

Fintech 2024

Sixth Edition

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Approaches and developments

During 2023, despite the global economic slowdown caused by interest rate hikes and inflation and the moderate growth of the Swiss economy in 2023, the Swiss fintech sector has grown steadily, especially in the field of sustainable fintech companies where the growth has exceeded 50%. At the end of 2023, 483 companies were active in the Swiss fintech sector, showing an increase of 11% against the previous year. The Swiss Fintech scene continues its pace of transformation and disruption, setting major trends that may define where the fintech sector will develop and which business models will survive in the long run. While several countries still consider fintech a threat to their economies, allowing poor progress for their fintech business, Switzerland positioned itself already in 2016 with a clear strategy for the stable and steady growth of digitalisation and fintech. Switzerland is accordingly established as a prominent player in fintech offering a secure environment with access to a robust, high-quality technology infrastructure and experienced professionals and service providers with a long tradition in the financial services sector.

The Swiss regulatory approach to fintech continues to stand out amidst global developments. Switzerland's pragmatic and progressive stance has enabled it to cultivate an ecosystem that simultaneously encourages innovation and safeguards financial stability. In contrast to some jurisdictions that adopted a cautious approach following the banking crisis, Switzerland recognised the transformative potential of fintech and swiftly implemented a regulatory framework conducive to fostering technological advancements. As the SEC moved forward to approve the listing and trading of crypto exchange traded products (ETPs) for the first time early this year, the SIX Swiss Exchange had listed over 200 ETPs with cryptocurrencies as underlying assets, the first dating back to 2016. Moreover, the COVID-19 pandemic underscored the importance of digital solutions in sustaining financial services, and Switzerland's forward-thinking regulations provided a solid foundation for its financial sector to adapt and thrive in the face of unprecedented challenges.

Switzerland's regulatory approach to fintech is centred around fostering an innovation-friendly framework that promotes technological advancements while still upholding

the integrity and esteemed reputation of Switzerland as a financial hub. Furthermore, Switzerland's regulatory environment, characterised by principle-based laws and regulations and technological neutrality, exhibits remarkable adaptability for new technologies and business models.

Since 2017, Switzerland has taken proactive measures in adopting regulations to accommodate fintech innovation, such as the regulatory sandbox in banking law, the video and online identification, the fintech licence in 2019 and, in 2021, the introduction of the DLT bill, integrating crypto assets and digital ledger technologies into Swiss civil law and financial market regulations. By incorporating necessary compliance requirements, risk assessment procedures, and anti-money laundering measures, Switzerland endeavours to maintain the reputation, stability and resilience of its financial hub.

In 2023, the following main regulatory developments took place, impacting the fintech sector with different intensity:

- FINMA issued Staking Guidelines disclosing the regulator's practice around staking (please see detail below under "Custody services and staking"). The question was triggered due to the transition of the Ethereum blockchain from a proof-of-work to a proof-of-stake consensus algorithm.
- In February 2023, FINMA introduced standardised reporting processes for regulated entities that engaged in activities with cryptoassets. Around CHF 6 billion of cryptocurrencies are held in custody in Switzerland. However, regulated entities often rely on a relatively low number of third-party custodians for the custody of cryptocurrencies.
- Issuance of different regulations and industry association's recommendations in the field of sustainable finance, with the aim of Switzerland becoming a leading sustainable financial centre. Especially the combination of sustainable financial services and digital technology (*green fintech*) are seen as a promising opportunity for fintech Swiss market players (see below).
- Entry into force of the Insurance Supervision Act and the Insurance Supervision Ordinance on January 1, 2024, with an impact also for the Insurtech industry, especially due to more stringent supervision of insurance intermediaries. This particularly impacts companies involved in the provision of online services that advise customers with the conclusion of an insurance contract or that propose insurance contracts. Other amendments under the new insurance regulations are the introduction of a restructuring regime to avoid insolvency and the introduction of relaxed supervisory rules for small insurers, the latter representing an opportunity for Insurtech start-ups.
- Introduction of a Limited Qualified Investor Fund (L-QIF) in Switzerland from March 2024, being a Swiss fund exempted from FINMA supervision, but managed by an institution approved by FINMA and limited to qualified investors. This new type of collective investment scheme can be also used in the crypto environment.
- Preparation of the bill governing the transparency of legal entities which affects all Swiss legal entities and even foreign entities with certain Swiss links.
- Preparation of the bill on extending international automatic exchange of information in tax matters to cryptoassets in order to implement OECD's Crypto Asset Reporting Framework (CARF).

