

FMA Instruction 2020/1 – Registration as a service provider under the TVTG

Instruction on registration as a TT Service Provider under the Law of 3 October 2019 on Tokens and TT Service Providers (TVTG) and the Ordinance of 10 December 2019 on Tokens and TT Service Providers (TVTV).

Reference:	FMA-WL 2020/1
Addressees:	TT Service Providers subject to registration under the TVTG
Re:	Grant of a registration to provide a TT Service under the TVTG
Place of publication:	Website
Date of publication:	1 January 2020
Last amended on:	8 June 2020

This Instruction provides an overview of the requirements for obtaining a registration as a TT Service Provider under the TVTG. Decisions regarding individual cases will be made solely on the basis of the legal provisions and the orders of the Financial Market Authority Liechtenstein (FMA) as the supervisory authority. Please contact the FMA for further information.

1. General information

Pursuant to Article 12(1) TVTG, legal and natural persons with headquarters (registered office) or place of residence in Liechtenstein who wish to professionally act as TT Service Providers must apply to be entered into the TT Service Provider Register (hereinafter "registration") in writing with the FMA before beginning their activity.

This also applies to Token Issuers who issue tokens in their own name or in the name of a client in a non-professional capacity if tokens in the amount of CHF 5 million or more will be issued within a period of 12 months (Article 12(2) TVTG).

Registration is performed only if all requirements set out in Article 13 TVTG have been met. The TT Service applied for may be performed only after entry in the TT Service Provider Register.

1.1. TT Services

According to Article 2(1)(i) TVTG, TT Service Providers include the following:

– Token Issuers:

Persons offering tokens to the public in the name of third parties. This includes not only the sale of tokens, but also other forms of offering, such as awarding tokens without consideration or as a gift (e.g. airdrop). Possible application cases include trading venues carrying out ICOs or IEOs for clients.

In addition, persons carrying out their own issuances must also register if the value of the tokens issued in one year exceeds or will exceed CHF 5 million.

– Token Generators:

Tokens are programmed before their generation. They are generated by providing their code in the relevant TT system for further use. This is undertaken by the Token Generator.

– TT Key Depositaries and TT Token Depositaries:

Persons who safeguard tokens or private keys for third parties, e.g. in a safe or a collective wallet. This also includes the execution of transactions for third parties. These services are typically provided by crypto exchanges or wallet providers.

The difference between a TT Key Depositary and a TT Token Depositary is that the latter assigns the safeguarded tokens to its own TT Identifier and can therefore dispose of the clients' tokens itself, i.e. the clients lose access. In contrast, TT Key Depositaries may only keep a copy of the client's key, which means that the client still has access to the tokens.

- TT Protectors:

Persons who, without disclosing the proxy arrangement, hold tokens on TT Systems in their own name for the account of third parties or carry out transactions for clients (note: TT Protectors in all cases require a licence under the Professional Trustees Act (TrHG)).

- Physical Validators:

Persons who ensure the enforcement of rights in accordance with the agreement, in terms of property law, to goods represented in tokens on TT Systems.

Physical Validators must ensure that:

- the client requesting the token generation is the rightful owner of the property rights to be tokenised and can also dispose of these rights;
- the owner of a token can actually assert the rights represented in the token.

Where, for example, ownership of an item of property is tokenised, this can be ensured through safekeeping of that item of property. Safekeeping may be outsourced to a third party. If the item is lost or if the Physical Validator cannot transfer ownership of the item for other reasons, the Physical Validator must provide monetary compensation to the owner of the token.

- TT Exchange Service Providers:

Persons who exchange legal tender for tokens and vice versa as well as tokens for tokens. Typically this includes services such as ATMs at which cryptocurrencies can be exchanged, but also persons who offer exchanges exclusively online.

- TT Verifying Authorities:

Persons who verify the legal capacity and the requirements for the disposal over a token.

This includes, for example, service providers that ensure that only persons with specific approval or meeting certain preconditions can purchase certain tokens. For instance, it may be verified whether persons buying a token representing an alcoholic beverage meet the legal age requirements to do so.

