



An independent, impartial, specialised and confidential alternative for conflict management and dispute resolution in the Swiss financial sector.

Activity Report 2022

Financial Services Ombudsman (FINSOM) is a specialised mediation institution for conflict management and dispute resolution in commercial and work relations in the Swiss financial sector. Recognised by the Federal Department of Finance (FDF) under the Financial Services Act (FinSA) in effect since 1st January 2020, FINSOM is also a member of INFO-Network¹ and an affiliate member of FIN-NET². Tax-exempt since 2018, FINSOM is the first public service mediation body in the Swiss financial sector. Its governance assures the mediation scheme’s independence from individuals, private interest groups and the public administration. This is FINSOM’s public report on Commercial Mediation for the calendar year 2022 as required under art. 86 FinSA and art. 7 para. 2 Directive 2013/11/EU. For further information regarding FINSOM please visit : www.finsom.ch

Commercial Mediation/FinSA

In 2022, FINSOM dealt with a total of 67 requests, including 5 information queries, 62 complaints, of which 1 complaint was admitted to mediation. Less than 5 requests concerned companies affiliated to FINSOM. The complaints concerned amounts from CHF 0 to nearly CHF 1'000'000.

Requests Commercial Mediation	67
Complaints	93%
Request for information	7%

Complaint	62
Rejected	98%
Admitted to mediation	2%

Complaint Rejected	61
FINSOM is not competent - referred	97%
Art. 75 al. 4 let. b FinSA	3%
Obviously vexatious	0

FINSOM is not competent - referred	59
Other competent authorities	29%
Other FinSA Ombudsman Office	47%
Foreign Ombudsman Office	3%
Other	21%

Language	67
EN	78%
DE	13%
FR	9%
IT	0

Client residence	67
Foreign	70%
Switzerland	30%

Amount claimed	CHF
Min.	0
Max.	<1mio

Duration	Average
Decision (rejected/admitted)	1 day
Admitted to mediation	90 days

¹ International Network of Financial Services Ombudsman Schemes (INFO-Network), <https://www.networkfso.org/>.

² Financial Dispute Resolution Network (FIN-NET), https://finance.ec.europa.eu/consumer-finance-and-payments/retail-financial-services/financial-dispute-resolution-network-fin-net_en.

On average, FINSOM responded to complaints within 1-3 working days with an admission to Commercial Mediation or a refusal. While requests usually come from clients, FINSOM also responds to requests from affiliated companies and the public. In the case of an admissible complaint, the maximum duration of a commercial mediation procedure is limited to 90 days, in principle. The duration of a mediation procedure depends upon the circumstances of the case, the location of the parties and the means of communication. The 90-day limit can be extended with the agreement of the parties, if the procedure has a chance of reaching an agreement. The mediation procedure takes place remotely, by phone, video conference or in writing. One of the parties is often domiciled abroad. Physical proximity of the parties to the ombudsman office or the designated mediator is neither essential nor required.

High rate of rejected complaints

The 2 main reasons for rejection in 2022 are :

<hr/>	1) Another ombudsman office was competent.
<i>“Although the number of complaints handled increased compared to the previous year, clients of companies affiliated to FINSOM are rather satisfied. Fraud remains a central theme in the complaints handled by FINSOM.”</i>	2) Fraud (or “scam”) referred to the competent authorities.
<hr/>	Although the number of complaints handled increased compared to the previous year, clients of companies affiliated to FINSOM are rather satisfied. Fraud remains a central theme in the complaints handled by FINSOM, a significant number of which also continues to be transferred to another ombudsman office in the Swiss financial sector.
	FINSOM notes that a specialised, transparent and publicly accessible mediation body (or “ombudsman office”) can contribute, in the interest of both professionals and clients, to complaint management (art. 75 para. 4 let. b FinSA), financial market supervision (art. 83 and 88 FinSA), combating economic crime (whistleblowing), conflict management and dispute resolution (art. 75 and 76 FinSA) as well as informing the public (art. 86 FinSA).

However, this “contribution” depends as much on the confidence of professionals and clients as on funding, availability, accessibility, technical competence³, cost efficiency and effectiveness, as well as on the adequate integration of the mediation body into enterprise risk management, market surveillance and legal proceedings.

Combating fraud in the financial sector

The typical scam involves a website with a domain name registered abroad that claims to offer services or products from Switzerland. Clients may also be approached by individuals claiming to distribute the services or products on behalf of a Swiss company. In both cases, the identity of a legitimate Swiss company, its directors or employees, could be stolen in order to gain client confidence.

