

Translation of Liechtenstein Law

Disclaimer

English is not an official language of the Principality of Liechtenstein. This translation is provided for information purposes only and has no legal force. The contents of this website have been compiled with the utmost care to reflect the current situation and the current state of knowledge. However, the provider of this website cannot accept any liability if any of its contents should be found to be inaccurate, incomplete or out of date.

English title:	Ordinance on the Asset Management Act (Asset Management Ordinance; VVO)
Original German title:	Verordnung zum Gesetz über die Vermögensverwaltung (Vermögensverwaltungsverordnung; VVO)
Serial number (LR-Nr.):	950.41
First published:	30 December 2005
First publication no. (LGBl-Nr.):	2005-289
Last amended:	01 August 2016
Date of last amendment - publication no. (LGBl-Nr.):	2016-215
Translation date:	1 December 2017

Liechtenstein Law Gazette

Year 2005

No. 289

published on 30 December 2005

Ordinance

of 20 December 2005

**on the Asset Management Act (Asset
Management Ordinance; VVO)**

Pursuant to Articles 6, 7, 8, 10, 12, 14, 20, 23, 24, 25, 28, 35, 41, 43, 44, 53, 61, and 66 of the Law of 25 November 2005 on Asset Management (Asset Management Act; VVG), LGBl. 2005 No. 278,¹ the Government issues the following Ordinance:

I. General provisions

Article 1

Object

This Ordinance lays down detailed rules governing, in particular:

- a) licences for asset management companies;
- b) the rights and duties of asset management companies;
- c) audit reports; and
- d) the extrajudicial mediation body (out-of-court arbitration body).

Article 2

Designations

The designations of persons and functions contained in this Ordinance shall apply to persons of female and of male gender.

¹ LR 950.4

II. Licenses

A. Licensing conditions

Article 3

Business plan

The business plan shall contain at a minimum the following information:

- a) information on the persons entrusted with administration and general management, the total number of employees, including their workload in terms of full-time equivalents, and the office premises;
- b) information on the organisation and the rules governing signatures;
- c) information on the planned activities and target markets (countries of operation, distribution channels, any special risks); and
- d) budgeted balance sheet and income statement.

Article 4

Guarantee of sound and proper business operation

1) As evidence that the persons entrusted with administration and general management guarantee sound and proper business operation, the following must be submitted to the FMA in particular:

- a) documented and signed curricula vitae;
- b) current criminal register extracts; and
- c) written statements on any pending criminal and administrative criminal proceedings as well as on freedom from debt collection and bankruptcy proceedings.

2) The FMA shall be notified without delay of any changes to the information referred to in paragraph 1(c).

Article 5

Close links to persons situated in third countries

If there are close links between an asset management company and a natural or legal person situated in a country outside the EEA, the legal and administrative provisions in that country or difficulties in their application must not prevent the FMA from exercising its supervisory function effectively.

B. Own funds¹Article 6²*Calculation of own funds*

1) Regulation (EU) No 575/2013, and in particular Article 95, applies to the calculation of own funds.³

2) The own funds of an asset management company which is neither the parent undertaking nor a subsidiary of a bank, an investment firm as defined in the Banking Act, a financial institution, or an asset management company shall be calculated on the basis of the annual financial statement.

3) Capital and reserves must additionally be calculated on a consolidated basis, provided that the asset management company:

- a) is or holds an interest in a parent undertaking of a bank, investment firm, financial institution, or asset management company; or
- b) is a subsidiary of a financial holding company as defined in Article 3a(1)(11) of the Banking Act.

4) The provisions of Articles 41a et seq. of the Banking Act apply *mutatis mutandis* to the consolidation of own funds under paragraph 3.

1 Title preceding Article 6 amended by LGBL 2007 No. 280.

2 Article 6 amended by LGBL 2007 No. 280.

3 Article 6(1) amended by LGBL 2015 No. 20.

Article 7¹

Repealed

C. Qualifying holdings

Article 8²

Principle

The acquisition, increase, or sale of qualifying holdings in an asset management company are governed *mutatis mutandis* by the provisions set out in Annex 8 of the Banking Ordinance.

