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Fintech 2025

Ninth Edition

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic and ESG (Environmental, Social and Governance) objectives. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?

Switzerland offers a friendly environment for companies in the fintech sector. According to a market study, a total of 483 fintech companies were active in Switzerland by the end of 2023 in comparison to 437 by the end of 2022 (an increase of 10.5%). The number of companies active in the field of blockchain/distributed ledger technology ("**DLT**") increased to 135 companies in 2022 *vs.* 113 in 2021 in Switzerland and continued to rise to 175 companies in 2023 in Switzerland and Liechtenstein (all data: IFZ Fintech Study 2024, An Overview of Swiss and Liechtenstein FinTech, pp 6–8). Overall, the Swiss fintech industry is very broadly diversified, and the distinction between fintech and traditional financial services continues to be blurred. Swiss regulation, in principle, takes a technology-neutral, principle-based approach, which has so far enabled the jurisdiction to deal with many innovations in the financial sector without major revisions of laws and regulations. It remains to be seen whether major developments such as the use of large language models and artificial intelligence ("**AI**") in fintech or financial services more generally will require amendments to the legal framework in the future.

The fintech sector has faced multiple challenges. *E.g.* FlowBank, an online bank/trading platform based in Geneva, was declared bankrupt by the Swiss Financial Market Supervisory Authority ("**FINMA**") in 2024 because it no longer had the minimum own funds required, although privileged client deposits are expected to be recovered in full (FINMA media release of 13 June 2024). Furthermore, a number of Swiss fintech businesses were affected by the FTX scandal in 2022 and its enduring effects on the sector. However, the Swiss fintech market also benefits from Switzerland's reputation as a stable and reliable jurisdiction.

Swiss-based fintech businesses are active in areas such as payments, investment and asset management services, exchange services, crowdfunding and crowdlending, insurance-related services (*insurtech*), regulation/compliance-related services (*regtech*) as well as in various platform services, *e.g.* for the purposes of fundraising and/or distribution of financial instruments. Many businesses with a focus on DLT are based in the so-called "Crypto Valley" in the Canton of Zug, Switzerland, which initially became known as a hub for initial coin offerings ("**ICOs**"). While cryptocurrencies and related services such as staking remain an active topic, security tokens and their issuance and trading infrastructures have in the more recent past received increasing attention. In November 2021, the Swiss stock exchange SIX ("**SIX**") launched a separate, fully regulated digital platform under the name SIX Digital Exchange, which provides a fully integrated end-to-end trading, settlement and custody service for digital assets.

In recent years, the market's focus has included decentralised finance ("**DeFi**"), which uses smart contracts to minimise the need for financial intermediaries. Although there are many open questions as to the legal and regulatory treatment of DeFi, it has been a rapidly growing sector (FINMA Risk Monitor 2022, p. 19). Further, FINMA has – similarly to the European standard-setter European Securities and Markets Authority ("**ESMA**") – addressed the topic of AI, recognising that while most institutions are still experimenting with AI, many companies have advanced AI applications that require corresponding risk management processes. Key challenges identified by FINMA in the use of AI include governance and responsibility, robustness and reliability, transparency and explainability as well as non-discrimination (FINMA Risk Monitor 2023, p. 24; see also ESMA's Public Statement – On the use of Artificial Intelligence (AI) in the provision of retail investment services of 30 May 2024, no. 5).

Generally speaking, the fintech market continues to see more mature projects, many of which are backed or launched by established financial institutions and technology companies. These well-funded start-ups more readily accept and embrace regulation, with several projects aiming to become licensed and supervised by FINMA.

Separately, the demand for sustainable financial services has increased in recent years, and so has the number of sustainability-related financial products that are labelled green or ESG. In this context, FINMA recognised early on the risk of greenwashing and took measures to protect investors and clients, in particular with respect to the supervision of investment funds that focus on sustainability. Furthermore, according to its Risk Monitor report, FINMA in 2021 launched a multi-year project to integrate climate risks into its supervisory practice (FINMA Risk Monitor 2021, p. 19). Among the first measures are transparency requirements regarding climate risks (both quantitative and qualitative) of Swiss banks and insurers. This has further been supplemented through ESG-focused self-regulation in the financial sector, *e.g.* by the Swiss Bankers Association ("**SBA**") and the Asset Management Association

Switzerland ("**AMAS**"). In a further effort to support the development of environmentally conscious fintech businesses, the Swiss Federal Council launched the Green Fintech Network in 2020. The network presented its first action plan with 16 concrete measure proposals in 2021. According to e.foresight, a Swiss banking think tank, in 2024, Switzerland hosted 49 "sustainable" fintech companies, which accounts for 12% of the sector and a 53% increase from 2023 (e.foresight Swiss FinTech Map).

