



**COUNTRY  
COMPARATIVE  
GUIDES 2021**

# **The Legal 500 Country Comparative Guides**

## **Switzerland**

### **FINTECH**

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This country-specific Q&A provides an overview of fintech laws and regulations applicable in Switzerland.

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## SWITZERLAND FINTECH



### 1. What are the sources of payments law in your jurisdiction?

The main sources of payments law in Switzerland are the Financial Market Infrastructure Act, the Anti-Money Laundering Act, the National Bank Act, and the Banking Act. In addition, implementing ordinances of the aforementioned laws and circulars from the Swiss Financial Market Supervisory Authority (FINMA) may be of relevance.

### 2. Can payment services be provided by non-banks, and if so on what conditions?

Payment services can be provided by non-banks if they do not conduct any activity which requires a banking licence. A banking licence or a FinTech licence (a type of banking licence with relaxed requirements) is generally required if the payment service provider intends to accept in a professional capacity deposits from the public. Funds that are affected to a payment system are not considered deposits if, cumulatively, they never exceed CHF 3,000 per customer, they only serve for the future acquisition of goods or services and no interest is paid on them. Funds which are guaranteed by a bank under a default guarantee are not considered deposits as well. In addition, a payment service provider is not deemed to accept deposits in a professional capacity if it fulfils the requirements of the sandbox regime (please see the answer to question 6). A Payment system may qualify as a financial market infrastructure within the meaning of the Financial Market Infrastructure Act. In such case, it requires authorisation from FINMA only if it is necessary for the proper functioning of the financial market or the protection of financial market participants and if it is not operated by a bank. Furthermore, payment systems which are deemed systemically important are subject to special requirements and to the oversight of the Swiss National Bank (SNB). The SNB is also competent to subject to its oversight foreign systematically important payment systems if they have substantial parts of their operation or leading participants in Switzerland or if they clear or settle

significant transaction volumes in Swiss francs. The operation of a payment system and the issuance of means of payment are subject to the Anti-Money Laundering Act if the payment system, respectively the means of payment, are used by third parties. In such case, the operator of the system or the issuer of the means of payment shall be deemed to be financial intermediaries if they are acting in professional capacity and must, if they are not subject to licensing requirements and prudential supervision by FINMA, apply for a membership with a self-regulatory organisation (SRO).

### 3. What are the most popular payment methods and payment instruments in your jurisdiction?

A survey conducted by the SNB in 2020 highlighted a multifaceted use of payment methods by households in Switzerland, with a coexistence of cash and cashless payment methods. Cash payments accounted for 43% of the payments transactions included in the survey, followed by debit card payments (33% of the transactions) and credit card payments (13% of the transactions). The previous survey conducted by the SNB in 2017 showed that the use of innovative payment methods such as payment apps and contactless card payments was still modest a few years ago. The new survey shows a significant increase of the use of debit and credit cards, compared to cash. Not surprisingly, the share of touch-free card payments as a percentage of all transactions increased from 4% in 2017 to 30% in 2020. A large number of banks and financial service providers now propose the Swiss mobile payment solution TWINT or other mobile payment solutions such as Apple Pay, Google Pay or Samsung Pay. The volume share of mobile payment apps grew from almost zero in 2017 to 5% in 2020. It can also be mentioned that while virtually respondents to the SNB survey have at least one banking relationship, 8% of them now hold an account at either a digital bank or a fintech.

#### 4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

Switzerland has currently no specific legal or regulatory requirements for open banking. It follows a market-driven approach where banks remain free to decide who they work with and who is allowed access to their interfaces, subject to the customers' consent. The Swiss Bankers Association (SBA) published in 2020 a paper on open banking aiming to define the conditions for the cooperation between banks and third party providers and to further advance the implementation of open banking in Switzerland. A number of initiatives are currently underway in the area of open banking, either in order to establish a Swiss API standard or to develop operational solutions for open banking. Examples of standardisation initiatives include the Swiss Fintech Innovations' (SFTI) Common API working group and the [openbankingproject.ch](https://openbankingproject.ch) initiative. Examples of initiatives aiming to develop platforms and API marketplaces include b.Link by central infrastructure provider SIX and the Swisscom Open Business Hub. Certain providers of core banking software offer their own marketplaces and platforms. The SBA acts as a mediator and coordinator between the various initiatives.

