

FMA Instruction 2024/1 – 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).

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Addressees:	TT Service Providers subject to registration under the TVTG
Re:	Grant of a registration to provide a TT Service under the TVTG
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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

Legal and natural persons with headquarters (registered office) or place of residence in Liechtenstein who wish to professionally act as TT Service Providers in Liechtenstein must be listed in the TT Service Provider Register of the FMA before commencing their activities (Article 12(1) and Article 19a TVTG). A distinction is made between a regular and a simplified registration procedure.

1.1 Regular registration procedure pursuant to Articles 13 et seq. TVTG

The regular registration procedure applies to natural and legal persons that do not fall under Article 19a TVTG (see point 1.2). Such persons must apply to the FMA for entry in the TT Service Provider Register. Registration is performed only if all requirements set out in Article 13 TVTG have been met.

1.2 Simplified registration procedure pursuant to Articles 19a et seq. TVTG

Certain undertakings that have already been issued a licence under financial market legislation and intend to provide TT Services can undergo a simplified registration procedure. These undertakings are:

- Banks with a licence pursuant to the Banking Act, for any TT Services;
- Electronic money institutions with a licence pursuant to the Electronic Money Act to act as Token Issuers, Token Generators, Tokenisation Service Providers, TT Depositories, and TT Transfer Service Providers;
- Central securities depositories with a licence pursuant to Regulation (EU) No 909/2014 to act as TT Depositories, TT Verifying Authorities, TT Price Service Providers, TT Identity Service Providers, and TT Transfer Service Providers;
- Investment firms with a licence pursuant to the Banking Act to act as Token Issuers, Token Generators, Tokenisation Service Providers, TT Depositories, TT Exchange Service Providers, TT Verifying Authorities, TT Price Service Providers, TT Identity Service Providers, TT Trading Platform Operators, TT Crypto-Asset Managers, and TT Transfer Service Providers;
- Asset management companies with a licence pursuant to the Asset Management Act to act as Tokenisation Service Providers, TT Verifying Authorities, TT Price Service Providers, TT Identity Service Providers, and TT Crypto-Asset Managers;
- Management companies with a licence pursuant to the Law concerning Specific Undertakings for Collective Investment in Transferable Securities or the Alternative Investment Fund Managers Act to act as Tokenisation Service Providers, TT Verifying Authorities, TT Price Service Providers, TT Identity Service Providers, and TT Crypto-Asset Managers.

Such undertakings must provide the FMA with the information and documents referred to in Article 3a TVTG before commencing their activities. If this information and documentation is complete and of sufficient quality, the FMA shall make the entry in the register.

1.3 TT Services

TT Services include the activities referred to in Article 2(1)(k)-(y) TVTG. When evaluating which activity is specifically at issue, it must be taken into account whether the service, according to the definition thereof, relates to tokens or crypto-assets. Crypto-assets are considered to be a subset of tokens within the meaning of the TVTG, referring exclusively to fungible tokens. Where the law refers to Crypto-Asset Services instead of TT Services, the services therefore relate to fungible tokens only.

- Token Issuers:

Persons who offer tokens to the public in their own name or in the name of a client. The former, referred to as "self-issuers", are not subject to any registration obligation. They must comply with the provisions of Article 38a TVTG, however.

- Token Generators:

Persons who put tokens into circulation for clients and ensure the technical requirements vis-à-vis third parties for effective disposal over tokens. "Putting into circulation" refers to the initial provision of a token on a TT system.

- Tokenisation Service Providers:

Persons who put tokens into circulation for clients and (in contrast to a Token Generator) ensure the legal and technical requirements vis-à-vis third parties for effective representation and transfer of rights via tokens.

- TT Depositaries:

Persons who safeguard tokens or TT Keys for clients.

The TT Depository combines the services of the TT Token Depository, TT Key Depository, and TT Protector previously separated out under the TVTG. "Irregular custody" is now also covered.

- 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.

- TT Exchange Service Providers:

Persons who exchange legal tender for crypto-assets and vice versa as well as crypto-assets for crypto-assets against their own book.

- TT Verifying Authorities:

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

- TT Price Service Providers:

Persons who provide TT system users with aggregated, i.e. self-calculated, price information on the basis of purchase and sale offers or completed transactions, i.e. who publish such information.

- 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.

- TT Agents:

Persons who professionally distribute or provide TT Services in Liechtenstein in the name and for the account of a foreign TT Service Provider.

- Token Lending Undertakings:

Persons who receive transferred tokens under the condition that they can dispose of them at their own discretion or on the instructions of customers, but must transfer tokens back after a certain period of time.

- TT Trading Platform Operators:

Persons who operate a crypto-asset trading platform which brings together or facilitates the bringing together of multiple third-party purchasing and selling interests, on the platform and in accordance with its rules, in a way that results in a contract, either by exchanging crypto-assets for other crypto-assets or for a fiat currency that is legal tender.

- TT Crypto-Asset Managers:

Persons who manage portfolios in accordance with mandates given by customers on a discretionary client-by-client basis where such portfolios include one or more crypto-assets or who offer or give personalised recommendations to customers in respect of one or more transactions relating to crypto-assets, or the use of crypto-asset services.

- TT Transfer Service Providers:

Persons who initiate the disposal of one or more crypto-assets from one TT Identifier to another TT Identifier on behalf of customers. The transfer of tokens for customers was previously included in the registration as a TT Token Depository or TT Key Depository and must now also be registered separately.

