

OMBUDSMAN FINANCIAL SERVICES PROVIDER

Articles of Association

June 25, 2020

Name, registered office and purpose

Section 1 Name and registered office

1 An Association in accordance with the provisions of Art. 60 et seq. exists under the Association name "Verein Ombudsstelle Finanzdienstleister (OFD)". It aims to gain the recognition of the Federal Department of Finance (FDF) in accordance with Article 84 of the Financial Services Act (FinSA).

2 The Association must be entered in the commercial register. The board determines the date of registration.

3 The registered office of the Association is in Zurich, unless the board determines a different registered office.¹

Section 2 Purpose

1 The Association aims to establish and operate an Ombudsman in accordance with Article 74 et seq. of the Financial Services Act for financial institutions, financial service providers and customer advisors (hereinafter referred to as financial service providers). To this end, it shall set up arbitration boards in all four parts of the country.

2 The Ombudsman's activities span the entire territory of Switzerland and are performed in German, French and Italian. The board can provide additional languages for individual arbitration boards.

3 The Association is not profit-making. However, it can set up the necessary reserves as appropriate to safeguard the activity.

4 The Association can set up an arbitration tribunal that is voluntarily available to the financial service providers affiliated with the Ombudsman and their customers in the event of failure to mediate.

5 The Association collects and manages the data provided by law regarding the affiliated financial service providers and about its own activities.

Membership

Section 3 Membership opportunities

Membership in the Association is open to professional associations of financial service providers with registered offices in Switzerland.

¹ Modified by the final vote of 25 June 2020

Section 4 Requirements for members

Only those who meet the following requirements may be accepted as members:

- a) The member must be committed to protecting the professional interests of financial service providers; and
- b) the majority of the financial service providers affiliated to the member must be active in Switzerland.

Section 5 Membership applications

1 Membership applications should be sent to the Association's office. The membership application must refer to the Articles of Association and organisational regulations of the Association, along with a written declaration that the applicant unreservedly agrees with these provisions.

2 Files providing information about the applicant; organisation and the business activities and which are suitable as evidence that the requirements pursuant to Section 4 have been fulfilled should be enclosed with the application.

3 The Board can draw up further provisions regarding the form and content of the membership application by means of a regulation.

Section 6 Decision regarding admission and legal remedy

1 There is no entitlement to admission to the Association.

2 The board shall decide whether to admit or reject applicants.

3 If the Board rejects the admission, the rejected applicant may request a decision from the next ordinary General Assembly within 10 days.

4 The General Assembly decides on the application for admission. It is not required to justify its decision.

Section 7 Requirements for maintaining membership

1 Members are required to continuously meet and adhere to the requirements for obtaining their membership.

2 Members must inform the office about any changes to the requirements that resulted in their membership without delay. The office shall report this to the board.

Section 8 Resignation

Members can resign from the Association by giving a notice period of six months before the end of a calendar year by submitting a written declaration to the board.

Section 9 Exclusion of members

The general assembly can, on its own initiative or at the request of the board, exclude a member if:

- they harm or endanger the interests of the Association through their conduct;
- the requirements for maintaining membership (Section 7 of the Articles of Association) are no longer met.

Section 10 Financial consequences

In the event of resignation or exclusion, the membership contribution for the current calendar year must be paid in full, even if it had not yet been invoiced at the time of resignation or exclusion.

Ombudsman affiliation

Section 11 Financial service provider affiliation

1 Financial service providers can join the Association's Ombudsman's office in the basis of an affiliation contract, provided that they meet the requirements. Membership of the financial service provider in an organisation which is a member of the Association is not a prerequisite.

2 A formal requirement for the affiliation is an affiliation obligation in accordance with Article 16 of the Financial Institutions Act (FinIA) or Article 29 paragraph 1(c) of the Financial Services Act (FinSA).

3 The affiliation is established on the basis of an affiliation contract and does not result in membership of the Association.

4 The office shall conclude the contract with the applicant on behalf of the Association. It can refuse affiliation if

- a) the applicant offers no guarantee that the business activities are in accordance with the law;
- b) the applicant has previously been rejected or terminated by the Association or another Ombudsman;
- c) the applicant does not or does not intend to perform an activity requiring affiliation in Switzerland;
- d) the applicant clearly does not meet the requirements for admission to a supervisory organisation or the register of customer advisors,
- e) as well as in the other cases provided for by law or regulation.

5 The board regulates the details.

Section 12 Requirements for maintaining affiliation

1 Affiliated financial service providers are obliged to continuously meet and comply with the requirements for obtaining their affiliation to the Ombudsman.

2 They shall notify the office of any changes to the requirements that led to the affiliation being granted without delay.

3 The office shall terminate the affiliation contract if the requirements for the affiliation no longer apply.

4 The affiliated financial service providers shall ensure that notifications can be sent by the Ombudsman to the most recently reported business address and can be accepted at any time. Failure to comply with this obligation constitutes a reason for termination. Notifications sent to the last registered business address are considered valid and legally effective, even if the effective delivery fails, particularly if a registered letter with an annotation is not collected, its acceptance is rejected or it is returned to the sender due to an unknown addressee.

