Banking or FinTech Licence: When Does Holding Client Money Require FINMA Authorisation?

The perimeter: three cumulative questions

Persons not subject to the Banking Act may not commercially accept public deposits. The Federal Council may provide exceptions "sofern der Schutz der Einleger gewährleistet ist" (provided depositor protection is ensured), and the issuing of bonds is excluded by statute **Art. 1 BankG**. Holding client money therefore needs FINMA authorisation only if there is a deposit, it comes from the public, and it is accepted commercially. The decision tree below works through these questions in turn. FINMA's circular follows the same order. Where all three answers are yes, existing deposits must be repaid, and the licence must be held before the activity starts **FINMA-RS 2008/3**. The circular is not binding law. FINMA circulars are not binding legal norms, and courts take them into account only insofar as they reflect a correct interpretation of the law **BGE 141 II 103**. In this field, the Federal Supreme Court has used Circular 2008/3 as interpretive support for the BankA and the BankO **2C_929/2010**. It has also accepted FINMA's numerical refinements as falling within the authority's technical discretion **2C_345/2015**.

Once the perimeter is crossed, there are two institutional licence routes:

- the banking licence (Art. 1a and 3 BankA);
- the FinTech licence under Art. 1b BankA ("Innovationsförderung", promotion of innovation). It applies the Act sinngemäss (by analogy) to persons that are mainly active in the financial sector, accept public deposits of up to CHF 100 million or designated crypto-based assets, and neither invest them nor pay interest on them **Art. 1b BankG**.

Neither licence should be confused with three other statuses:

- the licence-free sandbox under Art. 6 para. 2 BankO, which is an exemption, not a licence, and brings no FINMA supervision;
- affiliation with an AML self-regulatory organisation (SRO), which concerns AML supervision only;
- the cantonal consumer-credit licence.

Decision tree

1. Repayment obligation? Does the business owe the client repayment, or a performance economically equivalent to repayment? If not, there is no deposit (Step 1).
2. Excluded from the deposit concept? Art. 5 para. 3 BankO excludes consideration and security, compliant bonds, settlement accounts, pension-linked funds, small payment-instrument balances, and funds covered by a bank default guarantee (Step 1).
3. From the public? Deposits from banks and supervised undertakings, qualified shareholders and persons linked to them, institutional investors with professional treasury, employees, and certain non-profit entities are not public deposits (Step 2).
4. Commercial? Either more than 20 deposits are held on a lasting basis, or the business publicly solicits deposits. Deposits are counted across an economic unit (Step 3).
5. Sandbox? Total deposits of at most CHF 1 million, no interest-margin business, and prior information in text form. If all three are met, no licence is needed (Step 3).
6. Which licence? Deposits of up to CHF 100 million that are neither invested nor bear interest qualify for the FinTech licence. Every other case requires a banking licence (Step 4).
7. Parallel regimes. Independently of the above, check AML status (SRO affiliation or prudential supervision) and, for consumer lending, the cantonal licence (see "Registrations, affiliations and cantonal licences").

Step 1: Is there a deposit?

The repayment-debtor test

Art. 5 para. 1 BankO defines public deposits as "die Verbindlichkeiten gegenüber Kundinnen und Kunden" (liabilities towards customers), subject only to the exceptions in paras. 2 and 3 **Art. 5 BankV**. The Federal Supreme Court reads this as a presumption: "Die Bankenverordnung geht grundsätzlich davon aus, dass alle Verbindlichkeiten Einlagecharakter haben" (the Banking Ordinance assumes in principle that all liabilities have the character of deposits). The decisive element is that the recipient becomes the repayment debtor of the funds **2C_345/2015**. FINMA treats the list of exceptions in Art. 5 para. 3 BankO as exhaustive **FINMA-RS 2008/3**. The Federal Criminal Court's most recent judgment adds: "Massgeblich hierfür ist nicht die Bezeichnung der Einlagen, sondern der gewollte Vertragszweck" (decisive is not the label of the deposits but the intended purpose of the contract) **SK.2024.54**.

The concept has a limit. In 2C_122/2018, an investment scheme in Napier grass offered a "payment guarantee" that covered only the payout of harvest proceeds in cases of force majeure. The Federal Supreme Court accepted that a deposit can arise from a promised performance that is economically equivalent to repayment. On the facts, however, the company had committed itself "weder zu einer Rückzahlung noch zu einer Rendite" (neither to repayment nor to a return), so the funds were not deposits **2C_122/2018**. That holding is tied to the contract terms before the Court, not stated as a general rule.

The Federal Administrative Court decided a vinegar-barrel sale with storage options the same way. It held: "Fehlt einem Geschäftsmodell das tragende Element der Rückzahlungsverpflichtung, liegt keine Publikumseinlage vor, womit es auch keine Umgehung aufsichtsrechtlicher Vorschriften geben kann" (if a business model lacks the essential element of a repayment obligation, there is no public deposit, and so there can be no circumvention of supervisory rules). The court annulled FINMA's orders for liquidation, bankruptcy, cease-and-desist and publication **b-4354-2016**.

