

Article 16
Amendments to the Financial Markets Anti-Money Laundering Act

The Financial Markets Anti-Money Laundering Act – FM-GwG, Federal Law Gazette I No. 118/2016, last amended by federal act in Federal Law Gazette I No. 37/2018, is amended as follows:

[. . .]

6. *The previous Article 1 shall be given the paragraph designation (1) and in Article 1 para. 1 (new) after the word "financial institutions" the words "as well as to virtual currency service providers" shall be inserted.*

[. . .]

8. *In Article 2 after no. 20 the following nos. 21 and 22 are added:*

21. Virtual currencies: a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.

22. Virtual currency service providers: all service providers who offer one or more of the following services:

- a) services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies (custodian wallet provider);
- b) exchange between virtual currencies and fiat currencies;
- c) exchange between one or more forms of virtual currencies;
- d) transfer of virtual currencies;
- e) participation in and provision of financial services related to an issuer's offer and sale of virtual currencies."

[. . .]

18. *In Article 6 para. 1 no. 1 the semicolon at the end of no. 1 is replaced by a comma and the following phrase "including electronic identification means and relevant trust services as set out in Regulation (EU) No 910/2014 and any other secure, remote or electronic identification process in accordance with para. 4;" is inserted.*

19. *In Article 6 para. 1 no. 2 the semicolon after the phrase "of the customer" is replaced by a period and the phrase "Where the beneficial owner identified is the senior managing official pursuant to Article 2 no. 1 point b WiEReG, obliged entities shall take the necessary reasonable measures to verify the identity of the natural person who holds the position of senior managing official and shall keep records of the actions taken as well as any difficulties encountered during the verification process. A reasonable measure is to inspect the register of beneficial owners in accordance with Article 11 WiEReG;" is inserted.*

20. *The following sentences are added to Article 7 para. 1:*

"Whenever entering into a new business relationship with a legal entity pursuant to Article 1 WiEReG, the obliged entities shall collect an excerpt of the register pursuant to Article 9 or 10 WiEReG as proof of registration of the beneficial owners. Whenever entering into a new business relationship with a company, a trust, a foundation, a legal entity comparable to a foundation or with a legal arrangement similar to a trust domiciled in another Member State or in a third country which is comparable to a legal entity within the meaning of Article 1 WiEReG, the obliged entities shall collect proof of registration or an excerpt of the register, if its beneficial owner are subject to the registration of beneficial ownership information pursuant to Article 30 or 31 of Council Directive (EU) 2015/849."

21. *In Article 7 para. 6 the second sentence reads:*

"This shall in particular be the case when the relevant circumstances of a customer change, or when the obliged entity has any legal duty in the course of the relevant calendar year to contact the customer for the purpose of reviewing any relevant information relating to the beneficial owner(s), or if the obliged entity has had this duty under Council Directive 2011/16/EU."

[. . .]

23. *Article 9 para. 1 reads:*

"(1) In the cases referred to in Articles 9a to 12, and if an obliged entity determines, either on the basis of its risk assessment (Article 4) or in another manner, that a higher risk of money laundering or terrorist financing exists, then the obliged entity shall apply enhanced customer due diligence to manage and mitigate those risks appropriately. In this case, the risks of money laundering and terrorist financing relating to types of customers, geographic areas, and particular products, services, transactions or delivery channels shall be assessed and at least the factors of potentially higher risk situations set out in Annex III taken into account."

24. *Article 9 para. 3 reads:*

"(3) The obliged entities shall examine, as far as reasonably possible, the background and purpose of all transactions that fulfil at least one of the following conditions:

1. they are complex transactions;
2. they are unusually large transactions;
3. they are conducted in an unusual pattern;
4. they do not have an apparent economic or lawful purpose.

In particular, obliged entities shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious."

25. *After Article 9 the following Article 9a is inserted with the heading:*

"Business relationships and transactions relating to high-risk third countries

Article 9a. (1) With respect to business relationships or transactions involving high-risk third countries, obliged entities shall apply the following enhanced customer due diligence measures:

1. obtaining and adequately reviewing additional information on the customer and on the beneficial owner(s);
2. obtaining additional information on the purpose and intended nature of the business relationship;
3. obtaining additional information to verify the origin of the funds used and obtaining additional information about the financial situation of the customer and their beneficial owners;
4. obtaining information on the reasons for the intended or performed transactions;
5. obtaining the approval of senior management, before establishing or continuing business relationship with such customers, and
6. conducting enhanced ongoing monitoring of the business relationship by further increasing the frequency and intervals of controls and selecting patterns of transactions that need further examination.

[. . .]

35. *In Article 21 para. 1 no. 1 after the phrase "are necessary to comply with the customer due diligence requirements," the phrase "including electronic identification means and relevant trust services as set out in Regulation (EU) No. 910/2014 or any other secure, remote or electronic identification process in accordance with Article 6 para. 4," is inserted.*

36. *In Article 21 para. 1 the number "five" is replaced in each instance by the number "ten".*

[. . .]

47. *After Article 32 the following Articles 32a and 32b are inserted with the heading:*

"Registration of virtual currency service providers

Article 32a. (1) If a service provider pursuant to Article 2 no. 22 intends to conduct its activities in Austria or to offer its activities from within Austria, it shall first apply to the FMA for registration. The application shall be accompanied by the following information and documents:

1. The name or company name of the service provider and if available the managing director(s);
2. the place of incorporation of the undertaking and the business address for delivery of relevant documents;
3. a description of the business model, indicating in particular the nature of the intended services;
4. a description of the internal control system that the applicant intends to implement and a description of the strategies and procedures planned to comply with the requirements of this federal act and Regulation (EU) 2015/847, and

5. in the case of a legal person, additionally the identity of and the amount contributed by owners who directly or indirectly possess a qualifying holding in the applicant pursuant to Article 4 para. 1 no. 36 of Regulation (EU) no. 575/2013.
- (2) If, on the basis of the information and documents pursuant to para. 1, the FMA has specific indications that the requirements of this federal act cannot be met, or if the FMA has doubts as to the personal reputation of the managing director(s), the natural person holding a qualifying holding (para. 1 no. 5) or the natural person intending to act as a service provider pursuant to Article 2 no. 22, the FMA shall not carry out the registration.
- (3) The service provider shall notify the FMA immediately of any changes to the information in para. 1.
- (4) The FMA shall publish the information pursuant to para. 1 nos. 1, 2 and 3 on its official website and keep it updated on an ongoing basis.

Article 32b. The FMA shall prohibit the activities of service providers pursuant to Article 2 no. 22 without registration pursuant to Article 32a para. 1. To this end, the FMA has the powers pursuant to Articles 22b to 22e FMABG."

[. . .]

50. *In Article 34 after para. 3 the following para. 4 is inserted:*

"(4) Any person who offers services related to virtual currencies pursuant to Article 2 no. 22 without the required registration pursuant to Article 32a para. 1 commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 200 000."

[. . .]

55. *After Article 43 para. 3 the following Article 43 para. 4 is inserted:*

"(4) [. . .] Article 2 no. 22 and Article 32a with the heading shall enter into force on 1 October 2019, provided that the obligation to register shall enter into force on 10 January 2020.