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

Switzerland has no specific prohibitions or restrictions in place with respect to fintech businesses or cryptocurrency-related activities, but general Swiss laws and regulations for the financial sector apply. With few exceptions, Swiss financial regulation is technology-neutral and principle-based, which has so far allowed the market and the competent authorities to cope well with technological innovation. Depending on the nature and scope of their business activities, fintech operators may be subject to regulation and supervision by FINMA or by self-regulatory organisations. In accordance with the principle of "same business, same risks, same rules", FINMA takes an economic approach when assessing the relevance and application of Swiss laws on cryptocurrency-focused businesses such as DeFi projects, *e.g.* to determine whether compliance with regulation on financial services, anti-money laundering ("**AML**"), collective investment schemes, financial market infrastructures, banks, insurance companies, securities firms and/or data protection is required (FINMA Risk Monitor 2022, p. 19). Therefore, each case needs to be assessed individually (see question 3.1). With regard to ICOs, stablecoins and cryptocurrencies in particular, FINMA published several guidance papers in which it emphasised the concept of an individual review of each business case regarding the regulatory impact. It is therefore prudent for fintech start-ups to seek clearance from the regulator before launching their project on the market.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Switzerland has an active start-up scene and various funding opportunities are available for companies at every stage of development. There are seed and venture capital firms for early funding as well as mature debt and equity capital markets for companies at a later stage. In addition, there are many financial institutions that have a potential interest in buying an equity stake in fintech companies or in a full integration, *e.g.* to ensure new distribution channels. Foreign investment is also common and not specifically restricted.

Crowdfunding and crowdlending as alternative sources of funding had shown rapid growth rates in Switzerland in the last years, further driven by the COVID-19 pandemic (according to the 2021 Crowdfunding Monitor Study of the University of Lucerne, 14,984 projects were crowdfunded via crowdsupporting/crowddonating at a total amount of CHF 44.6 million in the course of 2020), both in terms of the number of platforms and the funds raised; however, since then, crowdfunding has decreased in 2021 and 2022. At the end of April 2023, according to a market study, 35 platforms were maintaining an active physical presence in Switzerland (compared to only four in 2014 and 38 in 2020) and several non-domestic platforms were active on the market on a cross-border basis. The legislator has facilitated crowdfunding and crowdlending platforms by way of the introduction of fintech regulation in Switzerland as follows: (a) on 1 August 2017, the maximum holding period during which the acceptance of funds for the purpose of settlement of customer transactions does not yet qualify as taking deposits from the public (and therefore does not count towards a potential banking or fintech licence requirement) was extended from seven to 60 days; and (b) a so-called "regulatory sandbox" was introduced in the Banking Ordinance, according to which more than 20 deposits from the public can be accepted on a permanent basis without triggering a banking licence requirement, as long as (i) the deposits accepted do not exceed CHF 1 million, (ii) no interest margin business is conducted, and (iii) depositors are informed, before making the deposit, that the person accepting the deposits is not supervised by FINMA and that the deposits are not covered by the Swiss depositor protection scheme (see question 3.2 for further details). Furthermore, on 1 January 2019, a regulatory licence type geared towards fintech operators with a need to hold deposits from the public in limited amounts was introduced in the Banking Act ("**BankA**").

Switzerland hosts a range of incubator and accelerator programmes for both Swiss-based and international fintech companies, either exclusively fintech-related (such as the association F10 or Thomson Reuters Labs – The Incubator) or focused on digital innovation in general including fintech (such as Kickstart Accelerator) or blockchain (CV Labs Blockchain Incubator). In addition, there are organised challenges aiming to support mainly fintech companies that generally involve a prize (such as the Swiss Innovation Challenge).

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

There are no specific tax or other incentives for the benefit of the fintech industry in Switzerland. However, depending on the tax domicile of the company and the residence of the shareholders, there are certain tax benefits for start-up companies and tax schemes granting some relief to investors.

Generally speaking, depending on the tax domicile of the company, the ordinary profit tax rate in Switzerland can be as low as 11.22% (tax rates vary between the different Swiss cantons and municipalities).

Further, there are various general special regimes for corporate income tax purposes available in Switzerland. Under the patent box regime, cantons tax profits from qualifying patents and comparable rights at a reduced rate for corporate income tax purposes. Cantons can also provide for special R&D "super deductions" from corporate income tax and/or exempt a part of the equity (to the extent attributed to qualifying participations, patents and loans to group companies) from the annual capital tax. Cantons with a statutory cantonal and communal tax rate of at least 13.5% at the cantonal capital may also provide for a notional interest deduction on so-called "security capital". Only the Canton of Zurich meets this requirement and accordingly introduced the deduction for equity financing.

Start-ups may benefit from a tax holiday on the cantonal and federal level if their tax domicile is located in a structurally less developed region of Switzerland. Furthermore, if a company sells a stake of at least 10% of the capital held in another company that has been held for at least one year prior to the sale, a participation deduction can be applied to the realised profit. In addition, Swiss resident individuals are not taxed on capital gains realised on privately held assets. Dividend payments to companies that hold a participation of at least 10% or with a fair market value of at least CHF 1 million in the dividend paying company also benefit from the participation deduction. Dividend payments to Swiss resident individuals on substantial participations of at least 10% are taxed at a reduced rate.

