

Translation of Liechtenstein Law

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This Act shall enter into force on 1 January 2020, subject to fulfilment of the constitutional requirements.

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| English title: | Law of 3 October 2019 on Tokens and TT Service Providers (Token and TT Service Provider Act; TVTG) |
| Original German title: | Gesetz vom 3. Oktober 2019 über Token und VT-Dienstleister (Token- und VT-Dienstleister-Gesetz; TVTG) |
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Law
of 03 October 2019
on Tokens and TT Service Providers
(Token and TT Service Provider Act; TVTG)

I hereby grant my consent to the following resolution adopted by Parliament:¹

I. General provisions

Art. 1

Object and Purpose

1) This law establishes the legal framework for all transaction systems based on Trustworthy Technology and in particular governs:

- a) The basis in terms of civil law with regard to Tokens and the representation of rights through Tokens and their transfer;
- b) The supervision and rights and obligations of TT Service Providers.

2) It aims:

- a) to ensure trust in digital legal communication, in particular in the financial and economic sector and the protection of users in TT Systems;
- b) to create excellent, innovation-friendly and technology-neutral framework conditions for rendering services concerning TT Systems.

¹Report and application, together with Comments from the Government No. 54/2019 and 93/2019

Art. 2

Definitions and designations

1) The following definitions are established for the purposes of this Act:

- a) "Trustworthy Technology (TT)": Technologies through which the integrity of Tokens, the clear assignment of Tokens to TT Identifiers and the disposal over Tokens is ensured;
- b) "TT Systems": Transaction systems which allow for the secure transfer and storage of Tokens and the rendering of services based on this by means of trustworthy technology;
- c) "Token": a piece of information on a TT System which:
 1. can represent claims or rights of memberships against a person, rights to property or other absolute or relative rights; and
 2. is assigned to one or more TT Identifiers;
- d) "TT Identifier": an identifier that allows for the clear assignment of Tokens;
- e) "TT Keys": a key that allows for disposal over Tokens;
- f) "Users": people who dispose over Tokens and/or use the TT Services;
- g) "Token Issuance": the public offering of Tokens;
- h) "Basic Information": Information about Tokens to be offered to the public, enabling the user to make a judgement about the rights and risks associated with the Tokens as well as the TT service providers involved;
- i) "TT Service Provider": a person who exercises one or more functions under letters k to t;
- k) "Token Issuer": a person who publicly offers the Tokens in their own name or in the name of a client;
- l) "Token Generator": a person who generates one or more Tokens;
- m) "TT Key Depositary": a person who safeguards TT Keys for clients;
- n) "TT Token Depositary": a person who safeguards Token in the name and on account of others;
- o) "TT Protector": a person who holds Tokens on TT Systems in their own name on account for a third party;
- p) "Physical Validator": a person who ensures the enforcement of rights in accordance with the agreement, in terms of property law, represented in Tokens on TT systems;

- q) "TT Exchange Service Provider": a person, who exchanges legal tender against Tokens and vice versa and Tokens for Tokens;
- r) "TT Verifying Authority": a person who verifies the legal capacity and the requirements for disposal over a Token;
- s) "TT Price Service Provider": a person who provides TT System users with aggregated price information on the basis of purchase and sale offers or completed transactions;
- t) "TT Identity Service Provider": a person who identifies the person in possession of the right of disposal related to a Token and records it in a directory.

2) The designations used in this Act to denote persons and functions include persons of male and female gender.

II. Civil basis

Art. 3

Object and scope

1) This chapter governs the qualification of Tokens and their disposal on TT Systems under civil law.

2) It applies if:

- a) Tokens are generated or issued by a TT Service Provider with headquarters or place of residence in Liechtenstein; or
- b) Parties declare its provisions to expressly apply in a legal transaction over Tokens.

3) Articles 4 to 6 and 9 also apply correspondingly to Tokens that do not represent any rights.

Art. 4

Qualification of Tokens

If Liechtenstein Law is applicable according to article 3, the Token is considered to be an asset located in Liechtenstein.

Art. 5

Power of Disposal and Right of Disposal

- 1) The TT Key holder has the power of disposal over the Token.
- 2) It is further assumed that the person possessing the power of disposal over a Token also has the right to dispose of the Token. For every previous holder of the power of disposal, it is presumed that he was the person possessing the right of disposal at the time of his ownership.
- 3) If someone is the holder of a power of disposal without wanting to be the person possessing the right of disposal, he can rely on the person from whom he received the Token in good faith is the person possessing the right of disposal.

