



BY-LAWS



FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

1	LEGAL FORM AND NAME	2
2	AIMS	2
3	REGISTERED OFFICE.....	3
4	BODIES	3
5	FUNDING	3
6	MEMBERS	3
6.1	Voting rights.....	3
6.2	Conditions for admission for members	4
6.2.1	Active Members	4
6.2.2	Passive Members.....	4
6.3	Resignation and exclusion.....	4
7	GENERAL ASSEMBLY	5
7.1	Composition	5
7.2	Duties and Competencies	5
7.3	Notice of meetings.....	6
7.4	Presidency	6
7.5	Decisions	6
7.6	Agenda.....	7
8	DIRECTOR	7
8.1	Composition	7
8.2	Representation.....	8
8.3	Duties and Competencies	8
9	AUDITOR	9
10	FINANCIAL YEAR	9
11	SUPERVISION	9
12	LIQUIDATION.....	10
13	ADOPTION	10

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

1 LEGAL FORM AND NAME

1. Under the name of

Financial Services Ombudsman (FINSOM)
(Ombudsman des Services Financiers (OMSF))
(Ombudsman für Finanzdienstleistungen (OMFD))
(Ombudsman dei Servizi Finanziari (OMSF))

2. The Association was created on 12 August 2018. It is governed by articles 60 et seq. of the Swiss Civil Code and these by-laws which determine how it is organised and how its members are admitted. These by-laws replace those of 14 July 2020.

2 AIMS

3. The purpose of the Association is to develop an independent, impartial, specialised, transparent and accessible "mediation system" within the meaning of the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA). It exists and acts notably on the basis of a legal mandate granted by the FDF but may carry out other similar activities on a private mandate that do not pose a conflict of interest. It is a non-profit organisation, does not operate on a commercial basis and acts in the public interest.
4. FINSOM is a "mediation body" or "ombudsman office".
5. Through its activities FINSOM enables affiliated companies to comply with certain legal obligations regarding investor protection and occupational health, as well as to manage their operational¹ and reputation risks. It contributes to:
 - a. The protection of clients as well as to the protection of employees and companies against unfair business practices.
 - b. The proper functioning of the free economy within the meaning of Art. 94 of the Federal Constitution.
 - c. Financial market supervision.
 - d. The reduction of occupational health costs.
 - e. Relieve the burden on the judicial system.
6. Through its existence FINSOM contributes to the image of the Swiss financial market and to protecting its reputation.

¹ Operational risks are defined as "the risk of loss, resulting from the inadequacy or failure of internal procedures, people or systems or from external events". This definition includes all legal and compliance risks insofar as these represent a direct financial loss, i.e. including regulatory fines imposed by regulatory authorities or other authorities.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

3 REGISTERED OFFICE

7. The Association's registered office is in Martigny.
8. It is voluntarily entered in the commercial register.
9. The Association has been established for an indefinite period.

4 BODIES

10. The administrative bodies of the Association are:
 - a. The General Assembly
 - b. The Director
 - c. The Auditor

5 FUNDING

11. The Association's resources are made up of financial contributions from affiliated companies, donations and legacies, and, if necessary, public grants.
12. The undertakings of the Association are guaranteed by its assets to the exclusion of all personal liability of its members.

6 MEMBERS

13. The Association has two membership categories:
 - a. **Active Members:** members of the General Assembly.
 - b. **Passive Members:** Companies that affiliate to a FINSOM mediation system.

6.1 Voting rights

14. In order to ensure FINSOM's organisational and financial independence as per legal requirements, the right to vote is limited to Active Members.
15. Each Active Member is by law excluded from voting on any resolution concerning a transaction or dispute between him or her, his or her spouse or a lineal relative on the one hand and the association on the other.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

6.2 Conditions for admission for members

6.2.1 Active Members

16. Active Members are natural persons.
17. There can be 5 to 7 Active Members, the majority of which must be independent of the affiliated companies. The interests of private, professional and institutional clients and occupational health must also be represented. Members must be independent from the Director.
18. Active Members must act in the public interest. Together, they must form a multidisciplinary and multilingual committee. Technical and practical expertise in investor or consumer protection, occupational health, governance, risk management and internal control, as well as knowledge of financial market regulation and operation, must be combined.
19. They are obliged to declare any possible conflicts of interest, including any duties, close relationships or contractual obligations with an affiliated company. They should declare any close relationships to the Director.
20. Active Members may not perform operational duties within the Association or be appointed by it.
21. They must have sufficient availability to fulfil their duties and be based in Switzerland.
22. The General Assembly decides on the nomination of Active Members, which is subject to the approval of the FDF in accordance with art. 84 FinSA. If necessary, the FDF appoints the members of the General Assembly.

6.2.2 Passive Members²

23. The Director decides on the admission of companies and lays down the conditions of admission in a regulation approved by the FDF that supplements the articles of association.

