

**FMA Instruction 2020/2 – Enquiries under the TVTG**

Instruction on issuing information about the application of the Law on Tokens and TT Service Providers (TVTG) or another Act listed in Article 5(1) FMAG for clearly determined facts in connection with Trustworthy Technology

Reference:	FMA-WL 2020/3
Addressees:	Persons wishing to obtain information from the FMA about the application of the Law on Tokens and TT Service Providers (TVTG) or another Act listed in Article 5(1) FMAG for clearly determined facts in connection with Trustworthy Technology
Re:	Issuing information under Article 43(2)(b) TVTG
Place of publication:	Website
Date of publication:	1 January 2020
Last amended on:	1 January 2020

Under Article 43(2)(b) TVTG, the FMA issues information about the application of the laws listed in Article 5(1) FMAG (hereinafter "subordination enquiry" or simply "enquiry").

Given that the FMA had already answered such enquiries before the TVTG entered into force, this information sheet is intended to put into writing the practices established over the past few years.

## **1 Applicability of the Instruction**

Article 43(2)(b) TVTG requires that the enquiries concern "clearly determined facts" and be in connection with Trustworthy Technology, i.e. distributed ledger technology, blockchain, or other applications as well as any activities on such systems. They must also concern applicability of the special legislation listed in Article 5(1) FMAG.

Please note that there is no obligation to submit any facts to the FMA for assessment. In order to achieve the highest possible degree of legal certainty with regard to licensing, prospectus, or due diligence obligations under the special laws referred to in Article 5(1) FMAG as well as under the TVTG, it is however recommended that such an enquiry be submitted before taking up business activities.

## **2 Content of the enquiry**

Enquiries must contain a complete, detailed, and coherent description of the underlying facts (including a description of all payment flows, contractual relationships, and cooperation with other service providers). In addition, the following information must accompany the enquiry:

- the infrastructure or specific blockchain used;
- whether the facts have already been presented to another supervisory authority and, if so, the assessment by that authority;
- whether the business model is being carried out or has already been carried out in another country.

This information must be provided not in a merely technical manner but in a manner suitable for a legal assessment.

In addition, the enquiry must be accompanied by a sound legal appraisal in the form of a legal opinion or a self-appraisal of possible licensing, prospectus, or due diligence obligations under the special laws listed in Article 5(1) FMAG. A statement regarding each of these laws is not necessarily required. The appraisal may be limited to those legal acts which may manifestly be relevant.

If the legal appraisal does not meet the above requirements, the FMA will request an amended enquiry.

## **3 Enquiry process**

Enquiries may be submitted to the FMA in writing, by e-mail, or preferably by using the correspondent form.

The FMA will then analyse the facts and, where necessary, contact the enquirer directly to clarify additional questions. The assessment is then issued by e-mail, or, upon request, by simple letter.

#### **4 Scope of the assessment**

The FMA can and may answer enquiries only regarding financial market law. This concerns questions relating to the special laws listed in Article 5(1) FMAG. The FMA is unable to discuss other areas of law (civil law, commercial law, company law, tax law, etc.) or the economic profitability of a business model. Furthermore, the FMA cannot and may not act in an advisory capacity.

The assessment is made solely on the basis of the information and documents presented and the relevant facts ascertained therefrom. Any change entails a new assessment.

Moreover, the assessment refers solely to the Liechtenstein legal area and Liechtenstein legal bases, and it does not comment on legal requirements abroad. Clarifications to that effect must be carried out additionally and independently. This is relevant especially where cross-border activity is envisaged. Due to the lack of requirements under EU law, FinTech business models may be treated differently in the surrounding foreign countries.

By issuing an assessment, the FMA neither approves nor endorses the business model. Any statements or indications to that effect on websites and in the media must be avoided and, where necessary, will be corrected publicly by the FMA (see Article 43(3)(f) TVTG).

#### **5 Fees**

The fee payable to the FMA is CHF 2,000 per enquiry (Annex I(I<sup>quater</sup>)(h) on Article 30(1) FMAG).

#### **6 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>

#### **7 Final provisions**

##### **7.1 Entry into force**

This Instruction enters into force on 1 January 2020.

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