

In case of discrepancies between the French and the English texts, the French text shall prevail

Luxembourg, April 5th, 1995

To all the credit institutions and other professionals of the financial sector subject to the supervision of the IML.

IML CIRCULAR 95/118

Concerns: customer complaint handling

Dear Sir, Madam,

The place that private customer transactions take up on the Luxembourg financial market is such that it becomes particularly important that the professionals of the financial sector handle the complaints received from customers in a proper manner.

The obligation for each professional to provide an appropriate response to these complaints is indeed not only part of basic business ethics; it is also an essential component of the public image of the financial sector and of each individual institution's efforts to protect its business.

For the management as well as for the IML in its capacity as authority responsible for the prudential supervision of the financial sector, customer complaints can be revealing indicators of malfunctioning.

Until now, the number of customer complaints that have reached the IML is relatively low compared to the number of supervised entities and the number of individual customers; moreover, these complaints concerned only about 50 banks, with a concentration on a very small number of banks.

Firstly, this Circular aims to address a certain number of recommendations to banks and PFS (professionals of the financial sector) that should allow them to handle the complaints of their customers more easily and avoid in most cases that the customers appeal to the IML.

Secondly, the circular aims at informing banks and PFS about the way the IML intervenes when it receives a complaint from a customer.

Complaint handling by financial professionals

A customer who addresses a complaint to a financial professional is all the more inclined to accept the response or proposal for settlement from the professional and to place renewed confidence in the professional, if the customer is aware that his complaint has been taken seriously and handled with the required diligence, transparency and objectivity.

To this end, banks and PFS should have in place an appropriate internal structure and precise instructions concerning the receipt and handling of customer complaints.

Where the department against which the complaint has been lodged is unable to provide the customer with a direct response, to the satisfaction of the latter, a hierarchical superior or a department in charge of customer complaints shall be designated, to which the department involved shall, on its own initiative, pass on the file. At the same time, it shall inform the customer of the name and contact number of the person thenceforth in charge of his complaint, so as to ensure that the customer is not confronted with an impenetrable administrative organisation.

A member of the management should be designated as being responsible for the handling of customer complaints. The responses provided to customers shall be made under his authority. Each bank and PFS is requested to notify the IML of the name of the member of the management responsible.

Complaints shall be handled objectively with the will to find the truth. Professionals should never seek to camouflage or cover up a mistake committed by themselves or by one of their employees. In case of a negative response, the reason thereof should always be explained.

The efficiency of the complaint handling also depends on its diligence. Simple cases should normally receive a response within a few days. In more complex cases, an acknowledgement of receipt should be sent as quickly as possible in order to maintain good relations with the customer.

Although it should be presumed, unless otherwise proven, that a complaint has been made in good faith, the opposite case may arise. The financial professional is then responsible for ending the relationship with the customer, no longer based on the necessary degree of confidence, in a resolute and orderly manner.

Complaint handling by the IML

Even though the IML has always had to handle complaints lodged by customers of establishments under its supervision, Article 58 of the law of 5 April 1993 on the financial sector confers on the IML a specific competence in this matter. Indeed, Article 58 provides that: “The IML is the relevant authority for receiving complaints from customers of professionals under its supervision and for intervening with these professionals with the aim of settling these complaints amicably.”

The intervention of the IML pursuant to Article 58 is always carried out in its capacity as public authority. It aims to find an amicable settlement to the complaints received on the basis of the authority conferred on it by law. It does not act as a judge or an arbitrator passing a mandatory judgment, nor as an “ombudsman”, who, by definition, is a person charged with defending the citizens’ rights against public authorities.

Apart from its task consisting in intervening with the aim of finding an amicable settlement pursuant to Article 58, the IML, when it is informed by or through a customer complaint that a professional subject to its supervision has not abided by the legal, regulatory and statutory requirements, will take the appropriate steps in accordance with its statutory responsibilities.

Unless the customer has already provided this information, the IML, upon receipt of a customer complaint, asks the customer whether the complaint has already been lodged with the professional and which response has been obtained. If the customer has not exhausted all the means of recourse against the professional, the IML invites the customer to do so as a first step, and will, if necessary, provide the client with the name of the member of the management responsible for handling complaints for the bank or the PFS concerned. The IML will invite the customer to provide information as to the response received from the professional for the purposes of a possible later intervention of the IML.

Where the customer has received from the professional a final negative response or where no response has been received, the IML will intervene with the professional by providing him with a copy of the customer complaint and requesting him to take up a position. The IML will inform the customer of this intervention.

The professional is required to reply and co-operate as exhaustively as possible upon any request from the IML (Article 40).

If the parties agree, and if considered useful by the IML, the IML may organise a meeting between the parties.

If the IML is in possession of what it considers to be a complete file, it will draw up a reasoned opinion. If the IML comes to the conclusion that the customer's complaint is unfounded, it will inform the customer and the professional thereof. If it concludes that the complaint is fully or partly justified, it will transmit its reasoned opinion to the professional and inform the customer thereof. At the same time, it will request the parties to contact each other in order to settle the dispute in the light of the aforementioned opinion and to keep it informed about further progress on the matter. If the parties subsequently inform the IML that they cannot or will not reach an amicable settlement, the IML informs the customer of the legal action he may take.

If one of the parties to a complaint has referred the matter to a court, the IML will cease its intervention pursuant to Article 58.

Yours faithfully,

INSTITUT MONETAIRE LUXEMBOURGEOIS

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