. Each party must be informed of the other's position, and as such, have access to the ombudsman's case files, including any expert reports. No access to confidential information is allowed unless the party in question has waived the right to data privacy. Usually, simple cases are decided within a few weeks, while more complex cases take 4–6 months.

Use cases to set market standards. When a particular decision favors the consumer, the ombudsman can order the (financial service) provider to pay compensation or take remedial action. Compensation can cover losses and inconvenience, and the provider can be obligated to correct improper conduct. Legislators and financial regulators can then issue general market rules to influence behavior by showing financial services firms what practices will not be tolerated.

Binding decisions are better. An ombudsman’s final decision becomes binding on both parties when the consumer accepts it within a set time limit (and binding on neither if this period is exceeded). The courts in three countries can enforce the ombudsman’s decision in cases of provider noncompliance. Because the adjudicator’s decision must remain confidential in Singapore, the courts can only enforce the terms of a settlement agreed upon by both parties during mediation, not the adjudicated decision. However, FIDReC has the authority to fine noncompliant members, and fines accrue for each day the member does not comply with a FIDReC decision. Allowing financial institutions to appeal a decision without negative consequences attached if they lose is contrary to the spirit and purpose of establishing a financial ombudsman.

7. Accountability and Publishing Bring About Multiple Benefits

Require public disclosure of decisions. All case study countries aim to hold their ombudsman accountable for the impartiality and quality of their work. In all cases but Singapore (where the privacy of the dispute parties takes precedence), the ombudsman's decisions are published along with the reasoning supporting the decisions made. The ADR systems in Armenia, Australia, and Singapore must also report to their financial regulators or legislatures. All ombudsman offices publish annual reports that provide statistics and details of their activities, categorize complaints by type, and explain how the cases were resolved. Also, at the time of the drafting of this paper, Singapore was digitizing FIDReC processes, thus, there may now be new uses of data analytics, at least internally.

Monitoring and evaluation systems strengthen the ombudsman office. Monitoring, reporting, and accountability requirements should not be considered constraints on the independence of a financial services ombudsman. The information and data collected can guide regulators and lawmakers in designing reforms that will improve the ADR scheme and strengthen the overall financial system. Regulators and legislators can use the same data to determine better ways to protect consumers, stifle improper conduct, and head off systemic issues. Transparency thus encourages extensive participation in a country's financial sector, which enables the overall economy to develop and grow. Monitoring and evaluation have been used in both Australia and the UK, but mainly in response to public criticism of the ombudsman schemes.

8. Funding for Schemes Should Come from the Financial Service Providers

Give boards the power to approve ombudsman budgets. Annual budgets with projections of income and expenditures are prepared with oversight by the ombudsman’s boards in the three countries. The budgets require approval by government departments or financial regulators in three countries.
The AFCA constitution gives the Australian Ombudsman’s board final budget approval. In no country does the financial industry have a role in approving the ombudsman’s budget.

Require industry to absorb most of all the costs. Where consumer access to the ombudsman is not free, fees are kept low, compared with a country’s per capita gross domestic product (e.g., Singapore). As a result, costs are covered either by levies on all regulated financial service providers and case filing fees or a mixture of both (in Armenia, Australia, and Singapore). A provider’s contribution is generally related to its market segment and size. Australia imposes additional levies on firms that are the target of a large volume of consumer complaints, and FIDReC has the authority to do so as well. Levies on providers reflect both the growing constraints on public expenditure and the fact that the financial industry can expect to reap significant benefits from the ombudsman’s work—better client retention, for example, and an expanding and healthier financial services marketplace.

9. Establishment Challenges Lead to Long-Term Financial Sector Benefits including Increased Consumer Trust

Establishment of a financial ombudsman builds consumer trust in the financial system. A financial services culture in which disputes routinely go unresolved and where consumers are the inevitable losers can build deep distrust in the finance industry, as well as the institutions meant to police it. It will also tempt providers to engage in further bad behavior. Broad inroads by digital finance into vulnerable target populations could exacerbate both problems. Finance sectors face a ceiling on growth and development prospects when too many consumers have diminished faith in their services. Meanwhile, low-income and otherwise disadvantaged citizens can be deprived of the kind of financial products that can help them improve their lives and play a significant role in their local economies.

