

**ADDIS ABABA UNIVERSITY**

**SCHOOL OF LAW**



**Implementation of Dispute Settlement Provisions of the Financial  
Consumer Protection Directive No. FCP/01/2020 in the Banking  
Sector**

**BEZA KIROS KAHSAY**

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**Implementation of Dispute Settlement Provisions of the Financial Consumer  
Protection Directive No. FCP/01/2020 in the Banking Sector**

Beza Kiros

Advisor: Fekadu Petros(Assistant Professor of Law)

*A thesis submitted in partial fulfillment of the requirements  
for the degree of Masters of Law  
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**ADDIS ABABA UNIVERSITY COLLEGE OF LAW AND  
GOVERNANCE STUDIES, SCHOOL OF LAW**

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**APPROVAL SHEET**

**BY: Beza Kiros Kahsay**

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**Advisor's Name**

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**Signature**

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**Examiner's/ Reader's Name**

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**Signature**

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**Examiner's/ Reader's Name**

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**Signature**

## DECLARATION

This thesis paper is my original work, and has not been submitted to any other university, and the materials used in it have fully been acknowledged.

Declared by:

Name: Beza Kiros Kahsay

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Confirmed by:

Name: *Fekadu Petros (Assistant Professor of Law)*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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## **ABSTRACT**

*As is expected in any human interaction within a given societal setting, conflicts are bound to arise. This holds true for the interactions between consumers and their financial service providers. Consumer protection relies heavily on consumers having confidence that they will have access to redress in case issues arise in their transactions. Taking this into consideration, we examine the intentional provisions of laws established to address disputes that may arise from such interactions. The objective of this study is to investigate the practices and challenges faced in the implementation of financial dispute resolution by banks in Ethiopia. Many of the world's major financial hubs currently employ systems of financial dispute settlement. However, these systems inevitably encounter questions regarding their function and role in regulating financial markets, particularly as they expand and enhance their capacity to handle an increasing number of finance-related conflicts. The purpose of financial dispute resolution is to strive for a fair settlement through mutual agreement, while highlighting the benefits of reaching such an agreement, such as cost and stress reduction, as well as avoiding a lengthy legal process. This study adopted a mixed research approach, utilizing a descriptive research design method to collect and analyze both quantitative and qualitative data. The quantitative component of the study included 32 respondents from seven banks that have internal complaint handling units. Interviews were also conducted to gather information from senior staff of the National Bank of Ethiopia. The quantitative data sets were analyzed using descriptive methods, while a narrative approach was employed to examine the qualitative data. The findings revealed challenges in the implementation and resolution of disputes under the Financial Consumer Protection Directive No. FCP/01/2020. In conclusion, the study suggests potential solutions that stakeholders could consider when redesigning Ethiopia's framework for resolving financial consumer disputes. These recommendations aim to establish an efficient and effective dispute resolution system in the country.*

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# CHAPTER ONE: INTRODUCTION

## 1.1 Background of the Study

A consumer can refer to either a group or an individual of people who purchase and utilize goods and services solely for personal use. Consumer protection encompasses the practices aimed at safeguarding consumers from unfair business practices in relation to products and services. The need for consumer protection arises due to disparities in the customer-supplier relationship, which can be attributed to unequal negotiating power, knowledge, and resources. Consumer protection laws and regulations are specifically designed to shield consumers from unfair practices employed by suppliers. Dispute resolution plays a crucial role in financial markets, as it not only ensures that disputes arising from financial services and legal obligations are resolved by an impartial mediator and result in enforceable remedies, but it also addresses the need for improved accessibility, particularly for consumers. Enhancing access to justice, or the ease with which investors can protect their rights in financial markets, not only fosters increased consumer confidence and market participation, but also contributes to market efficiency by reducing the resources allocated to dispute resolution. Therefore, selecting an appropriate method of dispute resolution becomes crucial to ensure market efficiency. Ineffective dispute resolution methods can have adverse effects on consumer confidence, market efficiency, and the allocation of resources dedicated to dispute resolution.<sup>1</sup>

Financial dispute resolution methods are well-known mechanisms for settling disputes, aiming to ensure cost-effectiveness and efficiency in financial services. The process of globalization in the financial system, coupled with rapid advancements in information technology and financial innovation, has resulted in a highly complex and interconnected financial system across various sectors and institutions. Furthermore, the presence of financial conglomerates, which have ownership ties across different financial subsectors, adds to the complexity of transactions and interactions among financial institutions. These institutions play a crucial role in providing

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<sup>1</sup>Shahla F. Ali† & Antonio Da Roza†, ALTERNATIVE DISPUTE RESOLUTION DESIGN IN FINANCIAL MARKETS— SOME MORE EQUAL THAN OTHERS: HONG KONG’S PROPOSED FINANCIAL DISPUTE RESOLUTION CENTER IN THE CONTEXT OF THE EXPERIENCE IN THE UNITED KINGDOM, UNITED STATES, AUSTRALIA, AND SINGAPORE, University of Hong Kong Faculty of Law Research Paper No. 2012/20, July 19, 2011, page 487

financial services. The financial services sector faces numerous challenges, including issues related to moral hazard, suboptimal consumer protection in financial services, and potential disruptions to the stability of the financial system. Consequently, there is a growing need for the establishment of supervisory agencies within the financial services sector to address these challenges effectively.<sup>2</sup>

In 2008, Central Bank Governors and the G20 Finance Ministers urged the OECD, the Financial Stability Board (FSB), and other pertinent international organizations to formulate unified principles for consumer protection frameworks in the realm of financial services. As a response to this call, the OECD released a document titled "G20 High-Level Principles on Financial Consumer Protection" in early 2011. It is important to note that this document does not have any legally binding effect on countries, but rather serves as a guiding framework for countries as they develop their legal and institutional structures for financial consumer protection.<sup>3</sup> The document does not have a binding effect on countries; however, it serves as a guideline for countries when they develop their institutional and legal framework for financial consumer protection.<sup>4</sup> Jurisdictions should prioritize ensuring that consumers have access to sufficient mechanisms for handling complaints and seeking redress. These mechanisms should be accessible, affordable, independent, fair, accountable, and characterized by timeliness and efficiency. It is important that such mechanisms do not impose unreasonable costs, delays, or burdens on consumers. In line with these principles, financial services providers and authorized agents should establish procedures for handling complaints and providing redress.<sup>5</sup>

A variety of pertinent standards, drawn from sources such as the Equator Principles, the Basel Accords, the UN Millennium Development Goals, global deliberative processes, and general rule of law standards, offer valuable guidance for the establishment of a consumer financial dispute resolution system. These standards encompass elements such as the requirement for accessible

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<sup>2</sup> Zulfi Diane Zaini, The Function of Financial Services Authority (FSA) in Dispute Settlement Banking Customers in Indonesia, <https://ersj.eu/journal/696>, European Research Studies Journal Volume XX, Issue 3A, 2017 page 70

<sup>3</sup> International Financial Corporation, Promoting Financial Consumer Protection in Cambodia, (July 2015) P.17

<sup>4</sup> OECD, G20 High-Level-Principles on Financial Consumer Protection, (October 2011) P.4 (High-Level-Principles)

<sup>5</sup> <https://www.oecd.org/fin> OECD, G20 High-Level-Principles on Financial Consumer Protection, (October 2011) P.4 (High-Level-Principles) <https://www.oecd.org/fin>

grievance mechanisms, the importance of financial dispute prevention through transparent risk disclosure and risk mitigation, the principles of impartiality, equity, accountability, and fairness. Incorporating these standards aids in the development of an effective and equitable consumer financial dispute resolution system.<sup>6</sup>

The National Bank of Ethiopia has issued Financial Consumer Protection Directive No. FCP/01/2020, which outlines the establishment of internal dispute resolution mechanisms by financial service providers and “external dispute resolution mechanisms overseen by the National Bank of Ethiopia.” However, certain provisions related to dispute settlement within the directive have raised controversies and posed challenges during implementation. This paper aims to address any deficiencies in the institutional framework and the implementation strategy for resolving disputes involving financial consumers from both legal and practical perspectives. It also evaluates the progress made thus far and offers potential solutions to rectify the identified issues.

## **1.2. Statement of problem**

Effective consumer redress through both internal dispute resolution (IDR) and external dispute resolution (EDR) is a crucial component of a robust financial consumer protection framework. The availability of effective redress mechanisms ensures that consumer protection measures have practical impact, such as providing suitable remedies, including compensation, to address individual consumer harm and driving changes in provider behavior and industry practices. As financial institutions' IDR processes mature and benefit from the positive outcomes of a well-functioning mandatory EDR scheme, the goal is for the majority of financial consumer complaints to be successfully resolved through the internal complaint handling procedures of financial services providers, without the need for external intervention. However, it is important for financial services providers to actively engage with complainants and ensure that any unresolved complaints through IDR processes are appropriately and effectively forwarded to an

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<sup>6</sup> SHAHLA F.ALI, Consumer Financial Dispute Resolution in a Comparative Context: Principles, <https://books.google.com>>

authorized EDR scheme. This ensures that consumers have access to an external avenue for resolution when internal processes are unable to provide a satisfactory outcome.<sup>7</sup>

The first financial consumer protection law in the Ethiopian legal system is the Financial Consumer Protection Directive, which was issued by the NBE in 2020. This directive shall apply to any financial service provider, financial product and service, and financial consumer and security provider.<sup>8</sup> The financial service providers' internal dispute resolution and the NBE's external dispute resolution are both recognized under the FCP directives.

All financial service providers have a responsibility to establish an internal complaint handling unit at their head office, where security providers and financial consumers can lodge complaints. The directive requires financial service providers to implement and enforce policies and procedures that ensure transparent, fair, free, accessible and efficient internal complaint handling.<sup>9</sup>

However, there are some controversies within the directive. According to the directive, if a financial service provider is unable to resolve a complaint within 10 business days, they are required to report the case to the NBE within two business days.<sup>10</sup> The National Bank of Ethiopia is then tasked with investigating the case within 10 business days. This timeline may pose challenges for practical implementation.

Therefore, this study aims to address the shortcomings in the implementation framework for dispute resolution under the Financial Consumer Protection Directive, taking into account practical challenges. Additionally, the study evaluates and acknowledges the achievements made in the implementation framework of the financial consumer protection directive in Ethiopia. Finally, the study proposes possible solutions to overcome these challenges.

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<sup>7</sup> WORLD BANK GROUP, FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA Diagnostic Review of Financial Consumer Protection Diagnostic Review of Financial Consumer Protection, APRIL 2017, page 19

<sup>8</sup> Directive Number FCP/01/2020, Financial Consumers Protection Directive, NBE, 2020, article 3 available at file:///C:/Users/user/Downloads/FCP-01-2020.pdf

<sup>9</sup> Directive Number FCP/01/2020, Financial Consumers Protection Directive, NBE, 2020, cumulative reading of article 5.5.1 § 5.5.2(5.5.2.1) available at file:///C:/Users/user/Downloads/FCP-01-2020.pdf

<sup>10</sup> Ibid cumulative reading of article 5.5.3(5.5.3.2 C) § 5.5.4(5.5.4.2)

### **1.3. Research questions**

Based on the above statements of the problem, the researcher plans to address the following research questions:

1. How is Dispute Settlement designed in the financial consumer protection directive? And what is the experience of other countries?
2. Is financial consumer dispute settlement as designed in the directive being implemented in the banks? If so, how?
3. What are the major challenges, if any, in implementation of the Directive, and how can they be solved?

### **1.4. Objective of the Study**

#### **1.4.1 General Objective**

The general objective of the study is to assess the main challenges in the implementation of the dispute settlement provisions of the Financial Consumer Protection Directive No. FCP/01/2020.

#### **1.4.2. Specific objective**

Based on the above general objective, the following specific objectives are addressed through the research:

- ✓ To assess the design of dispute settlement provisions in the financial consumer protection directive ;
- ✓ To analyses the implementation of the financial consumer dispute settlement as designed in the directive being implemented in the banking sector;
- ✓ To identify the major challenges in the implementation of the directives and to suggest possible solutions.

### **1.5. Significance of the Study**

Generally, the study was considered to have its own academic, policy, and other significance. Therefore, the study had the following specific significance:

- ✓ The study shows the major challenges in the implementation of the dispute settlement provisions of Financial Consumer Protection Directive No. FCP/01/2020 from both a legal and practical perspective.
- ✓ As the study elaborates on other alternative dispute resolution means, it is beneficial for legal experts to understand the implementation of dispute resolution for financial consumers.
- ✓ It gives suggestions to the enforcing institutions so as to follow the recommended effective implementation strategies for financial dispute resolution.
- ✓ It will serve as a stepping stone for further or related studies in regards to financial dispute resolution.

## **1.6. The scope of the Study**

The study focuses on the implementation of the Financial Dispute Resolution Directive No. FCP/01/2020. However, it is important to note that the scope of this paper is limited to assessing the implementation of financial dispute resolution specifically under the financial consumer protection directive. The research examines the practical aspects of implementing dispute resolution within banks and the National Bank of Ethiopia.

## **1.7. Limitation of the Study**

During the course of this research, the lack of sufficient relevant literature and practical cases has had an impact on the study.

## **1.8. Research Methodology**

### **1.8.2. Research Method Approach**

Procedures for collecting, analyzing, interpreting, and reporting data in research studies are collectively referred to as research designs. In this study, a mixed-methods approach was employed by the researcher to address the research questions. By combining both quantitative and qualitative methods, mixed-methods research can offer a more comprehensive understanding and insight compared to conducting solely quantitative or qualitative studies.

### **1.8.2.1 Research Design**

Following the decision to employ a mixed-methods approach for the study, the next step involves selecting a specific design that effectively addresses the research problem. In this study, a mixed-methods design, incorporating an appropriate blend of qualitative and quantitative methods, was chosen. This method was deemed most suitable for addressing the research questions at hand. While the researcher primarily utilized qualitative methods, incorporating legislative analysis and case studies, interpretive (qualitative) methods were also employed to assess the effectiveness of the enforcement strategy and institutional framework. Additionally, certain quantitative methods were utilized to examine the implementation of financial dispute resolution in Ethiopia. These quantitative methods were employed to collect and analyze relevant, measurable data, facilitating the generation of comprehensive findings.

### **1.8.2.2 Source of data**

The data sources in this study were categorized into two main groups: primary sources and secondary sources. Primary data refers to information collected directly from informants or other firsthand sources. In this study, primary data was obtained through the use of questionnaires distributed to banks and face-to-face interviews conducted with the financial inclusion and legal departments of the National Bank of Ethiopia (NBE). These data collection methods aimed to assess the implementation practices and challenges related to the dispute settlement provisions outlined in the Financial Consumer Protection Directive No. FCP/01/2020.