Art. 6

Disposal over Tokens

- 1) Disposal is:
 - a) the transfer of the right of disposal to the Token; or
 - b) the justification of a securities or a right of usufruct to a Token.
- 2) Disposal over a Token requires that:
 - a) the transfer of the Token is concluded in line with the regulations of the TT System, where a restricted in rem right to a Token can also be ordered without transfer, if this is apparent to third parties and clearly establishes the time of ordering;
 - b) the transferring party and the recipient party unanimously declare that they are transferring the right of disposal to the Token or that they wish to justify a restricted in rem right; and
 - c) the transferring party is the person possessing the right of disposal pursuant to article 5; article 9 remains unaffected.
- 3) If a Token is disposed over without reason or a subsequent reason fails to exist, the revocation shall be accomplished in accordance with the provisions of the Enrichment Law (sections 1431 et seq. ABGB).

Art. 7

Effects of Disposal

1) Disposal over the Token results in the disposal over the right represented by the Token.

2) If the legal effect under (1) does not come into force by law, the person obliged as a result of the disposal over the Token must ensure, through suitable measures, that:

- a) the disposal over a Token directly or indirectly results in the disposal over the represented right, and
- b) a competing disposal over the represented right is excluded.

3) The disposal over a Token is also legally binding in the event of enforcement proceedings against the transferor and effective vis-à-vis third parties, if the transfer:

- a) was activated in the TT system prior to the commencement of the legal proceedings, or
- b) was activated in the TT system after the initiation of the legal proceedings and was executed on the day of the proceeding's openings, provided that the accepting party proves that he was without knowledge of the proceedings openings or would have remained without knowledge upon the exercise of due diligence.

Art. 8

Legitimacy and exemption

1) The person possessing the right of disposal reported by the TT System is considered the lawful holder of the right represented in the Token in respect of the Obligor.

2) By payment, the Obligor is withdrawn from his obligation against the person who has the power of disposal as reported by the TT system, unless he knew, or should have known with due care, that he is not the lawful owner of the right.

Art. 9

Acquisition in Good Faith

Those who receive Tokens in good faith, free of charge, for the purpose of acquiring the right of disposal or a restricted in rem right is to be

protected in his acquisition, even if the transferring party was not entitled to the disposal over the Token unless the recipient party had been aware of the lack of right of disposal or should have been aware of such upon the exercise of due diligence.

Art. 10

Cancellation of Tokens

1) If a TT Key is unaccounted for or a Token is otherwise not functional, the person who possessed the right of disposal at the time of the loss or when the Token became non-functional can apply for the Token to be cancelled in non-contentious proceedings.

2) For this purpose, the applicant must convince the court of their right of disposal and the loss of the TT Key or the non-functionality of the Token.

3) The respondent is the person obliged from the right represented in the Token.

4) The declaration that a Token is non-functional shall be published without delay in the Official Journal and at the discretion of the District Court in any other appropriate manner.

5) The applicant may also assert their right without the Token upon cancellation or demand the generation of a new Token at their own expense.

III. Supervision of TT Service Providers

A. General

Art. 11

Object and scope

1) This chapter governs the registration and supervision of TT Service Providers with headquarters or place of residence in Liechtenstein and their rights and obligations.

2) It does not apply to the country, municipalities or municipal associations or public companies when acting as officials.

B. Registration of TT Service Providers

1. Obligation and requirements of registration

Art. 12

Registration obligation

1) Persons with headquarters 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 in writing (article 23) with the FMA before providing a service for the first time.

2) Token Issuers with headquarters or place of residence in Liechtenstein who issue Tokens in their own name or in the name of a client in a non-professional capacity must apply to be entered into the TT Service Provider Register in writing with the FMA before beginning their activity of Tokens in the amount of CHF 5 million or more will be issued within a period of twelve months.

Art. 13

Registration requirements

1) An entry in the TT Service Provider Register (article 23) requires the applicant to:

- a) be capable of action;
- b) be reliable (article 14);
- c) be technically suitable (article 15);
- d) have their headquarters or place of residence in Liechtenstein;
- e) have the necessary minimum capital (article 16), where appropriate;
- f) have a suitable organisational structure with defined areas of responsibility and a procedure to deal with conflicts of interest;
- g) have written internal proceedings 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;
- e) have special internal control mechanisms (article 17), where appropriate;
- i) have authorisation pursuant to the Trustees Act if they intend to act as a TT Protector; and

- k) if they intend to conduct activity that is subject to an additional authorisation obligation in accordance with a law pursuant to article 5(1) of the Financial Market Supervision Act, for which the corresponding authorisation is available.
- 2) The government may rewrite the registration requirements in (1) subject to articles 14 to 17 in more detail by issuing an ordinance.

