



Activity Report 2023

In accordance with Article 86 of the Financial Services Act (FinSA), Finanzombudsstelle Schweiz (FINOS) is required to publish an annual activity report.

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Activity Report 2023

We are pleased to present our activity report for the 2023 financial year.

This report provides you with a comprehensive insight into our activities, the associated challenges and the successes we have achieved over the past year. We show how we have created added value for our affiliated financial service providers and their clients through our commitment to amicable, out-of-court dispute resolution. We also address our administrative challenges in this report, as this area takes up a significant proportion of our resources. Although we have organised our ombudsman's office with as little bureaucracy as possible, the large number of financial service providers registered with us causes an administrative burden that remains high despite our efficient working methods.

At the beginning of 2023, we assumed that the number of registrations and deregisters with our ombudsman's office would fall significantly. We expected that the momentum caused by regulatory changes due to the end of the transition period in connection with the new FINMA authorisation requirement for certain financial service providers would be completed by the end of 2022. However, despite a slight easing compared to 2022, the pace of change among financial service providers remained high throughout the year.

Our ombudsman's office recorded 89 deregistrations last year, with 58% of the deregistrations, similar to the previous year, involving companies domiciled in Switzerland. In addition to the deregistrations, 14 financial service providers were excluded by our ombudsman's office for non-payment of the base fee. These exclusions cause a considerable amount of work, as we make numerous efforts to contact the

financial service providers concerned in order to avoid an exclusion where possible. Nevertheless, in many cases it was not possible to reach the financial service providers who were ultimately excluded. We are aware that an exclusion can have serious consequences, as servicing private clients without an ombudsman's office is considered an unauthorised activity. We therefore only use this measure as a last resort.

In addition to deregistrations and exclusions, there were also numerous new registrations. At around 60%, the majority of the new registrations related to financial service providers who also registered in a Swiss adviser register. This is probably due to the fact that the registration hurdles and financial costs are significantly lower for an adviser register than for a regulation by the Financial Market Supervisory Authority FINMA. Although the regulation by the Financial Market Supervisory Authority FINMA enables a wider range of financial services to be offered, the adviser register is a relatively simple way for new players in the financial sector in particular to enter the Swiss market. With 143 new registrations, deregistrations and exclusions were once again significantly exceeded, meaning that the number of financial service providers registered with us continued to rise over the course of the 2023 financial year. At the end of 2023, 1124 financial service providers were registered with us, which corresponds to an increase of 40 companies.

Reduction of the base fee

Fortunately, the continued efficient organisation of the ombudsman's office and the increase in affiliated financial service providers allowed us to further reduce the base fee. After the base fee had already been reduced from CHF 540 to CHF 520 for 2023, the Board decided

to reduce it further to just CHF 500 for 2024 due to the financially solid situation.

Conciliation procedure

Over the past year, our arbitration team has been confronted with a wide range of issues.

The issues that recur regularly each year include cases in which it is necessary to clarify whether or not the contracts agreed between clients and the commissioned financial services providers have been respected. We now have a certain amount of experience in the professional assessment of these cases.

Less straightforward to deal with are, for example, cases in which there is already a disagreement between the parties to the dispute as to whether a contractual relationship exists at all. It is well known that in Switzerland not only written but also oral contracts are valid and legally binding. In cases where there is no written contract and there is disagreement between the parties to the dispute regarding a client relationship, it must be assessed on the basis of circumstantial evidence whether a client relationship exists. If there is insufficient evidence, no conciliation procedure can be carried out. However, if both parties to the dispute wish to proceed with a conciliation procedure despite the unclear situation, we will be happy to support them in finding an out-of-court solution.

The following is another example of an issue that we were confronted with for the first time as part of a conciliation enquiry.

A bank client was robbed abroad and shortly afterwards his bank account was emptied. One of the questions that arose in this case was whether the bank could be held at least partially liable for the loss. The first step was to determine what the respective duties of care of the client and the bank are in such a situation,

to then assess any breaches of duty based on the course of events.

Despite the numerous challenges posed by the wide range of topics involved in conciliation enquiries, they make our work very exciting and help us to further expand our professional expertise with each conciliation procedure.

Number of conciliation enquiries

In the 2023 reporting year, the ombudsman's office received 45 conciliation enquiries, fewer than in 2022 (63). The number of conciliation enquiries fluctuates greatly from year to year and is also partly related to major events, as for example the collapse of an internationally active financial services provider in 2022. We expect a significant increase in conciliation enquiries for 2024, as we already received the same number of enquiries in the first half of the current year as in the whole of last year.

Preliminary clarifications

For each conciliation enquiry, preliminary clarifications are carried out before a decision is made on whether to open a case. During the preliminary clarification phase, the financial service provider concerned does not incur any costs, as these expenses are covered by the annual base fee until the official opening of a conciliation procedure.

Requirements for a procedure

It is worth remembering at this point that a conciliation procedure can only be initiated if a concrete loss has occurred, and the client has previously tried to resolve the problem bilaterally with the financial service provider and no other authority has yet taken action in this matter.

These above-mentioned criteria are already checked when a conciliation enquiry is submitted via our ombudsman's office website.