Labels and payout restrictions do not change the classification:

- Labels. In B-1489/2011, an online forex platform called client payments non-refundable "subscription fees". The court held that "les cotisations litigieuses payées par les clients et les soldes positifs de leurs comptes constituent des dettes inscrites au passif du bilan de la recourante" (the disputed fees paid by clients and the positive balances on their accounts are debts recorded as

liabilities on the appellant's balance sheet). Allowing negative balances that clients had to make good also amounted to providing credit **b-1489-2011**.
- Payout restrictions. In 2C_345/2015, prepaid balances could be paid out only to the customer's own bank account, never in cash. The Court still treated the provider as "Rückzahlungsschuldnerin" (repayment debtor). Neither the absence of interest nor the fact that only 0.14% of balances were actually cashed out changed the result **2C_345/2015**.

Exclusions from the deposit concept

Art. 5 para. 3 BankO excludes six categories **Art. 5 BankV**:

- (a) Consideration and security. Funds that are consideration under a contract transferring ownership or a service contract, or that are transferred as security. FINMA's examples are a down payment under a sale, an advance under a mandate and a rent deposit **FINMA-RS 2008/3**. In 2A.360/2006, the exception failed because the customers acquired neither goods nor services and had a right to repayment **2A.360/2006**. In the E-Coin case, it failed because the model was economically a deposit business, not a genuine transfer of ownership **b-6413-2017**.
- (b) Bonds and equivalent uncertificated rights. These are excluded only if, at the time of the offer, creditors receive the prescribed information on the issuer, terms, accounts, collateral and representation in a form under Art. 64 para. 3 FinSA **Art. 5 BankV**. Under the former wording, the Federal Supreme Court held that if any of the required information is missing, the product becomes "eine gewöhnliche Publikumseinlagen" (an ordinary public deposit) **2C_860/2017**. In 2026, the Federal Administrative Court applied this to bonds whose offering omitted the payment date and the last audited annual accounts **b-214-2024**.
- (c) Settlement accounts. See the next subsection.
- (d) Pension-linked funds. Funds inseparably linked to life insurance, occupational pensions or recognised forms of pension provision **Art. 5 BankV**.
- (e) Small payment-instrument balances. See "Digital wallets and prepaid systems" below.
- (f) Bank default guarantee. See "Stablecoins" below.

Settlement accounts: the most contested exclusion

The exclusion covers non-interest-bearing customer balances that serve solely to settle customer transactions. For precious-metal dealers, asset managers "oder ähnlichen Unternehmen" (or similar undertakings), settlement must take place within 60 days. Securities firms and DLT trading systems are not subject to that time limit **Art. 5 BankV**.

FINMA practice develops the exclusion in three ways **FINMA-RS 2008/3**:

- Purpose. The interest ban serves rapid turnover, "grundsätzlich max. 60 Tage" (in principle a maximum of 60 days).
- Extension to pass-through models. FINMA includes "Geschäftsmodelle mit Weiterleitungscharakter wie bspw. Money Transmitting, Crowdfunding oder Inkasso" (business models with a forwarding character such as money transmitting, crowdfunding or debt collection). This extension rests on FINMA's reading of "similar undertakings", not on express wording in the ordinance.
- Limits. Foreign-exchange dealers that keep accounts for investment in different currencies are excluded from the exception, and "Bei vergleichbarer Tätigkeit fallen auch Kryptowährungshändler nicht unter die Ausnahme" (cryptocurrency dealers engaged in comparable activity are not covered either). Precious-metal dealers escape the 60-day limit only if they physically hold the metal and their clients have a right of segregation in bankruptcy.

The courts read the exclusion narrowly:

- The Federal Supreme Court confines it to pure settlement accounts that serve solely to provide liquidity for a main transaction. A person who acts only as intermediary cannot rely on it **2C_345/2015**.
- In B-2311/2010, investor funds were pooled on a so-called "Treuhandkonto" (trust account) pending forex trading. There was "(noch) kein Hauptgeschäft" (as yet no main transaction), because no broker had been chosen and no account opened. The fiduciary argument also failed, since there was no trust agreement between the account-holding company and the investors **b-2311-2010**.
- In B-1489/2011, the exclusion was irrelevant for a forex dealer, whose activity does not fall within any of the listed categories **b-1489-2011**.

The exclusion can therefore be relied on only where a concrete main transaction exists, the funds are passed on within the time limit, and no interest or interest-like benefit is paid.

Step 2: Does the deposit come from the public?

Art. 5 para. 2 BankO excludes deposits from the following groups **Art. 5 BankV**:

- domestic and foreign banks and other state-supervised undertakings;
- shareholders or partners with a qualified participation, and persons economically or family-linked to them;
- institutional investors with professional treasury;
- active and retired employees, for deposits with their employer;
- associations, foundations and cooperatives that meet three conditions: they are not active in finance, they pursue an idealistic purpose or common self-help and use the deposits exclusively for it, and the deposits have a term of at least six months.