III. Rights and duties

Article 9³

Delegation of activities

1) Main activities within the meaning of Article 12(2) of the Act are activities referred to in Article 3(1) of the Act, unless they are provided only on an auxiliary basis.

2) The asset management company shall take measures to ensure effective monitoring of delegation at all times. The asset management company may issue instructions to the delegatee at any time or withdraw the delegation with immediate effect.

3) The provisions of Annex 6 of the Banking Ordinance apply *mutatis mutandis* to asset management companies.

¹ Article 7 repealed by LGBL 2007 No. 280.

² Article 8 amended by LGBL 2009 No. 256.

³ Article 9 amended by LGBL 2007 No. 280.

Organisational requirements¹

Article 10

a) in general²

1) The asset management company shall, taking into account the nature, scope, and complexity of its business, as well as the nature and range of related investment and ancillary services, make effective and appropriate organisational arrangements:³

- a) to ensure that the asset management company itself and its tied agents comply with the legal obligations;
- b) to prevent conflicts of interest within the meaning of Article 20 of the Act from harming client interests;
- c) to ensure continuity and regularity in the provision of services. In so doing, the asset management company shall adopt an appropriate execution policy. The provisions of Annex 7.4 of the Banking Ordinance apply *mutatis mutandis*;⁴
- d) to ensure proper administration and accounting, the establishment of internal control mechanisms, efficient risk identification and assessment and internal reporting procedures, as well as effective control and security mechanisms for data processing systems and the protection of client data;⁵
- e) to ensure that it is able to mathematically determine the company's financial situation with sufficient accuracy at all times;
- f) to ensure that sufficient records are kept of all its services and transactions to enable a competent third party to verify compliance with the requirements of the Act and this Ordinance and, in particular, to ascertain that the asset management company has complied with all its obligations to clients or prospective clients;
- g) to comply with the requirements concerning substitution and delegation.
- h) to ensure that the employees employed by the asset management company know their responsibilities and functions and the procedures required to fulfil these responsibilities and that they possess the requisite skills, knowledge, and experience;⁶

1 Heading preceding Article 10 inserted by LGBL 2007 No. 280.

2 Article 10 heading amended by LGBL 2007 No. 280.

3 Article 10(1) introductory sentence amended by LGBL 2007 No. 280.

4 Article 10(1)(c) amended by LGBL 2007 No. 280.

5 Article 10(1)(d) amended by LGBL 2007 No. 280.

6 Article 10(1)(h) inserted by LGBL 2007 No. 280.

- i) to ensure that persons performing multiple functions are not prevented by anything from performing their various functions properly, honestly, and professionally;¹
- k) to ensure that procedures and systems are in place to protect the security, integrity, and confidentiality of information on a permanent basis and that business activities can continue, including in the event of disruptions;²
- l) to monitor, assess and, as needed, adjust the adequacy and effectiveness of the systems, procedures, mechanisms, and arrangements established in accordance with subparagraphs (a) to (k) above.³

2) In the case of branches of asset management companies, the FMA shall – without prejudice to the possibility for the competent authority of the home Member State to have direct access to the records – be responsible for monitoring compliance with paragraph 1(f) in regard to transactions carried out by the branch.⁴

3) The FMA may require an asset management company to submit organisational and business regulations if this appears necessary in particular due to the client structure, the amount of assets under management, or the number of employees.

Article 10a⁵

b) in particular

1) Depending on the nature, scope, and complexity of its business, as well as the nature and range of related services in accordance with Article 3(1) of the Act, the asset management company shall create the following bodies or functions as part of its organisation:

- a) compliance function;
- b) risk management function;
- c) function of an internal auditor; and
- d) client complaints body.

¹ Article 10(1)(i) inserted by LGBL 2007 No. 280.

² Article 10(1)(k) inserted by LGBL 2007 No. 280.

³ Article 10(1)(l) inserted by LGBL 2007 No. 280.

⁴ Article 10(2) amended by LGBL 2007 No. 280.

⁵ Article 10a inserted by LGBL 2007 No. 280.