If the criteria are not met, the client is automatically informed of the reasons during the online application process. These enquiries are not recorded for data protection reasons and are not included in the above-mentioned conciliation enquiries for the past year. We assume that the actual number of enquiries was significantly higher. However, we only record statistics for enquiries that initially appear to fulfil the criteria for a conciliation procedure but still need to be specifically examined by the ombudsman's office. The ombudsman's office declared itself not responsible for 40 enquiries. This was because the requirements for carrying out a conciliation procedure were not met or the case could already be resolved in the preliminary clarification phase through the intervention of the ombudsman's office and therefore no official proceedings had to be opened. As the costs of a conciliation procedure are borne by the financial service provider concerned, the ombudsman's office examines very carefully whether it is really necessary to initiate a conciliation procedure. For this reason, financial service providers are sometimes very interested in settling a dispute before opening a conciliation procedure during the preliminary clarification phase, which is still free of charge for them.

The following are some of the reasons why no conciliation procedure was initiated despite a request for conciliation.

No financial loss

Clients contacted the ombudsman's office in the past year in order to avert a potential financial loss at an early stage. While this is understandable, we cannot intervene before a loss has occurred. In these cases, we recommend contacting the financial service provider directly and clarifying the situation bilaterally.

Residence outside Switzerland

Our ombudsman's office is responsible for all clients of Swiss financial service providers. In the case of foreign financial service providers, however, only clients domiciled in Switzerland can call on our services. In constellations where neither the client nor the financial service provider is domiciled in Switzerland, our ombudsman's office may not become involved.

Lack of efforts to find a solution

For some enquiries, our ombudsman's office initially declared itself not responsible because the client had not previously endeavoured to find a bilateral solution with the financial service provider, or only to a limited extent. In such cases, the client is informed that it is possible to contact our ombudsman's office again at a later date if the bilateral search for a solution fails. We assume that in many cases these clients were able to reach an agreement with the financial service providers as they did not apply to us later for a procedure.

No misbehaviour

In some client enquiries, it became clear during the preliminary clarification that there was no misconduct on the part of the financial service provider. No conciliation procedure is initiated in such cases. We explain the reasons for our decision in detail to the clients concerned. However, we have noticed that our reasoning is not always fully understood or accepted.

If no conciliation procedure is initiated and no contact was necessary as part of the preliminary clarifications, the financial service providers are generally not informed that we have received a conciliation enquiry concerning them.

Low hurdle for arbitration

Preliminary clarifications, which take place before conciliation procedures are initiated, are one of the most important basic services of our ombudsman's office and, as already mentioned, are covered by the annual fee. For clients of financial service providers, both conciliation enquiries and conciliation procedures are free of charge. By making conciliation enquiries free of charge, the financial hurdle was deliberately set low in order to ensure good access to the conciliation procedure. However, in order to avoid unnecessary conciliation procedures, the ombudsman's office checks very carefully whether the requirements for conciliation procedures are met.

Based on our experience, the low access hurdle required by law for clients has the advantage that, thanks to contacting our ombudsman's office, ambiguities and misunderstandings can be clarified at an early stage. This prevents the situation from escalating unnecessarily due to misjudgements. Clients therefore benefit from a professional assessment by a neutral body as early as the preliminary clarification stage, without any costs being incurred for either party.

Conciliation procedure

The number of pending conciliation procedures from the previous year and new conciliation procedures initiated in the 2023 reporting year totalled seven. Of these seven conciliation procedures, six were successfully concluded in the 2023 reporting year. One case was still being processed at the end of 2023.

We consider the small number of officially opened and conducted conciliation procedures as positive, since we actively support the parties in dispute in finding a solution, particularly in the case of low amounts in dispute and when an amicable solution is apparent at an early stage.

Some statistics

Of the affiliated financial service providers at the end of 2023, 67% (+1% compared to the previous year) were based in Switzerland and 33% (-1%) were based abroad. The increase in affiliated financial service providers by 40 to 1124 at the end of 2023 is mainly due to financial service providers from Switzerland.

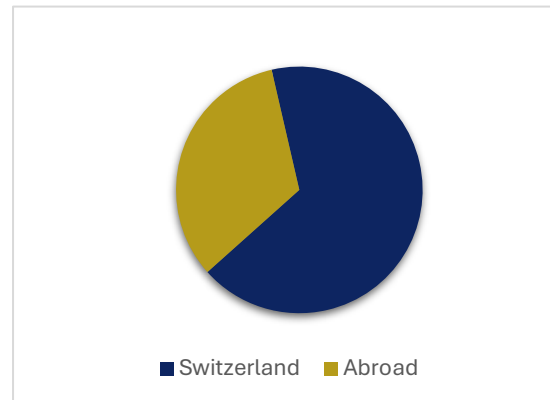


Figure 1: Financial service providers from Switzerland and abroad

In terms of financial service providers from abroad, the top five countries included the UK (excluding the Channel Islands) with 111, the USA with 77, Germany with 31, China (Hong Kong) with 21 and Singapore with 16 affiliated financial service providers. In total, affiliated financial service providers come from 33 different countries.

We would like to thank all parties involved for the trust they have placed in us. Our ombudsman office will continue to actively contribute to the conflict parties finding good and balanced out-of-court solutions with great commitment, a neutral attitude and a pragmatic approach.

Beyzade Han
Ombudsman