Switzerland levies annual wealth taxes. To lessen the tax burden for start-up investors, start-up companies are often valued at their substance value for wealth tax purposes (*e.g.* in the Canton of Zurich).

In terms of management/employee incentives, Switzerland offers attractive ways to structure participation schemes. If structured as an equity participation, such schemes generally aim to obtain a tax-exempt capital gain (instead of taxable salary) for the Swiss resident managers upon an exit. However, in case of an acquisition of employee shares for which a fair market value was unavailable or not accepted at the time of acquisition, part of the capital gain at exit might be taxed in case of a sale within five years after the acquisition. In any case, founder shares will not be regarded as employee shares and will as such generally provide for a tax-exempt capital gain.

In Switzerland, it is common to discuss the tax consequences of an envisioned structure with the competent tax administration and there is an uncomplicated process of obtaining advance tax rulings.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

The requirements for a listing on the SIX Swiss Exchange (the main Swiss stock exchange) are laid down in its Listing Rules (as revised on 1 September 2024). Essential listing prerequisites include, *e.g.*, (i) that the issuer has existed as a company for at least three years (however, exemptions exist) and has a reported equity capital of at least CHF 25 million. Furthermore, (ii) the securities must meet the minimum free float requirements (at least 20% of all of the issuer's outstanding securities in the same category have to be held in public ownership, and the capitalisation of those securities in public ownership has to amount to at least CHF 25 million).

The listing requirements of the BX Swiss (the second regulated Swiss stock exchange) are structured in a similar way as those of the SIX Swiss Exchange but are in some areas slightly less stringent, *e.g.* the issuer must only have existed as a company for at least one year and the share capital and the reported equity must only amount to at least CHF 2 million.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

There have not been any recent IPOs in Switzerland in the area of fintech and IPO activity was generally low (Swiss VC Report 2024, p. 10).

The following acquisition transactions in 2024 might be noteworthy: NetGuardians, a fintech business helping financial institutions to prevent fraud and financial crime, was acquired by Stockholm-based private equity firm Summa Equity. Further, MidFunder, a fintech business specialising in revenue-based financing for companies, was acquired by Levenue. At the end of 2024, the Swiss Fintech Association and the Swiss Finance + Technology Association merged in an effort to enhance their services and collaboration with regulators and policy-makers.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Broadly speaking, the Swiss financial regulatory regime does not specifically address fintech. In fact, the recent new regulations addressing certain requirements for fintech companies in Switzerland have been designed according to the principle of technology-neutrality, meaning that business activities with substantially similar characteristics are subject to the same regulatory requirements irrespective of whether they are provided using advanced technology or in a more traditional format or irrespective of how they are labelled (notwithstanding, there is a regulatory licence type that is colloquially referred to as "fintech licence"; see further below). The intention is to provide a level playing field among innovators and traditional providers engaging in similar businesses with similar risks.

The Swiss legal and regulatory framework governing financial services consists of a number of federal acts and implementing ordinances as well as circulars and other guidance papers issued by FINMA. Fintech business models have to be assessed within this set of rules on a case-by-case basis (see question 1.2).

Specifically, based on their (intended) activities, fintech businesses may, in particular, fall within the scope of the BankA (if engaging in activities involving the professional acceptance of deposits from the public or the public solicitation of deposit-taking or engaging in collective custody of cryptocurrencies; see question 3.2), the Anti-Money Laundering Act ("**AMLA**") (if active as a so-called "financial intermediary", *e.g.* in connection with payment instruments, payment systems, individual portfolio management or lending activities; see question 4.5), the Collective Investment Schemes Act (if issuing or managing investment funds or engaging in other activities relating to collective investment schemes), the Financial Market Infrastructure Act ("**FinMIA**") (if acting as a financial market infrastructure, *e.g.* a multilateral trading facility, or operating a DLT trading facility), the Financial Institutions Act ("**FinIA**") (if acting as a securities firm, as an asset manager or trustee, see further below), the Financial Services Act ("**FinSA**") (if engaging in so-called "financial services for clients", *e.g.* investment advisory services) or the Insurance Supervision Act ("**ISA**") (if acting as an insurer or insurance intermediary). Moreover, *inter alia*, the Consumer Credit Act, the Data Protection Act ("**FADP**") as well as the National Bank Act may apply, as well as self-regulatory provisions or guidance papers by industry bodies (*e.g.* in the area of structured products with crypto underlyings).

Depending on the specific business model, regulatory requirements may include licence or registration requirements as well as ongoing compliance and reporting obligations, in particular relating to organisation, capital adequacy, liquidity and documentation, as well as general fit-and-proper requirements for key individuals, shareholders and the business itself. Certain types of regulated businesses are prudentially supervised by FINMA on an ongoing basis in a two-tier approach, whereby an audit firm (regulatory auditor) appointed by the supervised entity carries out regulatory audits that will be an important basis for the supervision by FINMA. The individual financial market laws provide for *de minimis* and other exemptions that can potentially be relevant for fintech businesses depending on the type and scale of their activities.

