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The Swiss fintech licence

A brief introduction

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Technology and digitalisation are key topics for the financial industry. Innovative and agile start-ups, as well as established companies (together known as fintech), are using the latest technology to disrupt value chains, evolve and redefine products and services, and revolutionise business models.

This is an area where Switzerland combines a long tradition of financial services with an innovative spirit and subject matter expertise. Changes to the Banking Act are creating ideal regulatory conditions for new fintech business models.

The new fintech licence now being introduced by the Swiss legislator has less strict requirements than the traditional banking licence. It enables fintech companies to carry out certain activities within an appropriate regulatory framework without the need for a costly and complex banking or other applicable licence.

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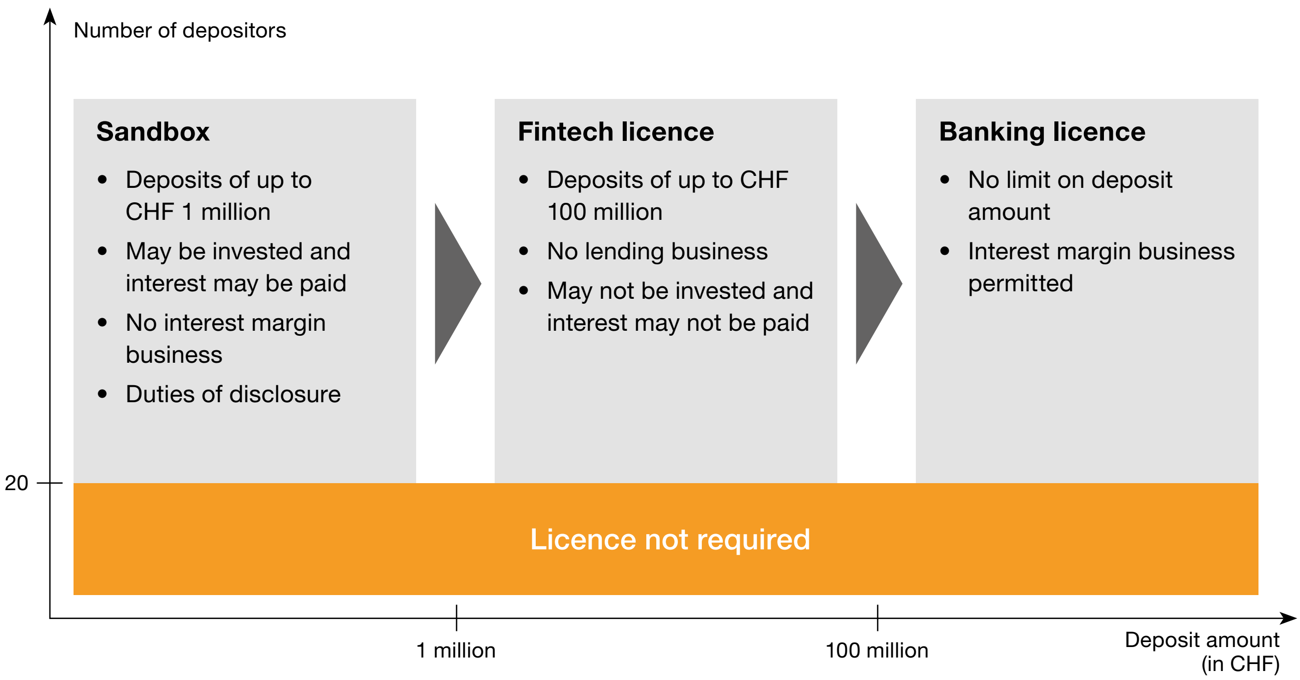
1. Background

On 15 June 2018, as part of its efforts to promote innovation, the Swiss legislator adopted a new article to the banking law. Under the title 'promoting innovation' it introduced the fintech licence to the Swiss Banking Act. This new licence category provides certain simplifications compared with the full banking licence designed to create a framework well-suited to fintech business models. The amendment to the Banking Act and the accompanying implementing provisions came into force on 1 January 2019.

