

## **OMBUDSMAN FINANCIAL SERVICES PROVIDERS**

### **SANCTION AND ARBITRATION RULES**

On the basis of Section 8 of the Organisational Regulations of the OFD Association, the board hereby issues the following Sanction and Arbitration Rules:

#### **General provisions**

##### **§1 Subject and scope**

These Sanction and Arbitration Rules regulate the system of sanctions for the OFD Association and are binding for the affiliated financial services providers.

#### **Sanction matters**

##### **§2 Sanctions**

(Section 5 Rules of Procedure)

<sup>1</sup> The ombudsman can pronounce the following sanctions for violations of the Articles of Association and regulations of the OFD Association:

- a) official warning;
- b) fines of up to CHF 10,000;
- c) termination of the affiliation contract, either immediate or with a notice period.

<sup>2</sup> If necessary, the sanction must be combined with a request to restore the orderly and legal situation within a period of no more than three months.

<sup>3</sup> The ombudsman's termination of the affiliation contract without notice can be combined with a fine in accordance with Section 2.

##### **§3 Determining fines**

When determining the level of a fine, the severity of the violation, the degree of fault and the economic situation of the member/financial services provider can be taken into consideration. Parallel government measures and/or penalties shall not affect the Association's internal sanctions. However, they should be taken into account as a mitigating factor if the effect of accumulation would result in an unreasonable degree of severity.

## **Exclusion and termination**

### **§4 Exclusion and termination**

<sup>1</sup> Exclusion from the OFD Association or the termination of the affiliation contract can be ordered in the event of repeated violations of the Articles of Association and regulations of the OFD Association, or if the fallible financial services provider does not restore the correct circumstances within a set period of time despite being warned.

<sup>2</sup> The exclusion or termination shall be enforced if the industry association or financial services provider no longer properly fulfils the requirements for maintaining membership or affiliation and does not restore the correct circumstances within a set period of no more than three months.

<sup>3</sup> A prior warning or deadline is not required if it appears to be of no use.

<sup>4</sup> Failure to pay the fees and other costs to the Ombudsman of the OFD Association in accordance with the schedule of fees and costs within three months after invoicing and after two written requests for payment shall automatically result in exclusion or termination. The same applies to non-payment of the fines, costs or compensation imposed on the financial services provider by decision of the independent arbitral tribunal.

### **§5 Waiver of exclusion or termination**

<sup>1</sup> The OFD Association can waive the exclusion or termination if it can be demonstrated that the industry association or financial services provider can restore the correct conditions within a short period of time, at the latest within three months, and offer a permanent guarantee for the fulfilment of the obligations in accordance with the Articles of Association and regulations.

<sup>2</sup> Unless these provisions regarding exclusion state otherwise, the provisions in the Organisational Regulations shall apply.

### **§6 Negligence and wilful intent**

In the event of negligent minor offenses, a warning can be given instead of a fine or a sanction can be waived.

## **Arbitration rules**

### **§7 Court of arbitration**

<sup>1</sup> The ombudsman is responsible for organising and appointing the internal arbitration tribunal.

<sup>2</sup> The arbitration tribunal is based in Zurich.

<sup>3</sup> The proceedings are to be carried out in accordance with the provisions of the Swiss Code of Civil Procedure (ZPO) of 19 December 2008.

<sup>4</sup> The decisions of the arbitration tribunal are final, subject to an appeal to the Federal Supreme Court in accordance with Art. 389 ZPO.

## **§8 Jurisdiction of the arbitration tribunal for internal disputes**

<sup>1</sup> Non-admission, exclusion, termination and sanction decisions in addition to decisions regarding the assessment and imposition of conventional penalties and fees of the ombudsman can be forwarded to the arbitration tribunal with a complaint.

<sup>2</sup> Each member and each affiliated financial services provider can also appeal to the arbitration tribunal against any decision by Association bodies which have the character of an individual specific decision and establish, determine or abolish obligations of the member or the affiliated financial services provider.

<sup>3</sup> Appeals to the arbitration tribunal against the setting of time limits and warnings are excluded.

<sup>4</sup> In addition, the arbitration tribunal is responsible for all legal disputes between the Association and its members or between the members themselves, insofar as the dispute relates to Association matters.

## **§9 Composition and selection**

<sup>1</sup> The OFD Association maintains a list of permanent arbitrators who are familiar with financial market legislation. The list must include at least six people, with at least one referee each able to speak Italian or French.

<sup>2</sup> The members of the arbitration tribunal must be independent of the Association. They shall inform the Association of any conflicting interests if these affect their independence.

<sup>3</sup> The arbitrators are elected by the board for a term of three years. Re-election is possible.

<sup>4</sup> The arbitrators are determined by lot by the Ombudsman for each arbitration case. The parties are informed about the selected arbitrators. They can reject an arbitrator twice without stating a reason. A rejected arbitrator shall be replaced by a new arbitrator selected by lot.

<sup>5</sup> The arbitration tribunal only consists of one person if a warning is being challenged. In all other cases, there are three members. The parties can agree on a single arbitrator in all cases.