FINMA is the integrated supervisory authority for the Swiss financial market, ensuring a consistent approach to the qualification and regulatory treatment of fintech businesses and other financial institutions. Furthermore, Switzerland has an established system of industry self-regulation by private organisations such as the SBA, the AMAS as well as numerous professional self-regulatory and supervisory organisations for financial intermediaries, asset managers and trustees. Some of the regulations issued by self-regulatory organisations have been recognised by FINMA as minimum standards (*e.g.* in the area of money laundering prevention).

3.2 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

Key representatives of FINMA have repeatedly expressed their openness in principle to innovation in financial services. At the organisational level, FINMA, *inter alia*, established a dedicated fintech desk to interact with fintech start-ups, and revised several of its circulars, which specify the practice of the regulator under the current legislation, to render them technology-neutral (*e.g.* by refraining from physical written form requirements relating to certain documentations or by enabling video and online identification for client onboarding purposes). In the context of AML, FINMA has also revised its respective ordinance, introducing simplified organisational requirements for small fintech companies (see question 4.5).

In order to make it easier for fintech start-ups to set up shop and to ease regulatory hurdles, a three-pillar legal reform programme was initiated by Swiss policy-makers (including the Federal Council) back in 2016, with the first two pillars (see first and second bullets below) taking effect on 1 August 2017. The third pillar of the legislative reform package refers to the introduction of a fintech licence category to the Swiss framework for financial market supervision and became effective on 1 January 2019 (see third bullet below).

- **Maximum holding period for settlement accounts**: The revision of the framework for banking legislation extended the time period for which third-party monies accepted on interest-free accounts for the purpose of settlement of customer transactions do not qualify as "deposits from the public" (and therefore do not count towards a potential banking licence requirement) to a maximum of 60 days (instead of only seven days). Crowdfunding platforms in particular, but also payment service providers, the business model of which typically requires holding third-party funds for a certain period of time, benefit from this broadened exemption. It must be noted that settlement accounts of foreign exchange dealers generally do not fall within the scope of the exception for settlement accounts. In the context of fintech, this may in particular affect cryptocurrency traders, which are subject to the same limitation if their business is conducted in a manner comparable to a traditional foreign exchange dealer.
- **Regulatory sandbox**: The Swiss regulatory sandbox provides an innovation space for fintech but also for other emerging businesses and other undertakings to test their business models. It allows any person, without the prior approval or review by the regulator (*i.e.* no licence requirement), to accept deposits from the public or engage in collective custody of cryptocurrencies in an amount or value of up to CHF 1 million, regardless of the number of depositors. This exemption is, however, available only if the deposits are neither interest-bearing nor invested (or alternatively used for the purpose of financing a primarily commercial or industrial activity). As a mitigating measure, the deposit-taker must inform the depositors – before accepting any of their monies – that it is not supervised by FINMA and that the deposits are not covered by the depositor protection regime. On 1 April 2019, new rules entered into force explicitly prohibiting the interest margin business while at the same time enabling deposits received under the sandbox to be used for private purposes (*i.e.* not for commercial or industrial purposes).
- **Fintech licence**: Under this licence category (sometimes also referred to as "banking licence light"), FINMA may authorise companies that do not carry out traditional banking activities to accept deposits from the public up to a maximum threshold of CHF 100 million as long as the deposits are not invested and no interest is paid on them. Hence, companies that merely accept and hold public deposits up to the threshold amount and do not engage in the commercial banking business with maturity transformation are eligible for the fintech licence. Compared to a fully-fledged banking licence, the fintech licence is subject to less onerous requirements in the areas of minimum capital, capital adequacy and liquidity, governance, risk management, compliance, depositor protection as well as accounting and auditing. Irrespective of the reliefs granted, AML regulation continues to apply to fintech firms if they qualify as financial intermediaries (the same applies to data protection law (see question 4.5)). We note that so far only five companies have obtained a fintech licence as the application scope of the fintech licence is, in practice, limited to certain business models. By way of the Federal Act on the Adaptation of Federal Law to Developments in the Technology of Distributed Electronic Registers ("**DLT Act**"), in 2021, the licence was expanded to, and is therefore required for, the business of collective custody of cryptocurrencies.

In addition, the DLT Act provides for a new regulatory licence type in the FinMIA for the operation of a DLT trading facility, defined as a professionally operated venue for the multilateral trading of DLT securities. According to Swiss law, DLT securities (from a regulatory point of view) include (a) register value rights in the meaning of art. 973*d* of the Swiss Code of Obligations, and (b) other value rights that are held on electronic registers and enable the creditors, but not the debtor, to dispose over their rights using technological processes.

In the insurance sector, the recently revised ISA, which entered into force in 2024, provides for a competence of FINMA to exempt small insurance undertakings with innovative business models under certain conditions from insurance supervision if this serves the sustainability of the Swiss financial market and the interests of the insured are safeguarded (regulatory sandbox in the insurance/insurtech sector).