FINMA practice gives these categories concrete content **FINMA-RS 2008/3**:

- Supervised undertakings: insurers are an example.
- Qualified shareholders: those holding more than 10% of votes or capital. Economically connected entities such as parent, subsidiary and sister companies are treated as closely related because they have an information and influence advantage.
- Professional treasury: at least one qualified person experienced in finance whose main task is the ongoing management of the company's funds.
- Employees: the exception does not extend to an employee's spouse or children.
- Associations, foundations and cooperatives: the exception is lost where the entity's purpose or business consists mainly in accepting deposits and investing them at interest.

Courts confine these exceptions to their wording. In B-2723/2011, a company had borrowed from more than 20 third parties. The lenders were not qualified shareholders or related persons, so "Bei den entgegengenommenen Darlehen handelt es sich somit um Publikumseinlagen i.S.d. Art. 1 Abs. 2 BankG" (the loans received are therefore public deposits within the meaning of Art. 1 para. 2 BankA) **b-2723-2011**. In the E-Coin case, limiting the offer to "members" did not avoid the public element, because the model was directed at the public and the association exception did not apply **b-6413-2017**.

Step 3: Is the activity commercial?

More than 20 deposits or public solicitation

Under Art. 6 para. 1 BankO, a person acts commercially if it either:

- "dauernd mehr als 20 Publikumseinlagen oder sammelverwahrte kryptobasierte Vermögenswerte entgegennimmt" (on a lasting basis accepts more than 20 public deposits or collectively held crypto-based assets); or

- publicly solicits them, even if fewer than 20 result **Art. 6 BankV**.

The ordinance counts deposits. FINMA's circular phrases the presumption as accepting funds "von mehr als 20 Einlegern" (from more than 20 depositors), and adds that a person who may not accept public deposits may not advertise for them either **FINMA-RS 2008/3**. The ordinance is binding and the circular is not **BGE 141 II 103**. Where the two formulations diverge, the ordinance's wording points towards counting deposits rather than depositors, so several deposits from one client would count separately.

The criminal cases show how precisely the threshold is applied:

- In SK.2018.31, the Federal Criminal Court dated the start of commercial activity to the investment of the 21st non-privileged investor **SK.2018.31**.
- In SK.2019.14, 35 investors under 38 loan contracts sufficed **SK.2019.14**.

In B-214/2024 (18 May 2026), the Federal Administrative Court relied on three independent indicators of commercial activity: more than 20 deposits, the use of intermediaries, and advertising on a website. Swiss licensing law also applied to a company with its seat in Switzerland that served only German clients: "Für die Bewilligungspflicht in der Schweiz ist es somit nicht relevant, ob die Gesellschaft ihre Tätigkeit ausschliesslich auf Deutschland beschränkt hat oder ob eine Gestattung in Deutschland vorgelegen hat" (for the Swiss licensing requirement it is therefore irrelevant whether the company confined its activity to Germany or held a German authorisation) **b-214-2024**.

Counting across an economic unit

Spreading deposits across several companies does not avoid the threshold. The Federal Supreme Court applies a unified economic view, despite formal legal separation, where the persons or companies are closely linked economically, organisationally or personally and only an overall view reflects the facts. The consequences then reach every member, even one that does not itself fulfil every element, "solange sie in einem Gesamtplan koordiniert und wesentlich zu einer solchen beitrugen" (as long as they acted in a coordinated overall plan and contributed materially to it) **2C_929/2010** . The Schwyz Cantonal Court applied the same group approach in a criminal case under Art. 46 BankA involving two closely linked companies and 34 depositors **STK 2023 56**.

The group approach has limits:

- Timing of involvement. A party that was not clearly identified and not yet legally involved in the business when the deposits were taken cannot be a group member **b-2311-2010**.
- Separate lawful activity. In BGE 136 II 43, the Court declined to treat a real-estate holding company as part of an unlawful group merely because of links to it. The Court held: "Die Ausgabe eigener Aktien ist weder eine Effektenhändlertätigkeit, noch stellt sie eine Entgegennahme von Publikumseinlagen dar" (issuing one's own shares is neither securities dealing nor acceptance of public deposits) **BGE 136 II 43**.

The CHF 1 million sandbox

Under Art. 6 para. 2 BankO, a business is not deemed to act commercially, even with more than 20 deposits or public solicitation, if it meets all three of the following conditions **Art. 6 BankV**:

- (a) it accepts public deposits or collectively held crypto-based assets of no more than CHF 1 million in total;
- (b) it runs no interest-margin business (Zinsdifferenzgeschäft); and
- (c) before depositors deposit, it informs them in writing or another text-evidenced form that it is not supervised by FINMA and that the deposit is not covered by deposit protection.

FINMA reads these conditions strictly **FINMA-RS 2008/3**:

- The cap. Liabilities may "zu keinem Zeitpunkt mehr als 1 Million Franken betragen" (at no time exceed CHF 1 million).
- The information. It must be given to each client individually, at the latest when the client commits and before the deposit is made. Notices "lediglich in den AGB" (merely in the general terms and conditions) do not suffice. A website notice is acceptable only if the absence of supervision and deposit protection is displayed separately from other information and the client expressly confirms having read it.

