

# FINMA Guidance

## 02/2022

First measures in cases of late applications from portfolio managers and trustees

11 August 2022

# Contents

<b>1</b>	<b>The home straight of the transitional period .....</b>	<b>3</b>
1.1	Latest figures on the status of the licensing process .....	3
1.2	Institutions withdraw from the licensing process.....	4
<b>2</b>	<b>Important steps in the licensing process up to the end of the year..</b>	<b>5</b>
2.1	No deadline extension for latecomers.....	6
2.2	Notification that no application will be submitted .....	6
<b>3</b>	<b>First supervisory measures taken .....</b>	<b>6</b>
3.1	General principle .....	6
3.2	Investigations already opened .....	7
3.3	Investigations in 2023 .....	7

## 1 The home straight of the transitional period

Portfolio managers and trustees have been subject to a licensing requirement since the Financial Institutions Act (FinIA; SR 954.1) entered into force on 1 January 2020. Article 74 FinIA grants existing portfolio managers and trustees a transitional period of three years to fulfil the licensing requirements, affiliate to a supervisory organisation (SO) and submit a licence application to FINMA.<sup>1</sup> This transitional period ends on **31 December 2022**.

In its [guidance published on 4 May 2022](#) FINMA drew attention to the end of the transitional period and set out the path to licensing. It also made it clear that the statutory transitional period cannot generally be extended. Institutions that wish to carry on their business legally in 2023 must submit an application to FINMA by the end of the year. Before a licence application is submitted to FINMA, the confirmation of affiliation to an SO must have been received. An adequate amount of time must be allowed for the affiliation process to the SO, particularly so that any necessary improvements or changes can be made. For this reason, FINMA had recommended that all institutions submit their application to an SO by 30 June 2022.

FINMA imposes sanctions for breaches of financial market law. This guidance provides an overview of the current status of applications. It also reveals that in connection with the observance of the transitional period by portfolio managers and trustees, FINMA has already conducted various investigations and filed several charges on grounds of unauthorised activities. FINMA will continue its investigations of those institutions that have not submitted their application on time after the end of the transitional period on 31 December 2022.

### 1.1 Latest figures on the status of the licensing process

FINMA has received 689 complete licence applications up to 31 July 2022. A total of 376 institutions, comprising 365 portfolio managers and 11 trustees, have been granted a licence, including microenterprises. The remaining 313 licence applications are currently being processed by FINMA.

The fees billed for the FINMA licensing process amounted to CHF 5 674 on average up to now, with a range of between CHF 2 000 and CHF 20 000.

