

BANKING RULE BR/22
COMPLAINTS-HANDLING PROCEDURES FOR
CREDIT INSTITUTIONS AUTHORISED UNDER THE
BANKING ACT 1994

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	05 /03/2020	New Banking Rule on Complaints-Handling for Credit Institutions

INTRODUCTION

1. In terms of Article 4 of the Banking Act 1994 (the 'Act') the Malta Financial Services Authority (the 'competent authority') as appointed under Article 3(1) of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta) is empowered to make Banking Rules as may be required for carrying out any of the provisions of the Act and for the purpose of implementing any guidelines, recommendations, decisions, opinions or any other instrument issued by the European Banking Authority, as may be required. The competent authority may also amend or revoke such Banking Rules. The Banking Rules and any amendments or revocation thereof shall be officially communicated to credit institutions and the competent authority shall make copies thereof available to the public.

SCOPE

2. The scope of this Rule is to adopt the provisions prescribed in the [Joint Guidelines by the European Security and Markets Authority and the European Banking Authority for Complaints-Handling for the securities and the banking sector \(04/10/2018 – JC 2018 35\)](#) and to provide for ancillary matters thereto.
3. This Rule is applicable to:
 - a) credit institutions licensed under the Act;
 - b) credit institutions authorised in another Member State exercising their right to provide services or to establish a branch in Malta under the European Passport Rights for Credit Institutions Regulations;
 - c) branches established in Malta of credit institutions authorised in a third country, insofar as such branches take deposits from the retail sector;

Provided that this Rule shall not apply where a credit institution or branch referred to in this paragraph received a complaint about:

- (i) activities other than those supervised by the competent authority pursuant to Article 4(2) of Regulation (EU) No 1093/2010; or
- (ii) the activities of another entity for which the credit institution or branch referred to in this paragraph has no legal or regulatory responsibility (and where those activities form the substance of the complaint);

Provided further that in such cases the credit institution or branch referred to in this paragraph shall respond, where possible, explaining its position on the complaint and, or, where appropriate, giving details of the entity responsible for handling the complaint.

DEFINITIONS

4. For the purposes of this Rule, the following definitions shall apply:
 - (i) "credit institutions" shall refer to credit institutions and branches falling within the scope of this Rule in terms of paragraph 3;
 - (ii) "complaint" shall mean a statement of dissatisfaction addressed to a credit institution by a natural or legal person relating to the business of banking and, or, of any additional activities listed in the Schedule to the Act;
 - (iii) "complainant" shall mean a natural or legal person who is presumed to be eligible to have a complaint considered by a credit institution and who has already lodged a complaint.

COMPLAINTS MANAGEMENT POLICY

5. Credit institutions shall put in place a 'complaints management policy'. This policy should be defined and endorsed by the senior management of the credit institution, who should also be responsible for its implementation and for monitoring compliance with it.
6. The 'complaints management policy' shall be set out clearly in writing and shall be made available to all relevant staff of the credit institution through an adequate internal channel.

COMPLAINTS MANAGEMENT FUNCTION

7. Credit institutions shall have a 'complaints management function' which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.

REGISTRATION

8. Credit institutions shall maintain a Register in which every complaint and the action taken in its regard is recorded. This Register shall contain, *inter alia*, the following information:
 - a) the subject of the complaint;
 - b) the date on which the complaint was received;
 - c) the date when the complaint was answered by the institution;
 - d) the date when the complaint was resolved;
 - e) the result/outcome of the complaints handling procedure and;
 - f) a detailed description of the banking product in question, as applicable, to which the complaint refers.

The competent authority may at any time require the Register to be produced for its review. The documentation relating to the complaint shall be kept and archived in a secure manner for a reasonable period based on the nature of the complaint.

REPORTING

9. Credit institutions shall provide information on complaints and complaints-handling to the competent authority, where applicable and/or as and when required. This data shall cover the number of complaints received, differentiated as appropriate or as indicated in any criteria that the competent authority may from time to time establish.

INTERNAL FOLLOW-UP OF COMPLAINTS-HANDLING

10. Credit institutions shall analyse, on an on-going basis, complaints-handling data, to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks by, for instance, carrying out the following:
 - a) analysing the causes of individual complaints to identify root causes common to types of complaint;
 - b) considering whether such root causes may also affect other processes or products, including those not directly complained of; and
 - c) correcting, where reasonable to do so, such root causes.

PROVISION OF INFORMATION

11. Credit institutions shall:
 - a) On request, provide written information to the competent authority regarding their complaints-handling process;
 - b) Publish details of their complaints-handling process in an easily accessible manner (for example, in brochures, pamphlets, contractual documents or via the credit institution's website);
 - c) Provide clear, accurate and up-to-date information about the complaints-handling process including:
 - (i) Details of how to make a complaint (for example, the type of information to be provided by the complainant, the identity and contact details of the person or department to whom the complaint should be directed); and
 - (ii) The process that will be followed when handling a complaint (for example, when the complaint will be acknowledged, an

indication of handling timelines and the availability of an authority, an ombudsman or Alternative Dispute Resolutions forums including complaints with the Arbiter for Financial Services under the Arbiter for Financial Services Act (Chapter 555 of the Laws of Malta).

- d) Provide clear information on the language in which the complaint may be submitted to the credit institution which languages shall at least include the English and Maltese languages.

PROCEDURE FOR RESPONDING TO COMPLAINTS

12. Credit institutions shall, within 2 working days, acknowledge receipt in writing of any complaint.
13. Where a complaint is made orally, credit institutions shall make a summary of the complaint and request the complainant to confirm in writing the said summary.
14. Credit institutions shall seek to gather and investigate all relevant evidence and information regarding the complaint before taking a final decision.
15. When a credit institution acknowledges receipt of a complaint in accordance with paragraphs 12 and 13, the credit institution concerned shall also provide the complainant in writing with confirmation of the following:
 - a) That the credit institution shall investigate the complaint;
 - b) That the credit institution shall, on completion of the investigation and without unnecessary delay, inform the complainant, in writing, about the outcome of the investigation and describing its proposed course of action; and
 - c) That if the investigation is not completed within 15 working days from the date of receipt of the complaint, the credit institution shall inform the complainant of such fact before the end of this period.
16. Where the credit institution envisages that the investigation of a complaint will not be completed within 15 working days from receipt of the complaint, the credit institution shall immediately:
 - a) Inform the complainant that the investigation will not be completed within 15 working days from the receipt of the complaint;
 - b) Inform the complainant about the reasons of the causes of the delay;
 - c) Provide an indication as to when the investigation is likely to be completed; and
 - d) Inform the complainant that, if the complainant is not satisfied with the progress of the investigation, the matter may be referred by the complainant to other Alternative Dispute Resolution forums including

complaints with the Arbiter for Financial Services under the Arbiter for Financial Services Act (Chapter 555 of the Laws of Malta).

17. When providing a final decision that does not fully satisfy the complainant's demand, credit institutions are expected, to the extent possible, to include a thorough explanation of the credit institution's position on the complaint and that complainant may refer to other Alternative Dispute Resolution forums including complaints with the Arbiter for Financial Services under the Arbiter for Financial Services Act (Chapter 555 of the Laws of Malta).
18. Any form of communication in terms of the paragraphs above shall be communicated to the complainant clearly and in writing.

DATA PROTECTION

19. Credit institutions shall ensure that, when handling complaints in terms of this Rule, they shall abide with any data protection laws including the Data Protection Act (Chapter 586 of the Laws of Malta) and any regulations issued thereunder, and with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) as amended from time to time.

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