Art. 14

Reliability

- 1) A natural person is excluded from rendering a TT Service if:
- a) they have not been convicted by a court of law for fraudulent bankruptcy, damage to third party creditors, preferring of a creditor with fraudulent intent or grossly negligent interference with creditor's interests (sections 156 to 159 of the Liechtenstein Criminal Code), or have been sentenced to up to three months' imprisonment or a fine of more than 180 daily rates and the conviction has not been expunged; and
 - b) they have not been convicted in the ten years prior to their application due to severe or repeated violations of the provisions of the Law on Unfair Competition, the Consumer Protection Act or a law pursuant to article 5(1) of the Financial Market Supervision Act;
 - c) they have been subject to a futile seizure in the five years prior to application;
 - d) bankruptcy proceedings were brought against them in the five years prior to application or an application to bring bankruptcy proceedings was rejected due insufficient assets to cover the cost pursuant to article 10(3) of the Liechtenstein Bankruptcy Rules; or
 - e) there is another reason which creates serious doubt concerning their reliability.
- 2) (1) letters a to d also applies for foreign decisions and proceedings if the underlying action is also a criminal offence pursuant to Liechtenstein law.
- 3) For legal persons, the requirements under (1) must be met by members of their bodies and shareholders, partners or holders who hold a qualified investment of 10 % or more in a legal person.
- 4) Upon request, the FMA may allow for exclusion under (1) and (2) if committing the same or similar offence when rendering the TT Service

is not to be expected in consideration of the nature of the criminal offence and the personality of the person sentenced.

Art. 15

Technical suitability

Those who are sufficiently technically qualified due to their education or prior career for the task in question shall be considered technically suitable.

Art. 16

Minimum capital

1) Applicants who intend to act as TT Service Providers pursuant to article 2(1) letters l, n, o, p and r must have the appropriate minimum capital or a guarantee of the same value before starting their activity. Minimum capital is:

- a) for Token Issuers pursuant to article 12(1):
 - 1. 50,000 Francs to the extent that Tokens with a total value of up to and including 5 million Francs are issued during one calendar year;
 - 2. 100,000 Francs, if Tokens with a total value of more than 5 million Francs up to and including 25 million Francs are issued within a period of twelve months;
 - 3. 250,000 Francs to the extent that Tokens with a total value of more than 25 million Francs are issued during one calendar year;
- b) for TT Key Depositories: 100,000 Francs;
- c) for TT Token Depositories: 100,000 Francs;
- d) for TT Exchange Service Providers:
 - 1. 30,000 Francs, if transactions with a total value of more than 150,000 Francs up to and including 1 million Francs are carried out within a period of twelve months;
 - 2. 100,000 Francs, if transactions with a total value of more than 1 million Francs are carried out within a period of twelve months;
- e) for Physical Validators:
 - 1. 125,000 Francs if the value of the property, the contractual enforcements of which are guaranteed by the Physical Validator, does not exceed 10 million Francs;

2. 250,000 Francs if the value of the property, the contractual enforcements of which are guaranteed by the Physical Validator, exceeds 10 million Francs.
- 2) The minimum capital requirements under (1) must be adhered to at all times.
- 3) Applicants who intend to provide multiple TT Services shall meet the highest minimum capital requirement under (1).

Art. 17

Special internal control mechanisms

- 1) Applicants who intend to act as TT Service Providers pursuant to article 2(1) letters k to t must have suitable internal control mechanisms before starting their activity which ensure the following:
 - a) for Token Issuers:
 1. disclosure of basic information (articles 30 to 38) at any time during Token Issuance and for at least ten years afterwards;
 2. the prevention of abuse with regard to the option of Token recipients waiving basic information (article 31(1)(a));
 3. the execution of Token Issuance according to the conditions of the basic information;
 4. the maintenance of the provided services in the event of interruptions during the Token Issuance (business continuity management);
 - b) for Token Generators, the use of suitable measures which ensure that:
 1. the right in the Token is correctly represented during the Token's lifetime;
 2. that the disposal over a Token directly results in the disposal over the represented right;
 3. a competing disposal over the represented right are excluded both under the rules of the TT system and the provisions of applicable law.
 - c) for TT Key Depositories:
 1. establishing suitable security measures which in particular prevent the loss or abuse of TT Keys;

