

## **THE OMBUDSMAN SCHEME FOR NON-BANKING FINANCIAL COMPANIES, 2018**

The Scheme is introduced with the object of enabling resolution of complaints free of cost, relating to certain aspects of services rendered by certain categories of non-banking financial companies registered with the Reserve Bank, to facilitate the satisfaction or settlement of such complaints, and matters connected therewith.

### **CHAPTER I**

#### **PRELIMINARY**

##### **1. SHORT TITLE, COMMENCEMENT, EXTENT AND APPLICATION**

- 1) This Scheme may be called the Ombudsman Scheme for Non-Banking Financial Companies, 2018.
- 2) It shall come into force on such a date as the Reserve Bank may specify.
- 3) It shall extend to the whole of India.
- 4) The Scheme shall apply to the business in India of a Non-Banking Financial Company as defined under the Scheme.

##### **2. SUSPENSION OF THE SCHEME**

- 1) The Reserve Bank, if it is satisfied that it is expedient so to do, may by order suspend for such period as may be specified in the order the operation of all or any of the provisions of the Scheme, either generally or in relation to any specified non-banking financial company.
- 2) The Reserve Bank may, by order, extend from time to time, the period of any suspension ordered as aforesaid by such period, as it thinks fit.

##### **3. DEFINITIONS**

- 1) 'Award' means an award passed by the Ombudsman in accordance with the Scheme and includes a direction for specific performance by the non-banking financial company concerned and/ or to pay compensation for the loss, if any, suffered by the complainant.
- 2) 'Appellate Authority' means the Deputy Governor-in-Charge of the Department of the Reserve Bank implementing the Scheme.
- 3) 'Authorised Representative' means a person other than an Advocate duly appointed and authorized by a complainant to act on his behalf and represent him in the proceedings under the Scheme before an Ombudsman for consideration of his complaint.
- 4) 'Complaint' means any representation or allegation made in writing or through electronic means, containing a grievance alleging deficiency in service as mentioned in Clause 8 of the Scheme.
- 5) 'Non-Banking Financial Company' (NBFC) means a 'non-banking financial company', as defined in Section 45-1(f) of the Reserve Bank of India Act, 1934, and registered with the Reserve Bank under Section 45-1A of the Reserve Bank of India Act, 1934, which (a) is authorised to accept deposits, or (b) has customer interface, with assets size of one billion rupees or above as on the date of the audited balance sheet date of the previous financial year, or of any such asset size as the RBI may prescribe,

but, is not a Non- banking Financial Company - Infrastructure Finance Company (NBFC-IFC), Core Investment Company (CIC) , Infrastructure Debt Fund - Non-banking Financial Company (IDF-NBFC) and a company under liquidation.

Explanation – NBFC-IFC, CIC and IDF-NBFC shall have the same meanings as respectively assigned to them under RBI directions.

A company under liquidation would mean a company (as defined in the Companies Act, 2013) in respect of which, the tribunal has passed the order of winding up and appointed official liquidator/ provisional liquidator, and, in cases of voluntary winding up/ liquidation, it would be from the date of passing of the resolution by a company to that effect and appointment of liquidator.

6) 'Ombudsman' means any person appointed under Clause 4 of the Scheme.

7) 'Reserve Bank' means the Reserve Bank of India constituted by Section 3 of the Reserve Bank of India Act, 1934 (2 of 1934).

8) 'Secretariat' means the office constituted as per Sub-Clause (1) of Clause 6 of the Scheme.

9) 'Settlement' means an agreement reached by the parties, either by conciliation or mediation, under Clause 11 of the Scheme.

10) 'Scheme' means the Ombudsman Scheme for Non-Banking Financial Companies, 2018.

## **CHAPTER II ESTABLISHMENT OF OFFICE OF OMBUDSMAN**

### **4. APPOINTMENT & TENURE**

- 1) The Reserve Bank may appoint one or more of its officers in the rank of not less than General Manager to be known as Ombudsman to carry out the functions entrusted by or under the Scheme.
- 2) The appointment of Ombudsman under the above Clause may be made for a period not exceeding three years at a time. Provided that the Reserve Bank may reduce the term of appointment or reappoint the Ombudsman, if it considers necessary to do so.

