

Swiss Banking Ombudsman: ready for FinSA

- **The Federal Department of Finance, as the competent authority, has recognised the Banking Ombudsman as an ombudsman's office within the meaning of the FinSA.**
- **Bank is not automatically liable for investment losses**
- **Confirmation of court decisions on negative reinvestment rates in the case of early repayment penalties for fixed-rate mortgages.**
- **2,013 cases were resolved in 2019: around 5% more than in the previous year.**

Zurich, 2 July 2020. — At its annual press conference, the Swiss Banking Ombudsman asserted that it had dealt with the impact and implementation of the Financial Services Act (FinSA) in many ways in 2019, following its intense involvement in the corresponding legislative process in previous years. The FinSA requires not only banks, but in principle all financial services providers, to join an ombudsman's office. The Swiss Bankers Association therefore decided that the Banking Ombudsman should make its services available to all members, even those without banking status, requiring certain adjustments to its rules of procedure. To comply with FinSA's formal requirements for accreditation of the ombudsman's office, it was also necessary to draw up new organisational regulations and a new contribution and cost regulation. In late June 2020, the Banking Ombudsman was accredited by the Federal Department of Finance as an ombudsman's office within the meaning of the FinSA.

Obviously, the rules of conduct for financial services providers under the FinSA are also relevant to the activities of the Banking Ombudsman, such as the obligation to carry out an appropriateness or suitability test during investment advising or asset management. Although those supervisory obligations were not yet in force in 2019, they were already making themselves felt. For instance, various banks had been collecting additional information from customers with a view to meeting the new requirements, which some felt went too far and complained to the Banking Ombudsman. On the other hand, the Ombudsman handled some customer complaints involving improper and/or contradictory documentation regarding investment recommendations.

Customers regularly complain to the Ombudsman about inadequate investment performance or even investment losses, sometimes overlooking that investment risks are generally assumed by the client and that the bank is not automatically liable for a certain return on investments. Liability claims cannot be asserted unless certain conditions resulting from the civil law are met, e.g. if the appropriateness or suitability test was flawed or the investment recommendations made were contrary to the results of those tests.

In August 2019, the Zurich High Court (Zürcher Obergericht) confirmed the existing case law on the issue of early repayment penalties with negative reinvestment rates in the case of early redemption of fixed-rate mortgages and ruled in favour of the customer. Firstly, this has led to more and more banks entering into direct settlement agreements. Secondly, it was ultimately easier to resolve the cases that were still being submitted to the Banking Ombudsman. In the opinion of some banks, however, their contracts are worded differently from those previously assessed by the courts and they continue to refuse a compromise. In addition, some of the banks concerned have now adapted their contracts to expressly anticipate the charging of negative reinvestment rates.

In the year under report, the Banking Ombudsman's Office resolved a total of 2,013 cases, 1,298 of them orally and 715 in writing. Thus, the total number of cases increased by 5% over the prior year. As in the previous year, settlement issues were the main cause of problems, followed by complaints about fees. Eighty-five per cent of the cases were resolved within the desired 3-month period. 94% of the Banking Ombudsman's proposed solutions were accepted by the banks.

In 2019, 468 new enquiries were received for searching for assets without contact and dormant assets. Total assets of CHF 7.5 million from 41 customer relationships and the contents of 5 safe deposit boxes were made accessible to eligible beneficiaries.

Press release

Annual Report 2019 (in German)

Annual Report 2019 (in French)

2019 in Brief

Pictures Marco Franchetti