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# IT EMERGING TECHNOLOGIES PRACTICE GROUP

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## PUBLISHER



The Law Firm Network  
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# MAKING DIGITISATION LEGALLY WATERTIGHT: THE LIECHTENSTEIN BLOCKCHAIN ACT

by Remo Mairhofer

**At the beginning of 2020, Liechtenstein established the legal framework for distributed ledger technology respectively blockchain applications with the Blockchain Act - a novelty with many possibilities.**

## World's first Blockchain Act

The blockchain technology was first developed for Bitcoin, a private digital money system. Thereby, blockchain technology functions as a register in which transactions can be securely stored. However, the applications of blockchain technology are not limited to simple transactions of coins. Moreover, they offer the possibility for a wide range of economic services, since assets or rights in general can also be mapped on blockchain systems. Above all, the low costs of digital transactions (without intermediaries) open up new possibilities in the world of finance and services as well as in the industrial world. These applications are collectively referred to as the 'token economy'. Liechtenstein recognised this trend early on and was the first country in the world to create a legal framework and with it legal certainty for users and service providers with the 'Token and TT Service

Provider Act' (TVTG). Meanwhile, other states are also following suit.

## Transaction systems based on Trustworthy Technologies (TT)

The term 'Blockchain' originates from the application of Bitcoins, which involves the serial logging of transactions in a distributed ledger and the blockwise verification of a certain number of transactions. In this process, the unchangeable history of the transactions creates a relationship of trust between the actors. However, the Bitcoin blockchain is only one of the possible technical implementations of blockchains. Therefore, an abstract, technology-neutral definition of the term 'Blockchain' was deliberately chosen for the legislation, not least to prevent the legal framework from becoming outdated from a technological perspective after just a few years. The fact that trust is created

by technology and not only by organisations was the decisive factor in defining the term 'Trustworthy Technology' as the connecting factor for the law. The term 'Trustworthy' means that the integrity of tokens (see below), their unambiguous allocation and their secure exchange should be guaranteed. Colloquially, the TVTG is called the Blockchain Act.

## Introduction of a new legal subject 'Token'

As already mentioned, in addition to crypto-currencies (e.g. Bitcoin), there are many other possible uses for blockchain or TT systems (transaction systems that enable the secure transfer and storage of tokens and the provision of services based on the use of trustworthy technologies). For example, it is also possible to map software usage rights or financial instruments. In order to be able to cover as many possible uses of the token economy, legal rights are used. Everything that is used in the legal and economic system can be subsumed under this: the right to receive money, the right of ownership to an object (e.g. work of art or real estate), the right to receive goods, rights of use of all kinds, liens, rights to claims and membership





rights and much more can be included. However, these rights can only be represented digitally via TT systems and are thus subject to the legitimation and transfer order of the TT system. The original legal right and thus all associated legal consequences remain intact. In order to make this representation of rights in a TT system legally secure, the TVTG introduced the legal subject of the 'Token', which makes the representation of all types of rights on a TT system possible in the first place. The token is therefore akin to a holder for the representation of a right. The case of an 'empty' holder is also possible and relevant in practice, such as cryptocurrency without real value collateralisation (e.g. Bitcoin). However, the model chosen in the TVTG can also cover a large number of other cases of application (e.g. property rights or rights of use to objects, intellectual property rights, guarantee rights).

Supervision of TT service providers and civil law aspects of the TVTG

In regulating TT systems, the fundamental question has arisen as to whether the technology itself can or

should be regulated. Due to the high pace of innovation of TT systems and the lack of involvement of a regulated intermediary, the legislator considered it less sensible to regulate the technology itself. Therefore, adequate regulation and supervision of the TT service providers themselves were deemed appropriate, whereas the critical technical examination of the TT systems on which TT service providers offer their services is to be carried out by the TT service providers themselves.

TT service providers who offer activities relevant to user protection on a commercial basis and thus require registration (e.g. issuing, generating or holding tokens) must comply with the minimum standards of the TVTG. This applies to all TT service providers domiciled in Liechtenstein. However, it is not applicable to TT service providers domiciled abroad who provide TT services to persons domiciled in Liechtenstein, thus preventing any unreasonable restriction of market access of the token economy for persons domiciled in Liechtenstein.

On the one hand, the TVTG thus aims at

the supervision as well as the rights and obligations of TT service providers. On the other hand, it lays down the foundations of civil law in relation to tokens, the representation of rights by means of tokens and their transfer. Thus, if tokens are created or issued by a TT service provider domiciled or resident in Liechtenstein, the TVTG applies in the same manner as if parties expressly declare the provisions of the TVTG to be applicable in a legal transaction concerning tokens.