The information condition is where businesses fail in practice. In SK.2019.14, the sandbox was unavailable because "Es mangelt bereits an der Einhaltung der Informationspflichten gemäss Art. 6 Abs. 2 lit. c BankV" (the information duties under Art. 6 para. 2 lit. c BankO were not even complied with) **SK.2019.14**. In SK.2024.54, the sandbox was excluded because interest was promised and more than CHF 1 million was accepted. The court described the exemption as an "Innovationsraum (sog. «Sandbox») für Geschäftsmodelle im FinTech-Bereich" (innovation space, a so-called sandbox, for business models in the FinTech sector) **SK.2024.54**.

Step 4: FinTech licence or banking licence?

The dividing line: amount, investment and interest

Under Art. 1a BankA, a person mainly active in the financial sector is a bank if it does any of the following **Art. 1a BankG**:

- (a) commercially accepts more than CHF 100 million in public deposits, or publicly solicits them;
- (b) accepts up to CHF 100 million in public deposits or designated crypto-based assets and "anlegt oder verzinst" (invests them or pays interest on them); or
- (c) refinances itself to a substantial extent with several banks that hold no material stake in it, in order to finance on its own account an indefinite number of persons or companies with which it does not form an economic unit.

The FinTech licence is therefore defined by two activities it forbids. Whoever lends out client money or pays interest on it is a bank, whatever its size **Art. 1a BankG**.

The ordinance also restricts how a FinTech licensee may hold the funds **Art. 14f BankV**:

- Where the money may sit. Public deposits may be held only as sight deposits at a bank or another Art. 1b institution, or as Category 1 high-quality liquid assets under Art. 15a LiqV.
- Currency. They must be held in the currency of the client's claim.
- Segregation. They must be kept separate from the licensee's own funds. Alternatively, they may be booked so that they can be shown separately at all times, but then a full ordinary audit is required.

Where several Art. 1b institutions form a group, the CHF 100 million threshold is calculated "über die ganze Gruppe" (across the whole group). FINMA may exclude an entity that is "offensichtlich unabhängig" (obviously independent), in particular where business models or objectives differ markedly **Art. 24a BankV**.

Requirements of the FinTech licence

Art. 1b para. 3 BankA requires the licensee to have:

- a precisely defined business scope and a matching administrative organisation;
- adequate risk management and effective internal control, including compliance;
- adequate financial resources; and
- managers of good reputation who guarantee proper business conduct **Art. 1b BankG**.

The ordinance implements these requirements in the following way:

- Legal form and seat. The licensee must be a company limited by shares (AG), a partnership limited by shares (KmAG) or a limited

liability company (GmbH), with its registered seat and actual administration in Switzerland **Art. 14a BankV**. It must be actually managed from Switzerland **Art. 14c BankV**.
- Business scope. The scope must be described "sachlich und geografisch genau" (precisely in substance and geography) in the articles of association or regulations **Art. 14b BankV**.
- Governance. Where a separate body for overall direction, supervision and control is needed, it must have at least three members, and at least one third of them must be independent of management. Holders of at least 10% (qualified participants) must be of good reputation. FINMA may grant exceptions to the board requirements in special cases **Art. 14d BankV**.
- Compliance and risk. The compliance and risk-control functions must be independent of revenue-generating business. FINMA may relax this independence requirement case by case if gross revenue is below CHF 1.5 million and the firm proves that its business model is low-risk. Compliance and risk management may be outsourced to qualified, appropriately licensed third parties **Art. 14e BankV**.
- Conflicts of interest. Organisational measures are required. Where clients cannot be protected from disadvantage, the conflict must be disclosed to them **Art. 14g BankV**.
- Minimum capital. The minimum is 3% of the public deposits and collectively held crypto-based assets accepted, but at least CHF 300,000. It must be fully paid in, held permanently, and not lent to qualified participants. FINMA may require more in individual cases. The Capital Adequacy Ordinance (ERV) and the Liquidity Ordinance (LiqV) do not apply **Art. 17a BankV**.
- Accounting and audit. Accounting follows the Code of Obligations (OR) only. The annual accounts are audited under the OR, and Art. 727a paras. 2 to 5 OR (opting out of the audit) do not apply. In addition, an audit firm licensed by the Federal Audit Oversight Authority carries out a regulatory audit under Art. 24 FINMASA **Art. 1b BankG**.

Client disclosures: no deposit protection

FinTech licensees fall outside the depositor privilege (Art. 37a BankA) and the immediate payout rule (Art. 37b BankA). Depositors must be informed of this "bevor sie die Einlage tätigen" (before they make the deposit) **Art. 1b BankG**.

Art. 7a BankO adds three requirements to this information duty **Art. 7a BankV**:

- Content and form. Clients must be informed in writing or another text-evidenced form about the risks of the business model, the services and the technology used, and about the absence of deposit protection.
- Timing and placement. The information must be given early enough before the contract is concluded for the client to understand it. It "darf nicht nur in den Allgemeinen Geschäftsbestimmungen enthalten sein" (may not be contained only in the general terms and conditions).
- Electronic delivery. Information provided electronically must be retrievable, downloadable and storable on a durable medium.

