

notification ends the arbitration board proceedings. If the dispute has not been resolved, the notification also acts as a certificate of failed attempt at settlement pursuant to section 15a (1) sentence 2 of the Introductory Act for the Code of Civil Procedure Rules (Gesetz betreffend die Einführung der Zivilprozessordnung – EGZPO)). The average length of proceedings is six months.

#### **Cost of arbitration**

Proceedings conducted by the arbitration board at BaFin are free of charge for consumers. Expenses such as postage or costs of legal counsel are not reimbursed. Consumers do not necessarily have to be represented by a third party (such as a lawyer) in the arbitration proceedings, however. The consumer arbitration board imposes a fee of € 200 on companies involved in proceedings (see section 10 of the Regulation on Financial Dispute Resolution Entities (Finanzschlichtungsstellenverordnung – FinSV)).

#### **Cross-border disputes**

If you are involved in a dispute with a financial services provider from another country, the financial dispute resolution network FIN-NET will support you. FIN-NET members will make contact with the competent out-of-court dispute resolution entity for you and provide you with the necessary information.

The arbitration board at BaFin is a member of FIN-NET. More information is available here:

<http://ec.europa.eu/finance/fin-net>



financial dispute resolution network

#### **Organisation of the arbitration board**

The arbitration board at BaFin is based in the Central Legal Department (Zentrale Rechtsabteilung), outside the technical supervision. It consists of two arbitrators and an office. The arbitrators, who are appointed for a term of three years, are:

- Dörte Schmidt-Ebeling
- Arne Heinrich Huneke

The arbitrators stand in for each other as required. They are qualified to hold judicial office and are employed by BaFin. They have more than three years legal professional experience. As arbitrators, they are independent and not subject to instructions.

The arbitrators are supported in their work by an office which serves as a point of contact for applications and queries as well as conducting the dispute resolution proceedings. The arbitrators and the office team are obliged to maintain confidentiality.

Please send your application for arbitration and the required documentation to:

Schlichtungsstelle bei der  
Bundesanstalt für Finanzdienstleistungsaufsicht  
Referat ZR 3  
Graurheindorfer Straße 108  
53117 Bonn  
Phone: +49 (0)228-4108-0  
Fax: +49 (0)228-4108-62299  
E-mail: [schlichtungsstelle@bafin.de](mailto:schlichtungsstelle@bafin.de)  
Internet: [www.bafin.de/dok/7858142](http://www.bafin.de/dok/7858142)

#### **Imprint**

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#### **Photographs**

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Bundesanstalt für  
Finanzdienstleistungsaufsicht



# Arbitration Board at BaFin



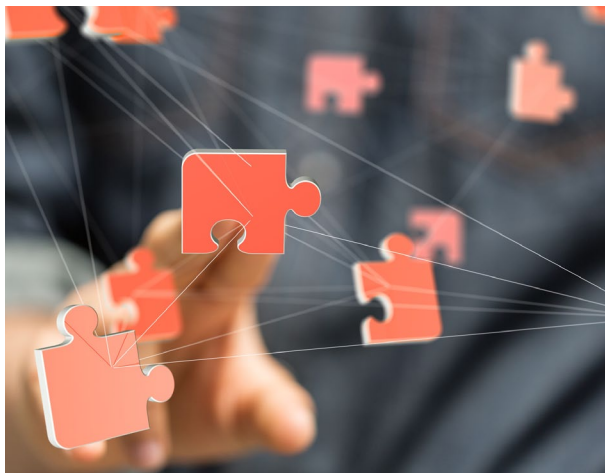
## Jurisdiction

The arbitration board at the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) is an official consumer dispute resolution entity pursuant to section 14 (1) of the German Injunctions Act (Unterlassungsklagengesetz – UKlaG).