3.3 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

The introduction of the fintech legislation (see question 3.2) reduced certain regulatory hurdles for fintech businesses in Switzerland. In general, it can also be said that the Swiss inbound cross-border regulatory regime for financial services is fairly liberal in comparison to international regulation. Many Swiss financial market regulatory laws do not apply to fintech (and other) businesses that are domiciled abroad and serve customers in Switzerland on a pure cross-border basis, *i.e.* without employing persons permanently on the ground in Switzerland or by frequent travel to Switzerland. Notably, the BankA, FinIA and AMLA apply only to foreign operators that have established a relevant physical presence in Switzerland, *e.g.* a branch or representative office. That said, cross-border operators that are not regulated in Switzerland should refrain from creating an (inaccurate) appearance of "Swissness", *e.g.* by using a ".ch" domain or referring to Swiss contact numbers or addresses (or such factors in combination). However, the Swiss financial services regulation pursuant to the FinSA also captures foreign financial service providers that service clients in Switzerland from abroad on a pure cross-border basis; a significant departure from the otherwise liberal regulatory inbound regime, albeit limited to certain defined types of financial services such as investment advice, investment management, the receipt and transmission of orders and the purchase and sale of financial instruments, as well as specific lending activities in this context. Separately, it must be noted that some areas of Swiss financial regulation are more restrictive with regard to cross-border activities, notably the regulation of collective investment schemes as well as insurance regulation and consumer credit regulation.

3.4 How is your regulator approaching the challenge of regulating the traditional financial sector alongside the regulation of big tech players entering the fintech space?

The Swiss Federal Council instructed the State Secretariat for International Finance to review the current regulatory framework and submit amendments to the financial market legislation with regard to innovative business models of financial institutions. The focus is, *inter alia*, on the fintech licence (see questions 3.2 and 3.3) and whether it should be amended to include payment service providers (including stablecoin) and providers of cryptoassets. Additional topics to be reviewed are Green Fintech or further use of DLT. The bill is currently being drafted and is to be submitted for public consultation in 2025 (see Federal Council, Digital finance: areas of action 2022+, February 2022, Appendix).

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

Swiss data protection law is set forth in the FADP and the implementing Data Protection Ordinance ("**DPO**"). The revised FADP and DPO entered into force on 1 September 2023. The main goal of the revision was to adapt Swiss data protection legislation to the changed technological and social conditions and, in particular, to improve the transparency of data processing and strengthen the rights and self-determination of data subjects. Furthermore, the revision served to align Swiss data protection legislation with the requirements of the General Data Protection Regulation (EU) 2016/679 of the EU ("**GDPR**"), as this was a key element to ensure continued EU recognition of Switzerland as a third country with an adequate level of data protection in order for cross-border data transfers to remain possible in the future without further protective measures. Fintech firms are subject to the FADP if they process personal data in Switzerland. In this context, the mere storage of personal data on a server in Switzerland is sufficient to trigger the applicability of the FADP. It is worth mentioning that Swiss data protection law is based on an "opt out" model, meaning that the processing of personal data is not allowed against the express wish of a data subject, but the consent of a data subject is, generally, not a requirement for lawful processing (subject to specific rules regarding the processing of particularly sensitive personal data). Recently and following the expansion of AI-supported data processing, the Federal Data Protection and Information Commissioner ("**Commissioner**") stated that the FADP is also directly applicable to its use (Commissioner, Current data protection legislation is directly applicable to AI, 9 November 2023).

A fintech firm (as with other businesses) processing personal data in Switzerland must do so in accordance with the following data processing principles: good faith; proportionality; purpose limitation; transparency; accuracy; data security; and lawfulness. This means personal data may only be processed for a specified and legitimate purpose (it is not permitted to collect personal data for unknown future purposes in bulk), the purposes, controller and recipients of the data must at least be transparent upon collection of the personal data (under the revised FADP, companies have an active duty to inform data subjects of all processing activities; the FADP sets out the minimum information that must be provided) and only the personal data necessary to achieve the purpose may be processed. The personal data should only be accessed on a strict need-to-know basis and deleted once it is no longer required for the purpose for which it was collected (subject to statutory retention duties). The revised FADP introduces additional duties that impact fintech firms processing personal data in Switzerland, similar to the duties under the GDPR. Fintech firms (as with other businesses) have to (i) maintain a register of all data processing activities (with certain exemptions), (ii) report certain data breaches to the Commissioner and, in certain cases, the affected data subjects, (iii) actively inform all data subjects of all data processing activities (*i.e.* through a detailed privacy policy) and, in certain circumstances, and (iv) conduct a so-called "data protection impact assessment" (*i.e.* a risk assessment) for high-risk processing activities. Furthermore, the processing of personal data by third-party service providers on behalf of a fintech firm is subject to the conclusion of a data processing agreement between the fintech firm and the third-party service provider. The data processing agreement should, in particular, ensure that the third-party service provider may only process the personal data for the same purposes as the fintech firm and that the third-party service provider ensures at least the same level of data security (by implementation of state-of-the-art technical and organisational data security measures). The parties should also ensure strict confidentiality, where possible and necessary. In particular, a fintech firm must ensure that consent of the affected customers is obtained if the fintech firm is subject to statutory or contractual confidentiality duties that would otherwise prevent the engagement of third-party service providers. Under the FADP, third-party services providers are, furthermore, required to obtain the fintech firm's prior consent if the third-party service provider wants to engage sub-processors for the processing activities it is carrying out on behalf of the respective fintech firm. For the requirements regarding cross-border data transfers, see question 4.2 below.

