

FINMA Guidance

01/2022

Timetable for the licensing process for portfolio managers and trustees

4 May 2022

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1 Licence application: act now!

The end of the transitional period for portfolio managers and trustees is getting closer. Institutions that seriously prepare their application now and submit it to a supervisory organisation (hereinafter SO) by 30 June 2022 are ideally prepared for the end of the transitional period. The quality of the application determines the duration and costs of the licensing process, which is why it is worth critically questioning your own business model once again when preparing your application and initiating any changes now.

Institutions that do not submit their application to the SO until autumn 2022 or do not implement the changes requested by the SO or do not do so on time risk missing the deadline and will only have themselves to blame.

1.1 Background and purpose

Portfolio managers and trustees have been subject to a licensing requirement since the Financial Institutions Act (FinIA; SR 954.1) came 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, including the affiliation to an SO and submit a licence application to FINMA.¹ This transitional period ends on **31 December 2022**.

The purpose of this guidance is to show the necessary steps in the licensing process again, provide recommendations for fulfilling the duties in accordance with the FinIA and set out the corresponding timetable.

Before a licence application is submitted to FINMA, the confirmation of affiliation to an SO must have been received. For this, the complete licence application is transmitted to the corresponding SO. 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. FINMA strongly recommends that all institutions submit the complete licence application to an SO by **30 June 2022**. The time to act is now!

1.2 Latest figures

In 2020, 2,521 portfolio managers and trustees reported to FINMA that they intend to submit a licence application to FINMA by 31 December 2022. According to the FINMA survey conducted in December 2021, over 1,200 of these institutions are planning to submit their application to an SO² by **30**

¹ See Article 74 para. 2 FinIA.

² See Annex 1 for the list of FINMA-approved SOs.

June 2022. In addition, some 220 institutions reported that they would not submit an application and intend to cease their activity at the end of 2022.

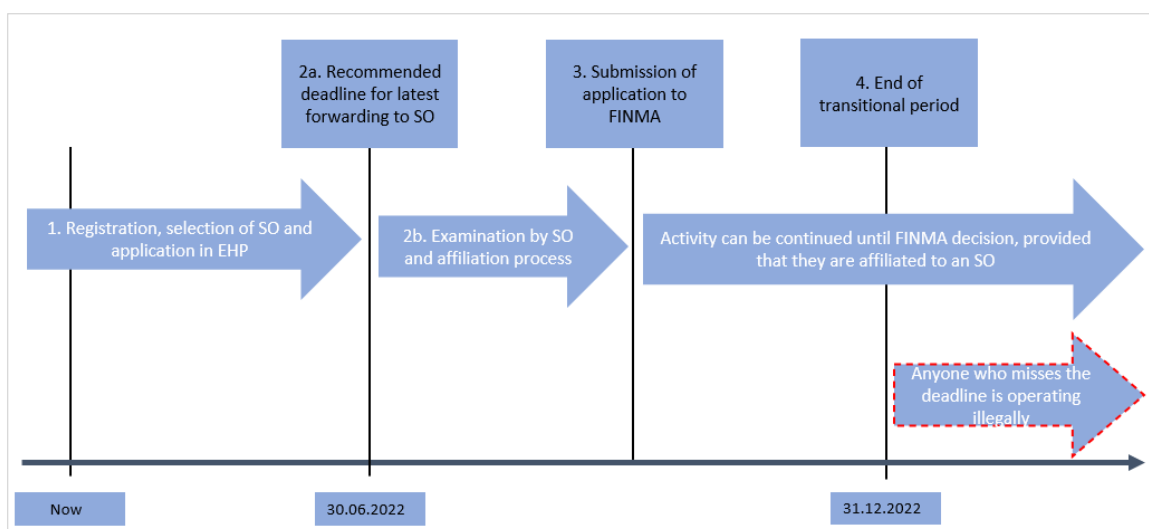
Authorisation procedure	Authorised	Applications received
Status as at 25.04.2022		
Portfolio managers with SO affiliation	155	306
Portfolio managers group companies	80	84
Trustees with SO affiliation	7	19

As of 25 April 2022, 409 institutions had submitted a complete application to FINMA. Of those, FINMA has licensed 242 institutions, 235 portfolio managers and 7 trustees. Although FINMA has seen a steady increase in application numbers since the beginning of 2022, the figure is still below FINMA's expectations and the reports submitted by the institutions.