2. the separate safekeeping of customers' TT Keys from the business assets of the TT Key Depository; and
 3. the maintenance of the services in the event of interruptions (business continuity management);
- d) for TT Token Depositories:
1. establishing suitable security measures which in particular prevent the loss or abuse of TT Keys;
 2. the separate safekeeping of customers' Tokens from the business assets of the TT Token Depository; and
 3. the clear assignment of Tokens to customers;
 4. the execution of customers' orders in line with contracts;
 5. the maintenance of the services in the event of interruptions (business continuity management);
- e) for Physical Validators, their liability in the event that rights to property guaranteed by the Physical Validator cannot be enforced in accordance with the contract;
- f) for TT Protectors:
1. establishing suitable security measures which in particular prevent the loss or abuse of TT Keys;
 2. the separate safekeeping of customers' Tokens and business assets of the TT Protector; and
 3. the clear assignment of Tokens to customers;
 4. the execution of customers' orders in line with contracts;
 5. the maintenance of the services in the event of interruptions (business continuity management);
- g) for TT Exchange Service Providers:
1. the disclosure of comparable market prices of the traded Tokens;
 2. the disclosure of the purchase and sale prices of the traded Tokens;
- h) for TT Verifying Authorities, the use of suitable measures which ensure that the verification services it offers are rendered reliably;
- i) for TT Price Service Providers:
1. the transparency of the published prices;
 2. the avoidance of conflicts of interest when setting prices;
 3. the disclosure of information to affected users regarding transactions concerning related parties.

k) for TT Identity Service Providers:

1. the use of suitable measures that allow for the identity of the person possessing the right of disposal to be established; in doing so, it must be ensured that:
 - aa) for natural persons or representatives of legal person present in person, their identity is determined based on official photo identification or by other evidence that has been or is to be document which is just as reliable; for representatives of legal persons, it must moreover be ensured that the necessary power of representation has been determined;
 - bb) for natural persons or legal persons not present in person, other identification methods are to be applied that allow for identification equivalent to under letter aa) to be determined;
 2. the specific assignment of TT Identifiers to the lawful holder;
 3. the secure storage of customer data.
- 2) The obligations arising from the internal control mechanisms under (1) must always be complied with.

2. Registration procedure

Art. 18

Registration application

- 1) The registration application pursuant to article 12 must include the following information and documents:
- a) name or company and address of the applicant;
 - b) information about the intended TT Service;
 - c) information about the TT Systems to be used during the planned TT Service;
 - d) information about the legal nature of the applicant, in the event that the applicant is a legal entity;
 - e) evidence that the requirements pursuant to articles 13 to 17 have been met;
 - f) further information and documents at the request of the FMA if necessary to assess the registration application.

2) The registration application and the information and documents under (1) may be submitted in electronic form to the FMA. The FMA may demand certificates to be submitted in the original, or be notarised or apostilled.

3) Changes in the information and facts under (1) must be reported to the FMA without delay. This notification to the FMA must be made prior to any public announcement.

4) The FMA may waive the submission of certain information and documents under (1) if it already has access to them, in particular because:

- a) the applicant already has authorisation according to the Financial Market Supervision Act;
- b) the applicant is already registered to render another TT Service than the one he is applying for; or
- c) the application has already been registered for the same TT Service.

5) The government shall regulate the registration application in more detail, in particular the evidence under (1)(e) by means of an ordinance.

Art. 19

Entry into the TT Service Provider Register

1) Based on the complete application and the information or documents submitted, the FMA must verify whether the registration requirements have been met.

2) The FMA must decide on the full application within three months.

3) If all registration requirements have been met, the FMA must enter the applicant into the TT Service Provider Register (article 23) and inform the applicant of the entry by sending an excerpt from the TT Service Provider Register. The FMA may carry out registration subject to conditions and obligations; the conditions and obligations must be available.

4) If the registration requirements are not met, the FMA must establish this within the period specified in (2), notwithstanding a procedure according to article 46 and prohibit the exercise of the TT Service in question.

5) The TT Service applied for may only be exercised for the first time after having been entered into the TT Service Provider Register.

3. Expiration and removal

Art. 20

Expiration of Registration

1) Registration in accordance with article 19 will expire if:

- a) the business has not commenced within a year;
- b) the business activity was not carried out for more than one year;
- c) the registration is waived in writing;
- d) bankruptcy proceedings are opened in respect of the TT Service Provider with legal effect or are rejected due to insufficient assets to cover the costs pursuant to article 10(3) KO; or
- e) the TT Service Provider's company has been deleted from the Commercial Register.

2) In justified circumstances the FMA may, upon application, extend the time-limits pursuant to (1) letters a and b.

3) The revocation of a registration must be communicated in writing to the TT Service Provider in question. After becoming legally effective the revocation 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 in accordance with article 23.

Art. 21

Removal of the registration

The FMA must remove a registration pursuant to article 19 if:

- a) the registration requirements are no longer met;
- b) the FMA was not aware of significant circumstances during registration;
- c) the registration as a TT Service Provider expired due to false information or for other reasons;
- d) a TT Service Provider systematically or seriously violates its legal obligations; or
- e) a TT Service Provider does not comply with the FMA's requests to restore the lawful status in accordance with (2).

