

Content

Title :	Financial Consumer Protection Act <b>Ch</b>
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Legislative :	1. Enacted and promulgated per 29 June 2011 Presidential Order No. Hua-Zong-I-Yi-10000133861; for implementation from 30 December 2011 2. Article 7, 10 amended and promulgated per 4 June 2014 Presidential Order No. Hua-Zong-I-Yi-10300085841; for implementation from 1 July 2014
Content :	<p>Chapter 1 General Principles</p> <p>Article 1 This Act is specifically enacted to protect the interests of financial consumers, and to fairly, reasonably, and effectively handle financial consumer disputes, thereby reinforcing the confidence of financial consumers in markets and promoting sound development of financial markets.</p> <p>Article 2 The competent authority for this Act is the Financial Supervisory Commission (FSC), Executive Yuan.</p> <p>Article 3 The term "financial services enterprise" as used in this Act includes banking enterprises, securities enterprises, futures enterprises, insurance enterprises, electronic stored value card enterprises, and enterprises in other financial services as may be publicly announced by the competent authority. The terms "banking enterprises," "securities enterprises," "futures enterprises," and "insurance enterprises" as used in the preceding paragraph shall take the definitions set out in Article 2, paragraph 3 of the Organic Act Governing the Establishment of the Financial Supervisory Commission; provided, however, that securities exchanges, over-the-counter securities exchanges, central securities depositories, futures exchanges, and enterprises in other financial services as may be publicly announced by the competent authority are not included within the meaning of these terms. The term "electronic stored value card enterprises" as used in paragraph 1 means issuers as defined in Article 3, subparagraph 2 of the Act Governing Issuance of Electronic Stored Value Cards.</p> <p>Article 4 The term "financial consumer" as used in this Act means parties that receive financial products or services provided by a financial services enterprise; provided, however, that it does not include the following: 1. Qualified institutional investors; or 2. Natural persons or juristic persons with a prescribed level of financial capacity or professional expertise. The meanings of the terms "qualified institutional investors" and "prescribed level of financial capacity or professional expertise" as used</p>

in the preceding paragraph shall be prescribed by the competent authority.

#### Article 5

The term "financial consumer dispute" as used in this Act means a civil dispute between a financial consumer and a financial services enterprise over a product or service.

#### Article 6

The liability of a financial services enterprise to a financial consumer as set out in this Act shall not be limited or exempted by prior stipulation. If the preceding paragraph is violated, the stipulation at issue shall be invalid.

### Chapter 2 Protection of financial consumers

#### Article 7

When a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall act in conformance with the principles of fairness, reasonableness, equality, reciprocity, and good faith.

Contractual provisions entered into by a financial services enterprise and a financial consumer that are clearly unfair shall be invalid. If there is a disagreement over the meaning of any contractual provision, the provision shall be interpreted in favor of the financial consumer.

A financial services enterprise, in providing financial products or services, shall exercise the due care of a good administrator; for any financial product or service it provides that has the nature of a trust or mandate arrangement, the financial services enterprise shall also bear such fiduciary duty as may be required by applicable legal provisions or contractual stipulations.

#### Article 8

A financial services enterprise, in publishing or broadcasting advertisements or carrying out solicitation or promotional activities, shall not engage in falsehood, deception, concealment, or other conduct sufficient to mislead another party, and shall verify the truthfulness of the content of its advertisements. The obligation it bears to financial consumers shall not be less than that indicated in the content of the aforementioned advertisements or in the materials or explanations provided to financial consumers in the aforementioned solicitation or promotional activities.

Regulations governing the methods, content, and other requirements pertaining to the advertisements and solicitation or promotional activities of the preceding paragraph shall be prescribed by the competent authority. A financial services enterprise shall not take advantage of education and awareness programs to introduce individual financial products or services.

#### Article 9

Before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall fully understand the information pertaining to the financial consumer

in order to ascertain the suitability of those products or services to the financial consumer.

Regulations governing -what "information pertaining to the financial consumer" must be fully understood and what matters relating to "suitability" must be taken into account, as mentioned in the preceding paragraph, and other matters requiring compliance, shall be prescribed by the competent authority.