On the other hand, secondary data refers to information obtained from documents and third-party sources. In this study, secondary data sources were utilized to gather information such as the number of banks, which was extracted from the 2022 annual report of the National Bank. Additionally, the researcher reviewed secondary sources of data, including various literature pieces and case analyses. However, it is worth noting that no relevant cases were found in the National Bank of Ethiopia's records.

### **1.8.2. Sampling technique**

In this descriptive research design, the quantitative research phase was conducted first, followed by the qualitative phase. In both phases of the study, the same sampling method was employed to select informants for the quantitative and qualitative approaches. Although the data collection

was carried out separately, similar techniques were utilized to select the informants. The details of these techniques will be briefly explained in the following section.

### **1.8.2.1 Purposive Sampling Techniques**

To encompass both the qualitative and quantitative sections of the descriptive research design, the researcher utilized the purposive sampling technique to select informants. For the qualitative data collection, experienced and senior staff members from the financial inclusion department and legal department of the National Bank of Ethiopia were purposefully chosen. This approach aimed to gather comprehensive information regarding the practice and design of the financial consumer protection directive. Consequently, all informants were selected with a purpose, ensuring that qualitative information could be obtained through the use of open-ended interview questions designed to fulfill the study's objectives. Similarly, all employees within the bank's complaint handling unit were purposefully chosen by the researcher to complete questionnaires for the quantitative data collection phase. This decision was made to ensure that the quantitative data gathered through the questionnaires would be representative of the employees working in the complaint handling unit.

### **1.8.2.2 Target Population**

The target populations of the study include the financial inclusion department, the legal department of the National Bank of Ethiopia, and the 25 banks listed in the 2021/22 annual report of the National Bank.

Out of the 25 banks, two banks declined to complete the questionnaire. Fourteen banks do not currently have an internal complaint handling unit, and two banks are in the process of establishing one. Consequently, only seven banks were found to have an internal complaint handling unit in line with the directive.

As a result, the researcher collected questionnaires specifically from the seven banks that have complaint handling units.

Table 1: The number of respondents and participants

<b>Banks</b>	<b>Number of Respondents/Participants</b>
Bank A	6
Bank B	5
Bank C	4
Bank D	7
Bank E	1
Bank F	5
Bank G	4
Total	32

**NB.** The names of the selected banks are anonymous for confidentiality purposes. The majority of them did not consent to having their names mentioned in this research.<sup>11</sup>

### **1.8.3 Data collection Instruments**

Data collection refers to the systematic process of gathering and measuring empirical information related to a specific variable of interest. This process utilizes established scientific tools to address the research questions at hand. In this study, closed-ended structured questions were developed to collect quantitative data, while open-ended semi-structured questions were formulated to gather qualitative data effectively. The subsequent section provides a brief overview of the data collection procedures and tools employed to align the research questions with the empirical data.

#### **1.8.3.1 Questionnaire**

A questionnaire is a fundamental research instrument or tool employed to gather data in a quantitative research approach. In this study, the questions were developed based on the “financial consumer protection directive to assess the active implementation of the directive by banks.” The questionnaire was distributed to all team members within the internal complaint

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<sup>11</sup>Bank B refers to the Commercial Bank of Ethiopia; Bank C refers to the Awash International Bank; and Bank D refers to the Cooperative Bank of Oromia.

handling unit of the banks, with the aim of identifying implementation practices and challenges pertaining to the internal complaint handling units in Ethiopian banks.

### **1.8.3.2 Interview**

The primary tool utilized for data collection in the qualitative phase of the descriptive research design, employing a mixed research methodology, is the interview. This research instrument was employed in the qualitative section of the study. The interviews consisted of open-ended, semi-structured guiding questions that were used to gather empirical data from the informants. Purposive sampling techniques were employed to select the informants, who were experts from the National Bank of Ethiopia working in the financial inclusion and legal departments. The interviews were conducted face-to-face, following a brief introduction explaining the study's objectives and the researcher's motivation to investigate the implementation practices and challenges of financial dispute resolution. The expected benefits of the proposed study were also discussed. During the interviews, the researcher took notes and, with the consent of the interviewees, utilized a smartphone recorder to ensure accurate recording of the conversations.

### **1.8.4 Data collection Procedures**

#### **1.8.4.1 Getting Research Permission**

Before contacting informants, obtaining research permission from the relevant authorities was a requirement. Permission was granted by Addis Ababa University's School of Law, and supportive letters were provided to authorized offices and organizations that were approached for cooperation during data collection. Consequently, letters requesting permission to conduct research were sent to the National Bank of Ethiopia and the 25 banks in Ethiopia. Upon receiving the letter granting permission, the researcher conducted the research at all 25 banks and the National Bank of Ethiopia.

### **1.8.5 Data Analysis**

The analysis in the descriptive research design commenced with a quantitative survey study aimed at identifying statistically significant differences and anomalous results. Subsequently, an in-depth qualitative study was conducted to provide explanations for these observed results. In the second phase of the study, qualitative data were collected and analyzed, building upon or connecting with the findings from the initial quantitative phase. To summarize the gathered

quantitative data, statistical methods such as frequency distribution, percentages, tabular representation, and graphical representation were employed using SPSS. On the other hand, the qualitative data underwent analysis using narrative analysis techniques.

### **1.9. Ethical consideration**

In conducting the research, the researcher will place significant emphasis on ethical values when dealing with those who provided data. The researcher will respect the consent and dignity of the research participants, safeguard their privacy, maintain confidentiality of the research data, avoid any conflict of interest, and refrain from asking misleading questions. These measures are taken to ensure that the study is conducted in a proper and effective manner.

### **1.10. Research Organization**

The study was organized into five chapters. The first chapter provided an explanation of the study's background, statement of the problem, objectives, research questions, significance, scope and delimitation, methodology, limitations, and organization. The second chapter focused on a comprehensive review of literature, with a particular emphasis on conceptual themes and issues related to financial consumer dispute resolution. This chapter examined the evolution of financial consumer dispute resolution, international legal and regulatory frameworks, and experiences of different countries. The third chapter examined Ethiopia's legal and regulatory framework for financial consumer dispute resolution. Chapter four focused on the implementation of the directive within the selected institution, presenting and analyzing the data collected from relevant bodies in accordance with the existing legal frameworks outlined in NBE Directive No. FCP/01/2020. Lastly, the fifth chapter presented the study's conclusion and recommendations.

### **1.11. Citation Rule**

This study has fully adhered to acknowledging different pieces of literature using the rules of citation outlined in the Oxford University Standard for Citation of Legal Authorities (OSCOLA).

# CHAPTER TWO: The General Overview of Financial Dispute Resolution

## 2.1 Introduction

A financial system, shaped by globalization, rapid advancements in information technology, and financial innovation, has become increasingly complex, dynamic, and interconnected across various sectors and institutions. The ownership linkages of financial services institutions to multiple sub sectors have further complicated transactions and interactions within the financial system.<sup>12</sup> The objective of consumer protection in the financial services sector is to establish a robust framework that enhances consumer empowerment, raises awareness among financial institutions, and fosters public confidence in the industry. Consumer protection encompasses policies and programs that promote awareness, handle complaints, provide information services, and facilitate dispute settlement for both private and public sector users of financial services.<sup>13</sup>

A bank, as an organization, collects funds from the public through “savings and channels them back to the public in the form of credit or other financial instruments, aiming to improve people's living standards.” Banking encompasses institutional and business activities, as well as the processes involved in conducting such activities.<sup>14</sup> An efficient mechanism for resolving disputes arising from banking activities is crucial, serving as a vital component of overall economic development and specifically within the banking sector.<sup>15</sup>

As financial products grow increasingly complex and more individuals rely on them, consumer protection mechanisms within the financial services industry are expanding. An effective consumer protection system comprises three interrelated components. Firstly, it includes laws and regulations that govern the relationships between service providers and users, ensuring

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<sup>12</sup>Zulfi Diane Zaini, The Function of Financial Services Authority (FSA) in Dispute Settlement Banking Customers in Indonesia, *European Research Studies Journal*, Volume XX, Issue 3A, 69-81, 2017 page 70

<sup>13</sup> Ibid p. 78

<sup>14</sup> Ibid p.71

<sup>15</sup> Ibid p.73

fairness, transparency, and the provision of redress rights. Secondly, it necessitates an efficient enforcement mechanism, which encompasses dispute resolution processes. Thirdly, it promotes financial literacy and competence by assisting financial service users in acquiring the necessary knowledge and skills to manage their finances effectively.<sup>16</sup>

Financial institution dispute resolution mechanisms involve the acceptance and handling of complaints through various channels such as letters, emails, faxes, phone calls, and in-person visits. Currently, most dispute resolution mechanisms are regulated by supervisory authorities. Disputes between financial consumers and institutions typically initiate with complaints to the company, followed by additional options if no effective solution is found. Therefore, it is essential to implement an effective dispute resolution procedure within financial institutions.<sup>17</sup>

## **2.2 Principles of consumer financial dispute resolution protection in the Global context**

A number of relevant standards derived from various sources, including the Equator Principles, the UN Millennium Development Goals, the Basel Accords, global deliberative processes, and general rule of law standards, offer valuable guidance in the development of consumer financial dispute resolution systems. These standards emphasize the importance of accessible grievance mechanisms, transparent risk disclosure and risk mitigation for financial dispute prevention, impartiality, equity, accountability, and fairness.<sup>18</sup>

Since the mid-20th century, international standards established by global entities such as the United Nations, the IFC/World Bank, and the Basel Committee, along with principles of fairness and transparency advocated by civil society members and rule of law scholars, have indirectly influenced the evolution of consumer financial dispute resolution services. However, it's important to note that these principles and standards, while influential on a global scale, lack the enforceability of binding laws or regulations.

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<sup>16</sup> Oya Pinar Ardic Joyce A. Ibrahim Nataliya Mylenko Consumer Protection Laws and Regulations in Deposit and Loan Services Page3

<sup>17</sup> Dong Yang, Lei Liu, and Meihui Zhang, 'Research on Diversified Financial Dispute Resolution Mechanisms in China (2012) 7 Frontiers of Law in China 681 page 694

<sup>18</sup>Shahla F. Ali, Consumer Financial Dispute Resolution in a Comparative Context: Principles, Systems and Practice. Cambridge, UK: Cambridge University Press, vii-xiv, 1-267.University of Hong Kong Faculty of Law Research Paper No. 2013/002 page13

The objective of these ideas, whether promoted by institutions, nation-state members of various organizations, or societal movements, is to achieve equitable resolutions for financial disputes at both local and global levels. This can include seeking justice through UN Consumer Protection Principles, Millennium Development Goals, and Rules of Law Principles, establishing review mechanisms as seen in the Equator Principles, strengthening discipline and supervision of financial institutions as outlined in the Equator Principles and Basel Accords, or engaging in social deliberation to encourage fair and accountable approaches to resolving financial disputes by states and institutions.

Many of these ideas were developed in response to the financial crisis of the late 2000s, as financial institutions and states recognized the need to restore investor confidence (e.g., Basel Accords). Implementation of these standards may rely on voluntary participation by financial institutions (Equator Principles), local legal implementation and enforcement (Basel Accords and UN Consumer Protection Principles), or they may suggest general principles of legal and social justice that are effective based on the local economic, political, and legal systems in place (Global Deliberation, Millennium Development Goals, and Rules of Law Principles).<sup>19</sup>

### **2.2.1 United Nation Guidelines for Consumer Protection**

The United Nations Guidelines for Consumer Protection address various issues pertaining to the resolution of consumer financial disputes. These guidelines encompass provisions related to information, representation, redress, and consumer education.<sup>20</sup> Consumer rights, as outlined in the guidelines, include the right to redress, the right to information, the right to consumer education, and the right to representation, with a particular focus on the right to obtain compensation.

Governments are encouraged to establish or maintain legal and/or administrative measures that enable consumers, or relevant organizations acting on their behalf, to seek redress through formal or informal procedures. These procedures should be expeditious, fair, inexpensive, and

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<sup>19</sup>Shahla F. Ali, *Consumer Financial Dispute Resolution in a Comparative Context: Principles, Systems and Practice*. Cambridge, UK: Cambridge University Press, vii-xiv, 1-267. University of Hong Kong Faculty of Law Research Paper No. 2013/002 page 16

<sup>20</sup>United Nations Guidelines for Consumer Protection General Assembly in resolution 70/186 of 22 December 2015

accessible, taking into consideration the specific needs of low-income consumers.<sup>21</sup> Observers have noted that the effectiveness of consumer protection largely relies on educated consumers, well-funded institutions, and adequately trained and impartial law enforcement officials.<sup>22</sup>

### **2.2.2 Basel Accords**

The Basel Accords establish standards with two main objectives: 1) promoting transparent risk disclosure by banking institutions, and 2) minimizing risk through sufficient capital reserves to prevent financial disputes with customers. The Basel Committee on Banking Supervision serves as a platform for ongoing collaboration among banks and develops guidelines and standards related to banking practices and cross-border supervision. While the committee does not possess legal authority, it formulates best practices and guidelines for local authorities to implement at the national level. In response to the financial crisis of the late 2000s, the latest revision of the Basel Accords, known as "Basel III," aims to enhance transparency and disclosures of banks, improve risk management practices, and enhance their capacity to withstand financial and economic stress.<sup>23</sup> It is important to note that the committee does not have official supervisory authority, and its conclusions do not have legal binding force.<sup>24</sup>

### **2.2.3 Equator principles**

The Equator Principles are designed to provide a common foundation and framework for financial institutions to identify, assess, and manage environmental and social risks associated with project financing.<sup>25</sup> In terms of addressing financial disputes, Principle 6 is particularly relevant, while Principle 7 also has some relevance. Principle 6 states that the borrower should establish a grievance mechanism as part of the project's management system, taking into account

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<sup>21</sup> Ibid

<sup>22</sup>Shahla F. Ali, *Consumer Financial Dispute Resolution in a Comparative Context: Principles, Systems and Practice*. Cambridge, English(U,K): Cambridge University Press, vii-xiv, 1-267. University of Hong Kong Faculty of Law Research Paper No. 2013/002 page 18

<sup>23</sup> Ibid p.22

<sup>24</sup> Bank for International Settlements, 'History of the Basel Committee and its Membership', available at: [www.bis.org/bcbs/history.htm](http://www.bis.org/bcbs/history.htm) [accessed 25 April 2012].

