



COMMERCIAL MEDIATION



FINANCIAL SERVICES OMBUDSMAN (FINSOM)

Commercial Mediation/FinSA

Any reference to the masculine also applies to the feminine.

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1. PURPOSE

1. Based on the Director's duties and competencies provided in the by-laws; these rules define the **Commercial Mediation/FinSA** procedure and complete the by-laws.
2. The rules of procedure meet the requirements of mediation within the meaning of the Financial Services Act (FinSA) and mediation within the meaning of the Code of Civil Procedure (CCP).

2. SCOPE

3. These rules apply to:
 - a. Parties in a mediation procedure and their representatives.
 - b. The Ombudsman Office¹ (sec. 3).

3. OMBUDSMAN OFFICE

3.1. Ombudsman

4. The Director of the *Ombudsman Office* ("FINSOM") is also a Mediator. He is the *Ombudsman*.
5. The appointment and duties of the Ombudsman are set out in the by-laws.

3.2. Hotline

6. The Hotline receives the mediation request.
7. It carries out a *preliminary review* to determine whether the request meets the access conditions and decides whether to admit or refuse it.
8. If the request is refused, the Hotline will, as far as possible, try to direct the requestor towards a more appropriate approach or procedure.
9. If the request is admitted, the Hotline takes the appropriate measures to organise the mediation procedure.

3.3. Mediators and Experts

10. Persons appointed by FINSOM to conduct mediation procedures and perform independent assessments are *Mediators*.
11. The persons appointed by FINSOM to perform independent assessments are *Experts*.

¹ Or "Mediation Office".

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3.4. Independence and impartiality

12. The Ombudsman, Hotline, Mediators and Experts freely assess the cases submitted to them. They are not subject to any directives.

4. COMMERCIAL MEDIATION

4.1. Scope

13. The mediation procedure can be an alternative to a conciliation, judicial, arbitration or administrative procedure.
14. Commercial Mediation concerns the relationship between *a provider and a client*² (existing or potentiel).
15. If dissatisfied, the customer should first complain to the provider and try to reach an agreement with him before referring the matter to the Ombudsman Office.
16. In case of a conflict or disagreement between a provider and a client, Commercial Mediation encourages the parties to try to find solutions themselves *before* the situation degenerates to the point of terminating a business relationship or referring the matter to a conciliation authority, a court, a court of arbitration or an administrative authority.
17. FINSOM can also be designated for a mediation procedure *during* conciliation, arbitration, judicial or administrative proceedings. However, the conciliation, arbitration or judicial proceedings must be suspended.
18. The grounds for dissatisfaction may relate to claims, but also to any type of legitimate right, such as the right to obtain documents or data protection, as well as compliance with the rules of conduct, transparency at the point of sale, quality or after-sales service.³
19. The Ombudsman Office is not a substitute for consumer protection organisations or organisations that defend the interests of providers. FINSOM is neither a legal, social, medical, nor a therapeutic counsel.

4.2. General rules

20. FINSOM is competent to conduct mediation concerning an affiliated provider.
21. Provided that the conditions for access (sec. 4.4) are met, the mediation procedure can be opened at any time.
22. If a client's *unilateral* request for mediation is admitted, the provider must respond to requests from the mediation office.
23. If the same problem involving the same provider impacts several clients, they may appoint a common representative.

² Private, professional or institutional client, natural or legal person.

³ FinSA Message p.8195

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24. The mediation procedure must be unbureaucratic, fair, quick, and impartial. It is confidential (sec. 4.3).
25. The outcome of the procedure depends on the willingness of the parties. FINSOM does not issue a decision or propose a judgement.
26. The filing of a mediation request with FINSOM does not preclude a civil action. However, the request does not suspend or limit legal time limits, such as those relating to limitation, confiscation or judicial or administrative proceedings. The parties are responsible for complying with these time limits.

4.3. Confidentiality

27. Statements or correspondence between FINSOM and the parties may be written or oral.
28. If the request is *unilateral* (sec. 4.4), FINSOM does not take any steps to contact the other party without the consent of the requesting party.
29. The parties are not entitled to view FINSOM's correspondence with the other party.
30. The parties are not permitted to share their correspondence with FINSOM with each other.
31. The statements made by the parties within the framework of mediation proceedings and the correspondence between a party and FINSOM may not be used in other proceedings or shared with third parties (including judicial, supervisory or administrative authorities).

4.4. Access Conditions

32. A complaint or request for mediation may be submitted by a client⁴ (existing or potentiel) or a provider.
33. To be admitted to mediation, the following conditions must be met :
 - a. The complaint or request must be submitted in accordance with FINSOM instructions.
 - b. FINSOM is competent to conduct mediation (art. 20).
 - c. The requesting party must demonstrate that they have informed the other party of their point of view and attempted to reach an agreement with them.
 - d. The complaint or request cannot be obviously vexatious.
 - e. Mediation doesn't appear devoid of any chance of success from the outset.
 - f. If no conciliation authority, court, court of arbitration or administrative authority is or has been seized of the case, and if mediation has not already been conducted in the same case, the request can be *unilateral*. Otherwise, the request must be made *jointly* and any legal or arbitration proceedings must be suspended during the mediation.
34. If the above conditions are not met, the complaint or request for mediation will be refused.

⁴ Private, professional or institutional client, natural or legal person.

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4.5. Procedure

35. The procedure may take place at a distance or in person, at the decision of the Mediator.
36. The procedure can be conducted in French, English, Italian or German, depending on the language agreed between the parties⁵ or chosen by the client.
37. The Mediator hears the parties and tries to conciliate them.
38. The Mediator can request discussions, information, or documents from the parties at any time.
39. The Mediator can perform an *independent material and/or legal assessment* based on the information at his disposal but does not issue a decision or propose a judgment.
40. The Mediator brings in an Expert to complement his skills, if necessary.
41. The conclusion of an agreement is subject to the willingness of the parties.
42. At the end of the procedure, the Mediator notifies the parties of its closure.

4.6. Duration

43. The outcome of the mediation is communicated within 90 calendar days from the date the Mediator receives the complete file.
44. The 90-day limit can be extended with the agreement of the parties if the procedure has a chance of resulting in a resolution.

4.7. End of the procedure

45. The mediation procedure ends if:
 - a. The conflict or disagreement between the parties is resolved.
 - b. The conditions for access are no longer met.
 - c. A requestor withdraws their request or terminates the mediation procedure.

4.8. Procedural fees

46. In the event of a *unilateral* request as per sec. 4.4, the procedural fees are borne by the affiliated provider.
47. In the event of a *joint* request as per sec. 4.4, the division of the procedural fees must be agreed between the parties.
48. FINSOM may request advance payments.

⁵ According to a contract, the language of a contract or the usual language of communication between the parties.

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5. ENTRY INTO FORCE

This regulation was adopted by the Director on **28 May 2025**. 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 rules, the French version prevails.