2. Promoting innovation

Under the banner of 'promoting innovation', the new Article 1b of the Banking Act expands the scope of application to persons who are primarily active in the financial sector and accept deposits of up to CHF 100 million from the public on a professional basis, provided that these deposits are not invested and no interest is paid on them. This measure is intended to lower the barriers to market entry for fintech companies. The rules of the Banking Act continue to apply mutatis mutandis. If a company exceeds the CHF 100 million threshold, it will still need a banking licence. The fintech licence thus falls between the sandbox (which permits companies to accept public deposits of up to CHF 1 million without a licence) and the full banking licence.



3. Opportunities for fintech companies

The fintech licence accommodates various business models, as it is not designed for a specific type of business. This means that future yet unknown business models may potentially benefit from the relaxed requirements. There is particular potential for fintech companies that provide bank-like services but refrain from classic core banking activities (in particular interest margin business) and, thus, are only limited subject to bank-specific risks.

The fintech licence is of particular interest for business models that include the holding of funds – which until now was, with a few exceptions, only permitted with a banking licence. With the new fintech licence, it will be possible to accept public deposits up to CHF 100 million without a banking licence. Here are some examples of business models that can potentially benefit from the fintech licence:

Crowdfunding platforms

Operators of crowdfunding platforms can benefit from the new regulation if they are not only acting as an intermediary between investors and borrowers, but are also pooling the money collected and only thereafter paying out the money to the borrowers. Previously, crowdfunding operators were not permitted to hold money on the platform's account for more than 60 days. The new fintech licence permits them to hold money on the platform's account for more than 60 days, even without a banking licence, provided that this money does not total more than CHF 100 million. This gives a crowdfunding platform more flexibility (for example by enabling longer collection deadlines) and also allows for control mechanisms that improve quality and risk management (such as paying out money in instalments or simplified repayment models).

Providers of new payment services

Providers of new types of payment services can potentially also benefit from the new regulations. This would include, for example, mobile payments, payment solutions for digital business or e-commerce, micro payment services and peer-to-peer payment systems. Providers and operators of such services often have to hold funds temporarily for settlement purposes. Under the new fintech licence, the regulations governing these types of business model is more flexible and adequate to the risks.

Service providers in the field of blockchain technology

Service providers in the financial sector that use blockchain technology also benefit from the new fintech licence, for example when it comes to storing and trading virtual currencies (e.g. as custodians, wallet providers and crypto brokers) or validating blockchains (e.g. through mining or staking). Under the fintech licence, these types of service provider may now carry out activities that previously required a banking licence.

4. Requirements of the fintech licence

	Banking licence	FinTech licence
Public deposits	Unlimited	Max. CHF 100 million
Use of deposits	Lending and deposit business	Deposit business only (no interest margin business)
Minimum capital	CHF 10 million	CHF 300,000 or 3% of deposits
Capital and liquidity requirements	As per Banking Act	None
Supervision and monitoring	Normal auditor; annual audits	Reduced requirements on auditor; reduced audit frequency by request
Accounting	As per Banking Act	As per Swiss Code of Obligations
Deposit guarantee	As per Banking Act	None
Organisational requirements	Comprehensive, as per Banking Act	Exceptional relaxation of requirements possible

Public deposits

All liabilities towards customers are considered public deposits, provided no exception is applicable. Depending on their design, cryptocurrencies and tokens may also qualify as public deposits. FINMA Circular 2008/3 'Public deposits with non-banks' was adjusted to accommodate the fintech licence.

With a fintech licence companies may accept public deposits up to a maximum of CHF 100 million. The Federal Council has the competence to adjust this amount, taking into account the competitiveness and innovative capabilities of the Swiss financial industry. If a company exceeds the threshold of CHF 100 million, it must inform FINMA accordingly within 10 days and submit an application for a banking licence within 90 days.

Use of deposits

Public deposits taken by a company with a fintech licence may not be invested, nor may interest be paid on them. In particular, this rules out investing in investment products as well as interest margin activities, which are reserved for banks. Fintech companies must keep deposits segregated from their own funds or book them in a way that allows them at any time to clearly distinguish between their own funds and client deposits. As fintech companies are forbidden from paying interest on deposits, they can only hold them. They must be able to return the funds to customers within a reasonable timeframe. A fintech company can hold its liabilities as sight deposits with a bank or another fintech company. To minimise risk for depositors, the deposits must be kept in the currency of the respective repayment claim. This prevents losses resulting from exchange rate fluctuations. The same applies to cryptocurrencies; fintech companies must hold them in the same form as they received them.