6.3 Resignation and exclusion

24. Affiliation status is withdrawn:
 - a. Through resignation.
 - b. If the conditions for admission are no longer fulfilled.
 - c. If the affiliated company repeatedly fails to fulfil its duties in relation to mediation.³
 - d. For other good cause.
25. Exclusions of an Active Member are decided by the General Assembly in agreement with the FDF.
26. Exclusions of affiliated companies are decided by the Director.
27. A decision to exclude must be made with the due diligence required by the circumstances.
28. If affiliation is lost, financial contributions remain due.

² Simplification of this section on December 26, 2020 with no change in meaning.

³ Art. 82 FinSA

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

7 GENERAL ASSEMBLY

29. The General Assembly is the Association's highest authority and control board.
30. Its main role is to guarantee the independence and impartiality of the Director, on an organisational and financial level, and his technical expertise. It must perform its duties objectively and impartially without any conflict of interest or pressure from third parties.
31. It must act in the public interest.
32. Members of the General Assembly can defray their costs associated with participating in the assemblies.

7.1 Composition

33. The General Assembly is composed of Active Members.
34. To ensure FINSOM's organisational and financial independence, its impartiality and its expertise, the General Assembly must be constituted in such a way as to:
 - a. Bring together the necessary skills to assess the technical expertise of the Director with respect to the administration of "a mediation system" and "mediation".
 - b. Guarantee the independence, on an organisational and financial level, and the impartiality of the Director.

7.2 Duties and Competencies

35. The tasks and competencies of the General Assembly are as follows:
 - a. Adopt the by-laws prepared by the Director.
 - b. Appoint the Active Members.
 - c. Appoint the Director and set his remuneration.
 - d. Appoint the Auditor and set his remuneration.
 - e. Monitor compliance with the by-laws.
 - f. Advise the Director on the direction and administration of the Association.
 - g. Help make sure that the mediation system has sufficient resources to manage the Association and mediation procedures.
 - h. Settle matters that are not the responsibility of the other administrative bodies.
 - i. Supervise the activity of the other administrative bodies.
 - j. Discharge the other administrative bodies.
36. To guarantee independence and impartiality, in accordance with international standards and the rules applicable to the nomination of judges to the Federal Supreme Court, the General Assembly appoints the Director for a minimum six-year term to be renewed every five years.
37. The Directorate must be as independent "*as a judge*"⁴ and available. It is mandated at a fixed rate sufficient to ensure independent, impartial and professional leadership and management of the Association. Its remuneration is indexed to the salary of the President of the Cantonal Court of the place of its registered office.

⁴ *Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman*, David Thomas and Francis Frizon for THE WORLD BANK, January 2012.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

38. In order to avoid any conflict of interest, no objectives may be set for the Director regarding the acquisition of affiliations, the number of procedures, or a success rate in resolving conflicts.
39. The General Assembly can only dismiss the Director with important motive.

7.3 Notice of meetings

40. The Director will convene an ordinary meeting of the General Assembly at least once a year with 20 days' notice.
41. The Director can convene the General Assembly as often as needs be.
42. Notification can be given in writing or by email.

7.4 Presidency

43. The Assembly is chaired by the Director.
44. The Director or the General Secretary appointed by the Director takes the assembly minutes and signs it.
45. Minutes must be sent to members of the General Assembly for them to check the contents within 30 days.

7.5 Decisions

46. All Active Members have equal voting rights.
47. General Assembly decisions require a simple majority of members present.
48. Changes to the by-laws must be submitted by the Director to the FDF for approval before any decision is made by the General Assembly.
49. Decisions regarding the appointment or dismissal of an Active Member are subject to the prior agreement of the FDF. The same is true for the appointment and dismissal of the Director.
50. Points not on the agenda can be decided if all the Active Members present in the meeting agree to discuss the matter.
51. General Assembly decisions can also be made in writing through the circulation of a proposal from the Director or an Active Member. If this arises, the proposal must be written clearly and precisely such that Active Members can unequivocally reply with a simple yes or no. If the matter is complicated, additional information and documents must be circulated with the proposal. The proposal must be sent to all Active Members with a time to reply of at least 5 days. Failure to reply within the communicated timeframe is considered an abstention.

Replies are valid if sent by registered post, fax, or email provided that a signed PDF copy of the response to the proposal is attached. The original document must also be sent by post even though this is not a necessary condition for the Active Member's reply to be considered admissible.

52. Abstentions do not count as negative votes.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

53. Votes by proxy are not allowed.

54. In the case of a draw, the Director or the FDF makes the final decision.

7.6 Agenda

55. The agenda for the annual general meeting must include:

- a. A presentation of the Director's activity report.
- b. A discussion about opinions/decisions affecting the development of the Association.
- c. A statement and assessment of conditions for admission for Active Members.
- d. The Director's independence statement.
- e. Individual proposals

56. The Director is obliged to add to the agenda of the General Assembly any proposal from an active member which is submitted in writing at least 30 days in advance.

8 DIRECTOR

57. The Director is the Association's administrative body.

58. His main role is to lead and manage the Association in a manner which is organisationally and financially independent, in accordance with the rule of law, international standards and the by-laws.