#### Article 10

Before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall fully explain the important aspects of the financial products or services, and of the contract, to the financial consumer, and shall also fully disclose the associated risks.

An entity as referred to in the preceding paragraph that engages in the collection, processing, and use of personal information shall fully explain to the financial consumer his or her rights regarding the protection of personal information, and the possible negative consequences of any refusal to provide consent. A financial services enterprise that engages in lending business shall also carefully consider the borrower, the intended use of the funds, the source of repayment, the security for its claim, the perspective risks and benefits of the loan, and other such lending principles, and it shall not decline to provide a loan to a financial consumer solely on the grounds that the financial consumer has refused to authorize it to submit a query about his or her credit information to an enterprise that conducts inter-institutional credit information services. The explanations and disclosures that the financial services enterprise provides to the financial consumer, as mentioned in paragraph 1, shall be made in a manner that is fully understandable to the financial consumer, and the content thereof shall include, without limitation, aspects of material significance to the interests of the financial consumer, such as transaction costs, and possible gains and risks. Regulations governing related requirements shall be prescribed by the competent authority.

#### Article 11

A financial services enterprise which, by violating any provision in either of the two preceding articles, causes harm to a financial consumer shall bear liability for damages; provided, however, that this shall not apply if the financial services enterprise can prove that occurrence of the harm was not due to: its failure to fully understand the suitability of a product or service to the financial consumer; its failure to provide an explanation, or provision of an explanation that was untrue or incorrect; or its failure to fully disclose risks.

#### Article 12

A financial services enterprise shall incorporate the content of Articles 8 through 10 into its internal control and internal audit systems, and faithfully implement them.

#### Article 13

In order to handle financial consumer disputes fairly, reasonably, quickly, and effectively, thereby protecting the interests of financial consumers, an ombudsman body shall be established.

Financial consumers shall deal with a financial consumer dispute by first filing a complaint with the financial services enterprise. The financial services enterprise shall appropriately handle the matter within 30 days of the day the complaint is received, and shall inform the financial consumer that filed the complaint of its disposition. If the financial consumer does not accept the disposition or the financial services enterprise fails to handle the matter before the aforementioned time limit, the financial consumer may, within 60 days of either the day he receives notification of the disposition or the day the time limit expires, apply to the ombudsman body to institute an ombudsman case. When a financial consumer files a complaint with the ombudsman body, the financial consumer contact division of the ombudsman body shall refer the complaint to the financial services enterprise for handling.

In addition to handling financial consumer disputes, the ombudsman body shall also conduct education and awareness programs for financial services enterprises and financial consumers to ensure that financial services enterprises and financial consumers all have a full and correct understanding of financial consumption principles as well as the rights and obligations that arise in connection with a financial consumption relationship, thereby effectively averting the occurrence of financial consumer disputes.

In exchange for handling financial consumer disputes and the matters mentioned in the preceding paragraph, the ombudsman body may charge financial services enterprises annual fees and dispute handling service fees.

Schedules for the annual fees and service fees mentioned in the preceding paragraph, and related requirements, shall be prescribed by the competent authority.

#### Article 14

The ombudsman body shall be an incorporated foundation with total contributed capital of NT\$1 billion, which, in addition to private donations, shall also be contributed by the government from funds budgeted for that purpose over a period of five years. The ombudsman body at the time of its establishment shall have contributed capital in the amount of NT\$200 million.

The ombudsman body shall establish a fund, the funding sources of which shall be the following:

1. Properties donated.
2. Annual fees and service fees collected from financial service enterprises in accordance with paragraph 4 of the preceding article.
3. Interest and investment gains earned by the fund.
4. Other donation income.

Rules governing the following matters pertaining to the ombudsman body shall be prescribed by the competent authority.

1. Organization and establishment, supervision of its financial and

operating status, matters pertaining to any change to its registered information, and matters that must be set out in its articles of association.

2. The method of calculating annual fees and service fees to be paid by financial services enterprises.

3. Rules governing the income, expenditures, custody, and investments of the fund.

4. The terms of appointment of directors and supervisors, termination thereof, convening of directors meetings, the resolutions thereof, the duties of the board of directors and the supervisors, and other requirements.

