



AFFILIATION



FINANCIAL SERVICES OMBUDSMAN (FINSOM)

Affiliation

Any reference to the masculine also applies to the feminine.

1	PURPOSE	2
2	SCOPE	2
3	AFFILIATION CONDITIONS.....	2
4	AFFILIATION PROCEDURE	2
4.1	Registration	2
4.2	Activation	3
4.3	Invoicing.....	3
4.3.1	Financial Group.....	3
4.3.2	Art. 99 FINSO	3
4.3.3	Outsourcing	3
4.4	Suspension.....	3
5	DUTIES OF AFFILIATED COMPANIES	4
5.1	Duty to participate	4
5.2	Duty to inform.....	4
5.3	Duty to finance	4
6	RESIGNATION	5
7	EXCLUSION	5
8	READMISSION.....	5
9	COMPLAINTS	6
10	ENTRY INTO FORCE	6

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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. These rules apply to :
 - a. Companies that are affiliated with the Ombudsman Office (“FINSOM”).
 - b. Organisations that collect FINSOM's annual base tax in accordance with Art. 99 OSFin.

3 Affiliation conditions

3. Companies subject to a self-regulatory organisation (AML-SRO) or a FINMA authorisation, or whose client advisors are entered in a register recognised by FINMA, can affiliate to FINSOM.
4. The company can be in the process of incorporation, authorisation, or registration at the time of affiliation.
5. The affiliation can be by legal obligation (*mandatory*) or by self-regulation (*voluntary*).
6. The affiliation is in the name of the affiliated company (*individual affiliation*).
7. The affiliation is for an indefinite period, i.e. until resignation or exclusion from the company.
8. The usual means of communication between FINSOM and the affiliated companies is by e-mail and the FINSOM website. FINSOM is also accessible by telephone and postal mail.
9. Affiliations are reported to FINMA and/or the registration body, including voluntary affiliations.¹
10. FINSOM may also exchange information not in the public with the FINMA, the supervisory organisation, the registration body, the reviewing body and the FDF, provided that the information is useful for the performance of their tasks.²
11. Affiliate companies must comply with FINSOM regulations.

4 Affiliation procedure

4.1 Registration

12. To affiliate, simply register by submitting the online affiliation form available on the FINSOM website or send it completed to FINSOM. There is no contract to sign.

¹ Art. 83 FinSA

² Art. 88 FinSA

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13. It is possible to register for an affiliation the current year (*immediate affiliation*) or in advance for the following year (*anticipated affiliation*).
14. The accuracy of the data transmitted to FINSOM can be verified by FINSOM, the competent supervisory authority or the competent register.
15. The affiliated company must inform FINSOM of any changes to the registered data.
16. FINSOM informs FINMA and/or the registration body of the affiliation or its refusal.

4.2 Activation

17. The affiliation is activated by payment of the annual base tax and the subjection to an AML-SRO, the entry in a register recognised by FINMA or the FINMA authorisation.

4.3 Invoicing

18. The annual base tax shall be invoiced directly to the affiliated company, unless otherwise instructed under sec. 4.3.1 or 4.3.2.
19. The annual base tax can be invoiced in advance (for the following affiliation year) after the resignation deadline (sec. 6), so that FINSOM can meet its duty to provide information (art. 10).
20. For confidentiality reasons, any procedural costs will be invoiced directly to the affiliated company.
21. FINSOM will send its invoices by e-mail according to the data registered by the affiliated company.
22. Unless otherwise agreed, invoices are payable within 30 days.

4.3.1 Financial Group

23. A financial group may designate an entity in the group to pay the annual base tax of the affiliated entities of the group.

4.3.2 Art. 99 FINSO

24. Third party organisations may collect FINSOM's annual base tax at the same time as their own services and remit it to FINSOM.

4.3.3 Outsourcing

25. FINSOM is an association that is independent of the legislator, the market supervisory system and the free market players in the financial sector. For economic reasons, FINSOM may outsource its invoicing to a third-party provider independent of the financial sector that respects the same duties of confidentiality and professional secrecy as FINSOM.

4.4 Suspension

26. If the annual base tax or procedural fees remain unpaid remain unpaid, FINSOM can suspend the affiliation.
27. FINSOM can inform FINMA and/or the registration body of the suspension.

