

## Overview of enforcement

Expansion of the Enforcement division was completed in 2013. With 68 full-time equivalent positions, it is now large enough to allow FINMA to act in a targeted manner against breaches of the law in all areas of supervision.

The expansion by a total of 20 full-time equivalent positions in 2012 and 2013, combined with the integration of the international administrative assistance group following completion of an internal reorganisation, has generated valuable synergies, especially in market supervision and action against unauthorised activities. The division's new responsibility for administrative assistance also facilitates the task of carrying out enforcement proceedings with an international dimension (such as investigating possible manipulations of exchange rates<sup>71</sup>).

The intensity of enforcement activities varies between supervisory areas. The freedom of manoeuvre granted to FINMA is narrowest where there are suspicions of unauthorised activities.<sup>72</sup> Where prudentially supervised licence holders are concerned, in contrast, irregularities and problems can often be adequately addressed within the scope of ongoing supervisory activities.

### Process-oriented organisation has proved its worth

Dividing Enforcement into an Investigations section (concerned with licence holders, unauthorised activities, market supervision and administrative

assistance), a Proceedings section and separate groups for Insolvency and Operational Services has proved successful. The process-oriented structure permits an 'unité de doctrine' concerning the material appraisal of supervisory law and an assessment of escalation up to and including the initiation of proceedings, as well as a focus on ongoing enforcement proceedings until they become legally binding.

### Focus on business conduct obligations

In terms of themes, FINMA's Enforcement division increasingly dealt with the various business conduct obligations applying to financial intermediaries during 2013. Areas of particular importance included combating money laundering, new regulations governing market conduct, and due diligence obligations in cross-border services. FINMA identified breaches of the law, initiated corrective measures, imposed restrictions on business activity and applied sanctions such as disgorgement of profits, prohibitions on practising a profession and the preventive publication of rulings (such as bans on activities).

<sup>71</sup> See section on Full revision of the circular on 'Market conduct rules', p. 80.

<sup>72</sup> See section on Dealing with companies and individuals engaged in unauthorised activities, p. 78.

### **Executive Board committee takes decisions on enforcement**

FINMA's activities in enforcing the law are guided by the Enforcement Committee (ENA), which is made up of members of the Executive Board.<sup>73</sup> The committee decides on final rulings and, in the vast majority of cases, on whether or not to initiate enforcement proceedings against licence holders, their governing bodies or employees. Initiating proceedings in response to suspicions of unauthorised activity, ordering precautionary measures and issuing rulings related to insolvency and international administrative assistance are delegated to the Enforcement division.

### **Appeal proceedings taking time**

The time taken to complete appeal proceedings is giving cause for concern. This results in a long period of great uncertainty for all concerned. Such protracted proceedings are a major challenge, especially where the cases involve supervised licence holders or liquidations. Uncertainty over the outcome of the proceedings and the degree of freedom of manoeuvre means that it is often difficult to structure the ongoing supervisory relationship in such instances.

To counter this uncertainty and protect the interests of investors and policyholders, FINMA removes the suspensory effect of a complaint wherever appropriate and orders precautionary measures in parallel. The Federal Administrative Court grants FINMA the flexibility to do this or may take appropriate measures itself.

From an international perspective, the rapid processing of rulings in international administrative assistance cases is an important issue. Here, the power to take final decisions lies exclusively with the Federal Administrative Court, which deals with such complaints swiftly and thereby helps safeguard the ability to provide administrative assistance.

<sup>73</sup> See section on Board of Directors and Executive Board, p. 90.

## Enforcement statistics

	ONGOING AS OF 1 JAN. 2013	PROCEEDINGS INSTITUTED	PROCEEDINGS CONCLUDED	ONGOING AS OF 31 DEC. 2013
<b>Enforcement proceedings</b>				
– in institutional supervision	14	23	24	13
– conducted separately against employees of authorised institutions	3	17	7	13
– due to unauthorised activity	12	22	21	13
<b>Preliminary investigations</b>	342	740	545	537
<b>Liquidations</b>				
– of licence holders	2	0	0	2
– of companies engaging in authorised activities	29	8	11	26
<b>Bankruptcies</b>				
– of licence holders	10	0	0	10
– of companies engaging in authorised activities	93	34	31	96
<b>Recognition of foreign insolvency measures</b>				
– involving licence holders	9	5	0	14
– involving unauthorised activities	6	0	2	4
<b>Recognition of foreign restructuring measures</b>				
– involving licence holders	2	0	0	2
– involving unauthorised activities	0	0	0	0