#### Article 15

The ombudsman body shall establish a board of directors comprising 7 to 11 directors.

The ombudsman body shall have 1 to 3 supervisors.

The ombudsman body's directors and supervisors shall be appointed by the competent authority from among scholars, experts, and fair and impartial persons.

The board of directors shall select one director as chairman of the board with the consent of a majority of the directors present at a meeting attended by at least two-thirds of all directors. The selection shall become valid upon approval by the competent authority.

Directors, the board of directors, and supervisors shall not intervene in the handling of individual ombudsman cases.

#### Article 16

The ombudsman body shall establish a financial consumer services division to coordinate the handling by financial services enterprises of complaints, and to help ombudsman committee members handle the preparations for inspections.

Qualification requirements for the ombudsman body's internal personnel shall be drafted by the ombudsman body and submitted to the competent authority for approval.

#### Article 17

In order to handle an ombudsman case, the ombudsman body shall establish an ombudsman committee comprising 9 to 25 members, and may as necessary appoint additional members. One member shall be the chairperson. All members shall be selected from among scholars, experts, and fair and impartial persons who possess relevant learning or professional experience, and shall be hired after their selections have been submitted to and approved by the competent authority.

An ombudsman committee member shall serve a term of three years, and may be reappointed upon the expiration of the term. The chairperson shall serve in a full-time capacity, while the other ombudsman committee members may serve part-time.

All ombudsman committee members shall exercise their authority in a fair and impartial manner.

#### Article 18

Ombudsman committee members may, in order to handle an ombudsman case, be divided into subcommittees on the basis of the committee members' fields of expertise and the nature of individual ombudsman cases.

Regulations governing the qualification requirements, appointment, dismissal, compensation, and other matters pertaining to ombudsman committee members shall be prescribed by the competent authority.

#### Article 19

The application and any explanatory materials or concessions that one party to a financial consumer dispute submits to the other party to the dispute during the course of the dispute shall not be made public unless it is already public, or the law requires that it be made public, or the other party to the dispute has indicated consent.

Unless it is otherwise provided by law, or both parties to the dispute have indicated agreement, the ombudsman body and its personnel shall maintain confidential any financial consumer dispute materials and information pertaining to the ombudsman case to which they may become privy.

#### Article 20

After the ombudsman body entertains an application to institute an ombudsman case, it shall consider factual evidence related to the case and conduct an impartial and independent hearing in keeping with the principles of fairness and reasonableness.

In order to handle a financial consumer dispute, the ombudsman body may, as reasonably necessary, ask the financial services enterprise to provide assistance or submit documents and related materials. If the financial services enterprise that receives such a request fails to provide assistance or submit documents and related materials, the ombudsman body may report the matter to the competent authority for handling.

#### Article 21

The period of limitation on claims put forward by a financial consumer in its complaint or application to institute an ombudsman case shall be interrupted as a result of the filing of the complaint or application to institute an ombudsman case in accordance with this Act.

The period of limitation on the claims of the preceding paragraph shall be deemed not interrupted if any one of the following situations exists:

1. The complaint or application to institute an ombudsman case is withdrawn.
2. Following a complaint, an application to institute an ombudsman case is not filed in accordance with the provisions of Article 13, paragraph 2.
3. An application to institute an ombudsman case is not entertained.
4. The ombudsman case fails to achieve a resolution.

#### Article 22

When a financial consumer dispute involves a large number of financial consumers or financial services enterprises and everyone's cases are similar in nature, or the matter involves a material dispute over the application of law, the ombudsman body may temporarily suspend its handling

of those cases and once it has drafted dispute handling principles, submitted them to the competent authority, and obtained the latter's approval-continue handling the cases in accordance with those principles, or apply for a legal interpretation by an entity that has authority to interpret laws and regulations, and continue handling the cases on the basis of that interpretation.

#### Article 23

Regulations governing the procedures by which the ombudsman body handles ombudsman cases, the time limit for completion of an ombudsman case, and other requirements shall be prescribed by competent authority.

After a financial consumer applies to institute an ombudsman case, the ombudsman body may seek to institute mediation proceedings; where any party to the dispute does not agree to participate in mediation proceedings, or if mediation proceedings fail to achieve a resolution, the ombudsman body shall continue hearing the ombudsman case.