5 The board shall ensure that the statutory provisions are included in the affiliation contract. It can include further provisions in the affiliation contract.

Arbitration boards

Section 13 Establishment of arbitration boards

1 The Ombudsman shall establish a sufficient number of arbitration boards in all four language regions. The relationship between arbitration boards and the Association is regulated by contract.

2 Each arbitration board has at least one natural person who is suitable for mediation and the necessary infrastructure to conduct mediation negotiations.

3 The contract with the arbitration board regulates the remuneration in favour of the arbitration board and at the expense of the Association for the assigned conciliation proceedings.

Section 14 Arbitration procedures

1 The Board regulates the conciliation proceedings of the arbitration boards as the firm establishment of Article 75 FinSA and the maximum costs which can be imposed on a customer.

2 The Ombudsman oversees the arbitration boards and ensures the uniform application of the Rules of Procedure.

Organisation of the Association

Section 15 Bodies

The Association acts through the following bodies:

- a) The general assembly or the ballot of all members;
- b) the board / board committee;
- c) the Ombudsman;
- d) the office;
- e) the auditor.

Section 16 Organisational units

1 The board appoints the Ombudsman for a fixed term of two years. This title can only be removed by the board before the end of the fixed term of office for good cause. Re-election is possible. The Ombudsman must have the necessary

specialist knowledge, in particular in the field of FinSA, FinSO, FinIA and FinIO, must enjoy a good reputation, guarantee impartial, transparent, fair and efficient work as an intermediary and must be organisationally and financially independent of the parties requesting mediation.²

2 The board can form a board committee, to which certain designated tasks are assigned.

3 The board shall ensure the establishment of an office and entrust the Ombudsman with direct supervision of the office and the arbitration boards.

4 The board shall propose an auditor to the general assembly for election. Re-election is permitted.

Section 17 **Board**

1 The Board consists of at least three³ and a maximum of seven people who are delegates of an Association member. A maximum of one person per Association member can belong to the board.

2 Founding members of the Association are entitled to a seat on the board.

3 The remaining members have a limited right to a delegate on the board up to the maximum board size. The member with the larger number of financial service providers affiliated with the Ombudsman of the Association has priority and changes shall only be made at the end of the term of office of the surplus board member who leaves.

4 The election of new Board members and the replacement of former Board members is performed by the Board itself, subject to confirmation by the general assembly.

5 The board constitutes itself and appoints a president.

6 The term of office is two⁴ years; re-election is possible.

Section 18 **Board meetings**

1 The board meets at the invitation of the president as often as business requires.

2 Each board member can request that a board meeting be convened, stating the subject of discussion.

3 The board is quorate if at least half of all board members are present. It passes its resolutions with a simple majority of voters. In the event of a tie, the president has the casting vote.

4 Elections require the absolute majority of the votes cast. In further rounds of voting, the candidate with the lowest number of votes is eliminated. From the second round of voting onwards, only those candidates who already received vote(s) in the first round of voting can be elected.

² Modified by resolution of the ao general assembly on 7.10.2019

³ Modified by resolution of the ao general assembly on 7.10.2019

⁴ Modified by resolution of the universal assembly on 17.12.2019.

5 The board can also pass its resolutions (apart from elections) on the basis of written approval, unless a member requests advice.

6 Minutes are kept of the meetings and resolutions of the board.

Section 19 **Competencies and tasks of the board**

1 The board decides on all transactions that are not necessarily reserved or transferred to the general assembly or other bodies by law or by the Association's Articles of Association. It can delegate its powers to the board committee.

2 The board issues the regulations and contract models required by law and the Articles of Association.

3 Its tasks in particular include:

- defining, coordinating and monitoring of the various functions;
- issuing and amending the organisational regulations and the procedural rules for the Ombudsman's office;
- setting the admission fee and membership fee for members, the affiliation fee for affiliation to the Ombudsman, the annual fee for financial service providers and the fees for the conciliation proceedings;
- decisions regarding the admission of members;
- choice of Ombudsman and staffing of the office;
- confirmation or rejection of the mediators proposed by the Ombudsman;
- creation of the annual budget as proposed by the office;
- preparation of the general assembly or the ballot.

4 The board has the right to submit proposals to the general assembly or to the ballot.

5 The board determines which persons are authorised to represent the Association and how the legally binding signature for the Association is issued.

Section 20 **The Ombudsman**⁵

1 The Ombudsman organises and monitors the arbitration boards and submits applications to the board for approval of new arbitration boards.

3 The Ombudsman can attend board meetings in an advisory capacity.

4 The Ombudsman ensures that the mediators apply the Rules of Procedures uniformly.

5 The Ombudsman instructs and manages the office. It ensures that the conciliation proceedings are performed in a timely manner and decides whether applications for conciliation should be rejected in accordance with the provisions of Article 75 FinSA.