### **5. LOCATION OF OFFICE AND TEMPORARY HEADQUARTERS**

- 1) The office of the Ombudsman shall be located at such places as may be specified by the Reserve Bank.
- 2) For expeditious disposal of complaints, the Ombudsman may hold periodical meetings at his office or a place within his area of jurisdiction as may be considered necessary and proper by him in respect of complaints or references placed before him.

### **6. SECRETARIAT**

- 1) The Reserve Bank shall depute such number of its officers and other staff to the office of the Ombudsman as is considered necessary to function as the secretariat of the Ombudsman.
- 2) The cost of the Secretariat shall be borne by the Reserve Bank.

## **CHAPTER III JURISDICTION, POWERS AND DUTIES OF OMBUDSMAN**

### **7. POWERS AND JURISDICTION**

- 1) The Reserve Bank shall specify the territorial limits to which the authority of each Ombudsman appointed under Clause 4 of the Scheme shall extend.
- 2) The Ombudsman shall receive and consider complaints relating to the deficiencies in services filed on any one or more of the grounds mentioned in Clause 8 and facilitate their satisfaction or settlement by agreement or through conciliation and mediation between the non- banking financial company concerned and the aggrieved party or by passing an Award in accordance with the provisions of the Scheme.
- 3) The Ombudsman shall exercise general powers of superintendence and control over his Office and shall be responsible for the conduct of business there-at.
- 4) The Office of the Ombudsman shall draw up an annual budget for itself in consultation with Reserve Bank and shall exercise the powers of expenditure within the approved budget on the lines of Expenditure Rules framed by the Reserve Bank of India from time to time.
- 5) The Ombudsman shall send to the Governor, Reserve Bank a report, as on 30th June every year, containing a general review of the activities of his Office during the preceding financial year and shall furnish such other information as the Reserve Bank may direct.
- 6) Reserve Bank may, if it considers necessary in the public interest so to do, publish the report and the information received from the Ombudsman in such consolidated form or otherwise as it deems fit.

## **CHAPTER IV**

### **PROCEDURE FOR REDRESSAL OF GRIEVANCE**

#### **8. GROUNDS OF COMPLAINT**

Any person may file a complaint with the Ombudsman having jurisdiction, on any one of the following grounds alleging deficiency in services:

- a) Non-payment or inordinate delay in the payment of interest on deposits;
- b) Non-adherence to the Reserve Bank directives, if any, applicable to rate of interest on deposits;
- c) Non-repayment or inordinate delay in the repayment of deposits;
- d) Non-presentation or inordinate delay in the presentation of post-dated cheques provided by the customer;
- e) Failure to convey in writing, the amount of loan sanctioned along with terms and conditions including annualised rate of interest and method of application thereof;
- f) Failure or refusal to provide sanction letter/ terms and conditions of sanction in vernacular language or a language as understood by the borrower;

- g) failure or refusal to provide adequate notice on proposed changes being made in sanctioned terms and conditions in vernacular language as understood by the borrower;
  - h) Failure or inordinate delay in releasing the securities documents to the borrower on repayment of all dues;
  - i) Levying of charges without adequate prior notice to the borrower/ customer;
  - j) Failure to provide legally enforceable built-in repossession clause in the contract/ loan agreement;
  - k) Failure to ensure transparency in the contract/ loan agreement regarding
    - (i) Notice period before taking possession of security;
    - (ii) Circumstances under which the notice period can be waived;
    - (iii) The procedure for taking possession of the security;
    - (iv) A provision regarding final chance to be given to the borrower for repayment of loan before the sale/ auction of the security;
    - (v) The procedure for giving repossession to the borrower and
    - (vi) The procedure for sale/ auction of the security;
  - l) non-observance of directions issued by Reserve Bank to the non-banking financial companies;
  - m) Non-adherence to any of the other provisions of Reserve Bank Guidelines on Fair Practices Code for Non-Banking Financial Companies.
- 2) The Ombudsman may also deal with such other matter as may be specified by the Reserve Bank from time to time in this behalf.

