FINMA / 2026

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

Regulatory architecture: one prohibition, two licence routes

The starting point is a prohibition. Under Art. 1 para. 2 BankG, natural and legal persons that are not subject to the Banking Act may not accept public deposits on a commercial basis. The Federal Council may provide exceptions where depositor protection is ensured, and issuing bonds does not count as commercial acceptance of public deposits **Art. 1 BankG**. Any analysis of a wallet, payment platform or lending model therefore asks first whether a client-money liability is a public deposit taken commercially. The choice of licence comes second.

There are two licence routes:

- Banking licence (Art. 1a BankG). A bank is a person mainly active in the financial sector that either:
  - commercially accepts public deposits of more than CHF 100 million, or publicly offers to do so; or
  - accepts public deposits of up to CHF 100 million (or crypto-based assets designated by the Federal Council) and invests them or pays interest on them **Art. 1a BankG**.

A bank needs a FINMA licence before it starts business. It may not be entered in the commercial register before the licence is granted **Art. 3 BankG**.

- FinTech licence (Art. 1b BankG). The Act applies "sinngemäss" (by analogy) to persons mainly active in the financial sector that commercially accept public deposits of up to CHF 100 million, or designated crypto-based assets, and "diese Publikumseinlagen oder Vermögenswerte weder anlegen noch verzinsen" (neither invest these public deposits or assets nor pay interest on them) **Art. 1b BankG**.

Two variables therefore decide the route: volume (CHF 100 million) and use of funds (investment or interest). Step three below applies them.

Below both licences sit two regimes that are not banking licences at all:

- an exemption from the commercial-activity requirement for small volumes (the "sandbox", Art. 6 para. 2 BankV);
- the anti-money laundering regime with its SRO affiliation.

Temporal status

- FinTech licence. The wording covering crypto-based assets dates from the DLT Act of 25 September 2020, in force since 1 August 2021 **Art. 1b BankG**.
- Art. 1a lit. b BankG. The present wording comes from the Act of 17 December 2021 (insolvency and deposit insurance), in force since 1 January 2023 **Art. 1a BankG**.
- Sandbox. The information duty has applied in its current form since 1 April 2019. The threshold wording covering crypto-based assets has applied since 1 August 2021 **Art. 6 BankV**.

Several decisions discussed below applied the former Art. 3a aBankV. Their reasoning on the concept of deposit remains relevant, but numerical details must be read against the current text.

Step one: is there a deposit at all?

The repayment-debtor test

Under Art. 5 para. 1 BankV, all liabilities towards customers are public deposits unless an exception in paras. 2 or 3 applies **Art. 5 BankV**. The Federal Supreme Court places the repayment obligation at the heart of the concept. In 2C_345/2015 it named, "als entscheidendes Merkmal der Einlage das Eingehen einer Verbindlichkeit in dem Sinn, dass der Empfänger der Leistung selbst zu deren Rückzahlungsschuldner wird" (as the decisive feature of a deposit the assumption of a liability whereby the recipient itself becomes the repayment debtor) **2C_345/2015**. The Court added that whether interest is paid is irrelevant to the qualification as a deposit **2C_345/2015**. Interest becomes relevant only later, when choosing between the banking and the FinTech route.

The test is substantive. In 2C_122/2018 the Court asked whether, on an overall assessment, a binding repayment obligation had been assumed. An obligation to render a performance economically equivalent to repayment would also suffice **2C_122/2018**.

Where the repayment element is missing

Three decisions mark the limit of the concept:

- Napier-grass plantations (2C_122/2018). Customers paid about CHF 350,000 under 50 contracts. The "Auszahlungsgarantie" (payout guarantee) covered only harvest proceeds in the event of unforeseen events or force majeure. The company had committed to neither repayment nor a return, so the funds were not public deposits and FINMA's appeal was dismissed **2C_122/2018**.
- Vinegar barrels (B-4354/2016). Only a primary contractual money obligation counts. Secondary money claims do not: damages, contractual unwinding, or the refund of the price with 5% interest in the event of a defect. In the court's words, "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 hence no circumvention of supervisory rules). FINMA's liquidation, bankruptcy, cease-and-desist and publication orders were annulled **b-4354-2016**.
- Limited-partnership equity (B-4312/2008). The limited partners' contributions were equity, with no duty to repay a fixed amount, so the liquidation order fell **b-4312-2008**.

