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Guidance Notes

***The upcoming
“Law on Transaction
Systems Based on
Trustworthy Technologies
(Blockchain Act)”***



Liechtenstein has made a name for itself by drafting the “Law on Transaction Systems Based on Trustworthy Technologies (Blockchain Act)” (“TT Law”), which came into force on 1st January 2020. The TT Law provides much needed legal certainty by bridging the current divide occurring when “real world” assets or rights are “tokenised”. This not only brings confidence to entrepreneurs and investors seeking a regulated environment for their ventures, but it also ensure that Liechtenstein’s reputation as a well-regulated jurisdiction is upheld.

I. *What is a Token?*

A Token represents information on a TT System that can embody fungible claims or membership rights enforceable against an individual, goods, and / or other absolute or relative rights, and ensuring the assignment to one or more Public Key (Art 5.1.1).

- A TT System is “a “transaction system that ensures the secure exchange and safe storage of digital representations of rights, as well as the service provisions based on those systems using trustworthy technologies in accordance with Art.3” of the TT Law) (Art. 5.1.17)
- A Public Key is “a sequence of characters representing a unique publicly accessible address contained in a TT System to which Tokens can be uniquely assigned” (Art 5.1.2).
- By contrast, a Private Key is “a sequence of characters that can be used alone or with other Private Keys enabling the disposal of a Public Key” (Art. 5.1.3).

Using Twitter as analogy to better grasp the above definitions, you may want to think of the above TT Law terms as follows:

TT Law defined term	Twitter analogy
Public Key:	Twitter handle (i.e. online ID on Twitter)
Private Key:	password to access Twitter account
TT System:	Twitter platform
Token:	Tweets

Thus:

- where a Twitter user can use the Twitter platform to access his Twitter account (which his password protects from use by other users) and post a Tweet (representing a specific thought he has) which is thereafter visible by other users and attributed to him because the Tweet is linked to his specific Twitter handle,
- a Token owner can own a Token (representing ownership rights to a specific patent) recorded on a TT System and, whilst other users using the Public Key linked to that Token may see the Token, the Token owner must use the Private Key of that Token if he wants to transfer that Token to another user.



Unlike the legislation in Switzerland applicable to tokens, the TT Law does not slot Tokens into categories (Payment / Utility / Security) to avoid (i) unnecessary complexity and (ii) the emergence of Tokens artificially crafted to fall within a category which does not require an authorisation from the financial authorities).

II. Who does the TT Law apply to?

The term “Blockchain Law” (“*Blockchain-Gesetz*”) is often (and somewhat misleadingly) being used as shorthand to refer to the TT Law, despite the fact that Liechtenstein lawmakers deliberately refer to “Trustworthy Technologies” (“*Vertrauenswürdigen Technologien*”) (“**TT**”) throughout the TT Law. The aim here is to keep the TT Law “technology neutral”, thus allowing the TT Law to continue to provide a robust legal framework even as technological innovation continues to flourish.

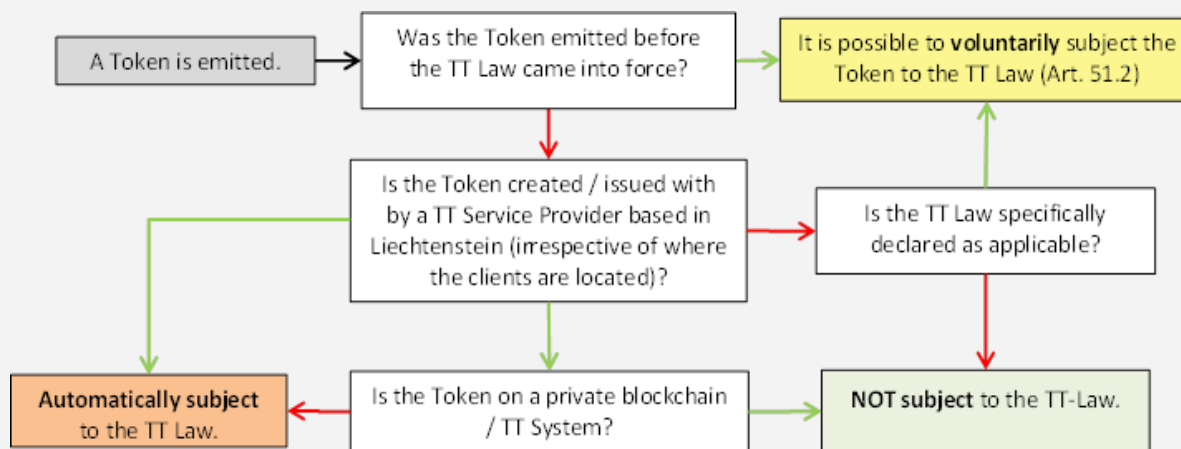
Consequently, the TT Law ensures its ongoing relevance by regulating TT Service Providers (“*VT-Dienstleister*”) based in Liechtenstein exclusively, setting out the requirements for “registration and supervision, as well as the rights and obligations of service providers who perform activities on TT Systems” (Art. 1), . This means that the TT Law does not seek to dictate which specific technologies are to be used by TT Service Providers in the course of their business, nor does it seek to regulate the activities of the technology developers as these are often “communities” spreading beyond Liechtenstein’s borders.