The contrast with a bank shows what this disclosure is about. In a bank's bankruptcy, deposits are privileged up to CHF 100,000 per creditor in the second class, and any excess falls into the third class **5A_362/2023**. Banks must also join the banks' self-regulation scheme before accepting such deposits. The scheme must pay out secured deposits within seven working days and is funded by bank contributions of 1.6% of secured deposits, at least CHF 6 billion **Art. 37h BankG**. A FinTech licensee's clients have none of this protection.

Crypto-based assets and custody models

Since 1 August 2021, Art. 1b BankA also covers crypto-based assets designated by the Federal Council **Art. 1b BankG**. Under Art. 5a BankO, these are collectively held assets under Art. 16 no. 1bis lit. b BankA that, in fact or as intended by the organiser or issuer, serve "in einem erheblichen Umfang als Zahlungsmittel" (to a significant extent as a means of payment) for goods or services, or for transfers of money or value. The settlement-account, supervised-institution and institutional-investor carve-outs also apply to these assets **Art. 5a BankV**.

Crypto-based assets are custody assets if the institution has undertaken to keep them available at all times and they are either individually allocated or allocated to a community in which each client's share is identifiable **Art. 16 BankG**. In bankruptcy they are segregated under Arts. 17 to 19 of the Intermediated Securities Act **Art. 37d BankG**. Art. 1b licensees must hold crypto-based assets in Switzerland and in the form in which they received them. FINMA may grant exceptions to the Swiss-location requirement in justified cases **Art. 14f BankV**.

FINMA's 2026 guidance assigns the licensing consequence by type of custody **FINMA Guidance 01/2026: Custody of cryptobased assets**
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Custody of crypto-based assets	Consequence according to FINMA
Individual custody	No banking licence, but subject to AML supervision
Collective custody with clearly identifiable customer shares	FinTech licence
Collective custody without clearly identifiable customer shares	Banking licence

This refines FINMA's earlier fact sheet. The fact sheet stated that holding several clients' payment tokens in the provider's own wallets generally requires a banking licence, but that "since the FinTech licence was introduced, a banking licence is no longer mandatory for such activities"
FINMA: Fact sheet: "Cryptoassets": FINMA is confronted with numerous p
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The full banking licence in comparison

A bank needs a FINMA licence before it starts business and before it is entered in the commercial register. The conditions are:

- a precisely defined business scope and an adequate organisation, with separate management and supervisory bodies where required;
- fully paid-in minimum capital;
- fit-and-proper managers; and
- suitable qualified participants **Art. 3 BankG**.

For a newly founded bank, the minimum capital is CHF 10 million, fully paid in **Art. 15 BankV**. That compares with CHF 300,000, or 3% of deposits, for a FinTech licensee **Art. 17a BankV**. In return, only a bank may invest deposits, pay interest on them and offer protected deposits **Art. 1a BankG Art. 37h BankG**.

Changing the business model

Two thresholds trigger a change of regime. Each has its own deadline:

Trigger	Notify FINMA	File licence application	Source
Sandbox limit of CHF 1 million exceeded	within 10 days	within 30 days	**Art. 6 BankV**
FinTech limit of CHF 100 million exceeded	within 10 days	within 90 days (banking licence under Art. 1a)	**Art. 1b BankG**

Sandbox overruns. FINMA may prohibit further deposit-taking until it decides on the application, where the protective purpose of the BankA requires it **Art. 6 BankV**. Under FINMA practice, the ban on interest-margin business and the information duty continue to apply during the notification and application periods. FINMA allows further deposit-taking during the procedure only if the applicant proves four things: repayment is not at risk, there is no over-indebtedness, the

minimum capital for the licence sought can be met, and there are no indications against the licence **FINMA-RS 2008/3**.

FinTech overruns. In special cases, FINMA may keep applying the FinTech regime to a firm holding more than CHF 100 million. The firm must still neither invest nor pay interest on the deposits, and must protect clients "durch besondere Vorkehrungen" (through special arrangements) **Art. 1b BankG**.

Changing what is done with the money. Starting to lend out deposits or to pay interest on them makes the firm a bank, whatever the amount **Art. 1a BankG**. Unlike Art. 1b para. 6 BankA, the statute sets no notification or application period for this switch, and a bank needs its licence before it begins business **Art. 3 BankG**. Similarly, a business that relies on an exclusion from the deposit concept loses it as soon as the facts change, for example:

- a wallet that allows peer-to-peer (P2P) transfers **2C_345/2015**;
- a platform that holds funds beyond 60 days **FINMA: Fact sheet: Crowdfunding: Crowdfunding is a way of collecting money from many sources for the purpose of financing projects. Wh** ;
- a stablecoin issuer whose guarantee no longer covers all deposits **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of stablecoins and banks providing guarantees** .

Business examples

Digital wallets and prepaid systems

A wallet balance is a deposit if the provider owes repayment. A payout to the customer's own bank account is enough to create that obligation **2C_345/2015**. The relevant exclusion is Art. 5 para. 3 lit. e BankO, which covers funds paid "in geringem Umfang" (in small amounts) into a payment instrument or system, used solely to buy goods or services in future, on which no interest is paid **Art. 5 BankV**.