Plan for the longer term. Establishing a financial services ombudsman is not an instant solution. Designing, laying the legal groundwork, and getting a new mechanism up and running is a complex, multiyear, iterative, and highly political process. This must be followed by on-the-job learning and adjustments to boost the ADR scheme’s efficiency and effectiveness. Financial institutions in all the countries reviewed were reluctant to consider and sometimes lobbied wholeheartedly against the creation of the ombudsman. Financial regulators everywhere must be prepared to engage deeply with the financial sector, civil society, and lawmakers and work through this resistance. Further, it helps to have a political champion.

Combat financial industry resistance by focusing on economic benefits. Data that illustrates positive contributions from ombudsman activities can mitigate objections by the financial industry. The ombudsman adds clarity to business planning by drawing precise lines between what is acceptable and what is not for both a financial service provider and its consumers. They are also a new vehicle for mediating disputes in a conciliatory way that can help a financial firm retain its client once a dispute is resolved.

Financial ombudsman becomes fundamental to protecting consumers. Despite the difficulties, bargaining, and learning by doing involved, the authors have not found a single jurisdiction where a financial services ombudsman has been established and later abandoned. On the contrary, financial systems around the world have ultimately embraced the ombudsman as a crucial component of consumer protection.

Three country systems available to advise. The representatives of the three financial dispute resolution facilities surveyed for this publication are willing to engage in direct discussions with law and policymakers in other countries interested in establishing a financial services ombudsman. We have
sought their insights and fact-checking services throughout the drafting process of this working paper. They have invaluable experiences and offer knowledge on the challenges encountered while creating their ADR mechanisms and how they overcame them, and the impact their ADR schemes have had on the financial sectors and consumer protection long term.

III. CONCLUSION

The benefits of creating a financial ombudsman or ADR mechanism have proven worth the effort in every country that has established one. Providing an independent, impartial, affordable service to help resolve low-value disputes between consumers and the comparatively more powerful financial services institutions is invaluable. Initial difficulties in establishing an ADR scheme are outweighed by the benefits of building awareness, trust, understanding, and potentially greater financial inclusion while, at the same time, demonstrating where the lines between proper and improper industry conduct lie. The data and information an ADR system generates can guide legislators and regulators in adjusting laws and rules to strengthen financial markets, as well as provide early warning of dangerous trends or systemic risks. Greater consumer confidence in the financial services sector can also lead to easier acceptance of new or more sophisticated services as the domestic sector matures. A financial services sector where both the consumers and the providers understand their own and each other’s rights and responsibilities is more likely to remain healthy and grow as opposed to one where consumer complaints are left chronically unresolved. We believe that dialogue and the lessons learned from other systems at each step of their journeys are valuable to any government or regulator seeking to build better protections for consumers of financial services.
## Country Comparison Table: Key System Characteristics

<table>
<thead>
<tr>
<th>Key System Characteristics</th>
<th>Armenia</th>
<th>Australia</th>
<th>Singapore</th>
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<tbody>
<tr>
<td>Financial dispute resolution system created by explicit statute</td>
<td>Yes, the Republic of Armenia Law on the Financial System Mediator (FSM), 2008. Available online at <a href="https://www.cba.am/EN/lalaws/Law_on_financial_system_mediator.pdf">https://www.cba.am/EN/lalaws/Law_on_financial_system_mediator.pdf</a>.</td>
<td>The AFCA was created as a nonprofit company, in accordance with the Corporations Act, 2001. Provides quarterly reports to the ASIC.</td>
<td>No, the FIDReC system is an independent public company limited by guarantee. Created pursuant to the Monetary Authority of Singapore as a one-stop center for resolution of retail financial disputes.</td>
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<tr>
<td>Since the creation of the ADR system, the underlying statute has been modified.</td>
<td>Yes, the law was modified to allow for SMEs to utilize the FSM.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>System covers disputes with all licensed financial service providers (i.e., unified system)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Consumers who are “natural persons” may use either the ADR system or the courts.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, only natural persons and sole proprietors may use FIDReC.</td>
</tr>
<tr>
<td>SMEs may also use the financial dispute resolution system.</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No fee for consumers or SMEs to use the dispute resolution system</td>
<td>Correct</td>
<td>Correct</td>
<td>No consumer fee levied if claim is resolved at mediation; must pay $50 if claim goes to adjudication. Financial institutions pay $50 for each mediation and $500 for each case that goes to adjudication.</td>
</tr>
<tr>
<td>There is a cap on the amount of compensation which can be awarded the complainant.</td>
<td>Yes, claims may not exceed (Armenian dram) AMD10 million (approximately $25,000).</td>
<td>AFCA may consider claims up to A$1 million for natural persons; up to A$5 million for small businesses. May award up to A$500,000 to persons or A$1 million to A$2 million for businesses.</td>
<td>Yes, FIDReC may award compensation of up to S$100,000 unless the parties have agreed to a maximum of a higher amount.</td>
</tr>
<tr>
<td>Financial institutions are required to fund the operations of the dispute resolution system.</td>
<td>Yes, contributions are mandatory as per Article 35 of the statute. Per the mediator, unused funds are refunded and/or may be spent on consumer education annually.</td>
<td>Yes</td>
<td>Yes, a levy is assessed on members in accordance with the funding framework of the terms of reference.</td>
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*continued on next page*
### Key System Characteristics

