



Insurance Ombudsman (« Mediator »)

The Insurance Ombudsman has been implemented by the Association of insurance and reinsurance companies (ACA) and the Luxembourg Union of Consumers (ULC) to find extrajudicial solutions in insurance litigation.

The operating rules of the Ombudsman are:

- **COMPOSITION**

The Ombudsman works in joint form “ULC / ACA”;

Each party shall designate a delegate, as well as an alternate;

The delegate of the ACA is Mrs Valérie TOLLET, Member of the Executive Committee.

The delegate of the ULC is Me André MARMANN.

The two aforementioned delegates are appointed for an unlimited period.

They are held to a strict duty of confidentiality.

ACA and ULC shall take the necessary measures to ensure that the treatment of personal data fully respects the legislation in this area.

ACA and ULC delegates meet requirements to "skills, independence and impartiality" as established by the legislation on extra-judicial settlement of consumer litigations. They cannot be relieved of their duties without just cause and they cannot receive instructions from the parties.

The delegates are allowed to be assisted if necessary by experts (in technical matters), to hear the concerned parties and even third parties and generally to take all information they need.

- **MISSION AND COMPETENCES**

The Ombudsman has as mission to process applications of extra-judicial settlement of insurance litigations between Luxembourg-based insurance companies and consumers residing in Luxembourg or in another State of the European Union.

After reviewing the complaint, the Ombudsman addresses a motivated letter to the concerned parties. When the Ombudsman notes that the positions of the parties are irreconcilable, he informs the parties in writing. He can also bring together the parties in litigation to facilitate the search for a solution, respectively an amicable agreement or to propose a solution himself. The conclusions or proposals of solution of the Ombudsman are devoid of any binding on the parties concerned.

The decisions of the Ombudsman are not made public. The names of the parties involved are not disclosed to third persons. They are based on the judicial and legal provisions applicable and they can also take into account elements of equity.

A brief activity report citing not names, but permitting to assess the results achieved and to identify the nature of treated cases, will be incorporated in the annual report of ACA.

The Ombudsman may refuse to process a given litigation referred to him on the grounds that:

- the applicant has not attempted to contact the other party to discuss his claim and to seek, firstly, to resolve the issue directly with the other party endears a period of two months;
- the litigation is abusive, fancified or vexatious;
- the litigation was previously or is currently being considered by another entity of extra-judicial settlement of litigations, an arbitral tribunal or a court, domestic or foreign;
- the mediator is incompetent to deal with the dispute (e.g. non-assurantial litigation).

• PROCEDURE FOR EXTRA-JUDICIAL SETTLEMENT

The parties involved have the right to be represented or assisted by a third party (e.g. lawyer) at all stages of the procedure.

They have the opportunity to withdraw from the procedure at any time, e.g. when they are dissatisfied with the performance or operations of the procedure.

When the Ombudsman proposes a solution to resolve the litigation, the parties concerned must be informed by the Ombudsman:

- that they have the possibility to accept or refuse the proposed solution;
- that participation in the procedure does not exclude the later possibility of legal recourse;
- that the proposed solution could be different from the decision of a court applying the legal provisions concerned;
- the possible legal consequences relating to the acceptance of the proposed solution.

The parties concerned have a reasonable consideration deadline of 1 month before indicating that they accept the solution proposed by the Ombudsman or an amicable agreement (time is recurring from the date of receipt of the related letter on the part of the Ombudsman).

The proceedings before the Ombudsman are free.

Referral to the Ombudsman must be done in writing (letter or e-mail) in one of the official languages of Luxembourg (the English language being however also accepted).

The request for mediation with the supporting documents must be addressed by email: mediateur@aca.lu, or by post: ACA, 12 Street Erasme, L - 1468 Luxembourg (Phone: 44 21 44 1) or by Fax (44-02-89).

The proceedings are also conducted in these languages.

Each party has the option, within a reasonable timeline fixed at 2 weeks, to freely express his views and arguments; to receive from the Ombudsman the arguments, evidence, documents and parts produced by the other party as well as any eventual opinion rendered by experts.

A dedicated form available in electronic format is intended to facilitate referral to the Ombudsman and the presentation of the insurance litigation, subject of the request for mediation. This form can be downloaded from the websites: ACA (www.aca.lu) and ULC (www.ulc.lu).

Law limitation periods are suspended from the date of referral to the Ombudsman, provided that the application for mediation is complete. Suspension runs until the day where the Ombudsman shall communicate to the parties:

- that the processing of the application is refused;
- that the procedure is over either by communication of a reasoned conclusion or by the proposal of a solution or an amicable agreement.

Suspension also ends on the date on which one of the parties notifies the other party its determination to put an end to the extra-judicial settlement of the litigation.

Reasoned conclusions made by the Ombudsman, as well as solutions proposed by him or amicable agreements can serve as room in the courts, unless otherwise agreed by the concerned parties.

• THE DIFFERENT STEPS OF THE PROCEDURE

The parties involved in an extra-judicial litigation must communicate to the Ombudsman all documents and relevant information relating to their demand.

Within three weeks following receipt of the complete application, the Ombudsman, when in accordance with the rules of procedure is not able to deal with a litigation that has been submitted, provides in writing to the parties a detailed explanation of the reasons for which he has not agreed to deal with the concerned litigation.

Within a period of 3 weeks, the Ombudsman sends a written confirmation to the applicant when an application is considered receivable and complete.

After getting all documents and information required on the part of the professional for the correct instruction of the litigation, the Ombudsman informs the parties of the receipt of the complete application and the date of receipt.

Within a period of 90 days starting from the date of receipt of the complete application, the Ombudsman shall communicate the outcome of the procedure of extra-judicial settlement of the litigation to the parties and send them a letter with reasoned conclusions, respectively a proposed solution.

The Ombudsman may, if it deems useful to him, extend the deadline of 90 days in case of highly complex litigations. The parties are informed of any extension of that period and of the approximate time scheduled for the closing of the litigation.

- **SECRETARIAT**

The Ombudsman meetings are held as often as needed. The secretariat is provided by the ACA. Each party sends to the other copy of the extra-judicial application addressed to it in its quality as referral body.

The costs of the secretariat are supported equally by both parties (ACA/ULC). Any costs of experts (e.g. actuary, lawyer, ..) exposed, if any, are shared, except in the case where the use of an expert would have been decided by one of the parties (in this case this one must bear alone the cost).

- **APPLICATION FIELD**

Recourse to the Ombudsman is open to consumers residing in Luxembourg or in another State of the European Union for litigations concerning (life or non-life) insurance contracts concluded with the Luxembourg-based insurance companies.

- **CORRESPONDENT**

Insurance companies are invited to designate a “Correspondent” who will be the interlocutor of the Ombudsman in case of litigations concerning their company. As the Ombudsman will have to discuss the solution of the litigation with the Correspondent, it is recommended that the correspondent occupies a position of responsibility in the concerned company.

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