Following the Markets in Crypto-Assets Regulation (MICA) in the EU, Switzerland is assessing the necessity and chances for amending or even redrafting its crypto asset service provider regulations. Furthermore, the existing legal and supervisory framework

in the fintech space is currently being reviewed by the government to tackle the question of whether the fintech licence is fulfilling the aim pursued by the corresponding regulations – most likely the fintech licence will be replaced by a new regulatory regime.

The development of Switzerland as an international fintech hub is not only being fuelled by the *tech* friendly, stable and consistent regulatory framework, but also by the high concentration of companies, investors and organisations that aim to foster the Swiss fintech ecosystem. Amongst such organisations, the House of Insurtech Switzerland, the CryptoValley, Tenity, Swiss Fintech, Swiss Finance + Technology Association (SFTA), Digital Switzerland and many others can be accounted as great accelerators of the Swiss fintech community, bringing shareholders, stakeholders, companies and public players together to foster growth, networking, innovation and success of the use of new technologies in the financial sector.

Artificial intelligence was identified by FINMA as a main trend that may impact financial services in the long term. For the time being, no specific regulations have been enacted in connection with the use of artificial intelligence, however, FINMA has warned regulated institutions of the main risks related to this technology, namely the responsibility for AI decisions, the reliability of applications, the transparency and explainability of AI decisions and the equal treatment of financial market clients.

Fintech offering in Switzerland

According to the FINMA Annual Report, the core fintech regulatory topics of 2023 were the trading and custody of payment tokens and staking (see detail below under Custody services and staking). On the product side, the segment of cryptocurrency exchange-traded products (ETPs) has grown with intensity. Furthermore, FINMA-supervised institutions in the fintech sector amount to 34 banks and securities firms, which is a sign of maturity of the fintech industry as is being progressively embraced by all market players. Amongst the very varied fintech service offer, embedded finance has been revealed as a major trend with the potential to slowly conquer the market. Solutions may be structured by making use of open finance/open banking, allowing customers to make use of their bank accounts and linking them with different applications offered by fintech companies, but also by linking fintech companies amongst themselves to provide complementary services. The introduction of an e-ID system in Switzerland, planned for 2026 at the earliest, may accelerate the development of embedded finance solutions.

Payments

Digital payment solutions and mobile banking continue growing steadily in Switzerland. Contactless payments, mobile wallets and peer-to-peer payment applications have gained popularity. Established banks and fintech start-ups offer mobile banking applications with features such as instant payments, money transfers and account management. Powered by SIX and the SNB, the Swiss Interbank Clearing (SIC) payment system went live with the introduction of instant-payments in November 2023 and the Swiss National Bank (SNB) decided that the bigger banks must accept incoming instant payments as from August 2024 and the other banks shall follow from the end of 2026. The SNB is actively exploring the potential of wholesale central bank digital currencies (CBDCs) used therefore amongst the SNB and commercial banks, in particular, with projects Helvetia, Jura, Helvetia Phase III, and Mariana. However, according to recent declarations of the SNB chairman, the SNB sees no need for a retail CBDC, mainly due to the impact that this may have on monetary policy. TWINT, a major Swiss mobile payment system, enables seamless in-store, online and

person-to-person transactions by mobile phones, eliminating the need for cash or physical cards. TWINT has gained popularity, with over 5 million active users in Switzerland (total population of approx. 8.7 million people) and 590 million transactions in 2023.

Progressively, digital payment systems such as payments via QR-Codes or with bitcoin are becoming integrated in the traditional chain of payment service providers.