2) The FMA requests the affected TT Service Provider to restore the legal status in the cases according to (1) letters a and b, setting a time-

limit of at least four weeks. If the request can not be sent to the TT Service Provider due to a lack of delivery address or a lack of legal bodies, the invitation will be published once in the Official Journal.

3) The revocation of a registration must be communicated in writing to the TT Service Provider in question. After becoming legally effective, the revocation 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 in accordance with (23).

Art. 22

Effect of the expiration and removal of the registration

1) With the expiration or removal of the registration pursuant to articles 20 and 21, the TT Service Provider must cease activity immediately.

2) The TT Service Provider must take the necessary precautions to ensure the interests of its clients are not impaired by the discontinuation of activities, and further, inform the FMA of these precautions immediately by providing a relevant description of the same.

3) If the FMA recognises that the precautions are insufficient, it must monitor implementation, and if necessary, commission an audit office to monitor implementation. The associated costs will be borne by the affected TT Service Provider.

4. TT Service Provider Register

Art. 23

Maintenance of the TT Service Provider Register

1) The FMA must maintain a publicly accessible register in which the following information must be entered:

- a) the TT Service Providers registered in Liechtenstein, citing the date of registration;
- b) the scope of the registered TT Services pursuant to article 12 including any possible requirements with the date of the entry of the TT Service in question;
- c) the expiration or removal of the registration pursuant to articles 20 and 21.

2 The FMA must verify entries under (1) based on a notification pursuant to article 18(3) and update them immediately if necessary.

3) The FMA must make the TT Service Provider Register available free of charge on its website. In addition, the FMA must grant any person access to the TT Service Provider Register at its physical office location, so long as technically feasible.

5. Exercising of business activity

Art. 24

Designation Protection

1) Designations that indicate activity as a TT Service Provider, may only be used in the company, in the designation of the business purpose and in the company's advertising, by registered TT Service Providers.

2) The government can regulate the details of the designation protection by means of an ordinance.

Art. 25

Safeguarding Requirements

1) Tokens held in a trust or in the name of the customer must be considered to be third-party assets in the event of enforcement, composition agreement proceedings and in the event that the TT Service Provider becomes bankrupt and shall be sorted in favour of the customer, subject to all claims of the TT Service Provider against the customer. The Tokens must be protected against claims of the TT Service Provider's other creditors, particularly in the event of bankruptcy, in order to protect the users. Tokens must be stored separately from the TT Service Provider's assets at all times.

2) TT Keys, which a TT Service Provider holds or keeps in safe custody for a customer in the TT Service Provider's own name or in another name, must be considered to be third-party assets in the event of enforcement, composition agreement proceedings and in the event that the TT Service Provider becomes bankrupt and shall be sorted in favour of the customer, subject to all claims of the TT Service Provider against the customer. The Tokens must be protected against claims of the TT Service

Provider's other creditors, particularly in the event of bankruptcy, in order to protect the users.

3) Upon request, during ongoing business operations, a TT Service Provider must present proof to the FMA showing that he has taken sufficient measures to comply with the requirements specified in (1). If the evidence is not provided or if the measures are insufficient, the FMA shall request that TT Service Provider furnish the necessary evidence or take suitable and necessary precautions to remedy the existing defects. This must be carried out in accordance with an appropriate deadline set by the FMA. If the supporting documents are not submitted or precautions are not taken at all, or within the time frame stipulated by the FMA, the FMA may take further measures, in particular, those set out in article 43(5).

4) In the event of enforcement against his TT Service Provider, the user has the right to appeal (article 20 of the Execution Law), if the enforcement relates to the Tokens secured in accordance with (1) or the TT Keys secured in accordance with (2). Under the same requirements, in the event of bankruptcy of the TT Service Provider, the user has the right to have his Tokens segregated from the assets of the TT Service Provider (article 41 of the Bankruptcy Rules (KO)).

Art. 26

Storage of Records and Supporting Documents

- 1) TT Service Providers must keep relevant records and supporting documents for supervisory purposes for at least ten years.
- 2) More specific legal obligations remain unaffected.

Art. 27

Outsourcing Functions

- 1) The outsourcing of important operational functions is permitted if:
 - a) the quality of the internal control of the TT Service Provider is not significantly impacted;
 - b) the obligations of the TT Service Provider remain unchanged according to this Act; and
 - c) the registration requirements according to this Act are not undermined.

2) In this context, an operational function is particularly important if it, only partially fulfilled or neglected, would significantly affect the TT Service Provider's ongoing compliance with its obligations under this Act or its financial performance.

3) A TT Service Provider outsourcing functions must take adequate precautions to ensure that the requirements of this Act are met.

4) Special statutory regulations on the outsourcing of functions remain reserved.