- TT Price Service Provider:

Persons who publish or provide TT System users with aggregated price information on the basis of purchase and sale offers or completed transactions.

This includes persons who publish independently calculated prices for tokens, such as crypto exchanges. Persons merely referencing the exchange rates of other service providers, while citing the source, are in any event not deemed TT Price Service Providers.

- TT Identity Service Providers:

Persons who identify the person in possession of the right of disposal related to a token and who record it in a directory.

2. Registration requirements under Articles 13 et seq. TVTG

The registration requirements are enumerated in Articles 13 et seq. TVTG. The applicant must demonstrate to the FMA that these requirements are met.

2.1. Applicant

The applicant must be a natural or legal person capable of action (Article 13(1)(a) TVTG) whose headquarters or place of residence is in Liechtenstein.

If the applicant intends to provide services as a TT Protector, the applicant must in all cases already have a licence under the Professional Trustees Act (Article 13(1)(i) TVTG):

- in the case of natural persons, as a professional trustee under Articles 4 et seq. of the Professional Trustees Act;
- in the case of legal persons, as a trust company under Articles 13 et seq. of the Professional Trustees Act.

If the applicant also intends to conduct activity that is subject to an additional licensing obligation under one of the special laws enumerated in Article 5(1) of the Financial Market Authority Act (FMAG), the applicant must already have such a licence, otherwise the application must be denied (Article 13(1)(k) in conjunction with Article 19(4) TVTG).

2.2. Reliability and technical suitability (Article 13(1)(b) in conjunction with Article 14 TVTG; Article 13(1)(c) in conjunction with Article 15 TVTG; Article 3 TVTV)

Technical suitability

Taking a holistic view, TT Service Providers must be sufficiently technically qualified for the task in question. To meet this criterion, a TT Service Provider may draw on the expertise of a qualified third party as part of an outsourcing agreement.

For the following purposes, this means:

- the (possibly external) persons entrusted with the provision of the TT Service must be sufficiently technically qualified to provide the service; and
- the persons responsible for the service at the management level of the TT Service Provider must have sufficient expertise to ensure proper management and to be able to assess the risks associated with the TT Service.
- Persons who are sufficiently technically qualified due to their education or prior career for the task in question are considered technically suitable in this regard (Article 15 TVTG).

Reliability

The members of the governing bodies of a TT Service Provider as well as its shareholders, owners, or partners who hold, directly or indirectly, more than 10% of the TT Service Provider must each meet the reliability requirements set out in Article 14(1) TVTG, i.e. in particular have a clean criminal and financial record.

If a reason exists that makes a person appear unreliable, an application may be submitted to the FMA to grant leniency in this regard.

2.3. Minimum capital (Article 13(1)(e) in conjunction with Article 16 TVTG, Article 4 TVTV)

TT Service Providers must have the appropriate minimum capital or a guarantee of the same value when starting their activity. The applicant must demonstrate to the FMA how this minimum capital is generated (origin of assets). This minimum capital requirement does not apply to:

- Token Generators;
- TT Protectors;
- TT Verifying Authorities;
- TT Price Service Providers;
- TT Identity Service Providers;
- Token Issuers pursuant to Article 12(2) TVTG
- financial intermediaries licensed by the FMA which are required to have higher minimum capital under that licence than the minimum capital required under the TVTG.

In the case of other TT Service Providers, the minimum capital must be at least:

- for Token Issuers pursuant to Article 12(1):
 - CHF 50 000 where tokens with a total value of up to and including CHF 5 million are issued during one calendar year;
 - CHF 100 000 where tokens with a total value of more than CHF 5 million up to and including CHF 25 million are issued during one calendar year;
 - CHF 250 000 where tokens with a total value of more than CHF 25 million are issued during one calendar year;
- for TT Key Depositaries: CHF 100 000;
- for TT Token Depositaries: CHF 100 000;
- for TT Exchange Service Providers:
 - CHF 30 000 where transactions with a total value of more than CHF 150 000 up to and including CHF 1 million are carried out during one calendar year;
 - CHF 100 000 where transactions with a total value of more than CHF 1 million are carried out during one calendar year;
- for Physical Validators:
 - CHF 125 000 where the value of the property, the contractual enforcement of which is guaranteed by the Physical Validator, does not exceed CHF 10 million;
 - CHF 250 000 Francs where the value of the property, the contractual enforcement of which is guaranteed by the Physical Validator, exceeds CHF 10 million.