A TT-Service Provider is defined as a person, legal or natural, which takes on one of the following roles:

- **Token Emitter** (“*Token-Emittent*”), i.e. publicly offering Tokens in his own name or commercially on behalf of third parties;
- **Token Generator** (“*Token-Erzeuger*”), i.e. generating one or more Tokens and makes them available via a TT System;
- **TT Depositary** (“*TT-Verwahrer*”), i.e. providing Private Key deposit services on TT Systems for third parties;
- **Physical Validator** (“*Physischer Validator*”), i.e. ensuring the enforcement of rights relating to property in the sense of Liechtenstein Property Law embodied in Token on a TT System;
- **TT Protector** (“*TT-Protector*”), i.e. holding Tokens on TT systems in his own name on account for a third party;
- **TT Exchange Office Operator** (“*TT-Wechselstubebetreiber*”), i.e. exchanging legal tender for Tokens and vice versa, as well as Tokens for Tokens;
- **TT Verifying Authority** (“*TT-Prüfstelle*”), i.e. verifying the legal capacity and the requirements for the disposal of a Token;
- **TT Price Service Provider** (“*TT-Preisdienstleister*”), i.e. providing TT System Users with aggregated price information on the basis of purchase and sale offers or completed transactions; and / or
- **TT Identity Service Provider** (“*TT-Identitätsdienstleister*”), i.e. identifying the person in possession of the right of disposal related to a Public Key and records it in a directory.



In order to ascertain whether or not a Token Emission is subject to the TT Law, the following flow-chart serves as a broad guideline:



(For more information on Token Emissions, see section I below)

In light of the heightened risk inherent to the “Token-Economy”, Liechtenstein lawmakers have decided that all of the above “roles”, except for the Token Generator, TT Verifying Authority and TT Price Service Provider, shall be subject to the Liechtenstein Due Diligence Act (“Sorgfaltspflichtgesetz”). Setting out the particular due diligence requirements and identification methods is outside of the scope of this note.

III. Registration requirements

A TT Service Provider fulfilling any of the following roles MUST register with the Financial Market Authority (FMA) to be published on a public register (Art.36), or face an FMA-imposed fine of up to CHF 30,000 (Art. 49.1(a)):

- Token Emitter;
- TT Depositary;
- Physical Validator;
- TT Protector;
- TT Exchange Office Operator; or
- TT Identity Service Provider.

Token Generator, TT Verifying Authority and TT Price Service Provider may elect to register on the public registry on a voluntary basis, which may give prospective clients an additional layer of confidence in the professionalism and capacity of the TT Service Provider. However, it is worth noting that there is no simplified application procedure for those volunteering for registration: such applicants will see their applications reviewed by the FMA with the same degree of scrutiny as those required to register before starting their activity as TT Service Provider.

