

🏠 (<https://www.fma.gv.at/en>) > [Financial Innovation and FinTech \(https://www.fma.gv.at/en/cross-sectoral-topics/fintech/\)](https://www.fma.gv.at/en/cross-sectoral-topics/fintech/)
> FinTech Navigator

FinTech Navigator

Supervisory Law Navigator for FinTechs

▼ Note about the following statements

The following statements refer on the one hand to typical phenomena of commercial life and should be considered to be the basic legal view of the Financial Market Authority (FMA). However, a conclusive and legally binding assessment of a licencing-based or prospectus issue is remains restricted to the specific individual case.

Advice about specific business models and their design is reserved for persons from professions providing advice, such as e.g. lawyers. The FMA is therefore unable to provide advisory services. Enquiries from lawyers to the FMA will only be handled where information about the particular client in question is supplied.

The FMA is not ultimately in the position to decide whether or not a specific transaction requires a prospectus, since this decision is reserved for the ordinary courts pursuant to the Capital Markets Act (KMG).

The FMA is also not the competent authority for the enforcement of the Alternative Financing Act (AltFG – Alternativfinanzierungsgesetz), this competence being held by the local administrative authorities.

The local administrative authorities are also responsible for the enforcement of the relevant provisions in the Commercial Code (GewO – Gewerbeordnung) regarding the activities of insurance mediation by insurance agents and insurance brokers as well as commercial financial advisers.

You are looking to start a business model in the area of...

▼ ...new payment methods and means of payment

There are three supervisory laws that are pivotal with regard to the licencing requirements for such activities: The Payment Services Act (ZaDiG – Zahlungsdienstegesetz), the E-Money Act of 2010 (EGeldG 2010 – E-Geldgesetz) and the Banking Act (BWG – Bankwesengesetz).

Issuance of payment instruments or means of payment

If you are issuing a payment instrument or means of payment, which is accepted by other entities for payment purposes, all three of the aforementioned laws contain provisions for the relevant activities (Article 1 para. 2 no. 4 ZaDiG, Article 1 para. 1 E-GeldG and Article 1 para. 1 no. 6 BWG). With regard to the applicability of these laws, it is particular dependent on the scope of the network – an important exception exists for restricted networks. Further information can be found (in German only) in the [FMA Focus on Alternative Currencies \(https://www.fma.gv.at/fma-themenfokusse/fma-fokus-alternativwaehrungen/\)](https://www.fma.gv.at/fma-themenfokusse/fma-fokus-alternativwaehrungen/).

Technical services

Mit der Nutzung dieser Seite erkläre ich mich damit einverstanden, dass in meinem Browser Cookies gespeichert werden. [Ausblenden](#) [Mehr Informationen über Cookies](#)

[\(https://www.fma.gv.at/impressum/\)](https://www.fma.gv.at/impressum/)

Services that are provided on a purely technical level are not required to have licences. If however, the technical billing service also includes the transfer of funds via your company's accounts, a purely technical service does not exist.

Billing or payment services

Billing or payment services may in all their varied forms constitute activities addressed under law, if the company handles the funds that are transferred (in particular payment services pursuant to Article 1 para. 2 ZaDiG). An exception exists for example for system operators that provide intrinsic added value using paid digital content, (in particular network operators). The European Payment Services Directive II (Directive (EU) 2015/2366), which is currently being implemented, will in the future also cover additional customer information services and payment initiation services, activities which were hitherto considered to be purely technical services.

Online platforms in connection with payments

Online platforms that settle payments in connection with the providing of goods, services or investments (e.g. e-Commerce or crowdfunding platforms) may also be subject to licencing requirements. Certain provisions granting exceptions (such as those for commercial agents pursuant to Article 3 para. 2 no. 3 ZaDiG) may become applicable, although whether such transactions are being conducted on a commercial basis may only be denied on a case-by-case basis. Some online service providers therefore operating by using cooperation agreements with licenced partners, whereby funds are then not transferred through their company's own accounts.

Neither the Payment Services Act nor the E-Money Act 2010 contain provisions for the activities performed by agents. As an agent for new or alternative payment methods and means of payment, you may be subject to a licence requirement, if they are associated with the brokering of deposit-taking business pursuant to Article 1 para. 1 no. 18 point a BWG (for example in the case of an app in conjunction with a specific deposit/current account).

▼ ... virtual currencies

What are virtual currencies?

Virtual currencies are a phenomenon that has spread increasingly strongly in the recent past. In recent years the FMA has received many enquiries in relation to business models based on virtual currencies.

Virtual currencies are given different designations both nationally and internationally. Virtual currencies are for example described as virtual, digital and electronic currencies as well as cryptocurrencies or digital payment instruments. Some examples of virtual currencies are Bitcoin, Ethereum, Litecoin etc.

