



The Legal 500 Country Comparative Guides

Switzerland

FINTECH

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This country-specific Q&A provides an overview of fintech laws and regulations applicable in Switzerland.

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SWITZERLAND FINTECH



1. What are the sources of payments law in your jurisdiction?

In contrast to the European Union (EU) with its Payment Services Directive 2 and E-Money Directive with respective licensing regimes, Switzerland has no payment-specific regulatory framework. The main sources of payments law are the Financial Market Infrastructure Act (FMIA), the Banking Act (BA), the National Bank Act (NBA) and the Anti-Money Laundering Act (AMLA). Payment activities are usually either lightly regulated by being only subject to the AMLA or rather strictly regulated by being subject to Swiss AML- and banking regulations.

Collecting public deposits is subject to the BA and allowed for (i) banks providing the classic interest difference business usually based on maturity transformation, and (ii) for fintech companies according to article 1b BA up to CHF 100 million for Fiat currency or crypto-based assets in an amount defined by the Swiss regulator FINMA on a case-by-case basis provided that such fintech companies do neither pay interest nor do proprietary transactions with such client funds.

Supervision and regulation of payment systems are carried out by two separate bodies, by the Swiss Financial Market Supervisory Authority (FINMA) under the FMIA and by the Swiss National Bank (SNB) under the NBA if the SNB deems a payment system of systemic relevance to Switzerland.

The FMIA sets forth the regulatory requirements for financial market infrastructures, including payment systems that are broadly defined as entities that clear and settle payment obligations based on uniform rules and procedures. Payment systems that are not operated by a bank are only subject to a licensing requirement if this is necessary for the proper functioning of the financial market or the protection of the financial market participants. The necessity for a license arises in particular if the payment system intends to process and clear payment transactions among financial intermediaries. FINMA does not currently supervise any

retail payment systems. Irrespective of a license requirement under the FMIA, payment systems that are deemed of systemic relevance are subject to reporting obligations to the SNB. SNB may also subject foreign payment systems that are of systemic relevance to Switzerland to its supervision.

Irrespective of any licensing requirements, all entities that provide services related to payment transactions not in scope of the BA, such as electronic transfers, money exchange and trans-/remittance services and services relating to credit cards are subject to the AMLA and need to become a member of a self-regulatory organisation (SRO).

2. Can payment services be provided by non-banks, and if so on what conditions?

Payment services can be provided by non-banks provided that they do not involve any activity which are subject to the BA. A banking or fintech license would be required if the payment service included the acceptance or solicitation of deposits in Fiat currency or crypto-based assets on a professional basis from the public. On a professional basis means accepting more than twenty deposits from the public on an ongoing basis or publicly soliciting the acceptance of deposits from the public in Switzerland regardless of the number of actual deposits. An exemption applies where deposits are made only for future purchases of goods or services, no interest is paid and the maximum amount of the customer claims is CHF 3'000.

Payment systems that are not operated by a bank require a license from FINMA under the FMIA if FINMA deems this necessary for the proper functioning of the financial market or the protection of the financial market participants.

3. What are the most popular payment methods and payment instruments in your

jurisdiction?

According to a survey conducted by the SNB in 2022 classic payment methods such as cash and debit cards continue to be the two most widely used payment methods among consumers in Switzerland (36% of transactions in cash and 33% of transactions in debit cards). In terms of the transaction value of everyday payments, the debit card remains the most important payment method. Mobile payment applications, such as Twint and ApplePay, are being used increasingly often by the population with a market increase in volume share from 5% to 11% since 2020.

4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

Unlike the member states of the EU and the United Kingdom, Switzerland does not have any specific legal requirements or regulations for open banking. Switzerland takes a market-driven approach to implementing open banking based on the expectation that the market will regulate itself. Several initiatives and collaborations among market participants in the Swiss payment industry and Swiss banks are currently underway with the aim to achieve harmonised standards that will allow solutions to scale. Specifically, the industry is working towards standards for giving data access to account information service providers via open APIs in order to avoid screen-scraping solutions which are usually problematic under e-banking agreements between banks and end-users. The Swiss authorities are closely monitoring the developments in open banking and expect the industry to deliver progress and results with open business models.

5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

The data of bank customers is protected by the banking secrecy. The Banking Act makes it a criminal offence for banking institutions and their officers and employees to disclose customer data to third parties. The Banking Act only protects information related to an identified or identifiable customer. A bank can therefore disclose customer data by anonymising the customer name or

account number or by aggregating customer data. There are several exceptions that allow banks to disclose otherwise protected customer data, such as to make reports to the Money Laundering Reporting Office in cases of money laundering or to comply with international tax treaties that require the automatic exchange of bank data to help fight tax evasion. Furthermore, customer data of all financial institutions, such as portfolio managers, trustees, managers of collective assets, fund management companies and securities firms, are protected by professional secrecy and the disclosure of such customer data constitutes a criminal offence.