#### 5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

The data of bank customers continue to be protected by Swiss banking secrecy. The Banking Act makes it a criminal offence to disclose confidential information on a Swiss bank's customer to unauthorised third parties. Swiss banking secrecy is however subject to certain specific limitations and exceptions which permit disclosure without the consent of the customer, in particular in the area of the automatic exchange of information in tax matters (not concerning Swiss residents) and the international administrative assistance in tax matters or anti-money laundering. In addition, banks must or may report to the Money Laundering Reporting Office Switzerland (MROS) potential cases of money laundering. Customer data processed by financial institutions such as portfolio managers, trustees, managers of collective assets, fund management companies and securities firms, are protected by professional confidentiality. The Financial

Institutions Act, which entered into force on January 1, 2020, provides that a disclosure of confidential customer data to unauthorised third parties is a criminal offence. Like the Swiss banking secrecy, the professional confidentiality is also subject to certain specific limitations and exceptions. In addition, Swiss companies, when handling customer data, are subject to the Data Protection Act, which, unlike most foreign data protection legislations, currently covers the personal data of both physical persons and entities. The revised Data Protection Act, which has been approved by the Swiss Parliament in September 2020 will only concern the personal data of physical persons. The date of entry into force of the revised Data Protection Act has not yet been published but is expected to be in 2022 or 2023. Swiss companies may also be subject to the General Data Protection Regulation (GDPR) if they process personal data of data subjects who are in the EU and if they offer services to data subjects in the EU or monitor their behaviour in the EU.

#### 6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

FINMA issued already in 2016 a circular allowing financial intermediaries to onboard clients by conducting a video identification or an online identification (Circular 2016/7). The Federal Council introduced a sandbox regime in 2017. This regime currently enables start-ups in the financial sector to accept deposits from the public of up to CHF 1 million in total without requiring an authorisation from FINMA, provided that they do not engage in the so-called interest rate differential business and inform depositors that they are not supervised by FINMA and that the deposit is not covered by any depositor protection scheme. The sandbox regime does not relieve the companies using it from complying with the anti-money laundering legislation. The Federal Council also extended in 2017 the holding period for settlement accounts from 7 days to 60 days. Settlement accounts are accounts held for the purpose of the settlement of client transactions. This extension benefitted in particular operators of crowdfunding platforms which can rely on the exemption pertaining to settlement accounts to avoid the need to obtain a banking licence, provided that no interest is paid on the settlement accounts and that the funds are held no longer than 60 days. In 2018, the Swiss Parliament amended the Banking Act to introduce the so-called FinTech licence, a type of banking licence with relaxed requirements. It enables institutions to accept deposits from the public of up to CHF 100 million in total or

certain cryptoassets, provided that these deposits are not invested and no interest is paid on them. The institutions willing to benefit from the FinTech licence must have a minimum capital of 3% of the deposits, but at a minimum CHF 300 000. FINMA has published Guidelines for the FinTech licence and has received some enquiries and applications, principally from companies offering services in the payment, bill of exchange and custody service sector and additionally wishing to accept public deposits. In 2020, FINMA granted the first FinTech licence to Yapeal AG, a company providing digital banking services, and the second one in 2021 to Klarpay, a start-up which facilitates payment traffic for internet companies. In 2018, FINMA published guidelines for enquiries relating to initial coin offerings (ICOs), defining the minimum information requirements for ICO enquiries and setting out the principles applied. Due to an increase of the interest in stable coins, FINMA published in 2019 a supplement to its ICO Guidelines outlining how it treats stable coins under Swiss supervisory law. The requirements under supervisory law for stable coins depend on which assets (e.g. currencies, commodities, real estate or securities) the stable coin is backed and the legal rights of its holders. FINMA has a dedicated FinTech desk which review inquiries regarding any specific projects relating to the FinTech sector. In 2019, FINMA published guidance on how it applies Swiss anti-money laundering rules to financial service providers supervised by FINMA which are active in the area of blockchain technology. During the same year, it issued banking licences to SEBA Crypto AG and Sygnum AG, two companies providing blockchain financial services to institutional and professional clients. In order to facilitate the opening of bank accounts for companies providing services based on the distributed ledger technology (DLT), the Swiss Bankers Association (SBA) published in 2019 practical guidelines to the attention of Swiss banks, containing recommendations on the due diligence to be conducted when opening accounts for DLT companies. A significant development occurred in February and August 2021 with the entry into force of a new legal framework for blockchain and DLT. This framework contains amendments to nine federal acts in various key areas such as corporate law, insolvency law and financial market law. These amendments are intended to increase legal certainty and to remove obstacles surrounding blockchain/DLT applications. They provide for, inter alia, (i) the creation of a new type of authorisation in the Financial Market Infrastructure Act for blockchain-based trading venues (ii) the introduction in the Swiss Code of Obligations of DLT/blockchain registered uncertificated securities that serve the same functions as traditional certificated securities or intermediated securities, so that for instance "tokenised" equities will receive the same legal treatment as equities under current securities law