2 Necessary steps up to the end of the year

2.1 The path to licensing

For portfolio managers and trustees who wish to continue operating on a professional basis after 31 December 2022, the process up until then includes the following milestones:



This results in the following action points:

When	What has to be done	Key points
1. Now	Registration on EHP	Registration of institution and authorisation coordinator on the FINMA survey and application platform (EHP). Important: It can take up to two weeks for the registration of the authorisation coordinator to be confirmed. Further information: https://www.finma.ch/en/finma/extranet/ehp-survey-and-application-platform/
	Selection of SO, poss. involvement of third parties	Selection of a supervisory organisation and, if desired, preparation of application in collaboration with third party (law firm, audit firm, compliance service provider etc.)
	Substantive preparation of application	Any necessary changes to the business model are made in order to satisfy the licensing conditions, i.e. the personnel, organisational and financial requirements according to Article 7 et seq. FinIA. The corporate governance and organisational structures must be appropriate to the business model. ³ The financial institution must establish appropriate corporate management rules and be organised in such a way that it can fulfil its statutory duties. The business area and its geographical extent must be in harmony with the institution's financial capabilities and organisational structures. In addition, financial institutions must employ personnel who possess suitable, relevant qualifications for their activity. Finally, it must be ensured that risk management, compliance and ICS are in place. ⁴ The continuation of business activities and any outsourcing are regulated.
	Formal preparation of application	EHP application form version 2.0 ⁵ Form for people responsible for proper business conduct All enclosures must be present and up-to-date. The list of enclosures can be found at the end of the application form on the EHP. Excerpts from the criminal and debt enforcement registers must not be older than three months.

³ Article 9 FinIA in conjunction with Article 12 of the Financial Institutions Ordinance (FinIO; SR 954.11): Policies/directives, processes and contracts are in place.

⁴ Article 21 FinIA in conjunction with Article 12 FinIO: Sets out the basic principles of risk management and defines risk tolerance.

⁵ The PDF version of the application form 2.0 serves merely as an aid; the application itself is to be completed and submitted exclusively on the EHP.

2a. By 30 June 2022	Transmission of application to SO	The complete application must be shared with the selected SO in the EHP.
2b. Between 30 June 2022 and 31 December 2022	SO checks the application	The SOs check the application to see whether the licensing conditions are met.
	Questions, subsequent submissions and improvements	The SOs can request subsequent submissions, improvements or adjustments. These may concern both corporate governance, financial guarantees, risk management and ICS or the processes and directives. Improvements – particularly at personnel and organisational levels – can be time consuming. This must be taken into account when submitting the application to the SO. The institutions are obliged to follow the SO's instructions and to make the requested adjustments.
3. By 31 December 2022	Receipt of confirmation of affiliation from SO	After examination the SO issues the confirmation of affiliation.
	Submitting the application to FINMA	Submission of the licence application to FINMA in the EHP and receipt of acknowledgement of receipt. ⁶
4. From 1 January 2023	Application submitted to FINMA	FINMA checks the application. The institution has the right to continue operating until its licence is granted. ⁷
	Application not submitted to FINMA	If no application is submitted to FINMA by 31 December 2022 this means that the institution is operating illegally, which may have criminal consequences. ⁸

2.2 The path to ceasing commercial activity

Institutions subject to a licensing requirement that no longer exercise an activity requiring a licence from 1 January 2023 must report this to FINMA **in writing by email without delay**.⁹ Any necessary adjustments to the business activities must be made by 31 December 2022. Unnecessary investigations by FINMA regarding the institution's status can be avoided by submitting this notification.

⁶ See fig. 3.1. An application without confirmation of affiliation to an SO is incomplete and will be rejected.

⁷ See Article 74 para. 2 FinIA. As proof for the institution, a confirmation email will be generated in the EHP shortly after the licence application is submitted to FINMA. See Annex 2.

⁸ Article 44 in conjunction with Article 50 of the Financial Market Supervision Act (FINMASA; SR 956.1). A criminal charge as a result of missing the deadline can have a negative impact on the guarantee of irreproachable business conduct and thus on the institution's ability to be granted a licence.