All financial services providers have to comply with the Data Protection Act when processing personal data of natural persons. Only personal data that is directly connected with the conclusion or performance of a contract can be collected and processed by the financial services provider (conclusion and performance of the financial service). As a general rule, any processing of personal data must be carried out in good faith and be proportionate. The customer must be informed about the personal data being processed and the purposes for which it is being used. Personal data needs to be destroyed or anonymised as soon as it is no longer required for the purpose of processing.

6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

Since 2015 the legislator has focused on adapting the legal and regulatory framework to the needs of the fintech sector. In 2016, FINMA issued a circular allowing financial intermediaries to onboard clients by conducting a video identification or an online identification which made client onboarding for anti-money laundering purposes economically more attractive. In 2017, the Federal Council extended the holding duration for settlement accounts from 7 to 60 days. The settlement account exemption allows asset managers, securities firms, dealers of precious metals and similar entities to accept and hold funds in customer accounts that exclusively serve the purpose of settling customer transactions without triggering the need for a banking license, provided that the funds are not-interest bearing and forwarded within 60 days. FINMA clarified that the settlement account exemption does not apply to cryptocurrency traders that undertake a similar activity as FX traders by maintaining accounts for their clients for investments in different currencies.

In 2017, a sandbox regime was introduced in the Banking Act that allows companies to accept public deposits of up to CHF 1 million without requiring a banking license subject to certain conditions. In addition to the sandbox regime, a new fintech license was introduced in 2019. The fintech license authorises its holders to accept public deposits of up to CHF 100 million in Fiat currency without engaging in any lending activities, ie without investing or paying interest on them. The fintech license thus falls between the sandbox and a full banking license. In 2021, the scope of application of the fintech license was extended to certain deposit-taking activities of crypto-based assets (cryptocurrencies) theoretically in an unlimited amount but subject to the discretion of FINMA and as long as neither interest is paid on them and no proprietary trading/investing of such client funds occurs. A fintech license is subject to simplified regulatory requirements compared to the banking license. Fintech companies are not subject to banking equity ratio requirements or liquidity requirements. The capital requirements are also less stringent for fintech companies: Fintech companies must hold a minimum amount of capital of 3% of the public deposits or crypto-based assets received, but no less than CHF 300'000. While the capital requirements and the organisational, auditing and accounting obligations are significantly reduced compared to a banking license, the anti-money laundering requirements fully apply. As a fintech license is not a banking license companies operating under a fintech license must not engage in any lending activities. Unlike in the case of banks, public deposits accepted by fintech license holders are not protected in the event of bankruptcy and fintech companies must notify their clients of this and about the risks associated with the company's business model, the services and technologies used before they enter into an agreement. Five institutions have obtained the fintech license by the end of 2023.

By passing the DLT Bill on 25 September 2020, the Swiss parliament passed a framework law to include cryptoassets and digital ledger technologies (DLT) into Swiss Law, making the Swiss crypto regulatory framework one of the most advanced in the world. On 1 February 2021, the amended Swiss Code of Obligations (CO) entered into force and introduced ledger-based securities as a new form of securities in addition to uncertificated rights, certificated securities (or paper-based securities) and book-entry securities (or intermediated securities) if they are created and transferred on a register, such as on a distributed-ledger-network (no further transfer requirements). The following main changes entered into force on 1 August 2021:

- According to the Federal Law on Debt Collection and Bankruptcy, the segregation of crypto-based assets in the event of insolvency is to be expressly regulated insofar as it is not necessary on a technical level anymore but only based on records.
- On the other side, the eased segregation requirements require such pooled wallet providers with off-balance sheet cryptoassets to apply for a fintech license, even if the cryptoassets' value exceeds the 100 million Swiss franc limit.
- In the FMIA, a new authorisation category for 'DLT trading facilities' was introduced. It functions similarly to the existing multilateral trading facilities (MTF) but allows for direct access of retail participants and further services on the trading value chain within the same legal entity, such as clearing, settlement and custody services.

7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

We do not foresee any imminent risks to the growth of the fintech market in Switzerland. On the contrary, the Swiss fintech industry has maintained a rapid rate of innovation. In 2022 Switzerland was home to around 437 fintech companies which was an increase of 14% compared to the previous year, and total funding for such fintech companies increased by 36% to CHF 605 million up from CHF 446 million, according to the FinTech Study 2023 of the Lucerne University of Applied Sciences and Arts.