Applicants who intend to provide multiple TT Services must meet the highest applicable minimum capital requirement.

The capital required under company law (e.g. CHF 50 000 for a public limited company) may be counted towards minimum capital under the TVTG.

The minimum capital requirements must be adhered to at all times. This means that the minimum capital under the TVTG may not be used for operational expenses.

2.4. Organisational structure (Article 13(1)(f) in conjunction with Article 27 TVTG)

TT Service Providers require a suitable organisational structure with defined areas of responsibility and a procedure to deal with conflicts of interest (governance). As part of the organisational structure, envisaged outsourcing agreements, such as delegation of the safekeeping of objects by a Physical Validator, must also be presented.

2.5. Internal procedures and (special) control mechanisms (Article 13(1)(g) in conjunction with Articles 17 and 25 TVTG)

TT Service Providers must have written internal procedures and control mechanisms that are appropriate in terms of the type, scope, complexity, and risks of the TT Services provided, including ensuring sufficient documentation of these mechanisms (internal control system, ICS).

An ICS comprises all internal company processes, methods, instruments, and measures to protect the interests of the TT Service Provider, to ensure proper operations, and to guarantee compliance with legal requirements. An effective ICS includes written instructions on work processes, regular monitoring of those processes, and risk management.

Special internal control mechanisms

Article 17 TVTG sets out the special control mechanisms that TT Service Providers must establish due to their business model in addition to those listed above. These mechanisms must be presented to the FMA in writing.

Safeguarding requirements

TT Token Depositaries, TT Key Depositaries, and TT Protectors must protect tokens or TT keys they hold for clients in their own name or in the name of a third party, i.e. in trust, against the claims of other creditors, particularly in the event of bankruptcy. Article 25 TVTG accordingly provides that such tokens and keys must be deemed third party assets.

These service providers must therefore store the tokens and keys in their safekeeping separately from the business assets (Article 17(1)(c)(2), (d)(2), and (f)(2) TVTG).

3. Registration procedure

The registration application and the accompanying documents must in principle be in German or English. Notarised translations of documents in other languages must be provided.

The registration application must be submitted to the FMA electronically. Persons who already have e-Service access can be provided with the appropriate form upon request. For all other persons, the FMA makes this form available on its website.

The FMA informs the applicant of any ambiguities and necessary corrections. The FMA may also demand that documents be submitted in the original, or be notarised or apostilled (Article 18(2) TVTG).

If relevant facts change during the registration procedure, updated documents must be submitted without delay (Article 18(3) TVTG).

The duration of the registration procedure depends primarily on the coherence and completeness of the information and the documents provided with the application. Within three months of receipt of the complete application, i.e. after full submission of all information required for registration, the FMA must either enter the applicant in the TT Service Provider Register or issue a decree denying the applicant and prohibiting the applicant from carrying out the TT Service in question (Article 19(3) and (4) TVTG).

4. Application documents (Article 18 TVTG in conjunction with Article 3 and 4 TVTV)

The registration application must be accompanied by the completed Annex 1 of this instruction together with all other annexes relevant to the specific case. If the required documents are impossible or disproportionately difficult to obtain, equivalents are permissible. Any inability to provide a document must be justified with reference to the facts.

Persons already licensed or registered with the FMA must mark the parts of the submitted documents relevant to the TT Service.

Please note that the FMA may request additional documents in accordance with Article 18(1)(f) TVTG where necessary.