⁹ Contact address: assetmanagement@finma.ch.

When	What has to be done	Key points
1. Now	Information to FINMA	Written notification by email to FINMA stating that no licence application will be submitted, the business activities will be discontinued by 31 December 2022 or will be continued below the threshold for commerciality.
2. By 31 December 2022	In the event of wind-down	Winding down of all business relationships, deletion of the company in the commercial register or changes to the business purpose if the company is to be continued with a different business purpose.
	In the event of continuation below the threshold for commerciality	Ensuring that the thresholds according to Article 19 FinIO are observed on a permanent basis as of 1 January 2023.

3 The statutory deadlines must be observed

It is the responsibility of the individual institutions to meet the applicable deadlines and licensing requirements.¹⁰ The SOs carry out a preliminary review of the applications in accordance with FINMA's specifications. It is not the task of the SO to ensure that institutions meet the applicable deadlines. The responsibility for taking timely action and meeting the deadlines pertains solely to the institutions.

3.1 Proof that the deadline was met

If an institution has submitted its application including the confirmation of affiliation to an SO by 31 December 2022, it can continue its business activities until a decision is made on the granting of a licence. Proof that an application has been submitted to FINMA is provided by an automatically generated confirmation email that is sent promptly after submission of the application via the EHP to the application coordinator and their deputies.¹¹ This can be transmitted to third parties, such as custodian banks, as proof that the obligations have been fulfilled and as confirmation that the transitional period was observed.

¹⁰ See section 1.

¹¹ See Annex 2 for sample email.

3.2 Deadline extension only possible in special circumstances

The transitional period stipulated in Article 74 para. 2 FinIA **ends on 31 December 2022**. It was stipulated by the legislator and **cannot be extended** by FINMA.

FINMA can extend the deadline only in **special circumstances**. This only applies in cases where the deadline cannot be met **through no fault** of the institution. Only institutions that can show that they have taken all necessary steps prior to 31 December 2022 in a timely manner in order to comply with the transitional periods, but that due to external influences outside their control run the risk of missing the deadline will be granted a deadline extension by FINMA.¹²

3.3 Missed deadline results in unauthorised activities

Institutions that intentionally operate without a licence after the deadline has expired or that do not observe the deadlines for other reasons will suffer supervisory and criminal consequences.¹³ Based on its duty to file criminal complaints, FINMA will report these cases to the criminal authorities and open enforcement investigations.¹⁴

¹² For example: illness, death, hacker attacks, force majeure events.

¹³ See Art. 44 FINMASA: Anyone who intentionally carries out an activity requiring a license under financial market legislation, in particular without a license, shall be punished by imprisonment of up to three years or a fine. Anyone who acts negligently is liable to a fine of up to CHF 250,000.

¹⁴ Article 44 FINMASA in conjunction with Article 50 FINMASA.

Annex 1

1. Useful information

Further information and aids are available for applicants on the FINMA website:

- [Licensing process](#)
- [Dossier on portfolio managers and trustees](#)
- [Symposium for portfolio managers and trustees held on 17 February 2022](#)

2. FINMA contact details

Any questions about this guidance, the licensing process or the FINMA documents can be sent to assetmanagement@finma.ch.

3. Supervisory organisation contact details


If you have questions about the licence application or SO affiliation, you can contact the relevant supervisory organisation:

- [AOOS - Schweizerische Aktiengesellschaft für Aufsicht](#)
- [FINcontrol Suisse AG](#)
- [OSFIN Aufsichtsorganisation Finanzdienstleister](#)
- [OSIF Organisme de Surveillance des Instituts Financiers](#)
- [SO-FIT Organisme de Surveillance pour Intermédiaires Financiers & Trustees](#)

Annex 2

Sample confirmation email after submitting the licence application via the EHP

Application under review: Bewilligung für Institute nach FINIG

 No-Reply
An

The following application is under review by FINMA:

- Name of institute:
- Type of authorisation: Portfolio manager
- Name of the application: Bewilligung für Institute nach FINIG
- Date of submission: 14.04.2022
- Person responsible:

Link: <https://ehp.finma.ch/gesuch/>

Sincerely

Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
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