The market continued to show strong interest in crypto-based financial services and assets. Alongside specialised fintech companies, a growing number of banks also expanded the range of services they provide in this area.

8. What tax incentives exist in your jurisdiction to encourage fintech investment?

Switzerland has introduced different tax incentives to promote innovation and provide for an attractive environment furthering R&D activities in Switzerland. In general, corporate taxes are levied on direct federal as well as on cantonal and communal level. The tax incentives for fintech companies mainly touch the cantonal and communal level.

At the income level a patent box solution has been introduced. This mechanism offers the possibility to reduce corporate income tax on income from qualifying patents on cantonal and communal level upon request. To the extent patents and similar rights are a result from R&D expenses in Switzerland the corresponding proportion of income is exempt from corporate income tax up to a maximum amount of 90% depending on the respective cantonal rules and an overall relief limitation.

From a cost perspective, an R&D super-deduction allows for an additional deduction of up to 50% of R&D expenses, provided that the relevant research and development activities have been carried out in Switzerland and qualify as science-based innovation, subject to cantonal rules and an overall limitation.

In order to reduce the capital tax liability arising on cantonal and communal level most cantons have introduced a relief allowing for a lower taxation of equity that is attributable to participations, intercompany loans and especially also patents.

In addition, in many cantons and at the direct federal level, it is possible to create reserves for future R&D contracts with third parties up to a certain maximum amount. At the direct federal level, such R&D reserves can be set up up to a maximum of 10% of taxable profit or a maximum of CHF 1 million in total. At the cantonal level, the rules on R&D reserves vary.

In addition, some cantons have introduced special tax incentives for innovative start-ups, usually in the form of special tax relief, provided that certain criteria are met.

Companies that locate in certain regions of Switzerland designated as development areas may be eligible for direct federal, cantonal and municipal tax holidays if certain criteria are met.

A general advantage of the Swiss tax landscape is the business-friendly attitude of the Swiss tax authorities. For complex matters it is standard practice to seek an advance ruling from the tax authorities concerned which provides certainty about the tax consequences.

9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

Despite the energy crisis, the start of the Ukraine war, the upcoming inflation, and supply chain issues in 2022, Switzerland attracted almost CHF 4 billion in financing rounds, which was an all-time high and of which half, ie. CHF 2 billion, went into ICT and fintech. However, the financing market for crypto- and blockchain projects has

been almost completely down much earlier in view of the known scandals of faulty projects and frauds, such as FTX, TerraLuna, Voyager, Three Arrows Capital, BlockFi, Celsius. Nevertheless, the biggest financing rounds have been with two Swiss crypto banks, two fintech SaaS-platforms and a digital asset high-frequency trader. Successful financing rounds have been Series B-D rounds rather than Series A rounds.

10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

Switzerland is one of the most advanced financial centres in the fintech and blockchain sector with innovation-friendly market conditions. Key local advantages include political stability, a strong currency, low inflation, access to credit and venture capital, an educated workforce (Switzerland is home to world-class research institutions and universities), years of experience in the banking and insurance sector and a good infrastructure, including information and communication technology. Switzerland is also home to the crypto valley in Zug which has attracted a lot of local and international talent and which is home to many well-known projects such as the Ethereum Foundation, the Solana Foundation and Tezos.

There is strong political support to promote the fintech and blockchain ecosystem in Switzerland. Since 2015 the regulator has been adopting the regulatory framework to the specific needs of the fintech sector. FINMA's technology neutral and functional approach to regulation allows flexibility towards new technologies and business models whilst also ensuring an appropriate degree of protection for customers and the financial market (*same risk same rules approach*). With the enactment of the DLT Bill in September 2020 Switzerland became one of the first countries to adopt legal regulations for blockchain technology. Clear regulations provide legal certainty, attract investors and enable innovation and growth.

The fintech license continues to attract interest from innovative business models due to its lower regulatory requirements. In accordance with the principle based Swiss regulatory approach the fintech license applies to all business models that accept public deposits but appears to be particularly attractive for innovative service providers in the areas of payment transactions and for crowdlending platforms. The fintech license also

recently gained the interest of several blockchain based projects as it allows the combination of fiat and cryptocurrency custody business within one license.