The common thread is economic risk. A model stays outside the deposit concept only where the client bears the risk of the underlying asset and the business owes no fixed money amount. Buy-back promises, guaranteed payouts or redemption at par bring it back in. In the E-Coin case, repayment duties triggered on a member's exit and on liquidation of the system made even the coin balances deposits **b-6413-2017**.

Statutory carve-outs from the deposit concept

FINMA treats the list in Art. 5 para. 3 BankV as exhaustive **FINMA-RS 2008/3**. The carve-outs most relevant to client-money businesses are:

- Consideration and security (lit. a). This covers funds that are consideration under a contract transferring ownership or a services contract, or that are transferred as security **Art. 5 BankV** . FINMA gives as examples a down payment under a sale, an advance under a mandate and a rent deposit **FINMA-RS 2008/3**. The Federal Administrative Court requires that the client actually acquires rights in rem and that the payment stands in a synallagmatic exchange relationship **b-4354-2016**. The exception was rejected in the E-Coin case **b-6413-2017**.
- Bonds (lit. b). This covers standardised mass-issued debt instruments, provided creditors receive the prescribed minimum information when the offer is made, in a form under Art. 64 para. 3 FIDLEG **Art. 5 BankV**. In B-5842/2024 (57 tranches, about CHF 150 million, about 2,100 bondholders), the exception failed for two reasons. Subscriptions and payments had been made before any prospectus existed, and investors' later confirmations could not cure that defect. The court therefore treated the bonds as ordinary public deposits **b-5842-2024**.
- Settlement accounts (lit. c) and payment means (lit. e). These are treated below under wallets and platforms.
- Bank default guarantee (lit. f). This covers funds whose repayment and interest are guaranteed by a bank **Art. 5 BankV**. It is treated below under stablecoins.

Step two: are the deposits "public" and taken "commercially"?

Excluded depositors

Deposits from the following are not public deposits under Art. 5 para. 2 BankV **Art. 5 BankV**:

- banks or other prudentially supervised undertakings;
- shareholders with a qualified participation, and persons economically or family-related to them;
- institutional investors with professional treasury;
- employees and pensioners with their employer;
- associations, foundations and cooperatives that are not active in finance, that pursue an ideal purpose or mutual self-help and use the deposits solely for it, and whose deposits have a term of at least six months.

FINMA reads these categories narrowly:

- Professional treasury requires at least one qualified, finance-experienced person whose main task is the permanent management of the company's funds.
- Employee deposits must be made directly with the actual employer. Family members are not covered, and neither is a separate employee association, unless the employer is liable for the deposits **FINMA-RS 2008/3**.
- Close relationships do not suffice. In B-2723/2011 the court held that a trusting private relationship with the lenders did not bring them within the related-persons exception **b-2723-2011**.

More than 20 depositors, or public solicitation

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

- permanently accepts more than 20 public deposits or collectively held crypto-based assets; or
- publicly offers to accept them, even if fewer than 20 are then accepted **Art. 6 BankV**.

FINMA describes this as a statutory presumption, subject to the sandbox in Art. 6 paras. 2 to 4 BankV **FINMA-RS 2008/3**. Under the former ordinance, the Federal Administrative Court treated the more-than-20 criterion as an irrebuttable presumption ("unumstössliche Vermutung") **b-2723-2011**.

Advertising alone is enough. In B-5737/2017 the court treated an intermediary who contacted potential investors by telephone and e-mail as advertising directed at an unlimited circle of addressees **b-5737-2017**. The Federal Supreme Court later partly reversed that judgment, but only because the cease-and-desist order was too broadly worded. The unauthorised deposit-taking itself was undisputed before it **2C_92/2019**. Art. 7 BankV forbids anyone barred from accepting public deposits from advertising for them "auf keine Art und Weise" (in any way whatsoever) **Art. 7 BankV**.

Group view: splitting the business does not help

Supervisory law looks through formal structures. The Federal Supreme Court confirmed that the protection of markets and investors justifies a unified economic view "trotz formaljuristischer Trennung der Strukturen" (despite the formal legal separation of the structures). It applied this where companies acted outwardly as a group and jointly carried out the unauthorised activity on a division-of-labour basis **2C_136/2019**. Once a group is found, the consequences reach every member, even one that does not meet all elements on its own **b-2311-2010**.

