

LIFE INSURANCE | OUT-OF-COURT RESOLUTION OF CROSS-BORDER DISPUTES IN THE FIELD OF LIFE INSURANCE

What are the complaint options available to a policyholder residing in Portugal in the event of a dispute relating to a life insurance contract concluded with a Luxembourg-based insurer?



What are the complaint options available to the policyholder in the event of a dispute with their insurer or insurance intermediary?

In general, the policyholder will first attempt to resolve the dispute directly with the professional involved. If no solution is found and the dispute persists, the policyholder may use certain mechanisms to try to resolve the dispute amicably, without having to resort to traditional judicial proceedings.

These mechanisms may vary depending on the nature of the professional involved in the dispute (insurer or insurance intermediary) and on the geographical scope of the dispute, which may be national (if the country where the professional is established is also the country of residence of the policyholder) or cross-border (if the country where the professional is established differs from the country of residence of the policyholder).

In addition, access to the available mechanisms may be subject to compliance with certain conditions (admissibility, submission requirements, deadlines, etc.).

The purpose of this article is to provide a summarised guide to the complaint options available to a policyholder in the following specific context: a life insurance policy concluded by a Portuguese resident with a Luxembourg insurer through a Luxembourg insurance intermediary or a Portuguese insurance intermediary.

In this article, we shall analyse the complaints mechanisms available in the following situations:

- **When the dispute is between the policyholder and the insurer (Part 1)**
- **When the dispute is between the policyholder and the insurance intermediary (Part 2). In this case, a distinction will be made depending on whether the intermediary is established in Luxembourg (Part 2.1) or in Portugal (Part 2.2).**

1. Complaint options against a Luxembourg-based insurer

1.1. OPTIONS IN LUXEMBOURG

In general, when the policyholder has a dispute with their insurer, they will first attempt to resolve it directly with the insurer. If no solution is found and the dispute persists, the policyholder may use certain mechanisms to try to resolve it amicably, without having to resort to traditional judicial proceedings.

1.1.1. COMPLAINTS-HANDLING MODEL IMPLEMENTED BY THE LUXEMBOURG-BASED INSURER

As a professional subject to the prudential supervision of the *Commissariat aux Assurances* (“CAA”), an insurer established in Luxembourg is required to provide, before the conclusion of the insurance contract, information on out-of-court dispute resolution, specifying the role and powers of the CAA. This information must be clear, understandable, and easily accessible on the insurer’s website and in the general terms and conditions of the insurance contract.

Every insurer must also have a complaints-handling policy.

CAA Regulation No. 19/03, of 26 February 2019, relating to out-of-court dispute resolution (hereinafter referred to as the “CAA Regulation”), specifies certain obligations imposed on professionals regarding the handling of complaints.

In addition, insurers established in Luxembourg and conducting insurance business in Portugal under the freedom to provide services (“FOS”) or the freedom of establishment (“FOE”) must comply with the “general good provisions” applicable to foreign insurers, as adopted by Portugal.

These conditions include, among other things, conduct rules for the handling of complaints.

In other words, the organisational model for complaints handling to be adopted by the insurer must not only comply with Luxembourg regulation, but must also take into account certain requirements arising from Portuguese regulation (in the context of the insurer’s relationship with its clients residing in Portugal).

First of all, what is a complaint?

Under Portuguese regulation, the term “complaint” is defined as an expression of disagreement regarding a position taken by an insurance company, or dissatisfaction regarding the services provided by the latter, as well as any allegation of possible non-compliance, submitted by clients. In the context of insurance activity, “clients” shall refer to policyholders, insured persons, beneficiaries, and injured third parties.

What Portuguese requirements apply to a Luxembourg-based insurer?

In general terms, the insurer must set up an autonomous function responsible for managing complaints, acting as a centralised point of receipt and response, duly identified internally and externally, and ensuring full accessibility to complainants.

The insurer must also have a complaints-handling policy, which must be available on its website. The complaints-handling policy must comply with a minimum content defined by the Portuguese regulator.

Additionally, the insurer must designate a “Client Ombudsman” (Provedor do Cliente) in Portugal, to whom clients may submit a complaint that has not been settled by the regular complaints handling procedures implemented by the insurer (see 1.2.1 “Client Ombudsman” (*Provedor do Cliente*)).

The handling of complaints by the insurer does not affect the right to bring proceedings before the courts or to use out-of-court dispute-resolution mechanisms.