Clients who do not perform their own due diligence before transferring funds often realise that they are victims of fraud only after having made several transfers and wish to withdraw their assets. Sometimes this happens despite having tried to do their due diligence through research and verifications, unfortunately missing details such as a website domain name, a non-existent postal address, a Swiss

³ Knowledge of rules of procedure, methods, subject matter (from a practical as well as legal point of view), context, psychology and communication, but also relevant practical experience. To assist parties in solving “problems”, ideally the neutral third party would also possess technical skills superior to those of the parties, or at least equivalent. When setting up a mediation institution, consideration should also be given to the additional administrative skills required for the sound development of an organisation and enterprise risk management in general, as well as the specific risks associated with its activities.

telephone number diverted abroad or anti-money laundering compliance declarations that refer to European rather than Swiss regulations.

The amounts transferred often exceed several thousand francs. While clients can always file a complaint with the criminal authorities to help combat economic crime and protect other clients, they often have to give up the hope of recovering their lost funds or have good insurance coverage.

It can be equally difficult for legitimate companies, their directors or employees to protect their identity, image and reputation. For example, the name and contact details of a legitimate and authorised company in Switzerland may be blacklisted abroad without specifying that it is a victim of identity theft.

Unfortunately, victims of identity theft quickly learn that it is not in itself a criminal offence under Swiss law and that recovering one's identity can be very difficult. For example, if the scam is known to the authorities, as soon as a website is closed down and blacklisted by the Financial Market Supervisory Authority (FINMA)⁴, it can already be replicated under another domain name.

While it is not enough for the client to check the FINMA blacklist to protect themselves from the above types of scams, FINMA also publishes a series of useful information for the protection of clients in the financial sector⁵, such as answers to frequently asked questions about cryptocurrency offerings⁶.

However, FINMA does not provide an individual answer to client complaints and does not comment on general statements and questions such as “Is firm Z licensed ?”⁷. To answer this question, clients must consult the FINMA lists⁸, the AML self-regulatory organisations⁹ or the FinSA Register of Advisors¹⁰.

It is also possible to check whether a company that offers, distributes or provides financial services or instruments to clients in or from Switzerland is affiliated to a Ombudsman Office (or “mediation body”) recognised by the FDF¹¹. If the information is not already published in the above lists or registers, or in case of doubt, it is best to confirm the affiliation with the mediation body in question.

“Financial market regulation and public information are not yet designed to facilitate the client’s due diligence.”

The verification of affiliation to an ombudsman office is additional to the verification of being subject to Swiss financial market supervision but neither guarantee that the client is actually dealing with the affiliated company or a legitimate representative. This can be difficult to ascertain when dealing with an unfamiliar company or person. Furthermore, while FINMA publishes information that is certainly useful to clients of the Swiss financial sector, financial market regulation and public information are not yet designed to facilitate the client’s due diligence.

⁴ <https://www.finma.ch/en/finma-public/warnungen/>

⁵ <https://www.finma.ch/en/finma-public/schutz-vor-anlagebetrug/>

⁶ <https://www.finma.ch/en/finma-public/fragen-und-antworten/>

⁷ <https://www.finma.ch/en/finma-public/reporting-information/>

⁸ <https://www.finma.ch/en/finma-public/authorised-institutions-individuals-and-products/>

⁹ <https://www.finma.ch/en/authorisation/self-regulatory-organisations-sros/>

¹⁰ <https://www.finma.ch/en/authorisation/registrierungsstelle/>

¹¹ Note: financial service providers whose services or instruments are intended exclusively for "professional clients" as defined by art. 4 FinSA are exempt from the obligation to affiliate to a mediation body. In addition, not all sectors or activities subject to market supervision in the Swiss financial sector are required to affiliate to a mediation body recognised by the FDF. However, voluntary affiliation is not excluded.

Efficiency and effectiveness of mediation in the financial sector

The one complaint admitted to mediation in 2022 already indicates the need to improve the efficiency and effectiveness of mediation in the financial sector generally, in the interest of both clients and professionals.

In this case, the foreign client complained, among other things, about the management of a portfolio in the context of a life insurance policy taken out on the recommendation of his Swiss investment advisor during a visit to Zurich. In addition to the insurance company and this advisor, an insurance broker and an asset manager were subjects of the client's dissatisfaction. The bank was spared, at least for the time being.

First, the client had to file individual complaints to the various companies in Switzerland and abroad concerned by his dissatisfaction. If the complaint was not dealt with satisfactorily, the client had to initiate an individual mediation procedure with each company at different ombudsman offices (if there was one).

While this inefficiency did not discourage the client but merely slowed them down, the lack of effectiveness of these procedures simply destroyed the confidence the client had in the financial sector while generating additional work for companies without allowing them to minimise their risks, on the contrary.