11. Access to talent is often cited as a key issue for fintechs - are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

In accordance with the Free Movement of Persons Agreement between the European Union (EU) and Switzerland EU/EFTA citizens have the right to enter, remain and take up gainful employment in Switzerland as employees or in self-employed capacity without a visa. Non-EU/EFTA nationals require a work permit, even for short-term employment. The number of permits issued is limited. Only qualified non-EU/EFTA nationals may work in Switzerland. The future employer must further demonstrate that the employment is in the economic interest of Switzerland and that they were unable to recruit the necessary personnel in Switzerland or from an EU/EFTA member state. Since 1 January 2021 UK nationals are no longer citizens of the EU and are therefore subject to the same rules that apply to third-country nationals, including quotas.

12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

As there are no immigration obstacles for EU/EFTA nationals, fintech companies already have access to a significant talent pool.

13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

Fintech companies can protect their ideas or individuality of their business by different means:

Copyright

Copyright protects the authors of literary and artistic works. It is the way in which an idea is expressed that is protected, not the idea or concept itself. Copyright

protection therefore applies to the form of the work and not its content. In particular, the source code of computer programs is protected by copyright. However, algorithms which form the basis of software, for example, are excluded from protection. Copyright protection automatically applies from the moment a work is created and is valid for a fixed period. There is no register.

Trademark

A trademark is a protected sign that distinguishes a company's products or services from those of other companies. All graphical representations of a sign can in principle be a trademark within the meaning of the law, for example words, combinations of letters, numbers, graphic images, three-dimensional forms, slogans, combinations of these elements, or even sound trademarks, which are made up of a sequence of notes. A strong trademark can help fintech companies to differentiate their products and services from their competitors. Given that fintech companies are often stewards of important financial assets and documentation, a reputable trademark can be of paramount importance to customers.

Unfair competition law adds additional protection in case of products or services being reproduced by third parties in confusion of customers.

Patents

A patent is an IP right for a technical invention. It allows fintech companies to prevent others from using their invention for commercial purposes for up to 20 years. The patent owner decides who is allowed to produce, sell or import its invention in those countries in which the patent is valid. The patent owner can also trade the patent, e.g. sell it or license the use of the invention.

Design

A design is a unique creative form that fintech companies can protect by registering it. This includes two-dimensional designs as well as three-dimensional forms.

Trade secrets

Finally, handling the internal know-how as a trade secret can be key for new fintech projects to develop. This can happen by means of contractual confidentiality provisions and internal guidelines to be agreed with employees and business partners.

14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

Cryptocurrencies do not qualify as legal tender in Switzerland. However, there are no restrictions regarding the legal ownership, transaction and exchange of cryptocurrency. In some cases, anti-money laundering regulations or license requirements may apply.

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

There is no uniform law governing ICOs in Switzerland. Depending on the qualification of the cryptoasset, different provisions may apply. There is no FINMA requirement for conducting an ICO, unless a cryptoasset is deemed a derivative or if the issuer has a repayment obligation. In these cases, authorisation as a securities house or a banking license may be necessary.

An ICO of a payment token triggers obligations under the AMLA.

An ICO of a utility token is not subject to the AMLA if the functionality of the token pertains to access to the blockchain for mainly non-financial purposes. If a utility token functions solely or partially as an investment in economic terms, FINMA will treat them as securities.

An ICO of an asset token may, according to the FINSA, lead to the obligatory publication of a prospectus or information sheet.

We do not foresee any change in this in the near future.

Generally, in Switzerland, four stages in an ICO can be distinguished:

- The pre-financing stage: investors are only offered the prospect that they will receive tokens at some point in the future and the tokens or the underlying blockchain, or both, remain to be developed. There are no transferable tokens on a blockchain at this stage.
- The pre-sale (voucher) stage: investors receive tokens entitling them to acquire or receive different tokens at a later stage (conversion or exchange is required).
- The pre-operational stage: the tokens' main functionality is ready, but it cannot be used yet at the point of issuance because the application, platform or underlying blockchain

remains to be developed or requires completion. No token conversion is necessary once the development of the platform or underlying blockchain is completed.

- The operational stage: the tokens' main functionalities are ready and can be used in the intended way on a functional blockchain, application or platform at the point of issuance.

16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

There were more than 1000 blockchain companies in Switzerland by the end of 2022 with the biggest concentration in the Crypto Valley in Zug, the most mature global blockchain hub in Europe. In 2021 fourteen unicorns (companies with valuations exceeding \$ 1 billion) were active in Switzerland and in 2022 there were still nine unicorns despite the crypto winter, including the layer 1 distributed-ledger-networks Ethereum, Solana, Cardano, Cosmos, Near, Dfinity and commercial companies 21shares, the world's largest ETP issuer and Safe, manager of digital assets. Switzerland is also home to the world's first fully regulated crypto banks, AMINA (formerly SEBA) and Sygnum.