<sup>25</sup> EQUATOR PRINCIPLES EP4 JULY 2020 <https://equator-principles.com>> page 3

the risks and negative impacts of the project.<sup>26</sup> Principle 7 emphasizes the importance of an independent initial review and consultation process. However, the principles do not provide detailed specifications regarding the characteristics of the grievance mechanism. Financial institutions are granted significant flexibility in determining how they establish the mechanism based on this provision.

It is important to note that the Equator Principles do not create any legal rights or obligations for any individual or entity, whether public or private. The implementation of these principles is voluntary and does not involve the International Finance Corporation (IFC) or the World Bank. Financial institutions adopt and implement these principles independently, without relying on or seeking recourse from the IFC or the World Bank.<sup>27</sup>

#### **2.2.4 UN Millennium Development Goals Objective: To Develop an Open, Rule-Based Trading System**

Rule of law concepts, including impartiality, fairness, transparency, and consistency, play a crucial role in the design and development of consumer financial dispute resolution procedures. It is evident that the fundamental principles of the rule of law establish the benchmarks by which disputes, including financial disputes, are prevented and resolved.<sup>28</sup>

### **2.3 Financial Dispute Resolution**

FDRs are designed to enhance trust and confidence, but only when integrated into a comprehensive and efficient legal and regulatory framework.<sup>29</sup> As stated by Ash GurbuzUsluel, the win-lose lawsuit model has a negative impact on economic actors who highly value public trust, making it disadvantageous for the losing party.<sup>30</sup> The Financial Services Sector Dispute

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<sup>26</sup>Shahla F. Ali, *Consumer Financial Dispute Resolution in a Comparative Context: Principles, Systems and Practice*. Cambridge, UK: Cambridge University Press, vii-xiv, 1-267. University of Hong Kong Faculty of Law Research Paper No. 2013/002 page 18

<sup>27</sup> Ibid

<sup>28</sup> B. Tamanaha, 'A concise guide to the rule of law', *Legal Studies Research Paper Series Paper # 07-0082*, p. 2, available at <http://ssrn.com/abstract=1012051> [accessed 25 April 2012]. For fuller discussion, see B. Tamanaha (2004) *On Rule of Law: History, Politics, theory* (Cambridge University Press).

<sup>29</sup> The Role of Financial Dispute Resolution Schemes in Enhancing Consumer Trust and Confidence

<sup>30</sup>Ash Gurbuz Usluel, *Mandatory or Voluntary Mediation? Recent Turkish Mediation Legislation*

Resolution has established a two-stage process for resolving disputes within this industry. The stages, in respective order, are internal and external dispute settlement.

Internal dispute resolution refers to the process of resolving disagreements between business actors and consumers within the financial services provider. If the first phase fails to reach a mutually acceptable resolution, consumers can escalate their dispute to an ADR agency that has been approved and registered by the Financial Services Regulatory Authority. This institution comprises various organizations depending on the specific financial services industry.<sup>31</sup>

Both the OECD and G20 (2011), as well as the World Bank (2012), emphasize the need for an affordable and efficient dispute resolution framework with effective enforcement powers.<sup>32</sup> Zulfi Diane Zaini asserts that the financial services sector has been subject to two phases of complaint resolution mechanisms: resolution of complaints handled by financial services institutions (internal dispute resolution) and resolution of disputes through courts or other external institutions outside of the judicial system (external dispute resolution).<sup>33</sup>

### **2.3.1 Internal Dispute Resolution**

The internal mechanism of dispute resolution refers to the handling of complaints by banks themselves. Banks are required to have written procedures and policies in place for the appropriate handling and resolution of consumer complaints. They are specifically mandated to designate a responsible individual for overseeing the operations of the complaints handling function, although ultimate responsibility lies with the Board of Directors to ensure effective policy implementation.<sup>34</sup>

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and a Comparative Analysis with the EU's Mediation Framework, J. Disp. Resol. 2020,

<sup>31</sup> THE WEAKNESSES OF ALTERNATIVE INSTITUTIONS FOR DISPUTE RESOLUTION IN FINANCIAL SERVICES SECTOR

<sup>32</sup> Habib Ahmed and Ili Rahilah Ibrahim, 'Financial Consumer Protection Regime in Malaysia: Assessment of the Legal and Regulatory Framework' (2018) 41(2) Journal of Consumer Policy 159 page 163

<sup>33</sup> Zulfi Diane Zaini, The Function of Financial Services Authority (FSA) in Dispute Settlement Banking Customers in Indonesia, European Research Studies Journal, Volume XX, Issue 3A, 69-81, 2017 page 79

<sup>34</sup> World Bank, Diagnostic Review of Financial Consumer Protection of Ethiopia: Key Findings and Recommendation, [2017] , p.55

Banks must ensure that their complaint handling system is accessible, independent, accountable, fair, affordable, timely, and efficient. Independence implies that the complaint handling function is separate from the organization being complained against. Accessibility involves considering geographical locations and the circumstances of vulnerable groups. It may also include using language that the consumer can understand.<sup>35</sup> In their efforts to resolve customer complaints, banks may utilize banking mediation, aiming for a resolution process that is simple, inexpensive, and expeditious.<sup>36</sup> Prior to escalating a complaint to the Banking Ombudsman, the complainant must have exhausted the relevant bank's internal complaints procedure.<sup>37</sup>

### **2.3.1.1 Complaint Handling Unit**

Under the directive, “each financial service provider is required to establish a single complaint handling unit that can receive client complaints.” through various channels, including verbal communication, written correspondence, telephone, email, websites, or similar means. The staff of the Complaint Handling Unit should possess the necessary tools and authority to effectively address and resolve complaints, enabling them to take decisive actions as required.<sup>38</sup>

### **2.3.1.2 Accessibility and Disclosures**

Financial service providers are obligated to provide clear and comprehensive guidance to customers on the complaint filing process. The complaint handling unit and all related procedures must be operated and designed in a manner that ensures easy accessibility for all customers. This includes the requirement for financial service providers, their representatives, and any third-party service providers (if applicable) to publicly display such information. These displays should be available electronically and at physical locations, ensuring visibility and transparency.

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<sup>35</sup> Ibid

<sup>36</sup> Ibid p.74

<sup>37</sup> Philip Rawlings and Chris Willett, 'Ombudsman Schemes in the United Kingdom's Financial Sector: The Insurance Ombudsman, the Banking Ombudsman, and the Building Societies Ombudsman' (1994) 17 *Journal of Consumer Policy* 307.page 316

<sup>38</sup>The DLA Piper/New Perimeter team, *Client Protection Principles:Model Law and Commentary for Financial Consumer Protection*, April 2015 page 41

Furthermore, all disclosures and contracts provided to clients by financial service providers concerning consumer financial products and services must include contact details for both the complaint handling unit and the supervisory authority. This ensures that customers have the necessary information to directly reach out to the appropriate entities for filing complaints and seeking resolution.<sup>39</sup>

### **2.3.1.3 Responsiveness**

Upon concluding an investigation into a complaint, the Financial Service Provider is required to promptly communicate the resolution to the Client. The provider should clearly articulate the rationale behind the decision. Additionally, Financial Service Providers must ensure that all complaints are handled in a fair, unbiased, and timely manner. In the event of an unfavorable decision, the financial service provider must inform the client about procedures for potential appeal or further pursuit of the complaint. This includes providing guidance on options such as conciliation, mediation, or any other complaint resolution process established by the supervisory authority or an industry association.<sup>40</sup>

### **2.3.1.4 Records and Reporting**

For a duration determined by the supervisory authority, the financial service provider is required to retain all records related to each client complaint, including documentation detailing the resolution of the complaint. The supervisory authority possesses the authority to monitor the handling of complaints by the provider and can request regular data reports.

The specific clients served by the financial service provider and the services provided should be proportionate to the size and complexity of the provider itself. Larger financial service providers are expected to have well-established processes and dedicated staff. However, smaller providers should have more flexibility in developing effective and affordable complaint handling procedures. Internal complaint handling procedures may vary depending on the specific circumstances of each financial service provider. Nevertheless, at a minimum, senior management should oversee and actively monitor the process, with a focus on resolving client

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<sup>39</sup> Ibid p.42

<sup>40</sup> Ibid

issues.<sup>41</sup> If a complaint is not resolved in favor of the client, they should have the ability to appeal the decision. This appeal process could involve a further review within the financial service provider or an external process, such as third-party arbitration or an appeal to a dispute resolution mechanism established by the supervisory authority. Reasonable time limits for filing an appeal should be permitted.<sup>42</sup>

### **2.3.2 External Dispute Resolution**

The implementation of financial consumer protection rules and regulations relies on regulatory and supervisory bodies. The effectiveness of this institutional structure significantly impacts the successful execution of the current legislative framework.<sup>43</sup> Different countries employ diverse techniques for monitoring and enforcing consumer protection, reflecting variations in legal frameworks. Consumer protection in financial services is often overseen by multiple regulators. In countries with comprehensive consumer protection laws, the agency responsible for implementing such legislation may also be responsible for consumer protection in financial services, in addition to goods and services. As part of the business conduct supervision of financial service providers, financial regulators, including central banks in many countries, frequently assume the role of regulating consumer protection in financial services.<sup>44</sup>

Efficient and effective mechanisms for resolving complaints and disputes should be in place. While consumers have the option to pursue legal action in cases of misconduct, engaging in litigation with large corporations is often impractical for consumers due to the difficulties, expenses, and disproportionate burdens involved.<sup>45</sup> Given that consumers are unlikely to seek

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<sup>41</sup> Ibid

<sup>42</sup> Ibid p,43

<sup>43</sup> Oya Pinar Ardic Joyce A. Ibrahim Nataliya Mylenko Consumer Protection Laws and Regulations in Deposit and Loan Services January 2011 Page10

<sup>44</sup>Ibid Page11

<sup>45</sup> Habib Ahmed and Ili Rahilah Ibrahim, 'Financial Consumer Protection Regime in Malaysia: Assessment of the Legal and Regulatory Framework' (2018) 41(2) Journal of Consumer Policy 159 page 162

justice if obtaining redress is challenging and costly, complaint and redress channels must be affordable, convenient, and effective.<sup>46</sup>

External complaint resolution programs can take various forms, each with its own costs and benefits. Formal court proceedings and fair administration may provide a solution, but they are typically expensive and time-consuming. Alternative dispute resolution processes with less formality may offer a less expensive and quicker option. In cases where both parties can reach a mutually acceptable resolution, non-binding mediation may provide an even speedier resolution.

## **2.4 Model of dispute resolution**

As a result of the recent global recession, governments have increasingly turned to alternative dispute resolution (ADR) to address financial consumer complaints against banks and financial institutions.<sup>47</sup> Following the collapse of Lehman Brothers, financial institutions worldwide began exploring potential regulatory responses to these complaints. The experiences of the United Kingdom, the United States, Australia, Singapore, the Netherlands, and Germany have served as models in this regard.<sup>48</sup>

In well-established financial centers, two distinct methods for resolving financial disputes exist: an ombudsman-based system (employed in the United Kingdom and Australia) and an arbitration model (utilized in the United States and Singapore).<sup>49</sup> Alternative dispute resolution structures, such as tribunals and financial ombudsman systems, are highly encouraged due to their efficiency, cost-effectiveness, and less formal nature.<sup>50</sup>

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<sup>46</sup> Rutledge, S. Consumer protection and financial literacy: Lessons from nine country studies. Policy Research Working Paper, Washington DC: World Bank. (2010) check Malaysia page 163

<sup>47</sup> Shahla F. Ali, 'Globalization and Financial Dispute Resolution: Examining Areas of Convergence and Informed Divergence in Financial ADR' [2013] 2013(2) Journal of Dispute Resolution 331 page 336

<sup>48</sup> Ibid 338

<sup>49</sup> Shahla F. Ali and Antonio Da Roza, 'Alternative Dispute Resolution Design in Financial Markets - Some More Equal than others: Hong Kong's Proposed Financial Dispute Resolution Center in the Context of the Experience in the United Kingdom, United States, Australia, and Singapore' (2012) 21(3) Pacific Rim Law & Policy Journal 486

<sup>50</sup> Habib Ahmed and Ili Rahilah Ibrahim, 'Financial Consumer Protection Regime in Malaysia: Assessment of the Legal and Regulatory Framework' (2018) 41(2) Journal of Consumer Policy 159 page 162

### **2.4.1 Alternative Dispute Resolution in the Financial Service**

Alternative Dispute Resolution (ADR) is a broad term encompassing methods or processes that help individuals resolve disputes related to products or services without the need to go to court. Examples of ADR techniques include arbitration, mediation, and conciliation.<sup>51</sup> Before considering ADR, consumers were typically expected to make an effort to resolve their complaint through the complaint-handling process of their financial service provider. Additionally, in some countries, ADR could not be pursued if a claim had already been filed in court.<sup>52</sup>

When establishing an ADR system for financial services, several common aspects should be taken into account based on a comparison of different features identified in case studies and practices across countries. Firstly, the ADR service provider should be legally independent from financial services companies. If independence is not specified by law, the governing board of the ADR provider should be independent of the financial companies that form its membership. Ideally, ADR should be free to use to ensure that the cost does not discourage lower-income consumers. Funding for the ADR provider can be provided by the government, central bank, financial regulator, or the financial services sector. An industry levy contribution can also create the right incentives for firms to handle complaints effectively.<sup>53</sup>

#### **2.4.1.1 Financial ADR System in the United States**

The United States largely relies on a system of arbitration to settle retail financial consumer disputes.<sup>54</sup> There are several prominent programmes in the United States for resolving consumer financial issues. These include both private arbitration and court-annexed programmes for credit card and bank loan disputes.