Wealth management

Digital wealth management has experienced significant growth, driven by advances in technology and regulatory updates from FINMA. In particular, the automation and digitisation of client onboarding and KYC processes has become more widespread, thanks to regulations that allow video and online identification. This has made client onboarding more cost effective. Investment Apps, such as Kaspar& are being well received in the market. In addition, the increasing popularity and availability of exchange-traded funds (ETFs) has led to a wider range of algorithmic management offerings. Exchange-traded products (ETPs) opened the possibility for exposures to crypto assets within a traditional financial instrument. Together with the increasing offer of digital assets and online banking solutions, numerous Swiss and foreign banks offer digital investment services. Even if foreign banks are in principle exempted from the banking licence in Switzerland if they do not establish a Swiss physical presence and act on a pure cross-border basis, they are required to implement the FinSA code of conduct when providing digital investment solutions to Swiss customers.

Trading bots/robo advisory

Trading bots such as UpBots and AlgoTrader have disrupted financial services markets in Switzerland by automating and improving trading processes. UpBots is a Swiss all-in-one platform that enables trading in cryptocurrencies and established commercial markets. AlgoTrader is a Swiss-based algorithmic trading software platform that supports automated trading across multiple asset classes.

Sophisticated trading signal providers offer their services to financial institutions without requiring a financial market licence, as they provide signals based on general market expectations without accepting deposits from client or managing client portfolios.

Artificial intelligence (AI)

Also in the Swiss financial sector, artificial intelligence is being increasingly relied upon, especially in the fields of risk management, pricing and customer interaction (for example, chatbots). Topics such as accountability, errors, the intransparency for the users and their unequal treatment are the main risks envisaged by FINMA. Based on its competences of supervision of regulated entities, FINMA set out in 2023 its expectations as to the business processes required to manage risks posed by AI by regulated institutions. Since the fourth quarter of 2023, FINMA has been conducting on-site inspections and follow-ups with financial institutions that use AI extensively following a risk-based approach.

In November 2023, the Federal Council ordered the preparation of an overview of possible regulatory approaches to AI, considering the different industries affected as well as the EU AI Act and the Council of Europe's AI Convention. The report is expected to be published by the end of 2024.

At a legislative level, it is to be highlighted that the Federal Council has initiated in May 2024 the consultation process to extend the automatic exchange of information in tax matters (AEA) to cryptoassets to enter into force in 2026.

Regulatory and insurance technology

Regulatory technology

The Swiss RegTech (Regulatory Technology) market has seen remarkable developments in recent years as the financial industry seeks innovative solutions to efficiently meet regulatory compliance requirements.

Swiss RegTech companies have emerged to provide technology-driven solutions for regulatory compliance. These solutions include automated compliance monitoring, risk assessment, regulatory reporting, and know-your-customer (KYC) processes. Companies such as NetGuardians, Apiax, Alyne, Investglass and Argus Grid Technologies are developing advanced RegTech solutions to help financial institutions navigate the complex regulatory landscape.

A key focus area for Swiss RegTech companies is the automation of regulatory reporting processes. By leveraging technologies such as AI and machine learning (ML), these companies offer solutions that streamline data collection, validation, and reporting, enabling financial institutions to meet reporting requirements more efficiently. Companies such as FinCube and JAROWA specialise in the automation of regulatory reporting.

Swiss RegTech companies are developing innovative solutions to improve AML compliance and fraud prevention measures. These solutions use advanced analytics, AI and pattern recognition algorithms to detect suspicious activity. Companies such as NetGuardians and KYC Spider are focusing on AML and fraud prevention solutions.

In the aftermath of the Credit Suisse collapse in 2023, FINMA pointed out that as customers lost confidence in the bank, the extensive liquidity outflows were further exacerbated by the digital communication channels (*digital bank run*) which ultimately brought the bank to the brink of insolvency. Authorities including the regulator had to intervene in an emergency to protect the bank's creditors and avoid realisation of systemic risks. Experts are of the view that FINMA should have the means to use market information more effectively in its supervision. This may potentially result in the development of further tools in the field of *RegTech*.