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

Swiss financial companies are increasingly relying on artificial intelligence in various areas. A survey conducted by FINMA in 2022 on the use of AI in the banking and asset management sectors revealed that half of the polled institutions already make use of AI or are planning to use it. According to the survey results all institutions use AI in their front office (such as marketing) and for process optimisation, for documents processing, IT or human resource management. Other fields of application include compliance and conduct (such as KYC), financial risk management and system monitoring. AI is also already widely used in the insurance sector with the main applications in customer interactions, claims processing and distribution and for pricing purposes.

FINMA takes a proactive approach towards AI and has set up a specialist unit to monitor the increasing use of AI in the Swiss financial market. As FINMA has a technology-neutral, functional approach it should not

impede its use. FINMA formulated initial supervisory expectations that are to be discussed on an application-specific basis. Interestingly, FINMA itself is exploring AI applications for its supervisory role.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

The insurtech market in Switzerland is evolving rapidly. A study of the Institute of Financial Services in 2022 identified 58 insurtech companies in Switzerland which makes Switzerland the fourth largest insurtech ecosystem in Europe. Insurtech companies primarily rely on established technologies such as process digitisation/automatisation/robotics to offer innovation as well as (although less often) on disruptive technologies such as artificial intelligence and distributed-ledger technology. Insurtech companies often offer their services in partnerships with established insurance players due to the significant licensing requirements in Switzerland although this may change with new regulatory simplifications that have been introduced this year. Under the revised Insurance Oversight Act which entered into force on 1 January 2024 small insurance companies with innovative business models benefit from relaxed supervisory rules. Insurtech companies provide innovative tools to established insurers such as digital platforms for client onboarding and tools to enhance product developments and pricing as well as claims handling and customer services.

19. Are there any areas of fintech that are particularly strong in your jurisdiction?

According to the annual IFZ Fintech study fintech companies in Switzerland are primarily active in the financial market sector with a focus in payment services, investment management, banking infrastructure, loans and deposits, distributed-ledger technology and analytics. The greatest growth in 2022 was recorded in investment management and banking infrastructure.

20. What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?

On the one hand, Switzerland is home to many

progressive decentralized finance (DeFi) and crypto startups as well as decentralized autonomous organizations (DAOs), and on the other hand, Switzerland is an important and internationally recognized financial center with traditional financial institutions. In particular in view of strict AML-regulations, collaboration between DeFi/DAOs and the regulated world is almost non-existing. However, DeFi projects such as decentralized exchanges try to accommodate the AML-requirements by introducing ring-fenced layers only accessible by whitelisted clients. Somewhere in the middle are non-crypto fintechs, which often collaborate with existing banks in banking-as-a-service-models for account-, payment- and card-services in order to avoid obtaining expensive and complex banking licenses.

21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

There are different types of banks in view of fintech models: There are two crypto banks in Switzerland (Sygnum and Amina (formerly SEBA)) that have a full banking license and that are at the forefront of crypto and fintech with services and products developed themselves. These crypto banks provide their own infrastructure as outsourcing provider to many existing traditional banks, including many private banks but also more and more Cantonal banks, in particular for custody, brokerage and staking of cryptoassets. Non-crypto fintechs often collaborate intensively with existing banks based on a banking-as-a-service model in order to avoid obtaining a complex and costly banking license.

22. Are there any strong examples of disruption through fintech in your jurisdiction?

The DLT Bill introduced the possibility to issue and transfer ledger-based securities exclusively by a technical transfer on a blockchain or distributed-ledger, which is recognised in Switzerland as valid even without the physical transfer of a document or paper (required for traditional certificated securities) and/or a written assignment (required for traditional simple uncertificated securities) or a booking implemented by a central securities depository (required for book-entry securities). All rights that can be certificated in securities up to now can also be structured as ledger-based securities, ie, in principle all contractual rights including receivables and shares in corporations. Therefore, tokenisation has become a lot easier since the introduction of the DLT Bill

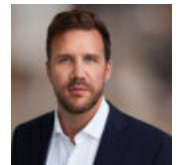
in February 2021. The DLT Bill also introduced a new authorisation category for DLT trading facilities. Switzerland is still waiting for the Swiss Financial Market Supervisory Authority (FINMA) to grant the first license

for a DLT trading facility. It will be interesting to see if this will kick-off a bigger trend towards tokenisation and asset tokens (ie, securities) and whether such DLT trading facilities could become strong competitors to traditional trading venues.

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