Section 21 **General assembly**

1 The ordinary general assembly takes place annually. Extraordinary general assemblies take place if the board decides or if requested by at least a fifth of the members.

⁵ Modified by resolution of the ao general assembly on 7.10.2019

2 The general assembly is convened by the president. As a rule, the items to be discussed must be announced to the members 20 days before the general assembly. In urgent cases, the president can shorten the notice period to three days.

3 Each member has one vote in the general assembly. Each member delegates a representative.

4 Applications from members must be submitted to the board for the attention of the general meeting no later than seven days after receipt of the invitation.

Section 22 **Ballot**

By order of the board, the written vote of all members (ballot) can take the place of a general assembly.

Section 23 **Competencies of the general assembly**

The general assembly has the following powers:

- annual election of the auditor;
- passing resolutions on the board's annual report, the annual financial statements, granting discharge for the board, the office and the auditor;
- acceptance of the Ombudsman's annual report;
- confirmation or rejection of the newly appointed board members at the next general assembly;
- decisions regarding the admission of a member at the level of second instance after a decision by the board to reject the member;
- exclusion of a member;
- amendments and additions to the Articles of Association;
- Dissolution of the Association.

Section 24 **Quorum**

1 Resolutions and elections of the general assembly require a simple majority of all votes present or represented, unless stipulated otherwise in the Articles of Association or by law.

2 A vote requires a simple majority of all members.

3 In the event of a tie, the president has the casting vote.

4 The representation of absent members is excluded. Legal entities and partnerships are represented by a person authorised to sign.

5 A majority of two thirds of all members is necessary to change the Articles of Association relating to the organisational form of the Association or the voting rights.

Section 25 **Auditor**

1 The general assembly elects an auditor. The auditor remains in office until a new auditor is elected.

2 The auditor checks the annual accounts and the bookkeeping and reports in writing to the board at the general assembly. A representative of the auditor must attend the general assembly if the report contains concerns or if the board requests their presence.

Section 26 **Registered office**

1 The board shall transfer the management of the current business of the Association to an office, unless this has been delegated to the board committee. The office reports to the Ombudsman and serves as a contact point for the EFD.

2 The tasks of the office in particular include:

- administration of the Association;
- allocation of mediators for handling mediation requests and coordination of appointments for conciliation proceedings;
- dispatch of summons and decisions in coordination with the designated mediator;
- collection and administration of all current data about the members, the affiliated financial service providers and the performed conciliation proceedings;
- preparation of statistics and the annual report;
- Management of bookkeeping and completion of all administrative work, in particular tax returns and AHV/BVG (Old Age and Survivors' Insurance/Occupational Pensions Act);
- Storage of documents about the conciliation proceedings performed over the past 10 years.

Financial matters

Section 27 **Liability**

The Association is only liable for its liabilities with its Association assets. The liability of individual members beyond the last valid annual membership fee is excluded.

Section 28 **Admission fee and membership fee**

1 A one-off admission fee and a membership fee are charged by each professional association affiliated to the Association. The admission fee is due as an assessment fee when the admission application is made and is not refunded, even if the application is rejected.

2 The membership contribution is calculated for each calendar year and is not billed pro rata if the membership begins or ends during the course the year.

3 The board decides on the level of the membership contribution on the basis of the budget. The membership fees must enable the proper fulfilment of the legal functions. Adequate provisions must be made for foreseeable tasks and burdens.

Section 29 **Financial service provider fees**

1 The Association collects a one-off joining fee and an annual fee from the affiliated financial service providers. The board regulates the level and modalities.

2 The Association shall charge the affiliated financial service providers reasonable contributions for any conciliation proceedings in which they are involved as a party. The board regulates the level and modalities.

Section 30 **Fees for conciliation requests**

1 The board can request a small registration fee in the Rules of Procedures if a customer submits an application for conciliation. The mediator decides on the definitive transfer of the registration fee.

2 The Rules of Procedures regulate the cases in which costs can be imposed on the customer of the affiliated financial service provider.

Section 31 **Compensation**

1 The Ombudsman and the members are entitled to claim reasonable compensation for their activities, whereby the amount is determined by the board.

2 The board concludes agreements with the commissioned persons and intermediaries regarding the assessment of the compensation.

Final provisions

Section 32 **Coming into force**

These Articles of Association shall come into force when they are adopted by the founding assembly on 30 October 2018.

Section 33 **Dissolution**⁶

The Association can be dissolved by resolution of a general assembly or by written vote. In the event of dissolution, the profit and capital shall be donated to one or more other legal persons exempt from taxation on the basis of charitable or public purposes in the area of debt advice and debt restructuring based in Switzerland.

Zurich, 25 June 2020

Revised on 7 October 2019, 17 December 2019, 25 June 2020

⁶Inserted by resolution of the Universal Assembly on 17.12.2019