4.1. Waiver of documents (Article 18(4) TVTG)

The FMA may waive the submission of certain documents if the FMA already has access to those documents. The FMA therefore generally waives the submission of documents as part of the registration process in the following cases:

- if the person concerned or the person's company already holds a licence/registration (except under the TVTG) granted by the FMA and the person is subject to a regular review in this regard in the context of the licence/registration or ordinary supervision:
 - evidence of reliability;
 - evidence of technical suitability in regard to the assessed activity.

In the case of financial intermediaries licensed or registered by the FMA which are already required to have higher minimum capital under their license, evidence of the minimum capital under the TVTG may in general likewise be waived.

At the substantiated request of the applicant, further documents may be waived in individual cases.

5. Costs

5.1. Registration fee

A fee of CHF 1 500 is payable for the grant or denial of a registration. A fee of CHF 700 is levied for the registration of each additional TT Service. It is irrelevant in this regard whether the various services are the

subject of one or more applications (Article 30 in conjunction with Annex 1 Section I.^{quater} (a) and (b) of the Financial Market Authority Act (FMAG)).

5.2. Taxes

General information on the taxation of TT Service Providers may be obtained from the Liechtenstein Fiscal Authority (www.stv.llv.li).

5.3. Commercial Register entry fee

The fees chargeable for entry in the Commercial Register and public certification are governed by the Land and Commercial Register Fees Ordinance.

6. Expiration and removal of a registration (Articles 20 et seq. TVTG)

The fee for a decree ordering the expiration or removal of a registration is CHF 250 per registered service (Article 30 in conjunction with Annex 1 Section I.^{quater} (c) and (d) FMAG).

Please note that a registration expires if business has not commenced within a year or was not carried out for more than one year (Article 20(1)(a) & (b) TVTG). In justified cases, the FMA may extend these time periods on request.

The expiration of a registration must be communicated to the TT Service Provider by way of a decree. Once the decree enters into effect, the expiration must be published in the Official Journal at the expense of the TT Service Provider and must be noted in the TT Service Provider Register (Article 20(3) TVTG).

7. Changes with regard to the registration requirements (Article 18(3), Article 28(1)(a) TVTG)

TT Service Providers must inform the FMA of all changes with regard to the registration requirements. This applies both during the registration procedure and afterwards (for reporting obligations after registration, see FMA Instruction 2020/3).

8. Retention obligation (Article 26 TVTG)

TT Service Providers are subject to a retention obligation of at least 10 years for all relevant records and supporting documents.

9. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) as well as in line with applicable data protection law.

Information regarding the processing of personal data, as well as details about the processing purpose, the data controller and the rights of data subjects can be found in the FMA Privacy Policy: [https://www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html](https://www.fma.li/en/fma/data-protection/fma-privacy-policy.html).

10. List of amendments

The following amendments were made on 8 June 2020:

- Point 2.2: The clarification was made that persons with direct or indirect qualifying holdings must meet the reliability requirements.
- Point 2.3: The clarification was made that no minimum capital requirements apply for Token Issuers pursuant to Article 12(2) TVTG.
- Points 2.4, 2.5, and 4: Now that new Annexes 1-6 have been created, no detailed enumeration of application documents or the content of the review have to be included in the instruction itself. The requirement has been added that all relevant annexes must accompany the registration application.
- Annexes 1-6 have been newly created. Annex 4 in general corresponds to the old Annex 1, but it has been expanded to include legal persons.
- The final provision and entry into force have been brought together under a single heading.

11. Final provisions and entry into force

This instruction entered into force on 1 January 2020.

The changes of 8 June 2020 enter into force on 8 June 2020.

Financial Market Authority Liechtenstein
Regulatory Laboratory/Financial Innovation
Telephone: +423 236 73 73
E-mail: fintech@fma-li.li

- Annex 1 TT registration application form
- Annex 2 Assessment of reliability
- Annex 3 Assessment of technical suitability
- Annex 4 Declarations on any pending criminal and administrative criminal proceedings as well as bankruptcy and execution proceedings
- Annex 5 Due diligence concept checklist for registration/notification/licensing
- Annex 6 Notification of functions under the Due Diligence Act