## **9. PROCEDURE FOR FILING COMPLAINT**

- 1) Any person who has a grievance against a Non-Banking Financial Company on any one or more of the grounds mentioned in Clause 8 of the Scheme may, himself or through his authorised representative (other than an Advocate), make a complaint to the Ombudsman within whose jurisdiction the Branch/ Registered Office of the Non-Banking Financial Company complained against, is located.
- a) The complaint, when in writing, shall be duly signed by the complainant or his authorized representative and shall be, as far as possible, in the form specified in 'Annex II' or as near as thereto as circumstances admit, stating clearly:
- i. the name and address of the complainant,
  - ii. the name and address of the branch or registered office of the Non-Banking Financial Company against which the complaint is made
  - iii. the facts giving rise to the complaint,
  - iv. The nature and extent of the loss caused to the complainant, and

v. the relief sought for.

b) A complaint made through electronic means shall also be accepted by the Ombudsman and a print out of such complaint shall be taken on the record of the Ombudsman. c) The Ombudsman shall also entertain complaints covered by this Scheme received by the Central Government or Reserve Bank or other financial regulators and forwarded to him for disposal.

#### **9-A POWER NOT TO ENTERTAIN A COMPLAINT**

The Ombudsman shall not entertain a complaint unless:-

a) the complainant, before making a complaint to the Ombudsman, had made a written representation to the respective NBFC and the NBFC had rejected the complaint or the complainant had not received any reply within a period of one month after the NBFC received his representation or the complainant is not satisfied with the reply given to him by the NBFC;

b) the complaint is made not later than one year after the complainant has received the reply of the NBFC to his representation or, where no reply is received, not later than one year and one month after the date of the representation to the NBFC;

c) the complaint is not in respect of the same cause of action which was settled or dealt with on merits by the Ombudsman in any previous proceedings whether or not received from the same complainant or along with one or more complainants or one or more of the parties concerned with the cause of action;

d) the complaint does not pertain to the same cause of action, for which any proceedings before any court, tribunal or arbitrator or any other forum is pending or a decree or Award or order has been passed by any such court, tribunal, arbitrator or forum;

e) The complaint is not frivolous or vexatious in nature;

f) the complaint is made before the expiry of the period of limitation prescribed under the Indian Limitation Act, 1963 for such claims; and

g) the complainant has filed along with the complaint, copies of the documents, if any, which he intends to rely upon, and a declaration that the complaint is maintainable under Clause 9-A.

#### **10. POWER TO CALL FOR INFORMATION**

1) For the purpose of carrying out the duties under this Scheme, an Ombudsman may require the NBFC against whom the complaint is made or any other NBFC concerned with the complaint, to provide any information or furnish certified copies of any document relating to the complaint which is or is alleged to be in its possession. Provided that in the event of failure of an NBFC to comply with the requisition without sufficient cause, the Ombudsman may, if he deems fit, draw the inference that the information if provided or copies if furnished, would be unfavourable to the NBFC.

2) The Ombudsman shall maintain confidentiality of any information or document that may come into his knowledge or possession in the course of discharging his duties and shall not disclose such information or document to any person except with the consent of the person furnishing such information or document;

Provided that nothing in this Clause shall prevent the Ombudsman from disclosing information or document furnished by a party in a complaint to the other party or parties to the extent considered by him to be reasonably required to comply with any legal requirement or the principles of natural justice and fair play in the proceedings.

#### **11. SETTLEMENT OF COMPLAINT BY AGREEMENT**

1) As soon as it may be practicable to do, the Ombudsman shall send a copy of the complaint to the branch or registered office of the NBFC named in the complaint, under advice to the designated Nodal Officer (NO) referred to in Sub-Clause (3) of Clause 15, and endeavour to promote a settlement of the complaint by agreement between the complainant and the NBFC through conciliation or mediation.

