

AFFILIATION

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

Affiliation

Any reference to the masculine also applies to the feminine.

1	PURPOSE	2
2	SCOPE	2
3	COMPANY	2
3.1	Affiliation conditions	2
3.2	Affiliation procedure	3
3.2.1	Registration	3
3.2.2	Required data.....	3
3.2.3	Affiliation	3
3.3	Duties of affiliated companies.....	3
3.3.1	Compliance.....	3
3.3.2	Obligation to inform.....	4
3.3.3	Obligation to participate.....	4
3.3.4	Obligation to finance.....	4
3.4	Resignation.....	4
3.5	Exclusion.....	4
3.6	Readmission	5
4	DESIGNATED BRANCH ORGANISATION.....	5
4.1	Definition of "branch organisation"	5
4.2	Designation.....	6
4.3	Designation conditions	6
4.4	Duties of the designated branch organisation.....	6
4.4.1	Compliance.....	6
4.4.2	Transparency	6
4.4.3	Collection service	6
4.5	Termination	6
5	ENTRY INTO FORCE	7
6	APPENDIX: FINANCIAL CONTRIBUTIONS	8
6.1	Annual basic fee and procedural fee	8
6.1.1	Annual base tax	8
6.1.2	Procedural fee.....	8
6.2	Other administrative fees.....	8

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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. The following companies can affiliate, irrespective of their legal form:
 - a. Portfolio manager
 - b. Trustee
 - c. Manager of collective assets
 - d. Fund management company
 - e. Securities firm
 - f. Trade assayer
 - g. Insurance intermediary
 - h. Insurance company
 - i. Bank
4. Client advisers mandated by or partners of an affiliated company may be included in the latter's affiliation.¹
5. Other companies or client advisers who must affiliate to a recognised mediation body that cannot affiliate with another body², or would like to affiliate to FINSOM, can request an exception from the Director.
6. Affiliation is individual, in the name of the affiliated company.

¹ Art. 29 para. 1 let. c FinSA.

² Art. 100 para. 3 FinSO.

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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.
8. FINSOM informs FINMA of the registration, once the basic fee is received, in accordance with its duty to inform.
9. FINSOM does not charge a registration fee. The basic fee collected upon registration is reimbursed less the reimbursement fee in the appendix, if FINMA authorisation or registration is not granted.

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 target clientele.
 - 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 FINMA authorisation or registration is confirmed.

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.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

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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.
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"³.

3.4 Resignation

24. Any resignation must be submitted in writing with 3 months' notice.
25. FINSOM informs FINMA 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.

³ *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.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

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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 and FINMA 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 FINMA of exclusions in accordance with its duty to inform.
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 registration procedure.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

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4.2 Designation

39. A branch organisation may be "designated" by FINSOM to act as a collection service for its members⁴. 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 FINMA authorisation or registration.
- c. Commit to respect FINSOM's independence and impartiality.
- d. Fulfil its function in a transparent manner.

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.

⁴ Message FinSA p. 8198 et art. 99 FinSO.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

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5 ENTRY INTO FORCE

This regulation was adopted by the Director on **30 July 2020**. 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.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

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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, in terms of activities and/or employees in Switzerland.

The annual base tax includes the hotline and a basic training for affiliated companies.

Commercial Mediation⁵

CHF 34 per employee (CH)

Workplace Mediation

CHF 50 per employee (CH)

For Commercial Mediation, the annual base tax depends on whether the company carries out activities that are subject to an obligation of affiliation (to an FDF-recognised mediation body) on an ancillary or primary basis. In the case of ancillary activities, it is calculated on the basis of the number of employees (front, back, middle office) assigned to these activities. External client advisors who are included in the company's affiliation (Art. 29 para. 1 let. c FinSA) count as employees. Self-employed persons count as employees.

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 :

Simple case	CHF 500 per case	Complex case	CHF 200 per hour
Verwaltungskosten	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

Reminder fee	CHF 50	Refund fee⁶	CHF 200
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⁵ FINSOM applies a fee equivalent to that of the Swiss Banking Ombudsman.

⁶ FINSOM does not charge a registration fee. The basic fee collected upon registration is reimbursed less the reimbursement fee, if FINMA authorisation or registration is not granted.