1.1.2. LUXEMBOURG INSURANCE OMBUDSMAN

The Luxembourg Insurance Ombudsman is a body implemented by both the *Association des Compagnies d'Assurances et de Réassurance* (ACA) and the *Union Luxembourgeoise des Consommateurs* (ULC) to find out-of-court solutions to insurance-related disputes between, on the one hand, Luxembourg-based insurance companies and, on the other, consumers residing in Luxembourg or in another Member State of the European Union.

Mediation is an alternative to judicial action, which is often long and costly.

The procedure before the Insurance Ombudsman is free of charge, confidential, and impartial.

The ACA's website contains a section dedicated to mediation (role of mediation, who can resort to mediation, situations in which the mediator cannot intervene, mediation procedure, stages of the procedure, filing of a complaint, etc.). Some of these rules are presented below.

Who can file a complaint with the Luxembourg Insurance Ombudsman?

Recourse to the Insurance Ombudsman is available to consumers residing in Luxembourg or in another EU member state who have concluded insurance contracts (life or non-life) with Luxembourg-based insurance companies.

Conditions for the intervention of the Luxembourg Insurance Ombudsman

The Insurance Ombudsman may be contacted after the complainant has attempted to contact the insurer to discuss the dispute and try, in the first instance, to resolve the dispute directly with the insurer.

How to file a complaint with the Luxembourg Insurance Ombudsman?

If the complainant meets the required criteria to resort to mediation, they may file a complaint to the Insurance Ombudsman:

- Electronically, using the online form;
- By post, using the form available for download on the ACA's website.

Content of the application

To facilitate the processing of the complainant's request, the completed mediation request form and the information and documents listed on the ACA's website must be sent to the Insurance Ombudsman.

Procedure

The procedure of mediation is described on the ACA's website.

Conclusions of the Luxembourg Insurance Ombudsman

The conclusions or solutions proposed by the Insurance Ombudsman are not binding on the parties involved.

The parties may choose to accept or reject the proposed solution.

Participation in the procedure does not exclude the possibility of recourse at a later stage to judicial action.

1.1.3. CAA

The CAA is the competent supervisory authority for the insurance sector in the Grand Duchy of Luxembourg, which includes insurance companies, reinsurance companies, certain pension funds, insurance sector professionals (ISPs), insurance and reinsurance intermediaries (agents and brokers) and ancillary insurance intermediaries.

The CAA offers an out-of-court dispute resolution service aimed at finding an amicable, cost-free solution to a complaint brought against a professional subject to the CAA's supervision, without going to court.

The CAA's intervention is subject to the principles of impartiality, independence, transparency, competence, efficiency, and fairness.

The provisions relating to procedures before the CAA are set out in the CAA Regulation and detailed on the CAA's website. Some of the provisions are set out below.

Who can file a complaint with the CAA?

In the context of out-of-court dispute resolution, the CAA is competent to receive complaints submitted by natural persons acting for purposes unrelated to their commercial or professional activity and concerning insurance contracts concluded or negotiated by natural or legal persons subject to its supervision.

Conditions for the intervention of the CAA

The out-of-court dispute resolution procedure of the CAA is subject to the condition that the complaint has been previously submitted in writing to the professional concerned and that the complainant has not received a response from the professional or has not received a satisfactory response within 90 days from the date the complaint was sent.

How to file a complaint with the CAA?

If the request is admissible, it may be submitted to the CAA in Luxembourgish, German, French, or English, in writing:

- By post: 11, rue Robert Stumper, L-2557 Luxembourg;
- By fax: (+352) 22 69 10;
- By email: reclamation@caa.lu;
- Through the CAA's website (online): www.caa.lu.

Content of the application

To facilitate the submission of a request, the CAA provides a specific form, which must be filled in and sent to the CAA along with all documents specified in the form.

Procedure

The procedure is described in the CAA Regulation.

Conclusions of the CAA

The conclusions of the CAA are not binding on the parties, who are free to accept or reject them after a reasonable reflection period.

If the parties do not reach an agreement following the CAA's conclusions, they may bring the case before the courts.

1.2. OPTIONS IN PORTUGAL

In addition to the mechanisms available in Luxembourg mentioned above, the policyholder residing in Portugal may also use the following mechanisms available in Portugal.

1.2.1 CLIENT OMBUDSMAN (« *PROVEDOR DO CLIENTE* »)

Insurance companies (national or foreign) are required to designate a Client Ombudsman (*Provedor do cliente*) in Portugal, to whom clients may file a complaint that has not been settled by the regular complaints-handling model implemented by the insurance company.

