Federal Council adopts implementing provisions for new fintech licence

21 December 2018 | Contributed by Meyerlustenberger Lachenal

Introduction

From 1 January 2019 companies that operate beyond the core activities characteristic for banks will be able to accept public funds of up to Sfr100 million on a professional basis subject to simplified requirements. During its meeting on 30 November 2018, the Federal Council set into force an amendment to the Banking Act to promote innovation in the fintech area. Moreover, crowdlending should also be possible for private consumers within the licence-exempt area of the sandbox.

In February 2017 the Federal Council proposed three measures for consultation to promote innovation in the financial sector and to remove barriers to market entry for fintech firms. Two of these – the extension of the holding period for settlement accounts and an authorisation-exempt innovation area (the ‘sandbox’) – have already been regulated at ordinance level and came into force on 1 August 2017. On 1 January 2019 the third measure – a new authorisation category for fintech companies with simplified requirements in the Banking Act – will come into force.

Impact

With the new measure, fintech companies that obtain the new authorisation category under the licence can accept public funds of up to Sfr100 million, providing that they neither invest nor pay interest on these funds. The collected public funds must either be segregated from the fintech company’s own funds or at least be recorded in a way that they can be reported separately from the fintech company’s own funds at any time. The latter option requires the fintech company to be subject to an ordinary audit according to Article 727 of the Swiss Code of Obligations.

Such fintech licences could be of use for crowdlending platforms, trading platforms, payment services providers and many other business models. Such business models are typically based on service fees.

In contrast to such fintech companies, companies with a full bank licence use the interest margin business model by accepting public funds in an undefined amount for payment of lower interest rates (the passive side of the balance sheet) and by granting loans to an undefined number of persons for receiving higher interest rates (the active side of the balance sheet). This interest margin business model of banks is of a high-risk nature because the collected funds from the public are typically of a short-term nature and the granted loans are typically of a long-term nature, which could result in a bank run.

As the service fee model of fintech companies is less risky than the interest margin business model of full banks, the requirements for fintech companies are much lower than the ones for banks. In particular, fintech companies will not be subject to the complex capital and liquidity requirements of banks and will have substantially reduced accounting and auditing requirements. The minimum capital requirement of 3% of the collected public deposits, but at least Sfr300,000, is also much
lower than for full banks. However, fintech companies will have to inform their clients in writing that their deposits do not fall within the scope of the deposit protection system, and inform them about the risks associated with the fintech company's business model, services and technologies that are used. Further, fintech companies must have their registered office and their actual administration and management in Switzerland. The board of directors must be composed of at least three members and at least one-third of its members must be independent from the executive management.

The simplified requirements will be further detailed by amendments to the Banking Ordinance, the Auditor Oversight Ordinance and the Financial Market Supervisory Authority (FINMA) Fees and Charges Ordinance. Further, FINMA has published specific guidelines for the application process for this new fintech licence and on 1 January 2019 FINMA will amend its Anti-money Laundering Ordinance to ensure fintech companies comply with anti-money laundering standards. In general, all financial institutions are subject to similar anti-money laundering requirements. However, as the new fintech licence will particularly affect smaller institutions, FINMA is introducing some organisational relaxations for low-risk institutions with gross revenues less than Sfr1.5 million.

Comment

As a further change to the Banking Ordinance, the sandbox will be extended to include crowdlending business models, whereby public funds of up to a total amount of Sfr1 million will be able to be brokered in the future not only for commercial and industrial purposes but also for private consumption. This extension is possible because crowdlending will eventually be subject to the Consumer Credit Act. As it will take time to implement these rules, the changes to consumer credit law and the associated amendment of the Banking Ordinance will not come into force until 1 April 2019.

For further information on this topic please contact Alexander Vogel or Reto Luthiger at Meyerlustenberger Lachenal by telephone (+41 44 396 91 91) or email (alexander.vogel@mll-legal.com or reto.luthiger@mll-legal.com). The Meyerlustenberger Lachenal website can be accessed at www.mll-legal.com.

The materials contained on this website are for general information purposes only and are subject to the disclaimer.