FINMA fills in the open term with three conditions **FINMA-RS 2008/3**:

- the balance per customer per issuer must never exceed CHF 3,000;
- discounts may relate only to the goods and services, not to the size of the balance; and
- there are examples of covered instruments: prepaid cards, internet payment methods and mobile payment systems.

The Federal Supreme Court has accepted the CHF 3,000 figure as within FINMA's technical discretion. In 2C_345/2015 it refused the exclusion to a planned system that allowed transfers between customers and balances above that limit, because such balances do not serve "einzig" (solely) future purchases **2C_345/2015**.

The E-Coin case shows the same reasoning applied to wallets. Users' EUR balances in the "Cash Wallet" were repayable, and the court held that "Die Investition in EC ist als Einlage zu qualifizieren" (the investment in E-Coin is to be qualified as a deposit). Only the publication of the cease-and-desist order against the appellant was annulled, as disproportionate **b-6413-2017**.

A wallet that cannot meet lit. e has three ways forward:

- a bank default guarantee under lit. f, which the Federal Supreme Court described as a way to operate "ohne selber eine Bankenbewilligung einholen zu müssen" (without having to obtain a banking licence itself) **2C_345/2015**;
- the sandbox, for balances of up to CHF 1 million **Art. 6 BankV**; or
- a FinTech licence, if balances are neither invested nor bear interest **Art. 1b BankG**.

Voucher models

In B-5473/2017, the Federal Administrative Court treated a voucher model as a purchase contract that excluded any cash payout. It held that "fehlt es an der erforderlichen Rückzahlungsverpflichtung" (the required repayment obligation is lacking), so there was no deposit **b-5473-2017**. This decision has a qualified subsequent history. On FINMA's request, the court later clarified its operative part so that the matter was remanded to FINMA to complete the first-instance proceedings. The Federal Supreme Court then wrote off FINMA's appeal as moot without deciding the merits **2C_571/2019**. The voucher holding therefore illustrates the repayment test. It is not settled authority on vouchers generally.

Payment platforms and money transmitters

A payment platform that receives client funds on its own accounts and passes them on can rely on the settlement-account exclusion only if three conditions are met:

- the funds are actually forwarded within the 60-day framework;
- they bear no interest; and
- they serve a concrete main transaction **FINMA-RS 2008/3** **2C_345/2015**.

FINMA's crowdfunding fact sheet applies this to platforms:

- Direct allocation of funds from financers to project developers, including through an independent escrow agent, is in principle not subject to licensing
- An operator that holds funds on its own accounts for longer than 60 days, for example to await the end of a long collection period, needs a banking licence before starting business, unless the funds stay within CHF 1 million and the sandbox conditions are met **FINMA: Fact sheet: Crowdfunding: Crowdfunding is a way of collecting** .

Even when banking law is avoided, AML law usually applies (see below).

Stablecoins

FINMA considers that stablecoin holders "generally have a payment claim against the issuer at any time", and that "these claims are usually categorised as deposits under banking law or collective investment schemes" **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of** . Whether the reserve is managed for the account and risk of the holder or of the issuer decides between the two categories **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of** .

Issuers that use a bank default guarantee under Art. 5 para. 3 lit. f BankO need no banking licence. They only need to join an SRO as financial intermediaries **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of** . FINMA has set minimum requirements for the guarantee **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of** :

- each holder must have its own claim against the Swiss guarantor bank, and holders must be informed of the guarantee;
- the guarantee must cover at least all public deposits including interest, and covered deposits must never exceed its ceiling;
- it must be callable quickly and without complication; and
- the claim must be due "at the latest when bankruptcy proceedings are opened against the stablecoin issuer, and not only when a certificate of loss is issued".

FINMA stresses that this protection "is not comparable to the level of protection afforded by a banking licence", and that holders do not benefit from deposit protection under Art. 37a BankA. Where these requirements are not met, "unauthorised activity cannot be ruled out" **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of** .

Lending businesses and crowdlending

Lending with own funds is not banking. The banking perimeter is reached in two ways:

- On the funding side. A lender becomes a bank if it refinances itself substantially with several unrelated banks to lend, on its own account, to an indefinite number of borrowers outside its economic unit **Art. 1a BankG**.
- Through deposit-taking. A lender that funds its loan book with money from the public engages in deposit-taking. Borrowing from more than 20 third parties made a company a deposit taker in B-2723/2011 **b-2723-2011**. The criminal cases under Art. 46 BankA involved the same pattern of loan contracts with investors **SK.2019.14**.

On a crowdlending platform, two parties need to be assessed separately:

- The operator. It must avoid holding lenders' money beyond the settlement-account framework **FINMA: Fact sheet: Crowdfunding: Crowdfunding is a way of collecting money from many sources for the purpose of financing projects. Wh** .
- The borrower or project developer. FINMA warns that a licence may be needed if it accepts funds on its own accounts on a commercial basis, "in particular if the funds are accepted in the form of third-party capital (e.g. loans)". It adds that "advertising for funds per se constitutes an activity requiring a licence under the Banking Act". Project developers may use the same CHF 1 million exemption, subject to the information duty and the ban on interest-margin business **FINMA: Fact sheet: Crowdfunding: Crowdfunding is a way of collecting money from many sources for the purpose of financing projects. Wh** .