Finally, companies must ensure that they have implemented processes to allow data subjects to exercise their rights in accordance with the FADP (in particular, the right to information/access, the right to correction of inaccurate/wrong personal data and the right to deletion of inaccurate/wrong personal data). The revised FADP introduces the right to data portability, similar to the GDPR.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

Swiss data privacy laws apply to any natural or legal person who processes personal data, if the processing takes effect in Switzerland or impacts individuals in Switzerland, respectively (*e.g.* if personal data is collected or stored in Switzerland or the fintech firm offers products or services to data subjects in Switzerland). Therefore, the activity of processing of personal data on equipment located in Switzerland is, in principle, within the scope of the FADP (see question 4.1). This is particularly relevant for foreign fintech firms that are processing personal data in Switzerland through branch offices or third-party service providers.

The FADP prohibits international data transfers if such a transfer could seriously endanger the privacy of the data subjects concerned. This could be the case particularly if personal data is disclosed to a country where the local legislation does not guarantee an adequate protection of personal data, *e.g.* India, China or the U.S. in case of non-certified companies. The Swiss Federal Council is the competent authority to issue binding decisions on the adequacy of a foreign country's data protection laws. The Federal Council has published a binding list of countries that provide an adequate level of data protection in annex 1 of the DPO. In particular, all EU Member States are deemed to meet the requirement of adequate data protection rules for the processing of personal data of individuals. If personal data is disclosed to a company in a country that does not provide an adequate level of data protection, other measures must be implemented to justify such a transfer.

In January 2024, the EU confirmed that Switzerland offers an adequate level of data protection, meaning that personal data will continue to circulate from the EU and the EEA to Switzerland without further need for guarantees. Similarly, later in August 2024, the Swiss-U.S. Data Privacy Framework was approved. Switzerland can transfer personal data to self-certified U.S.-based companies without any additional guarantees.

An important means to secure adequate protection for transfers to other countries is the use of standard contractual clauses ("**SCCs**") for the transfer of personal data to third countries issued by the European Commission, adapted to Swiss law requirements, or other contractual clauses explicitly recognised by the Commissioner. In June 2021, the European Commission published the revised SCCs, which were recognised by the Commissioner for Switzerland some weeks later. Before signing these new SCCs, Swiss companies need to implement the requirements published by the Commissioner (*e.g.* in a Swiss appendix) and they need to assess on a case-by-case basis whether the SCCs are actually suitable for ensuring appropriate protection of the transferred personal data or whether supplementary measures need to be in place in addition to the SCCs (a so-called "data transfer impact assessment"). In particular, Swiss companies exporting data need to evaluate on a case-by-case basis whether the laws in the receiving country relating to lawful data access by foreign public authorities (*e.g.* for national security or criminal investigation purposes) and data subject rights are compatible with Swiss data protection law and Swiss constitutional principles. Furthermore, international data transfers between entities of the same group are permitted if so-called "binding corporate rules" have been adopted by the entities and approved by the Commissioner. Under the FADP, the Commissioner must be notified of the use of model contracts (except if SCCs are used) for international transfers and binding corporate rules need to be approved by the Commissioner or another competent authority domiciled in a country that provides an adequate level of data protection prior to any transfers. Another option is to obtain explicit consent for the transfer from the data subject whose data is being transferred for individual cases. Companies are also permitted to transfer personal data abroad if it is necessary, for the respective company to establish, exercise or enforce legal claims before a foreign court or authority in a specific case, or if the transfer is directly connected to the conclusion or performance of a contract. The direct collection of personal data from a data subject in Switzerland by a fintech company based outside of Switzerland is not considered an international data transfer.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

The sanctions pursuant to the old FADP were moderate but have since been extended significantly pursuant to the revision of the FADP in 2023:

- **Civil law sanctions**: As under the old FADP, if the personality of a data subject has been violated (*e.g.* if personal data is not processed in compliance with the general data protection principles, personal data is disclosed to a third party without consent, a legal basis or an overriding interest, or if personal data is processed despite the data subject's objection), then the data subject can lodge a civil claim. A data subject can file a request for an interim injunction against unlawful data processing. It is, *inter alia*, also possible to lodge a claim for correction or deletion of data or a prohibition on the disclosure of data to third parties. In addition, a data subject is entitled to compensation for actual damages caused by unlawful processing or other breaches of the FADP.
- **Criminal law sanctions**: Under the revised FADP, the catalogue of criminal offences that can lead to a fine in case of wilful conduct has been extended (*e.g.* non-compliance with the requirements to engage a data processor or transfer personal data abroad, intentionally providing wrong or incomplete information, failure to comply with the minimum data security standards defined in the DPO, or if a company does not comply with the minimum standards of data security defined by the Federal Council) and the fines that can be imposed have been increased to up to CHF 250,000 (previously CHF 10,000). The Commissioner will still not have the competence to issue such fines but will be entitled to file a criminal complaint. The cantonal criminal law enforcement

agencies are competent for issuing fines and they only become active in case they receive a complaint.