There is currently no legal definition of virtual currencies. They are often characterised as follows:

- They are not issued by any central bank or authority
- New units of value are as a rule created using a predefined procedure within a computer network (known as "mining")
- There is now central authority, that checks or manages transactions
- All transactions are recorded in a publically held ledger (known as "blockchain")
- Transactions that have been made can generally not be revoked
- Electronic wallets, which may be used to store and manage virtual currencies (known as a "wallet")
- Decentralised network – Peer-to-Peer network

Legal basis in Austria:

"bitcoin" is a well-known example of a system based on blockchain". By virtue of there being

no issuer, it is not subject to supervision by the FMA. It should however be noted that the operation of various business models based on bitcoin may require a licence from the FMA
Mit der Nutzung dieser Seite erkläre ich mich damit einverstanden, dass in meinem Browser Cookies gespeichert werden. [Ausblenden](#) [Mehr Informationen über Cookies](#)
<https://www.fma.gv.at/impressum>

(such as in accordance with the Austrian Banking Act (BWG; Bankwesengesetz), Alternative Investment Fund Manager Act (AIFMG; Alternative Investmentfonds Manager-Gesetz), Payment Services Act (ZaDiG; Zahlungsdienstegesetz)) and / or a prospectus in accordance with the Capital Markets Act (KMG; Kapitalmarktgesetz).

For example, the receiving of funds from other parties for the purpose of management or as deposits (deposit-taking business), provided that the activity is conducted on a commercial basis, constitutes a banking transaction pursuant to Article 1 para. 1 no. 1 of the Austrian Banking Act (BWG; Bankwesengesetz). The management aspect may also exist when funds are invested in a virtual currency.

Example: Company A collects funds from the general public, to then invest them in accordance with its own discretion in virtual currencies. The repayment claim of the investor is based on the performance of the investment.

Furthermore, it is also not possible to exclude the obligation to hold a licence in accordance with the Alternative Investment Fund Managers Act (AIFMG; Alternative Investmentfonds Manager-Gesetz). Where capital is collected from a number of investors, which is then invested in virtual currencies in accordance with a defined investment strategy, and the benefit, i.e. the profit, is passed on to the investors, then there are good grounds to suggest that an alternative investment fund (AIF) exists.

Example: Investors hold a stake in a company with the legal form of a GmbH & Co KG. The investment in virtual currency is contractually arranged in accordance with a procedure developed by the founders. The investors share in the returns of such investments.

The obligation to publish a prospectus in accordance with the Capital Markets Act (KMG) may also exist. In the event that investments or securities are publicly offered in a company investing in virtual currencies, then the obligation to publish a prospectus is generally to be assumed; the same applies to funds being invested in a risk-sharing group.

Example: Issue documents are published on the Internet for holdings in a GmbH & Co KG. The business activity of this company is intended to consist in operating a server farm for bitcoin mining.

Online platforms for purchasing virtual currencies, that also process payments in Euro, may in turn be subject to the obligation to hold a licence under the Payment Services Act (ZaDiG).


Example: Company B operates a platform on which customers make exchange their virtual currencies, and settles the paying out of the purchase price in Euro using its own accounts.


Business models are therefore always to be checked on a case-by-case basis. The FMA therefore recommends prior to commencing a business activity to submit an enquiry to the specialised [FinTech Point of Contact \(https://www.fma.gv.at/en/cross-sectoral-topics/fintech/fintech-contact-form/\)](https://www.fma.gv.at/en/cross-sectoral-topics/fintech/fintech-contact-form/).

Developments in European Law:

The European Banking Authority (EBA) made consumers and supervisory authorities aware of the risks relating to the purchasing, holding or trading in virtual currencies in December 2013 and in July 2014. The risks include for example:

- Transactions in virtual currencies may be used for criminal acts like money laundering;
- The value of the virtual currency may be subject to drastic exchange rate fluctuations;
- Hacker attacks against trading platforms may lead to the loss of the invested funds;
- Virtual currency may be stolen out of the digital wallet.


<http://www.eba.europa.eu/-/eba-warns-consumers-on-virtual-currencies> 
(<http://www.eba.europa.eu/-/eba-warns-consumers-on-virtual-currencies>)

<http://www.eba.europa.eu/-/eba-proposes-potential-regulatory-regime-for-virtual-currencies-but-also-advises-that-financial-institutions-should-not-buy-hold-or-sell-them-whilest-n> 
(<http://www.eba.europa.eu/-/eba-proposes-potential-regulatory-regime-for-virtual-currencies-but-also-advises-that-financial-institutions-should-not-buy-hold-or-sell-them-whilest-n>)


Mit der Nutzung dieser Seite erkläre ich mich damit einverstanden, dass in meinem Browser Cookies gespeichert werden. [Ausblenden](#) [Mehr Informationen über Cookies](#)

(<https://www.fma.gv.at/impressum>)

The most recent development on a European level concerns the amendment to the 4th Anti Money Laundering Directive, Directive 2015/849/EU. The draft was published by the European Commission in July 2016, and for the first time includes a single definition for virtual currencies. Furthermore it also stipulates the obligation for the authorisation or registration of service providers, who permit virtual currencies to be exchanged into real currencies and vice versa, as well as for providers of electronic wallets:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0450> 
[\(http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0450\)](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0450)

The EBA published an opinion in reaction to the draft of the amendment to the 4th Anti Money Laundering Directive 2015/849/EU in August 2016, in which important points, such as the period for implementation or the legal status of the entity to be registered, are discussed:

<https://www.eba.europa.eu/documents/10180/1547217/EBA+Opinion+on+the+Commission%E2%80%99s+proposal+to+bring+virtu>

[\(https://www.eba.europa.eu/documents/10180/1547217/EBA+Opinion+on+the+Commission%E2%80%99s+proposal+to+bring+virtu\)](https://www.eba.europa.eu/documents/10180/1547217/EBA+Opinion+on+the+Commission%E2%80%99s+proposal+to+bring+virtu)

▼ ... an Initial Coin Offering (ICO)

“Initial Coin Offerings” (ICOs) are also increasingly frequently being conducted in the Austrian financial market. Often they are constructed in such a way, that they are not subject to any form of regulation or supervision. However, under certain circumstances, ICOs may however constitute a financial service requiring a licence, or may fall within the scope of another law regarding investor protection. The FMA is generally open to new developments, and neutral in terms of the underlying technology. We are therefore duty-bound to advise providers of ICOs, where there are potentially linkages to laws that have been conferred upon the FMA for supervision purposes.

An ICO, as a rule, is a form of **corporate or project financing** based on the blockchain technology. During an ICO capital is mainly collected in the form of virtual currencies. In return the capital providers receive a coin or token from the organiser of the ICO that is connected to the company or project. The coin or token may also take the form of a shareholding in a company, frequently that of a start-up, or a claim to a promise in relation to profits to be realised in the future.

Due to the different designs of ICOs in technical, functional and economic terms, it is not possible to provide a one-size-fits-all supervisory law classification of them. An assessment under supervisory law must always be based on the specific design of the ICO on a case-by-case basis.

What must you as an offeror of an ICO take into consideration from a supervisory law perspective.

There are currently no specific rules under supervisory law governing ICOs at either Austrian, European or international level. Depending on the specific design of the ICO, there may be some linkages to existing supervisory law. In addition to the specific design regarding the taking and usage of the capital of the ICO, the legal position of the holder of the coin or token is of particular relevance.

Potential activities requiring a licence:

Austrian Banking Act (BWG)

If capital is not raised using virtual currencies, but instead uses a legal currency, and the ICO stipulates that the funds raised are to be invested in accordance with discretion of the ICO organiser, then where there is a corresponding claim by the investor for repayment, the activity requiring a licence of deposit-taking business as defined in Article 1 para. 1 no. 1 BWG exists.

Regardless of the form in which capital is raised (whether using virtual currencies or ones that are legal tender), if the ICO stipulates that the generated Coin is intended to be deployed as a payment instrument, then depending on the specific design of the ICO, the activity requiring a licence of issuance and administration of payment instruments in accordance with Article 1 para. 1 no. 6 BWG may be fulfilled.

Article 1 para. 1 no. 11 BWG contains a separate activity requiring a licence, for the participation in underwriting of third-party issues in certain instruments (e.g. transferable securities) The realisation of an issuance of a tokenised bond for a company, i.e. the preparation of the issuance, taking over of securities/instruments as well as their placement and the associated services therewith would constitute this activity.

Custody and administration of securities for other parties requires a licence in accordance with Article 1 para. 1 no. 5 BWG as custody business, regardless of the technical manner, e.g. using blockchain and smart contracts.

[Further information about the conditions for being granted a licence in accordance with the BWG \(https://www.fma.gv.at/en/banks/licencing-notification/\).](https://www.fma.gv.at/en/banks/licencing-notification/)

Securities Supervision Act 2007 (Wertpapieraufsichtsgesetz 2007 – WAG 2007)

Coins or Tokens constitute financial instruments as defined in the Securities Supervision Act 2007 (WAG 2007). There is a strong indication for such a classification, if the rights associated with the coin or token are comparable to well-known categories of securities. In particular the granting of voting rights, shares in profits, tradability, the promise of interest payments or the repayment of the capital received at the end of a specific term therefore speak for the existence of a security.

Depending on the design of the coin or token, it may also not be possible to exclude a classification as defined in WAG 2007, even where the instrument is not a security, such as when derivatives in other cryptocurrencies are associated with the coin or token.

In such instances, depending on the advanced design of the ICO an investment service requiring a licence under the WAG 2007 may exist.

[Further information about the conditions for being granted a licence in accordance with the WAG 2007 \(https://www.fma.gv.at/en/financial-service-providers/investment-service-providers/licences/\).](https://www.fma.gv.at/en/financial-service-providers/investment-service-providers/licences/)

Capital Market Act (KMG)

In the case that coins or tokens grant the respective holders certain proprietary rights, such as rights to a claim, membership rights or conditional rights (e.g. ownership rights, claims to dividends or repayment) against the ICO organiser, they may be classified as investments and fall within the scope of the Austrian Capital Market Act. This applies in particular if the investors form a risk sharing group among themselves or together with the issuer. In this case, for a public offering of the coins or tokens the obligation to publish a prospectus pursuant to the Capital Market Act (KMG) exists. If, as per the case above, a transferable security exists, then a securities prospectus as defined in the Capital Market Act (KMG) would be required to be drawn up.