The procedures by which the ombudsman body handles mediation cases, qualification requirements for mediation personnel, recusal requirements, time limits for completion of mediation procedures, and other requirements shall be drafted by the ombudsman body and submitted to the competent authority for approval.

Provisions pertaining to ombudsman cases in Article 15, paragraph 5 and Article 19, paragraph 2 apply *mutatis mutandis* to mediation procedures.

Where a mediation procedure achieves a resolution, a mediation statement shall be prepared. The provisions of Article 28 and Article 30 apply *mutatis mutandis* to the preparation, service, approval, and validity of a mediation statement.

A financial consumer who has previously taken part in a failed mediation or conciliation procedure in accordance with the provisions of another law may apply to institute an ombudsman case within 60 days of the date on which the mediation or conciliation procedure failed.

#### Article 24

To apply to institute an ombudsman case, a financial consumer shall fill out an application form that expressly indicates the names and basic identifying information of the parties to the dispute, the claims, the facts, the reasons, the related documents or information, and details regarding the inappropriate handling of the complaint.

Where any one of the situations listed below applies with respect to a financial consumer who applies to institute an ombudsman case, the ombudsman body shall decide not to entertain the application, and shall provide written notification to the financial consumer and the financial services enterprise; provided, however, that if the situation can be corrected, the ombudsman body shall notify the financial consumer to make correction within a reasonable time limit:

1. The application was not filed properly.
2. The matter is not a financial consumer dispute.
3. The applicant did not first file a complaint with the financial services enterprise.
4. The financial services enterprise is still handling the complaint that

was filed with it, and it has not yet been more than 30 days since the filing.

5. The application was submitted after the statutory time limit.
6. A party to the dispute lacks standing.
7. The applicant has previously applied to institute an ombudsman case in accordance with this Act, and the case failed to achieve a resolution.
8. A final and irrevocable court judgment has been rendered on the subject of an application to institute an ombudsman case, or a mediation, ombudsman, compromise, conciliation, or arbitration procedure has resulted in a successful resolution of the matter.
9. Other situations as may be specified by the competent authority.

#### Article 25

After the ombudsman body entertains an application to institute an ombudsman case, the chairperson of the ombudsman committee shall appoint at least three ombudsman committee members as pre-examiners to carry out an inspection and prepare an inspection opinion.

An ombudsman committee member shall exercise voluntary recusal where an ombudsman case involves his own interests or those of a spouse, a relative within the second degree of kinship, or a cohabiting family member, where he has served at the financial services enterprise in question and left that employment less than three years previously, or where there otherwise exist circumstances sufficient to support a finding that he would likely be biased in the exercise of his duties. Recusal shall also be exercised if a party to the dispute applies for it.

Under the circumstances contemplated in the preceding paragraph, if there is a dispute between an ombudsman committee member and a party to the dispute over the need for recusal, the ombudsman body's ombudsman committee shall decide by resolution whether the ombudsman committee member is to be recused, and the ombudsman body shall, within three days of the date of the resolution, provide the parties to the dispute with written notification of the result of the resolution.

Within five days of the day when an ombudsman committee member exercises voluntary recusal or the day when the ombudsman committee decides by resolution as set out in the preceding paragraph that an ombudsman committee member must be recused, the ombudsman committee chairperson shall appoint another pre-examiner.

#### Article 26

The procedure for an ombudsman case shall in principle involve a consideration of documents, and the parties to the dispute shall be given an opportunity to state their opinions within a reasonable period of time. The ombudsman committee may, as it deems necessary, notify a party to the dispute or a party in interest to appear at a designated location to state his opinions. When a party to the dispute asks to appear before the ombudsman committee to state his opinions the ombudsman committee shall, if it believes there is a legitimate reason, give that party an opportunity to state his opinions before the committee.

Under the circumstances contemplated in the preceding paragraph, the ombudsman body shall send notice to the party to the dispute or party in

interest by seven days prior to the date when he is to state his opinions.

#### Article 27

Pre-examiners shall submit an inspection opinion to the ombudsman committee for its consideration.

