

Brussels, 21 October 1993.

CIRCULAR B 93/5 TO THE CREDIT INSTITUTIONS

Dear Madam,

Dear Sir,

In its circular of 28 July 1987, the Banking and Finance Commission has defined, within the framework of the protection of savings from the public and the prudential supervision, under which conditions credit institutions may appeal to independent agents and how such a network of independent agents should be supervised.

Taking into account the experience gained since 1987, the Banking and Finance Commission considered it necessary to re-examine the principles and rules applicable to the independent agents of the credit institutions subject to its supervision, and adapted its circular of 28 July 1987 accordingly.

This circular, which replaces the circular of 28 July 1987, shall apply to all independent agents established or operating in Belgium for the account of credit institutions established in Belgium.

**1. The concept of "independent agent"**

For the purpose of this circular "independent agent" shall mean any person who, professionally but not under an employment contract, is authorized to carry out, as an independent, in the name and for the account of a credit institution, transactions which are part of the institution's current activities, through direct contacts with the customers. When carrying out transactions on behalf of a credit institution within the limits of their mandate, these self-employed independent agents commit the institution concerned.

Any person who, without having any power of representation, confines himself to bringing several parties together for specific transactions, shall not be considered an independent agent. Credit institutions appealing to such intermediaries must see to it that they actually confine themselves to bringing the parties together and that, under no circumstances, they have any power of representation as a result of which they would have to be considered independent agents. The intermediaries concerned may only carry on activities in their own name.

With regard to the sale of savings certificates ("bons de caisse"), it is legally prohibited to appeal to other intermediaries than those referred to in Article 3 of the Law of 4 December 1990, except when they act under the legal status of independent agent.

## 2. General principles

### 2.1. Representation of one single credit institution

2.1.1. For the banking activities enumerated in Article 3, § 2<sup>1</sup> of the Law of 22 March 1993 on the legal status and supervision of credit institutions, independent agents may only represent one single credit institution, except for activities in the field of lending and leasing. The exclusivity principle must even be complied with if an above-mentioned activity is concerned which is not carried on by the credit institution itself.

Subject to the specific measures which may be taken by a credit institution with regard to organization and supervision, the mandate granted by that institution may, in addition to the activities of the credit institution itself, also include the activities of its subsidiaries established in Belgium as credit institutions or financial institutions carrying on activities referred to in the above-mentioned

---

1. Enclosed you will find the list of activities enumerated in Article 3, § 2 of the Law of 22 March 1993.

Article 3, § 2. It goes without saying that the second paragraph of 2.2.2.b) must be applied when the subsidiary concerned is a stockbroking firm.

2.1.2. As far as credit granting is concerned, the independent agent representing the credit institution for the activities referred to in 2.1.1. may intervene either in the capacity of independent agent, or in the capacity of credit broker. If he grants credits in the capacity of independent agent, he shall exclusively grant those forms of credit which are granted by the credit institution which he represents. For types of credits which are not granted by the credit institution represented by the independent agent and insofar as the rules governing the combination of different functions (cf 2.2. and 3.4.) are respected, an independent agent may act as an independent agent of another credit institution.

2.1.3. The independent agent must observe the exclusivity rule both directly and indirectly and may not evade that principle by appealing to private individuals or legal entities acting as intermediaries.

## 2.2. Incompatibility rules

2.2.1. The combination of the function of independent agent and the pursuit, for one's own account, of the activities referred to in 2.1.1. above shall be prohibited. This prohibition shall specifically apply to the combination of any activity involving exchange transactions for one's own account, including cash exchange transactions as referred to in Article 194, paragraph 2 of the Law of 4 December 1990, and the activity of independent agent.

2.2.2. a) The combination of the activity of an independent agent of a credit institution and that of a stockbroking firm, carried on for one's own account, shall be prohibited. This prohibition shall also apply to the combination with the activity of an authorized agent of a stockbroking firm, subject to the provisions of b).

- b) An independent agent of a credit institution may act as an independent agent of a stockbroking firm, provided that the credit institution concerned does not receive any stock exchange orders itself.

The stockbroking firm must undertake that any cash related to stock exchange orders and received through the intermediary of an independent agent acting for his own account and combining his function with that of an independent agent of a credit institution, can only be received in the capacity of independent agent of the credit institution concerned. In that case, the credit institution and the stockbroking firm must conclude an agreement organizing the supervision of the activities. Such agreement shall clearly define the responsibilities of the credit institution and the stockbroking firm with regard to the activities of the independent agents acting for their account. This presupposes that the credit institution and the stockbroking firm impose equivalent procedures and safety measures on their independent agents for their relationship with their customers and that they ascertain that their agents are able to deploy sufficient means to verify compliance with those procedures and measures.