Using the FinTech licence for lending is excluded by its definition, because lending out deposits is "investing" them **Art. 1a BankG**.

Registrations, affiliations and cantonal licences

AML financial intermediary status and SRO affiliation

AML status is a separate question from licensing. Banks under Art. 1a BankA and persons under Art. 1b BankA are financial intermediaries supervised by FINMA **Art. 2 AMLA**. Other persons are financial intermediaries if they "berufsmässig fremde Vermögenswerte annehmen oder aufbewahren oder helfen, sie anzulegen oder zu übertragen" (professionally accept or hold third-party assets or help invest or transfer them). The statute names in particular lending business (including consumer credit, mortgages, factoring, trade finance and finance leasing) and payment services **Art. 2 AMLA**. These intermediaries "müssen sich einer Selbstregulierungsorganisation anschliessen" (must join a self-regulatory organisation) **Art. 14 AMLA**.

Since 1 January 2020 there is no alternative of direct FINMA AML supervision. In B-5494/2021, a debt-restructuring business that forwarded clients' instalments to creditors was providing payment services. Because it had no SRO affiliation, FINMA could order it to cease the activity and publish the order for two years **b-5494-2021**.

SRO affiliation is not a licence. It sits alongside the banking-law analysis and cannot replace a banking or FinTech licence where deposits are taken. FINMA's crowdfunding fact sheet puts this directly: "If a platform operator is not already required to have a licence under the Banking Act, they must become a member of a self-regulatory organisation (SRO) recognised by FINMA" **FINMA: Fact sheet: Crowdfunding: Crowdfunding is a way of collecting money from many sources for the purpose of financing projects. Where** . The same pattern applies to crypto services: individual custody escapes banking licensing but remains subject to AML supervision **FINMA Guidance 01/2026: Custody of cryptobased assets**.

Professional activity. An intermediary acts professionally if any one of the following applies **Art. 7 GwV**:

- gross revenue of more than CHF 50,000 per calendar year;
- more than 20 contracting parties per year in relationships that are not one-off;
- power of disposal over third-party assets exceeding CHF 5 million; or
- transactions exceeding CHF 2 million per year.

Only revenue from activities subject to the AML Act counts. In 6B_1490/2022, the Federal Supreme Court annulled a conviction because income from selling watches and jewellery could not be added to intermediation revenue. The case applied an earlier, lower revenue threshold **6B_1490/2022**.

Lending-specific rules. The general professionality test is replaced by two cumulative thresholds: gross revenue of more than CHF 250,000 and an outstanding loan volume of more than CHF 5 million **Art. 8 GwV**. Several arrangements are not lending business at all, including taking out loans, interest- and fee-free loans, loans to shareholders holding at least 10%, employer loans, and credit that is ancillary to another transaction **Art. 3 GwV**.

Challenging an SRO refusal. A refusal to admit can be challenged. The Federal Administrative Court held that an SRO decision on (non-)admission "ist als Verfügung im Sinne von Art. 5 VwVG zu qualifizieren" (is to be qualified as a ruling under Art. 5 of the Administrative Procedure Act), in a case concerning an operator of crypto exchange machines **2023iv-4**. That decision interpreted Art. 14 AMLA before its amendment. The version in force since 1 October 2026 expressly allows SROs to set further admission conditions in their regulations **Art. 14 AMLA**.

Cantonal consumer-credit licence

Consumer lending adds a cantonal layer. Cantons must require a licence for commercial consumer lending and credit brokerage. The licence is issued by the canton of the lender's or broker's seat and is valid throughout Switzerland. Entities subject to the BankA, and sellers financing their own goods or services, are exempt **Art. 39 KKG** . The licence requires a guarantee of proper business conduct and orderly financial circumstances, the necessary commercial and professional knowledge, and professional liability insurance **Art. 40 KKG**.

The cantons apply these federal criteria. In 2A.432/2006, the Federal Supreme Court upheld a Vaud refusal to license a consumer-credit broker who had been convicted in connection with misleading advertising. The cantonal authority had also ordered the business closed **2A.432/2006**. A consumer lender that is neither subject to the BankA nor financing its own sales therefore needs the cantonal licence in addition to any AML affiliation.

Consequences of operating without authorisation

Supervisory measures

FINMA may investigate firms whose licensing obligation is still disputed. It may appoint an investigating agent without first establishing a specific breach: "es genügt, dass hierfür objektive Anhaltspunkte sprechen" (it is sufficient that objective indications point to one) **2C_860/2017**.

If unlicensed deposit-taking is established, FINMA may take three steps **2C_860/2017**:

- liquidate the company under supervisory law;
- open insolvency proceedings if the company is over-indebted or permanently unable to pay; and
- publish its final ruling under Art. 34 FINMASA where the breach is serious.

