

FMA Instruction 2020/3 – Reporting and notification requirements under the TVTG

Instruction on the reporting and notification requirements 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 2020/3
Addressees:	TT Service Providers subject to registration under the TVTG, Token Issuers (irrespective of registration obligation)
Re:	Reporting and notification requirements under the TVTG
Place of publication:	Website
Date of publication:	1 January 2020
Last amended on:	1 January 2020

This Instruction provides an overview of the reporting and notification requirements applicable to (registered) TT Service Providers. 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. Changes with regard to the registration requirements (Article 18(3), Article 28(1)(a) TVTG, Article 6 TVTV)

The following remarks apply to TT Service Providers which are already registered.

After registration, TT Service Providers must inform the FMA of all changes with regard to the registration requirements, in particular:

- changes to persons with qualifying holdings, but also to the amount of individual holdings (reaching, exceeding, and falling below the holdings threshold of 10%);
- change of the member of the general management responsible for the TT Service;
- changes to the composition of governing bodies;
- new outsourcing agreements;
- changes to address or registered office.

The reports of changes must be accompanied by all evidence the FMA requires for its review (see Article 18(1) TVTG and FMA Instruction 2020/1).

In the e-Service portal, the FMA makes forms available to be used for these reports.

Recommendation

The registration requirements must be met for the entire duration of business activities, otherwise the FMA must withdraw the registration (Article 21(1) (a) TVTG).

The FMA accordingly recommends that changes with regard to the registration requirements be reported and reviewed in advance (i.e. before the changes occur). In the case of a review after the fact, there is a risk that the registration will be withdrawn.

2. Confirmation that the registration requirements are met (Article 5(1) TVTV)

The following remarks apply to TT Service Providers which are already registered. The first report must be made in the year following registration.

By 31 March of each year, TT Service Providers must confirm in writing to the FMA that the registration requirements set out in Article 13 TVTG were permanently met during the preceding year.

In the e-Service portal, the FMA makes forms available to be used for these reports.

3. Evidence of required minimum capital (Article 5(2) TVTV)

The following remarks apply to TT Service Providers which are already registered. The first report must be made in the year following registration.

According to Article 5(2) TVTV, TT Service Providers must provide evidence to the FMA by 31 March of each year that the minimum capital required under Article 16 TVTG was available over the course of the entire previous year.

If the minimum capital is held in the form of tokens, this evidence must be provided twice a year, on 31 March and 30 September.

The evidence may be provided

- in the same form as in the registration procedure (Article 4 TVTV), or
- by presenting a confirmation by an audit firm or auditor recognised by the FMA.

Financial intermediaries licensed by the FMA which are already required to have higher minimum capital under that license need not provide any additional evidence thereof.

The evidence must be submitted to the FMA by post or electronically in a standard format (pdf, jpg, etc.).

4. Notification of a Token Issuance (Article 30(c) TVTG, Article 7 TVTV)

The following remarks apply to all Token Issuers, irrespective of whether they are registered with the FMA or not.

According to Article 30(c) TVTG, Token Issuers must report each Token Issuance to the FMA in advance. Issuance in this context is the public offering of tokens in their own name or in the name of a client (see Article 2(1)(k) TVTG).

The notification requirement arises (cumulatively):

- every time a token is issued for the first time (not only by way of sale), but not when a token is resold that is already in circulation;
- if the offering is public. For instance, this is the case if the notice of the offering is addressed to an unrestricted group, but not if tokens are merely awarded to personally known persons determined in advance;
- independently of whether the exceptions from the obligation to compile and publish basic information under Article 31 TVTG apply; and
- independently of whether a prospectus must be drawn up for the token under the EWR-WPPDG.

The notification to the FMA must contain at least the following points:

- information on the Token Issuer, especially name, address, contact data, and – for legal persons – a current extract from the Commercial Register;
- information on the token, especially name, number of tokens to be issued during a specified time period, and the right embodied in the token;
- name of the TT System used;
- time period of the issuance;
- issuing currencies, i.e. currencies against which the token is to be issued, specifically fiat currencies, cryptocurrencies/tokens, or both;

- target markets.

The FMA may request more information as necessary.

The notification of a Token Issuance 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.

Recommendation

Depending on their functionality and design, tokens may fall within the scope of the special financial market laws enumerated in Article 5(1) of the Financial Market Authority Act (FMAG). In particular, tokens may constitute a financial instrument or electronic money. Their issuance and use may therefore be subject to a licensing or prospectus requirement.

In light of the existing criminal provisions set out in financial market legislation and in order to achieve the greatest possible legal certainty, the FMA recommends presenting the envisaged business model to the FMA for assessment before any token is issued (see FMA Instruction 2020/2).

5. Reporting requirements in the transitional year

The following remarks apply to persons who, as of 1 January 2020, already provide a TT Service subject to registration under Article 12 TVTG but have not yet been registered by the FMA.

Such persons must carry out their business activity in accordance with Articles 25 to 28 of the Act and thus in particular meet the reporting requirements under Article 28 TVTG.

As long as the TT Service Providers have not yet been registered by the FMA, the report pursuant to Article 28(1)(a) TVTG is limited to an announcement that business has commenced.

According to Article 28(1) in conjunction with Article 20(1) TVTG, TT Service Providers must therefore report to the FMA without delay:

- the fact that they are engaged in an activity requiring registration as a TT Service;
- the cessation of their business activities;
- their removal from the Commercial Register;
- final initiation or dismissal of bankruptcy proceedings.

The report must be submitted to the FMA by post or electronically in a standard format (pdf, jpg, etc.).

The FMA makes a reporting form available on its website for reporting the fact that one is engaged in an activity requiring registration as a TT service.

The transition period ends at midnight on 31 December 2020.

6. Costs

A fee of CHF 700 is payable for the review of each change to a registration requirement (Article 30 in conjunction with Annex 1 Section I.^{quater} (e) of the Financial Market Authority Act (FMAG)).

7. 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>.

8. Final provisions

8.1. Entry into force

This instruction enters into force on 1 January 2020.

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