

OFS Ombud Finance Switzerland

Rules of Procedure

Definitions:

“Foundation” means the foundation incorporated on April 7, 2020 under the name OFS Ombud Finance Switzerland, recognised as a Mediation Organ in the meaning of the LSFIn on June 24, 2020 by the Federal Department of Finance.

“LSFin” means the Federal Act on Financial Services dated June 15, 2018.

“Client” means a client of a Provider.

“Mediators” means the individuals exhaustively listed on the corresponding pages of the Foundation’s web site with their curriculum vitae, who are available to provide mediation and other dispute resolution services under the present Rules of Procedure. The term Mediator is a gender neutral term used to designate male and female Mediators indiscriminately.

“Providers” means the financial service providers, advisors to clients and providers and issuers of financial instruments, defined in art. 2 para 1 LSFIn, who are subject to an obligation to affiliate to a Mediation body recognised by the Federal Department of Finance.

Article 1 Scope

- 1.1 The present Rules of procedure have been enacted by the Council of the Foundation.
- 1.2 They define the terms under which the Mediators shall render dispute resolution services, to resolve disputes between clients and Providers of in the meaning of art. 74 LSFIn or any other dispute submitted by a Provider with a view to its extra-judicial resolution.
- 1.3 The services offered by the Mediators under the present Rules of Procedure are also available to any other parties in relation to any sort of dispute.
- 1.4 The Rules of Procedure in force when a written request for mediation is filed with the Foundation, are applicable.

Article 2 Relationship with the Mediator

- 2.1 The appointment of a Mediator to assist parties in the resolution of a dispute gives rise to a contractual relationship directly between the said Mediator and the parties. That relationship

is governed by the present Rules of Procedure and the relevant provisions of the LSFIn in all matters pertaining to art. 74 et seq. LSFIn.

- 2.2 The Foundation has no authority to provide instructions to an appointed Mediator and is not entitled to receive any information, except for the purpose of preparing the Foundation's activity report and in the framework of art. 88 LSFIn.
- 2.3 The procedure being an amicable procedure leading to a voluntary settlement or a non-binding recommendation, the Mediator shall not be held responsible for the outcome or the conduct of the proceedings.

Article 3 Mediators' Authority

- 3.1 Mediators are appointed to assist parties to resolve their dispute by amicable means, first by mediation and eventually by issuing an evaluation. The appointed Mediator determines, in collaboration with the parties and within the framework defined by the law and the present Rules of procedure, the process it deems most appropriate and its modalities.
- 3.2 In procedures which are subject to art. 74 et seq. LSFIn, the Mediator may issue a written recommendation containing a legal and factual evaluation of the dispute.

Article 4 Commencement of the Amicable Resolution Procedure

- 4.1 The process is initiated by the filing of a written request with the Foundation, for instance by means of the form available on the pages of the Foundation web site, and the payment of the registration fee. The request has to be filed together with the main exhibits, namely the ones regarding the relationship between the parties and the matter at dispute, with a confirmation of the payment of the registration fee. A copy of the request must be sent to the other party at the time of its filing with the Foundation.
- 4.2 Within 10 days from the receipt of the request, the party who is designated as respondent may spontaneously file a response with simultaneous copy to the applicant.
- 4.3 Parties remain responsible for the preservation of their rights, in particular all rights they cannot dispose of by agreement, such as the lapsing of a right.

Article 5 Appointment of the Mediator

- 5.1 The parties may agree on the person of the Mediator amongst Mediators proposed by the Foundation on its web site. For this purpose and provided the parties have not already jointly designated the Mediator, the party filing a request may express its preferences in the request, allowing the respondent to consent with this choice.
- 5.2 Otherwise, the Mediator shall be designated by the Foundation on the basis of the language of the proceedings and any other criterion taking circumstances into consideration; the designation based on the language of the procedure shall be random based or systematic among Mediators based on the legal seat or domicile of the Provider.

Article 6 Rules of Ethics and Conflicts of Interests

- 6.1 The designated Mediator verify the absence of any conflict of interests. In case of conflict of interests, another Mediator on the list is designated instead of the conflicted Mediator. The designation of the Mediator is confirmed by the Foundation and communicated to the parties.
- 6.2 All Mediators are subject to and undertake to abide by the SBA guidelines on mediation issued by the Swiss Bar Association. The Mediator declares any circumstance coming to its attention in the course of the proceedings which may give rise to legitimate doubts as to its independence or impartiality towards the parties or any of them.