The registration procedure is as follows (Art. 36.3):



1. The applicant submits information to the FMA evidencing its capacity to fulfil the following requirements:
 - a. Personal capacity of the natural person involved, applying a “fit & proper” test, perhaps on par with the test applicable to banks although this is as yet unspecified;
 - b. Organisational capacity, including a clear organisational structure, internal control mechanisms and a minimum capital of CHF 100,000.
 - c. Other specific criteria, dependent on the type, scope and complexity of the services provided.
2. The FMA checks the information, and
 - a. The FMA accepts the application and registers the TT Service Provider on the public register (Art. 37 + Art 41); or
 - b. The FMA rejects the application and the applicant is prohibited from acting as TT Service Provider.

The FMA aims to accept or reject applications within three weeks of receiving the necessary information, however, a lack of response from the FMA within this timeframe does not grant the applicant the right to start being active on the market. The applicant should instead follow up with the FMA and, if necessary, lodge a complaint with the FMA’s ombudsman.

For those applicants who, apply for registration on a voluntary basis, an unsuccessful application means that the applicant will not be registered on the public register and it is unlikely that the FMA would turn a blind eye to an applicant, which it has deemed as unfit for registration, going to market. At this stage, however, further clarification is still needed as to how the FMA might take action in such instances.

It is worth noting that a registration in accordance with Art. 36.1 and Art. 36.2 can expire for a number of reasons detailed in Art. 38, most notably if the business (i) has not commenced within a year or (ii) the business activity was not carried out for more than a year.

Once a TT Service Provider is registered, it will need to report to the FMA any changes to its circumstances as presented on the application before such changes are made public, or otherwise face possible sanctions from the FMA (Art. 49). The FMA has the power to order the TT Service Provider to hand over information and / or force changes where appropriate, although the procedure to do so (periodic reporting, audit?) is not fully set out as yet.

IV. Token Emission

A Token emission in Liechtenstein may only take place once the Token Emitter publishes “Basic Information” on the public offering of Tokens, in English or German, and reported the same to the FMA (Art. 28).



The particulars of the information to be provided are set out at Art. 30, and perhaps too dry to be detailed in this note. However, it is worth noting that Art. 31 provides exemptions, namely that the requirements set out in Art.28 do not apply if:

- All buyers have verifiably disclaimed the basic information prior to purchasing the Token;
- The offer is directed at less than 150 Users;
- The selling price of the total emission does not exceed CHF 1,000,000 (or equivalent in another currency) over a period of 12 months; and / or
- There is a pre-existing obligation to publish qualified information about the public token offer under other laws.

Where the basic information is incorrect, incomplete, or omitted, then the responsible persons shall be held liable for the damage caused by the user (unless they prove that they did apply the care of a reasonably prudent businessman in preparing the basic information). This liability can neither be disclaimed nor limited in advance in an attempt to disadvantage Users or avoid liability for willful or gross negligence.

V. Ownership and disposal of Tokens

The person holding a Private Key not only has the power to dispose of the Token to which it relates, but is also assumed to have the right to dispose of said Token (Art.6.1), and is therefore considered as the owner of the Token. Where the transferor, having the right of disposal of the Token, disposes of the Token in accordance with the rules of the TT System, and provided both the transferor and transferee have affirmed their wish to transfer receive the Token, then that disposal of the Token results in the disposal of the rights embodied by that Token (Art.7 & Art.8). It is therefore critical that Token owners take appropriate steps to safeguard their Private Keys.

VI. Points to take away

The TT Law will prove to be an asset for those reputable firms which decide to operate their business in accordance with the TT Law as clients will draw confidence from the fact that such firms are operating within a clear legal framework designed to enable innovation whilst safeguarding the interests of users.

Having said that, the law is relatively complex and Blockchain regulation is new. The TT Law is certainly a huge step in the right direction. Its success will, however, be a function of its implementation. Existing Liechtenstein companies will have to adapt to this new environment and understand in detail what it means to be a TT Service Provider.

As of August 30th, 2018, the Financial Market Authority (FMA) has approved, for the first time, the prospectus of an Initial Coin Offering (ICO) / a Token Generating Event (TGE) for the sale of a security token in Liechtenstein which serves as the first ever governmentally approved public offering of security tokens in Europe. This reflects Liechtenstein's progressiveness in this area and of the things yet to come.