Furthermore, the Commissioner now has the competence to issue binding orders against companies processing personal data in breach of the revised FADP. The Commissioner will, *inter alia*, have the power to restrict, suspend or terminate processing activities or to require companies to comply with their duties under the revised FADP. If companies do not comply with such binding orders, they can face a fine of up to CHF 250,000. Furthermore, the revised FADP has extended the catalogue of criminal offences.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

Switzerland does not provide for comprehensive cyber security legislation. However, specific objects and specific industries are regulated with regard to cyber security by way of a number of provisions in different acts and initiatives, *inter alia*:

- Under the revised FADP, the Federal Council has issued minimum standards of data security in the revised DPO that companies processing personal data will at least have to meet. Furthermore, the revised FADP provides for an obligation to notify the Commissioner and, where necessary, the affected data subjects of certain personal data breaches.
- Fintech firms subject to the supervision of FINMA also have a duty to report certain cyber security incidents to FINMA in accordance with art. 29 para. 2 of the Financial Market Supervision Act (see also FINMA guidance paper 05/2020). Further, on 7 June 2024, FINMA published guidance paper 03/2024 regarding findings from FINMA's cyber risk supervision, clarification of FINMA guidance paper 05/2020 and scenario-based cyber risk exercises.
- The Criminal Code provides for statutory offences, which protect IT infrastructure against cyber crime (*i.e.* against the unauthorised obtaining of data, unauthorised access to a data processing system, data corruption, *etc.*).
- The National Cyber Security Centre is Switzerland's competence centre for cyber security and thus the first contact point for businesses, public administrations, educational institutions and the general public for cyber issues. It is responsible for the coordinated implementation of the National Cyberstrategy (https://www.ncsc.admin.ch/ncsc/en/home/dokumentation/medienmitteilungen/newslist.msg-id-94237.html), which was adopted by the Federal Council on 5 April 2023.
- The Federal Department of Defence, Civil Protection and Sport established a Cyber Defence Campus that commenced operations in January 2019, focusing on early detection and observation of current developments in the cyber world and on the development of action strategies in this respect.
- On 5 April 2022, the Swiss Financial Sector Cybersecurity Center was founded. It aims to enhance the financial sector's ability to withstand cyber security risks – its cyber resilience – and promote a partnership between financial institutions and authorities on strategic and operational issues. The 55 founding members include banks, insurers and industry associations.
- The Federal Act on Information Security ("**ISG**") "*Bundesgesetz über die Informationssicherheit beim Bund*") was adopted on 18 December 2020 and entered into force on 1 January 2024. The ISG requires federal authorities subject to the ISG to report security incidents to the competent authority ("*Fachstelle BS*"). Additionally, the ISG provides the basis for a reporting obligation for critical infrastructures in case of cyber attacks. The "Cybersecurity Ordinance" implementing the ISG's reporting obligation is to be submitted to the Federal Council for approval in 2025.
- In 2011, Switzerland ratified the Budapest Convention (Council of Europe Convention on Cybercrime of 2001), which fosters increased and rapid international cooperation in the fight against cyber crime.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

The Swiss rules on prevention of money laundering and terrorist financing are set forth in the AMLA, the Anti-Money Laundering Ordinance, ordinances and circulars of FINMA as well as the rulebooks of recognised self-regulatory organisations. Generally speaking, AML regulation applies to so-called "financial intermediaries" (and partially to merchants if they accept large sums in cash, *i.e.* more than CHF 100,000, as payment in commercial transactions). On the one hand, certain prudentially regulated entities, such as banks, securities firms, fund management companies, life insurance undertakings and, with the introduction of the DLT Act, DLT trading systems, qualify as financial intermediaries based on their regulatory status (*per se* financial intermediaries). On the other hand, any otherwise unregulated person or entity can qualify as a financial intermediary by virtue of its professional activities. In general, this refers to any person that, on a professional basis, accepts or holds on deposit third-party assets or that assists in the investment or transfer of such assets (*e.g.* money transmitters or crypto exchanges, but also, depending on the particulars of the case, issuers of cryptocurrencies). The DLT Act also closed potential loopholes in the area of money laundering.