2) The person entrusted with the compliance function is responsible for regularly assessing the adequacy and effectiveness of the procedures, arrangements, and principles implemented to deal with the risk of non-compliance, and, if necessary, for remedying them, as well as for providing general advice and support to the asset management company. The person entrusted with the compliance function shall report to the general management at least once a year. The asset management company must ensure that the person entrusted with the compliance function has the necessary expertise, powers, and organisational independence. The person may not be included in the other service activities of the asset management company if the nature, scope, and complexity of the business of the asset management company as well as the nature and range of related services in accordance with Article 3(1) of the Act so require.

3) The person entrusted with risk management shall apply the principles laid down by the asset management company as well as the procedures, processes, and mechanisms instituted within the framework of risk management, report to the general management on their adequacy and effectiveness and compliance therewith, and advise the general management on such matters. The person shall report to the general management at least once a year.

4) The person entrusted with the function of internal audit shall carry out and assess a standardised audit of the adequacy and effectiveness of the systems, internal control mechanisms, and arrangements as well as make recommendations in this respect and document these audits in an audit report. The person shall report to the general management at least once a year.

5) The person responsible for client complaints shall record and process incoming complaints appropriately and without delay.

Article 11

Asset management agreements

1) The asset management companies must conclude written agreements with their clients on the respective rights and duties as well as other conditions (asset management agreements).

2) Asset management agreements shall include in particular:

- a) the precise designation of the asset management company and the client;
- b) the banking relationships concerned;

- c) the express mandate and authorisation to manage the assets;
- d) the scope of the asset management authorisation;
- e) the type of investments to be made, in particular as regards the permissible investments;
- f) the concrete structure of reporting and accounting by the asset management company;
- g) the type of instruction given by the client to the asset management company;
- h) remuneration for the asset management company, in particular the treatment of retrocessions; and
- i) the procedure for amending or terminating the asset management agreement.

3) The provisions set out in paragraphs 1 and 2 apply *mutatis mutandis* to the provision of services in accordance with Article 3(1)(c) of the Act.¹

Article 12²

Client classification

- 1) The asset management company shall classify each of its clients as:
- a) retail clients;
 - b) professional clients; or
 - c) eligible counterparties.
- 2) Annex 7.2 of the Banking Ordinance applies *mutatis mutandis* to the classification procedure.

Article 12a³

Provision of services

1) The asset management company shall take all appropriate measures to achieve the best possible result in the provision of services to its clients. The asset management company shall take into account the factors enumerated in Annex 7.4 Section I(1)(a) of the Banking Ordinance. If the asset management company carries out client orders in

¹ Article 11(3) inserted by LGBL 2007 No. 280.

² Article 12 amended by LGBL 2007 No. 280.

³ Article 12a inserted by LGBL 2007 No. 280.

accordance with the express instructions of the client, it shall in any case be deemed to fulfil the obligation to achieve the best possible result for the client.

2) The asset management company shall establish principles for achieving the best possible result in the provision of services. For each financial instrument class, it shall designate the entities to which it transmits the orders for execution. The execution principles of these entities must enable the asset management company to comply with its own principles for the provision of services.

3) The asset management company shall monitor the effectiveness of its principles for the provision of services, review them at least once a year, and adjust them where necessary.

4) The asset management company may assume that professional clients and eligible counterparties have sufficient knowledge and experience in regard to services requested in accordance with Article 3(1) of the Act and that they are able to bear the investment risk financially.

Article 12b¹

Conflicts of interest

The provisions of Annex 7.1 of the Banking Ordinance apply *mutatis mutandis* to the treatment of conflicts of interest.

Article 12c²

Information to clients

The asset management company shall provide adequate information to its clients in accordance with Articles 16, 17, and 19 of the Act. It shall also inform clients of the principles for the provision of services under Article 12a. The provisions of Annex 7.3 of the Banking Ordinance apply *mutatis mutandis*.

¹ Article 12b inserted by LGBL 2007 No. 280.

² Article 12c inserted by LGBL 2007 No. 280.