Article 7 Replacement of a Mediator

If a Mediator is no longer in a position to fulfill its duties, the Foundation designates a replacement in accordance with the provisions of article 6 above.

Article 8 Language of the Proceedings

- 8.1 A Mediation under the present Rules can only be conducted in German, English, French or Italian.
- 8.2 In all matters subject to art. 74 LSFIn, the language of the proceeding shall be the one among the above referred languages used by the parties in their contractual relationship or agreed between the parties. In all other disputes that do not pertain to art. 74 LSFIn, the language of the proceedings shall be the one among the above referred languages agreed between the parties. In the absence of agreement between the parties, the Mediator chooses the language of the procedure taking all circumstances in consideration.
- 8.3 Where the procedure is to be held in English and leads to a written recommendation, the Mediator shall establish a translation thereof in the language of the Swiss Confederation where the responding party has its legal seat or domicile.

Article 9 Seat of the Procedure

Unless jointly chosen by the parties and the Mediator, the seat of the procedure shall be in the place determined by the Mediator, for instance the place where the Mediator has its professional activity.

Article 10 Exchange of Briefs

- 10.1 As it may deem it necessary in its discretion, the designated Mediator may require from the parties to complete their filings or from the respondent(s) to submit a written response. Any written exchange is to be sent to the Mediator with simultaneous copy to the other party.
- 10.2 A party wishing to communicate confidentially or to submit confidential documentation to the Mediator, shall first discuss with the Mediator to determine the opportunity and modalities of such confidential exchanges. Ultimately, the Mediator has the power to decide on the admissibility and modalities of such confidential exchanges.

Article 11 Admissibility

In all proceedings subject to art. 74 LSFIn, the Mediator shall determine as soon as reasonably possible whether the request is admissible or not in the meaning of art. 75 para 4 LSFIn.

Article 12 Conduct of the Procedure

- 12.1 As soon as the Mediator is designated, it shall organise an initial conference to take place shortly, to discuss the dispute between the parties, the process and its organisation. Where a physical reunion of the parties cannot take place within a reasonable timeframe, that initial conference may take place by phone or any other visio-conference system as determined by the Mediator. After this initial conference, the Mediator shall draft a short note summarising the dispute, the process and its modalities, taking into consideration the authority of the Mediator to eventually issue a written evaluation.
- 12.2 At any time after its appointment, the Mediator may have *ex parte* exchanges with each of the parties. Unless otherwise agreed with the interested party, information exchanged during such *ex parte* hearing is not communicated to the other party.
- 12.3 The proceeding shall be conducted swiftly and in a non-bureaucratic manner. The proceedings shall always start with a facilitative mediation, unless exceptional circumstances or an agreement with the parties otherwise require.
- 12.4 In all disputes subject to art. 74 et seq. LFin, the opportunity of an evaluation of the law and the facts pertaining to the dispute by the Mediator should not negatively impact the investment in time and efforts to be dedicated to the finding of an amical solution to the dispute. In principle, any final evaluation by the Mediator should be made in writing and integrated to a communication by the Mediator confirming the end of the procedure.
- 12.5 As a matter of principle the Mediator discusses with the parties the way the process shall be conducted. The Mediator can make any suggestion to the parties in this respect. Ultimately, the Mediator decides upon the procedure.
- 12.6 The parties participate to the procedure actively and in good faith. The Mediator may suggest any party to submit any information the Mediator deems useful to the dispute resolution procedure. In all cases subject to art. 74 et seq. LFin, the Providers shall proceed with any request for information coming from the Mediator.
- 12.7 At any time, the Mediator who feels that its effort are fruitless, may terminate the proceedings.

Article 13 Representation

- 13.1 The parties may be assisted by professionals, such as lawyers or financial advisors. It is expected that the said professionals shall assist their party all along the proceedings. They shall attend all reunions personally and shall refrain from getting replaced or represented.
- 13.2 Unless otherwise agreed between the parties, all costs pertaining to such assistance are borne by the assisted party.

Article 14 Confidentiality

- 14.1 The whole dispute resolution procedure is subject to a confidentiality obligation pertaining to all individuals participating to the proceedings, i.e. the parties and their representatives, any assisting professionals, the Mediator and any other involved individual, like experts.