Insurance technology

Within Europe, Switzerland is considered an InsurTech hub. Traditional insurers have an advantage when entering the InsurTech market as they already have the necessary licences. Currently, there is no specific legislation for InsurTech business models. Therefore, any regulatory considerations for InsurTech models should be evaluated based on the general regulatory framework for insurance operations.

Switzerland has seen the emergence of several incubators and accelerators focused on fostering InsurTech innovation. According to the IFZ InsurTech Report 2023/2024, Switzerland continues to have a vibrant scene for insurtechs with 66 companies. Recognising the potential of InsurTech, traditional insurance companies in Switzerland are collaborating with startups to improve the customer experience, increase operational efficiency, and explore new business models.

Amongst the main trends, the so called “embedded insurance” is worthy of mention as a business model that integrates the insurance in the sale of a main product or service to which it is attached. For example, TONI Digital, which allows businesses to structure insurance to be embedded in their products and services.

Some players use AI to identify gaps between insurance policies, such as UpQuai. The development of AI solutions is in full progress at all levels, the insurance multinationals having established specific AI departments to coordinate and even develop AI internal solutions, often combined with the cooperation with tech giants such as Google or Microsoft. Claims handling and underwriting are the fields where most AI solutions are being tested and implemented. An example is the Helvetia-Chatbot using ChatGPT-technology.

Further examples in the field of Insurtech include companies such as Knip, which offers digital insurance management solutions, and Advanon, which focuses on trade credit insurance. Blockchain-based solutions are being explored for areas such as claims management, fraud detection and parametric insurance. An example is Etherisc, which focuses on decentralised insurance applications.

InsurTech companies are leveraging the Internet of Things (IoT) to enable pay-per-use insurance models. By collecting real-time data from connected devices, such as telematics devices in cars or wearables, insurers can offer personalised insurance products based on individual behaviour and risk profiles. Companies such as GotCourts, a Swiss-based start-up, offer pay-as-you-play insurance for sports activities.

Regulatory bodies

FINMA is Switzerland's financial market supervisory authority. FINMA's primary task is to enforce the laws governing the financial market. Where authorisation is required to engage in financial market activities, FINMA grants such authorisation if the legal requirements are met. It is also responsible for supervising these activities and the Swiss financial market. If necessary, FINMA enforces supervisory law by means of coercive administrative measures. These include precautionary measures or measures to restore compliance with the law, withdrawal of authorisation, liquidation of unauthorised companies, bans on certain industries and activities, and orders to disgorge unlawfully obtained profits. It may also publish final rulings naming the parties involved. FINMA exercises its regulatory powers by issuing ordinances, where provided for in financial market legislation, and circulars on the application of financial market legislation. With regard to anti-money laundering, financial intermediaries must join a private self-regulatory organisation recognised and supervised by FINMA and be subject to its supervision. In addition, portfolio managers are licensed by FINMA but supervised by a private supervisory organisation accredited by FINMA. FINMA is also competent to impose sanctions (e.g. to initiate enforcement proceedings). If an enforcement proceeding gives rise to suspicion of criminal activity, FINMA will file a complaint with the Federal Department of Finance or the Prosecutor's Office who assess whether to open criminal proceedings or not.

FINMA has established a "fintech desk", which assesses the regulatory qualification of fintech business models that voluntarily request such a pre-assessment from FINMA. Business players use the fintech desk especially when there is a doubt about the interpretation of a specific regulation.

Key regulations and regulatory approaches

In general, only banks with a banking licence allowing for the pursuit of the classic interest-difference business model may accept deposits from the public. Therefore, a fintech-oriented company cannot accept deposits from the public unless it first obtains a banking licence.

The requirements for such a banking licence are quite onerous, i.e. at least CHF 10 million of fully paid-up equity capital, and the capital, liquidity and organisational requirements are rarely met by start-ups. To create a growth environment for fintech companies, the Swiss legislator first created a sandbox regime and then additionally introduced a fintech licence, which was later extended to cryptocurrencies also. These allow fintech companies to accept deposits from the public without the need for a banking licence. Fintech start-ups can experiment in the market within the sandbox and then grow further with the fintech licence or even a banking licence. Furthermore, the provision of asset and/or fund management services, and the activity as a securities house or securities firm are mainly subject to a license from FINMA. The principle that regulations need to be proportionate can be seen on the rule that supervisory intensity varies depending on the size of the company.