The group view has limits:

- A party that was not yet determined, and not yet legally involved, when the deposits were taken (there, a broker) is not a group member **b-2311-2010**.
- A group ends once common organs and coordination cease **b-4312-2008**.

In criminal proceedings, the Schwyz Cantonal Court counted together 34 payments (about EUR 2.07 million) spread across two closely linked companies **STK 2023 56**.

Not mainly active in finance? The prohibition still applies

Arts. 1a and 1b BankG define institutions "hauptsächlich im Finanzbereich tätig" (mainly active in the financial sector) **Art. 1a BankG Art. 1b BankG**. The Federal Administrative Court has held that the prohibition in Art. 1 para. 2 BankG does not depend on that element. Nor does it require an active lending or interest business **b-5737-2017**. A trading company that borrows at a fixed interest rate from more than 20 private investors therefore breaches the prohibition, although it could not be licensed as a bank in its current form.

The sandbox: up to CHF 1 million without a licence

Under Art. 6 para. 2 BankV, a person who would otherwise act commercially does not do so if three conditions are met **Art. 6 BankV**:

- Volume. It accepts public deposits or collectively held crypto-based assets of no more than CHF 1 million in total.
- No interest margin. It does not carry on interest-margin business ("kein Zinsdifferenzgeschäft").
- Prior information. Before the deposit is made, it informs depositors in writing, or in another form evidenced by text, that it is not supervised by FINMA and that the deposit is not covered by deposit protection.

FINMA practice specifies these conditions:

- Liabilities towards customers may "zu keinem Zeitpunkt" (at no point in time) exceed CHF 1 million. The limit is therefore a running cap, not an annual or average figure **FINMA-RS 2008/3**.
- The information must be given individually. A notice only in the general terms and conditions is insufficient. Website information is acceptable if it is displayed separately in text-evidencing form and the client expressly confirms having read it **FINMA-RS 2008/3**.

If the threshold is exceeded, the person must notify FINMA within 10 days and file a licence application within 30 days. Where the

protective purpose of the Act requires it, FINMA may prohibit further deposits until it decides **Art. 6 BankV**. FINMA allows deposit-taking to continue during the procedure only if the conditions of Art. 6 para. 2 lit. b and c BankV are still observed and the applicant shows four things **FINMA-RS 2008/3**:

- repayment is not endangered;
- there is no over-indebtedness;
- the minimum capital for the licence sought can be met;
- nothing indicates that the licence would be refused.

The sandbox is an exemption, not a licence. It confers no supervisory status, and the anti-money laundering rules continue to apply on their own terms.

Step three: banking licence or FinTech licence?

The dividing line: invest or pay interest

Once deposit-taking is established and no sandbox applies, two questions decide the route:

- Will the deposits exceed CHF 100 million?
- Will they be invested, or will interest be paid on them?

If either answer is yes, the business needs a banking licence **Art. 1a BankG**. If both answers are no, the FinTech licence is available **Art. 1b BankG**.

The FinTech regime gives this restriction practical effect through safekeeping rules. Under Art. 14f BankV, deposits must either be kept segregated from own funds, or be recorded so that they can be shown separately at any time. In the second case, an ordinary audit under Art. 727 OR is required. The deposits may be held only as sight deposits with a bank or another Art. 1b institution, or as high-quality liquid assets of category 1 under the LiqV. They must be held in the currency of the clients' claims. Crypto-based assets must be held in Switzerland and in the form in which they were received, although FINMA may grant exceptions to the Switzerland requirement in justified cases **Art. 14f BankV**.

A model that uses client money to fund loans, earn yield or pay a return therefore cannot be accommodated within the FinTech licence.

FinTech licence: organisation, capital and disclosure

The FinTech regime applies the Banking Act only by analogy. Art. 1b para. 3 BankG requires four things **Art. 1b BankG**:

- a precisely defined business scope and an appropriate administrative organisation;
- adequate risk management and internal control, including compliance;
- adequate financial resources;
- managers and directors of good reputation who offer a guarantee of irreproachable business conduct.