Art. 28

Reporting obligations

1) TT Service Providers must inform the FMA immediately of:

- a) all changes with regard to the registration requirements;
- b) the cessation of business activities;
- c) the removal of the TT Service Provider from the Commercial Register;
- d) the existence of another reason for cancellation pursuant to article 20.

2) TT Service Providers must inform the FMA of all information about its business activity required to exercise supervision.

3) The government shall regulate reporting obligations, in particular the frequency and content of the notifications under (2) in more detail by means of an ordinance.

Art. 29

Publication obligations

TT Service Providers must publish the following in a way that can be accessed by the public at any time:

- a) information about the TT Systems it uses;
- b) a declaration on the suitability of the TT Systems it uses for the application purposes in question; and
- c) information about any possible change in a TT System, including a relevant justification.

6. Basic information for Token Issuance

Art. 30

Obligation to compile and publish basic information and to display the Token Issuance

Subject to (31), before issuing Tokens Token Issuers must:

- a) prepare basic information according to the following provisions;
- b) publish the basic information in an easily accessible way; and
- c) report the Token Issuance to the FMA.

Art. 31

Exceptions

1) The obligations pursuant to article 30(a) and (b) shall not apply for public offerings of Tokens if:

- a) all recipient parties demonstrably declare that they waive the basic information before acquiring the Token;
- b) the offer is geared towards fewer than 150 users;
- c) the sale price of the total issue does not exceed 5 million Francs or the corresponding equivalent in another currency; or
- d) there is already an obligation to publish qualified information about the public offering of Tokens according to other laws.

2) No additional basic information needs to be published for any later public resale of Tokens if:

- a) the basic information pursuant to article 30 has already been published; and
- b) the issuer or the person responsible for preparing the basic information has approved its use in a written agreement.

Art. 32

Form and language of the basic information

1) Basic information must be prepared and published in a way that is easy to analyse and understand.

2) Basic information can be prepared and published in one or several documents.

3) If basic information consists of several documents, then the Token Issuer must prepare and publish a brief, easily understandable summary with information about the Token Issuer and the Tokens to be issued.

4) Basic information must be prepared and published in German or English.

Art. 33

Content of the basic information

1) Basic information must in particular include the following:

- a) information about the Tokens to be issued and associated rights;
- b) the name of the TT system used;
- c) a description of the purpose and nature of the legal transaction underlying the Token Issuance;
- d) a description of the purchase and transfer conditions for the Tokens;
- e) information about the risks associated with purchasing the Tokens;
- f) for the issuance of Tokens, the rights to property represent:
 1. evidence of a registered Physical Validator regarding ownership of the property; and
 2. a confirmation from a registered Physical Validator, that the rights registered in the issued Tokens are also enforceable in line with the basic information.

2) The basic information, moreover, includes a summary, which contains brief and generally understandable essential information in the language, in which the basic information was originally prepared. The summary must also include warnings that:

- a) it is to be understood as an overview of the subsequent basic information;
- b) the recipient party must read all of the basic information before purchasing; and
- c) persons who have assumed responsibility for the summary, including its translation, or who prepare the summary or translation can only however be made liable in the event that the summary is misleading, incorrect or inconsistent if read together with other parts of the basic information.

3) The basic information must include the names and roles (and, for legal persons, the company and headquarters) of those who are responsible for the content. The basic information must include a declaration by these persons that the information is correct to the best of their knowledge and that no significant information has been left out.

4) The basic information must also include the names and roles (and, for legal persons, the company and headquarters) of those who are responsible for the technical and legal functionality of the Token.

5) The Token Issuer must put an issuance date on the basic information and ensure it cannot be amended through suitable measures.

6) The government may regulate the content of the basic information in more detail by means of an ordinance.

Art. 34

Addendum to the basic information

1) Every new material fact or every material error or inaccuracy with regard to the basic information that is determined after the basic information is first published must be named in an addendum to the basic information.

2) In addition, the summary and any translations of the summary must be supplemented by the information included in the addendum.

3) The government may regulate the addendum to the basic information in more detail by means of an ordinance.

Art. 35

Liability

1) If any facts in the basic information that is to be prepared according to this Act are incorrect or incomplete, or if the basic information in accordance with these provisions was not prepared, the persons responsible under articles 33(3) and (4) shall be liable to every user for damages that arise as a result, provided they do not demonstrate that they took the due care of a prudent businessman when preparing the basic information. Only damage directly suffered is considered to be damage, not also loss of profit.

2) The persons named in (1) shall also be liable for their vicarious agents and for the persons they employ, provided they do not demonstrate that they took the due care according to the circumstances in their selection, instruction and supervision.

3) Liability under (1) and (2) can neither be excluded nor restricted in advance to the detriment of users in the event of intent or gross negligence.

