

Federal Council proposes revisions to boost fintech innovations

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In February 2017 the Federal Council initiated a consultation procedure on new financial technology (fintech) regulations. The revised provisions ensure that barriers to market entry for fintech firms are reduced and that Switzerland's competitiveness as a financial centre is maintained. The consultation will end on May 8 2017. The proposed amendments to the Banking Act and the Banking Ordinance aim to ease the regulatory framework for innovative fintech companies and will support and enable innovation, while simultaneously taking into account the potential risk involved with their business model for customers and the financial system as a whole.

Regulatory framework

The proposed easing of the regulatory framework will contain the following main elements:

- The exception provided for in the Banking Ordinance for the acceptance of funds for settlement purposes providing for a maximum period of third-party moneys in settlement accounts for market participants without a banking licence under the Banking Act (Article 5(3) lit c of the ordinance) will be extended from seven to 60 days.
- The Federal Council proposes the introduction of an innovation area (a so-called 'sandbox') that will exempt companies from the obligation to obtain a banking licence when accepting client deposits up to Sfr1 million (ie, the acceptance of public funds up to Sfr1 million will not qualify as financial operations on a commercial basis and will thus be exempt from authorisation). This sandbox regime is supposed to allow fintech companies to check the viability of their business model before they scale up, and they will then be required to obtain formal authorisation of the Swiss Financial Market Supervisory Authority (FINMA). The introduction of this new sandbox exemption will be implemented by an amendment to the ordinance. The proposed sandbox does not apply to anti-money laundering laws and thus fintech start-ups that qualify as financial intermediaries must continue to join a self-regulatory organisation to ensure full compliance with the applicable anti-money laundering regime, in particular the due diligence requirements.
- The Federal Council has proposed a plan to introduce simplified authorisation pre-conditions and less stringent operating requirements compared to a full banking licence. The new 'light' banking licence will in particular provide for less stringent requirements concerning accounting and auditing than those applicable to a full licence. In addition, the new regime will also ease the deposit protection, minimum capital, own funds and liquidity requirements applicable to full banks, since companies with the new light banking licence can conduct some banking activities, but can also accept public funds of up to a maximum of Sfr100 million only (irrespective of the number of depositors) and are not allowed to operate in the lending business. This plan requires an amendment to the act, while the new provisions relating to less stringent minimum capital, own funds and liquidity requirements will have to be implemented within the scope of implementing regulations to be issued in a second step. The availability of

AUTHORS

[Alexander Vogel](#)



[Christophe Pétermann](#)



[Reto Luthiger](#)



such light licences is expected to significantly lower the entry threshold for providers of payment systems and crowdfunding platforms, while applications managing assets automatically (ie, robo-advisers or robo-managers) under the current Swiss licence regime do not need a licence, but will have to apply for one with the entry into force of the Financial Services Act and the Financial Institutions Act, which will introduce prudential supervision and thus a licencing requirement for all financial service providers in the asset management business, as well as independent asset managers.

The introduction of a new licensing category for financial innovators and a licence-exempt area (sandbox) was strongly supported by FINMA, since a more flexible fintech regime is expected to significantly boost competition among the financial players and through this increased competitiveness to contribute to the quality of the financial services offered in Switzerland. Against this backdrop, the Federal Council announced its intentions for easing the regulatory framework for providers of innovative financial technologies in November 2016, with the aim to reduce barriers to market entry for new providers in the fintech area and to increase legal certainty for the sector overall.

However, in its several proposals to amend the licencing regime, the Federal Council shied away from formulating rules that are aimed at regulating other issues relating to rapidly progressing digitisation in the financial sector (particularly in the blockchain context), such as decentralised autonomous organisations (DAOs). DAOs are platforms for the autonomous governance of investment capital featuring smart contract (scripting) functionality (ie, executing scripts using an international network of public nodes, even though DAOs with a strong Swiss connection have already been set up and are operating – eg, the DAO Ethereum set up by the Swiss non-profit foundation Ethereum Foundation). However, the Federal Council announced that it will follow these developments closely in the future and swiftly proposed necessary regulatory adjustments if required.

Comment

Following the consultation period, the Federal Council will review the feedback voiced in the consultation and prepare the final amendments. The light banking licence regime will require further amendments to the rules and regulations promulgated under the Banking Act (as well as the Liquidity Ordinance and the Capital Adequacy Ordinance) and thus the new regime is not expected to enter into force before 2018.

For further information on this topic please contact [Alexander Vogel](mailto:alexander.vogel@mll-legal.com), [Christophe Pétermann](mailto:christophe.petermann@mll-legal.com) or [Reto Luthiger](mailto:reto.luthiger@mll-legal.com) at Meyerlustenberger Lachenal by telephone (+41 44 396 91 91) or email (alexander.vogel@mll-legal.com, christophe.petermann@mll-legal.com or reto.luthiger@mll-legal.com). The Meyerlustenberger Lachenal website can be accessed at www.mll-legal.com.

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