provided that certain requirements are met and (iii) the segregation of crypto-assets in the event of bankruptcy. In September 2021, FINMA has issued a license to SIX Digital Exchange, the first-ever approval for a stock exchange and a central securities depository for the trading of tokens. During the same month, FINMA also approved for the first time a Swiss fund that invests primarily in cryptoassets.

## 7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

We do not see any imminent risks to the growth of the FinTech market in Switzerland. On the contrary, the continuous political support to the FinTech sector and the numerous legislative and regulatory initiatives described in the answer to question 6 create a very attractive environment for FinTech firms and shall further consolidate Switzerland's position as a global FinTech hub. While the number of requests for ICOs has decreased from its highest level in 2017, in particular in the wake of disputes or failures concerning certain ICOs, FINMA receives numerous requests concerning blockchain-based business models, in particular projects relating to stable coins. According to a study published by the Lucerne University of Applied Sciences and Arts (IFZ FinTech Study 2021), Switzerland was home as of late 2020 to 405 FinTech companies, representing a 6% increase compared with 2019. The SNB's 2019 survey on digitalisation and fintech at Swiss banks further confirms that Swiss banks are targeting to achieve, and have already achieved in certain sectors, a high level of digital maturity.

## 8. What tax incentives exist in your jurisdiction to encourage fintech investment?

There is no tax incentives applying specifically to FinTech companies. However, Switzerland generally offers an attractive fiscal environment for companies. Depending on the cantonal and communal tax location, the maximum total corporate income tax rate (federal, cantonal and communal) on profit before tax ranges from about 12% to about 21%. A patent box was introduced in 2020 at cantonal and communal levels reducing the taxation of income related to patents. In most cantons, there is the option to apply for an R&D super deduction. In addition, certain newly created companies may benefit from temporary cantonal and communal tax reliefs if they serve the economic interest of the relevant canton. It is generally possible to obtain advance tax rulings from the competent tax

administration.

### **9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?**

According to the IFZ FinTech Study 2021, a total of 61 funding rounds were conducted by Swiss FinTech companies in the year 2020, raising a total amount of approximately CHF 260 million. Each funding round raised around CHF 6.8 million on average, a 33% increase compared to 2019. Seed capital investment accounted for CHF 25 million (10%), Series A funding for CHF 68 million (26%) and Series B funding for CHF 167million (64%). Among the 405 FinTech companies included in the IFZ FinTech Study 2021, 69 were active in the field of payments (17%), 48 in the field of deposit & lending (12%), 158 in the field of investment management (39%) and 130 in the field of banking infrastructure (32%). A certain number of venture capital funds targeting start-ups in the Swiss FinTech industry have been created over the past years, including the SIX FinTech Venture, which is a CHF 50 million fund investing in early stage start-ups. In addition, various incubators, accelerators and awards based in Switzerland seek to support Swiss-based FinTech companies.

### **10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?**

Switzerland is an excellent jurisdiction for FinTech companies and one of the most important FinTech locations in the world in particular for the following reasons: There is a strong political support for the FinTech industry which has materialized in various legislative and regulatory initiatives that removed legal uncertainty and unnecessary regulatory hurdles for FinTech companies as described in the answer to question 6; The Swiss regulator FINMA is undertaking numerous initiatives to promote Swiss FinTech interests and is perceived as very competent in the field; The Swiss financial regulation is technology-neutral and principle-based, which allows it to cope with technological innovation; Switzerland has a striving FinTech ecosystem with an increasing number of mature projects launched or backed by established financial institutions and technology providers. It is home to the Zug Crypto Valley (which counts Unicorns such as Ethereum, Cardano, Polkadot, Tezos, Cosmos, etc) and has two important financial centres in Zurich and Geneva. This facilitates collaborations with banks and financial service providers as well as access to investors.