- 14.2 The said confidentiality obligation covers all declarations made by individuals participating to the proceedings during the mediation, such as settlement offers expressed in the course of the mediation, statements, reactions to offers and declarations about facts or the law or any admissions as to facts or the merits of any claim or allegation. The participating individuals undertake not to disclose or to avail itself of any information subject to such confidentiality obligation in any judicial, arbitral or administrative procedure, parallel or subsequent (hereafter “any parallel or subsequent procedure”). The participating individuals undertake not to present, expose or seek as evidence in any parallel or subsequent procedure:
- any such statement transcribed or reproduced on any medium,
 - information or confidential documents disclosed by the other party to the Mediator only,
 - the Mediator’s personal notes or any other document the Mediator may have produced or drafted but not subject to free use by the parties or their advisors.

The participants undertake not to call the Mediator as a witness or any other participant regarding declarations and documents exchanged during the mediation.

- 14.3 The Mediator proceeding with *ex parte* hearings is subject to an internal confidentiality obligation by which it undertakes not to reveal or disclose to the other party information or documents received *ex parte* or to disclose such information only to the extent authorised by the party who owns the right to confidentiality. Any participating individual who wishes to disclose certain documents to the Mediator under such internal confidentiality obligation, shall first discuss with the Mediator to agree on the modalities and consequences of such disclosure.
- 14.4 In all proceedings subject to Art 74 et seq. LSFIn, this internal confidentiality obligation shall remain without prejudice to the right of the Mediator to issue a written evaluation of the dispute as per art. 75 para 8 LSFIn.
- 14.5 The parties hereby expressly and irrevocably renounce to challenge any settlement resulting from the mediation or evaluation issued by the Mediator for the reason that the Mediator received *ex parte* information. Notwithstanding this and as far as possible, the Mediator shall abstain from disclosing in its evaluation, any such information subject to an internal confidentiality obligation.
- 14.6 Unless conflicted, Mediators among themselves may exchange about on-going procedures to ensure quality and consistency of the services rendered under the present rules of procedure.
- 14.7 The confidentiality obligation defined in the present Rules, applies subject to:
- the right to disclose any settlement found in the course of the procedure, for enforcement purposes;
 - the right of the Mediator to disclose any circumstance pertaining to the procedure for the purpose of recovering any unpaid professional fees;
 - the right to present in any parallel or subsequent procedure, the written recommendation issued by the Mediator at the end of the proceedings.
- 14.8 Is also reserved in relation to proceedings subject to art. 74 LSFIn, the obligation of the Foundation, possibly of the Mediator, to exchange information in the meaning of art. 88

LSFin. The Foundation, respectively the Mediators, undertake to construe art. 88 LSFin restrictively and to disclose to authorities only information which is demonstrated to be necessary to the fulfillment of their duties. Mediators are also bound by a confidentiality obligation with respect to the Foundation which may be informed only to the extent necessary to the drafting of the activity report of the Foundation or required by art. 88 LSFin.

Article 15 Mediators' Fees and Costs of the Procedure

- 15.1 In all procedures subject to art. 74 LSFin, the Mediator's fees and procedural expenses shall be borne by the Provider excepted for the registration fee which is always borne by the party initiating the procedure.
- 15.2 Unless otherwise agreed by the parties, in all other procedures not subject to art. 74 *et seq.* LSFin, the Mediator's fees and the costs of the procedure are borne by the parties equally. The same rule applies in relation to all deposits requested by the Mediator.
- 15.3 The Mediators' fees are based on an hourly rate. The Foundation Council may issue a schedule of fees.
- 15.4 As soon as possible after appointment, the Mediator may require payment of a deposit. That deposit and any supplementary deposit necessary to cover the Mediator's fees and other costs of the proceedings, shall be determined by the Mediator taking into consideration the complexity of the dispute, the amount at stake, the procedural modalities and all other circumstances known to the Mediator at the time of such decision. Deposits are payable within 15 days as from the date set forth on the request for a deposit. The Mediator may ask as many deposits as necessary taking into consideration the circumstances and the characteristics of the dispute.
- 15.5 The costs of the procedure include the registration fee of the request and all other incurred expenses other than the Mediator's fees. Unless otherwise agreed between the parties, each party bears its own lawyers' and other advisers' fees; these fees and expenses are not part of costs of the procedure.

Article 16 Governing Law

The relationship between the Mediator and the parties within the framework of any procedure under the present rules of procedure, is governed by Swiss law excluding any conflict of law rule. Swiss law is also the governing law in the relationship between the Foundation and the parties.

Article 17 Limitation of Liability

Neither the members of the Council of the Foundation nor the Foundation itself shall be held liable towards the parties or any other participant or third party for any act or omission in connection with a mediation or any other dispute resolution procedure held under the present Rules of procedure, unless it is demonstrated that the act or omission is intentional or constitutes a gross negligence.