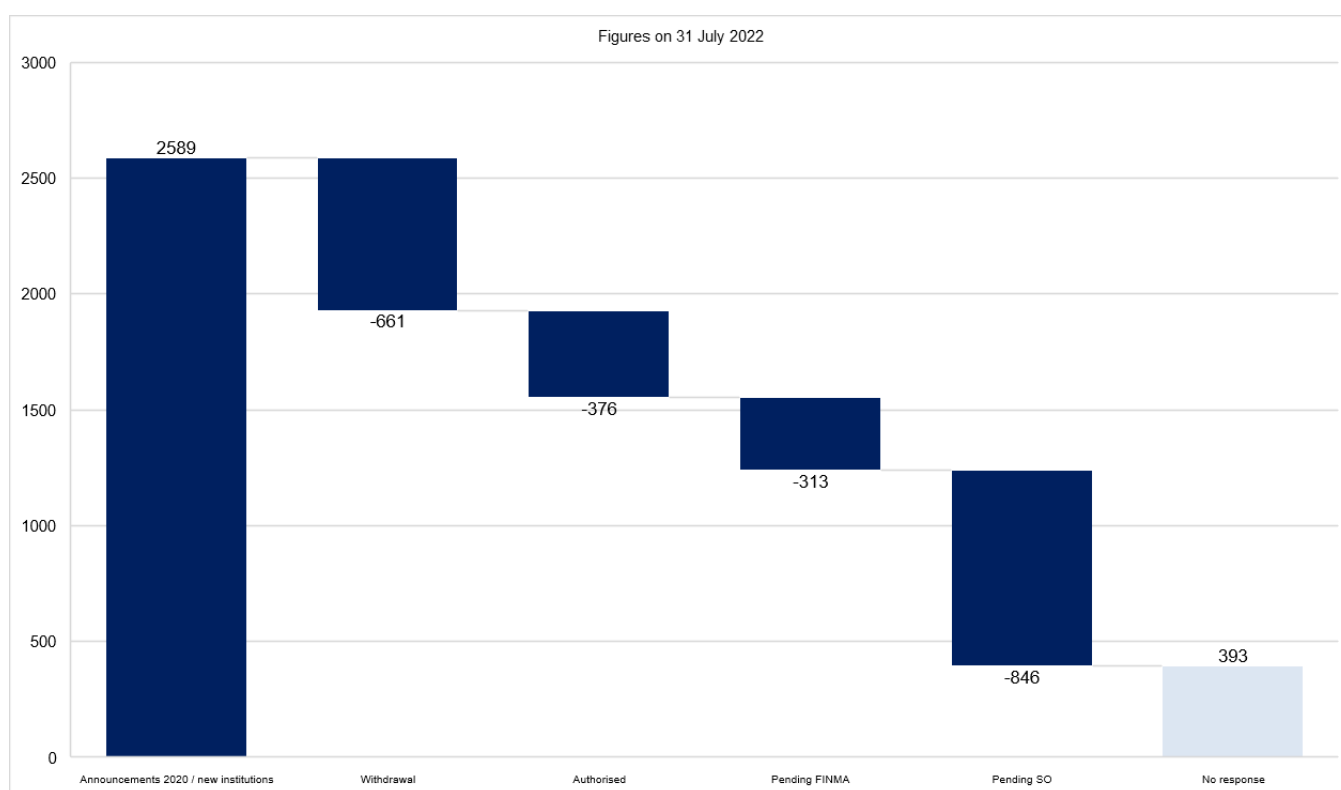
---

<sup>1</sup> See Article 74 para. 2 FinIA.

The average time taken for FINMA to process an application is 108 days<sup>2</sup>, with a range of between 18 and 536 days. The costs and processing time for an application are determined by its quality and complexity.

According to information from the SOs, they had 765 applications pending on 30 June 2022. The majority of the institutions have thus complied with the communicated deadline of 30 June 2022 for submitting applications to the SOs. These institutions have taken an important step on the path to the new supervisory regime.

As of 31 July 2022, a total of 1 535 institutions are undergoing the licensing process or have already successfully completed it.



## 1.2 Institutions withdraw from the licensing process

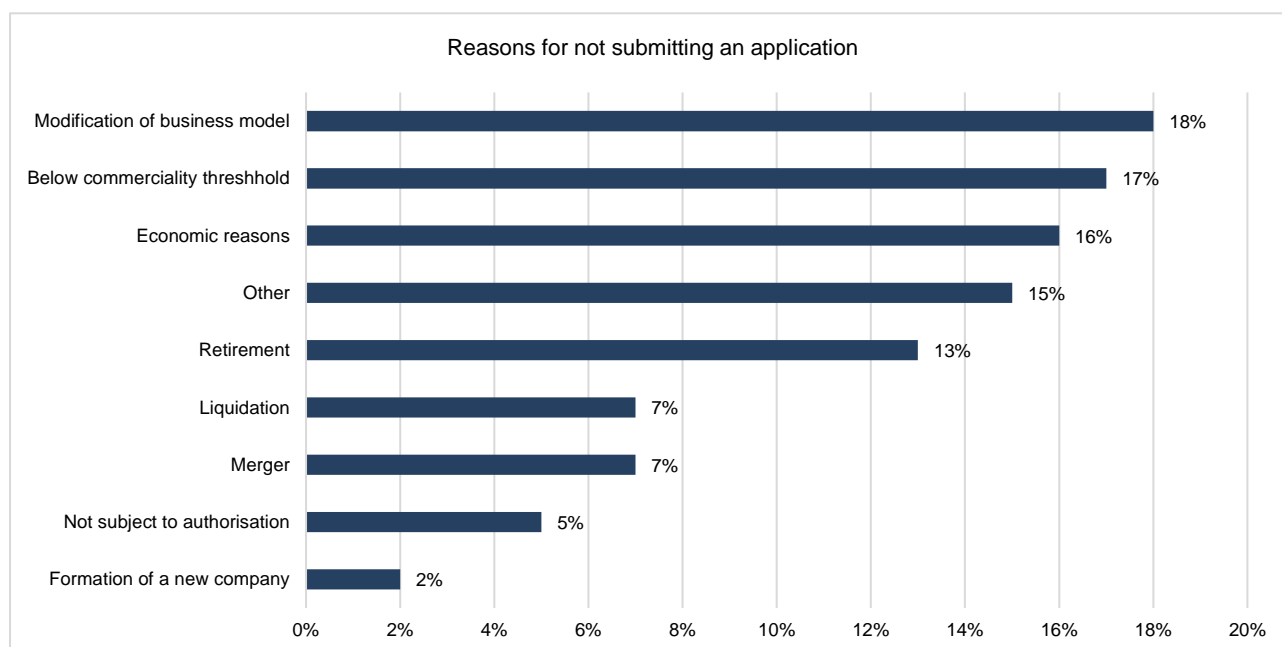
In the course of notifications received in 2020, some 130 institutions already stated that they would not be submitting a licence application. As part of the EHP survey conducted on 15 December 2021, a further 220 institutions then informed FINMA that they did not intend to submit an application. More

<sup>2</sup> This also includes the days on which the application was with the applicant after being sent back for correction.

companies came forward before the end of July. In total, 661 institutions have notified FINMA that they will not be submitting an application.