The BankV gives these requirements concrete form:

- Legal form and seat. The institution must be an AG, a KmAG or a GmbH, with its registered office and effective administration in Switzerland **Art. 14a BankV**. It must actually be managed from Switzerland **Art. 14c BankV**.
- Business scope. The scope must be described precisely, both by subject matter and geographically, in the articles or regulations. It must match the institution's financial means and organisation **Art. 14b BankV**.
- Board. A separate board is required only where the business purpose or volume calls for one. Where it exists, it needs at least three members, at least one third of them independent of management. Qualified participants (10%) must be of good reputation. FINMA may grant exceptions in special cases **Art. 14d BankV**.
- Compliance and risk management. These functions must be independent of revenue-generating business, and they may be outsourced to qualified third parties. FINMA may relax the independence requirement in individual cases if gross revenue is below CHF 1.5 million and the institution shows that its business model is low-risk **Art. 14e BankV**.
- Capital. The minimum capital 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 and held at all times. It may not be lent to qualified participants or invested in participations they control. FINMA may impose higher requirements, and the capital adequacy (ERV) and liquidity (LiqV) ordinances do not apply **Art. 17a BankV**.
- Accounting and audit. Accounting follows the Code of Obligations only. The annual accounts are audited under the OR, with Art. 727a paras. 2 to 5 OR not applicable. A regulatory audit under Art. 24 FINMAG is also required **Art. 1b BankG**.

Client disclosures. Deposits held by a FinTech institution are not covered by the privileged-deposit rule (Art. 37a BankG) or the immediate-payout rule (Art. 37b BankG). Depositors must be told this before they make the deposit **Art. 1b BankG**. Art. 7a BankV adds further requirements:

- Content. The institution must give written or text-evidenced information on the risks of its business model, services and technologies, and on the absence of deposit protection.
- Timing. The information must be given early enough for clients to understand it before concluding the contract.
- Placement. It may not be contained only in the general terms and conditions.
- Durability. Where provided electronically, it must be retrievable, downloadable and storable on a durable medium at any time **Art. 7a BankV**.

These rules follow the same logic as FINMA's practice on sandbox disclosures, but they are stricter in one respect: they require information on business-model and technology risks.

Banking licence: the heavier regime

A bank needs the following **Art. 3 BankG**:

- articles and regulations that define the business scope precisely;
- an appropriate organisation, with management separated from oversight where the business requires it;
- the fully paid-in minimum capital set by the Federal Council;
- fit and proper management;
- qualified participants whose influence does not harm sound business conduct;
- managers resident where they can actually exercise management.

The minimum capital for a new bank is CHF 10 million, fully paid in, and contributions in kind must be checked by an approved audit firm **Art. 15 BankV**. The contrast with the FinTech floor of CHF 300,000, and with the disapplication of the ERV and LiqV **Art. 17a BankV**, shows why the use of client funds is commercially decisive.

Changing the business model or crossing thresholds

The licensing analysis must be repeated whenever volume or use of funds changes. Three transitions are regulated:

- Sandbox to licence. If the CHF 1 million cap is exceeded, notify FINMA within 10 days and apply within 30 days (Art. 6 para. 4 BankV, see above) **Art. 6 BankV**.
- FinTech to bank by volume. If the CHF 100 million threshold is exceeded, FINMA must be notified within 10 days, and a banking-licence application under Art. 1a BankG filed within 90 days **Art. 1b BankG**. Alternatively, FINMA may in special cases keep the FinTech regime in place above CHF 100 million. This requires that the funds are neither invested nor interest-bearing and that client protection is ensured by special arrangements **Art. 1b BankG**.
- FinTech to bank by use of funds. Starting to invest deposits or to

pay interest on them takes the institution out of Art. 1b BankG and into Art. 1a lit. b BankG at any volume **Art. 1a BankG**. The statute provides no grace period for this change. A banking licence must therefore be in place before the new activity begins (Art. 3 para. 1 BankG) **Art. 3 BankG**.

Missed notifications are not merely administrative. Wilfully failing to make the required notifications to FINMA is punishable by a fine of up to CHF 500,000, and negligence by a fine of up to CHF 150,000 **Art. 49 BankG**. Banks must also have FINMA approve changes to their articles and regulations that affect business purpose, scope, capital or internal organisation, before those changes are entered in the commercial register **Art. 3 BankG**.