There is also a facilitated access to some of the world's largest technology companies which have a presence in Switzerland as well as to the EPFL and the ETH Zürich, two high-profile technical universities; Switzerland offers an attractive tax environment and the possibility of tax rulings, as well as employer friendly labour and corporate laws; Switzerland has a particularly stable political environment and there are as a general rule no specific immigration obstacles for EU/EFTA citizens willing to join a Swiss FinTech company.

### **11. Access to talent is often cited as a key issue for fintechs - are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?**

According to the Free Movement of Persons Agreement between the European Union (EU) and Switzerland (AFMP), EU/EFTA citizens have the right to enter, remain and take up gainful employment in Switzerland both in an employed and self-employed capacity, without the application of any quotas or immigration caps, with the exception of posted workers who work for more than 90 days per calendar year in Switzerland (for the provision of services not covered by a special service agreement between Switzerland and the EU/EFTA) as well as for Croatian nationals. There are yearly quotas for the different types of work permits to be issued in favour of non-EU/EFTA citizens. For the year 2021, 4,500 B-permits (long duration permit) are made available as well as 4,000 L-permits (short duration permit). Quotas for UK nationals coming to Switzerland as employees or service providers for over four months are set at 3,500 (2,100 residence permits and 1,400 short-stay permits). As a general rule, foreigners can work in Switzerland for a period of up to eight days per calendar year without a work permit or prior registration.

### **12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?**

There are no specific immigration obstacles for EU/EFTA citizens (subject to the few limitations described in the answer to question 11) and this enables Swiss FinTech companies to have access to a significant talent pool. If however no specialists can be found in Switzerland or in

EU/EFTA countries, work permits may be granted enabling the hiring of non-EU/EFTA specialists if all other relevant conditions are met. As companies in other sectors may also have the need to hire non-EU/EFTA workers, the FinTech sector does not have any specific influence on immigration policies or on the number of quotas.

### **13. What protections can a fintech use in your jurisdiction to protect its intellectual property?**

With respect to IP protection, FinTech companies can mainly protect their inventions under Swiss copyright and patent laws. Copyright is indeed the key protection for software provided that computer programs have an individual character and it covers the source code but not mere ideas as well as algorithms and formulas. However, patent protection may also be relevant – in exceptional circumstances – when the application of the computer program solves a technical problem. In addition, FinTech companies can also protect their products and/or services through design rights and trademarks registrations, including graphical representations in 3D form. Finally, further protection is offered under the Swiss Unfair Competition Act or in special legislation, for example criminal sanctions in case of disclosure of trade and business secrets.

### **14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?**

Switzerland has a favourable and attractive legal framework regarding crypto assets in general. With respect to cryptocurrencies more precisely, it allows their issuance and trading subject to compliance with Swiss AML legislation. In its ICO Guidelines dated 16 February 2018, FINMA clarified the regulatory framework of initial coin offerings (ICOs) and how to apply Swiss financial markets laws to ICOs. In such ICO Guidelines, FINMA explains the classification of cryptocurrencies and other tokens under Swiss law. In summary, FINMA distinguishes the following three categories of tokens: payment tokens (or cryptocurrencies): they serve only as means of payment and do not represent a claim against the issuer; utility tokens: they provide rights to access or use a digital application or service, provided that such application or service is already operational at the time of the token sale (otherwise they qualify as asset tokens); and asset tokens: they represent an asset, such as a debt or equity claim against the issuer or a third party, or a right in an underlying asset. Tokens may also take hybrid forms including elements of more than one

of the above categories. In addition, pursuant to a supplement to the ICO Guidelines dated 11 September 2019, FINMA considers that stable tokens (i.e. tokens backed by an underlying asset such as a pool of fiat currencies), are not a separate type of token category and they may classify as asset or hybrid tokens. Swiss securities laws are relevant for the issuance of asset tokens and hybrid tokens with the functionality of asset tokens. However, payment and utility tokens that do not represent any claims against an issuer or a third party are not subject to Swiss securities laws. Payment tokens do not qualify as legal tender under Swiss law. However, the Swiss Federal Council has clarified that the parties to a transaction may agree on their use as the applicable means of payment for such a transaction. In addition, the issuance of payment tokens requires compliance with the Swiss AML legislation (see question 15).

