Do I need a Swiss licence?

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The question arrives in many forms. A Zug GmbH wants to sell tokens to the public, a wallet developer wants to add a swap function, a family office wants to manage the crypto holdings of three friendly families, a Singapore exchange wants a Swiss subsidiary to onboard European clients. In each case the Swiss answer is reached by passing the business model through a cascade of statutes, because Switzerland has no single "crypto licence". The DLT Act of 2020 amended ten existing statutes and created one new licence category, the DLT trading facility, which remains rare in practice.[1] Everything else is a question of fitting a new activity into categories written for banks, securities firms, asset managers and payment systems.

The first filter is always anti-money-laundering law. A business that accepts, holds, transfers or exchanges crypto assets for third parties on a professional basis is a financial intermediary under Art. 2 para. 3 of the Anti-Money Laundering Act (AMLA). It must either join a self-regulatory organisation (SRO) or hold a FINMA licence before it starts.[2] That duty is independent of the prudential licence questions that follow. It is where most start-ups actually begin. The second filter asks whether the business takes deposits from the public. A token held for a client in a way that gives the client only a contractual claim is a deposit under Art. 1 of the Banking Act (BankA) unless an exemption applies, as is a stablecoin issued against a redemption

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promise.[3] The third filter is the Financial Institutions Act (FinIA), which catches anyone who manages assets on behalf of clients with a power of attorney, including crypto-only portfolio managers.[4] The fourth asks whether the tokens are securities, because dealing in securities for others or operating a venue for them engages the securities firm licence and the Financial Market Infrastructure Act (FinMIA).[5] The fifth concerns collective investment: pooling investor money for common investment with external management is a collective investment scheme whatever the technology.[6]

The sequence

1. Does the business hold, transfer, exchange or otherwise deal with crypto assets belonging to third parties, on a professional basis, in or from Switzerland? If yes, it is a financial intermediary and must affiliate with an SRO before commencing. If the only activity is developing and publishing software without any power of disposal over client assets, it is probably outside the AMLA, although a front-end operator who routes client orders or earns transaction fees is at risk.[7]
2. Does the business accept crypto assets or fiat from more than twenty persons, or advertise to the public for that purpose, in a way that leaves the counterparty with only a claim to redelivery? If yes, this is deposit-taking unless the assets are held in a manner that qualifies them for segregation under Art. 16 no. 1bis BankA and the business does not use them for its own account. The fintech licence under Art. 1b BankA permits deposits up to CHF 100 million without interest and without investment, and the sandbox under Art. 6 BankO permits up to CHF 1 million without any licence.[8]
3. Does the business decide, on the client's behalf and under a power of attorney, how client crypto assets are invested? If yes, it is a portfolio manager under Art. 17 FinIA and needs a FINMA licence plus affiliation to a supervisory organisation (AO). Advice without a power of disposal is outside FinIA, although it may trigger FinSA conduct rules and registration as a client adviser.[9]

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4. Are the tokens securities (standardised, suitable for mass trading, embodying a claim or membership right)? If yes and the business trades them for others, underwrites them or operates a market, it needs a securities firm licence or a trading-venue authorisation. Payment tokens and pure utility tokens are not securities under FINMA's taxonomy, which is why most spot exchanges in Switzerland operate as SRO members without a FINMA licence.[10]
5. Does the business pool assets from several investors for collective management? If yes, the CISA applies to the vehicle and FinIA to its manager, subject to the de minimis rules for managers of collective assets and the qualified-investor regime.[11]
6. Does the business issue a token redeemable at par in fiat or pegged by a reserve? If yes, FINMA treats the issuer as a deposit-taker or the arrangement as a collective investment, with the bank-guarantee construction examined critically in FINMA's 2024 guidance.[12]
7. Does the business offer the tokens to the public with documentation that functions as a prospectus? If the tokens are securities, Art. 35 ff. FinSA apply with the exemptions in Art. 36 and 37.[13]

Step	Question	If yes	If no	Where explained
1	Power of disposal over third-party crypto, professional basis	SRO affiliation before start (AMLA)	Probably outside AMLA; check front-end and fee exposure	Part F, Ch. II
2	Deposits from the public or redemption promise	Banking licence, fintech licence (Art. 1b) or sandbox; or segregation under Art. 16 no. 1bis	No banking question	Part E, Ch. II
3	Discretionary management with power of attorney	Portfolio manager licence (FinIA) + AO	Advice only: FinSA conduct rules	Part E, Ch. III

