Ombudsstelle
für Finanzdienstleister

OMBUDSMAN FINANCIAL SERVICES PROVIDERS
RULES OF PROCEDURE

Based on Art. 84(2) d FinSA and Section 19 paragraph 2 of the Association's Articles of Association, the board has issued the following Rules of Procedure:

General provisions

§1 Subject and scope

[1] These Rules of Procedure regulate the conciliation proceedings before the ODF Association's Ombudsman.

[2] It contains all relevant procedural provisions contained in FinSA and the Articles of Association of the OFD Association.

Obligations of the affiliated financial service providers

§2 Obligation of the financial service provider to provide information

(Art. 79 FinSA)

[1] The financial service providers must inform customers about the option of conciliation proceedings via the Ombudsman:

a) when entering into a business relationship within the scope of the obligation to provide information pursuant to Art. 8(1)c FinSA;

b) in the event of a rejection of a legal claim asserted by the customer; and

c) at any time upon request.

[2] The information must be provided in writing and include the name and address (postal address and homepage address) of the OFD Association's Ombudsman.

§3 Obligation of the financial service provider to provide information and participate

(Art. 78 FinSA)

[1] The financial service providers who are affected by a conciliation request must participate in the conciliation proceedings.

[2] The financial service provider is obliged to provide the Ombudsman with all requested information and statements in a timely manner, hand over files and follow up on conciliation proceedings during the conciliation proceedings.

[3] If necessary, the Ombudsman can ask the customer to release him from bank client confidentiality in the case in question.

§4 Sanctions

(Art. 82 FinSA in conjunction with Art. 78 - 80 FinSA)

1 If the financial service provider violates its obligation to provide information or its duty of disclosure, refuses to participate in the conciliation proceedings, unduly delays the conciliation proceedings or fails to pay the fees or is delayed in doing so, the Ombudsman can request the fulfilment of these duties by letter, threatening the sanctions pursuant to paragraph 2.

2 If the financial service provider does not comply with the request, the Ombudsman can impose a fine or, in the event of recurrence, can arrange for the financial service provider to be excluded. He can issue a warning in less severe cases.

Responsibilities and tasks of the Ombudsman and the mediator

§5 Responsibilities

1 The Ombudsman deals with disputes relating to legal claims between customers and financial service providers.

2 The Ombudsman is not responsible for:

a) business and tariff policies;
b) general legal and economic questions;
c) any business with foreign clients of foreign branches of financial service providers;
d) cases which have already been the subject of official or arbitration proceedings or have been legally settled.

§6 Representation

1 The Ombudsman can delegate minor cases to employees of the office for mediation. However, these employees must not conduct conciliation negotiations.

2 When dealing with these cases, the employees of the office observe the principles of these Rules of Procedure.

§7 Performance of tasks in accordance with duty

1 The Ombudsman and mediators perform their tasks within the meaning of the FinSA and the purpose of the OFD Association (Article 2 of the Articles of Association).

2 The Ombudsman and mediators shall do everything which appears to be necessary for them to form their own opinion freely. They are regularly trained in the area of financial market law and follow current case law.

3 They review the cases submitted to them freely and without instructions.

Conciliation proceedings

§8 Relationship to the ZPO

The provisions of Art. 202 - 207 ZPO apply accordingly to the conciliation proceedings, unless stated otherwise in the Rules of Procedure.

§9 Submitting the placement request using the form

(Art. 75(4) FinSA)

[1] Customers and affiliated financial service providers must contact the Ombudsman using the completed and signed form from the OFD Association.

[2] An application for mediation is permitted at any time if:

a) it is submitted to the office using the form provided by the OFD Association;

b) the customer making the complaint believes that they have previously informed the financial service provider in writing of their position and has made an attempt to come to an agreement. This may, in particular, involve the submission of correspondence with the financial service provider or a conversation log;

c) the attempt to mediate is not clearly abusive;

d) conciliation proceedings are not already pending and have not been carried out in relation to the same matter;

e) no arbitration board or court, arbitral tribunal or administrative authority has dealt with the matter;

f) it contains a legal request;

g) it contains a precise description of the parties and their full address;

h) it contains a brief description of the subject of the dispute;

i) all relevant documents are enclosed with it.

[3] The completed form and enclosed documents are to be sent to the offices of the OFD Association.

§10 Initiation of conciliation proceedings

[1] The office shall confirm to the parties that the conciliation request has been received, stating the date of dispatch and receipt by the office.

[2] The office shall review the received conciliation request and reject it if it does not meet the requirements of §9.

[3] Revised conciliation requests can be submitted again at any time.

4 The office asks the applicant to pay the application fee within 10 days of receipt of the application in accordance with the Schedule of Contributions and Costs.