59. He also holds the role of "mediator" and can lead mediation procedures.

60. He must perform his duties objectively and impartially without any conflict of interest or pressure from third parties.

61. The Director is paid for his availability and work.

8.1 Composition

62. The Director is composed of a natural person ("Director" or "Ombudsman").

63. To guarantee his technical expertise, the Director must meet the following cumulative criteria:

- a. Possess appropriate knowledge of the financial market, related regulations and supervision, financial services and instruments.
- b. Have the appropriate personal skills and knowledge of out-of-court dispute resolution.
- c. Have at least 10 years of professional experience working in companies active in the field of financial services.⁵
- d. Have the necessary expertise to lead and manage the Association particularly in terms of governance, risk management and internal control.

64. In order to guarantee its independence and impartiality, in principle, the Director cannot have a close relationship with branch organisations or members of the Association. The Director declares its close relations or business relationships involving a risk of conflicts of interest.

⁵ It is not enough to have been self-employed in the financial sector or to have been an external service provider.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

8.2 Representation

65. The Association is bound by the personal signature of the Director.
66. Depending on the size of the Association, i.e. the staff at its disposal, the Management puts in place a collective signature.

8.3 Duties and Competencies

67. The Director has the right and the obligation to manage FINSOM independently, without third party instructions, and to represent the office in accordance with the rule of law, international standards and the by-laws.
68. The Director develops a mediation system that meets the high reputation of the Swiss financial centre and its standards in terms of governance, risk management and internal control. Among other things, it guarantees respect for professional secrecy and the confidentiality of the mediation procedure. The Director ensures adequate control of the risk of conflict of interest.
69. The Director prepares the by-laws, rules of affiliation for companies, rules of mediation procedure and financial contributions, and submits them to the FDF for approval.
70. The Director organises his replacement appropriately.
71. The Director establishes a quality management system to ensure an efficient and effective mediation procedure and the continual improvement of activities.
72. The Director manages FINSOM's staff to ensure the necessary technical expertise required to manage a variety of cases in several languages.
73. The Director can delegate tasks internally or to third parties. The principles of independence, impartiality, expertise and confidentiality must be guaranteed. He monitors the proper execution of delegated tasks.
74. The Director may designate branch organisations to collect basic fees from affiliated enterprises. FINSOM's competence and its independence must be guaranteed. Branch organisations may not collect the costs of proceedings.
75. The Director establishes a budget and a funding plan which does not depend on the number of mediation cases and which covers as a minimum the costs linked to:
 - a. The Association's administration.
 - b. The administration of admissions and exclusions.
 - c. The accessibility and availability of the mediation procedure.⁶
 - d. Establishing and publishing an annual report.
 - e. Complying with its duties to inform.
 - f. Building adequate reserves.
76. The budget and financing plan are drawn up in consultation with the FDF and subject to its approval.
77. The Director maintains the Association's accounts. The provisions of the Swiss Code of Obligations on commercial accounting and the presentation of accounts apply by analogy.

⁶ Including having a help desk or hotline available.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

78. The Director ensures that the mediation body informs the public about its organisation, its regulations, its financial contributions (including procedural fees), in a transparent manner and in accordance with the law.
79. In accordance with the law, the Director ensures that the mediation body provides the competent supervisory authorities with information on affiliated, rejected or excluded companies and publishes an annual activity report.
80. The Director ensures that any exchange of information not accessible to the public with FINMA, the supervisory organisation, the registration body, the reviewing body and the FDF is necessary for the performance of their functions. The confidentiality of the mediation procedure must be maintained.

9 AUDITOR

81. The Association performs an annual restricted audit.
82. The Association must submit its accounts for a normal audit by an auditor if over the course of two successive tax years two of the following amounts are surpassed:
 - a. Balance sheet total: CHF 10 million
 - b. Turnover: CHF 20 million
 - c. Staff: 50 full-time employees (yearly average)
83. The provisions of the Swiss Code of Obligations on the auditor of a corporation (*société anonyme*) apply.

10 FINANCIAL YEAR

84. The financial year starts on 1 January and finishes on 31 December every year. The first year ended on 31 December 2019.

11 SUPERVISION

85. For its activities subject to FinSA, the Association is subject to the recognition and supervision of the FDF.
86. It may be subject to other supervisory provisions for additional activities.
87. FINSOM is not subject to FINMA.

FINANCIAL SERVICES OMBUDSMAN (FINSOM)

By-Laws

Any reference to he shall include she and vice versa except where specified.

12 LIQUIDATION

88. The liquidation of the Association is decided by the General Assembly by the majority of members present. Any assets will be allocated to a body with comparable aims.
89. Loss of FDF authorisation does not automatically lead to the liquidation of the Association.

13 ADOPTION

90. These by-laws were adopted at the general assembly of **27 January 2021**, following the approval of the FDF on **21 January 2021**.
91. These by-laws replace those of **14 July 2020**.

On behalf of the Association

The Director

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.