

The role of the banking ombudsman: non-binding arbitrator or judge?

To mark this year's 20th anniversary of the creation of the Swiss Banking Ombudsman Foundation, the Foundation Board commissioned a study designed to analyse the current concept and compare it with schemes in other countries, to examine the way in which the Banking Ombudsman has operated and fulfilled his mandate since creation of the scheme and to produce an outlook to include potential courses of action and recommendations.

This "anniversary task" has become all the more important because of the severe financial crisis, which saw the Banking Ombudsman receive a record number of complaints in 2009 and led FINMA to launch a debate on improving customer protection (FINMA Distribution Report 2010). In parallel with this, the level of acceptance among banks fell. Whereas between 86% and 95% of the Banking Ombudsman's recommendations were accepted by the banks in question in the period 2006 to 2008, that figure dropped to 73% in the crisis-hit year 2009.

All this raises the question of whether changes to the Banking Ombudsman concept are needed in order to be able to tackle the new challenges, while the unprecedented number of similar cases (e.g. complaints about Lehman Brothers and absolute return products) illustrates that there are limits to case-by-case treatment.

Dr Urs Philipp Roth-Cuony, former CEO and delegate of the Swiss Bankers Association, was commissioned to conduct the study in December 2010. His report, which runs to some 90 pages, considers the key issues and makes ten specific recommendations for the future definition of the Banking Ombudsman scheme.

In his study, Dr. Roth investigated the Ombudsman scheme in light of its regulatory basis and the actual procedures followed. He then compared this with the structure and developments in financial ombudsman schemes in the EU and various other countries around the world.

The results were discussed in structured interviews with representatives of banks, FINMA, the Ombudsman of Private Insurance and of SUVA, consumer organisations and various ombudsman's offices in other countries.

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The complete study is only in German available.