Fintech licence

To promote innovative financial companies, Switzerland has introduced the FinTech licence. The “FinTech licence” (or “banking licence light”) is a streamlined licence. The FinTech licence allows institutions to accept public deposits of up to CHF 100 million or cryptocurrencies theoretically in an unlimited amount but is subject to the discretion of FINMA, as long as they neither pay interest on nor do proprietary trading/investing with such client funds. The public funds collected by the fintech company must be either kept separate from the company’s own funds or recorded in a manner that allows for separate reporting at any time. The latter option requires the fintech company to undergo a regular audit. Fintech licences are useful for various business models such as crowdlending platforms, trading platforms, payment, account and card services and others. These business models commonly rely on service fees as their revenue source.

Unlike fintech companies, full-fledged banks operate under an interest margin business model. They accept public funds without a specific limit, offering lower interest rates (liabilities) while lending to multiple individuals at higher interest rates (assets). This model is inherently risky because the funds collected are typically short term while the loans granted are long term, potentially leading to a bank run. Fintech companies face fewer requirements than full-service banks due to the less risky fee-for-service model they operate under. Fintech companies are exempt from complex capital and liquidity requirements and have reduced accounting and auditing obligations. The minimum capital requirement for fintech companies is 3% of the public deposits collected, with a minimum of CHF 300,000, which is significantly lower than that of full banks. However, fintech companies are obliged to inform clients in writing that their deposits are not covered by the deposit insurance system and to inform them about the risks associated with the company’s business model, services and technologies used.

It is currently subject to review whether the fintech licence has brought the desired effects, and a revision of this licence category is accordingly expected, as mentioned above.

Sandbox

The unsupervised and unregulated sandbox can be used by companies that accept funds from the public up to CHF 1 million. The sandbox is intended for fintech companies in their initial market testing phase. To be eligible for the sandbox, public deposits may not exceed CHF 1 million in total and no interest rate differential business may be conducted. In addition, depositors must be duly informed before making a deposit that the business is not supervised by FINMA and that the deposit is not covered by the deposit guarantee. If

someone acts as a financial intermediary in Switzerland, i.e. as soon as someone holds or manages funds for another person, Swiss anti-money laundering (AML) regulations apply.

Financial markets

The FinIA establishes a legal framework for financial institutions, while the FinSA regulates financial services in Switzerland. FinSA aims to create a level playing field for financial institutions and enhance client protection. It introduces point-of-sale codes of conduct, prospectus requirements and clear key information documents for financial instruments. FinIA standardises rules for financial service providers that manage third-party assets. FinSA's conduct of business rules are similar to the EU's MiFID I and II, making it easier for Swiss financial service providers to enter the EU market. Financial service providers must comply with these rules when offering financial instruments in Switzerland. The rules include information and due diligence obligations, suitability tests, documentation requirements and rules of conduct.

Fintech companies in Switzerland are not subject to specific fee regulations, but they must comply with disclosure requirements regarding fees for financial services. In cases where a Key Information Document (KID) is required for Swiss private clients, a detailed fee disclosure for collective investment schemes and structured products must be included in the KID.

DLT trading facilities/DLT

The DLT Bill provided legal certainty in the field of DLT, in particular, for the transfer of DLT-based assets. As a result, market access for fintech companies was improved and regulatory barriers were removed. To this end, ledger-based securities were introduced.

A ledger-based security is a right that is registered in a securities ledger in accordance with an agreement between the parties and can only be exercised and transferred to others through that securities ledger. The securities ledger must meet a number of minimum requirements with regard to power of disposal, integrity, publicity and independent access.

The Financial Market Infrastructure Act introduced a new licensing category for "DLT trading facilities". These function similarly to the existing multilateral trading facilities, but will allow individuals to participate without the involvement of an intermediary. FINMA has not yet issued any licences for DLT trading facilities. According to FINMA, an initial application for licensing as DLT trading facility is in progress.