- 2.2.3. A credit institution may allow its independent agents to carry on other professional activities than those for which it mandated them, insofar as those activities are clearly separated and sufficient guarantees are offered to delimit the risks resulting from that situation. The public may under no circumstances get the impression that those other activities are carried on for the account of the credit institution. Examples of activities which may be combined and are considered compatible with the legal status of independent agent, include the intermediation in insurances or real estate transactions, tax consulting services to undertakings, social security and mutual insurance services. When credit institutions appeal to agents combining such activities, they must obtain the agents' authorization to verify the strict compliance with the imposed separation of functions.

The independent agent must observe the incompatibility rules both directly and indirectly and may not evade the incompatibility principle by appealing to private individuals or legal entities acting as intermediaries.

### **2.3. Information of the customers**

The credit institutions must provide maximum safety with regard to the transactions of their independent agents through adequate supervision, procedures and information of the public.

The credit institutions must see to the protection of the depositors by avoiding that their legitimate trust is abused by misleading constructions. Consequently, they must avoid that services are provided which the customers may wrongly consider to be carried out under the credit institution's responsibility.

The independent agent shall carry on its activities as representative of the credit institution with reference to the name of the credit institution which he represents.

The independent agent must fully inform his customers of the nature of the transactions which he is authorized to carry out for the account of the credit institution as soon as they enter into a business relationship with him as a result of which they become regular customers. On that occasion, the customers shall be informed that all cash and securities transactions are recorded on pre-printed documents with the credit institution's letterhead, a copy of which must be given to the customer each time a transaction is concluded. The information referred to in this paragraph shall be confirmed to the customer (unless the customer instructs the credit institution otherwise) by the credit institution itself through correspondence which is sent to the address indicated by the customer.

### 3. The agent's contract

The co-operation between the independent agent and the credit institution shall be based on a written contract. This contract must, taking into account the independence of the agent, contain the necessary principles to guarantee the safety of the transactions carried out for the account of the credit institution.

- 3.1. The contract or an enclosure to the contract must restrictively define the fields of activity and the types of transactions for which the independent agent is competent. The contract shall stipulate that the agent is not authorized to carry out any transactions for the account of the credit institution for which he has not received any written instructions.
- 3.2. The contract shall contain an exclusivity clause in accordance with the principles referred to in 2.1.
- 3.3. With regard to credit granting, the intervention of the agent must be restricted to collecting and verifying the required information and the signatures and transmitting the documents to the credit institution. Any interference of the independent agent in credit granting decision shall be excluded, as he has no power of decision. Only when the credit institution itself has taken a decision, the independent agent may make validly binding commitments on behalf of that institution, as a result of which he may only then communicate the credit offer and conclude the contract. However, without prejudice to these principles, an independent agent shall be authorized, on the basis of standard examination rules (e.g. in the form of credit scoring) and objective criteria subject to an a posteriori confirmation procedure, to grant credits for limited amounts, the maxima of which shall be set by the credit institution.
- 3.4. If the independent agent carries on any other professional activity, he shall inform the credit institution beforehand in writing. The contract shall clearly stipulate that, when that activity is contrary to the principles of this circular, the credit institution may oppose to it being carried out.

The contract or the enclosure to the contract must explicitly mention which activities are authorized. Non-compliance with this contractual clause must be sanctioned.

The contract shall mention that prior written authorization is required should the authorized activities be modified.

- 3.5. The contract shall contain the obligation for the independent agent to comply with the administrative and accounting procedures prescribed by the credit institution. They specifically imply immediate registration of each transaction, and compliance with the rules laid down by the credit institution pursuant to the legal and regulatory provisions with regard to money laundering, especially with regard to the formal identification of the customers.
- 3.6. The independent agent must undertake not to use any methods aimed at or resulting in the promotion of tax evasion by third parties and constituting a special scheme referred to in Article 57, § 3 of the Law of 22 March 1993.
- 3.7. The independent agent must undertake to transmit the amounts and securities which he owes within the periods of time established by the credit institution as well as the documents evidencing the financial and credit transactions.
- 3.8. The agent may under no circumstances receive a mandate from a customer or a power of attorney on the account of one of his customers, except for family members living under the same roof, nor take securities or deposit books of customers in open safe custody.

Exceptions to the prohibition to take securities or deposit books of customers in open safe custody, may only be authorized after having obtained the credit institution's approval. In that case, the role of the independent agent shall be restricted to acts of mere safekeeping and management, excluding all acts of disposal. The independent agent must

report the number of securities and the volumes concerned to the credit institution.

