

## Crowdfunding

Crowdfunding is a way of collecting money from many sources for the purpose of financing projects. Where this involves an investment, those providing the funds will face the usual risks to which investors are exposed. Crowdfunding platform providers and project developers must verify whether they require a licence from FINMA before taking up any such activities. The revised Banking Ordinance, which came into force on 1 August 2017, relaxes certain legal requirements for financial market participants in ways that also benefit crowdfunding.

The term “crowdfunding” refers to the financing of a project by a large number of donors (project financiers). In other words, a crowd will sponsor the project developers, who generally post their projects on an online crowdfunding platform. A project financier who is interested in a posted project then has the opportunity to support it financially via the platform.

Crowdfunding is not subject to any specific regulatory requirements under Swiss law, which means that all currently valid laws governing financial markets apply. Because business models relying on crowdfunding vary greatly, it is necessary to clarify on a case-by-case basis whether a licence is required.

### **Platform operators: careful review of licensing requirements**

In principle, crowdfunding platforms used by project financiers to allocate funds to project developers directly are not subject to licensing requirements under financial market legislation. This also applies when funds are channelled through a third party (e.g. an escrow agent) who is independent of the project developers, platform operators or project financiers.

However, platform operators must verify whether they need a licence under the Banking Act whenever project financiers’ funds are channelled through their accounts. If a crowdfunding platform operator accepts funds on a commercial basis and, rather than forwarding them to the project developer within 60 days (prior to 1 August 2017 the maximum period allowed in practice was 7 working days), holds them for some time (in order, for instance, to ensure that the amount is available at the end of a lengthy collection period), a licence under the Banking Act must be obtained prior to taking up business. From 1 August 2017, a licence is no longer required in such cases if the funds accepted for forwarding do not exceed CHF 1 million, as this is no longer regarded as commercial activity. However, before transferring

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## In principle, platform operators accepting money into their accounts are subject to money laundering provisions.

the funds to the platform, project financiers must be made aware that the platform is not supervised by FINMA and their deposits are not protected. Moreover, the platform is not permitted to invest or pay interest on the funds unless its principal activity is commercial or industrial.

Funds channelled through a platform operator's accounts are generally also subject to money laundering provisions if the operator renders a professional service, because they constitute a payment transaction service that requires a licence. If a platform operator is not already required to have a licence under the Banking Act, they must either obtain a licence from FINMA as a directly supervised financial intermediary (DSFI) or become a member of a self-regulatory organisation (SRO) recognised by FINMA.

### **Project developers: collecting funds may constitute a banking activity**

Project developers may also need FINMA authorisation. A licence under the Banking Act may be necessary if project developers accept funds from project financiers in their own accounts on a commercial basis. This applies in particular if the funds are accepted in the form of third-party capital (e.g. loans). It should also be noted that advertising for funds per se constitutes an activity requiring a licence under the Banking Act. From 1 August 2017, project developers can take advantage of the same licence exemp-

tion as platform operators provided they do not accept funds exceeding CHF 1 million and they meet the other requirements (information requirements, prohibition on investing and paying interest unless their main activity is commercial and/or industrial).

### **Risks for project financiers**

Depending on the business model, there are a number of ways in which financiers can support project developers. For example, a contribution can be made as a donation, or a service can be provided (e.g. delivery of a product) instead of a cash contribution. If, on the other hand, the contribution is intended as an investment that is expected to deliver a return or an increase in value, the project financier bears the risk of loss, in the same way as with any other investment.

### **Investigations by FINMA**

If FINMA receives specific information indicating that an activity relating to crowdfunding is being conducted without FINMA authorisation, membership of an SRO or holding a DSFI licence, it will launch an investigation. If the suspicions are confirmed, FINMA will take corrective measures to restore compliance with the law. This may result in the liquidation of the company in question. Furthermore, any breach of licensing requirements is a criminal offence

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### For more information

This web page contains information on whether a provider has been granted a FINMA licence or is an SRO member.

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