Business examples

Digital wallets and prepaid payment accounts

The leading case is 2C_345/2015. A prepaid payment service promised in its terms and conditions to pay customer balances out to the customer's bank account at any time. That promise made the provider the repayment debtor, so it was taking deposits **2C_345/2015** . The Court rejected both exceptions the provider relied on:

- Settlement accounts. This exception covers only "reine Abwicklungskonti" (pure settlement accounts) that provide the liquidity needed to settle a main transaction. It is not open to a business that acts only as an intermediary **2C_345/2015**.
- Payment means. This exception failed for two independent reasons. Peer-to-peer transfers meant the balances did not serve solely future purchases of goods or services. And the CHF 3,000 limit applied in FINMA practice was exceeded **2C_345/2015**.

Under Art. 5 para. 3 lit. e BankV, funds count as payment means only if three conditions are met: they are loaded "in geringem Umfang" (in small amounts), serve solely the future purchase of goods or services, and bear no interest **Art. 5 BankV**. FINMA gives concrete content to "small amounts". The balance per customer and issuer may never exceed CHF 3,000. Discounts or other monetary benefits may relate only to the goods and services and may not depend on the size of the balance **FINMA-RS 2008/3**. The CHF 3,000 figure is FINMA practice, not statutory text. The Federal Supreme Court has nonetheless accepted it as a valid criterion **2C_345/2015**.

BGE 132 II 382 marks the contrasting boundary. A purely internal offsetting platform with no cash payout was in principle not subject to a licence. By contrast, a linked euro account allowing payments in and out, on which the company was the debtor, was treated like a bank current account and held deposits **BGE 132 II 382**.

In practice, the design of a wallet determines its classification:

- Closed-loop wallet. Merchant-only spending, a cap of CHF 3,000, no interest and no P2P transfers keep the funds outside the deposit concept.
- Open wallet with payout or P2P. If the wallet allows payout on demand or peer-to-peer transfers, it holds deposits. It then needs at least the sandbox (if total balances stay within CHF 1 million) or the FinTech licence, provided the balances are neither invested nor remunerated.

A bank default guarantee is the alternative route: Art. 5 para. 3 lit. f BankV **Art. 5 BankV 2C_345/2015**.

Payment platforms, crowdfunding and money transmission

Under FINMA practice, the settlement-account exception (Art. 5 para. 3 lit. c BankV) has three features **FINMA-RS 2008/3**:

- it presupposes rapid turnover, "grundsätzlich max. 60 Tage" (in principle a maximum of 60 days), and no interest;
- it extends to forwarding models such as money transmitting, crowdfunding and debt collection;
- it does not cover foreign-exchange dealers who keep client accounts for investment in several currencies, nor crypto traders engaged in comparable activity.

The statutory text itself is narrower. It covers non-interest-bearing balances that serve solely to settle client transactions. For precious-metal dealers, asset managers and similar businesses, settlement must take place within 60 days. Securities firms and DLT trading systems are not bound by that period **Art. 5 BankV**.

The exception presupposes an existing main transaction. In B-2311/2010, 855 investors had paid about EUR 2.57 million into a so-called trust account. No broker had yet been determined and no broker account opened, so there was no main transaction. The account was not a settlement account, and the funds were public deposits **b-2311-2010**.

FINMA's crowdfunding fact sheet applies the same logic to platforms:

- No licence in principle. Funds that flow directly from financers to the project, or through an independent escrow agent, do not in principle require a licence.
- Banking licence if funds are held. A platform operator that holds funds instead of forwarding them within 60 days needs a banking licence, unless the CHF 1 million sandbox conditions are met **FINMA: Fact sheet: Crowdfunding: Crowdfunding is a way of collecting** .

Lending businesses and crowdlending

Lending the money onward is the clearest case for a banking licence. Investing deposits leads to Art. 1a lit. b BankG at any volume **Art. 1a BankG**. Two distinct roles must be kept apart:

- The lender's own funding. A company that borrows from the public to fund its business takes deposits. In B-5737/2017, fixed-interest loans (mostly 6.5% over 36 months) from more than 20 private investors were public deposits **b-5737-2017**.
- The borrower in crowdlending. The Federal Criminal Court treated the company named as borrower in a loan-based crowdfunding model as the repayment debtor. Its 38 loan contracts with 35 investors clearly exceeded the more-than-20 threshold **SK.2019.14**. FINMA likewise warns that project developers who accept funds as loans into their own accounts may need a banking licence, unless they stay within the sandbox conditions **FINMA: Fact sheet: Crowdfunding: Crowdfunding is a way of collecting** .