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<sup>51</sup> AFI CONSUMER EMPOWERMENT AND MARKET CONDUCT WORKING GROUP: HELP AND REDRESS SUBGROUP ALTERNATIVE DISPUTE RESOLUTION, Survey Report July 2017 page 3

<sup>52</sup> Ibid p.4

<sup>53</sup> Ibid p. 5

<sup>54</sup> Shahla F. Ali, 'Lessons for the US System of Financial Arbitration: A Responsive Empirical Exploration of Arbitration and Ombudsman Services' (2013) 8 *Frontiers of Law in China* 651, page 651

#### **2. 4.1.1.1 American Arbitration Association**

The American Arbitration Association ("AAA") offers a specific set of rules for financial disputes known as the AAA Arbitration Rules for Commercial Financial Disputes. These rules apply to all disputes related to commercial financial arrangements, products, or other matters, including bank loan and credit card disputes.<sup>55</sup> To understand the role and function of the Financial Industry Regulatory Authority ("FINRA"), the prominent nationwide program for arbitrating consumer disputes with broker-dealers and financial institutions, it is necessary to examine its legislative and regulatory background.<sup>56</sup> The primary objective of FINRA Dispute Resolution is to assist clients in resolving securities-related disputes with broker-dealers or their representatives. Arbitration under FINRA is less formal than traditional litigation and follows simpler rules.<sup>57</sup>

The use of alternative dispute resolution in the financial sector emerged in the United States in the context of securities negotiations. The Financial Industry Regulatory Authority (FINRA) allows investors to resolve issues through mediation or arbitration, with arbitration being the more popular choice.<sup>58</sup>

To meet the financial sector's need for expedited proceedings, the Rules establish a limited timeframe for arbitration proceedings, with a maximum duration of 120 days. For disputes involving smaller amounts of money (up to US\$75,000), an expedited procedure applies. In this procedure, a single arbitrator will resolve the dispute, preferably after only one day of hearing. If a second hearing is necessary, it must take place within seven days of the first hearing, according to the guidelines. The award must be issued within thirty days of the conclusion of the hearing.<sup>59</sup>

Self-regulatory organizations (SROs) are non-governmental institutions responsible for regulating their members by developing and implementing rules and regulations governing their

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<sup>55</sup> Ibid p.656

<sup>56</sup> Ibid p.657

<sup>57</sup> Byron II Crowe, 'Financial Services ADR: What the United States Could Learn from South Africa' (2014) 47(1) Cornell International Law Journal 145page 152

<sup>58</sup>Shahla F. Ali, 'Globalization and Financial Dispute Resolution: Examining Areas of Convergence and Informed Divergence in Financial ADR' [2013] 2013(2) Journal of Dispute Resolution 331 page 336

<sup>59</sup>Shahla F. Ali, 'Lessons for the US System of Financial Arbitration: A Responsive Empirical Exploration of Arbitration and Ombudsman Services' (2013) 8 Frontiers of Law in China 651.page 658

members' commercial activities.<sup>60</sup> FINRA was established as a monopoly SRO under the active and direct supervision of the Securities and Exchange Commission (SEC).<sup>61</sup> The SEC has the authority to issue binding rules for governing the securities industry, as long as they comply with the enabling statutes.<sup>62</sup> Although FINRA may not be a government entity, it exercises powers delegated to it by the SEC in the vast majority, if not all, of its activities. Additionally, as SROs have multiplied, some new SROs have been created through amendments to securities laws. Consequently, they represent a unique combination of private sector self-regulation and delegated government regulation.<sup>63</sup>

#### **2.4.1.1.2 FINRA Mandate and Function**

FINRA provides public educational materials that offer a general overview of the securities industry and other basic information about securities intended for laypeople. The majority of contracts between salespersons, broker-dealer firms, and consumers include an arbitration requirement, and most contractual disputes are resolved through arbitration. While there are various organizations that can conduct securities arbitrations, FINRA handles the majority of securities disputes in accordance with its arbitration rules and regulations.

Arbitration between member firms and their employees has generally been viewed as a matter of private contract, a condition of being a member of a self-regulatory organization (SRO). Even if a customer agreement does not contain a pre-dispute arbitration clause, Rule 12200 of the FINRA Code of Arbitration Procedure for Customer Disputes compels broker-dealers to submit to arbitration at the request of a customer. In addition to the more formal arbitration process, FINRA offers a non-binding mediation system.<sup>64</sup>

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<sup>60</sup> Ibid p.660

<sup>61</sup> Ibid p.661

<sup>62</sup> Byron II Crowe, 'Financial Services ADR: What the United States Could Learn from South Africa' (2014) 47(1) Cornell International Law Journal 145page 151

<sup>63</sup>Shahla F. Ali, 'Lessons for the US System of Financial Arbitration: A ResponsiveEmpirical Exploration of Arbitration and Ombudsman Services' (2013) 8 Frontiers ofLaw in China 651.page 661

<sup>64</sup> Ibid p.666

The FINRA Code of Arbitration Procedure for Customer Disputes applies to any dispute filed between a customer and a member that is submitted to arbitration. Despite being touted as a "quick, fair, and relatively inexpensive" alternative to litigation, arbitration employs formal procedures that can increase costs and cause delays.<sup>65</sup> According to the Financial Supervisory Agency, the Financial ADR System aims to provide dispute resolution that is "fast, simple, and flexible, taking into account the parties' circumstances and the nature of the case."<sup>66</sup> The complainant must first file an initial statement of claim with the Director of Dispute Resolution, specifying the relevant facts and requested remedies. The respondent then serves an answer with facts, defenses, and counterclaims.

FINRA has jurisdiction over both client complaints and disputes between industry members. Intra-industry disputes generally must be arbitrated under FINRA rules if they pertain to the business activities of a member or related person and involve members, members and affiliates, or associates. This would include disputes between broker-dealer firms or between a broker-dealer and its employee.<sup>67</sup> If the parties proceed to an award, the FINRA Code requires a majority of arbitrators to agree on the decisions and determinations, but written opinions are not mandatory. Awards are subject to judicial review on the merits only when there is a "manifest disregard of the law" and they do not serve as precedent. Due to the limited judicial review and the absence of a requirement for a reasoned conclusion, arbitrators can decide in favor of claimants based on "general equity grounds."<sup>68</sup>

### **2.4.2 Financial Ombudsman**

FOS, by combining mediation and arbitration, can, on the one hand, restore understanding between the two parties while also compensating for the limitations of pure mediation. FOS is

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<sup>65</sup> Ibid p.668

<sup>66</sup>Maeda, Tomohiko, and Andrew M. Pardieck. "ADR in Japan's Financial Markets & the Rule of Law." Northeastern University Law Review, vol. 10, no. 1, Spring 2018, pp.400-468. Page 425

<sup>67</sup> Byron II Crowe, 'Financial Services ADR: What the United States Could Learn from South Africa' (2014) 47(1) Cornell International Law Journal 145 page 157

<sup>68</sup>Shahla F. Ali, 'Lessons for the US System of Financial Arbitration: A Responsive Empirical Exploration of Arbitration and Ombudsman Services' (2013) 8 Frontiers of Law in China 651. page 671

also advantageous for financial institutions in terms of protecting trade secrets, and the principle of secrecy can help safeguard their reputation.<sup>69</sup>

Global experience has shown that the Institute of Financial Ombudsman has successfully established itself as a fair and efficient mediator between clients and financial service providers.<sup>70</sup> The FOS system addresses the policy concerns related to power imbalances, specifically between financial service providers and consumers, in dealing with certain types of claims within the legal system.<sup>71</sup> Mitchell emphasized the drawbacks of the judicial system in this context, noting that courts are "relatively inaccessible, expensive, and slow." To achieve the best outcomes under this system, qualified legal assistance is necessary.<sup>72</sup>

Accessing the Ombudsman is typically direct, informal, and free of charge. The procedures are non-adversarial and non-technical, and reasons are provided for the decisions made.<sup>73</sup> Fairness is a two-way process, and the Ombudsman must be fair to both the complainant and the defendant throughout the proceedings, in terms of the merits and in the final decision. Therefore, it is crucial to maintain a balance in the decisions made for each individual complainant, as it would be counterproductive if what appeared fair for one resulted in unreasonably high burdens for many.<sup>74</sup> The Ombudsman Service is authorized to resolve disputes between financial institutions and their clients based on what is deemed "fair and reasonable."<sup>75</sup> The decision also reflects an attempt to establish a division of labor between courts and ombudsmen when they work together,

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<sup>69</sup> Dong Yang, Lei Liu and Meihui Zhang, 'Research on Diversified Financial Dispute Resolution Mechanisms in China' (2012) 7 *Frontiers of Law in China* 681, page 684

<sup>70</sup> Pozniakova O., Dobosh N.

DEVELOPMENT OF DIGITALIZATION MECHANISM OF INSTITUTE OF FINANCIAL OMBUDSMAN ON EXAMPLE OF UKRAINE 54

<sup>71</sup> Mary Donnelly, "The Financial Services Ombudsman: Asking the Existential Question," *Dublin University Law Journal* 35 (2012): page 230

<sup>72</sup> Prots Galeza, "Reforming the Role of the Financial Services Ombudsman," *Liverpool Law Review* 41, no. 3 (October 2020): 277 <https://heinonline.org/HOL/License>

<sup>73</sup> Tollemache, Nadja. "Taking the Ombudsman Concept into the Private Sector: Notes on the Banking Ombudsman Scheme in New Zealand." *Victoria University of Wellington Law Review*, vol. 26, no. 2, May 1996, pp. 236

<sup>74</sup> *Ibid* p.243-244

<sup>75</sup> Richard Nobles, 'Rules, Principles and Ombudsmen: *Morwich and Peterborough Building Society v the Financial Ombudsman Service*' (2003) 66(5) *Modern Law Review* 781

with courts having exclusive jurisdiction over the interpretation of the law and ombudsmen having the freedom to choose with minimal restrictions, which is a fundamental basis for assessing fairness.<sup>76</sup>

The Service is specifically empowered to issue orders that courts would not be able to make. If accepted by the complainant, these orders become binding on respondents. Requesting judicial review of the Service's decision is the only official avenue of appeal available to respondents.<sup>77</sup>

#### **2.4.2.1 The Financial Ombudsman Experience in the UK**

One of the first nations to create an inter-sectoral financial ombudsman in 1981 was the United Kingdom. In Europe, there are two different financial ombudsman models: the German model and the English model. In Germany, the financial ombudsman is mainly held by private banks, whereas in the English model, it is financed by the government. The need for consumers of financial services to have this mediator is confirmed by the establishment of an international network of financial ombudsmen in Australia in 2007. The network was founded by Australia, Austria, Botswana, Canada, the Czech Republic, Denmark, France, Greece, Ireland, the Isle of Man, Italy, New Zealand, Norway, Peru, the Republic of Trinidad and Tobago, South Africa, Switzerland, the United Kingdom, and the United States. Practice has shown that national courts worldwide are becoming less effective at handling small consumer claims, especially in the financial sector, due to high costs and lengthy dispute resolution periods, which negatively impact consumer advocacy. However, the recommendations and findings are general and applicable to all nations where the institution of the financial ombudsman is functioning or planned.<sup>78</sup>

In the UK, the Financial Services Authority (FSA) was founded in 1998 with the goal of consumer protection.<sup>79</sup>The FSA is one of the largest unified regulators of the financial industry

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<sup>76</sup> Ibid

<sup>77</sup> Ibid p. 782

<sup>78</sup> Pozniakova, O., and Dobosh, N. Development of Digitalization Mechanism of Institute of Financial Ombudsman on Example of Ukraine. *Technology Audit and Production Reserves*, 6(4(56),54-59 .published30/12/2020 <https://papers.ssrn.com>>page54

<sup>79</sup> Mamiko Yokoi-Arai, 'A comparative analysis of the financial ombudsman systems in the UK and Japan' (2004) 5(4) *Journal of International Banking Regulation* 333

in the world and oversees all firms engaged in regulated financial operations, which will soon total 10,000 companies. The Financial Ombudsman Service Ltd (FOS) was established by the FSA in response to the objective of consumer protection, providing consumers of financial products with an alternative dispute resolution system for recourse. The FOS is one of the largest ombudsman programs globally, with wide-ranging powers and detailed procedures.<sup>80</sup>

Ombudsmen have been present in the financial sector since the 1980s and are constituted by self-regulatory, statutory, or voluntary entities.<sup>81</sup> The establishment of these ombudsmen can be industry-led or statutory-regulatory-led. Examples of industry-led ombudsmen include the Banking Ombudsman, Building Societies Ombudsman, Insurance Ombudsman, and Personal Insurance Arbitration Service. Many other ombudsmen were established as a result of the Financial Services Act of 1986, which outlined criteria for recognition as a self-regulating organization. Additionally, sector laws required the establishment of the Pensions Ombudsman and the Building Societies Ombudsman.<sup>82</sup>

The National Consumer Council's suggestion in 1983 led to the creation of the Banking Ombudsman, which began operating in 1986. The term "ombudsman" typically refers to a system of administrative review where the legitimacy and appropriateness of governmental decisions can be reconsidered.<sup>83</sup> Based on the Financial Services and Markets Act (FSMA), the Financial Services Authority (FSA) established the Financial Ombudsman Services (FOS) and Financial Ombudsman Service Limited for financial dispute resolution. While the FOS was established by the FSA, it is wholly governed by the board of directors and operates independently from the FSA, although the two institutions maintain close collaboration. The directors of Financial Ombudsman Service Limited are appointed or removed by the Financial Service Authority, and the appointment or dismissal of the chairman of the board must be

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<sup>80</sup> Ibid p.334

<sup>81</sup> Ibid p.334 These were the Banking Ombudsman, Building Societies Ombudsman, Investment Ombudsman, Insurance Ombudsman, Personal Insurance Arbitration Service, Personal Investment Authority Ombudsman, Securities and Futures Authority Complaints, and Bureau and Arbitration Scheme. Financial Services Authority: Direct Regulation, Unit, and Independent Investigator

<sup>82</sup> Ibid p.334

<sup>83</sup> Ibid p.335

approved by the Treasury. The board of Financial Ombudsman Service Limited manages the company and appoints the ombudsman as a position of authority within the company.<sup>84</sup>

#### **2.4.2.1.1 Legal foundation**

Before the Financial Ombudsman Service (FOS) can consider a complaint, the financial institution must be notified of the issue and have exhausted all available remedies within eight weeks.<sup>85</sup> This requirement is part of the scheme's design, which mandates that the firm's internal complaints procedures be completed before filing a complaint with the ombudsman.<sup>86</sup> As a result, while the FOS does receive and respond to a significant number of inquiries, its primary role is to resolve disputes that cannot be resolved through the complaint handling mechanism of financial institutions.<sup>87</sup>

#### **2.4.2.1.2 Grounds for Dismissal**

A complaint that falls within the jurisdiction of the ombudsman may, in specific situations, be dismissed without a review of the merits. Dismissal is a rare occurrence and is not taken lightly. Making a decision to dismiss a complaint removes the consumer's right to have their grievance addressed by the ombudsman in an informal, cost-free manner, and potentially on more favorable terms. If a complaint is determined to be frivolous and vexatious, it may be dismissed, and the business involved will not be charged a case fee.<sup>88</sup>

#### **2.4.2.1.3 Functions of the FOS**

The goals of the FOS include establishing a unified ombudsman scheme and ensuring ombudsman independence. The FOS aims to facilitate prompt and formal resolution of disputes. The accountability of the FOS is outlined in the Memorandum of Understanding (MOU)

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<sup>84</sup> Dong Yang, Lei Liu and Meihui Zhang, 'Research on Diversified Financial Dispute Resolution Mechanisms in China' (2012) 7 *Frontiers of Law in China* 681, page 685

<sup>85</sup> Mamiko Yokoi-Arai, 'A comparative analysis of the financial ombudsman systems in the UK and Japan' (2004) 5(4) *Journal of International Banking Regulation* 336

<sup>86</sup> Mitchell, Caroline. "The Financial Ombudsman Service - A Fair and Reasonable Alternative to the Court." *European Journal of Commercial Contract Law*, vol. 3, no.3/4, July 2011, pp. 65-74. Page 66

<sup>87</sup> Mamiko Yokoi-Arai, 'A comparative analysis of the financial ombudsman systems in the UK and Japan' (2004) 5(4) *Journal of International Banking Regulation* 336

<sup>88</sup> Mitchell, Caroline. "The Financial Ombudsman Service – A Fair and Reasonable Alternative to the Court." *European Journal of Commercial Contract Law*, vol. 3, no.3/4, July 2011, pp. 65-74. Page 67

exchanged between the FSA and the FOS.<sup>89</sup> The funding of the FOS consists of annual fees (or a general levy) imposed on firms under the jurisdiction of the FOS, as well as case fees levied on financial institutions for each complaint handled by the FOS. Consequently, consumers can utilize the system without any payment. The FOS is also responsible for proposing procedures for complaint handling, rules for awarding costs, and guidelines for case fees, all of which require approval from the FSA.