Ledger-based securities and intermediated securities

The DLT legislation provides for the issuance and transfer of ledger-based securities by means of a technical transfer on a blockchain or distributed ledger without the physical transfer of a document or paper (required for certificated securities) and/or a written assignment (required for simple uncertificated securities) or an entry by a central securities depository (required for book-entry securities). All previously securitisable rights can also be structured as ledger-based securities, i.e. essentially all contractual rights as well as claims and shares in companies.

The absence of a third party (e.g. a custodian) is the key feature of ledger-based securities. The issuance of ledger-based securities does not require a regulated institution (e.g. a licensed bank, securities firm or central securities depository) to act as a custodian to credit such intermediated securities to specific securities accounts or other depositories.

Asset tokens

An asset token represents a property right in an asset. Asset tokens allow both new and existing assets (e.g. stocks, bonds or mutual fund shares) to be traded in the form of security tokens on a digital securities exchange such as the SIX Digital Exchange. Asset tokens can be held with wallet providers that are not prudentially supervised. The category of asset tokens can also include tokens whose purpose is to make physical assets tradable on the blockchain. The spectrum of novel assets facilitates the investment in non-bankable assets such as real estate and art paintings, whereby the legal structure chosen will be decisive for the regulatory qualification. FINMA classifies asset tokens as a claim to ownership of an asset, making them similar to shares or bonds from a regulatory perspective. The qualification of an asset token depends on the features of the structure and rights attached to such asset token, again following technology neutrality.

Asset tokens that are offered to the public or placed with more than 20 clients are considered securities under Swiss law. FinSA requires the issuance of a prospectus for asset tokens offered to the public, along with a review by a prospectus review body. Depending on the circumstances, additional regulatory requirements may apply to collective investment schemes and structured products. Intermediaries involved in the placement of securities or derivatives may be subject to securities dealer/firm regulation as an issuing house or derivatives firm.

Additional regulatory requirements apply to the offer of non-Swiss collective investment schemes and structured products or the setting up of a structure of collective investment in Switzerland.

The offer of asset tokens is on the rise, especially in case of actively or passively managed ETFs. Often the ETF itself is issued as an asset token (direct investment in cryptoassets) and the funds are still in traditional form, and often as standard book entry securities listed to track a digital asset such as a cryptocurrency or an index of cryptocurrencies (indirect investments in cryptoassets). Companies like 21Shares, Leontech, Amina Bank and VanEck belong to the standard players in the issuance of tracker certificates and ETFs with cryptoassets as underlying assets.

Custody services and staking

With the growing investment in cryptoassets, be it in form of asset tokens (such as securities) or in form of payment tokens or cryptocurrencies (such as bitcoin or ether), the regulation regarding the custody of cryptoassets became central. While the general questions regarding the custody of cryptoassets are already sufficiently addressed by Swiss regulations, during 2023, the treatment of staking was particularly questioned. Staking can be defined as the earning of rewards in return for validating the integrity of blockchains in a proof-of-stake validation mechanism, where cryptoassets are provided as collateral by a validator to secure that the validation is made accurately. During the process of staking, cryptoassets can be confiscated (slashing) in case of misbehaviour of a validator or subject to a lock-up or exit period. Staking service providers are often custodians that use cryptoassets of their customers for staking. When custody services are provided, the risk from a regulatory perspective is (besides the slashing and the lock-up period) that the custodian goes bankrupt and assets in custody pass to form part of the bankruptcy estate of the custodian generating a potential loss for customers. As Switzerland regulation is technology neutral, the question of how staked cryptoassets are treated in case of bankruptcy of the custodian needed to be answered by way of interpretation of the already

applicable regulatory framework. Therefore, in December 2023, FINMA issued Guidance 8/2023 on staking services. According to Guidance 8/2023, where the cryptocurrencies can be segregated from the bankruptcy estate of the custodian during the staking and custody is individual, no banking licence applies. While this is in principle the case in connection with asset tokens (as it with securities accounts deposited with a bank), in the case of payment tokens, segregation requires under Swiss law that the cryptocurrency is held in readiness for customers at all times and either (i) kept in individual custody, or (ii) kept in collective custody being clearly viewable which part of the cryptoassets belongs to which customer – otherwise no segregation applies and a banking licence is required for the staking service provider.