The designation of this Client Ombudsman must comply with certain criteria (being a natural person, mastering the Portuguese language, among others).

This designation entails obligations for both the insurer and for the Client Ombudsman.

In this context, the Luxembourg insurer must:

- Notify the designation of the Client Ombudsman to the Portuguese Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões – ASF*), the competent supervisory authority for the insurance sector in Portugal;
- Implement operating rules applicable to the handling of complaints by the Client Ombudsman (Ombudsman regulation);
- When applicable, publish the recommendations issued by the Client Ombudsman on its website and provide the ASF with the hyperlink to the webpage where the recommendations are published;
- Upon request from the ASF, submit a report on complaints management to the ASF.

Filing of a complaint to the Client Ombudsman does not entail any costs or charges for the complainant. The expenses relating to the designation and functioning of the Ombudsman are borne by the insurance company that designated the Ombudsman.

Who can submit a complaint to the Client Ombudsman?

Policyholders, insured persons, beneficiaries, and injured third parties within the scope of an insurance contract concluded with the insurer that has designated the Client Ombudsman.

Conditions for the intervention of the Client Ombudsman

A complaint may be filed with the Client Ombudsman if the complainant has already attempted to resolve the dispute directly with the insurer but has not received a response from the insurer within a maximum period of 20 working days from the date of receipt of the complaint, or if, having received a response, the complainant disagrees with its content. This deadline may be extended to 30 working days in cases of particular complexity.

How to submit a complaint to the Client Ombudsman?

In the event eligibility criteria are met, the complaint may be submitted by the complainant to the Client Ombudsman in accordance with the procedure described in the Ombudsman regulation.

Content of the request

The minimum requirements and the form of submission of complaints by clients are set out in the Ombudsman regulation.

Procedure

The procedure applicable is also the one described in the Ombudsman regulation.

Conclusions of the Client Ombudsman

The Client Ombudsman has advisory powers and may issue recommendations to the insurance company as a result of the handling of complaints.

Where applicable, the recommendations of the Client Ombudsman are published on the insurer’s website.

The handling of complaints by the Ombudsman does not prejudice the complainant’s right to resort to the courts or to other out-of-court dispute resolution mechanisms.

1.2.2. ASF

The ASF is the supervisory authority competent for the insurance sector in Portugal.

Within the scope of its competencies, the ASF must analyse and respond to the complaints it receives.

The complaint procedure with the ASF is free of charge and does not affect the complainant’s right to resort to other bodies.

Who can submit a complaint to the ASF?

In the case of insurance contracts, complaints may be submitted to the ASF by: policyholders, insured persons, beneficiaries, and any persons injured by an entity subject to ASF’s supervision (namely, insurance and reinsurance companies, insurance and reinsurance intermediaries and pension fund management entities).

Conditions for the intervention of the ASF

Complainants may submit a complaint to the ASF regarding acts or omissions of a supervised entity, provided that such complaint has previously been submitted to the entity concerned and has not been settled.

The ASF will only assess complaints that are not pending before other bodies, and have not received a response from the entity concerned within 20 working days from the date of receipt, or for which, having received a response, the complainant disagrees with its content.

How to submit a complaint to the ASF?

Provided that the complaint meets the ASF’s admission criteria, it should preferably be submitted by completing the online form available on the Consumer Portal (*Portal do Consumidor*).

Procedure

The applicable procedure is set out in Regulatory Standard 7/2022-R.

Conclusions of the ASF

The ASF does not offer mediation or arbitration services.

The ASF will analyse whether the situation that gave rise to the complaint complied with the rules governing the activity of the entities under its supervision and will provide the complainant with the clarifications it deems appropriate.

If the treatment of the complaint reveals indications of a breach of legal or regulatory provisions under its supervision, the ASF may use such information to initiate a supervisory procedure or an administrative sanction procedure.

1.2.3. COMPLAINTS BOOK

Insurance companies (national and foreign) must have a physical and/or electronic complaints book, as applicable, complying with legally established requirements.

Electronic complaints may be filed via the digital complaints book platform, available at:
<https://www.livroreclamacoes.pt/Inicio/>.

2. Complaint options against the Luxembourg/Portuguese insurance intermediary

2.1. LUXEMBOURG-BASED INSURANCE INTERMEDIARY

2.1.1. Options in Luxembourg

Complaints-handling model implemented by the Luxembourg-based insurance intermediary

As with insurers established in Luxembourg, insurance intermediaries established in Luxembourg are required to provide information on out-of-court dispute resolution before the conclusion of the brokerage contract, specifying the role and powers of the CAA.