Lending on own funds, without taking public deposits, does not trigger the Banking Act. It does, however, make the lender a financial intermediary under Art. 2 para. 3 lit. a GwG **Art. 2 AMLA**.

Stablecoins and bank default guarantees

FINMA states that stablecoin holders generally have a payment claim against the issuer at any time. For that reason, these claims are "usually categorised as deposits under banking law or collective investment schemes". The dividing line is whether the underlying assets are managed for the account and risk of the holder or of the issuer **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of** .

Some issuers rely on bank default guarantees and therefore need only SRO affiliation **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of** . FINMA has set minimum requirements for such guarantees **FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of** :

- the guarantee must cover at least all public deposits, including interest;
- the claim must fall due at the latest when bankruptcy proceedings open against the issuer;
- if the associated risks are not addressed, "unauthorised activity cannot be ruled out".

Holders still do not benefit from deposit protection under Art. 37a BankG
FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of stablecoins and banks providing guarantees
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Licence, registration or affiliation: the anti-money laundering layer

Banking-law classification and anti-money laundering status are separate questions:

- Licensed institutions. Banks and FinTech institutions are financial intermediaries under Art. 2 para. 2 lit. a GwG **Art. 2 AMLA**.
- Para. 3 intermediaries. Businesses that professionally accept, hold or transfer third-party assets fall under Art. 2 para. 3 GwG. This includes in particular lending businesses (lit. a) and payment-service providers such as electronic transfers for third parties or issuing payment means (lit. b) **Art. 2 AMLA**. These intermediaries must join a self-regulatory organisation (SRO) under Art. 14 GwG. The amended wording of Art. 14 GwG applies from 1 October 2026 **Art. 14 AMLA**.
- Exemption. Para. 3 intermediaries that serve exclusively para. 2 intermediaries, or equivalently supervised foreign ones, are exempt **Art. 2 AMLA**.

SRO affiliation is therefore the floor for an unlicensed wallet, platform or lender, not a substitute for a banking-law licence. FINMA's crowdfunding fact sheet states that a platform channelling funds through its own accounts provides a payment service, and must join an SRO if it is not already required to hold a banking licence
FINMA: Fact sheet: Crowdfunding: Crowdfunding is a way of collecting money from many sources for the purpose of financing projects. Where
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For wallet transfers by FINMA-supervised institutions, FINMA applies the travel rule of Art. 10 AMLO-FINMA in a technology-neutral way, with no exception for unregulated wallets. Transfers to external wallets are permitted only where the institution's own customer is proven to own the wallet, or where the third-party owner has been identified **FINMA Guidance 02/2019: Payments on the blockchain**.

Consequences of unauthorised deposit-taking

Supervisory measures

The supervisory consequences escalate:

- Liquidation. Where a company has commercially accepted public deposits without a licence, liquidation is mandatory under Art. 37 paras. 2 and 3 FINMAG read with Art. 23quinquies para. 1 BankG **b-4285-2020**.
- Bankruptcy liquidation. This additionally requires over-indebtedness or serious liquidity problems. Formal proof is not needed: reasonable, comprehensible circumstances indicating existing or imminent over-indebtedness suffice **2C_136/2019**. In 2C_136/2019 the Federal Supreme Court set aside bankruptcy orders because these conditions were not established on the record. After the remand, the Federal Administrative Court upheld a renewed bankruptcy order because assets did not cover liabilities **b-4285-2020**. The Federal Supreme Court has also held that FINMA need not confine liquidation to the illegal business line, nor give time to regularise it **BGE 132 II 382**.
- Repayment instead of liquidation. In B-2723/2011, the loans had already been repaid. FINMA therefore rightly refrained from liquidation and publication, and a cease-and-desist order with a ban on advertising was proportionate **b-2723-2011**.

