

Switzerland: New FinTech Regulation

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Key Points

- On 2 November 2016, the Swiss Federal Council announced that it planned to reduce barriers to market entry for FinTech companies.
- The program of the Swiss Federal Council comprised three pillars consisting of (i) the extension of the maximum holding period of third party monies from 7 days to 60 days, (ii) the introduction of a regulatory “sandbox regime” and (iii) the introduction of a new FinTech licence to be granted by the Swiss Financial Market Supervisory Authority (FINMA).
- The first two pillars were introduced on 1 August 2017.
- The third pillar, a new FinTech licence, arrived on 1 January 2019.

Extension of the maximum holding period

Previously, Swiss law provided that securities or precious metal dealers, asset managers or similar institutions holding deposits in settlement accounts did not conduct a deposit taking activity giving rise to a requirement to be licensed as a bank, provided such deposits were held exclusively for the execution of a client transaction and they were not interest-bearing. According to FINMA’s practice, the exception was only applicable if the funds were on-transferred within seven days.

On 1 August 2017, this seven-day period was extended to a maximum of 60 days, except for securities traders. Therefore, providers of crowdfunding services accepting funds from investors and transferring such funds to projects were able to benefit from the extended deadline. Further, this was not restricted to FinTech companies.

Sandbox

Until 1 August 2017, Swiss law required any company that accepted deposits from more than 20 customers, or that publicly advertised the acceptance of deposits, to obtain a bank licence. There was no minimum threshold for the amount of such deposits.

Since 1 August 2017, a provider has been able to accept funds from the public (i.e. more than 20 customers) without restriction up to a total value of CHF 1 million. Until

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now, to benefit from this exemption, the funds could not be re-invested or bear interest. With effect, from 1 April 2019, it is now possible to invest deposits received up to CHF 1 million within the “sandbox,” although operating in the interest rate differential business is prohibited and remains the privilege of the banks. These activities are no longer subject to supervision by FINMA and so do not require authorisation by FINMA. Consequently, the deposits are not guaranteed in case of bankruptcy and investors must be informed accordingly in advance.

If the funds of a provider exceed CHF 1 million, the provider is required to inform FINMA within 10 days and apply for a banking licence within 30 days.

New FinTech licence

The third pillar of FINMA’s reforms is the creation of a new type of licence to promote innovation in Switzerland for companies not carrying out traditional banking activities (“FinTech licence”). This licence, available since 1 January 2019, is available for companies that are mainly active in the financial sector accepting deposits from the public up to a maximum of CHF 100 million, or seeking such deposits from the public, provided such deposits are not re-invested and do not bear interest. FINMA may increase the CHF 100 million threshold if measures are in place to guarantee the protection of clients.

This CHF 100 million threshold will in principle be calculated at the group level where applicable.

In addition, professionals with a FinTech licence are required to inform their clients in advance of accepting deposits about their business model, services provided and technologies used, and disclose that the deposits are not covered by a deposit guarantee.

The requirements are based on the audit requirements applicable to banks and securities dealers, but the audit is less extensive and the reporting process simpler, while focusing on the specifics of the FinTech business model. In order to obtain a FinTech licence, the professionals are subject to a regulatory audit by an authorised audit firm. It also has to comply with certain organisational, risk management, compliance, accounting and financial resources requirements.

These requirements are less strict than those applying to a regular commercial banking business.

For example, a regular bank needs a minimum capital of CHF 10 million whereas FinTech licence holders are required to have a minimum capital of at least CHF 300,000 and equivalent to 3 percent of the public deposits they hold. In addition, FinTech licence holders do not have to comply with the provisions of the Capital Adequacy Ordinance and the Liquidity Ordinance. Under the Capital Adequacy Ordinance, banks and securities dealers are required to keep sufficient capital available for the business they conduct and the risks they incur and to limit their risks appropriately. The Liquidity Ordinance governs the qualitative and quantitative liquidity requirements for banks. Finally, the accounts of FinTech licence holders can be prepared in accordance with the provisions of the Swiss Code of Obligations and do not have to comply with the more onerous rules provided in the Banking Ordinance.

On 3 December 2018, FINMA published its guidelines governing FinTech licence applications. The guidance facilitates the application process for applicants.

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