Minimum capital

When a new fintech company is set up, it must hold a minimum amount of capital of 3% of the public deposits received, but no less than CHF 300,000. This capital must be fully paid-up and, other than banks, must be retained at all times. Fintech companies are not permitted to lend this capital to holders of a qualified participation. In individual cases, the minimum capital requirement might be higher if the fintech company conducts business with higher risks. In both qualitative and quantitative terms, the capital requirements for fintech companies are less stringent than those for banks.

Capital and liquidity requirements

A further easing of requirements for fintech companies relates to the fact that they are not subject to the provisions of the Capital Adequacy Ordinance or the Liquidity Ordinance. This is because fintech companies are not permitted to conduct interest margin business and are, therefore, only exposed to reduced levels of fixed income rate and liquidity risks.

Supervision and monitoring

As part of its risk-based supervision, FINMA can allow for audits to take place on a less than annual basis, as is the case for asset managers. Depending on the risks that a specific fintech business model entails, FINMA may relax certain requirements. For example, fintech companies with a low-risk business model have the option of requesting that the regulatory auditor conduct an audit every two or three years rather than annually. This reduced audit frequency saves the fintech company time and money. FINMA Circular 2013/3 'Auditing' has been amended to accommodate the fintech licence.

Accounting

Fintech companies' accounts must be drawn up exclusively in accordance with the provisions of the Swiss Code of Obligations.

Deposit guarantee

Deposits with fintech companies are not covered by the deposit guarantee. The provisions for privileged deposits do not apply. Customers must be informed of this fact before a company with a fintech licence is allowed to accept money from depositors.

Other requirements

In addition to the above-mentioned requirements, a fintech company must offer a guarantee of proper business conduct. It must also have a compliance function and a functioning risk management system. The small banks regime is intended to reduce the burden on smaller banks with above-average capitalisation. As part of this regime, the requirements are also relaxed for companies with a fintech licence, namely by the amended FINMA Circulars 2018/3 'Outsourcing' and 2008/21 'Operational risks at banks'. However, the FinTech licence is still less extensive than the banking licence, despite the relaxation of requirements under the small banks regime.

Besides this, fintech companies must comply with all financial market laws and other applicable legislation, in particular the anti-money laundering provisions. Among other things, the legislator wants to make sure that there is a level playing field and that established market participants like banks are not disadvantaged.

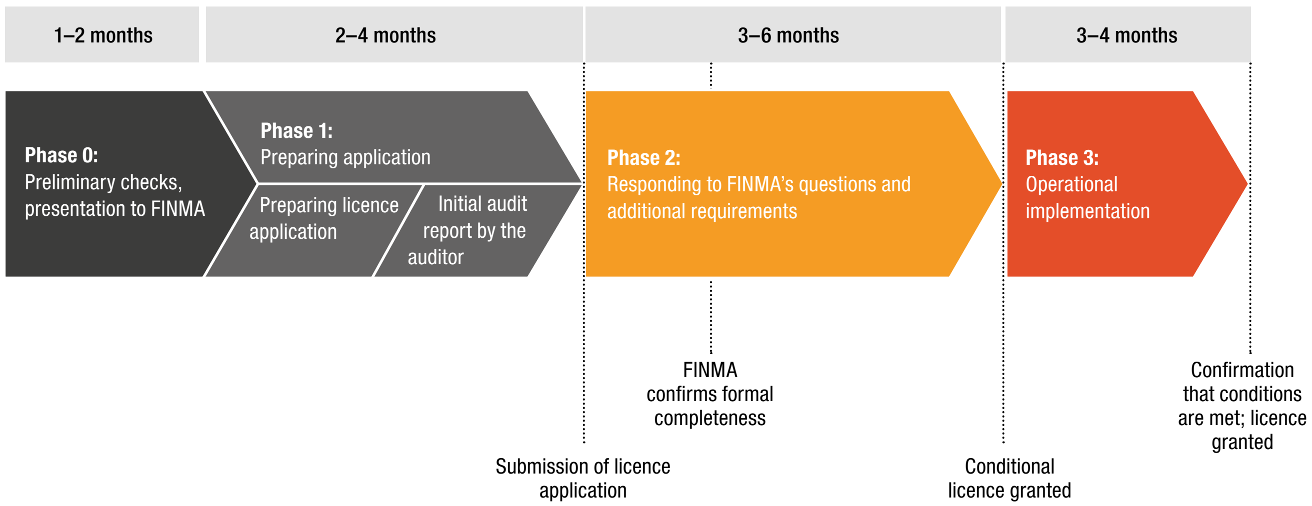
5. Costs and timeframe of the fintech licence