<table>
<thead>
<tr>
<th>Financial institutions are charged a premium by the system based on higher volumes of complaints as compared to peer institutions.</th>
<th>No</th>
<th>Yes</th>
<th>Yes, FIDReC has the authority to charge a levy on individual firms or a subsector. Members are divided into blocks and the levy is apportioned between the blocks based on usage. Within each block, the members agree to apportionment based on usage, market share, or equal share or a combination.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decisions of the financial dispute resolution system are binding on the financial service provider.</td>
<td>Yes, the decision is binding if the consumer agrees in written form. If not, it does not come into force.</td>
<td>Yes, if the consumer accepts the decision, the financial service provider is legally bound to accept it.</td>
<td>Yes, if the consumer accepts the decision, the financial service provider is legally bound to accept it. Members are bound by the FIDReC terms to abstain from legal action vs. FIDReC. Members can be penalized up to S$100 per day if they are in breach of FIDReC’s terms of reference up to 14 days. The penalty increases thereafter.</td>
</tr>
<tr>
<td>The dispute resolution system has the competency to resolve cases of consumer debt distress.</td>
<td>No, there is no specific mandate.</td>
<td>Yes, approximately 9% of AFCA’s cases are related to debt distress.</td>
<td>No, there is no specific mandate.</td>
</tr>
<tr>
<td>Decisions of the dispute resolution system are published.</td>
<td>Yes, the mediator publishes regular reports. However, not all decisions are published, only ones establishing a precedent. Names of organizations against which the decision is made are not published.</td>
<td>Yes, AFCA has a “data cube” which displays data by firms with four or more complaints and is searchable by firm, issue, product, and location. See <a href="https://data.afca.org.au/at-a-glance">https://data.afca.org.au/at-a-glance</a>.</td>
<td>Mixed, FIDReC decisions are provided orally only to participants. However, case studies are published on the FIDReC website along with annual reports.</td>
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<td>System has a single decision-maker, multiple, or specialized panels.</td>
<td>At the claims, investigation, and handling phase, there is a mix of economists and lawyers; two deciding mediators may also convene a group of financial institutions to inquire how they would resolve a similar problem.</td>
<td>There are adjudicators, ombudsmen, and the possibility to convene expert panels when issue is particularly complex or unique (e.g., when an indigenous person is involved, a representative of indigenous persons is on the panel).</td>
<td>Decision-making is outsourced to adjudicators who are law firm lawyers or retired judges. The adjudicators are appointed by the board of directors and the criteria for their appointment is available on the FIDReC website.</td>
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</tbody>
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AFCA = Australia Financial Complaints Authority, ASIC = Australian Securities and Investment Commission, FIDReC = Financial Industry Disputes Resolution Centre.

Establishing a Financial Services Ombudsman in Mongolia
*Experiences and Lessons from Armenia, Australia, and Singapore*

Alternative dispute resolution in the form of a financial ombudsperson, mediator, or arbiter adds value to the financial services sector. It can provide redress for high volumes of consumer complaints, establish rules of conduct for financial service providers, and improve the sector’s overall health and sustainability. This paper sets out insights from three long-standing financial alternative dispute resolution systems in Armenia, Australia, and Singapore. It outlines how the different systems work and highlights lessons for countries interested in developing similar arrangements to strengthen financial consumer protection.

About the Asian Development Bank

ADB is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty. Established in 1966, it is owned by 68 members —49 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.