#### **2.4.2.1.4 Procedures of FOS**

The FSA explains that these objectives should guide the complaint handling procedures of the FOS. These procedures should be comprehensive, accessible to consumers, fair and impartial to both parties (consumers and firms), capable of making binding decisions, consistent in their approach to providing redress, transparent, accountable, flexible, simple, quick, efficient, and should meet appropriate minimum performance standards. Additionally, the procedures should enable appropriate feedback to the regulator.<sup>90</sup>

Once accepted by the consumer within the specified time frame, the ombudsman's ruling is final and binding. The guidelines do not provide for an appeal of the decision. The only opportunity to appeal is through the judicial review process. It's important to note that the appeal process is solely related to the procedure and not the merits of the complaint.<sup>91</sup>

The FSA not only stipulates the procedures of the FOS but also articulates the requirements for a firm's complaint handling procedures. A firm is required to publicize its internal complaint handling procedure to all consumers. This includes referring in writing to the existence of the procedure at or immediately after the point of sale, publishing the details of the procedure, providing a copy upon request, automatically providing a copy to the complainant upon receiving a complaint (unless the complaint is resolved by the close of business on the next

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<sup>89</sup> Mamiko Yokoi-Arai, 'A comparative analysis of the financial ombudsman systems in the UK and Japan' (2004) 5(4) *Journal of International Banking Regulation* 337

<sup>90</sup> Mamiko Yokoi-Arai, 'A comparative analysis of the financial ombudsman systems in the UK and Japan' (2004) 5(4) *Journal of International Banking Regulation* 338

<sup>91</sup> Mitchell, Caroline. "The Financial Ombudsman Service - A Fair and Reasonable Alternative to the Court." *European Journal of Commercial Contract Law*, vol. 3, no.3/4, July 2011, pp. 65-74. Page 69

business day), and displaying them in each branch or sales office accessible to qualified complainants.<sup>92</sup>

## **CHAPTER THREE: Ethiopian legal and regulatory framework of financial consumer dispute resolution**

### **3.1 Introduction**

Chapter 2 delves into the details of resolving financial disputes. According to the literature, financial dispute resolution aims to ensure that consumers have access to adequate complaint handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely, and efficient. The effectiveness of financial dispute resolution relies on its integration into a comprehensive and efficient legal and regulatory framework, which in turn enhances trust and confidence.

In the financial services sector, the resolution of disputes follows a two-stage process. The stages, namely internal and external dispute settlement, are listed in sequential order. Internal dispute resolution refers to the process of resolving disagreements between business actors and consumers within the financial services provider. If the first phase fails to result in an acceptable agreement for both parties, consumers can escalate their dispute through an external dispute resolution mechanism. In well-established financial centers, there are two models for resolving financial disputes: the ombudsman system and the arbitration model.

In accordance with the concepts outlined in the Ethiopian FCP Directive, financial dispute resolution must be accessible, equitable, transparent, cost-free, and effective. The aforementioned ideas serve as the starting point of this chapter, which examines critical issues related to the legal and regulatory framework of financial dispute resolution for banks in Ethiopia in detail.

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<sup>92</sup> Mamiko Yokoi-Arai, 'A comparative analysis of the financial ombudsman systems in the UK and Japan' (2004) 5(4) *Journal of International Banking Regulation* 338

### **3.2 What is the source of NBE power to enact the Financial Consumer Protection Directive?**

The Ethiopian constitution clearly states “the power to enact the administration of the NBE and matters relating to local currency, as well as foreign exchange issues, for the HPR (House of Peoples' Representatives).<sup>93</sup>In line with its mandate, the HPR issued the National Bank of Ethiopia Establishment Proclamation No. 591/2008.” The organizational structure of the National Bank of Ethiopia includes a Board of Directors, a Governor, a Vice Governor appointed by the government, and the necessary staff.<sup>94</sup>

The NBE has the powers and duties of supervising and licensing banks, insurers, and other financial institutions,<sup>95</sup>as well as authorizing individuals to establish and operate a system and issue payment instruments.<sup>96</sup> No one is allowed to, engage in the banking business, use the name bank or its derivative, transact a banking business at any place other than that authorized, close an existing place of business, introduce new banking services, merge with or take over the banking business of another bank, alter the name under which it is licensed to do banking business, without authorization from the NBE.<sup>97</sup> The National Bank has the authority to remove or suspend a bank's director, senior executive officer, or chief executive officer with sufficient reason.<sup>98</sup> In terms of issuing regulations and directives, the Council of Ministers may issue regulations for implementing the NBE establishment proclamation, and the National Bank may issue necessary directives for its implementation.<sup>99</sup>

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<sup>93</sup>The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proclamation No 1, Neg. Gaz. Year 1, No. 1 Art.55(10)

<sup>94</sup>The National Bank of Ethiopia Establishment (as Amended) Proclamation, the Proclamation No. 591/ 2008, Federal NegaritGazeta, 14th Year No. 50 of 2008, ADDIS ABABA, 2008Art.3(5)

<sup>95</sup> Ibid Art.5(7)

<sup>96</sup>National Payment System Proclamation, Proclamation No. 718/ 2011., Federal NegaritGazeta, 17th Year No. 84 of 2011, Art.4/2(a)

<sup>97</sup>Banking Business, Proclamation No. 592/ 2008, Federal NegaritGazeta, 14th Year No.57 of 2008, ADDIS ABABA, 2008Art.3(3)

<sup>98</sup> Ibid Art.17(1)

<sup>99</sup> Ibid Art.27

The banking and National Payment System proclamations contain specific provisions related to financial consumer protection. The increasing complexity and diversity of services and products offered by financial institutions through traditional and electronic channels, as well as the transfer of opportunities, pricing, and transactional risks to consumers, necessitate enhanced consumer protection. Generally, bank payments involve transferring funds from the payer to the payee. Banks and financial institutions allow service providers to access their services through contracts acting as agents, with money being sent or deposited by small agent businesses through the payment systems used by larger banks. In Ethiopia, various banks utilize digital financial services such as Coopay-Ebirr, Amole, Gizepay, CBE Birr, and OIB's mobile banking. As the digital financial system expands and more products and services become available to consumers, it is crucial to have effective recourse mechanisms in place. Therefore, an analysis of the NPSP and Banking proclamations related to financial dispute resolution is conducted.

However, the Banking proclamation does not have a single provision addressing this subject matter, except for the authority given to the NBE to determine minimum conditions for consumer protection through directives.<sup>100</sup> On the other hand, the NPSP contains certain provisions regarding internal complaint handling. The NPSP obliges participants, operators, and issuers of payment instruments to establish internal complaint handling procedures for electronic fund transfers and stored value facilities and inform users about the complaint lodging procedures.<sup>101</sup> Additionally, the NPSP empowers the National Bank to issue directives prescribing basic terms and conditions applicable to contracting parties in the electronic fund transfers and stored value facilities business.<sup>102</sup> Furthermore, participants, operators, or issuers of payment instruments are required to promptly resolve complaints or disputes with their customers regarding the processing of electronic fund transfers or stored value cards through internally established systems. They cannot require customers to present their complaints to any other party or have them investigated by any other party within the shared system.<sup>103</sup> The NPSP

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<sup>100</sup>, Banking (Amendment) Proclamation No. 1159/ 2019 Federal NegaritGazeta, 25th Year No. 88 of 2020, Article 57

<sup>101</sup> National Payment System Proclamation, No. 718/ 2011, national payment system proclamation 718/2011, Federal Negarit Gazeta, 17th Year No. 84 of 2011, Art. 20(1)

<sup>102</sup> Ibid Art.20(2)

<sup>103</sup> Ibid Art. 22(14)

stipulates that disputes among parties involved in the national payment system concerning any civil matter arising under the NPSP shall be resolved through mediation.<sup>104</sup> According to the National Payment System Proclamation, a participant means a party who participates in a payment, clearing, or settlement system as a direct participant who opens and maintains a settlement account at the National Bank or any other settlement entity, or an indirect participant who shall only be able to settle its obligations due through the account of a direct participant.<sup>105</sup> On the definitional articles, however, the term "parties" is not defined. Thus, in order to be called a participant, a person should open an account and maintain a settlement account at the NBE and should further participate in payment, clearing or settlement system either indirectly or directly. As a result, since they do not open and maintain an account at the NBE, customers who use the electronic payment system are not regarded as participants. Therefore, the term participant does not refer to costumers. There is a controversy with respect to the term parties under article 31 of the NPSP and whether the consumer can take his allegation to external dispute resolution of the National Bank of Ethiopia and regular courts.

According to Article “31(1) of the NPSP, disputes among parties involved in the NPS” are to be resolved through mediation, and failing mediation, through arbitration. The parties involved in the NPS are defined in Article 2(16)(a) of the NPSP, which includes payment service providers such as operators, participants, issuers of payment instruments, and any third party acting on their behalf, either as an agent or through outsourcing agreements, operating in the country, either entirely or partially. However, consumers are not listed as parties involved in the NPSP. Therefore, consumers are not obligated to settle disputes with payment service providers through mediation or arbitration. In other words, consumers can directly bring their claims to the external dispute resolution of the NBE and regular courts.

### **3.3 The Ethiopian legal framework of financial dispute resolution**

The first financial consumer protection law in the Ethiopian legal system is the Financial Consumer Protection Directive, which was issued by the NBE in 2020. Prior to 2020, there was no comprehensive directive issued by the NBE specifically aimed at protecting consumers of

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<sup>104</sup> Ibid Art.31(1)

<sup>105</sup> Ibid Art 2(19)

financial service providers. Instead, general consumer protection laws applied to financial consumers. One of the objectives of introducing the new Financial Consumer Protection Directive was to establish clear and objective regulations for financial consumer protection, including supervision, complaint handling, and dispute resolution mechanisms. These mechanisms are necessary to promote fair, responsible, and transparent financial transactions and shape the professional conduct of financial service providers towards financial consumers.<sup>106</sup> The new financial consumer protection directive, No. FCP/01/2020, provides a general framework consisting of 11 main provisions. The directive includes the short title, definitions, scope of application, general provisions, specific provisions, good governance, compliance and risk management, record keeping, other applicable directives, transitory arrangements, penalties for non-compliance, and the date of enforcement. All financial service providers, financial products and services, as well as financial consumers and security suppliers, are subject to this directive.

### **3.3.1 Compliant Handling Requirement**

There is a possibility of disagreements arising between financial service providers and their consumers. Therefore, designing an appropriate dispute settlement mechanism is a core principle in the banking sector. While the FCP directive attempts to address financial dispute settlement mechanisms, implementing them in practice can be challenging.

The FCP directives acknowledge both internal and external dispute resolution processes. Negotiation, arbitration, mediation, and lawsuits are examples of conflict resolution mechanisms. Internal complaint handling refers to a method for resolving complaints between a financial service provider and a financial consumer in accordance with the established policies, procedures, and appropriate NBE directives of the latter. On the other hand, when a specialized mechanism is developed by the NBE to resolve conflicts between the financial service provider and the financial consumer, it is referred to as external dispute resolution.<sup>107</sup> The financial consumer protection directives outline the requirements for complaint handling and place duties on financial service providers to implement policies and procedures for an internal complaint

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<sup>106</sup> Financial Consumers Protection Directive, Directive Number FCP/01/2020, NBE, 2020, From preamble of the directive paragraph 3 available at file:///C:/Users/user/Downloads/=-FCP-01-2020.pdf

<sup>107</sup> Ibid Art.2.2.20

handling unit that is accessible, equitable, transparent, cost-free, and effective.<sup>108</sup> The other responsibility of the financial service provider is to establish an internal complaint handling unit at the head office.<sup>109</sup> However, the directive requires financial service providers to establish a complaint handling unit at their head offices. However, it can be challenging for bank customers residing in regions and rural areas to file a complaint with the head office. Another issue is that the number of bank branches and customers outweighs the capacity of the complaint handling unit at the head office, rendering it inaccessible to financial consumers.

At the time of contract signing, financial consumers should receive clear communication regarding the location, complete address, point of contact information, and other essential details of the complaint handling office. Financial consumers should also be provided with various means to file complaints, including phone, electronic message, fax, postal services, or in-person, and they should be actively informed about these options. The financial service provider should respond to the complaint using the same medium of communication used for filing the complaint or in any other appropriate form. Additionally, it is important for financial service providers to allocate adequate resources to their internal complaint handling staff, ensuring their independence from staff and functions subject to complaints.<sup>110</sup> The financial consumer protection directive states that complaints can be made in different ways, such as phone, electronic message, fax, postal services, and in person. For instance, if the person has a complaint and is living in a regional state, he must come to the head office to file the complaint in person. In addition, it is difficult to financial consumer to file the complaint through electronic message, fax, postal because not everyone who uses the bank is educated and has not adapted to the system easily, high cost of Internet, absence of networks, lack of reliable power supply, those reasons make the complaint handling unit inaccessible and the directive are not implemented properly.