# Examples of enforcement practice in 2013

## Increase in enforcement activities relating to directly subordinated financial intermediaries

As an alternative to joining a self-regulatory organisation (SRO), financial intermediaries operating in the para-banking sector have the option of submitting themselves to supervision by FINMA in regulatory money laundering matters as directly subordinated financial intermediaries (DSFIs). The difficult economic environment is also having an impact on the para-banking sector. Players in this market must meet the requirements of an environment that is more complex than it used to be. This leads to an increase in the number of cases involving such DSFIs being referred to the Enforcement division: around a dozen in 2013 alone.

## Countertrades used as a channel for proceeds of organised crime

In the course of two large-scale foreign criminal investigations, FINMA became aware that organised crime syndicates are using countertrades to launder the proceeds of crime, and that such transactions had also been carried out via authorised Swiss financial institutions. Foreign clients of Swiss banks were receiving sums of money (the proceeds of, for example, the street-level drug trade) in their home country via middlemen.

These clients would then instruct their bank to transfer a corresponding amount to a further payee at a third institution (for example in Asia), which would end up being credited to suspected members of organised criminal structures. The fact that countertrades lend themselves so readily to money laundering means that they harbour substantial legal and reputational risks which it is essential for institutions to control. Following its own investigations at various institutions, FINMA ordered organisational measures to be taken to limit these risks.

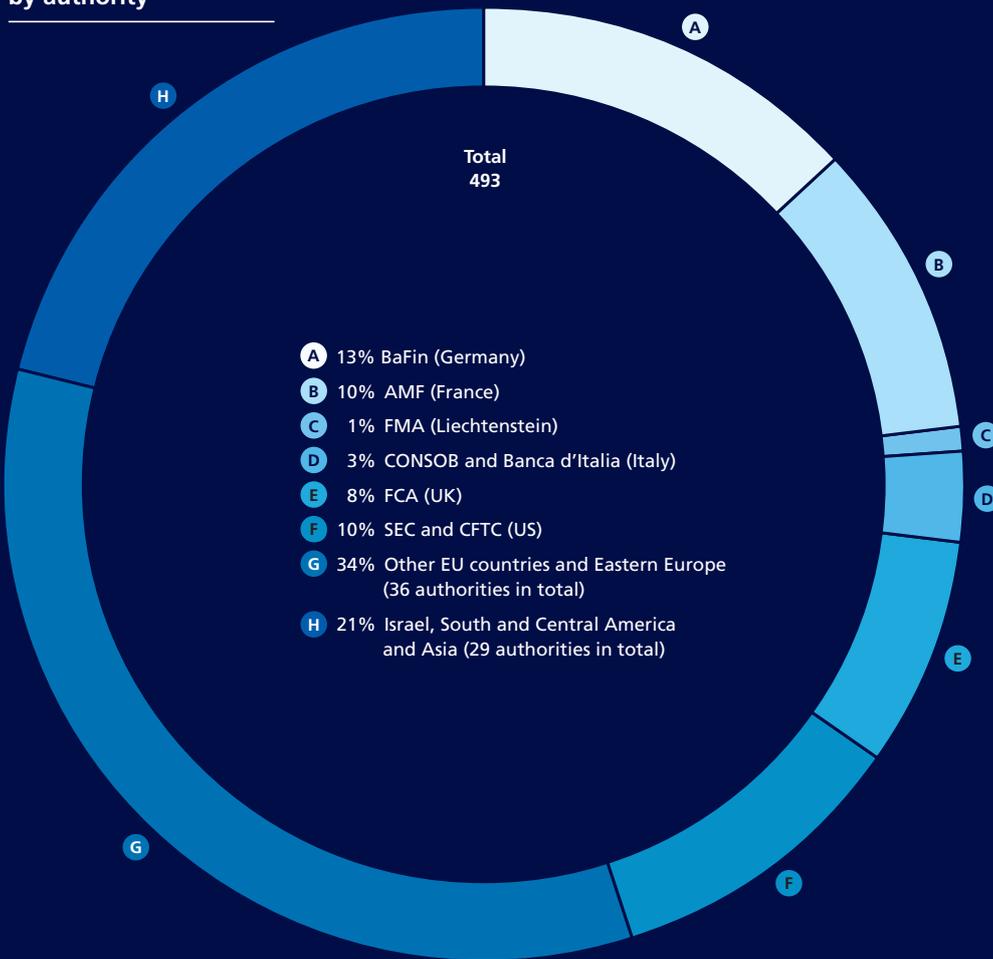
## Progress in the Lehman Brothers bankruptcy proceedings