Article 12d¹*Reporting duties*

The asset management company shall report to its clients in an appropriate form on the services provided for them. The relevant provisions of Annex 7.3 of the Banking Ordinance apply *mutatis mutandis*.

*Transactions by governing bodies and employees²*Article 12e³*a) Definition*

1) All transactions in financial instruments as defined in Article 4(1)(g) of the Act carried out by the following persons for their own account or for the account of persons with whom there is a close relationship, in particular a family relationship, shall be considered transactions by governing bodies and employees:

- a) governing bodies and employees of an asset management company;
- b) governing bodies and employees of tied agents;
- c) natural persons who, in the context of outsourcing of business processes of the asset management company, provide services that enable investment services.

2) Persons with whom there is a close relationship also include natural and legal persons as well as legally independent special-purpose assets with which a person referred to in paragraph 1 is in a relationship that establishes a direct or indirect, significant interest in the execution of the transaction that goes beyond the interest in generating fees and commissions.

3) Transactions by governing bodies and employees also include transactions in financial instruments carried out by a person referred to in paragraph 1 for the account of persons not covered by paragraphs 1 and 2, where such transactions are beyond the scope of that person's responsibilities at the asset management company.

¹ Article 12d inserted by LGBl. 2007 No. 280.

² Heading preceding Article 12e inserted by LGBl. 2007 No. 280.

³ Article 12e inserted by LGBl. 2007 No. 280.

Article 12f¹*b) Treatment of transactions by governing bodies and employees*

1) Asset management companies shall take suitable organisational measures, in particular prohibitions, inspections, and contractual agreements, to ensure that no transactions by governing bodies and employees are carried out which:

- a) violate the provisions of market abuse legislation;
- b) are based on the abuse of confidential information or use of such information contrary to the rules;
- c) are in conflict with the duties of the asset management company set out in Articles 14 to 20 of the Act;
- d) are carried out based on a financial analysis prepared by or on behalf of the asset management company, before the addressees of the financial analysis are able to respond appropriately to it after potentially gaining knowledge of it, unless they act in good faith on the basis of unsolicited client orders.

2) Asset management companies shall ensure that all persons referred to in Article 12e(1) are informed of the provisions relating to transactions by governing bodies and employees.

3) Asset management companies shall ensure that all persons referred to in Article 12e(1) are obliged by contractual agreements to notify transactions by governing bodies and employees to the persons responsible for such transactions. The persons responsible for accepting such notifications shall notify their own transactions by governing bodies or employees to the chief executive officer. A register shall be kept for the notification and approval of transactions with governing bodies and employees.

4) Exempted from the scope of paragraphs 1 and 3 are transactions by governing bodies and employees which relate exclusively to units in collective investment undertakings meeting the conditions for exercising the rights under Directive 85/611/EEC or which are subject to equivalent supervision by an EEA Member State with regard to risk diversification, and the person for whose account the transaction is carried out does not participate in the management of the undertaking in question.

¹ Article 12f inserted by LGBL 2007 No. 280.

Article 12g¹*c) Audit by the audit office*

The audit office shall regularly audit the transactions carried out for persons referred to in Article 12e(1) and shall determine whether those transactions comply with the provisions set out in Articles 14 to 20 of the Act and with the generally accepted principles of the asset management industry.

Article 13

Duty to retain records

1) The asset management company shall ensure that records of the transactions it carries out are prepared which enable a competent third party to form a reliable opinion on the transactions and business relationships as well as on compliance with the legal provisions and the asset management agreement.

2) These records shall be archived in Liechtenstein, and the archives shall be organised in such a way that they can be reviewed at any time by the audit office or the FMA.

Article 14²*Reporting*

1) Domestic asset management companies and domestic branches of foreign asset management companies must prepare a report in accordance with the form in the Annex every six months as of 30 June and 31 December and submit it to the FMA within two months of the applicable cut-off date.

2) The audit offices of domestic branches of foreign asset management companies shall audit the branches once a year with regard to compliance with the code of conduct referred to in Article 14 of the Act as well as the duty to keep and retain records in accordance with Article 22 of the Act and submit the report to the FMA no later than six months after the end of the FMA's fiscal year.