Stablecoins

In a supplement to its Guidelines on ICOs, FINMA outlined in 2019 the treatment of stablecoins under Swiss supervisory law. In doing so, FINMA has been following the same approach as for blockchain-based tokens, focusing primarily on the economic function and purpose of a token (substance over form). FINMA adheres to the principle of “same risks, same rules”, taking into account the relevant facts of each case.

Many, but not all, stablecoins confer a contractual claim against the issuer to the underlying assets, or confer direct ownership rights, which may make them qualify as asset tokens and potentially, securities. In short, stablecoins can vary widely. As a result, the regulatory requirements also differ depending on the assets the stablecoin is backed by or linked to and the rights of its holders. FINMA therefore distinguishes between asset-backed stablecoins that are linked to cryptocurrencies, commodities, real estate or securities. The specific purpose and characteristics of stablecoins may trigger the application of different financial market laws. Amongst others, regulations on banking, fund management, financial infrastructure, money laundering and securities trading may apply.

Stablecoin projects often fall within the scope of the licensing requirements of the Banking Act or the Collective Investment Schemes Act (CISA). In addition, due to their inherent purpose as a means of payment, most stablecoin projects are also subject to the Anti-Money Laundering Act (AMLA). To the extent that a stablecoin project creates a payment system of significant importance, it may be required to obtain a licence.

Stablecoin projects using a default guarantee issued by a bank in order to be exempt from a fintech or banking licence have become popular in Switzerland.

Payment tokens

So called cryptocurrencies such as bitcoin, ether or USDC are, according to the FINMA ICO Guidelines, to be qualified differently from asset tokens to the extent that they do not entail a claim against an issuer as is the case for asset tokens (such as shares, bonds and other financial instruments). By lack of such a claim and accordingly the lack of creation of passive accounts for the issuer, also no public deposits are created and no banking licence applies to the issuer of cryptocurrencies.

In the past years, crypto exchanges have gained importance while Swiss investors hold a relative high amount of cryptoassets. An example is Binance (Switzerland) AG.

AML

The AML obligations are imposed on financial intermediaries and dealers. Persons, including legal entities, who hold on deposit assets belonging to others or who assist in

the investment or transfer of such assets are considered financial intermediaries under the AML law. More specifically, this includes the execution of credit transactions or the provision of services related to payment transactions, in particular, by carrying out electronic transfers on behalf of others.

Compliance with the Swiss AML regulations includes the fulfilment of due diligence requirements, including the identification of beneficial owners, and membership of a self-regulatory organisation or direct supervision by the FINMA.

Not only custody-wallet providers or providers safekeeping private keys are subject to Swiss AML-regulations, but also anyone facilitating the transfer of virtual currencies provided that it enters into an ongoing business relationship.

The Swiss AMLA states that not only banks and securities dealers, but also any person who provides payment services or issues or administers a payment instrument is a financial intermediary subject to the act.

Payments

In contrast to the European Union (EU) with its payment services directive II and e-money directive with respective licence regimes, Switzerland has no payment-specific regulatory framework. Payment activities are usually either lightly regulated by being only subject to Swiss AML-regulations or rather strict regulated by being subject to Swiss AML- and banking regulations. The fintech licence created a kind of middle ground to this pretty big regulatory balancing act.

DAO

A DAO, or Decentralized Autonomous Organization, is an organisation that operates through smart contracts on a blockchain. It is designed to be autonomous, meaning that it operates without a centralised authority or hierarchical structure. Instead, decision-making within a DAO is typically governed by voting mechanisms and predefined rules encoded in smart contracts.

Although the DAO is not a fixed term in Swiss law and does not have a defined structure, its effects may well be recognised therein. In some cases, a DAO qualifies as a collective investment scheme, in particular, if an asset is collected from multiple users to finance the DAO and its activities. However, a DAO would at least qualify as a simple partnership under the CO, as it is a catch-all arrangement leading to unlimited liability of its members and tax consequences.