The difficulties in conflict management and dispute resolution in cross-border relationships are well known. Unfortunately, the plurality of mediation bodies in the Swiss financial sector does not improve the situation at the national level. Amongst other things, it is not excluded that a dissatisfied client has to complain to several Swiss mediation bodies without results, even in the case of an objectively well-founded complaint that presents a reputational risk for the Swiss financial centre, often followed by a tightening of its regulations. It is also possible that there is no specialised or competent mediation body in Switzerland to deal with the client's complaint.

A mediation procedure that is “non-bureaucratic, fair, fast, impartial and inexpensive for the client, if not free of charge”¹² is not yet guaranteed in the Swiss financial sector. Both the plurality of competing mediation bodies and the lack of a specialised and competent body prevent mediation from making an

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efficient and effective contribution to complaint management (art. 75 para. 4 let. b FinSA), financial market supervision (art. 83 and 88 FinSA), combating economic crime (whistleblowing), conflict management and dispute resolution (art. 75 and 76 FinSA) as well as informing the public (art. 86 FinSA).

FINSOM reminds that only “a few countries have the unusual idea of ‘competitive’ ombudsmen, where – subject to specified minimum standards – the financial industry is able to choose between two or more competing financial ombudsmen. Such a choice presents severe risks to independence and impartiality – because financial businesses may favour the ombudsman they consider likely to give businesses the best deal. It overlooks the role of financial ombudsmen as an alternative to the courts

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¹² Art. 75 al. 1 FinSA.

*and creates one-sided competition – because, unlike the financial businesses, the consumers are not given any choice of ombudsman”.*¹³

“Self-regulation of conflict management and dispute resolution historically has limits.”

With 8 competing FinSA mediation bodies, Switzerland is unfortunately one of the few countries that not only have competition between “mediators” but also between the “mediation bodies” that appoint and supervise them. Neither the costs nor the added value of such competition are obvious.

While the idea of revising Articles 215 and 218 of the Swiss Code of Civil Procedure so as to rely less on the parties for the organisation and financing of mediation should be a good one, the Swiss financial sector would certainly not have enough dissatisfied clients to justify creating a mediation market by introducing an inadequate number of mediation bodies and mediators in competition. The reputation of the Swiss financial centre remains of high repute such that fraudsters steal a Swiss legal or natural person’s identity. The current state of mediation in financial services simply cannot have been the aim of FinSA.

Self-regulation of conflict management and dispute resolution historically has limits, regardless of the method or rules of procedure in question (e.g. mediation, conciliation, arbitration or court) or the title borne by the neutral or impartial third party conducting the procedure (e.g. mediator, conciliator, judge, arbitrator, ombudsman). Some State intervention is necessary to ensure the availability, accessibility, efficiency and effectiveness of a method, as well as good coordination between them. However, one should not lose sight of the purpose of such intervention and the overriding interest to be protected.

When regulating, Switzerland should be conscious of certain fundamental principles of risk management in a free economy, such as the important role of the State to “safeguard the interests of the Swiss economy as a whole » (art. 94ss Cst) without limiting itself to guaranteeing individual "economic freedom" (art. 27 Cst) in such a way as to create an imbalance between supply and demand, inefficient and ineffective bureaucracy and unfair competition (arts. 96 and 97 Cst).

“If the efficiency and effectiveness of conciliation or judicial procedures clearly still need to be improved in Switzerland, it would naturally be preferable to avoid replicating their design or operational shortcomings while making them worse.”

Market surveillance, combating economic crime, conflict management and dispute resolution as well as public information are "cost centres" for the management of risks in an economic sector or a country, as "governance, risk management and internal control" ("Enterprise Risk Management" or "internal control system") is for a private company. However, "adequate risk management", which is proportional as well as efficient and effective, remains a necessary "investment" to support the achievement of the objectives of "income-generating activities" at both individual and national level.

Unfortunately, since FinSA, we can observe that Swiss cantons are starting to "encourage" mediation on a cantonal level as well¹⁴. We can already see that Switzerland is developing mediation as a private company would develop its after-sales service for complaints management in the economic interest of its employees, without considering the company's or its clients’ needs - except that a private company that managed its risks in such a way is likely to disappear.

¹³ Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman, A practical guide based on experience in western Europe, By David Thomas and Francis Frizon for The World Bank, January 2012, p. 38-39.

¹⁴ Example: Law on mediation (12854), of 28 January 2023, of the Republic and Canton of Geneva

If the efficiency and effectiveness of conciliation or judicial procedures clearly still need to be improved in Switzerland, it would naturally be preferable to avoid replicating their design or operational shortcomings while making them worse. Such an approach to developing mediation or any other method of conflict management and dispute resolution will be as costly to Switzerland as shortcomings in enterprise risk management or market surveillance. FINSOM suggests greater caution in the regulation of these activities, including better risk and impact analysis.

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