<sup>6</sup> In the case of a three-party arbitration tribunal, the arbitrator who is drawn first acts as president.

<sup>7</sup> If one of the parties is subject to professional secrecy, the arbitrators and the secretary of the arbitration tribunal must also be subject to professional secrecy.

<sup>8</sup> An arbitrator determined by lot shall perform their role in the current case, regardless of their remaining term of office.

<sup>9</sup> If the list of permanent arbitrators is exhausted before the arbitration tribunal is fully occupied, the parties to the dispute must alternately designate two independent arbitrators for each remaining nomination, of which the opposing party selects one in each case.

#### **§10 Initiation of the arbitration proceedings**

<sup>1</sup> The arbitration tribunal is invoked by submitting a written objection with reasons to the ombudsman.

<sup>2</sup> If this is a objection against the decision of an Association body, the objection period is 10 days after receipt of the decision. (Postmark is authoritative). The provisions regarding judicial recess (Art. 145 (1) ZPO) apply.

<sup>3</sup> The ombudsman selects the arbitrators by lot within 20 days and informs the parties about the selected arbitrators. These parties are required inform the ombudsman in writing about their rejection of any of the arbitrators within a period of 10 days. Their silence shall be deemed to be approval of the reported arbitrators.

<sup>4</sup> As soon as the arbitrators have been appointed, the ombudsman transfers the files to the sole arbitrator or the president of the three-party arbitration board.

<sup>5</sup> Upon transfer of the files, the process management becomes the responsibility of the arbitration tribunal.

#### **§11 Writing off arbitration proceedings**

<sup>1</sup> The ombudsman can write off or suspend the objection procedure for procedural reasons if the reason arises before the arbitration tribunal is constituted, in particular if the objection is not justified despite the deadline for rectification, if the advance payment is not received, if the objection is withdrawn, if the contested decision is reconsidered and the decision is revoked at the same time the contested decision or in the event of the applicant's bankruptcy.

<sup>2</sup> In such cases, there is no need to charge fees for the objection procedure or award legal fees.

#### **§12 Procedural provisions**

<sup>1</sup> The negotiation language is one of the three national languages or English at the request of the parties and is otherwise determined by the official language or language of the objection at the complainant's registered office.

<sup>2</sup> The arbitration tribunal reviews contested decisions freely. It is not bound by actual findings of the lower court. New facts and evidence can be brought forward until the parties' submissions are finished.

<sup>3</sup> The arbitration tribunal makes its decisions in a secret session and the decision can be made in writing if all the arbitrators agree and none of them request verbal advice.

<sup>4</sup> The arbitration tribunal makes its judgement on the basis of Swiss public and private law and the statutes and regulations of the OFD Association.

<sup>5</sup> Unless the statutes stipulate otherwise, the Swiss Code of Civil Procedure of 19.12.2008 (ZPO) applies accordingly as an arbitration code, but with the following differences:

a) In general, the simplified procedure according to Art. 243 et seq. ZPO applies with at least one written party submission, but without the right to a written replies and rejoinders or oral proceedings. The arbitration tribunal may issue different orders.

b) The objection has a suspensive effect.

c) No arbitration procedure shall take place, although the arbitration tribunal can make proposals to the parties at any time or work towards the conclusion of a settlement.

d) When deciding on sanctions, the cost and compensation consequences follow criminal procedural principles.

e) No litigation compensation is awarded in the fee review process.

f) Certificates and testimonies in English are also accepted without translation, unless the arbitration tribunal or the other party requests a translation.

g) The arbitration fee is calculated according to the effective time and effort of the acting arbitrators

h) At the request of the person responsible, an objecting member must pay a registration fee as follows:

1. CHF 500 if only a fee is in dispute;
2. CHF 2,000 if a sanction is in dispute;
3. CHF 4,000 if non-admission to or exclusion from the Association is in dispute.

i) The arbitration tribunal can impose further deposit payments on the complainant and, in the event of non-payment, can decide not to lodge the complaint. The deposit amount is to be measured according to the presumed costs of the arbitration tribunal and any contested outstanding costs of the OFD Association.

<sup>6</sup> The parties to the arbitration proceedings shall refrain from filing the arbitral award with the competent authority (Art. 386 ZPO). The files of the arbitration tribunal are to be stored by the office of the OFD Association for 10 years after they become legally effective.

## **Notification of sanctions**

### **§13 Notification to the supervisory organisation**

<sup>5</sup> The ombudsman shall inform the supervisory organisation of a sanctioned financial services providers or sanctioned industry organisations about the imposed sanction, as soon as it becomes legally binding.

## **Final provisions**

### **§14 Changes to the regulations**

<sup>1</sup> The Rules of Procedures can be changed by the board at any time after consultation with the ombudsman.

<sup>2</sup> Changes must be submitted to the Federal Department of Finance (FDF) for approval. The board will not put the changed Organisational Regulations into effect until the FDF has granted its approval.

### **§15 Coming into effect**

The Rules of Procedure will enter into force on July, 1st 2020

Zurich, Juli, 1st 2020