The legal form of the Swiss association provides a suitable legal wrapper for the DAO, limiting the personal liability of its members. The Swiss association is a very flexible legal form with few mandatory laws, allowing it to be tailored to the specific needs of a project. In addition, liability is limited to the association's assets, and the association has full legal personality and can therefore enter into contracts.

As of January 1, 2023, new regulations came into force for associations that are required to be registered in the Commercial Register.

Sustainable finance

Also in Switzerland, the financial services regulation is moving towards the implementation of ESG standards. FINMA Guidance 5/2021 sets out the current practice on the prevention of greenwashing in connection with collective investment schemes. In December 2023, the

Federal Council updated the Swiss Climate Scores which are considered as best practice recommendations to achieve climate transparency and are addressed to investment institutions such as asset managers, banks and insurance companies. From January 1, 2024, public companies and regulated entities with a certain size are required to publish a report following the recommendations of the Task Force on Climate-Related Financial Disclosures. The Swiss Asset Management Association AMAS updated its principle based self-regulation for members in 2023, covering transparency and disclosure for sustainability-related collective assets and, to align with the objectives of the Federal Council, AMAS has issued self-regulation 2.0 to become effective in September 2, 2024. In February 2024, FINMA launched a consultation on a new circular covering the supervisory practice regarding the management of nature-related financial risks for banks and insurers. It is expected that further regulations will enter into force in 2026 providing a common understanding regarding the designation of financial products and financial services as sustainable.

Implications of new EU law

On May 16, 2023, the European Council adopted the European Union Regulation on Markets in Crypto Assets (MiCA), which came into force on June 30, 2023 and must be applied partly from June 30, 2024 and the rest from December 30, 2024. Despite being a non-EU country, Switzerland will be affected by MiCA as most crypto-related businesses have links to EU jurisdictions. Therefore, Swiss companies that offer their products or services to EU countries will need to carefully assess whether their business activities are subject to MiCA or, with respect to crypto-assets that constitute financial instruments such as securities, to the EU's Markets in Financial Instruments Directive (MiFID II). As MiCA aims to cover the range of crypto-assets as broadly as possible, it is likely to have an impact even if it falls outside the scope of Swiss financial market regulation.

Some tokens are subject to extended rules under MiCA. For example, stablecoins are considered an "e-money token" or an "asset-reference token" under MiCA. The issuance of an e-money token or asset-referenced token generally requires a physical presence within the EU/EEA and a licence. In addition, a so-called "crypto-asset whitepaper" must be published.

On July 12, 2024, the AI Act was published, and will apply to private and public actors inside and outside the EU starting on August 1, 2024, to the extent that the AI system is localised in the EU or its use affects persons in the EU. Accordingly, AI systems localised in Switzerland may be caught by the EU AI Act. Accordingly, it is sensible to consider relevant compliance with the AI Act when designing projects, taking also the relevant sanctions into account. The AI Act has taken a risk-based approach with four levels with may be used as a risk management tool.

Restrictions

The Federal Council has actively worked to remove market entry barriers for fintech companies. This approach has been underscored by the introduction of a new category of fintech licences in the Swiss Banking Act and its ordinance. By simplifying the requirements for a special licence for fintech companies, market entry barriers are lowered. Previously, such activities would have required a full banking licence, a deal-breaker for most fintech companies as they generally remain outside core banking activities despite providing bank-like services. There is also a growing focus on open banking.

Cross-border business

With the introduction of FINSA and the Swiss FinIA, foreign financial service providers wishing to target clients domiciled in Switzerland with financial instruments are required to register. The obligation to register is imposed on the persons who act as “client advisors” for the financial service provider, not on the provider itself. However, client advisors of prudentially supervised foreign financial institutions are not required to register if services are exclusively provided to per se professional clients. An exception to register may apply under certain circumstances according to the newly adopted Bern Financial Services Agreement between Switzerland and the United Kingdom, adopted in December 2023.

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