Many fintech business models include elements that lead to their operators qualifying as financial intermediaries in the meaning of the AMLA. If this is the case and no exemptions are available, the fintech firm is required to join a recognised Swiss AML self-regulatory organisation. In this context, the firm is required to comply with certain duties on an ongoing basis, in particular the duty to verify the identity of customers and the beneficial ownership in the relevant assets as well as documentation, reporting and audit requirements. In a push to eliminate barriers for technology-based business models, FINMA introduced a circular that enables onboarding of customers via digital channels, *e.g.* by means of video transmission and other forms of online identification. This model has also been replicated in the rulebooks of recognised AML self-regulatory organisations.

The AMLA includes specific criminal provisions sanctioning the violation of duties under AML regulation. In addition, certain offences in the area of corruption and money laundering are set forth in general criminal law, meaning that they apply to fintech (and other) firms regardless of their qualification as a financial intermediary.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction (for example, AI)?

Aside from financial regulation in various areas (see questions 3.1 *et seqq.*) and the data protection regime (see questions

4.1 *et seqq.*), fintech firms have to comply with general corporate and civil law provisions as well as with Swiss competition law on the basis of the Unfair Competition Act ("**UCA**"). Furthermore, depending on the specific business model, the Telecommunications Act may apply.

Although there is currently no particular legislation concerning AI in place in Switzerland, the Swiss Federal Council has recognised the potential and risks of the technology and has commissioned an overview over possible regulatory approaches to AI based on current Swiss law, the EU's AI Act and the Council of Europe's AI Convention. The overview will act as basis for a potential regulatory proposal in 2025. At the supervisory level, FINMA, on 18 December 2024, published a guidance paper on governance and risk management for financial institutions using AI.

5 Technology

5.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Fintech inventions are predominantly protected either by copyright law or by patent law. Assuming that fintech products are typically based on computer programs – or more broadly, software – they are protected by copyright if they possess an individual character (*i.e.* if they are original). In practice, this criterion relates to the novelty or absence of triviality in comparison to existing computer programs. Copyrights in computer programs cover the source code and object code. However, the underlying ideas and principles as well as algorithms and formulas used in and for computer programs are not protected. Copyright protection in computer programs expires 50 years after the author deceases. Software that is integral to an invention may further be patented for a period of 20 years. However, computer programs *per se* are excluded from patentability.

In addition, the design of fintech products (*e.g.* if implemented in portables, wearables, *etc.*) may be protected for a maximum period of 25 years by design rights. Fintechs may also seek protection under the Trademark Act and register graphical representations for the distinction of the company's products or services during a period of 10 years (renewable). Marketable products are further protected by the UCA against technical reproduction processes and exploitation without appropriate effort on the part of the reproducing party. Unlike the laws of EU Member States, Swiss law does not provide for database rights.

The protection of fintech inventions or innovation as trade and business secrets may also be based on statutory or contractual obligations.

5.2 Please briefly describe how ownership of IP operates in your jurisdiction.

As a general rule, the primary owner of the copyright is the author, *i.e.* the natural person who created the work. Computer programs – or more broadly, software – are works as defined by Swiss copyright legislation. The copyright automatically vests in the author and exists informally upon the moment of intellectual creation; registration is not required.

In case a computer program has been created under a contractual employment relationship in the course of fulfilling professional duties and contractual obligations, the employer alone is entitled to exercise the exclusive rights of use. Similar statutory rules apply as regards to designs and inventions (patents). However, unlike the situation regarding computer programs, the acquisition of inventions and designs is subject to the payment of an additional compensation to the employee if they have been created outside the performance of contractual obligations (mandatory claim). Outside employment relationships, the IP rights (copyrights) or the right to apply for IP protection (patents, designs) vest in the person who has created the work, inventions or design.

5.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

In Switzerland, only (Swiss) national IP rights are enforceable. This also applies if an IP right has been applied for via an international application system (*e.g.* WIPO's international patent system PCT or the international trademark system) or regional application system (*e.g.* patent applications under the European Patent Convention) and if Switzerland was chosen as the designated state in respective applications (the resulting rights are national rights, not multi-jurisdictional rights).

5.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

IP rights are, as a general matter, exploited/monetised by means of assignment (transfer), licensing, and the granting of security interests. There are slightly different formalities for the various types of IP rights in respect of assignments and licences. Subject to the assignment of copyrights, an assignment must be in writing and signed by the assignor. The recording of the change of ownership in the relevant IP register is not a requirement for the assignment and transfer to the assignee but may be advisable since a change of ownership not recorded in the register is not relevant for persons who have acquired IP rights in good faith. The written form is not required for licence agreements in general.

Both the licence agreements and the pledge agreements pertaining to trademarks, patents and designs may be entered in the relevant IP register at the request of one of the contractual parties. As a consequence, they become binding on any rights related to trademarks, patents and designs subsequently acquired.

Daniel Flühmann is a partner in Bär & Karrer's banking & insurance practice area and co-heads the fintech practice. His work focuses on banking, insurance, investment funds and financial market laws. He advises Swiss and foreign banks, securities firms and fintechs as well as insurance companies and financial services providers such as e-money institutions and payment services providers on regulatory and contract law matters and in the context of enforcement proceedings.
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