Complaint processing: New framework to come for financial institutions and financial intermediaries

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Last September, the AMF published its draft *Regulation respecting complaint processing and dispute resolution in the financial sector* (the "Draft Regulation"). The consultation period for it ended on December 8, 2021. The AMF is currently reviewing the many comments it received.

The Draft Regulation[1] aims to harmonize and improve complaint processing in the financial sector by providing for new mechanisms to ensure prompt and efficient complaint processing, among other things.

In the insurance industry, only firms and insurers are currently required to adopt and apply a complaint processing and dispute resolution policy. The Draft Regulation will make these obligations apply to independent partnerships and representatives. It also introduces new requirements and restrictions as well as monetary penalties for not including mandatory content in communications to a complainant, for example.

Here are some of the Draft Regulation's new provisions:

1. Broadening of the definition of "complaint" to:
   Any dissatisfaction or reproach;
   That cannot be remedied immediately and for which a final response is expected;
   In respect of a service or product offered by a financial institution or financial intermediary;
   That is communicated by a person who is a member of the clientele of the institution or intermediary.

   The Draft Regulation does not contain a requirement that a complaint must be made in writing.[2] It does make it mandatory for financial institutions and financial intermediaries to implement a

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complaint drafting assistance service.[3] It also requires that a note be left in each record to indicate whether a complainant requested this service.

Prohibition on the use of the term “ombudsman” in any representation or communication intended for the public to refer to the complaint process or to the persons assigned to its implementation.[4]

Specific requirements as concerns the mandatory content of a complaint processing policy, an acknowledgment of receipt and final response to a complainant, a complaint record and a complaints register.

2. For each complaint received, the complaint record must include the following information:
   - The complaint
   - Whether the complainant requested the complaint drafting assistance service
   - The complainant’s initial communication
   - A copy of the acknowledgment of receipt sent to the complainant
   - Any document or information used in analyzing the complaint, including any communication with the complainant
   - A copy of the final response provided to the complainant
3. New time limits:
   - Within 10 days of receiving a complaint, the insurer must notify the complainant in writing that they must also file the complaint with any other financial institution, financial intermediary or credit assessment agent involved, and the insurer must provide the complainant with their contact information.[5]
   - The complainant must be given 20 days to assess and respond to an offer to resolve the complaint, with sufficient time for the complainant to seek advice for the purpose of making an informed decision.[6]
   - If the complainant accepts the offer, the insurer has 30 days to respond.[7]
   - Financial institutions and financial intermediaries have a strict 60-day time limit to provide the complainant with a final response.[8]
   - There is a new 15-day time limit to send the complaint record to the AMF.[9]
4. There is a streamlined process for complaints that are resolved within 10 days of being recorded in the complaints register:
   - The final response serves as an acknowledgment of receipt and must contain the following information:
     - The complaint record identification code
     - The date on which the complaint was received by the insurer or insurance representative
     - The name and contact information of the employee responsible for processing the complaint referred to in section 7 of the Draft Regulation or in the Sound Commercial Practices Guideline
     - A summary of the complaint received
     - The conclusion of the analysis, including reasons, and the outcome of the complaint
     - A reference to the complainant’s right to have the complaint record examined by the AMF
     - The signature of the complaints officer
     - A statement to the effect that the complainant has accepted the offer to resolve the complaint

New monetary administrative penalties

The Draft Regulation also provides for monetary administrative penalties ranging from $1,000 to $5,000 for failure to comply with certain requirements and prohibitions of the Draft Regulation. For example, the following will be subject to a monetary administrative penalty of $5,000:

Attaching a condition to an offer to prevent the complainant from fully exercising their rights.
Using the term “ombudsman” or any other similar title in any representation or communication intended for the public to refer to the complaint process or the persons assigned to its implementation to suggest that such persons are not acting on behalf of the financial institution or financial intermediary.

In the latter case, a monetary administrative penalty may be imposed even where no complaint is involved, because the prohibition covers “any representation or communication intended for the public.” Insurers and financial intermediaries should review their communications as soon as possible, and especially the summary of their complaint processing policy appearing on their website.

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1. It concerns all entities regulated by the AMF, but the bulletin more specifically addresses financial institutions and financial intermediaries in the insurance industry.
2. As currently indicated on the AMF's website.
3. Draft Regulation, s. 11.
4. *Id.,* s. 26, para. 2.
5. *Id*., s. 15.
6. *Id*., s. 13.
7. *Id.*
8. *Id.,* s. 12, para. 4.
9. *Id*., s. 25.

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