[Further information about the obligation to produce a prospectus !\[\]\(0fb13ad0bfa3d86868cdd3883e5665b3_img.jpg\) \(https://www.fma.gv.at/en/glossary/obligation-to-produce-a-prospectus/\).](https://www.fma.gv.at/en/glossary/obligation-to-produce-a-prospectus/)

[Further information about investment prospectuses !\[\]\(799877f5c2f906134441300079881630_img.jpg\) \(https://www.fma.gv.at/en/glossary/investment-prospectus/\).](https://www.fma.gv.at/en/glossary/investment-prospectus/)

Alternative Investment Fund Managers Act (AIFMG)

Furthermore, an obligation to hold a licence may exist in accordance with the AIFMG. Where capital is collected from a number of investors, which is then invested in accordance with a defined investment strategy, and the benefit, i.e. the profit, is passed on to the coin or token holders, then there are good grounds to suggest that an alternative investment fund exists.

Further information about alternative investment funds (AIFs) can be found here: <https://www.fma.gv.at/en/alternative-investment-funds/> Mit der Nutzung dieser Seite erkläre ich mich damit einverstanden, dass in meinem Browser Cookies gespeichert werden. [Ausblenden](#) [Mehr Informationen über Cookies](#)

[\(https://www.fma.gv.at/impressum/\)](https://www.fma.gv.at/impressum/)

<https://www.fma.gv.at/en/glossary/alternative-investment-fund-aif/> 
 (<https://www.fma.gv.at/en/glossary/alternative-investment-fund-aif/>) and

<https://www.fma.gv.at/en/investment-funds-and-investment-fund-managers/aifs-and-aif-managers/> (<https://www.fma.gv.at/en/investment-funds-and-investment-fund-managers/aifs-and-aif-managers/>).

In addition, depending on the design of the coin or token, activities requiring a licence may exist in accordance with the Payment Services Act (ZaDiG) or the E-Money Act (E-Geldgesetz).

Anti-money laundering provisions

If business models fall under the supervision of the FMA, then the corresponding due diligence obligations for the prevention of money laundering and terrorist financing (as set out in particular in the Financial Markets Anti-Money Laundering Act (FM-GwG; Finanzmarkt-Geldwäschesgesetz)) also apply to you.

Furthermore, it should also be noted that beyond the scope of application of the FM-GwG and the associated supervision by the FMA, due diligence obligations for the prevention of money laundering and terrorist financing also apply for certain types of commercial activities pursuant to Article 365m1 para. 2 of the Commercial Code (GewO; Gewerbeordnung). The competent trade authority may give information about whether a trader is required to comply with these provisions.

FinTech Point of Contact

Business models are therefore always to be checked on a case-by-case basis. The FMA therefore recommends prior to commencing a business activity to submit an enquiry to the [FinTech Point of Contact](https://www.fma.gv.at/en/cross-sectoral-topics/fintech/fintech-contact-form/) (<https://www.fma.gv.at/en/cross-sectoral-topics/fintech/fintech-contact-form/>).

▼ ... crowdfunding and alternative online investments

It is important with regard to the licencing requirements, whether you wish to operate a donation or reward-based platform or a crowd investing platform.

Donation or reward-based crowdfunding is generally only affected by the supervisory laws, in the case that the platform also handles the processing of payments between the crowd and the projects. In this case a licence in accordance with ZaDiG may be necessary, such as for money remittance business (Article 1 para. 2 no. 5 ZaDiG). Many platforms therefore incorporate a licenced partner, so that an account belonging to the platform itself is therefore not involved in the transfer procedure.

In the case of **crowd investing** the requirement of a licence is on the one hand dependent on the type of the investment and on the other hand dependent on the type of platform activity. Furthermore, it should always be remembered that the public offering of certain types of investments (securities and investments pursuant to the Capital Market Act (KMG) require a prospectus to be issued.

Credit intermediation platforms may only operate if they have a licence pursuant to Article 1 para. 1 no. 18 point b BWG or if they operate with one of the business licences listed therein. You are, however, always running the risk of providing an unauthorised lending business (Article 1 para.1 no. 3 BWG) for users. Classic P2P credit intermediation activities are therefore only implementable in Austria with considerable difficulty.

Platforms that broker transferable securities (e.g. Shares, bonds, participation certificates) or other financial instruments pursuant to Article 1 no. 6 of the Securities Supervision Act of 2007 (WAG 2007 – Wertpapieraufsichtsgesetz 2007), generally fall within the scope of application of Article 3 para. 2 no. 3 WAG 2007 (receiving and transmitting of orders in relation to financial instruments) are therefore provide an investment service that requires a

licence. If the platform provides customers with investment recommendations, then Mit der Nutzung dieser Seite erkläre ich mich damit einverstanden, dass in meinem Browser Cookies gespeichert werden. [Ausblenden](#) [Mehr Informationen über Cookies](#)
 investment advice pursuant to Article 3 para. 2 no. 1 WAG 2007 would be provided.
<https://www.fma.gv.at/impressum/>

In some cases, on the basis of the design of the investment in the form of deposit-taking business (Article 1 para. 1 no. 1 BWG) the brokerage activity listed in Article 1 para. 1 no. 18 point a BWG may apply. Both the platform as well as the project then are providing an activity that requires a licence.

