

# AFFILIATION

# FINANCIAL SERVICES OMBUDSMAN (FINSOM)

## Affiliation

*Any reference to the masculine also applies to the feminine.*

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## 1 PURPOSE

1. Based on the Director's tasks and competences provided for in the by-laws, the present regulation sets out the **conditions for affiliation**. It supplements the by-laws.

## 2 SCOPE

2. This regulation applies to:
  - a. Registering or affiliated companies
  - b. Designated branch organisations

## 3 COMPANY

### 3.1 Affiliation conditions

3. Companies subject to FINMA authorisation or registration can affiliate irrespective of their legal form. For example :
  - a. Portfolio manager (Art. 17 para 1 FinIA)
  - b. Trustee (Art. 17 para 2 FinIA)
  - c. Securities firm (Art. 41 FinIA)
  - d. Branch (Art. 52 FinIA)
  - e. Representation (art. 58 FinIA)
  - f. Bank (Banking Act)
4. Client advisers of Swiss financial service providers not subject to FINMA authorisation or registration as well as client advisers of foreign financial service providers can affiliate with FINSOM.
5. Client advisers who are mandated by an affiliated company, who are its partners or who belong to the same group as an affiliated company may be included in the latter's affiliation.
6. Affiliation is individual, in the name of the affiliated company.

### 3.2 Affiliation procedure

#### 3.2.1 Registration

7. The company registers by filling out the form available on FINSOM's website and pays the basic fee invoiced. An alternative means of transmitting the required data below can be arranged with the Director.
8. Once the base tax has been collected, FINSOM will inform the competent supervisory authority or register of advisers of the registration in accordance with its duties to provide information.

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9. FINSOM does not charge a registration fee. The basic fee collected upon registration is reimbursed less the reimbursement fee in the appendix, if authorisation or registration is not granted by FINMA or a register of advisers.

### 3.2.2 Required data

10. Essential data:

- a. The contact person competent to represent the company.
- b. The name, address and Business Identification Number (BIN) of the enterprise.
- c. The main branch of activity.
- d. The client category.
- e. The number of employees in Switzerland.
- f. The languages desired for the mediation (FR, GE, EN and/or IT).
- g. Membership of a branch organisation (if applicable).

11. The company that opts for Workplace Mediation indicates the total number of employees in Switzerland and the desired languages.

12. The number of employees is calculated as indicated in the appendix (see "Financial contributions").

13. Registration is based on the principle of trust. Data accuracy can be verified by FINSOM or the competent supervisory authority.

14. The affiliated company must inform the ombudsman office of any changes to the data recorded.

### 3.2.3 Affiliation

15. Affiliation is active as soon as authorisation or registration is confirmed by FINMA or a register of advisers. In the case of companies that are exempt from FINMA authorisation or registration in a register of advisers, affiliation becomes effective as soon as the basic fee has been collected.

## 3.3 Duties of affiliated companies

### 3.3.1 Compliance

16. The company commits itself to respect the regulations, independence and duties of the mediation body. It shall organise itself and take all necessary measures to respect its commitments and obligations.

### 3.3.2 Obligation to inform

17. The affiliated company must provide adequate information on the possibility of initiating a mediation procedure with FINSOM:

- a. When establishing a customer relationship.
- b. When a customer complaint is rejected.
- c. At any time, at the request of a customer.

18. The information must be provided in an appropriate form.

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19. The affiliated company agrees with the client, when establishing a contractual relationship, that the procedure may be conducted in French, German, Italian or English.
20. The above provisions shall apply by analogy to Workplace Mediation.

### 3.3.3 Obligation to participate

21. The affiliated company must respond within the time limits granted by the mediation body, respectively the mediator, to the mandate to appear, invitations to take a position and requests for information from the mediator.

### 3.3.4 Obligation to finance

22. The affiliated company contributes to the capital of the mediation body by paying an annual basic fee.
23. The affiliated company also covers the costs of procedures which concern it, in accordance with the "principle of causality".<sup>1</sup>

## 3.4 Resignation

24. Any resignation must be submitted in writing with 3 months' notice.
25. FINSOM shall inform the competent supervisory authority or the register of advisers of the resignation in accordance with its duty to inform.
26. New requests for mediation will be processed until the end of the notice period. Ongoing proceedings shall not be interrupted. The costs of the proceedings remain payable by the resigning company.

## 3.5 Exclusion

27. In accordance with the by-laws, an affiliated company which repeatedly fails to fulfil its duties must be excluded.
28. "Repeatedly" means more than three times. For example, a firm that fails to pay its basic fee or procedural costs, despite three reminders, will be excluded.
29. The exclusion of a company belonging to a group has no impact on the affiliation of the other companies in the group.
30. The Director hears the affiliated company and consults with the competent supervisory authority or register of advisers before taking a position on the matter.
31. The final decision shall be taken by the Director, after consultation of the General Assembly.
32. FINSOM informs the competent supervisory authority or the register of advisers of exclusions in accordance with its duty to inform.

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<sup>1</sup> *Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman*, David Thomas and Francis Frizon for THE WORLD BANK, January 2012, p. 36-37.

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33. An excluded company may appeal against the Director's decision to the Federal Department of Finance (FDF).