### **15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?**

Switzerland is a pioneer in the areas of ICOs but also of securities token offerings (STOs). The regulatory framework is defined in the FINMA ICO Guidelines and its supplement (cf. question 14). In the context of ICOs and tokens, the issuance of means of payment that cannot be used exclusively with the issuer, providing services related to payment transactions in the form of money/asset transmission services and money exchange services are financial intermediation activities subject to Swiss AML legislation. Depending on the classification of tokens to be issued in an ICO, the issuance can qualify as financial intermediation activity subject to Swiss AML legislation: the issuance of payment tokens is classified as an issuance of means of payment and constitutes a financial intermediation activity; the issuance of utility tokens with a pure access/use function does not qualify as financial intermediation activity except if there is a form of payment function, for example the ability to use the utility tokens to pay for services; the issuance of asset tokens does not qualify as financial intermediation activity provided that they are classified as securities and are not issued by a bank, securities firm or certain other prudentially supervised entities. Notwithstanding the guidance provided by FINMA, since the structures of ICOs and STOs can be complex and could trigger the applicability of various Swiss financial laws, it is standard practice to seek a non-action letter from FINMA regarding the regulatory status of a specific project.

### **16. Are you aware of any live blockchain projects (beyond proof of concept) in your**

## jurisdiction and if so in what areas?

There is a significant number of well-funded and promising blockchain projects in Switzerland. FINMA granted banking licences to two digital assets banks and several Swiss Fintech companies are developing sophisticated blockchain infrastructure allowing financial institutions to integrate cryptocurrencies, tokens and use of distributed ledger in a secure way in view of the custody, trade, transfer and tokenization of digital assets. Other blockchain projects relate for example to the supply chain in the commodities sector and to the shipping industry in order to digitalize the process and documentation, or to the luxury world (blockchain infrastructure providing information on authenticity, sourcing and sustainability). The Gren FinTech sector is also developing, with various companies focusing on the analysis of ESG data or providing investment solutions with a sustainable impact.

### 17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

Artificial Intelligence is already used in the financial sector for example by banks and asset managers in connection with the use of robo-advisors, using algorithms analysing various financial products, that can generate suggestions to create a bespoke investment portfolio in line with the client's risk profile. It is also an important component in the review of huge amount of data and documents, risk assessment (e.g. granting of credits), preventing frauds, RegTech etc. FINMA has a neutral approach regarding technology in the financial sector so that regulation should not impede its use but rather encourage it.

### 18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

There are very promising InsurTech companies in Switzerland with a focus on digital management of insurance policies, consolidation and comparison of insurances, digital on-boarding of clients and digital management of insurance claims and related payments. In the field of healthcare, some projects aim at developing digital solutions such as digital health

screening, telemedicine and digital diagnostic services.

### 19. Are there any areas of fintech that are particularly strong in your jurisdiction?

Switzerland is a leading jurisdiction for FinTech companies in particular for financial services and there are several very strong areas of FinTech but most of all (i) investment management, (ii) process digitalisation, automatization & robotics, (iii) distributed ledger technology, (iv) banking infrastructure, (v) analytics, big data & artificial intelligence, (vi) payments and (vii) deposit & lending.

### 20. What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?

At the moment, FinTech companies tend more and more to be seen as rather helping existing financial institutions to develop their offers than disrupting their business. This is in particular true in the field of infrastructure for digital assets. Some Swiss financial institutions are investing in fintech companies active in the financial sector and some banks even participate in the development of new digital banks. The strategy of start-ups seems to try to cooperate with existing well-established financial institutions but the constantly evolving technology could change the situation in the future.

### 21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

Generally, large financial institutions have their own FinTech development / innovation teams and aim at developing fintech innovation in view of their own vision and needs. However, their strategy regarding FinTech innovations can vary considerably. Smaller financial institutions tend to rely more on partnerships with technology providers and external FinTech companies.

### 22. Are there any strong examples of disruption through fintech in your jurisdiction?

Besides the ICOs and STOs innovations which are good disruptive examples as they strongly compete with private equity funding, the introduction of a new type of

licence for trading venues with the adoption of the new legislative framework for blockchain and DLT (cf. question 6), pursuant to which blockchain / DLT

uncertificated securities can be traded, could bring disruption as such new DLT platforms could become strong competitors to traditional trading venues.

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