

Switzerland

Bär & Karrer

Fintech boost in Switzerland

Fintech is currently a hot topic in many jurisdictions, particularly when it comes to facilitating innovation in that area from a regulatory perspective.

Against this backdrop, during its meeting on November 2 2016, the Swiss Federal Council pronounced itself in favour of easing the regulatory framework for fintech companies to establish Switzerland as a leading fintech hub. It also instructed the Federal Department of Finance to draw up a consultation draft with the required legislative amendments.

Lower regulatory barriers

The Swiss Federal Council has proposed the following regulatory adjustments:

- **Fintech licence:** Fintech business models often require the handling of client funds which potentially leads to the need for a banking licence. However, the cost and effort involved in acquiring a fully-fledged banking licence most often exceed what fintech startups can afford, effectively preventing them from entering the market. In light of this, the Swiss Federal Council has proposed the introduction of a new licence type that imposes lower regulatory requirements than a fully-fledged banking licence. Under this new type of licence, service providers will be able to accept public deposits up to a total value of CHF 100 million (approx. \$99.4 million) – or more in specific cases authorised by the Swiss Financial Market Supervisory Authority (Finma) – but will not be allowed to engage in commercial banking. This means that they may not invest the deposits or pay interest on them. In turn, the regulatory requirements will be significantly reduced. Notably, the licence will trigger substantially lower capital adequacy requirements than an ordinary banking licence. The required minimal capital will amount to five percent of the accepted public funds, but no less than CHF 300,000. Deposits accepted under the fintech licence will not be covered by the Swiss deposit protection system. The introduction of this fintech licence would be pioneering by international standards.
- **Innovation sandbox:** Under Swiss banking law, a licencing requirement arises

to the extent that a person accepts deposits from the public on a commercial basis or holds themselves out as accepting deposits from the public. In this context, whoever (a) accepts on an ongoing basis more than 20 deposits; or (b) holds themselves out as accepting deposits from the public (even if this results in fewer than 20 deposits), is deemed to act 'on a commercial basis'. As fintech companies often try to attract as many clients as possible within a short period of time (eg crowdfunding), the threshold of 20 deposits will typically be quickly exceeded. Therefore, the Swiss Federal Council proposes to introduce a 'sandbox' in terms of an innovation area which is exempted from a licencing requirement. Under this proposal, providers will be able to accept public funds up to a total value of CHF 1 million before having to apply for a banking licence. This would allow fintech innovators to develop and test their business idea within the exemption boundaries of the sandbox. For the sake of transparency, providers operating under the sandbox exemption would, however, be required to inform their clients that they do not hold a Finma licence.

- **Extension of the maximum holding period on settlement accounts:** Under the current banking regulation, monies that are held on interest free settlement accounts (ie accounts that solely serve the purpose of settling client transactions) for at the most seven days do not qualify as deposits from the public. The Swiss Federal Council proposes to extend this maximum holding period to 60 days. This will allow crowdfunding companies to hold monies for longer without triggering a licence requirement - the current regime is a considerable market barrier for them, as project funding usually takes more than seven days.

The regulatory adjustments proposed by the Swiss Federal Council will not extend to anti-money laundering and anti-terrorist financing due diligence requirements, and fintech providers will continue to be subject to the relevant regulations, should they qualify as financial intermediaries. Nevertheless, in terms of creating a fintech-friendly environment, Finma has enhanced the regulatory framework to facilitate client identification via digital means (see 2016/07 Finma Circular 'Video and online identification' which came into force on March 18 2016). It has also updated its 'Guidelines on asset management' Circular to allow digital contracts, basically waiving the requirement that asset management contracts

need to be concluded in writing (see updated Finma Circular 2009/01 'Guidelines on asset management' which came into force on August 1 2016).

Timeframe of implementation

Pursuant to recent information from the Federal Department of Finance, the consultation draft with the required legislative fintech amendments will be published in February 2017. In parallel and in the context of the proposed far-reaching reform of Swiss financial markets regulations (ie in particular the introduction of a Financial Services Act and a Financial Institutions Act), the Council of States resolved the legal basis in the Banking Act for the fintech licence on December 14 2016. This proposition of the Council of States will now be debated in the National Council.

At this stage, it is not yet clear how the consultation process initiated by the Federal Council will be coordinated with the parliamentary debates. In any event, we expect the decision of the Council of States to further accelerate the legislative process with regard to the fintech licence, which could enter into force as early as 2018. Regarding the extension of the maximum holding period for settlement accounts and the sandbox exemption, the Federal Council could already amend the Banking Ordinance accordingly during the course of 2017, once the consultation process has been completed.

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