

Stiftung Schweizerischer Bankenombudsman
Fondation Ombudsman des banques suisses
Fondazione Ombudsman delle banche svizzere
Swiss Banking Ombudsman Foundation

**Rules of Procedure
for the
Swiss Banking Ombudsman**

Art. 1: The task of the Ombudsman

- 1.1 The Ombudsman acts in accordance with the purpose of the Swiss Banking Ombudsman Foundation (Article 3 of the Foundation Charter). He provides clients of the member institutes of the Swiss Bankers Association (hereinafter “institutes”) with a neutral and independent source of information and intermediary that does not issue binding legal judgments.
- 1.2 The Ombudsman also serves as the Central Claims Office for dormant assets held in Swiss banks under the guidelines issued by the Swiss Bankers Association.

Art. 2: Scope of competence of the Ombudsman

- 2.1 The Ombudsman deals with questions and complaints from clients about banking and financial services transactions carried out by institutes as defined in Article 1.1. Any directly affected private individual or legal entity may approach the Ombudsman.
- 2.2 The Ombudsman declines competence in
 - questions of general business and fee policy
 - abstract business and legal questions
 - transactions with institutes abroad that are not financial services to private clients pursuant to Article 3 letter c and Article 4 paragraphs 1 and 2 of the Financial Services Act (FinSA). normally, any cases where official proceedings are already under way and any cases transferred to such proceedings prior to completion of Ombudsman proceedings or that have been definitively settled

- 2.3 Applying to the Ombudsman does not suspend or limit legal deadlines such as those relating to limitation, forfeiture or court or administrative proceedings. Clients are responsible for ensuring such deadlines are met.
- 2.4 The procedural rules set out in the guidelines of the Swiss Bankers Association on the treatment of assets without contact and dormant assets at Swiss banks (Guidelines on Dormant Assets) apply to searches for dormant assets held in Swiss banks.

Art. 3: Powers and duties of the Ombudsman

- 3.1 The function of the Ombudsman is entrusted to him personally. He proposes and puts forward suggestions for mediation. In the event that the Ombudsman is unable to perform his duties, the Foundation Board shall arrange a deputy. In all other respects he may delegate tasks to staff and arrange to be represented by them in contacts with clients and institutes.
- 3.2 The Ombudsman does everything he deems necessary to form a free and independent opinion. He is authorised to obtain from the institute concerned all necessary information relating to the case submitted to him and to inspect its files. He allows clients to release the institute from its obligation of confidentiality in respect of the Ombudsman for this specific case.
- 3.3 The Ombudsman is subject to the duty of confidentiality that applies to agents. He is entitled to decline to take part in civil proceedings in accordance with Article 166 (1) d of the Swiss Code of Civil Procedure (ZPO).

Art. 4: Procedure

- 4.1 Clients may contact the Ombudsman in person, in writing or using electronic media.
- 4.2 The Ombudsman deals with simple enquiries orally. He provides information to clients and advises them on how to proceed.
- 4.3 The Ombudsman may encourage clients to first put their questions or complaints to the institute directly and demand a written response.

- 4.4 Where further investigations are necessary the Ombudsman may encourage clients to submit their enquiries in writing and provide him with copies of the relevant documentation.
- The Ombudsman's response in such cases is also normally in writing.
- 4.5 The Ombudsman hears both sides. The parties' right to inspect files is restricted to their correspondence with the Ombudsman.
- 4.6 The Ombudsman acts as an intermediary and submits proposed solutions to the parties. The parties are not bound by these. They are free to make decisions at their own discretion.
- 4.7 The Ombudsman may decline or suspend the handling of complaints where the Ombudsman procedure is not a suitable way of providing a solution, for instance on grounds of complexity, or where there appears to be no prospect of the Ombudsman procedure providing a solution.
- 4.8 The Ombudsman has the final word in all matters of advocacy, rulings and proposed solutions. The Foundation Board does not get involved in reviewing the Ombudsman's decisions on matters of advocacy, rulings or proposed solutions.
- 4.9 The Ombudsman may revisit decisions on matters of advocacy, rulings or proposed solutions where there are grounds for so doing, notably when new facts emerge.

Art. 5: Mass cases

- 5.1 In addition to/deviation from the general procedural provisions of these rules, the following provisions apply to mass cases:
- 5.2 Mass cases are complaints where:
- a large number have occurred or are expected in a short period of time, and
 - they involve the same or similar products, services or circumstances, or
 - clients are using the same or similar (legal) arguments

5.3 Treating some complaints as mass cases is intended to help ensure that identical or similar cases are dealt with uniformly, efficiently and promptly, resulting in a fair and consistent solution. When it comes to establishing which cases fall within a particular group and determining how to proceed and what decision-making criteria should be used, greater importance may be attached to dealing with cases that have elements in common than to treating each individual case in depth.

5.4 Institutes should inform the Ombudsman at an early stage if they are aware of any situations that may result in complaints which might meet the criteria for being treated as mass cases.

Where the Ombudsman becomes aware of possible mass cases as a result of complaints received or information provided by third parties such as regulators, consumer protection organisations or the media, he may carry out further investigations where necessary and request a response from the institute concerned.

5.5 Should the Ombudsman conclude, based on the response from the institute and having considered the broader circumstances, that the criteria for a mass case have been met and it seems appropriate to treat the complaints in question as a mass case, the institute is informed to this effect in order to open a dialogue aimed at reaching agreement on the following points:

- acknowledgement that there is a mass case
- the criteria for including individual complaints in the mass case
- the criteria for setting up case groups, if applicable
- how complaints might be dealt with collectively, if applicable
- the criteria for deciding on complaints in individual cases/case groups
- communications with the clients concerned, interest groups and the general public

5.6 If agreement cannot be reached on whether or not there is a mass case, the criteria for including complaints in it and the formal treatment and material consideration of the complaints, the Ombudsman submits the unresolved or disputed points to the Foundation Board for a decision.

5.7 The procedure for establishing that there is a mass case, determining the criteria for including complaints in it and the formal treatment and material consideration of the complaints is confidential.

Art. 6: Costs

- 6.1 The procedure is in principle free for clients. The Ombudsman has the discretion in particular cases to decline to take on complaints or tell clients that they will be charged according to the work involved.
- 6.2 The Ombudsman charges the institute concerned a processing fee for each individual case, based on the work involved. The Ombudsman issues a fee scale approved by the Foundation Board.

Art. 7: Publicity

- 7.1 The Ombudsman informs the general public of his activities at least once a year via an annual report and press conference. He issues statistics broken down by enquiries, complaints and issues. He does not comment publicly on individual cases or disclose any names.
- 7.2 The Ombudsman may provide the institute with general information about his activities.

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