

# 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 registering or affiliated companies.

## 3 COMPANY

### 3.1 Affiliation conditions

3. Swiss or foreign companies that provide financial services, on a professional basis, in Switzerland or to clients in Switzerland can affiliate to FINSOM.
4. Art. 3 let. c of the Financial Services Act (FinSA) defines financial services as follows :
  - a. Acquisition or disposal of financial instruments.
  - b. Receipt and transmission of orders in relation to financial instruments (definition art. 3 let a FinSA).
  - c. Administration of financial instruments (portfolio management).
  - d. Provision of personal recommendations on transactions with financial instruments (investment advice).
  - e. Granting of loans to finance transactions with financial instruments.
5. Affiliation to FINSOM can be :
  - a. A condition for FINMA authorisation.
  - b. A condition for registration with a register of advisers recognised by FINMA.
  - c. Voluntary.
6. FINSOM affiliation is always in the name of the company covered by the affiliation.
7. Depending on the company's organisation it is possible to:
  - a. Affiliate several companies at the same time or as a group.
  - b. Affiliate via or with the help of a third party mandated by the company.
  - c. Designate a contact person external to the company for the administration of the affiliation and/or mediation.
8. Affiliate companies must comply with FINSOM regulations.

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### 3.2 Affiliation procedure

#### 3.2.1 Registration

9. To affiliate, the company needs to provide the following essential data:
  - a. The contact person(s) competent to represent the company for affiliation administration and mediation.
  - b. The name, address and Business Identification Number (BIN) of the enterprise.
  - c. The category of authorisation in Switzerland.
  - d. The client category.
  - e. The number of employees for the calculation of the annual base tax<sup>1</sup>.
  - f. The languages desired for the mediation.
  - g. Belonging to a group of affiliated companies (if applicable).
  - h. Membership of a branch organisation (if applicable).
10. Registration is based on the principle of trust. The accuracy of the data can be verified by FINSOM, the supervisory authority or the register of advisors.
11. The affiliated company must inform FINSOM of any changes to the data recorded.

#### 3.2.2 Affiliation

12. The company is affiliated as soon as it receives confirmation of affiliation from FINSOM.
13. For companies subject to FINMA authorisation or registration with a register of advisors, affiliation is active as soon as the authorisation or registration is confirmed and the annual base tax is paid.
14. For companies that affiliate voluntarily, the affiliation is active as soon as the base tax is paid.
15. Affiliation renews itself annually in the absence of resignation or exclusion.

### 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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<sup>1</sup> See annex.

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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. According to articles 75 para. 1 and 80 FinSA as well as the provisions on occupational health protection, affiliated companies finance the mediation body collectively and the mediation procedures individually.
23. FINSOM's financial contributions are fair and proportional to the risk of affiliated companies. They respect the "principle of causality".<sup>2</sup>
24. Invoices are sent by email to the contact person designated by the affiliated company.

## 3.4 Resignation

25. A resignation must be submitted in writing by the affiliated company with a minimum 3 month notice.
26. When an affiliated company resigns, the annual base tax is not reimbursed.
27. 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

28. If a company affiliating in the context of a FINMA authorisation procedure or registration with a register of advisers does not obtain its authorisation or registration, the company is excluded. The company may apply for a refund of the annual base tax after deduction of the reimbursement fee in the appendix.
29. In accordance with the by-laws, an affiliated company which repeatedly fails to fulfil its duties must be excluded. The annual base tax is not refunded.
30. "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.
31. The exclusion of a company belonging to a group has no impact on the affiliation of the other companies in the group.

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<sup>2</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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32. The Director hears the affiliated company and, if applicable, consults with the supervisory authority or register of advisers before taking a position on the matter.
33. The final decision shall be taken by the Director, after consultation of the General Assembly.
34. An excluded company may appeal against the Director's decision to the Federal Department of Finance (FDF).

### 3.6 Readmission

35. In the event of a past exclusion, applications for affiliation must be addressed directly to the Director.
36. It is not excluded that the Director readmits an excluded company. It depends on the circumstances.

## 4 ENTRY INTO FORCE

This regulation was adopted by the Director on **3 October 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> Revision following the adoption of the "Bundesgesetz zur Anpassung des Bundesrechts an Entwicklungen der Technik verteilter elektronischer Register vom 25. September 2020". *Main Changes*: Removal of rules concerning branch organisations, clarification of reimbursement policy, reformulation of the affiliation conditions with specification of voluntary affiliation.

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## 5 APPENDIX: Financial Contributions

### 5.1 Annual basic tax and procedural fees

#### 5.1.1 Annual base tax

Each affiliated company pays an annual base fee according to its **size** and **type of authorisation** in Switzerland per **type of mediation**.

Commercial Mediation and Workplace Mediation are **available separately**, as chosen by the affiliated company :

- **Commercial Mediation – FinSA** : CHF 34 per employee in Switzerland allocated to the activities covered by the affiliation of a legal entity subject to FINMA, or CHF 34 per “client adviser” (art. 28 FinSA) for other companies. Maximum CHF 2’400 per year.
- **Workplace Mediation** : CHF 50 per employee in Switzerland. Maximum CHF 2’400 per year.

**Notes:** Full time equivalent does not apply. An administrator involved in operations counts as an employee. If the contact person is an external person, he/she counts in principle as an employee, except for grouped affiliations. A group can affiliate several legal entities and their branches. An employer can affiliate several client advisers.

**See FAQ** under [www.finsom.ch](http://www.finsom.ch) : How do I calculate the annual base tax ? Why only CHF 34 ?.etc.

#### 5.1.2 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.

### 5.2 Other administrative fees

<b>Reminder fee</b>	CHF 50
<b>Refund fee<sup>4</sup></b>	CHF 200

*Status: 30 October 2020*

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<sup>4</sup> See marginal figure 27.