

Example

On principle 1

ICOs and variants thereof should be subject to relevant existing rules (no new regulation necessary).

On principle 2

Formal requirement "Form verifiable by text" instead of "written form".

On principle 3

Risk-based supervisory concepts.

On principle 4

Consumer protection, anti-money laundering legislation.

On principle 5

5a: P2P exchanges on DLT.

5b: Smaller financial market participants may outsource compliance functions.

On principle 6

Archiving in the digital world not only captures documents, but entire processes (to be completed by customers).

No contradictions: BankA promotes fintech, draft revision FADP complicates digital credit check.

On principle 7

Consultation on the results of the authorities' internal blockchain working group. Mixed task forces working on developing new regulations under the lead of the competent authority.

On principle 8

Transparency regulations in fintech template or under FinSA.

On principle 9

Verification of the identity of the contractual partner by analogue or digital means.

On principle 10

Digital platform for FINMA authorisations without change in media.

Please contact us directly to discuss the above or specific projects.

SFTI regulations working group

Properly regulating FinTech

10 principles

The digital world is constantly and rapidly evolving. This development does not stop at borders and particularly affects the highly regulated financial sector. “FinTech”, “RegTech”, “InsureTech”, regardless of the name of technological innovations in the financial sector, these require special attention in the context of legislation and supervision to ensure that the Swiss financial centre is not left behind.

SFTI has established ten principles for the regulation of innovations in the financial sector, which are likely to apply to many other areas as well:

1 New technological possibilities do not necessarily require new regulation

Laws and regulations must only be introduced to the extent necessary and only after a detailed economic, technical and legal analysis. In particular, opportunities and the risks must be assessed and a regulatory impact assessment prepared.

2 Technology-neutral regulation

In order to keep pace with dynamic technical innovations and regulatory trends abroad, technology-neutral wording must be used.

3 Principle-based regulation

Principle-based regulations, which describe the objectives whilst allowing sufficient flexibility as to the individual approach to achieving the objectives, promote innovation and enable meaningful implementation in line with a specific business model.

4 Competition-neutral regulation

Cross-sector laws for the protection of consumers/investors or of the Swiss financial centre are generally applicable without restriction to all market participants. This leads to fair competition, a level playing field, protects the financial centre and prevents regulatory arbitrage.

5 Competition-neutral regulation does not mean protection of possession

On the one hand, technological innovation can give rise to new business models, which can only be implemented in a legally compliant manner by adapting the applicable rules (5a). On the other hand, barriers to market entry must be removed in accordance with the principle of proportionality, whereby organisational obligations in particular should be on a risk-based approach (5b). The new rules must in turn be available to all market participants when they use the same technology (5a) or establish/purchase relevant subsidiaries (5b).

6 Regulation as a concept

“Physical” and “digital” are different media for the same operation, to which the same rules apply. During the initiation and conclusion of contracts, during business transactions and in the enforcement of rights, any difference of treatment based on the media used must be avoided. The requirements of the digital world must be implemented as a consistent global system without contradictions, whereby not only substantive law but also procedural and enforcement law must be adapted. Hurdles recognised for the digital world should be liberalised for the physical world, too. International law must also be taken into account, although excessive regulation is to be avoided.

7 Open door principle

The early involvement of business, science, (supervisory) authorities and potential users in the legislative processes, on the one hand, helps with the required comprehensive analysis and assessment of new possibilities and rules, especially with a focus on practical benefits and feasibility; on the other hand, it gives authorities an insight into the technical possibilities, opportunities and risks and promotes an understanding of the challenges associated with the construction of the digital world.

8 Demand and enable personal responsibility

Innovation should be created first and foremost for the benefit of customers. This must entail taking personal responsibility; which must also be made possible, in particular by creating and maintaining transparency and by providing appropriate information and training (eliminating the information gap).

9 Not everything that is possible is also necessary

The rules applicable to digital solutions should not be much more stringent than for their analogue counterparts, just because they are theoretically (technically) possible.

10 Enable mass market or automated implementation

The implementation of rules should be automated to the fullest extent possible. Ensuring a reasonable cost/income ratio for development and operation as a strategic target is in the interest of maintaining the attractiveness of the Swiss financial centre as a business location. Implemented rules must logically be subjected to an effectiveness test.