4) Liability shall only be borne for information in the summary including its translations if they are misleading, incorrect or inconsistent in connection with other parts of the basic information or do not convey all material information. The summary must include a clear warning in this respect.

Art. 36

Severability

If several persons are liable to pay compensation for a damage, each of them shall be held jointly and severally liable with the others so long as the damage is personally attributable to their own negligence and circumstances.

Art. 37

Jurisdiction

The Court of Justice shall have jurisdiction for claims of the transferee of Token regarding the legal relationship with the Token Issuer with headquarters within the country.

Art. 38

Statute of limitations

Any claim for damages against the persons who are responsible in accordance with the above provisions will be barred by the statute of limitations one year from the date on which the cause of action accrues, the cause of action accruing on the date the injured party is both aware of the damage and the identity of the party liable for the damage, expiring regardless, ten years from the date of the harmful act.

C. Supervision

Art. 39

Jurisdiction

The Financial Markets Authority (FMA) is responsible for the supervision of TT Service Providers and the execution of the associated statutory provisions.

Art. 40

Official Secrecy

1) The FMA, any other persons consulted by these authorities and bodies and all representatives of public authorities shall be subject to official secrecy without any time limits with respect to the confidential information that they gain knowledge of in the course of their official activities.

2) Confidential information within the scope (1) may be transmitted in accordance with this Act or special statutory provisions.

3) If bankruptcy or liquidation proceedings have been initiated over a TT Service Provider by the decision of a court, confidential information which does not relate to third parties may be disclosed in civil law proceedings, if this is necessary for the proceedings concerned.

4) Without prejudice to cases covered by the requirements of criminal law, the FMA, all other administrative authorities, courts and bodies, natural persons or legal entities may only use confidential information that they receive in accordance with this Act only for purposes of fulfilling their responsibilities and tasks within the scope of this Act or for purposes for which the information was given, and/or in the case of administrative and judicial proceedings that specifically relate to the fulfilment of these tasks, provided this is required to do so. If the FMA, another administrative authority, court, body, or a person transmitting information, gives its consent; then the authority receiving the information may use it for other financial market supervision purposes.

Art. 41

Cooperation Between National Authorities and Agencies

The FMA works with other competent national authorities and agencies provided this is required to fulfil its duties under this Act.

Art. 42

Processing and transferring personal data

1) The FMA and other competent national authorities and agencies may process personal data, including personal data regarding criminal sentences and offences of the persons subject to this Act, or have such processed, if this is necessary in order to fulfil its duties under this Act.

2) They may send personal data to each other or other competent authorities in other EEC member states if this is necessary in order to fulfil its duties under this Act.

3) They may send personal data to the competent authorities of third-party states if the data protection requirements under chapter V of Regulation (EU) 2016/679 have been met in addition to the requirements under (2).

Art. 43

FMA duties and authorisations

1) In the course of its supervision, the FMA monitors compliance with the provisions of this Act and its associated ordinances.

2) The FMA is responsible for the following duties in particular:

- a) registering TT Service Providers and the removal of registrations;
- b) issuing information about the application of this Act or another Act listed in article 5(1) FMAG (Financial Markets Supervision Act) for clearly determined facts in connection with Trustworthy Technology;
- c) maintaining the TT Service Provider Register in accordance with article 23;
- d) the prosecution of contraventions in accordance with article 47(2).

3) The FMA has all necessary authority to perform its duties and may, in particular:

- a) require TT Service Providers to provide all information and documents required for the execution of this Act;
- b) order or carry out extraordinary audits;
- c) make decisions and ordinances;
- d) issue legally binding decisions and rulings;
- e) carry out on-site inspections of TT Service Providers; and
- f) correct false information that has been published by naming the TT Service Provider involve and issue warnings;
- g) temporarily prohibit the exercising of a TT Service.

4) If the FMA becomes aware of violations of this Act or of other deficits, it shall take the measures necessary to bring about a lawful state of affairs and to eliminate the deficits.

5) The FMA may assign an expert as its observer to a TT Service Provider if the interests of users or creditors appear to be acutely endangered by mismanagement. The external audit office appointed may be entrusted with this responsibility. The observer shall monitor the activities of the governing bodies, in particular the implementation of the measures ordered, and shall report to the FMA on an ongoing basis. The observer shall enjoy the unrestricted right to inspect the business activities and the books and files of the TT Service Provider. The cost of the supervisor must be borne by the TT Service Provider, insofar as a reasonable relationship exists between the work associated with the activity and its expenses.

6) If there is reason to assume that a person is rendering TT Services without authorisation pursuant to this Act, the FMA may demand information and documents from the person concerned if this person is a subordinate person. In urgent cases, the FMA may order the immediate cessation of the activity without prior warning and without imposing a deadline.