- 3.9. The independent agent may under no circumstances accept a remuneration from the customers.
- 3.10. With regard to his activities carried on under such contract, the independent agent must undertake only to make use of the documents, circulars, texts and advertising provided for or approved by the credit institution.
- 3.11. The independent agent must accept that all books and documents with regard to his mandate of agent are subject to the internal and external supervision of the credit institution in order to verify the regularity of the transactions. The supervision shall also concentrate on the requisite separation of functions in case of combinations with compatible activities authorized pursuant to 2.2.3.
- 3.12. The contract must provide the possibility for the credit institution to put an immediate end to its relationship with the independent agent, without prejudice to any indemnification, in conformity with Common Law.

#### **4. Internal procedures**

- 4.1. The credit institution shall submit the activities of the independent agents to adequate administrative and accounting procedures which enable adequate internal supervision.

These procedures shall specifically imply that:

- rules are laid down for each transaction and its immediate accounting registration;
- unless procedures are adopted which guarantee an equivalent safety, all transactions are recorded on pre-numbered and pre-printed documents with the credit institution's letterhead. It must be regularly checked that the numbering is not interrupted;



- cash in hand shall be subject to strict limits;
  - rules are laid down for checking the professional repute, experience and training as well as the financial position of the independent agents, their possible representatives and collaborators at the moment of their recruitment. With respect to the independent agents whose activity is carried on in the form of a company, not only the experience and professional repute of their managers, but also the professional repute and financial soundness of the company shall be checked;
  - the credit institution sees to it that its independent agents get adequate professional training and that they are regularly informed about the evolution of techniques and transactions;
  - the credit institution shall maintain direct written contacts with the customer. As such, for instance, it is advisable to send regular statements of account to the address indicated by the customer (unless the customer instructs the credit institution otherwise). The customer shall be regularly requested to approve the accounts by means of a declaration which is sent to the address indicated by the customer. The statement may neither be sent by the credit institution nor returned to the credit institution through the intermediary of the independent agent;
  - a specialized cell at central management level sees to the regular follow-up of the accounts of the independent agents and the compliance with the procedures.
- 4.2. The credit institution shall occasionally carry out administrative and accounting on-site inspections without prior warning, in particular when shortcomings have been established. Such inspections may not be carried out by the credit institution's commercial inspection department. The credit institution shall see to it that the administrative and accounting inspections are entrusted to other persons than those carrying out the

commercial inspections. This rule is meant to avoid commercial concerns to oust the accounting and administrative aspects. Both an inspection planning and a programme for the inspections by the internal auditors shall be established.

- 4.3. With regard to credit granting and when the representative acts as independent agent of the credit institution, the nature of the supervision and the inspection must take account of the nature of the relationship between the credit institution and its agent and of the risks inherent to credit granting through the intermediary of independent agents. These risks relate to the quality of the credit production, on the one hand, and to the responsibility of the credit institution in case its independent agent does not comply with the existing legislation, in particular with regard to consumer credit, on the other.

**5. Managers and employees of credit institutions carrying on activities similar to those of independent agents**

If persons who are bound to the credit institutions by an employment contract, carry out functions equivalent to those of independent agents after their usual working hours in their own name, via a third party or through a company, the principles of this circular shall apply by analogy.

However, for employees who are involved in the supervision of the activities concerned or who find themselves in a conflict of interests, the combination of activities shall be unacceptable and must therefore be prohibited.

For managers not participating in the daily management and for members of the credit institution's Management Committee, the combination of activities shall also be unacceptable.

**6. Reporting to the Banking and Finance Commission**

If a credit institution puts an end to its contract with an independent agent on the basis of a serious misdemeanour or the presumption of a serious misdemeanour, it must inform the Banking and Finance Commission without delay.

7. Entry into force

This circular shall immediately enter into force. Without prejudice to the circular entering into force, the existing agreements shall, if necessary, be adapted as soon as possible and at the very latest on 30 June 1994.

Yours sincerely,

The Chairman,

J.-L. Duplat.

Enclosure : one.

ENCLOSURE**LIST OF THE ACTIVITIES ENUMERATED IN ARTICLE 3, § 2 OF THE LAW OF 22 MARCH 1993 ON THE LEGAL STATUS AND SUPERVISION OF CREDIT INSTITUTIONS**

1. Acceptance of deposits and other repayable funds from the public.
2. Lending, including inter alia consumer credit, mortgage credit, factoring with or without recourse, and financing of commercial transactions (including forfaiting).
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in:
  - a) money market instruments (cheques, bills, CDs, etc.);
  - b) foreign exchange;
  - c) financial futures and options;
  - d) exchange and interest rate instruments;
  - e) transferable securities.
8. Participation in share issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.

11. Portfolio management.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.