The other point is that a complainant can also make a complaint, in Amharic, English and in regional working language where the financial consumer is located.<sup>111</sup> In relation to language, according to the administrative procedure proclamation, a directive adopted by an agency shall

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<sup>108</sup> Ibid Art. Cumulative reading of Article 5.5 sub article 5.5.1

<sup>109</sup> Ibid Art. 5.5sub article 5.5.2(5.5.2.1)

<sup>110</sup> Ibid Cumulative reading of Article 5.5 sub article 5.5.2

<sup>111</sup> IbidArt. 5.5 sub article 5.5.2(5.5.2.3)

be prepared in English and Amharic language<sup>112</sup> but the directive prepared by the NBE is written only in English. And this makes it difficult for complaints to understand and enforce their rights properly according to the directive. The directive requires FSPs to use Amharic and other local languages relevant to their consumers in all their written communication.

### **3.3.2 The Process and timeline of complaint handling**

Regarding the financial products and services they have acquired from the financial service provider, a consumer of financial services may make complaints. Upon receiving a complaint, a financial service provider is obligated to promptly acknowledge it, investigate the complaint as soon as possible, and inform the complainant of the outcome within a maximum of 10 working days. However, for certain categories of financial products and services, a shorter investigation period may be established. In general, financial service providers ensure that each complaint is addressed in an equitable, objective, and timely manner.<sup>113</sup> A financial consumer may file a complaint with the National Bank if, in the circumstances, the financial consumer is dissatisfied with the decisions given by the financial service provider and has not received responses from the financial service provider within 10 business days. If the financial service provider is unable to resolve the complaint through the internal complaint handling process within 10 business days, the case shall be reported to the National Bank within two business days, and the National Bank will also investigate the case within 10 business days.<sup>114</sup>

### **3.3.3 Complaints Database**

A financial service provider shall make sure that at least monthly reports are provided to their board on the volume and nature of complaints received, the extent to which they have been resolved and the related root causes and systematic issues that they identify. The financial service provider must be accountable for maintaining records of complaints in a timely manner and reporting complaints to the National Bank on a monthly basis.<sup>115</sup>

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<sup>112</sup> Federal Administrative Proclamation No.1183/2020,, Federal NegaritGazeta 26<sup>th</sup> Year No.32, Addis Ababa, 7<sup>th</sup> April 2020,Art. 15(1)

<sup>113</sup> Ibid cumulative reading of sub article 5.5.3( 5.5.3.1, 5.5.3.2, 5.5.3.3)

<sup>114</sup> Ibid cumulative reading of article 5.5.4 sub article( 5.5.4.1, 5.5.4.2)

<sup>115</sup> Ibid Art.5.5.5(5.5.5.1,5.5.5.2)

The records of complaints have to include the date a complaint is lodged, the name and contact details of the complaints, the name and contact details of relevant staff members handling the complaint, details of the outcome of the complaint, including any settlement provided to a complainant and any reasons given if a complaint is not resolved in the complainant's favor, and any other information necessary in order for the financial service provider to be able to meet any reporting requirements imposed by the National Bank.<sup>116</sup> For the NBE to oversee the financial service provider, all of the aforementioned factors are crucial. It also helps to identify resolved and unresolved complaints and to know the number of complaints they receive.

### **3.3.4 Financial Consumer Protection Directive in line with administrative procedure proclamation**

There was a groundbreaking move by the Ethiopian legislature that introduced the administrative procedure law. Article 37 of the FDRE constitution addresses this issue head-on by emphasizing the right of access to justice. It stipulates that every individual has the right to bring a justiciable matter before a court of law or any other competent body with judicial powers and obtain a decision or judgment.

One of the aims of the administrative procedure proclamation is to ensure transparency in the operations of the federal democratic republic of Ethiopia's government. The constitution mandates that public employees who fail to fulfill their obligations will be held accountable. Administrative agencies need to be regulated to prevent them from infringing upon people's rights and interests. The establishment of a system of judicial review legally promotes administrative justice by fostering a culture of transparency and accountability. This system provides recourse for individuals who may be aggrieved by the actions of administrative agencies, both in their rule-making and decision-making capacities.<sup>117</sup> The National Bank of Ethiopia has issued this directive based on delegation of power bestowed upon it by the legislator which affects people's rights and interest.<sup>118</sup>

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<sup>116</sup> Ibid Art 5.5.5(5.5.5.3)

<sup>117</sup> Federal Administrative Proclamation, No.1183/2020, Federal NegaritGazeta 26<sup>th</sup> Year No.32, Addis Ababa, 7<sup>th</sup> April 2020,article 2

<sup>118</sup> Ibid art. 2

The definition external dispute resolution means a dedicated scheme, to be established by the National Bank, for resolving disputes between the financial consumer and the security provider.<sup>119</sup>

The other point is also related to the administrative procedure proclamation. According to the administrative procedure proclamation of Article 15(1), a directive adopted by an agency shall be prepared in English and Amharic, but the directive prepared by the NBE is written only in English. It means all the consumers are not known or understand English so it's difficult for financial consumer to understand the directive. The since directive requires FSPs to use Amharic and other local language relevant to their consumers in all their written communication. In relation to language, according to the administrative procedure proclamation, a directive adopted by an agency shall be prepared in English and Amharic.<sup>120</sup> However, the directives prepared by the NBE are written only in English. And this makes it difficult for complaints to understand and enforce their rights properly according to the directive. But the directive requires FSPs to use Amharic and other local languages relevant to their consumers in all their written communication.

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<sup>119</sup> Financial Consumers Protection Directive Number FCP/01/2020, NBE, 2020, Directive article 2 sub article 2.12 available at file:///C:/Users/user/Downloads/FCP-01-2020.pdf

<sup>120</sup>Ibid Art.15(1)

# CHAPTER FOUR: DATA PRESENTATION, ANALYSIS, AND DISCUSSION

## 4.1 Overview

This chapter presents, analyzes, and discusses data from various sources, in line with the objectives of the study. Firstly, the demographic information of the first respondent is presented, including their gender, educational level, and work experience in internal dispute resolution at the complaint handling unit of banks. Secondly, the chapter provides a descriptive analysis of the quantitative data, followed by the presentation and analysis of qualitative data using the narrative analysis method.

## 4.2. Demographics Information

The researcher selected all 25 banks listed in the 2021/2022 annual report of the National Bank to conduct research on the implementation of financial consumer dispute resolution. Out of the 25 banks, only 7 have established complaint handling units, while 2 banks are currently in the process of establishing such units. Additionally, 14 banks do not have complaint handling units, and 2 banks declined to participate in the research by rejecting the questionnaires for their own reasons.

Table 2: *Bank information that has an internal complaint handling unit*

Banks have an internal complaint handling unit.	Yes	No	Under establishment
	7	14	2

*Source: Field Survey, 2023*

The researcher attempted to distribute questionnaires to 35 informants from seven banks. However, due to various factors, only 34 respondents could be reached. Out of the 34 respondents, two provided incomplete responses, leaving 32 valid responses. As a result, those two respondents were excluded from the study, while the remaining 32 were considered as the study sample and included in the analysis. All of the respondents were employed in the internal complaint handling units of banks. The data collection period spanned one month and 15 days.

Table 3: *Distribution of Questionnaires*

Participants	Total	%	Remarks
Number of banks	7	28%	All selected banks are not involved
Number of selected respondents	35	100%	All selected respondents received the questionnaire
Received Responses	32	91.4%	Majorities questionnaires are collected

*Source: Field Survey, 2023*

#### 4.2.1 Demographic Findings

The researcher utilized the demographic information collected through the survey questionnaires to draw conclusions regarding the practical implementation of financial consumer dispute resolution. This information was gathered based on three key parameters: gender, educational level, and work experience, along with the assessment of the practical implementation of financial dispute resolution by banks. In the following sections, the researcher provides a brief discussion of these parameters to explain their significance in the study.

##### 4.2.1.1 Respondents Gender

As a result, as seen in Figure 7, the majority of respondents in this study are male, which represents (N = 21), or 65.6% of respondents, and (N = 11), or 34.4% of respondents, are female.

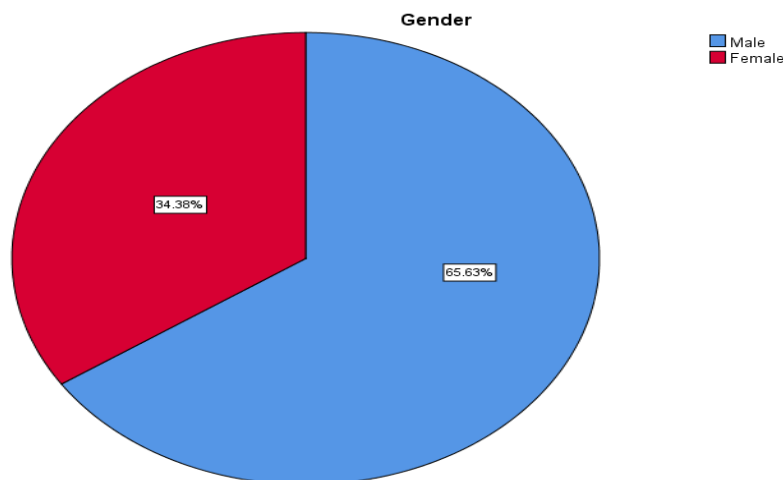


Figure 1: *Gender of the Respondents* (Source: *Field Survey, 2023*)

#### 4.2.1.2 Respondents Educational Level

Understanding the level of education of the respondents enables the researcher to assess their comprehension of the implementation of the Financial Consumer Dispute Resolution Directive. This, in turn, helps the researcher determine how educational level influences the implementation of financial consumer dispute resolution.

As shown in Figure 1, the majority of respondents in this study hold a first degree, accounting for 23 respondents or 71.88 percent of the total participants. The next largest category of respondents consists of master's degree holders, with a total of 9 participants. This demonstrates that the survey includes personnel from various educational backgrounds to ensure a well-represented sample.

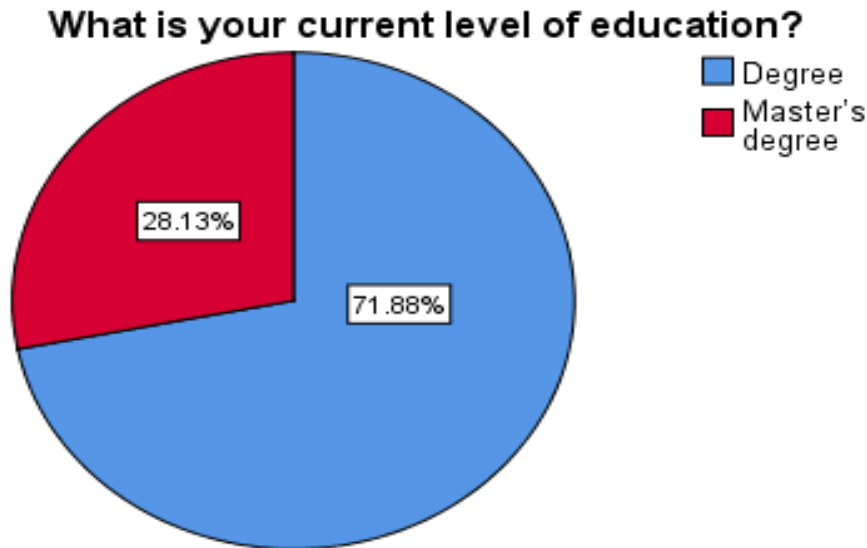


Figure 2: *Educational Level of the Respondents' (Source: Field Survey, 2023)*

#### 4.1.2.2 Respondents experience or service year

The demographic information helps the researcher determine whether the experience of a complaint handling unit affects its implementation in practice.

Figure 2 illustrates the respondents' work experience in the complaint handling unit of banks. According to the data, nearly 62.50 percent of respondents have less than two years of experience, accounting for 28 out of the total 32 respondents. Around 31.25 percent of respondents have two to five years of experience, accounting for 10 individuals. Approximately 6.25 percent of all respondents have served in the unit for six to ten years. This suggests that the

survey respondents are relatively new to the complaint handling unit, considering that the existence of the directive is two years. From the data, it can be inferred that most banks have established this unit under the name "customer experience," while others have integrated it into their former risk and compliance departments.

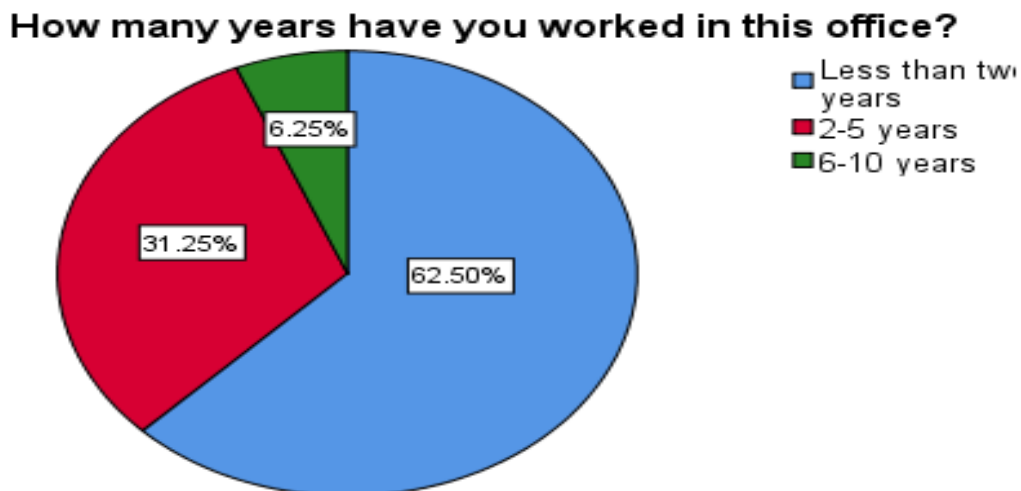


Figure 3: *Working experience of the Respondents' (Source: Field Survey, 2023)*

### 4.3 Quantitative Data Presentation, Analysis, and Discussion

This section presents, analyzes, and discusses quantitative data. As mentioned earlier, all the data presented here was collected through a questionnaire from 32 informants. The data was carefully evaluated to demonstrate the practices and challenges related to the implementation of financial consumer dispute resolution by banks in Ethiopia that have an internal complaint handling unit. The subsequent sections briefly discuss the key findings based on the questions posed to the respondents. The first part focuses on the practical implementation of the Financial Consumer Protection Directive, while the second part assesses the challenges associated with its implementation.

#### 4.3.1 The implementation of the financial consumer dispute resolution directive

For the first question, out of the 25 banks, two banks declined to fill out the questionnaire. Among these 25 banks, two are currently in the process of establishing an internal complaint handling unit, and 14 banks do not have an internal complaint handling unit. Hence, from the remaining seven banks, a total of 32 respondents completed the questionnaires.

Among the respondents from the seven banks, all 32 participants stated that their respective banks have an internal complaint handling unit. Therefore, as shown in the table, 100% of the respondents from the seven banks answered affirmatively. This implies that all seven banks have a dedicated complaint handling unit.