7) The costs incurred due to misconduct shall be borne by those responsible in accordance with article 26 of the Financial Market Supervision Act.

8) The government may regulate the details of the tasks and powers of the FMA by means of an ordinance.

Art. 44

Supervision taxes and fees

The Supervision taxes and fees are based on the Financial Market Supervision Act.

D. Proceedings and Legal Remedies

Art. 45

Proceedings

To the extent not otherwise specified in this Act, the provisions of the National Administration Act (LVG) shall apply to proceedings.

Art. 46

Legal remedy

1) Decisions and decrees of the FMA may be appealed within 14 days of service to the FMA Complaints Commission.

2) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service to the Administrative Court.

E. Penal Provisions

Art. 47

Offences and infractions

1) The following persons shall be penalised by the District Court for offences with up to one year imprisonment or a fine of up to 360 daily rates:

- a) those who render TT Services requiring registration contrary to article 12;
- b) those who use a designation contrary to article 24 which suggests activity as a TT Service Provider;

- c) those whose registration as a TT Service Provider expired due to false information or other illegal matters; or
- d) those who systematically violate their legal obligations in a serious manner as a TT Service Provider.

2) If the action does not constitute a criminal offence within the jurisdiction of the courts, TT Service Providers shall be fined by the FMA by up to 100,000 Francs due to an infraction, if:

- a) they do not comply with the minimum capital requirements under article 16;
- b) they do not have the internal control mechanisms listed in (17);
- c) they violate the reporting obligations under article 18(3) and article 28;
- d) they do not comply with the FMA requirements and conditions associated with registration pursuant to article 19(3);
- a) they violate the security obligations pursuant to article 25;
- f) they do not keep records, or keep insufficient records or do not store supporting documents contrary to article 26;
- g) they outsource important operational functions without meeting the requirements pursuant to article 27;
- a) they violate their publication obligations pursuant to article 29;
- i) they violate their obligations in connection with the preparation and publication of basic information or the display of the Token Issuance pursuant to (30) ff.;
- i) they fail to comply with a decree or order issued to them by the FMA with reference to the threat of punishment under this article.

3) The FMA must impose fines against legal persons if the infractions under (2) are committed in execution of the course of business of legal persons (offences) by persons who have either acted alone or as a member of the Administrative Board, Management Board or Supervisory Board of the legal person or another management position within the legal person, based on which they:

- a) are authorised to outwardly represent the legal person;
- b) exercise supervisory powers in a management position; or
- c) otherwise exercise significant influence over the management of the legal person.

4) For infractions under (2) committed by the employees of the legal person, even if not culpably, the legal person is also responsible if the infraction is enabled or significantly facilitated as a result of the persons named in (3) failing to take the necessary and appropriate measures to prevent such offences.

5) The responsibility of the legal person for the offence and the punishability of the persons named in (3) or the employees named in (4) due to the same offence are not mutually exclusive. The FMA may refrain from pursuing a natural person if a fine has already been imposed on a legal person for the same violation and there are no other circumstances that oppose refraining from pursuing the natural person.

6) In the event of negligent conduct, the upper penalty limits in (1) and (2) above shall be halved.

Art. 48

Responsibility

Where violations are committed in the business operations of a legal person, the penal provisions shall apply to the members of management and other natural persons who acted or should have acted on its behalf. With all persons, including the legal entity, shall, however, be jointly and severally liable for monetary penalties, fines and costs.

Art. 49

Announcing sanctions; binding effect of convictions

1) The FMA may announce the imposition of lawful punishments at the expense of the party concerned if this fulfils the purpose of this Act and is proportionate.

2) A conviction under this Act shall not be binding for the civil court judge with regard to the assessment of guilt, unlawfulness and determination of damage.

IV. Transitional and final provisions

Art. 50

Transitional provisions

1) Persons who render a TT Service requiring registration pursuant to article 12 at the time that this Act comes into force undertake:

- (a) to carry out their business in accordance with (25) to (38) in doing so, they may continue to use previous designations according to (24) until the expiry of the period according to letter b without registration; and
- b) to apply for the entry into the TT Service Provider Register to the FMA within a period of twelve months after this Act comes into force; otherwise, the right to render TT Services under this Act shall expire.

2) The provisions regarding the basis for Tokens under civil law according to chapter II may also be applied by the parties for Tokens that were generated before this Act came into force according to article 3(2)(b).

3) The provisions on the basic information for Token Issuance according to articles 30 to 28 shall apply to Tokens that are publicly offered for the first time after this Act comes into force.

Art. 51

Entry into force

Provided that the referendum deadline expires unutilised this Act shall enter into force on 01 January 2020, otherwise on the day after the announcement.