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Step	Question	If yes	If no	Where explained
4	Tokens are securities and traded for others	Securities firm licence or trading venue (FinMIA)	Spot exchange of payment tokens: SRO only	Part E, Ch. V
5	Pooling for collective investment	CISA vehicle + licensed manager	Direct holdings	Part E, Ch. VI
6	Stablecoin or par redemption	Bank or collective scheme analysis; FINMA ruling	Payment token	Part E, Ch. VII
7	Public offer of securities tokens	Prospectus (FinSA Art. 35) unless exempt	Utility or payment token: no prospectus	Part E, Ch. IV

The ruling question

A founder who has walked through the sequence and arrived at an unclear answer on step 2, 4 or 6 should consider a formal enquiry to FINMA under the ICO Guidelines. FINMA answers with a non-binding assessment letter that in practice banks, auditors and SROs accept as the basis for onboarding. The process takes two to four months when the file is complete and is charged by the hour.[14]

Zug perspective

A Zug start-up can usually begin operating within three months by taking three steps in parallel. It incorporates the GmbH or AG with the commercial register, files the SRO application with VQF or another SRO in Zug or Zürich and prepares the FINMA enquiry if any step of the sequence above is doubtful. You can start the SRO process before incorporation is complete, because the SRO examines the persons and the business plan first. What you cannot do is accept a single client's tokens before the SRO has admitted you.

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Notes

1. Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology of 25 September 2020 (AS 2021 33), in force in stages on 1 February and 1 August 2021; see Part C, Chapter V. ↩
2. Anti-Money Laundering Act of 10 October 1997 (AMLA; GwG, SR 955.0), Art. 2 para. 3 and Art. 14; the professional-basis thresholds are set out in Art. 7 ff. of the Anti-Money Laundering Ordinance (AMLO; GwV, SR 955.01); see Part F, Chapters I and II. ↩
3. Banking Act of 8 November 1934 (BankA; BankG, SR 952.0), Art. 1 para. 2 and Art. 1a; Banking Ordinance (BankO; BankV, SR 952.02), Art. 5; see Part E, Chapter II. ↩
4. Financial Institutions Act of 15 June 2018 (FinIA; FINIG, SR 954.1), Art. 2 para. 1 and Art. 17 ff.; see Part E, Chapter III. ↩
5. Financial Market Infrastructure Act of 19 June 2015 (FinMIA; FinfraG, SR 958.1), Art. 2 lit. b and bbis and Art. 73a ff.; FinIA Art. 41 ff.; see Part E, Chapter V. ↩
6. Collective Investment Schemes Act of 23 June 2006 (CISA; KAG, SR 951.31), Art. 7; see Part E, Chapter VI. ↩
7. FINMA's practice on non-custodial wallet providers and DeFi front-ends is described in Part F, Chapter II and Part E, Chapter IX; the Federal Council's report on DeFi of 2022 is discussed in Part C, Chapter VI. ↩
8. BankA Art. 1b and Art. 16 no. 1bis; BankO Art. 5 para. 3 lit. c (settlement accounts) and Art. 6 (sandbox); FINMA Guidance 08/2023 of 20 December 2023 on staking; see Part E, Chapters II and VIII. ↩
9. FinIA Art. 17 para. 1 and Art. 61 ff.; Financial Services Act of 15 June 2018 (FinSA; FIDLEG, SR 950.1), Art. 28 ff. on the register of client advisers; see Part E, Chapters III and IV. ↩

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10. FINMA Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs) of 16 February 2018, section 3; Supplement of 11 September 2019; see Part E, Chapter I. ↩
11. CISA Art. 7 and Art. 10; FinIA Art. 24 para. 2 (de minimis thresholds for managers of collective assets); see Part E, Chapter VI and Part P, Chapter VI. ↩
12. FINMA Guidance 06/2024 of 26 July 2024 on stablecoins; see Part E, Chapter VII. ↩
13. FinSA Art. 35–37; see Part E, Chapter IV. ↩
14. FINMA ICO Guidelines of 16 February 2018, Annex (minimum information for enquiries); FINMA Ordinance on the Levying of Fees and Charges of 15 October 2008 (FINMA-GebV, SR 956.122), Art. 8; see Part E, Chapter XII. ↩

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