**Table 4: Separate consumer complaint handling unit in the institution**

**Do you have a separate consumer complaint handling unit in your institution?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	32	100.0	100.0	100.0

*Source: Field Survey, 2023*

According to the findings presented in Table 4, all 32 respondents from the seven banks confirmed the presence of an internal complaint handling unit. Therefore, as indicated in Table 4, 100% of the respondents from these seven banks responded affirmatively. This implies that all seven banks have a dedicated complaint handling unit.

**Table 5: The number of staff in the complaint handling unit**

**What is the number of staff in the complaint handling unit in your organization?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	2- 5	12	37.5	37.5	37.5
	6 & above	20	62.5	62.5	100.0
	Total	32	100.0	100.0	

*Source: Field Survey, 2023*

"According to Table 5, the majority of banks in this study have 6 or more staff members, accounting for 62.5 percent of all respondents. The next largest category consists of banks with 2–5 staff members, representing 37.5 percent of the respondents.

**Table 6: Means of communication**

**What is the means of communication for receiving and responding to complaints?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	phone call	2	6.3	6.3	6.3
	text message	3	9.4	9.4	15.6
	in person	17	53.1	53.1	68.8
	All	10	31.3	31.3	100.0
	Total	32	100.0	100.0	

*Source: Field Survey, 2023*

The majority of the respondents communicate personally for receiving and responding to complaints. around 53.1 percent, accounting for 17 of the 32 respondents. 31.3 percent of the respondents received and responded to complaints through all means of communication (phone call, text message, in person), which means 10 out of 32 people. Around 9.4 percent of respondents said their means of communication is text message, which means 3 out of 32 people. Finally, 6.3 percent of the respondents' means of communication are phone calls, accounting for 2 of the 32 respondents.

**Table 7: Number of Complaints Received After the Establishment of the Complaint Handling Unit**

**How many complaints are received so far since the establishment of the complaint handling unit?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Less than 1000	2	6.3	6.3	6.3
	Between 1000 and 3000	5	15.6	15.6	21.9
	Over 3000	6	18.8	18.8	40.6
	Data not available	19	59.4	59.4	100.0
	Total	32	100.0	100.0	

*Source: Field Survey, 2023*

According to table 7 the majority of respondents (59.4 percent) indicated that they had no data. Although 18.8 percent of respondents received over 3000 complaints, 15.6 percent of respondents received between 1000 and 3000 complaints. In addition, nearly 6.3 percent of respondents received less than 1000 complaints. This implies that the majority of banks have no data on how many complaints they have received.

***Table 8: Average of Complaints per Month***

**On average, how many complaints are received from customers per month?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	less than 50	7	21.9	21.9	21.9
	Between 50 and 200	1	3.1	3.1	25.0
	Over 200	6	18.8	18.8	43.8
	Data not available	18	56.3	56.3	100.0
	Total	32	100.0	100.0	

*Source: Field Survey, 2023*

According to Table 8, the majority of the respondents (56.3 percent) do not have any data about the complaints they received from customers per month. Although 21.9 percent of respondents received less than 50 complaints, 3.1 percent of respondents received between 50 and 200 complaints. In addition, nearly 18.8 percent of respondents received over 200 complaints. This implies that the majority of banks have no data on how many complaints they have received.

**Table 9: Staff of the complaint handling unit**

**Is the relevant staff of the complaint handling unit trained?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	5	15.6	15.6	15.6
	No	27	84.4	84.4	100.0
	Total	32	100.0	100.0	

Source: Field Survey, 2023

According to Table 9, the majority of the respondents (84.4 percent) are not trained, although 15.6 percent of respondents are trained.

**Table 10: Department of CHU against receiving the complaint**

**When a financial consumer submits a complaint, does the relevant management or department complained against receive the complaint?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	14	43.8	43.8	43.8
	No	3	9.4	9.4	53.1
	According to the complaint	15	46.9	46.9	100.0
	Total	32	100.0	100.0	

Source: Field Survey, 2023

According to the responses, 46.9 percent of the respondents complained against receiving the complaint based on or according to the complaint. 43.8 respondents stated that they do not accept complaints. Finally, 9.4 percent of the respondents stated that they had received the complaint.

**Table 11: Policy and Procedure**

**Do you have policies and procedures for handling complaints?**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	23	71.9	71.9	71.9
No	1	3.1	3.1	75.0
under establishment	8	25.0	25.0	100.0
Total	32	100.0	100.0	

Source: Field Survey, 2023

The majority of the respondents (71.9 percent) have policies and procedures for complaint handling. Although 25 percent of respondents are under establishment and the remaining 3.1 percent have no policies and procedures, it implies the majority of the respondents have policies and procedures for handling complaints.

**Table 12: Location of complaint handling unit**

**At what location is the complaint handling unit located?**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Head Office in Addis Ababa	32	100.0	100.0	100.0

Source: Field Survey, 2023

According to Table 12, all respondents' complaint handling units are located at the head office.

**Table 13: Language of complaint**

**In what languages can complaints be submitted?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Amharic	16	50.0	50.0	50.0
	In the regional working language where the financial consumer is located	3	9.4	9.4	59.4
	All	13	40.6	40.6	100.0
	Total	32	100.0	100.0	

Source: Field Survey, 2023

The majority of the respondents (50.0 percent) received the complaints in Amharic. Although 40.6 percent of respondents received the complaint in all languages, the remaining 9.4 percent received it in the regional working language where the financial consumer is located.

**Table 14: Respond to a complaint within 10 business days**

**According to the number of staff, is it difficult to respond to a complaint within 10 business days?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	20	62.5	62.5	62.5
	No	12	37.5	37.5	100.0
	Total	32	100.0	100.0	

Source: Field Survey, 2023

According to Table 14, the majority of the respondents (62.5 percent) stated it is difficult to respond to a complaint within 10 business days. Although 37.5 percent of respondents stated that it is not difficult to respond within 10 business days.

**Table 15: Indicate the institution**

**In which institution do you indicate the complaints that are not satisfied by your decision?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Court	23	71.9	71.9	71.9
	NBE	9	28.1	28.1	100.0
	Total	32	100.0	100.0	

*Source: Field Survey, 2023*

According to respondents, 71.9 percent stated that they would refer complainants to court if they were not satisfied with their decision. The remaining 28.1 percent of respondents stated that they would indicate complaints to the NBE.

**Table 16: Refer the complaint to the institution that the FSP is unable to resolve**

**Most of the time where do you refer complaints that your institution is unable to resolve?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Court	22	68.8	68.8	68.8
	NBE	10	31.3	31.3	100.0
	Total	32	100.0	100.0	

*Source: Field Survey, 2023*

According to Table 16, the majority of respondents (68.8 percent) said that they would send the complaint to court if they could not resolve it. 31.3 percent of respondents sent the complaint to the NBE.

**Table 17: Report unresolved complaints within two business days**

**Does your workload make it difficult to report an unresolved complaint strictly within two business days?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	25	78.1	78.1	78.1
	No	7	21.9	21.9	100.0
	Total	32	100.0	100.0	

Source: Field Survey, 2023

The majority of the respondents (78.1 percent) stated it is difficult to report an unresolved complaint strictly within two business days. Although 21.9 respondents state it is not difficult to report an unresolved complaint strictly within two business days.

**Table 18: Distinct or a separate form to receive a complaint**

**Do you have a distinct or a separate form that you received a complaint?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	18	56.3	56.3	56.3
	No	10	31.3	31.3	87.5
	under establishment	4	12.5	12.5	100.0
	Total	32	100.0	100.0	

Source: Field Survey, 2023

According to Table 18, 56.3 percent of the respondents have a specific form to receive complaints. Although 31.3 percent of the respondents do not have a specific form to receive compliance, the remaining 12.5 percent have established a separate form to receive compliance.

**Table 19: Types of customers use the complaint handling unit**

*Which types of customers use the complaint handling unit?*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Individual consumers	10	31.3	31.3	31.3
	Both	22	68.8	68.8	100.0
	Total	32	100.0	100.0	

*Source: Field Survey, 2023*

According to the response, 68.8 percent of respondents' statements state that both types of customers (individual customers and corporate customers) are handled by a compliant handling unit. 31.3 percent of respondents' individual customers use a compliant handling unit.

**Table 20: Appeal Right**

**Do you think that the financial service provider's ability to appeal is limited by the fact that the national bank of Ethiopia resolution is binding?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	17	53.1	53.1	53.1
	No	15	46.9	46.9	100.0
	Total	32	100.0	100.0	

*Source: Field Survey, 2023*

According to the responses, 53.1 percent of respondents state that the financial service provider's ability to appeal is limited by the fact that the National Bank of Ethiopia's resolution is binding. Although 46.9 percent of respondents stated that the financial service provider's ability to appeal is not limited by the fact that the National Bank of Ethiopia's resolution is binding.

**Table 21: Difficulties of the Financial Consumer Protection Directive for Practical Implementation**

**Do you think the design of the dispute resolution mechanism in the Financial Consumer Protection Directive is difficult for practical implementation?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	25	78.1	78.1	78.1
	No	7	21.9	21.9	100.0
	Total	32	100.0	100.0	

*Source: Field Survey, 2023*

According to Table 21, the majority of the respondents (78.1 percent) responded that the design of the dispute resolution mechanism in the financial consumer protection directive is difficult for practical implementation. Although 21.9 percent of respondents responded that the dispute resolution mechanism in the financial consumer protection directive is not difficult for practical implementation,

### **4.3 Qualitative Data Presentation, Analysis, and Discussions**

To supplement and complement the survey findings, a qualitative data analysis was conducted in addition to the quantitative study. As a result, interviews were conducted with the financial inclusion and legal department of the National Bank of Ethiopia to gather information on the implementation practices and challenges of Financial Dispute Resolution.

During the interviews, the researcher obtained firsthand information from the National Bank of Ethiopia. The interviewees were given the flexibility to provide insights beyond the specific questions, and follow-up questions were asked to delve deeper into the topics. The first interviewee mentioned that the National Bank of Ethiopia is currently in the process of establishing an external dispute resolution mechanism. Additionally, they highlighted that the directive issued by the National Bank is binding on financial service providers, as its primary objective is to protect consumers. However, it was also acknowledged that consumers may have limited knowledge and understanding of the directive.

Furthermore, the interviewees emphasized that while the directive is binding on financial service providers, it is not binding on consumers. When asked about potential gaps in the financial dispute resolution provisions of the directive, they suggested that the government would need to issue a robust proclamation in the future to outline specific aspects, such as the independence of individuals involved in external dispute resolution and the criteria for assessing cases.

According to the second interviewee, the directive distinguishes between internal dispute resolution and external dispute resolution. Currently, there is no centralized external dispute resolution department. Instead, complaints related to banks are forwarded to banking supervision, insurance-related complaints are directed to insurance supervision, and microfinance and leasing-related complaints are referred to microfinance supervision. Although there is no unified external dispute resolution department established by the National Bank, efforts are being made to address the issue.

Therefore, the interviewee suggested that the National Bank establish an independent external dispute resolution department to handle complaints in accordance with the directive. This would help regulate financial service providers and ensure their adherence to proper practices. Additionally, it would create a trusted external dispute resolution mechanism for financial consumers, enabling them to file complaints with a single institution instead of having them scattered across multiple departments. The ultimate intention of the directive, which is binding on financial service providers and optional for consumers, is to protect consumers and provide them with access to the appeal process without denying their rights.

#### **4.4 Discussion and Analysis**

The data collected through a questionnaire and interviews revealed that the implementation of financial dispute resolution does not align with the directive. According to the financial consumer protection directive, all financial service providers are required to establish an internal complaint handling unit. However, it was found that only seven banks have such a unit in place.

Another noteworthy finding from the questionnaires is that the majority of respondents primarily communicate in person. However, according to the directive, financial service providers are obligated to utilize all means of communication, including in-person, phone calls, and text

messages. This requirement is necessary because not all complaints can be channeled through the head office, and some complaints originate from different regions.

Furthermore, it was observed that the majority of banks do not maintain annual or monthly data on the number of complaints they receive. This suggests a lack of proper reporting to the national bank.<sup>121</sup>

Based on the responses of the majority of respondents, it was found that when most bank customers make a complaint, the internal complaint handling unit often rejects it without adequate justification. Some respondents mentioned that the banks should not dismiss complaints arbitrarily; instead, they should provide sufficient reasons to the financial consumer, regardless of whether the complaint is accepted or rejected.

In accordance with their responsibilities, financial service providers are expected to establish policies and procedures, as well as provide training to their relevant staff.<sup>122</sup> Most of the respondents from the seven banks reported having already implemented policies and procedures, while the remaining banks are in the process of doing so. However, it should be noted that some banks lack a comprehensive policy and procedure document for their internal complaint handling unit. Therefore, each bank must develop and provide a policy and procedure document that aligns with the requirements.

Another issue highlighted in the questionnaire is that the majority of respondents have not received proper training. To ensure an efficient internal complaint handling process, it is crucial for banks to train their relevant staff adequately. Regarding the location of the complaint handling units, all respondents indicated that they are located at the head office, which is in line with the directive. However, it was mentioned that accessibility becomes challenging due to this requirement.

According to the directive, financial service providers are required to communicate in Amharic, the regional working language where the financial consumer is located, and English. However, the majority of respondents mentioned that their means of communication are primarily in

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<sup>121</sup> FCP directive article article 6 sub article 6.1.5 ensure that the financial service provider shall report periodically , or as may be required, on the execution status of this directive, to the National Bank

<sup>122</sup> Ibid Cumulative reading of article 5.5 sub article 5.5.1 and 5.5.2 sub article 5.5.2.5

Amharic. It is important to note that the directive mandates financial service providers to communicate in all languages.

As per the financial consumer protection directive, a financial consumer may submit a complaint to the financial service provider, which should be investigated promptly. The financial service provider is expected to respond to the complainant within a maximum of 10 business days upon receiving the complaint. If the internal complaint handling processes cannot resolve the complaint within this timeframe, the case should be reported to the national bank within two business days.<sup>123</sup> According to the majority of respondents, financial service providers are not adhering to the time frame stated in the directive, as they are not responding within 10 business days. Additionally, respondents indicated that financial service providers do not strictly report unresolved complaints within two business days. Therefore, it can be concluded that the majority of banks out of the seven surveyed are not effectively implementing the directive.

Regarding the resolution of complaints, the majority of respondents stated that they would refer complainants to court if they were dissatisfied with the decision, and some respondents mentioned that they would escalate the complaint to court if it could not be resolved. However, according to the directive, financial service providers are required to report unresolved complaints to the national bank. This suggests a lack of proper implementation of the directive by the majority of banks.

