



# 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. These rules apply to companies that are affiliated with the Ombudsman Office (or “Mediation Body”, hereafter “FINSOM”) as well as to organisations that collect FINSOM's annual base tax in accordance with Art. 99 OSFin.

## 3 Affiliation conditions

3. Companies that are members of an MLA self-regulatory organisation (SRO) or authorised by FINMA as well as client advisors, distributors or brokers listed in a register recognised by FINMA, can be affiliated to FINSOM.
4. They may also affiliate to FINSOM with the aim of becoming member of an SRO-MLA, to apply for a FINMA authorisation or enter a register recognised by FINMA.
5. Affiliations that do not meet the requirements of art. 3 or 4 is refused.
6. The affiliation can be by legal obligation (mandatory) or by self-regulation (voluntary).
7. The affiliation is in the name of the affiliated company (individual affiliation).
8. The affiliation is for an indefinite period, i.e. until resignation (sec. 6) or exclusion (sec. 7) from the company.
9. 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.
10. Affiliations are reported to FINMA as defined under art. 83 FinSA, including voluntary affiliations.
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.
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, an SRO-LBA, a register recognised by FINMA or FINMA.

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15. The affiliated company must inform FINSOM of any changes to the data recorded.

### 4.2 Activation

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

### 4.3 Invoicing

17. The annual base tax shall be invoiced directly to the affiliated company, unless otherwise instructed under sec. 4.3.1 or 4.3.2.
18. 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 according to Art. 10.
19. For confidentiality reasons, any procedural costs will be invoiced directly to the affiliated company.
20. FINSOM will send its invoices by e-mail according to the data registered by the affiliated company.
21. In the event of unpaid invoices, reminder charges apply in accordance with the principle of causality.

#### 4.3.1 Financial Group

22. 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

23. 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

24. 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.

## 5 Duties of affiliated companies

### 5.1 Obligation to inform

25. 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 attempting mediation with FINSOM before a court or an arbitration tribunal.<sup>1</sup>

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<sup>1</sup> 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.

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26. The company affiliated with the Workplace Mediation/LL informs its employees of the possibility to contact FINSOM for a confidential discussion before a work-related conflict or problem escalates to the point of absenteeism, a court or arbitration tribunal, or a complaint at the labor inspection authority.<sup>2</sup>
27. The company also informs of:<sup>3</sup>
- 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).
28. Information must be provided, respectively for Commercial Mediation/FinSA or Workplace Mediation/LL:<sup>4</sup>
- 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.
29. 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).<sup>5</sup>

## 5.2 Obligation to participate

30. 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.

## 5.3 Obligation to finance

31. 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.
32. FINSOM's financial contributions respect the "principle of causality".<sup>6</sup>
33. 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.
34. Financial contributions are published on the FINSOM website in a transparent manner.

## 6 Resignation

35. A resignation must be announced to FINSOM, by the affiliated company and in writing, indicating the reason, at the latest on 30<sup>th</sup> September for 31<sup>st</sup> December.
36. When an affiliated company resigns, the annual base tax is not reimbursed.

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<sup>2</sup> FC ruling 2C\_462/2011 of 9.5.2012

<sup>3</sup> Art. 79 para 2 et 75 para 5 FinSA

<sup>4</sup> Art. 79 al. 1 FinSA

<sup>5</sup> Art. 9 para 3 et 79 para 2 FinSA

<sup>6</sup> 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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- 37. In case of late resignation, the annual base tax remains due.
- 38. 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.

## 7 Exclusion

- 39. In accordance with the affiliation conditions (title 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.
- 40. In accordance with Art. 82 FinSA and the articles of association, an affiliated company that repeatedly fails to meet its information, participation or financing obligations must be excluded.
- 41. "Repeatedly" means more than twice. For example, a firm that fails to pay its base tax or procedural fees, despite two reminders, can be excluded.
- 42. The exclusion of a company belonging to a group has no impact on the affiliation of the other companies in the group.
- 43. The Director will hear from the affiliate and consult with the supervisory authority or body or the registry of advisors, before taking a position.
- 44. The decision to exclude is be taken by the Director.
- 45. In the event of exclusion, the annual base tax remains due or is not refunded.

## 8 Readmission

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

## 9 Complaints

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

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## 10 ENTRY INTO FORCE

This regulation was adopted by the Director on **30 September 2022**. 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.*