The main reasons for this are the adjustment of the business model as well as the continuation of business activities below the threshold for commerciality. A significant number of the original notifications from 2020 were submitted preemptively. Various companies contacted FINMA as a precautionary measure after the FinIA entered into force, but subsequent analyses revealed that they were not operating on a professional basis.

If no licence is applied for, it must be ensured that the adjustment of an institution’s business model does not merely entail a formal change to the designation of the service, but that this is a real, effective change.



## 2 Important steps in the licensing process up to the end of the year

The responsibility for taking timely action and complying with the transitional period ending on 31 December 2022 lies with the institutions. The deadline recommended by FINMA for submitting the licence application to an SO passed on 30 June 2022. The SOs carry out a preliminary review of the applications in accordance with FINMA’s specifications. However, it is not their task to ensure that institutions meet the applicable deadlines.

## 2.1 No deadline extension for latecomers

Institutions that have not yet submitted their licence application to an SO, despite the corresponding calls to action, must accept that they may miss the end of the transitional period at the end of the year through their own fault. Accordingly, they also no longer qualify for a possible deadline extension pursuant to Article 74 para. 4 FinIA. In any case, they should now submit the licence application without delay.

## 2.2 Notification that no application will be submitted

393 of the institutions that registered in 2020 are not yet in the process of being licensed and have not informed FINMA that they do not intend to submit a licence application.

Institutions that are no longer engaged in an activity requiring a licence as of 1 January 2023 and that therefore will not be submitting an application are asked to notify FINMA of this in writing stating their reasons without delay.<sup>3</sup> This notification will prevent FINMA from conducting unnecessary investigations next year.

# 3 First supervisory measures taken

## 3.1 General principle

Where there are substantiated suspicions of professional activity as a portfolio manager or trustee without a licence, FINMA is legally obliged to file a criminal charge with the Federal Department of Finance (FDF).<sup>4</sup>

On its part, FINMA will also take supervisory measures. These can range from an entry on the public warning list<sup>5</sup> if the institution fails to cooperate during the investigations to liquidation of the company where there are substantiated suspicions of unauthorised activities.

In the event that financial market laws have been breached, from a supervisory perspective FINMA will initially focus on restoring compliance with the law at the institution. In addition, FINMA can take measures against individuals who are responsible for the violations at the institution. The late submission of the licence application will also be taken into account when verifying that the requirements for irreproachable business conduct are met.

---

<sup>3</sup> Cf. Guidance 01/2022, number 2.2. The notification must be sent to [assetmanagement@finma.ch](mailto:assetmanagement@finma.ch).

<sup>4</sup> Article 44 FINMASA in conjunction with Article 50 FINMASA.

<sup>5</sup> Cf. <https://www.finma.ch/en/finma-public/warnliste/>.

Portfolio managers and trustees who miss the submission deadline for their licence application and nevertheless continue to operate on a professional basis from 1 January 2023 face measures under supervisory law as well as criminal consequences. The authority responsible for prosecution and judgement is the FDF. The monetary penalties or fines can be up to CHF 250,000 even in the case of negligence.

### 3.2 Investigations already opened

Portfolio managers and trustees who commenced their professional activity within a year of the FinIA entering into force had to contact FINMA immediately and meet the licensing requirements from the point of commencing their activity. They were obliged to affiliate to an SO and had to submit their licence application to FINMA by 6 July 2021. 118 institutions notified FINMA that they had commenced their activity in the year 2020. However, only a third of these institutions met their duty to submit a licence application to FINMA. A further 76 institutions gave contradictory information concerning the applicable transitional period in their communication with FINMA. FINMA has opened investigations on grounds of possible unauthorised activity at all these institutions.

Up to 31 July 2022 FINMA had filed criminal charges with the FDF in 18 suspicious cases and had placed 127 institutions on its public warning list.

### 3.3 Investigations in 2023

Institutions that were active before the entry into force of the FinIA but that do not submit an application to FINMA before the end of 2022 may no longer conduct their business activities (on a professional basis) from 1 January 2023. Anyone who intentionally or negligently operates without a licence will face the supervisory and criminal consequences set out above (see no. 3.1). Based on its duty to file criminal complaints, FINMA will report these cases to the criminal authorities and open investigations.<sup>6</sup>

---

<sup>6</sup> Article 44 FINMASA in conjunction with Article 50 FINMASA. See also FINMA Guidance 01/2022, no. 3.3.