FINMA is responsible for granting fintech licences and for the prudential supervision of fintech companies. Just like the banking licence, the fintech licence entails certain costs which are covered by fees and supervisory levies. FINMA has created a new section in its Fees and Levies Ordinance for levies on companies with a fintech licence. This governs supervisory levies in line with the ‘user pays’ principle. The supervisory levy consists of a fixed basic levy of CHF 3,000 plus an additional levy, 20% of which is calculated based on the balance sheet total and 80% of which is calculated based on gross income.

FINMA makes the assumption that, in addition to the above-mentioned fees, further costs will be incurred for the relevant financial and regulatory audits, payable to the respective audit companies. It estimates this amount to be around CHF 40,000 to CHF 50,000. This is significantly less than what is due for a regular banking licence.

In addition to FINMA’s fees, a fintech licence also entails the following costs (by way of example):

- Founding costs, particularly for advice and notary services
- Advisory costs for policies and documents required by regulation, directives, etc.
- Costs of capital to meet the regulatory capital requirement
- Auditor and initial audit report costs
- Infrastructure costs, particularly office and IT costs



6. Conclusion

The European Securities and Markets Authority's Report on the Licensing of FinTech Business Models, published on 12 July 2019, notes that current licence formats covered by European legislation do not fully capture innovative fintech business models. This finding vindicates the concept of a fintech licence in Switzerland, which is a balanced and principle-based approach to pursuing a flexible path welcoming innovation. Such well thought-out and risk-based fintech regulation creates legal certainty and boosts the attractiveness of Switzerland as a hub for financial business. The new provisions of the fintech licence make a significant contribution to this. Attractive taxation models, outstanding infrastructure and a large talent pool further all help make Switzerland an attractive location for fintech companies.

The fintech licence offers fintech companies an interesting alternative to a banking licence and, thanks to the lower requirements, makes it easier to enter the Swiss financial market.

7. How we can support you

Financial market regulation is one of our core areas of expertise. We can draw on our interdisciplinary know-how to help you efficiently align your business model with the legal and regulatory requirements and turn regulatory costs into strategic advantages. Our specialists have extensive experience in advising fintech companies. We also have a network of experts in legal, regulatory and technical matters all around the globe. We would be happy to assist you with your next financial services project.

Legal and regulatory
- Advice on legal and regulatory issues
- Preparation of, and support with, financial market licences
- Structuring and setting up corporate structures
- Drawing up internal directives and organisational measures
- Support with risk management and compliance
- Support with the organisational implementation of regulatory requirements

Taxes
- Structuring and tax advice (cantonal, national, international)
- Advice on, and support with, obtaining tax rulings
- Support with tax refunds

Business strategy
- Developing integrated business strategies
- Advice on defining a target operating model
- Market analysis
- Project management

Technology
- Web agency services (end-to-end)
- Data analysis
- Technical support

Assurance
- Risk management and assurance services
- Cybersecurity strategy and services
- Audit services

Corporate finance
- Advice on sales and marketing strategy
- Support with price strategy
- Advice on, and support with, raising capital

Third-party providers
- Support with selecting and evaluating third-party providers in the fields of:
  - Protecting against money laundering (know your customer, anti-money laundering)
  - Marketing
  - IT sourcing

8. Your team at PwC

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