2) For the purpose of promoting a settlement of the complaint, the Ombudsman may follow such procedure as he may consider just and proper. Ombudsman would provide opportunity to the complainant to furnish his/ her submissions within a time limit on written submissions made by the NBFC. Wherever, the Ombudsman is of the opinion that the documentary evidence furnished and written submissions by both the parties are not conclusive enough to arrive at a decision, he/ she may convene a meeting of NBFC and the complainant together to promote an amicable resolution. Further, for purpose of such a settlement, the Ombudsman shall not be bound by any rules of evidence.

3) Wherever a conciliation meeting is held and mutually acceptable agreement arrived at, the proceedings of the meeting shall be documented and signed by both the parties specifically stating that both are agreeable to the resolution.

4) The Ombudsman may deem the complaint as resolved, in any of the following circumstances:-

a) Where the grievance raised by the complainant has been resolved by the NBFC with the intervention of the Ombudsman; or

b) The complainant agrees, whether in writing or otherwise, to the manner and extent of resolution of the grievance by the Ombudsman based on the conciliation and mediation efforts;

c) In the opinion of the Ombudsman, the NBFC has adhered to the extant norms and practices in vogue and the complainant has been informed to this effect through appropriate means and complainant's objections, if any, to the same are not received by Ombudsman within the time frame provided.

5) The proceedings before the Ombudsman shall be summary in nature.

#### **12. AWARD BY THE OMBUDSMAN**

1) If a complaint is not settled by agreement within a specified period as the Ombudsman may allow the parties, he may, after affording the parties a reasonable opportunity to present their case, either in writing or in a meeting, pass an Award either allowing or rejecting the complaint.

2) The Ombudsman shall take into account the evidence placed before him by the parties, the underlying principles on which the practices in vogue have arisen, directions, instructions and guidelines issued by the Reserve Bank from time to time and such other factors which in his opinion are relevant to the complaint.

3) The Award shall state briefly the reasons for passing the Award.

4) Where the Ombudsman decides to allow the complaint, the Award passed shall contain the direction/s, if any, to the NBFC for specific performance of its obligations and in addition to or otherwise, the amount, if any, to be paid by the NBFC to the complainant by way of compensation for any loss suffered by the complainant, arising directly out of the act or omission of the NBFC.

5) Notwithstanding anything contained in Sub-Clause (4), the Ombudsman shall not have the power to pass an Award directing payment of an amount which is more than the actual loss suffered by the complainant as a direct consequence of the act of omission or commission of the NBFC, or one million rupees whichever is lower.

6) The Ombudsman may, also award compensation not exceeding one hundred thousand rupees to the complainant, taking into account the loss of time, expenses incurred, harassment and mental anguish suffered by the complainant.

7) A copy of the Award shall be sent to the complainant and the NBFC free of cost.

8) An Award allowing the complaint shall lapse and be of no effect unless the complainant furnishes to the NBFC and the Ombudsman concerned within a period of 30 days from the date of receipt of copy of the Award, a letter of acceptance of the Award in full and final settlement of his claim. Provided that no such acceptance may be furnished by the complainant if he has filed an appeal under Sub Clause (1) of Clause 14.

9) The NBFC shall, unless it has preferred an appeal under Sub-Clause (1) of Clause 14, within one month from the date of receipt by it of the acceptance in writing of the Award by the complainant under Sub-Clause (8), comply with the Award and intimate compliance to the complainant and the Ombudsman.

### **13. REJECTION OF THE COMPLAINT**

1) The Ombudsman may reject a complaint at any stage if it appears to him that:

- a. the complaint made is not on the grounds of complaint referred to in Clause 8 of the Scheme; or
- b. the compensation sought is beyond the pecuniary limit specified under the Scheme;
- c. the complaint made is requiring consideration of elaborate documentary and oral evidence and the proceedings before the Ombudsman are not appropriate for adjudication of such complaint; or
- d. the complaint made is without any sufficient cause; or
- e. the complaint made is not pursued by the complainant with reasonable diligence required to be taken; or
- f. in the opinion of the Ombudsman there is no loss or damage or inconvenience caused to the complainant.