If it is not planned to operate a platform, but you wish instead to start a **crowdfunding project**, you will have to take in account that there is a licencing requirement, with investments for which there is an unconditional repayment claim usually covered under the activity of deposit-taking business pursuant to Article 1 para. 1 no. 1 BWG. In the case of projects, in which the company receives the funds and reinvests them in other companies, rather than being operational themselves, the [Alternative Investment Fund Managers](https://www.fma.gv.at/en/glossary/alternative-investment-fund-manager-aimf/) [?] (<https://www.fma.gv.at/en/glossary/alternative-investment-fund-manager-aimf/>) Act (AIFMG) frequently applies.

The issue of the obligation to publish a prospectus is in any case a central one for crowd investing projects. In the event that one of the exemptions stipulated in Article 3 of the Capital Markets Act does not apply (for example the offering being restricted to fewer than 150 investors, or it having a volume of less than EUR 1.5 million) within the scope of application of the AltFG, the public offering, such as through a page on the Internet, triggers the requirement to issue a capital market prospectus. Depending on whether the offering is in the form of a security or an investment, the prospectus must either be formally checked by the FMA, or a copy of the prospectus submitted to the FMA. Even in the event that an exemption does exist from the requirement to publish a prospectus, it is also necessary to check whether there is a notification requirement in relation to the issuing calendar pursuant to Article 13 KMG.

Crowd investors are usually not required to hold a licence, with one significant exception: In the case of a credit intermediation platform, the users, provided that they are active on a commercial basis, may also be conducting the activity of lending business pursuant to Article 1 para. 1 no. 3 BWG. Caution: Operating on a commercial basis is already deemed to exist, if there is the intention to take deposits on a recurring basis. The intention of realisation of profits is not a requirement with regard to the issues of commercial operation.

Since crowd investing covers a broad range of business models and involved parties, detailed [information on crowd funding models and alternative financing \(in German only\)](https://www.fma.gv.at/fma-themenfokusse/informationen-zu-buergerbeteiligungsmodellen/) (<https://www.fma.gv.at/fma-themenfokusse/informationen-zu-buergerbeteiligungsmodellen/>) addresses the issues of licencing requirements and the requirements of a prospectus are addressed in greater detail.

The Alternative Financing Act

The [Alternative Financing Act](https://www.fma.gv.at/en/capital-markets/prospectus-supervision/the-alternative-financing-act/) (<https://www.fma.gv.at/en/capital-markets/prospectus-supervision/the-alternative-financing-act/>) (AltFG – Alternativfinanzierungsgesetz) in particular created a new exemption to the requirement to publish a prospectus in Article 3 para. 2 no. 10a KMG: instead of a prospectus there are separate information requirements under the AltFG. Crowd investments may be issued under the AltFG, if they are alternative financial instruments (e.g. profit participation certificates, but also securities such as shares and bonds) of SMEs. A tiered system of thresholds, which is different for shares and bonds than for non-securitised instruments, determines whether a full prospectus, a simplified prospectus as per the regime set out in Article 26a of the Prospectus Regulation, or an information sheet in accordance with the AltFG and the AltF-InfoV is required.

In addition, the AltFG also contains new obligations for platforms through which alternative financial instruments are traded (e.g. in particular crowd investing platforms). Such platforms require a business licence for providing commercial financial advice or a licence as an investment services provider pursuant to Article 4 para. 1 WAG 2007. Separate information and due diligence obligations, advertisement rules and rules for the prevention of money laundering apply for them.

The AltFG does not fall within the FMA's scope of enforcement, but in that of the local administrative authorities. If an AltFG platform is a licenced investment services provider pursuant to Article 4 para. 1 WAG 2007, then it is supervised by the FMA in accordance with the provisions of the Securities Supervision Act <https://www.fma.gv.at/impressum/>

▼ ... automated advice or intermediation systems, trading systems, trading robots, social trading.

In this sector, both activities requiring a licence under the BWG and activities requiring a licence under the Securities Supervision Act 2007 (WAG 2007) should be observed. Investment services requiring a licence pursuant to Article 3 para. 2 WAG 2007 come into question, as well as the banking activity of trading on one's own account or on the account of others pursuant to Article 1 para. 7 nos. 7 and 7a of the Banking Act (BWG – Bankwesengesetz), as well as brokerage activities in accordance with Article 1 para. 1 no. 18 BWG.

Article 1 para. 1 no. 7 BWG defines trading on one's own account or for others in specific instruments (in particular securities or many types of derivatives) as being a banking transaction that requires a licence, provided that the instrument is not being traded for private assets. On the basis of the current legislation, companies may not rely on this exemption. No. 7a in turn addresses trading in specific other financial instruments.

In terms of the applicability of the activity of trading, it does not make any difference whether processes are (partially) automated. Therefore a licence is not required for the use of a trading algorithm, provided that trading is conducted solely for private assets. The broker or the bank, through which you trade, on the other hand does require a licence. Such a licence may also have been granted by an authority within the EEA, if the provider is active in Austria by means of the freedom to provide services or the freedom of establishment (notified EEA companies can be found in the [Company Database \(https://www.fma.gv.at/en/search-company-database/\)](https://www.fma.gv.at/en/search-company-database/)).