Liechtenstein as a FinTech location

With the TVTG, Liechtenstein provides a comprehensive regulation of the token economy since the beginning of 2020. However, not only the token economy has priority in Liechtenstein. The TVTG is only one part of the strategic approach to building a functioning digital ecosystem, which is being strongly promoted in Liechtenstein by the legislator, the government and authorities, the Financial Market Authority as well as the individual players in the private sector. The small principality can position itself far ahead in the competition for the best FinTech solutions.

Sources: Report and Application of the Government to the Parliament of the Principality of Liechtenstein concerning the Token and TT Service Provider Act and the amendment of other laws (No. 54/2019)

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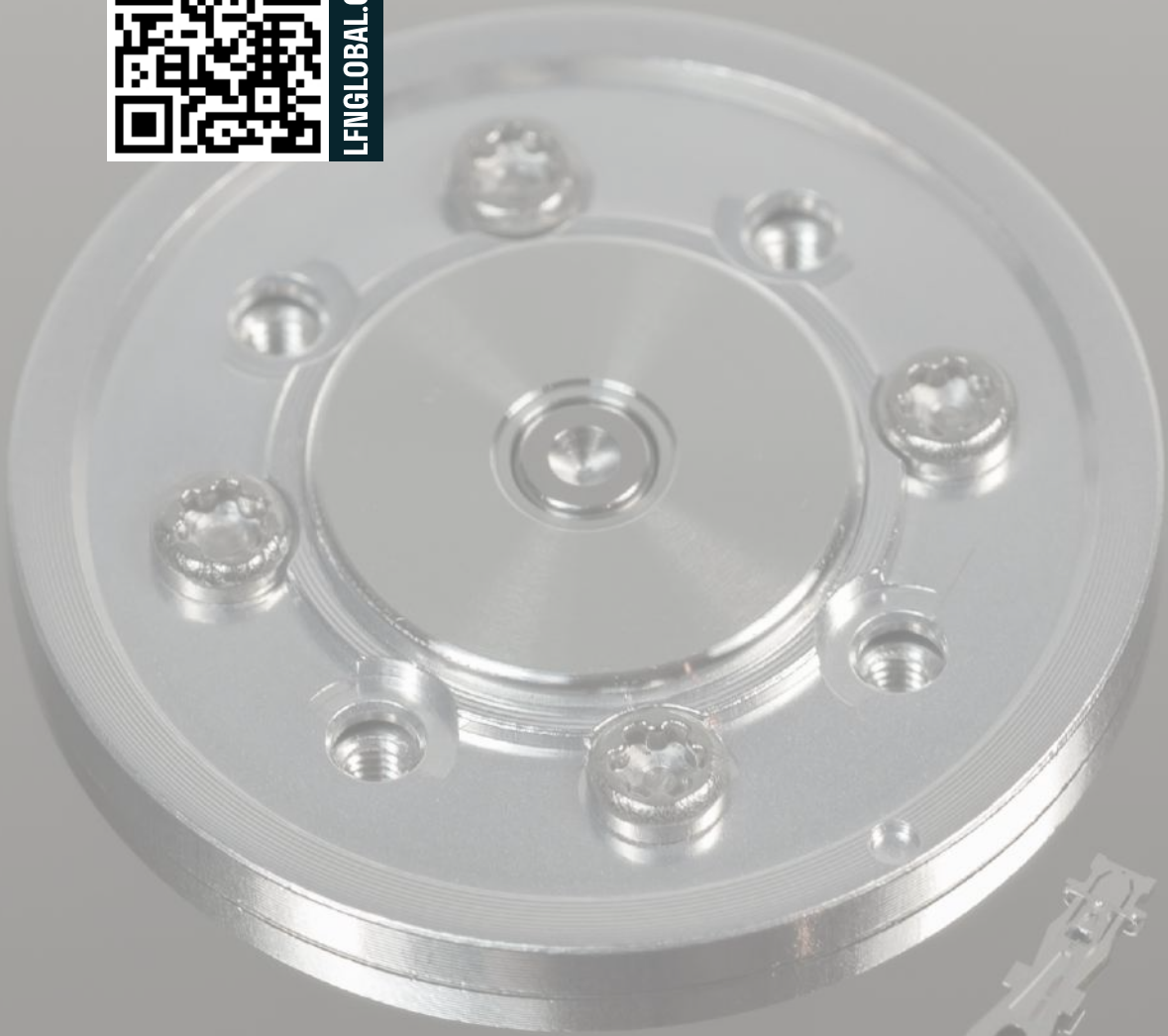
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