

Launching a service from Lugano

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For a provider of exchange, brokerage or custody services the steps differ. The provider must first decide whether it will hold client assets and in which form. Pure custody that meets the conditions of Article 242a DEBA and pure exchange services do not require a banking licence under current law, but they make the provider a financial intermediary, which must join a self-regulatory organization before it starts operating. Once client funds in fiat currency are held for longer than the settlement exception allows, or tokens are lent or staked without meeting the conditions of FINMA Guidance 08/2023, the provider needs a FinTech or banking licence. Dealing in tokens that are securities requires a securities firm licence. The provider must build the technical capacity to comply with the travel rule, including the verification of client-owned wallets, and must use blockchain analytics for the origin of tokens and for sanctions screening.

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The provider must also plan for the reform. If the draft of 2025 is adopted as proposed, providers of custody and exchange services that today operate under anti-money laundering supervision alone will need a licence as a crypto-institution, with capital, organizational and conduct requirements. A business plan that relies on the light regime of the present will need to be revised. For the Italian market, the provider must decide early whether it will rely on reverse solicitation, establish a CASP in the European Economic Area or cooperate with an authorized partner. In each case the structure must be documented, because Italian authorities will judge it by its economic substance. Finally, the provider must take account of data protection under the revised Federal Act on Data Protection, in force since 1 September 2023, and of FINMA's rules on outsourcing when it uses cloud or analytics providers abroad, topics discussed in Chapter I.III.

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