Cease-and-desist orders and their publication are subject to limits:

- Scope of the order. The order must be limited to the unlicensed activity actually at issue. A ban on "any" licence-requiring financial-market activity was too broad **2C_92/2019**.
- Serious breach. Publication under Art. 34 FINMAG requires a serious breach and individual proportionality. A one-off, isolated, minor breach is not enough **2C_929/2010**. Unlicensed consumer credit business implies a certain seriousness, and publication is not a criminal sanction under Art. 6 ECHR **2C_92/2019**.
- Risk of repetition. The Federal Administrative Court also requires a concrete risk of repetition. It annulled the publication against one E-Coin participant because FINMA had not substantiated that risk **b-6413-2017**.
- Bond issuer's officer. In B-5842/2024, publication for four years against a long-serving board member and CEO who had also acquired investors was upheld **b-5842-2024**.

Criminal liability

Intentional unauthorised acceptance of public or savings deposits is punishable by a custodial sentence of up to three years or a monetary penalty. Negligent acceptance is punishable by a fine of up to CHF 250,000 **Art. 46 BankG**. Advertising for deposits without the required licence is punishable separately, with a fine of up to CHF 500,000 **Art. 49 BankG**.

In 6B_63/2017, the Federal Supreme Court held three things:

- Criminal courts are bound by a final administrative judgment establishing unlawful deposit-taking.
- A FINMA warning that an activity may require a licence excludes a mistake of fact.
- Statements by FINMA representatives at a meeting nonetheless justified an unavoidable mistake of law under Art. 21 StGB, but only until FINMA's later letter dispelled it **6B_63/2017**.

Directors are personally exposed. The Federal Criminal Court convicted a co-founder and director of a crowdlending company as co-perpetrator **SK.2019.14**. The Schwyz Cantonal Court likewise convicted under Art. 46 para. 1 lit. a BankG **STK 2023 56**.

Current law versus proposed reform

On 22 October 2025, the Federal Council opened a consultation, running until 6 February 2026, on amending the Financial Institutions Act. The proposal would introduce two new licences: one for payment-instrument institutions (stablecoins) and one for crypto institutions. It is intended to "verbessern" (improve) the current FinTech licence **SIF Tätigkeitsbericht SIF 2025**. In the National Council debate on a stablecoin motion, the Federal Council described the plan as further developing the Art. 1b BankG licence **BO 2025 N 718**.

FINMA has also referred to the Federal Council's report under Art. 52a BankG, which calls for the BankV exceptions, including the default guarantee, to be reviewed
FINMA Guidance 06/2024: Stablecoins: risks and challenges for issuers of
. Art. 52a BankG itself is only a duty to evaluate the 2018 FinTech amendment and to report to Parliament **Art. 52a BankG**.

None of these proposals changes the current analysis. Until enacted, Arts. 1a and 1b BankG and Arts. 5, 6, 7a, 14a to 14f and 17a BankV govern.

Application checklist

1. Repayment obligation? Does the business owe clients a fixed money amount, whether on demand, at maturity, on exit or on liquidation? If not, there is no deposit **2C_122/2018 b-4354-2016**.
2. Carve-out? Do the funds fall within Art. 5 para. 3 BankV? Check in particular:
   - consideration under a sale or services contract;
   - a bond with a timely prospectus;
   - a settlement balance (no interest, 60 days, an existing main transaction);
   - a closed-loop payment means (CHF 3,000, no P2P, no

interest);
- a compliant bank guarantee.

3. Excluded depositors? Are all depositors within Art. 5 para. 2 BankV? Document qualified participations and professional treasury.
4. Commercial? Are there more than 20 depositors, or any public solicitation, including through intermediaries? Count across linked entities.
5. Sandbox? Are total liabilities at or below CHF 1 million at all times, with no interest-margin business and individual, text-evidenced warnings given before the deposit? Monitor the 10-day and 30-day deadlines.
6. Route? Will deposits exceed CHF 100 million, or be invested or bear interest? If so, a banking licence is needed (CHF 10 million capital). Otherwise, a FinTech licence (3% of deposits, at least CHF 300,000, segregation under Art. 14f BankV, Art. 7a BankV disclosures). Monitor the 10-day and 90-day deadlines.
7. AML layer. Without a licence, are payment or lending services provided? If so, join an SRO.
8. Change control. Before adding interest, yield, lending, P2P transfers or higher wallet limits, re-run steps 1 to 6. The licence must precede the new activity.