A large number of insolvency proceedings were completed in 2013. At the same time, however, FINMA's more intensive enforcement activity led to an increase in the number of new proceedings being opened, so that the total number of ongoing proceedings in this area remained as high as ever. Substantial progress was made in the bankruptcy proceedings against Lehman Brothers Finance AG. The schedule of claims was presented, and settlements reached with major counterparties. A number of appeals prevented the first instalment payments from being made.

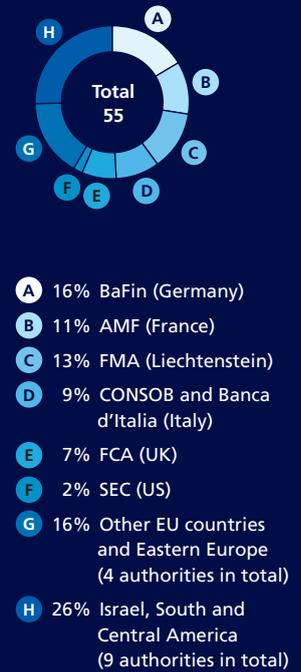
# International administrative assistance statistics

FINMA receives the third-largest number of requests for international administrative assistance worldwide. The majority of these are dealt with satisfactorily, though the uniquely Swiss client procedure, which entails delays and involves the parties affected being notified in advance, has earned criticism.

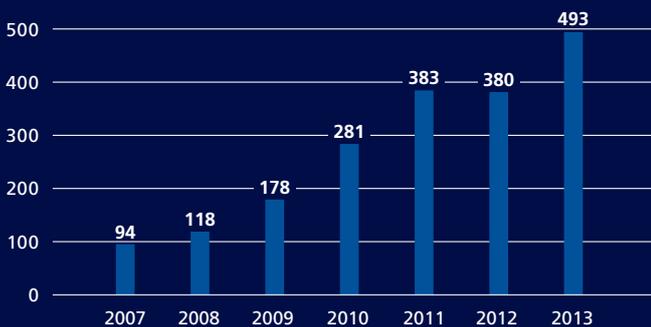
## Incoming requests by authority



## Outgoing requests by authority



## Requests for administrative assistance (2007–2013)<sup>74</sup>



<sup>74</sup> The figures for 2009 and 2010 have been adjusted from those published in previous annual reports.

### **Incoming requests**

In 2013, FINMA received 493 requests for administrative assistance from 73 foreign supervisory authorities. Of these, 363 concerned financial intermediaries and 1,218 clients. In respect of those 1,218 clients, a total of 194 client procedures have been initiated to date and 19 rulings issued. Appeals against ten of those rulings have been submitted to the Federal Administrative Court. In four cases, the Court ruled in FINMA's favour; six cases were still pending at the end of 2013. FINMA is in third place worldwide in terms of the number of requests received, which reflects the importance of Switzerland as a location for private banking. The statistics compiled each year by IOSCO confirm that FINMA handles the majority of the requests to the satisfaction of the foreign supervisory authorities, although the length of proceedings and the prior information given to the parties involved has earned criticism.

### **Outgoing requests**

In 2013, FINMA submitted 55 requests for administrative assistance to the relevant foreign authorities, including nine to Germany's BaFin, six to France's AMF, seven to Liechtenstein's FMA, five to CONSOB and the Banca d'Italia in Italy, four to the UK's FCA, one to the SEC in the US and 23 further requests to 13 supervisory authorities in EU member states, Eastern Europe and other countries. A total of six requests were made to foreign supervisory authorities in Europe and North, South and Central America regarding disclosure law.