If you operate a trading system with your customers, without your company providing the activity of trading – in particular as the trading activity is conducted directly between customers and a licenced broker/bank – the following activities requiring a licence may apply depending on how the system works:

- Portfolio management requiring a licence pursuant to Article 3 para. 2 no. 2 WAG 2007 may in particular exist, in the event that you control the system. This is generally the case for centrally connected trading accounts of cases of copy trading.
- If the system generated personal entry and exit signals tailored to the customer, then this probably constitutes investment advice pursuant to Article 3 para. 2 no. 1 WAG 2007.
- If your system transmits orders for execution to banks, brokers or issuers, (i.e. an order routing system), then the activity of the receiving and transmitting of orders pursuant to Article 3 para. 2 no. 3 WAG 2007 should be taken into account.
- If you receive funds or securities on your account (even if they exist at a provider already holding a licence), deposit-taking business pursuant to Article 1 para. 1 no. 1 BWG and/or custody business pursuant to Article 1 para. 1 no. 5 BWG most probably is being conducted.
- An **obligation to publish a prospectus** in accordance with the CMG may be an issue, where participation in a trading programme occurs by means of an investment or a security, that you publicly offer.

In addition to algorithmic trading facilities **automated advice systems** may only be operated while taking into consideration the investment advice activities requiring a licence pursuant to Article 3 para. 2 no. 1 WAG 2007. Regardless of the level of automation involved, investment advice shall be deemed to exist, if a personal recommendation is provided (as defined in Article 1 no. 27 WAG 2007) to buy/sell/hold financial instruments. Such advice should not be provided unless a licence is held. The conceptualisation of an automated advice system does not trigger a requirement to hold a licence. This means that you may set up such a system without a licence, and subsequently make the system available to a licenced undertaking for its activities, but you may not however operate the

and for which the provider of the service is responsible. Ich verstehe, dass in meinem Browser Cookies gespeichert werden. [Ausblenden](#) [Mehr Informationen über Cookies](#)

[\(https://www.fma.gv.at/impressum/\)](https://www.fma.gv.at/impressum/)

Systems that do not deal with the trading of securities, but which advise about **other products**, may also trigger the requirement to hold a licence: Article 1 para. 1 no. 18 BWG lists brokerage activities, in particular for lending business, bank guarantees/suretyships and deposit-taking business. Applications, for example **mobile phone apps or online platforms**, which following the entry of customer data then subsequently mediate certain products, may also be covered by such activities. However, the mere listing of product information, for example on comparison platforms, does not require a licence.

In this context it is important to also take into consideration the activity-related definition of the term **insurance mediation**, which in any case covers advice on insurance matters. Insurance mediation as defined in Article 137 para. 1 GewO is “the offering, suggesting or conducting of other preparatory work in relation to the conclusion of insurance contracts or the concluding of insurance contracts or assisting in the administration or performance of such contracts, in particular in the event of a claim.” Provided that these activities are not performed by an insurance undertaking or an employee of an insurance undertaking, who is active under the responsibility of that insurance undertaking, and is thereby covered by the licence of the insurance undertaking, the relevant business licence is required for their performance on a commercial basis. Credit institution may also only perform insurance mediation activities where they hold the relevant authorisation from the FMA to extend their business purpose to include insurance mediation activities pursuant to Article 21 para. 1 no. 8 BWG.

▼ ...technical services, server and data services, interfaces

If your model solely focuses on services **in conjunction with payment services**, no licencing requirement currently exists, if you do not come into possession of the funds to be transferred. This means that funds should not pass through your accounts. Purely technical services are not addressed by the ZaDiG. The law also does not list any activities relating to the mediation of payment services. This will, however, change in the future with the Payment Services Directive (2015/2366, PSD II), which is currently in the process of being transposed into national law, that will also regulate third-party providers (TPPs) by adding account information services and payment initiation services to the activities that require a licence. If you provide consolidated information about accounts at payment service providers, or your service is used to initiate payments via interfaces to payment service providers, you should adjust to the future provisions early.

There is a separate exception in ZaDiG with regard to digital payments for network and system operators. This exception, however, only covers anyone receiving an immanent added value from the product that is paid, for which the funds are billing, over and above the added value resulting from the settlement of the payment.

Services, whose purpose is the **brokerage of specific products** such as loans, bank guarantees/suretyships and deposit accounts, may under certain circumstances be considered as brokerage activities pursuant to Article 1 para. 1 no. 18 BWG. Systems that conduct the brokering of securities or other financial instruments pursuant to Article 1 no. 6 WAG 2007, may constitute investment services pursuant to Article 3 para. 2 WAG 2007 (e.g. order routing systems, which handle the receiving and transmitting of orders in relation to financial instruments; or automated advice systems – please see the separate section in this regard). For technical applications, such as apps for mobile phones or online platforms, which broker the conclusion of a contract for certain products, the activities named should therefore always be checked. However, the mere listing of product information having entered customer data, for example on comparison platforms, does not require a licence.