### 3.6 Readmission

34. In the event of a past exclusion, applications for affiliation must be addressed directly to the Director.

35. It is not excluded that the Director readmits an excluded company. It depends on the circumstances.

## 4 DESIGNATED BRANCH ORGANISATION

### 4.1 Definition of "branch organisation"

36. A branch organisation is an association of companies or a group of companies of the financial market.

37. The branch organisation distinguishes itself, namely from:

- a. Self-regulatory organizations (SROs) within the meaning of the Anti-Money Laundering Act (AMLA), which act on a legal mandate from FINMA.
- b. The mediation body, which cannot defend the interests of the affiliated companies and remain impartial. The mediation body also operates on the basis of a legal mandate from the FDF.
- c. Chambers of Commerce, which are not exclusively dedicated to the financial market sectors.

38. Among other things, the branch organisation may assist its members in gaining access to the Swiss financial market by registering them with FINSOM as part of a FINMA authorisation or a registration procedure with a register of advisers.

### 4.2 Designation

39. A branch organisation may be "designated" by FINSOM to act as a collection service for its members<sup>2</sup>. The decision is taken by FINSOM's Director.

### 4.3 Designation conditions

40. To be designated, the branch organisation must:

- a. Be domiciled in Switzerland.
- b. Be dedicated to one or more branches subject to the obligation of affiliation to a mediation body recognised by the FDF.
- c. Commit to respect FINSOM's independence and impartiality.
- d. Fulfil its function in a transparent manner.

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<sup>2</sup> Message FinSA p. 8198 et art. 99 FinSO.

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### 4.4 Duties of the designated branch organisation

#### 4.4.1 Compliance

41. The designated branch organisation commits itself to respect the regulations, independence and duties of the mediation body. It shall organise itself and take all necessary measures to respect its commitments and obligations.

#### 4.4.2 Transparency

42. The designated branch organisation shall inform its members in a transparent manner about its role vis-à-vis the mediation body.

43. Financial contributions received for the ombudsman office shall be transparent in relation to financial contributions to the branch organisation.

#### 4.4.3 Collection service

44. The designated branch organisation collects, monitors and remits the annual basic fees to FINSOM at intervals agreed with FINSOM.

45. The branch organization also handles reminders. After 2 unsuccessful reminders, it informs FINSOM.

### 4.5 Termination

46. The designated branch organisation and FINSOM may, at any time, terminate the designation.

47. Termination does not entail the resignation of the companies, registered or affiliated.

## 5 ENTRY INTO FORCE

This regulation was adopted by the Director on **29 September 2020** and replaces the regulation of 30 July 2020<sup>3</sup>. These regulations are approved by the Federal Department of Finance (FDF).

*If there are any difficulties of interpretation due to a difference between the French and English version of these by-laws, the French version prevails.*

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<sup>3</sup> Amendments marginal figures 3, 4, 5, 7, 8, 9, 25, 30, 32, 38, 40 b, Annex 1 ch. 6.1.1, mainly to clarify the affiliation conditions, information duties and the calculation of the basic fee in response to frequently asked questions. No important changes. Last updated on 29 September 2020, « Bundesgesetz zur Anpassung des Bundesrechts an Entwicklungen der Technik verteilter elektronischer Register vom 25. September 2020 ».

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## 6 APPENDIX: Financial Contributions

According to articles 75 para. 1 and 80 FinSA as well as the provisions on occupational health protection, affiliated companies finance the mediation body and the mediation procedures. The financial contributions of the FINSOM affiliated companies are as follows.

### 6.1 Annual basic tax and procedural fees

#### 6.1.1 Annual base tax

Each affiliated company pays an **annual** base tax, depending on its **size and type of authorisation in Switzerland**. The hotline and a basic training for affiliated companies are **included**.

#### **Commercial Mediation**

CHF 34 per employee (CH)

#### **Workplace Mediation**

CHF 50 per employee (CH)

**For Commercial Mediation**, the annual base tax is calculated based on the number of employees assigned to activities subject to FinSA. The base tax of a FINMA regulated company is calculated according to the total number of employees in Switzerland engaged in regulated activities. Administrators involved in operational activities count as employees. Client Advisers defined in FinSA pay a base fee based on the number of Client Advisers concerned. If the contact person is external to the company, he/she counts as an employee.

**For Workplace Mediation**, the annual basic fee depends on the number of employees who fall under the responsibility of the affiliated employer, within the meaning of occupational health protection provisions. The tax is calculated on the basis of the total number of employees concerned.

#### 6.1.2 Procedural fee

In case of admission to mediation, the following rates are borne by the affiliated company concerned and apply to Commercial Mediation and Workplace Mediation :

<b>Simple case</b>	CHF 500 per case	<b>Complex case</b>	CHF 200 per hour
<b>Admin fee</b>	CHF 50 par case		

Mediation is conducted remotely or at a location designated by FINSOM. Any meeting room expenses are at the expense of the company.

**Reminder:** According to FINSOM's Rules of Procedure, a mediation procedure doomed to failure must be refused or interrupted.

### 6.2 Other administrative fees

<b>Reminder fee</b>	CHF 50	<b>Refund fee<sup>4</sup></b>	CHF 200
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<sup>4</sup> See marginal figure 9.