2. Regular registration procedure

2.1 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.

2.1.1 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 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 or a condition precedent must be decreed (Article 13(1)(k) in conjunction with Article 19(3) and (4) TVTG).

2.1.2 *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)*

Reliability

The members of the governing bodies of a TT Service Provider as well as its shareholders, owners, or partners that have a qualifying holding in the applicant must each meet the reliability requirements set out in Article 14(1) TVTG, i.e. in particular have a clean criminal and financial record. According to Article 2(1)(z^{ter}), a qualifying holding is defined as a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which the interest is held.

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).

2.1.3 *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 and Tokenisation Service Providers;
- TT Verifying Authorities;
- TT Price Service Providers;
- TT Identity Service Providers;
- TT Agents;
- 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 subject to a registration obligation:

- 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 Depositories: CHF 100 000;
- for Token Lending Undertakings where the tokens transferred by customers are to be regarded as third-party property in proceedings to secure rights, compulsory execution proceedings, and insolvency proceedings of the TT Service Provider and are to be segregated in favour of the customer: CHF 100 000.
- Token Lending Undertakings for which this is not the case must hold at least 10% of the equivalent value of the tokens transferred by customers as own funds. They are obliged to assess their risks appropriately and hold higher own funds if necessary.
- for TT Trading Platform Operators: CHF 150 000;
- for TT Crypto-Asset Managers: CHF 50 000;
- for TT Transfer Service Providers: CHF 50 000;
- 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 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 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.

2.1.4 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.

2.1.5 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. 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.

2.2 Registration application and procedure (Article 18 TVTG in conjunction with Articles 3 and 4 TVTV)

The registration application must be submitted to the FMA electronically. The registration application must be accompanied by the completed Annex 1 of this Instruction together with all other annexes relevant to the specific case.

The FMA may request additional documents as needed. The FMA may also waive the submission of certain documents where they are already available to the FMA because the applicant is already registered for a TT Service other than the TT Service applied for or if the applicant has already been registered for the same TT Service in the past. At the substantiated request of the applicant, further documents may be waived in individual cases.

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.

The application and the accompanying documents must in principle be in German or English. Notarised translations of documents in other languages must be provided. Persons already licensed or registered with the FMA must mark the parts of the submitted documents relevant to the TT Service.

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.

If relevant facts change during the registration procedure, updated documents must be submitted without delay.

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).

3. Simplified registration procedure pursuant to Articles 19b-19c TVTG

Undertakings wishing to make use of the simplified registration procedure must submit information and documents on the types of TT Services planned, including their marketing, to the FMA at least 40 working days before the first provision of a TT Service. The information and documents to be submitted are defined in Article 3a TVTV. Specifically, these are:

- a description of the business model in which the nature of the planned TT Service (including the marketing thereof) and information on the TT systems used is particularly evident;
- proof of the minimum capital as required by Article 4 TVTV and proof of the origin of the funds, provided that no higher minimum capital than that required under the TVTG is prescribed as part of the licence under financial market law;
- a description of the written internal procedures and control mechanisms as required by Article 13(1)(g) TVTG;
- the names of the members of the management who are responsible for the TT Service;
- the names of the persons responsible for the execution of the TT Service as well as proof that they are technically suitable.

Certain provisions from the regular registration procedure therefore do not apply in the simplified registration procedure. These are, in particular, the provisions on reliability and technical suitability of the members of the management who are responsible for the TT Service.

Under the simplified registration procedure, the existence of special internal control mechanisms set out in Article 17 TVTG is also not a requirement for entry in the TT Service Provider Register, but it must be ensured during ongoing operations. Ideally, the relevant arrangements are therefore already submitted as part of the simplified registration procedure.

The information and documents must be submitted to the FMA electronically and in German or English. Notarised translations of documents in other languages must be provided. If relevant facts change during the simplified registration procedure, updated documents must be submitted without delay.

If the information and documents submitted are incomplete or deficient, the FMA grants a grace period of at most 20 working days for rectification. After this period, the service provider is prohibited from providing TT Services.

If, on the other hand, the FMA has received all the information and documents in full, it must enter the service provider in the TT Service Provider Register within 20 working days.

4. Costs

4.1 Registration fee

A fee of CHF 3 500 is payable for the grant or denial of a registration, irrespective of the number of TT Services applied for. If a fee in the amount of CHF 2 000 has already been paid for the issuing of information pursuant to Article 43(2)(b) TVTG, the fee for the grant or denial of a registration shall amount to CHF 1 500. In the case of TT Agents, the fee shall be CHF 700 (Article 30 in conjunction with Annex 1 Section I.^{quater} (a) FMAG).

If a registered TT Service Provider applies for registration for the provision of additional TT Services in a separate application, a flat registration fee of CHF 700 is charged.

Under the simplified procedure, no fee is charged for entry in the TT Service Provider Register.

4.2 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 obtained by way of the regular procedure expires if business has not commenced within a year or was not carried out for more than one year (Article 20(1)(a) and (b) TVTG). In justified cases, the FMA may extend these time periods on request.

A registration pursuant to Article 19a TVTG expires if the licence expires or is withdrawn from the TT Service Provider in accordance with financial market supervision legislation (Article 20(2a) TVTG).

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).

5. 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.

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](https://www.fma.li/en/fma/data-protection/fma-privacy-policy.html).

7. Entry into force

This Instruction enters into force on 1 February 2024.

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- Annex 1 TT registration application form (regular procedure)
- 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