With regard to the boundary, of whether the system is a purely technical one or not, in the latter instance also associated with a service that requires a licence, it is necessary to check what services are contractual bound to be performed. If for example you provide **exclusively server-based services or a website** through which the product providers and

Mit der Nutzung dieser Seite erkläre ich mich damit einverstanden, dass in meinem Browser Cookies gespeichert werden. [Ausblenden](#) [Mehr Informationen über Cookies](#)

<https://www.fma.gv.at/impressum>

customers act without any further intervention on your part, you are generally excluded from licencing requirements. In the case of **interface hardware and software** there are often difficult issues arising from the legal boundaries.

The **Markets in Financial Instruments Directive MiFID** [?](#)

(<https://www.fma.gv.at/en/glossary/mifidmifir-ii>) (to be transposed into national law by July 2017) contains a new treatment of technical services, in which it stipulates rules and a separate authorisation procedure for so-called data provision services for markets like stock exchanges, multilateral trading facilities (MTFs) or organised trading facilities (OTFs). There is a new activity requiring a licence in Annex I (this annex contains a list of the investment services to be supervised) for the operation of OTFs – which covers systems that match the supply and demand for financial instruments in a discretionary manner, in a different way to MTFs.

For this topic, in relation to the **sale of insurance products** the activity-related definition of the term insurance mediation is relevant. Insurance mediation as defined in Article 137 para. 1 GewO is “the offering, suggesting or conducting of other preparatory work in relation to the conclusion of insurance contracts or the concluding of insurance contracts or assisting in the administration or performance of such contracts, in particular in the event of a claim.” Provided that these activities are not performed by an insurance undertaking or an employee of an insurance undertaking, who is active under the responsibility of that insurance undertaking, and is thereby covered by the licence of the insurance undertaking, the relevant business licence is required for their performance on a commercial basis. Credit institution may also only perform insurance mediation activities where they hold the relevant authorisation from the FMA to extend their business purpose to include insurance mediation activities pursuant to Article 21 para. 1 no. 8 BWG.

This broad definition of the term insurance mediation is particular worth considering in the case of online sales or the establishing of online comparison portals for insurance products.

Issues relating to the **obligation to publish a prospectus** may arise for operations of online platforms dealing with or investments that are subject to the requirement to publish a prospectus pursuant to the Capital Market Act (KMG). Since the KMG focuses on the issue of public offering, not only the issuer, but also the operator of the platform may therefore be committing a breach of the requirement to publish a prospectus. Breaches of the obligation to publish a prospectus are even subject to criminal sanctions pursuant to Article 15 para. 1 KMG.

You would like to know if you require a licence...

▼ Exemptions for activities requiring a licence

[List of banking transactions in Article 1 para. 1 BWG \(https://www.fma.gv.at/download.php?d=468\)](https://www.fma.gv.at/download.php?d=468)

[List of investment services in Article 3 para. 2 WAG 2007 \(https://www.fma.gv.at/download.php?d=2085\)](https://www.fma.gv.at/download.php?d=2085)

[List of payment services in Article 1 para. 2 ZaDiG \(https://www.fma.gv.at/download.php?d=471\)](https://www.fma.gv.at/download.php?d=471)

[Providing of electronic money services in Article 1 para. 1 E-Geld-Gesetz 2010 \(https://www.fma.gv.at/download.php?d=2259\)](https://www.fma.gv.at/download.php?d=2259)

[Managing an alternative investment fund pursuant to Article 4 para. 1 AIFMG and the definition of terms in Article 2 para. 1 AIFMG \(https://www.fma.gv.at/download.php?d=2084\)](https://www.fma.gv.at/download.php?d=2084)

[Provision of contractual insurance activities pursuant to Article 6 para. 1 VAG 2016 \(https://www.fma.gv.at/download.php?d=825\)](https://www.fma.gv.at/download.php?d=825)

Mit der Nutzung dieser Seite erkläre ich mich damit einverstanden, dass in meinem Browser Cookies gespeichert werden. [Ausblenden](#) [Mehr Informationen über Cookies](#)

▼ Natural persons requiring licences

<https://www.fma.gv.at/impressum>

It is also possible that you may conduct an activity requiring a licence as a **natural person**. Licence holders may, however, almost without exception be **legal persons**. As a natural person you are allowed to operate an investment services provider pursuant to Article 4 para. 1 of the Securities Supervision Act (WAG 2007 – Wertpapieraufsichtsgesetz) or as a securities broker or tied agent in accordance with Article 2 para. 1 no. 15 or Article 1 no. 20 WAG 2007 respectively in cooperation with a licenced undertaking. Payment services may also be provided in accordance with ZaDiG in a licenced payment service provider, in which case you act as an agent in accordance with Article 3 no. 20 ZaDiG. The banking activity of brokering of loans pursuant to Article 1 para. 1 no. 18 point b BWG may also be conducted by natural persons holding the relevant business licence, and in that case do not require a banking licence.

A licence is required by anyone **active in Austria**, even if they are not incorporated in Austria. Companies may be active on a cross-border basis by means of the freedom to provide services and the freedom of establishment by virtue of holding a licence in another EEA country. They should notify their home authority, which in turn then notifies the FMA. A list of companies that are authorised to be active on a cross-border basis, can be found in the FMA Company Database on this website.

