

The FinTech licence

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With effect from 1 January 2019 Parliament introduced, in Article 1b BankA, a licence for institutions that accept public deposits up to CHF 100 million on condition that the funds are neither invested nor bear interest. Since 1 August 2021 the provision has also covered crypto-based assets designated by the Federal Council. FINMA's description of the licence, which is based on Article 1b BankA and Article 7a BankO, adds the main requirements. The institution must be organized as a company limited by shares, a partnership limited by shares or a limited liability company, have its registered office and conduct its business activities in Switzerland, and inform its clients that the client assets are neither privileged nor protected by depositor protection in the event of bankruptcy.¹ The minimum capital is three per cent of the public deposits and of the crypto-based assets in collective custody accepted, with a minimum of CHF 300,000, and the Capital Adequacy Ordinance and the Liquidity Ordinance do not apply to such institutions.² The extension of 2021 allowed FinTech institutions to hold paymenttype tokens in collective custody for clients without the full banking licence.

The licence did not meet the expectations of its authors. By the autumn of 2025 only four institutions held it, and FINMA had recently revoked one licence.³ The reasons lay partly in the ceiling of CHF 100 million, which limited the growth of successful providers, and partly in the absence of protection for client funds in the bankruptcy of the institution, which made the licence unattractive for clients and for the banks that had to hold the institution's omnibus accounts. In its report of 16 December 2022 the Federal Council acknowledged the need for improvements in the protection of client assets under the FinTech licence.⁴ The reform proposals of 2025 discussed below would replace the FinTech licence with a licence for payment instrument institutions, abolish the ceiling and require the segregation of client funds.

1 Enforcement at the perimeter

FINMA's enforcement practice shows where the perimeter runs. In a ruling of 19 August 2022 it found that three companies had accepted public deposits in fiat currency and in crypto-based assets on a commercial basis without a licence and had held crypto-based assets in custody in a manner that required a banking licence. FINMA issued a declaratory ruling under Article 32 FINMASA and a restoration order under Article 31 FINMASA, ordered the companies to cease the activity and confiscated profits of CHF 421,000. The ruling became final without appeal.⁵ The case is typical of the many enforcement proceedings that FINMA conducts each year against unauthorized providers, most of which end with liquidation or bankruptcy and are published only in anonymized form or in FINMA's warning list of unauthorized providers.

2 Notes

1. FINMA, "FinTech licence", <https://www.finma.ch/en/authorisation/fintech/fintech-bewilligung/> (legal basis Art. 1b BankA and Art. 7a BankO; public deposits up to CHF 100 million or crypto-based assets, not invested and no interest paid; legal forms; registered office and business activities in Switzerland; clients informed that "client assets are neither privileged nor protected by deposit protection"). Art. 1b BankA was inserted by the Financial Institutions Act of 15 June 2018 with effect from 1 January 2019, and para. 1 lit. a was amended by the DLT Act with effect from 1 August 2021, <https://www.droit-bilingue.ch/de-it/9/95/952.0-1b-6.html>. ↩
2. Art. 17a paras. 1 and 3 BankO, <https://www.droit-bilingue.ch/de-it/9/95/952.02-17a-33.html> ("3 Prozent der entgegengenommenen Publikumseinlagen und der entgegengenommenen sammelverwahrten kryptobasierten Vermögenswerte, jedoch mindestens 300 000 Franken"; Capital Adequacy Ordinance and Liquidity Ordinance not applicable). ↩
3. Mondaq, "FinIA Reform: New Licences For Payment And Crypto Institutions", 2025, <https://webiis10.mondaq.com/fin-tech/1697214/finia-reform-new-licences-for-payment-and-crypto-institutions> (only four institutions with the FinTech licence; one licence recently revoked by FINMA). ↩

4. FINMA, "FinTech licence" (above) (Federal Council report of 16 December 2022 on the need for improvements in client asset protection). ↩
5. FINMA, Enforcement case report 2022-29, <https://www.finma.ch/dokumentation/enforcementberichterstattung/kasuistik/2022-29/> (ruling of 19 August 2022; public deposits in fiat and crypto-based assets; custody without licence; Arts. 31, 32 and 35 FINMASA; CHF 421,000 confiscated; final without appeal). ↩

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