Two limits apply:

- Proportionality. If a company carries on both licensable and lawful activity, "ist nur der bewilligungspflichtige Teil zu liquidieren" (only the licensable part is to be liquidated), where that is technically possible and the lawful business has independent significance. In BGE 136 II 43, immediate liquidation was disproportionate. Allowing the company time to restructure under supervision would

have sufficed **BGE 136 II 43**.
- Publication. It is an administrative sanction aimed at "naming and shaming". For unauthorised activity, a certain seriousness is generally presumed, and publication is justified where a risk of repetition cannot be excluded **b-214-2024**. A "einmalige, punktuelle und untergeordnete Verletzung" (one-off, isolated and subordinate breach) is not enough **2C_929/2010**. In the E-Coin case, publication against one participant was annulled **b-6413-2017**.

Where there was no deposit at all, every measure falls away. B-4354/2016 annulled liquidation, bankruptcy, the cease-and-desist order and publication together **b-4354-2016**.

Criminal liability

Intentionally accepting public deposits without authorisation is punishable by up to three years' imprisonment or a monetary penalty. Negligence is punishable by a fine of up to CHF 250,000 **Art. 46 BankG**. The case law adds three points:

- Duration of the offence. The offence continues for as long as deposits are held **SK.2024.54**. Limitation runs only once the persons have "cessato di agire come una banca" (ceased to act as a bank) **SK.2018.31**.
- Negligence. SK.2018.31 ended in convictions for negligence only **SK.2018.31**.
- Intent. Eventual intent suffices **SK.2024.54**. The Schwyz Cantonal Court inferred it from the manager's duty to inquire into the licensing requirement **STK 2023 56**.

Version history and proposed reform

The current architecture was built in three stages:

- 2017. The CHF 1 million sandbox and the 60-day limit for settlement accounts entered into force on 1 August 2017. FINMA then described the FinTech licence as a proposal **FINMA Guidance 03/2017: New rules on public deposits / Questionnaire on FinTech licensing**.
- 2018. The Financial Institutions Act of 2018 enacted Art. 1b BankA in its original form, limited to public deposits of up to CHF 100 million that are neither invested nor bear interest **BBl 2018 3557**. The information duty in Art. 6 para. 2 lit. c BankO has applied since 1 April 2019 **Art. 6 BankV**.
- 2021. The DLT Act extended Art. 1b to crypto-based assets with effect from 1 August 2021 **Art. 1b BankG**.

These provisions are current law. A reform has been proposed but is not in force. On 22 October 2025, the Federal Council opened a consultation, running until 6 February 2026, on amending the Financial Institutions Act. The proposal would create two new licences, for payment instrument institutions (stablecoins) and for crypto institutions, and is meant to "die heutige «Fintech-Bewilligung» verbessern" (improve today's FinTech licence) **SIF Tätigkeitsbericht SIF 2025**. In the National Council, speakers described the draft as replacing the FinTech licence, moving the regime out of the BankA and removing the CHF 100 million cap. These are statements in debate, not enacted text **AB 2025 N 2384**. A competing parliamentary initiative (24.480) was not pursued, because the committee considered that the consultation draft already took up several of its concerns **Kommission für Wirtschaft und Abgaben Nationalrat: Bericht vom 4. November 2025 zu 24.480**. Until enacted legislation enters into force, the thresholds, deadlines and licence categories described above remain decisive.

Application checklist

1. Map every client-money flow. Identify who owes repayment, on what terms, and whether payout is possible in cash, to a bank account or to other users **2C_345/2015**.
2. Test each exclusion against the documented facts:
   - turnover within 60 days and no interest for settlement accounts;
   - CHF 3,000 per customer, purchases only and no P2P transfers for payment instruments;
   - complete information in a form under Art. 64 para. 3 FinSA for bonds; and
   - FINMA's minimum conditions for default guarantees **FINMA-RS 2008/3 Art. 5 BankV** **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issu**.
3. Classify every depositor. Check qualified shareholdings above 10%, institutional investors with professional treasury, and employees (not their relatives) **FINMA-RS 2008/3**.
4. Count deposits group-wide, and stop any public advertising until the licensing question is resolved **2C_929/2010 Art. 6 BankV**.
5. If relying on the sandbox, monitor the CHF 1 million cap continuously, avoid any interest margin, and obtain separate, acknowledged, text-evidenced disclosures before each deposit **FINMA-RS 2008/3 SK.2019.14**.
6. If applying for a FinTech licence, confirm that deposits will be neither lent out nor bear interest. Then plan:
   - capital of 3%, at least CHF 300,000;
   - independent compliance and risk functions;
   - segregation in sight deposits or high-quality liquid assets; and
   - Art. 7a BankO disclosures **Art. 17a BankV Art. 14e BankV Art. 14f BankV Art. 7a BankV**.
7. Set internal alerts for the 10/30-day sandbox deadlines and the 10/90-day FinTech deadlines **Art. 6 BankV Art. 1b BankG**.
8. Join an SRO before starting any payment, lending or custody service that meets the professionality thresholds, and obtain the cantonal licence for consumer lending **Art. 14 AMLA Art. 7 GwV Art. 39 KKG**.
9. Re-run the analysis before any product change, such as adding interest, P2P transfers, longer holding periods, lending or pooled crypto custody **Art. 1a BankG** **FINMA Guidance 01/2026: Custody of cryptobased assets**.