An additional condition is that the activity is provided on a **commercial basis**. However, in this regard market participants unfortunately make particularly frequently false assumptions. The term of “being provided on a commercial basis” is based on Article 2 UStG and involves an autonomous and sustainable activity for the purpose of generating revenues. The intention to realise profits is not necessary. Even the intention to conduct the activity to cover covers suffices. Purely technical service providers often develop FinTech models in addition to their other products or services, but such sub-divisions barely bring in any revenue. This however, does not exclude the possibility that a service requiring a licence is (also) provided. In particular in the field of new payment methods, such business models assume that the forwarding of payments only constitutes an ancillary service and therefore that a licence would not be necessary. However, only in the case that it actually is a free ancillary service, i.e. a standalone principle service is the subject of the contract, for which the payment service is conducted in a non-independent manner and free of charge, then the commercial nature of the service may be excluded on a case-by-case basis.

You would like to know if you require a prospectus...

▼ When does the obligation to produce a prospectus apply?

You will always require a prospectus, if securities or investments are being publicly offered, and where there is no applicable exemption as defined in Article 3 KMG. Put simply, the obligation to produce a prospectus should be checked in any case, provided that you collect funds from a broad circle of investors. Depending on the design it may constitute a security or an investment. Examples of types of securities are shares, bonds or certificates; examples of investments may include limited partner participations, silent participations or subordinated loans – however this always depends on the design on a case-by-case basis. The FMA is generally responsible for the approval of a securities prospectus in Austria, while investment prospectuses are checked by external auditors and submitted to the OeKB.

▼ Prospectus requirements for crowd investing

The issue of the obligation to produce a prospectus is exceptionally relevant in relation to **crowd investing**. A public offering of an investment requiring the publication of a prospectus (as security or an investment) triggers the requirement to issue a prospectus, unless one of the exemptions stipulated in Article 3 KMG applies (for example offers to

[Ausblenden](#) [Mehr Informationen über Cookies](#)

fewer than 150 investors or below a volume of EUR 1.5 million within the scope of application of the AltFG). This also applies to offerings on webpages. Depending on whether the offering is in the form of a security or an investment, the prospectus must either be formally checked by the FMA, or a copy of the prospectus submitted to the FMA. Even in the event that an exemption does exist from the requirement to publish a prospectus, it is also necessary to check whether there is a notification requirement in relation to the issuing calendar pursuant to Article 13 KMG.

Information about the AltFG can also be found [here \(https://www.fma.gv.at/en/capital-markets/prospectus-supervision/the-alternative-financing-act/\)](https://www.fma.gv.at/en/capital-markets/prospectus-supervision/the-alternative-financing-act/).

▼ Prospectus requirements for signal, social or mirror trading systems

The obligation to publish a prospectus may also exist for **signal, social or mirror trading systems**, such as in the case where participation in a trading programme occurs by means an investment or a security, that are being offered publicly.

If you yourself want to finance your FinTech company by means of securities or an investment pursuant to the KMG – you thereby are the issuer – the usual scope of application of the KMG listed above applies and you or anyone else, who publicly offers this, are required to publish a prospectus under the KMG.

▼ Prospectus approval costs

The **cost for approval of the prospectus by the FMA** are EUR 3,700 for a one-off prospectus (for a specific issuance) or EUR 4,200 for a base prospectus as well as fees of EUR 36.10. The duration of a prospectus approval procedure may usually take about 6-8 weeks from initial submission; the duration, however, depends strongly on the quality of the submission and the complexity of the material contained therein. We request that the timescale should be coordinated by telephone. These statements refers only to securities prospectuses; the FMA is not able to advise about the estimated costs for investment prospectuses as well as the legal advice that may be necessary in certain circumstances.

You would like to know whether you need to take rules on the prevention of money laundering into account...

▼ Due Diligence Obligations for the Suppression of Money Laundering and of Terrorist Financing

In order to ensure the stability and the image of the financial sector, provisions have also been introduced in Austria with regard to preventing the usage of the financial system for the purposes of money laundering and terrorist financing (further information can be found on the FMA website [here \(https://www.fma.gv.at/\)](https://www.fma.gv.at/)). In accordance with these provisions, certain financial market participants (e.g. credit institutions, insurance undertakings, payment institutions, electronic money institutions etc.), as well as other players in addition to the aforementioned (e.g. certain businessmen or lawyers and notaries), are expected to comply with due diligence obligations for the combatting of money laundering and terrorist financing.

FinTechs are also expected to comply with these due diligence obligations for the combatting of money laundering and terrorist financing, if they provide activities that require a licence and are therefore subject to supervision by the FMA. In this regard, the specific type of activities requiring a licence that a FinTech provides is not significant. The

respective applicable laws (incl. WAG, ZaDiG, AIFMG, E-GeldG) refer to the relevant provisions for the prevention of money laundering and terrorist financing contained in the <https://www.fma.gv.at/impressum/>. [Ausblenden Mehr Informationen über Cookies](#)