2) The Ombudsman, shall, if it appears at any stage of the proceedings that the complaint pertains to the same cause of action, for which any proceedings before any court, tribunal or arbitrator or any other forum is pending or a decree or Award or order has been passed by any such court, tribunal, arbitrator or forum, pass an order rejecting the complaint giving reasons thereof.

#### **14. APPEAL BEFORE THE APPELLATE AUTHORITY:**

1) Any person aggrieved by an Award under Clause 12 allowing the complaint or rejecting the complaint for the reasons referred to in Sub Clauses (c) to (f) of Clause 13, may within 30 days of the date of receipt of communication of Award or rejection of complaint, prefer an appeal before the Appellate Authority; Provided that in case of appeal by a NBFC, the period of thirty days for filing an appeal shall commence from the date on which the NBFC receives letter of acceptance of Award by the complainant under Sub Clause (8) of Clause 12; Provided further that the Appellate Authority may, if he is satisfied that the applicant had sufficient cause for not making the appeal within time, allow a further period, which shall not ordinarily exceed 30 days; Provided further that appeal may be filed by an NBFC only with the previous sanction of the Chairman or the Managing Director/ Chief Executive Officer or any other officer of equal rank.

2) The Appellate Authority shall, after giving the parties a reasonable opportunity of being heard; a. dismiss the appeal; or b. allow the appeal and set aside the Award; or c. remand the matter to the Ombudsman for fresh disposal in accordance with such directions as the Appellate Authority may consider necessary or proper; or d. modify the Award and pass such directions as may be necessary to give effect to the Award so modified; or e. pass any other order as it may deem fit.

3) The order of the Appellate Authority shall have the same effect as the Award passed by Ombudsman under Clause 12 or the order rejecting the complaint under Clause 13, as the case may be

#### **4) Implementation/ Enforcement of Award**

It shall be the obligation of the NBFC concerned to implement the settlement arrived with the complainant or the Award passed by the Ombudsman when it becomes final and send a report in this regard to the Reserve Bank within 15 days of the award becoming final. In the event of no implementation of settlement or the Award, the complainant may represent to the Reserve Bank and the Reserve Bank may initiate such action under the provisions of Reserve Bank of India Act, 1934 as it deems fit.

#### **15. NBFCs to display salient features of the Scheme for knowledge of public (in English, Hindi and Vernacular Language)**

1) The NBFCs covered by the Scheme shall ensure that the purpose of the Scheme and the contact details of the Ombudsman to whom the complaints are to be made by the aggrieved party are displayed prominently in all the offices and branches, in such manner that a person visiting the office or branch has adequate information of the Scheme.

2) The NBFCs covered by the Scheme shall ensure that a copy of the Scheme is available with the designated officer of the company for perusal in the office premises, if anyone desires to do so, and notice about the availability of the Scheme with such designated officer shall be displayed along with the notice under Sub-Clause (1) of this Clause and shall place a copy of the Scheme on their websites

3) (i) The NBFCs covered by the Scheme shall appoint Nodal Officers at their Head/ Registered/ Regional/ Zonal Offices and inform all the Offices of the Ombudsman about the same.

(ii) The Nodal Officers so appointed shall be responsible for representing the company and furnishing information to the Ombudsman in respect of complaints filed against the NBFC.



(iii) Wherever more than one zone/ region of a NBFC is falling within the jurisdiction of an Ombudsman, one of the Nodal Officers shall be designated as the 'Principal Nodal Officer' for such zones or regions.

## **CHAPTER V MISCELLANEOUS**

### **16. REMOVAL OF DIFFICULTIES**

If any difficulty arises in giving effect to the provisions of this Scheme, the Reserve Bank may make such provisions not inconsistent with the Reserve Bank of India Act, 1934 or the Scheme, as it appears to it to be necessary or expedient for removing the difficulty.