It is responsible for the out-of-court resolution of disputes applying

- the provisions of the German Investment Code (Kapitalanlagegesetzbuch – KAGB) in disputes where consumers are involved or
- other provisions relating to contracts between consumers and undertakings supervised pursuant to the German Banking Act (Kreditwesengesetz – KWG) regarding banking business pursuant to section 1 (1) sentence 2 of the KWG or financial services pursuant to section 1 (1a) sentence 2 of the KWG.

The arbitration board at BaFin is designed as a substitute dispute resolution entity for the aforementioned financial services, meaning it is only responsible if there is no recognised private consumer dispute resolution entity for the dispute. A list of all recognised consumer dispute resolution entities may be accessed on the website of the Federal Office of Justice (Bundesamt für Justiz) ([www.bundesjustizamt.de](http://www.bundesjustizamt.de); only available in German). The general consumer dispute resolution entity



(Allgemeine Verbraucherschlichtungsstelle) in Kehl is responsible for disputes which do not fall within the remit of the private or public dispute resolution entities pursuant to section 14 (1) of the UKlaG. You can find further information on its website at [www.verbraucher-schlichter.de](http://www.verbraucher-schlichter.de) (only available in German).

## Making an application

In such disputes, you can apply for arbitration to the office of the arbitration board at BaFin. Proceedings are conducted in German. The application should contain a brief description of the matter and include the documents necessary to understand the dispute (correspondence, contractual terms, cost calculations, etc) and a specific desired outcome. Applicants can also use the forms provided online by the arbitration board under [www.bafin.de/SharedDocs/Downloads/EN/Formular/dl\\_fo\\_schlichtungsstelle\\_en.html](http://www.bafin.de/SharedDocs/Downloads/EN/Formular/dl_fo_schlichtungsstelle_en.html).

In their application, applicants must confirm that

- no proceedings have been conducted or are pending at a consumer dispute resolution entity regarding the same dispute
- where disputes concern the right to conclude a basic account contract, no administrative proceedings pursuant to sections 48 to 50 of the German Payment Accounts Act (Zahlungskontengesetz – ZKG) are pending and no decision against which there is no appeal has been made in such proceedings
- no judgement on the merits of the case has been issued by a court and the dispute is not pending before a court
- no settlement has been reached in the dispute and it has not been otherwise resolved
- no application for legal aid relating to the dispute has been rejected because the intended assertion of legal rights had no reasonable prospect of success or was malicious.

## Course of proceedings

### Receipt of application

Once an application has been received, the arbitration board at BaFin first checks whether it is responsible for dispute resolution in this specific case. If it is not,

the consumer is informed of this. If another recognised consumer dispute resolution entity is responsible pursuant to section 14 (1) of the UKlaG, the arbitration board BaFin passes the file onto the responsible entity.

If the arbitration board at BaFin is responsible for the specific dispute, the applicant receives a confirmation of receipt. If necessary, the arbitration board asks the applicant to correct any mistakes in the application within a month. Arbitration proceedings can only be conducted if the correction is submitted by the deadline.

When submissions are permissible, the adverse party has one month to comment on the consumer's submission of the facts. The office of the arbitration board forwards the comments of the adverse party to the applicant. If, having submitted comments, the adverse party is not prepared to meet the desired outcome of the applicant, the applicant has one month to comment on the comments of the adverse party. The applicant can withdraw their application at any time during the arbitration proceedings and thus bring proceedings to an end.

### Arbitration proposal

Once the parties have been given sufficient time to comment, if the dispute has not been resolved, the arbitrators provide the parties with a written arbitration proposal based on the written information provided.

The proposal explains how the dispute between the parties can be appropriately resolved under applicable law, in particular taking into consideration mandatory consumer protection laws and good faith. It should be justified in a concise and understandable manner. However, the proposal does not include general legal information as the arbitration board is not allowed to provide legal advice.

Finally, the parties may respond in writing within six weeks stating whether or not they accept the decision proposed. If one of the parties involved does not accept the arbitration, it may still take legal action.

### Conclusion of arbitration

Once the deadline for acceptance of a possible arbitration proposal has been reached, the office of the arbitration board informs the parties of the result. This