

# Guidelines

for **FinTech licence** applications pursuant to Article 1*b* of the Banking Act

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## Purpose

This document is intended to act as a guide for the convenience of applicants and to facilitate the presentation of applications submitted by them. It does not give rise to any legal claim. These guidelines highlight the information and documents an applicant must usually submit when making an application. The guidelines do not exclude the possibility that the applicant may submit additional information or that the Swiss Financial Market Supervisory Authority FINMA may request further details and documents. Applications are to be submitted in one of Switzerland's official languages or in English, whereby the article of association, the organisational regulations and any other documents which are subject to approval must be submitted in one of Switzerland's official languages. If an application is submitted by a legal representative, this person's authorisation must be submitted.

Persons pursuant to Article 1*b* of the Banking Act (BA; SR 952.0) are permitted to accept public deposits of up to 100 million Swiss francs or crypto assets pursuant to Article 5*a* of the Banking Ordinance (BO; SR 952.02) but may not invest them or pay interest on them. FINMA licenses persons pursuant to Article 1*b* BA and supervises them after a licence has been granted.

Any change to the basis on which the licence was granted must be reported to FINMA. In the event of material changes, approval must be obtained from FINMA before continuing with operations (Art. 8*a* BO).

A person pursuant to Article 1*b* BA may not begin operations until a licence has been granted by FINMA. It is an offence to engage in activities which require a licence without being in possession of the said licence (Art. 44 Financial Market Supervision Act [FINMASA]; SR 956.1). The same applies to providing false information to FINMA or an audit firm (Art. 45 FINMASA).

## **I. Licence application**

### **I.1 General information**

- Reasons for applying for a licence as a person pursuant to Article 1 b BA and intention in doing so
- Description of the proposed activity and organisation, including the proposed business activity, geographical scope and target clientele
- Certified extract from the commercial register
- Information about the business premises, infrastructure and personnel
- Information about the applicant's group companies, participations and/or other presences (branch or representative offices)

### **I.2 Participations in the applicant**

- Share capital (structure, allocation, nominal value, subscription etc.)
- List of all participants with a direct or indirect holding of 5% or more (to the level of beneficial owner with voting rights and capital interest)
- Graphic showing all directly or indirectly qualified participants to the level of beneficial owner (including information regarding the size of the participation), broken down by shares of voting rights and capital
- Information on any agreements and other ways in which the applicant may be controlled or materially influenced. Documents (e.g. shareholders' agreements) must be submitted

#### **I.2.1 Information required for individuals who are directly or indirectly qualified participants**

- Personal details and information about qualified participations in companies operating in the financial sector (declaration of qualified participations form, signed and dated, original)
- Copy of a current identification document (copy of a passport or official ID document signed and dated by the holder)
- Declaration regarding pending and concluded legal proceedings (form, signed and dated)
- A CV signed by the person in question (including training and further education; list and description of past and current positions and directorships, with dates)
- References
- Swiss criminal records extract (original copy, no more than three months old)

- In the case of foreign nationals who have lived in Switzerland for less than five years, a criminal records extract from the previous country of residence or home country (original copy, no more than three months old)
- Debt enforcement register extract (original copy, no more than three months old)
- Declaration as to whether they hold the participation in question for their own account or on a fiduciary basis for a third party, and whether they have granted options or similar rights with respect to this participation (declaration of directly/indirectly qualified participations form, signed and dated, original)

#### **I.2.2 Information required for legal entities which are directly or indirectly qualified participants**

- Personal details and information about qualified participations in companies operating in the financial sector (declaration of qualified participations form, signed and dated, original)
- Articles of association
- Extract from the commercial register or an attestation to this effect
- Detailed description of business activities, the financial situation (including last annual financial statements, if available) and, if applicable, the group structure
- Declaration regarding pending and concluded legal proceedings (form, signed and dated)
- Declaration as to whether they hold the participation in question for their own account or on a fiduciary basis for a third party, and whether they have granted options or similar rights with respect to this participation (declaration of directly/indirectly qualified participations form, signed and dated, original)

#### **I.3 Information about persons entrusted with the administration and management of the business**

Information about the governing bodies:

- Composition of the governing body entrusted with the administration of the business, including details of the chairman, vice-chairman and members of any committees
- Information about the composition, organisation and powers of the executive board

The following documents must be submitted as proof that members of the executive board and the governing body entrusted with the administration of the business meet the requirements:

- Personal information (surname, first name, date of birth, nationality, place of birth, place of residence and function)

- Copy of a current identification document (copy of a passport or official ID document signed and dated by the holder)
- In the case of foreign nationals, copy of the residence permit (signed and dated)
- A CV signed by the person in question (including training and further education; list and description of past and current positions and directorships, with dates)
- Copies of job references, diplomas and other references
- Swiss criminal records extract (original copy, no more than three months old)
- In the case of foreign nationals who have lived in Switzerland for less than five years, a criminal records extract from the previous country of residence or home country (original copy, no more than three months old)
- Debt enforcement register extract (original copy, no more than three months old)
- Contract with the applicant (signed and dated)
- Declaration regarding pending and concluded legal proceedings (form, signed and dated)
- Declaration regarding qualified participations in companies operating in the financial sector (declaration of qualified participations form, signed and dated, original)
- Declaration regarding other directorships (form, signed and dated)

#### I.4 Business activity and internal organisation

- Detailed description of business activities and processes
- Business plan including budget (balance sheet, income statement) for the next three financial years with optimistic, realistic and pessimistic scenarios
- Liquidity planning for the first business year according to the pessimistic scenario of the business plan (on a monthly basis)
- IT planning with explanations of the technical and operational readiness of the individual applications and their criticality
- Articles of association, organisational regulations, which are tailored to the business activity of a person pursuant to Article 1b BA
- Organisational chart showing executive personnel and the FTEs per organisational unit
- Organisation and regulations/policies relating to the risk organisation, compliance and the internal control system (including AMLA policies)
- Outsourcing of activities
- Description of how public deposits are held (separate from the company's own funds?) and how compliance with the threshold of CHF 100 million is ensured
- If planned: detailed technical description of how the crypto assets will be stored
- Details of information for customers pursuant to Article 7a BO

- Description of any conflicts of interest and related measures pursuant to Article 14g BO

### I.5 Meeting of financial requirements

- Appropriate evidence of compliance with the minimum capital requirements and description of how compliance with minimum requirements is ensured as public deposits increase
- Anticipated minimum capital trends in line with the business plan, including information about sources of financing

### I.6 Regulatory audit firm

- Written notice of acceptance of the regulatory audit mandate
- Completed questionnaire regarding services of approved audit firms

### I.7 Additional requirements for groups operating in the financial services sector

- Organisational chart of the group with information about existing or planned licences granted under financial market law, graphic representation and details of shares of voting rights and capital

## II. Changes

All changes to matters affecting licensing require prior authorisation or approval by FINMA.

The following in particular require approval (the list is not exhaustive):

- Changes relating to key documents (particularly the articles of association and organisational regulations)
- Changes relating to holders of qualified participations
- Changes in the persons entrusted with the administration and management of the business
- Changes relating to the organisation
- If planned: changes to the technical set-up regarding the storage of crypto assets
- Changes relating to internal corporate governance regulations
- Changes relating to activity and non-core activities
- Changes relating to the outsourcing of core services

The licence application must contain a detailed justification (including risk analysis). All relevant information must be documented, and changed documents must also be submitted with changes tracked. Depending on the nature of the changes, it may be advisable to discuss them with FINMA in advance.