The ombudsman committee shall take fair and reasonable account of all circumstances pertaining to the ombudsman case, and adopt an ombudsman decision supported by the consent of at least one-half of the ombudsman committee members present at an ombudsman committee meeting attended by at least one-half of all committee members.

#### Article 28

The ombudsman committee's decision shall be prepared, in the name of the ombudsman body, into an ombudsman statement and served upon the parties to the dispute.

The delivery referred to in the preceding paragraph is subject mutatis mutandis to provisions in the Taiwan Code of Civil Procedure governing service of documents.

#### Article 29

The parties to the dispute shall notify the ombudsman body in writing, before the time limit prescribed in the ombudsman statement, whether they accept or reject the ombudsman decision. Once both parties accept it, the ombudsman case is resolved.

Where the financial services enterprise has expressed prior written consent, or in the contracts for its products and services or in other documents has expressed a willingness to abide by the dispute handling procedures of this Act, it shall accept any decision by the ombudsman committee that requires it to make payment below a certain amount to a financial consumer or convey thereto property valued at less than a certain amount; this shall also apply where the decision exceeds a certain amount but the financial consumer has expressed a willingness to reduce the amount of the payment or the value of the property to a certain amount.

The "certain amount" of the preceding paragraph shall be set by the ombudsman body and submitted to the competent authority for approval and public announcement.

#### Article 30

A financial consumer may, within a peremptory period of 90-days counting from the day on which the ombudsman case achieves a resolution, apply for the ombudsman body to send the ombudsman statement to a court for approval. Within five days of the aforementioned date on which the application is entertained, the ombudsman body shall send the ombudsman statement and the associated case files for approval by the district court with jurisdiction in the locality where the offices of the ombudsman body are located.

Except where the circumstances contemplated in paragraph 3 exist, the court shall approve the ombudsman statement of the preceding paragraph. After granting approval, the court shall return the approved ombudsman statement and the associated ombudsman case files to the ombudsman body, and shall also have originals of the approved ombudsman statement served upon the

parties to the dispute, and upon their counsel.

Where the court withholds approval because the content of the ombudsman statement violates laws or regulations, contravenes public order or good morals, or its compulsory enforcement is not possible for some other reason, then the court shall provide notice of its reasons to the ombudsman body and the parties to the dispute.

An ombudsman statement that has been approved by a court of law in accordance with the provisions of paragraph 2 shall have the same force as a final and irrevocable civil judgment, and the parties to the dispute shall not again in connection with the ombudsman case institute legal proceedings, nor shall it file a complaint or apply to institute an ombudsman case under this Act.

Where there are legal grounds to consider a court-approved ombudsman statement invalid or voidable, a party to the dispute may file suit in the district court of jurisdiction to request that the ombudsman case be declared invalid or void.

The situation contemplated in the preceding paragraph is subject *mutatis mutandis* to the provisions of Articles 500 to 502 and Article 506 of the Taiwan Code of Civil Procedure, and Article 18, paragraph 2 of the Compulsory Execution Act.

#### Chapter 4 Supplementary provisions

##### Article 31

If a director, supervisor, ombudsman committee member, mandatary, or employee of the ombudsman body violates this Act or any regulations issued hereunder, the competent authority may dismiss the director, supervisor, ombudsman committee member, mandatary, or employee.

##### Article 32

Where a financial consumer had already, prior to the implementation of this Act, filed with the competent authority or a subordinate agency thereof, with the industry association to which the financial services enterprise belongs, or with the Taiwan Insurance Institute, to institute a complaint, compromise, conciliation, mediation, or ombudsman procedure, or any equivalent thereto, and the dispute handling process had failed to achieve a resolution, he may, within 60 days of the day on which the dispute handling process failed, apply to institute an ombudsman case; if more than 60 days have already elapsed since the date on which the dispute handling process failed, he may file a complaint with the financial services enterprise in accordance with the provisions of Article 13, paragraph 2, and if the financial consumer does not accept the result of the complaint handling or the financial services enterprise fails to complete handling within the 30-day time limit for handling, he may apply with the ombudsman body to institute an ombudsman case.

##### Article 33

This Act shall enter into force on the date prescribed by the Executive Yuan.