¹ Article 12g inserted by LGBl. 2007 No. 280.

² Article 14 amended by LGBl. 2007 No. 280.

IV. Audit report

Article 15

Content of the audit report

- 1) The audit report shall include in particular:
- a) a summary of the reservations and qualifications at the beginning of the report, with reference to where the reservations and qualifications were identified;
 - b) information as to whether the licensing conditions, in particular those set out in Article 6(1)(b) to (e) and (g) as well as Article 10 of the Act, continue to be met;
 - c) information as to whether the provisions on business activities set out in Article 16 were fulfilled;
 - d) information as to whether the duty to retain records set out in Article 22 of the Act and Article 13 of this Ordinance was fulfilled;
 - e) a statement by the lead auditor whether all necessary information and documents have been received from the asset management company in accordance with Article 27 of the Act; and¹
 - f) the signature of the lead auditor for the audit.²
- 2) If the audit office considers further questions to be important, it shall expand its audit and report on that expansion.

Article 16

Audit of business activities

The audit of business activities shall include the following points in particular:

- a) compliance with the minimum requirements for the level and composition of own funds;³
- d) correctness of the business report and, if applicable, the consolidated business report with regard to form and content in accordance with Article 28 of the Act:

¹ Article 15(1)(e) amended by LGBL 2016 No. 215.

² Article 15(1)(f) amended by LGBL 2016 No. 215.

³ Article 16(a) amended by LGBL 2007 No. 280.

- c) compliance with the code of conduct and the professional guidelines declared binding by the FMA in accordance with Article 14 of the Act; and
- d) compliance with notification requirements.

V. Extrajudicial mediation body

Article 17¹

Principle

The provisions of the Ordinance on Financial Services Mediation Bodies shall apply to the extrajudicial mediation body.

Articles 18 to 21²

Repealed

VI. Transitional and final provisions

Article 22

Transitional provision

For trust companies that have a licence under the Professional Trustees Act (TrHG) at the time of entry into force of the Asset Management Act, the FMA shall grant facilitations in respect of Article 3(d).

¹ Article 17 amended by LGBl. 2009 No. 280.

² Articles 18 to 21 repealed by LGBl. 2009 No. 280.

Article 23

Entry into force

This Ordinance shall enter into force at the same time as the Asset Management Act of 25 November 2005.

The Government:
signed *Otmar Hasler*
Prime Minister

Annex
(Article 14(1))

Form for half-yearly reporting

Name of the asset management company:

Contact person:

Telephone/fax/e-mail of the contact person:

Information as of: 30 June ... 31 December ...

1 Information about the asset management company

- 1.1 Number of employees (by persons and full-time equivalents)
- 1.2 Number of tied agents (incl. name and address)
- 1.3 Amount in dispute of pending proceedings and anticipated losses

2 Information on client base

- 2.1 Number of all client relationships (total/of which with asset management agreement)
- 2.2 Number of new clients in this period
- 2.3 Number of terminated client relationships in this period

3 Information on assets under management

- 3.1 Total assets managed on the basis of asset management mandates (total/of which invested with banks in Liechtenstein)
- 3.2 Inflow of new assets from new clients since the last reporting date
- 3.3 Outflow of assets due to terminated client relationships since the last reporting date
- 3.4 Comments on major deviations of the assets under point 3.2 or 3.3

Transitional provisions

950.41 Asset Management Ordinance (VVO)

Liechtenstein Law Gazette

Year 2007

No. 280

published on 31 October 2007

Ordinance
of 16 October 2007
amending the Asset Management Ordinance

...

III.

Transitional provisions

The new law shall apply to procedures pending at the date of entry into force¹ of this Ordinance.

...

¹ Entry into force: 1 November 2007.

Liechtenstein Law Gazette

Year 2009

No. 256

published on 2 October 2009

Ordinance
of 29 September 2009
amending the Asset Management Ordinance

...

III.

Transitional provision

The new law shall apply to supervisory procedures pending at the date of entry into force¹ of this Ordinance.

...

¹ Entry into force: 2 October 2009.