5 Upon receipt of the application fee, the office will send the conciliation application to the Ombudsman and the other party without delay.

§11 Acceptance and mediation by the Ombudsman

1 The Ombudsman makes the final decision regarding acceptance issues and informs the parties.

2 In justified cases, especially when new facts are available, the Ombudsman may reconsider decisions regarding acceptance matters.

3 The board does not act on requests to review decisions regarding questions of acceptance, decisions and proposals for solutions by the Ombudsman and the mediators.

4 The Ombudsman examines the conciliation request and submits verbal or written solutions to the parties as soon as possible.

5 The parties are not bound by the Ombudsman's proposed solutions and can freely decide whether to accept or reject them.

§12 Implementation of the conciliation proceedings

(Art. 75(7) and Art. 78 FinSA)

1 If the mediation efforts of the Ombudsman do not lead to agreement and the dispute does not appear to be hopeless, the Ombudsman will summon the parties to mediation negotiations at the request of the customer or will commission a mediator to prepare and carry out the mediation negotiations.

2 The mediator must immediately reject their appointment in the event of a conflict of interest.

3 When appointing a mediator, the Ombudsman will take the parties' place of residence or domicile into account. With the consent of the mediator, the parties can freely agree on the location of the mediation negotiations within Switzerland.

4 The parties must appear in person for the negotiations.

5 Any parties whose place of residence or domicile is abroad and is unable to attend can appoint a representative.

6 In justified cases (e.g. the complaining customer's incapacity to travel, state travel bans), the mediation negotiations can be carried out abroad. The associated costs are borne entirely by the applicant and must be paid in advance.

7 After the mediation negotiations have been completed, the mediator will write a short written report and deliver it to the Ombudsman, together with the procedural files.

§13 Subsequent termination of the conciliation proceedings

(Art. 76(3) FinSA)

1 If, after submitting the conciliation request, facts become known which infringe §9 (2) b), d), or e), the conciliation proceedings will be terminated.

2 The parties will be informed of the termination in writing.

§14 Completion of the proceedings

(Art.75(8) und Art. 76(2) FinSA)

1 The Ombudsman sends the parties a notification that the proceedings are complete, which contains the execution of the conciliation procedure, the legal request made and, if applicable, the content of any agreements reached.

2 If no agreement could be reached or if such an agreement appears to be hopeless, the Ombudsman can, based on the information available to him, also include a short factual and legal assessment of the dispute in the notification regarding the conclusion of the proceedings.

3 The Ombudsman advises the parties in the notification regarding the conclusion of the proceedings that the complaining party can waive the conciliation proceedings under the Swiss Code of Civil Procedure (ZPO) and file a lawsuit directly with the competent court.

4 The Ombudsman advises the parties of the possibility of carrying out arbitration in accordance with the 3rd Section of the ZPO or the 12th Chapter of the International Private Law (IPRG).

Further procedural provisions

§15 General procedural principles

(Art. 75(1) and 6 FinSA)

1 The conciliation proceedings are to be carried out non-bureaucratically, fairly, quickly and inexpensively for the customer making the complaint.

2 The Ombudsman and the mediator must allow the parties to be heard.

3 The Ombudsman and the mediators appointed by him must honour the dispute assigned to them freely, independently and without instructions.

§16 Language of the proceedings

(Art. 75(5) FinSA)

The complaining customer can choose between an official language of the Swiss Confederation or English for the conciliation proceedings. The Ombudsman can also approve additional other languages that the parties have agreed upon in a written agreement.

§17 Confidentiality of the proceedings

(Art. 75(2) and (3) FinSA)

1 The conciliation proceedings are confidential.

2 Statements made by the parties within the context of the conciliation proceedings and the correspondence between each party and the Ombudsman may not be used in other proceedings, in particular in proceedings before a court or an administrative authority. This does not apply to the Ombudsman's notification of the completion of the proceedings to the parties.

3 The statements made during the negotiations are not recorded.

4 The parties' right to inspect files is limited to their correspondence with the Ombudsman or the mediator. The parties have no right to inspect the Ombudsman's correspondence with the other party.

§18 Mediation costs

(Art. 75(1) FinSA)

1 The costs depend on the OFD Association's Schedule of Contributions and Costs.

2 The costs of preparing and conducting conciliation negotiations will be charged to the defaulting party in the event of an unexcused absence.

Final provisions

§19 Changes to the regulations

1 The Rules of Procedure can be changed by the board at any time after consultation with the Ombudsman.

2 Changes must be submitted to the EVS for approval. The board will not put the changed organisational regulations into force until the EFD has given its approval.

§20 Coming into effect

The Rules of Procedure will enter into force on February 10th, 2020

Zurich, 17th December 2019