

## FINMA has published Guidance 01/2026 on the custody of crypto-based assets

On 12 January 2026, FINMA published Guidance 01/2026 on the custody of crypto-based assets, setting out supervisory expectations aimed at strengthening client and investor protection in Switzerland's growing crypto market.

FINMA identifies the risks associated with the custody of crypto-based assets and specifies the supervisory requirements applicable to Swiss regulated institutions, in particular banks, securities firms, managers of collective assets and portfolio managers offering custody, trading or investment services in such assets.

FINMA notes increasing interest for crypto-based assets in the Swiss financial market and a corresponding expansion of crypto-related services by supervised institutions. Following the entry into force of the DLT Blanket Act, Swiss legislation now offers enhanced insolvency protection for crypto-based assets held in custody by third parties.

### 1. Key risks and treatment under bankruptcy law

The Guidance highlights several key risks, including operational risks linked to distributed ledger technology, cyber-attacks, inadequate protection of private keys, dependency on third-party custodians, and complex legal issues where the custodian is located abroad. FINMA notes that these risks have not always been adequately addressed in practice.

From a supervisory perspective, FINMA clarifies that Swiss banks may hold crypto-based assets as segregable custody assets benefiting from bankruptcy protection provided that they are held in readiness for customers at all times and (i) they are held in individual custody, or (ii) they are held in collective custody with clear customer shares. Such assets do not generally give rise to capital requirements. Where custody is delegated to foreign custodians, this exemption applies by analogy if equivalent conditions are met, namely that the foreign third-party custodian is subject to prudential supervision and foreign law guarantees bankruptcy protection for the crypto-based assets held in custody.

### 2. Regulatory approach

For individual portfolio management, crypto-based assets must be held in custody with prudentially supervised institutions ensuring segregation and

bankruptcy protection. Where custody is provided abroad, foreign supervision and insolvency protection must be equivalent to Swiss standards. Custody arrangements that do not meet these requirements must be adjusted. Existing non-compliant arrangements are tolerated only on an exceptional basis, i.e. if (i) the foreign custodians are subject to equivalent prudential supervision, but no equivalent bankruptcy protection exists or (ii) arrangements with Swiss custodians under SRO supervision in which bankruptcy protection is ensured have been concluded, but prudential supervision is lacking. In any event, the continuation of such existing custody arrangements is subject to comprehensive client information, disclosure of alternative custodians and documented client consent.

With respect to collective investment schemes, crypto-based assets must generally be held with a Swiss custodian bank. Delegation to third-party custodians in Switzerland or abroad is permitted only if prudential supervision and bankruptcy protection are equivalent, and investors are appropriately informed of the associated risks.

For structured products and crypto ETPs, FINMA emphasises that effective bankruptcy protection is required for crypto-based assets pledged as security and refers to the specific rules issued by Swiss stock exchanges.

Finally, FINMA stresses that crypto-based assets are often risky and highly speculative investments characterized by high volatility, and reminds investors of the possibility of high losses, even where custody complies with regulatory requirements.

### 3. Conclusion and outlook

The Guidance confirms FINMA's cautious approach to DLT-based activities, with a strong focus on operational resilience, custody risks, and third-party dependencies. Going forward, institutions engaging in crypto-related services should expect continued supervisory scrutiny and are encouraged to proactively strengthen their governance, risk management and oversight frameworks to ensure regulatory compliance.

For more information or legal support related to cryptoassets, blockchain and fintech, please contact the below members of our Digital Assets & Fintech team.



**Maria Oberlin-Chiriaeva**  
Partner  
[maria.oberlin@borel-barbey.ch](mailto:maria.oberlin@borel-barbey.ch)



**Marc Freymond**  
Head of Technology & Digital Assets  
[marc.freymond@borel-barbey.ch](mailto:marc.freymond@borel-barbey.ch)



**Julien Dayer**  
Associate  
[julien.dayer@borel-barbey.ch](mailto:julien.dayer@borel-barbey.ch)