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5 Duties of affiliated companies

5.1 Duty to participate

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

5.2 Duty to inform

29. The company affiliated to Commercial Mediation/FinSA informs its clients of the company's complaint procedure to follow *before* seizing FINSOM and of the possibility of requesting mediation with FINSOM *before* a conciliation authority, a court, a court of arbitration or an administrative authority is seized or has been seized with the case.³

30. The company affiliated with the Workplace Mediation/LL informs its employees of the possibility contacting FINSOM for a confidential discussion and to request mediation *before*⁴ a conciliation authority, a court, an arbitration tribunal or an administrative authority is or has been seized. The affiliated company shall also inform its employees of their obligations to contribute to the protection of health at work by participating in a mediation procedure at the request of FINSOM.

31. The company also informs of :⁵

- a. FINSOM's Name and URL. The mailing address is to be provided upon request only.
- b. The language(s) in which FINSOM can be accessed (FR, DE, IT and/or EN).

32. Information must be provided, respectively for Commercial Mediation/FinSA or Workplace Mediation/LL:⁶

- a. Upon establishment of a new business or employment relationship.
- b. When a right asserted by the customer or employee is denied.
- c. At any time upon request of a customer or employee.

33. The information is provided in an appropriate form. It may be made available in a standardised form on paper (e.g. onboarding forms or contract) and/or electronically (e.g. website for Commercial Mediation/FinSA or intranet for Workplace Mediation/LL).⁷

5.3 Duty to finance

34. For Commercial Mediation/FinSA, each affiliated company pays an annual contribution (art. 80 FinSA) and covers its procedural costs (art. 75 para. 1 FinSA). The principles of FinSA are applied by analogy to Workplace Mediation/LL.

³ Art. 75 para 4 let. b, 8 para 1 let c. e 76 et 87 para 3 FinSA. Regarding the company's complaints procedure, see also *ISO 9001 - Quality Management System and ISO 10002 Quality management - Customer satisfaction - Guidelines for complaints handling in organisations and Guidelines on complaints-handling for the securities (ESMA) and banking (EBA) sectors* JC 2018 35, 04/10/2018.

⁴ FC ruling 2C_462/2011 of 9.5.2012

⁵ Art. 79 para 2 et 75 para 5 FinSA

⁶ Art. 79 al. 1 FinSA

⁷ Art. 9 para 3 et 79 para 2 FinSA

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35. FINSOM's financial contributions respect the "principle of causality".⁸
36. The financial contributions for Commercial Mediation/FinSA are subject to the approval of the Federal Department of Finance (FDF) and must be applied as approved.
37. Financial contributions are published on the FINSOM website in a transparent manner.

6 Resignation

38. A resignation must be announced to FINSOM, by the affiliated company and in writing, indicating the reason, at the latest on 30th September for 31st December.
39. When an affiliated company resigns, the annual base tax is not reimbursed.
40. New requests for mediation will be processed until 31st December. Ongoing proceedings shall not be interrupted. The costs of the proceedings remain payable by the resigning company.

7 Exclusion

41. An affiliated company that, repeatedly, fails to comply with the above duties (sec. 5) is excluded from FINSOM.
42. In accordance with the affiliation conditions (sec. 3), an affiliated company that loses its right to operate in the Swiss financial sector or is prohibited from doing so must also be excluded from FINSOM.
43. The Director is competent to decide on exclusion.
44. The exclusion of a company belonging to a group has no impact on the affiliation of the other companies in the group.
45. FINSOM informs the FINMA and/or the registration body of the exclusion.
46. In the event of exclusion, the annual base tax remains due or is not refunded.

8 Readmission

47. In the event of a past exclusion, applications for affiliation must be addressed directly to the Director.
48. It is not excluded that the Director readmits an excluded company. It depends on the circumstances.
49. FINSOM informs the FINMA and/or the registration body of the readmission.

⁸ Art. 80 FinSA and *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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9 Complaints

50. In case of dissatisfaction, the affiliated company may complain in writing to the Director, who will respond within 30 days.
51. If the company is not satisfied with the Director's response, the company may address its grievances to the Federal Department of Finance (FDF).

10 ENTRY INTO FORCE

This regulation was adopted by the Director on **16th September 2023**. It is 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.