Furthermore, in their capacity as insurance distributors, intermediaries must provide timely information, before the conclusion of any insurance contract, regarding *“the procedures for clients and other interested parties to lodge complaints against insurance intermediaries and the out-of-court complaint and redress procedures”*.

As a Luxembourg insurance intermediary carrying out distribution activities in Portugal under the freedom to provide services (FOS) or freedom of establishment (FOE), they must comply with the “general good provisions” applicable to foreign insurance intermediaries, as adopted by Portugal. Current Portuguese regulation, nevertheless, does not contain specific provisions on complaints handling applicable to insurance intermediaries registered in another EU Member State and operating in Portuguese territory.

CAA

In the event of a dispute between a policyholder residing in Portugal and an insurance intermediary established in Luxembourg, the policyholder may resort to the CAA under the conditions indicated above (see 1.1.3).

Note:

The ACA has no competence to handle complaints between a client and a Luxembourg-based insurance intermediary.

2.1.2. OPTIONS IN PORTUGAL

In addition to the mechanisms available in Luxembourg mentioned above, the policyholder residing in Portugal may also use the following mechanisms available in Portugal.

ASF

In the event of a dispute between a policyholder residing in Portugal and an insurance intermediary established in Luxembourg, the policyholder may file a complaint to the ASF under the conditions indicated above (see 1.2.2).

2.2. PORTUGUESE-BASED INSURANCE INTERMEDIARY

2.2.1. OPTIONS IN LUXEMBOURG

There are no available complaint mechanisms.

2.2.2. OPTIONS IN PORTUGAL

Complaints-handling model implemented by the Portuguese-based insurance intermediary

Under the Portuguese regulation in force, an insurance intermediary established in Portugal must adopt an organisational model for handling complaints from clients (policyholders, insured persons, beneficiaries, and injured third parties) regarding their acts or omissions.

A “complaint” is understood as an expression of disagreement regarding a position taken by an insurance intermediary, dissatisfaction with the distribution services provided by them, as well as any allegation of possible non-compliance submitted by clients.

The organisational model varies according to the “size” of the insurance intermediary in terms of remuneration, pursuant to the regulation approved by the ASF.

It should also be noted that insurance intermediaries, depending on their “size”, may be subject to reporting obligations to the ASF in the context of complaints.

Additionally, all insurance intermediaries must establish a complaints-handling policy, whose content is regulated by the ASF.

The handling of complaints by the insurance intermediary does not prejudice the complainant’s right to resort to the courts or to out-of-court dispute resolution mechanisms.

The insurance intermediary established in Portugal must also provide policyholders, before the conclusion of any insurance contract, with information about the complaints-handling procedure through which the policyholder or other interested parties may submit complaints.

ASF

In the event of a dispute between a policyholder residing in Portugal and an insurance intermediary established in Portugal, the policyholder may resort to the ASF under the conditions described above (see 1.2.2).

Complaints book

As with insurance companies, insurance intermediaries must have a physical and/or electronic complaints book, complying with legally established requirements.

In the event of a dispute between a policyholder residing in Portugal and an insurance intermediary established in Portugal, the policyholder may use the complaints book.

Summary of complaint options

Life insurance contract concluded by a Portuguese resident with a Luxembourg insurer through a Luxembourg/Portuguese insurance intermediary		
Mechanisms against the Luxembourg-based insurer (dispute between the policyholder and the insurer)	Mechanisms against the insurance intermediary (dispute between the policyholder and the insurance intermediary)	
	Luxembourg-based insurance intermediary	Portuguese-based insurance intermediary
In Luxembourg		
Complaints-handling model implemented by the Luxembourg-based insurer Luxembourg Insurance Ombudsman <i>Commissariat aux Assurances (CAA)</i>	Complaints-handling model implemented by the Luxembourg-based insurance intermediary <i>Commissariat aux Assurances (CAA)</i>	
In Portugal		
Portuguese Client Ombudsman (<i>Provedor do Cliente</i>) <i>Autoridade de Supervisão de Seguros e Fundos de pensões (ASF)</i> Insurer's complaints book	<i>Autoridade de Supervisão de Seguros e Fundos de pensões (ASF)</i>	Complaints-handling model implemented by the Portuguese-based insurance intermediary <i>Autoridade de Supervisão de Seguros e Fundos de Pensões (ASF)</i> Insurance intermediary's complaints book

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