In practice, both individual consumers and corporate consumers utilize the complaint handling unit. However, the directive does not provide clear guidance on this matter. The majority of respondents expressed that the financial service provider's ability to appeal is limited because the resolution by the national bank is binding. They provided different reasons, with some stating that the directive is unfair as it does not treat financial service providers and consumers equally. Respondents also raised concerns about the practical implementation of the dispute resolution mechanism outlined in the financial consumer protection directive. They cited reasons such as the lack of separation of dispute resolution by case type or monetary value, as well as the absence of an established external dispute resolution mechanism by the National Bank. They also mentioned that the time frame described in the directive is challenging to implement in practice.

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<sup>123</sup> Ibid cumulative reading of article 5.5.3(5.5.3.2 C) § 5.5.4(5.5.4.2)

Based on the information gathered from the interviews, different views were expressed. One interviewee mentioned that the external dispute resolution mechanism is not yet established, and there were differing opinions regarding the decision-making authority of the national bank, which is binding on financial service providers but optional for financial consumers. In general, it can be concluded that the Ethiopian FCP Directive's financial dispute resolution, in terms of accessibility, fairness, transparency, cost-effectiveness, and effectiveness, is not being properly implemented in both the banks and the National Bank of Ethiopia.

#### **4.5 The policy and procedure of the bank**

The policy and procedure of the bank provides detailed information about the customer complaint management procedure of the bank. It outlines the definitions of terms related to complaints, the objectives of the procedure, governing rules, guiding principles, types of customer complaints, complaint handling process, and the standard behavior expected from employees involved in complaint management. The guiding principles for handling complaints include customer focus, objectivity and fairness, confidentiality, accessibility, responsiveness, accountability, and continuous improvement. The types of customer complaints discussed are operational-related, product or procedure-related, behavioral related, fraud-related, and general complaints.

The complaint handling process involves facilitating complaint lodgment, complaint recording and prioritization, complaint escalation, and complaint resolution process includes stages such as acknowledgment, screening of complaints, root cause analysis, providing solutions, final report, appeal and review process, and responses and closure. The policy and procedure also emphasizes the importance of standard behavior for complaint handling employees, including commitment, openness, impartiality, fairness, and competency. It provides detailed roles and responsibilities for first, second and third-level contact points in handling complaints effectively.

Overall, the policy and procedure establishes a structured framework for managing customer complaints within bank, ensuring a customer-centric approach, fairness, and continuous improvement in complaint resolution processes.

The policy and procedure on customer complaint management of the bank demonstrate a commitment to transparency, fairness, accessibility, and efficiency in handling customer complaints.

#### Transparency

- ✓ The policy and procedure clearly defines terms and concepts related to complaints, outlining the procedures and objectives for complaint management.
- ✓ It emphasizes the importance of acknowledging complaints promptly and keeping complainants informed throughout the resolution process.
- ✓ The complaint handling process is structured and detailed, ensuring transparency in how complaints are received, recorded, prioritized, and resolved.

#### Fairness:

- ✓ The policy and procedure outlines guiding principles that emphasize fairness in handling complaints, ensuring that all complaints are dealt with in an equitable and unbiased manner.
- ✓ It establishes a hierarchy for escalating complaints based on their significance and urgency, ensuring fair treatment for all types of complaints.
- ✓ The roles and responsibilities of employees at different contact points are defined to ensure fair and consistent handling of complaints.

#### Free and Accessible:

- ✓ The policy and procedure highlights the importance of providing a transparent, effective, prompt, and free internal complaint process for customers.
- ✓ It ensures that complaint management resources are available and accessible at all times, including complaint receiving tools like forms, register books, and toll-free numbers.
- ✓ Customers are encouraged to express their complaints through channels, making the process free and accessible to all.

Efficient

- ✓ The policy and procedure of bank sets out clear objectives for the compliant management procedure , aiming to establish ownership, define roles, set standards, guide and monitor practices, and ensure quality services.
- ✓ The complaint handling process is structured to facilitate efficient resolution, with defined steps for lodging complaints, recording and prioritizing them, escalating when necessary, and resolving them effectively.
- ✓ The roles and responsibilities of employees at different levels ensure that complaints are handled efficiently and promptly, with a focus on continuous improvement.

Generally the policy and procedure reflects a commitment to transparency, fairness, accessibility, and efficiency in managing customer complaints within bank, aiming to enhance customer satisfaction and loyalty through effective complaint resolution processes.

## **CHAPTER FIVE: CONCLUSION AND RECOMMENDATION**

### **5.1 Overview**

This chapter presents the study's conclusions, as well as recommendations emphasizing on the **implementation of the dispute settlement provisions of Financial Consumer Protection Directive No. FCP/01/2020 issues could be addressed based on the empirical data provided throughout the study, as well as suggestions for future research.**

### **5.2 Conclusions**

**The purpose of this research is to analyze the practical implementation of the dispute settlement provisions outlined in Financial Consumer Protection Directive No. FCP/01/2020.** The study also aims to investigate the practices and challenges faced by banks in Ethiopia regarding the implementation of financial dispute resolution.

The researcher believes that one of the research questions, "How is dispute settlement designed in the Financial Consumer Protection Directive? And what is the experience in other countries?"

has been addressed in chapters 2 and 3, respectively. The other two research questions, "Is financial consumer dispute settlement being implemented in banks as designed in the directive? If so, how?" and "What are the major challenges, if any, in the implementation of the Directive, and how can they be solved?" have been answered through descriptive and narrative analysis in this study.

According to the findings, the financial dispute provisions outlined in the directive are not being implemented as intended. Among the 25 banks included in the study, only seven have an internal complaint handling unit, while two banks are in the process of establishing one. Fourteen banks do not have an internal complaint handling unit, and two banks declined to participate in the study, making it impossible to draw conclusions regarding them.

Among the seven banks with internal complaint handling units, the majority rely on in-person means of communication to receive and respond to complaints. Additionally, these banks lack comprehensive data on the establishment and monthly activities of their complaint handling units. While most banks have policies and procedures in place, their staff in the complaint handling units are generally not adequately trained. It is worth noting that all seven banks have internal complaint handling units located at their head offices. Another point to consider is that the majority of banks receive complaints in the Amharic language. If complainants are unsatisfied with the bank's decision, most banks would refer them to court or escalate the complaint to the court if they are unable to resolve it internally.

Also, the majority of banks fail to resolve complaints within 10 business days, and they also do not report unresolved cases to the National Bank within 2 business days as required. Another point to note is that both individual and corporate consumers predominantly utilize an internal complaint handling unit. Furthermore, respondents indicate that the financial service provider's ability to appeal is limited due to the binding nature of the National Bank of Ethiopia's resolutions. The respondents also highlight challenges in the practical implementation of the directive. They find it difficult to report unresolved cases within the mandated two-day timeframe. Similarly, they believe that the 10-day period allocated for investigating complaints is too short given the volume of complaints. Additionally, they emphasize the need for appeals to be open to both financial consumers and banks, allowing banks to challenge decisions that pose burdens on them. Lastly, it is worth noting that the National Bank of Ethiopia has not yet

established an external dispute resolution structure to effectively complete the financial consumer's dispute resolution process as outlined in the directive it issued. Therefore, it can be concluded that the directive is not being properly implemented, both within the banks and the National Bank of Ethiopia.

### **5.3 Recommendation**

This recommendation is based on the results of the research analysis conducted as part of a project on the practices and challenges of implementing the dispute settlement provisions outlined in Financial Consumer Protection Directive No. FCP/01/2020, specifically within the banking sector.

- ✓ There should be an independent agency dedicated to financial consumer protection. This agency should be funded through contributions from financial service providers. Such an agency would be able to develop expertise, maintain independence, establish regional offices for improved accessibility, and communicate with consumers in their local languages when necessary. It would also be responsible for conducting training for both consumers and financial service providers, ultimately addressing efficiency issues within the National Bank of Ethiopia (NBE) and financial service providers. Therefore, it is recommended that the government establishes a Financial Consumer Protection (FCP) Agency.
- ✓ The majority of banks acknowledge the practical challenges in resolving complaints within the stipulated 10 business days and reporting unresolved complaints to the National Bank within 2 business days. To enhance the implementation process, it would be beneficial to allow banks sufficient time to resolve complaints and forward unresolved cases to the NBE. So, the directive should be revised in this line.
- ✓ The decisions made by the NBE should prioritize fairness for both financial consumers and financial service providers.
- ✓ As lack of awareness is one of the major challenges, all banks should be required to provide adequate training for the staff of their internal complaint handling units, covering policies, procedures, and customer interaction. Additionally, they should inform and

educate financial consumers about the existence and functions of their internal complaint handling units.

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## **2.Laws and Legal Instruments**

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- ✓ **Banking Business, Proclamation No. 592/ 2008, Federal NegaritGazeta, 14th Year No. 57 of 2008, ADDIS ABABA, 2008**
- ✓ **Federal Administrative Proclamation, No.1183/2020, Federal NegaritGazeta 26th Year No.32, Addis Ababa,7<sup>th</sup> April 2020,**
- ✓ **Financial Consumers Protection Directive, 2020,FCP-01-2020**
- ✓ **The National Bank of Ethiopia Establishment (as Amended) Proclamation, the Proclamation No. 591/ 2008, Federal NegaritGazeta, 14th Year No. 50 of 2008, ADDIS ABABA, 2008**
- ✓ **National Payment System Proclamation, Proclamation No. 718/ 2011, Federal NegaritGazeta, 17th Year No. 84 of 2011, ADDIS ABABA, 2011**
- ✓ **The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proclamation No 1, Neg. Gaz. Year 1, No. 1**

# Appendix

## Questionnaire guides prepared for the Banking sector in Ethiopia

Type of the Study: A Master's Thesis in Business Law

Title:-Implementation of Dispute Settlement Provisions of the Financial Consumer Protection Directive No. FCP/01/2020 in the Banking Sector

The objective of this questionnaire: - To gather data so as to assess the main challenges from both legal and practical aspects in the implementation of the dispute settlement provisions of Financial Consumer Protection Directive No. FCP/01/2022 and to suggest possible solutions based on the findings.

Therefore, you are kindly requested to respond to the interviews, as the information you give will be helpful for the effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consent to the disclosure of your identity and personal views.

### Part 1 Personal Detail of Respondent

1. Gender

Male

Female

2. Name of the Respondent (optional)

.....

3. What is your current level of education?

Diploma

Degree

Master's degree

Ph.D

Others

4. How many years have you worked in this office?

Less than two years

2-5 years

6-10 years

More than 10 years

**Part one Practical implementation of financial consumer protection directive**

1. Do you have a separate consumer complaint handling unit in your institution?

- A. Yes
- B. No
- C. Under establishment

2. What is the number of staff of the complaint handling unit in your organization?

- A. 1
- B. Between 2 and 5
- C. 6 & above

3. What is the means of communication for receiving and responding to complaints?

- A. phone call
- B. text message
- C. in person
- D. All

4. How many complaints are received so far since the establishment of the complaint handling unit?

- A. Less than 1000
- B. Between 1000 and 3000
- C. Over 3000
- D. Data not available

5. On average, how many complaints are received from customers per month?

A. less than 50

B. Between 50 and 200

C. Over 200

D. Data not available

6. Is the relevant staff of the complaint handling unit trained?

A. Yes

B. No

C. Under the process to train

7. When a financial consumer submits a complaint, does the relevant management or department complained against receive the complaint?

A. Yes

B. No

C. According to the complaint

8. Do you have policies and procedures for handling complaints?

A. Yes

B. No

C. under establishment

9. At what location is the complaint handling unit located?

A. Head Office in Addis Abeba

B. Branches

10. In what languages can complaints be submitted?

A. Amharic

B. English

C. In the regional working language where the financial consumer is located.

D. All

11. According to the number of staff, is it difficult to respond to a complaint within 10 business days?

A. Yes

B. No

12. In which institution do you indicate the complaints that are not satisfied by your decision?

A. Court

B. NBE

13. Most of the time where do you refer complaints that your institution is unable to resolve?

A. Court

B. NBE

14. Does your work load make it difficult to report an unresolved complaint strictly within two business days?

A. Yes

B. No

15. Do you have a distinct or a separate form that you received complaint?

A. Yes

B. No

C. under establishment

16. Which types of customers use the complaint handling unit?

A. Individual consumers

B. Corporate consumers

C. Both

17. Do you think that the financial service provider's ability to appeal is limited by the fact that the National Bank of Ethiopia resolution is binding?  Yes  No If yes or no, what are the reasons? .....

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.....  
.....  
.....

**Part two Challenges on the implementation of financial consumer protection directive**

18. Do you think the design of the dispute resolution mechanism in the Financial Consumer Protection Directive is difficult for practical implementation?  Yes  No if yes, what are the challenges?

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.....  
.....  
.....

19. If the answer to the above question is yes, what solutions do you suggest?

.....  
.....  
.....  
.....

**Interview Guides Prepared for National Bank of Ethiopia**

Type of the Study: A Master's Thesis in Business Law

Title:-Implementation of Dispute Settlement Provisions of the Financial Consumer Protection Directive No. FCP/01/2020 in the Banking Sector

Objective of this Interview: - To gather data so as to assess the main challenges from both legal and practical aspects in the implementation of the dispute settlement provisions of Financial Consumer Protection Directive No. FCP/01/2022 and to suggest possible solutions based on the findings.

Therefore, you are kindly requested to respond to the interviews, as the information you give will be helpful for the effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consent to the disclosure of your identity and personal views.

**Personal Detail of Respondent**

1. Name of the Respondent (if he or she consented)

.....

2. Position in the Authority

.....

3. How many years have you worked in this office?

.....

1. Is there a dedicated directorate in the NBE to inspect, supervise and regulate financial service providers for the implementation of internal dispute resolution? If yes, in what way do you inspect them?

2. What types of measures do you take if the financial service provider do not establish internal compliant handling unit?

3. Do you accept all unresolved complaints from financial service providers, or do you have standards?
4. Which institution do you recommend if the complaint cannot be resolved there?
5. Has there been any challenges faced during the implementation of dispute resolution? If yes, what counter measures have been taken to overcome such challenges?
6. Is the National Bank required to pay compensation if a complaint proves the other party's wrongdoing?
7. If the answer to the above question is yes, how do you determine the compensation?
8. Do you believe that the financial service provider's ability to appeal is limited by the fact that the National Bank of Ethiopia resolution is binding?
9. Do you have the authority to order the financial leasing companies to establish a compliant handling unit?