FINMA's taxonomy and the licence cascade

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FINMA classifies tokens by their economic function into payment tokens, utility tokens and asset tokens, with hybrids possible, a scheme it announced in its ICO Guidelines of 16 February 2018 and refined in the stablecoin supplement of 11 September 2019.[1] Payment tokens are not securities but their issuer is a financial intermediary under the AMLA. Asset tokens are securities, so that trading them professionally requires a securities-firm licence and offering them publicly engages the prospectus rules of the Financial Services Act (FinSA; FIDLEG). Utility tokens are outside securities law only if their sole purpose is to give access to a service that is already usable at the time of issue. A utility token with an investment component is treated as an asset token. Part E, Chapter I analyses the taxonomy and its legal weight.

The classification maps onto a cascade of licences that Swiss law applies by activity. The table summarises the cascade as it applies to digital-asset businesses. Part E treats each licence in a chapter of its own.

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Activity	Licence or status	Act	Supervisor
Exchange of crypto for fiat or crypto, custody of segregated tokens, payment processing	Financial intermediary (AML only)	AMLA Art. 2 para. 3	SRO (VQF, SO-FIT, PolyReg, ARIF, OAD-FCT)
Accepting public deposits above CHF 1 million, non-segregated custody	Bank licence or fintech licence (Art. 1b BankA, deposits up to CHF 100 million, no interest, no investment)	BankA	FINMA
Deposits up to CHF 1 million, neither invested nor interest-bearing	Sandbox exemption	Art. 6 BankO	none (AML still applies)
Trading asset tokens for clients, underwriting, market making	Securities firm	FinIA	FINMA
Managing client token portfolios	Portfolio manager	FinIA Art. 17 ff.	AO under FINMA
Managing a collective investment scheme	Manager of collective assets or fund management company	FinIA, CISA	FINMA
Operating a venue for ledger-based securities with retail access	DLT trading facility	FinMIA Art. 73a ff.	FINMA
Issuing a stablecoin with a redemption claim	Bank (or bank default guarantee), or collective investment, or payment system	BankA, CISA, FinMIA Art. 81	FINMA

The deposit question dominates the cascade for crypto businesses. Accepting a customer's tokens without segregating them and holding them ready at all times is accepting a deposit, which requires a banking licence unless the business qualifies for the fintech licence or the sandbox. The fintech licence under Art. 1b of the Banking Act (BankA; BankG), in force since 1 January 2019, allows acceptance of

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public deposits up to CHF 100 million provided they are neither invested nor interest-bearing. It was designed with crypto custodians and payment firms in mind.[2] Stablecoin issuance is a deposit business unless structured otherwise. FINMA's 2024 guidance confirmed that an issuer may avoid the banking licence by obtaining a default guarantee from a bank meeting FINMA's minimum requirements. At the same time it warned of the risks that such guarantees create for the guaranteeing bank and required that every holder be identified.[3]

Zug perspective

You can start a crypto business in Switzerland without a FINMA licence if the business model keeps the customer's tokens segregated, never pools them in the business's own wallet, and never promises a return. Such a business needs only to join a self-regulatory organisation under the AMLA, which typically takes a few months, and can then exchange, broker and hold tokens for customers. The moment the model requires pooling, lending, staking on the business's own account or a fixed return, the business crosses into the Banking Act and the timeline and capital requirement change by an order of magnitude. A founder should therefore design the custody model before choosing the entity, because the custody model determines the licence. Part E, Chapter XII describes the month-one steps.

Notes

1. FINMA, media release of 16 February 2018 and "Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)" of the same date; FINMA, supplement to the ICO guidelines on stable coins of 11 September 2019. ↩
2. Banking Act (SR 952.0), Art. 1b, in force since 1 January 2019; Banking Ordinance (SR 952.02), Art. 6 (sandbox exemption up to CHF 1 million). ↩
3. FINMA Guidance 06/2024 of 26 July 2024, sections on the default guarantee under Art. 5 para. 3 lit. f BankO and on identification of holders under the AMLA. ↩

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