Translation of Liechtenstein Law

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Law
of 25 November 2005
on Asset Management (Asset Management Act; VVG)

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

I. General provisions

Article 1

Object and purpose

1) This Act governs the preconditions for the provision and mediation of asset management on a professional basis and serves to protect clients and to secure confidence in the Liechtenstein financial centre.

2) It also serves to implement:[1]

a) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (EEA Compendium of Laws: Annex IX – 30ba.01);

b) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms,

1 Article 1(2) amended by LGBl. 2014 No. 349.

amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176/338 of 27 June 2013).[1]

Article 2

Scope

1) Undertakings that provide or mediate in asset management on a professional basis (asset management companies) are subject to this Act. They are also deemed investment firms within the meaning of Directive 2004/39/EU and Directive 2013/36/EU.[2]

2) This Act does not apply to:

a) banks and investment firms within the meaning of the Banking Act;[3]

b) insurance undertakings within the meaning of the Insurance Supervision Act;

c) pension schemes within the meaning of the Occupational Pensions Act;

d) persons which provide services under Article 3(1) exclusively as part of a mandate as a governing body of a legal person, trust, or other collective or asset entity;

e) persons which exclusively have holdings in undertakings that do not constitute financial instruments within the meaning of Article 4(1)(g);

f) persons which provide services under Article 3(1) solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of the their parent undertakings;

g) persons which do not provide any service or investment activity other than dealing on own account, unless they are market makers or they deal on own account outside a regulated market or multilateral trading facility (MTF) on an organised, frequent, and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;

h) persons which provide services consisting exclusively in the administration of employee-participation schemes;

i) persons which provide services that only involve both the administration of employee-participation schemes and the provision

1 Article 1(2)(b) shall enter into force at the same time as the EEA Joint Committee Decision incorporating Directive 2013/36/EU.

2 Article 2(1) amended by LGBl. 2014 No. 349.

3 Article 2(2)(a) amended by LGBl. 2007 No. 267.

of investment services exclusively for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings;

k) the members of the European System of Central Banks and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

l) undertakings for collective investment in transferable securities within the meaning of the Law on Certain Undertakings for Collective Investment in Transferable Securities (UCITS Act), investment undertakings within the meaning of the Investment Undertakings Act (IUA), alternative investment funds within the meaning of the Law on Alternative Investment Fund Managers (AIFM Act), and pension funds, whether coordinated within the EEA or not and the depositaries and managers of such facilities;[1]

m) persons providing investment advice in the course of providing another professional activity not covered by this Act, provided that the provision of such advice is not specifically remunerated; and

n) the Liechtenstein Postal Service (Liechtensteinische Post Aktiengesellschaft) within the meaning of the Postal Act.

3) The rights conferred by this Act shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the European System of Central Banks performing their tasks as provided for by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank.

Article 2a[2]

Consolidated and supplementary supervision

1) Where asset management companies form a financial conglomerate, they are subject to the provisions of the Financial Conglomerates Act.

2) Where the Financial Conglomerates Act does not apply, the consolidated and supplementary supervision of asset management companies is governed *mutatis mutandis* by the relevant provisions of the Banking Act and the Insurance Supervision Act pertaining to the supervision of banks and investment firms on a consolidated basis as well

1 Article 2(2)(l) amended by LGBl. 2016 No. 56.
2 Article 2a inserted by LGBl. 2013 No. 62.

as the supplementary supervision of insurance undertakings of an insurance group.

3) For the supervision referred to in paragraph 1, an asset management company is deemed part of the sector it is assigned to under paragraph 2.

4) The activities carried out by asset management companies shall be included in the identification of a financial conglomerate as significant, cross-sectoral activities in accordance with Article 7 of the Financial Conglomerates Act.

Article 3

Business area

1) Asset management in accordance with Article 2(1) encompasses the following services:

a) portfolio management;

b) investment advice;

c) reception and transmission of orders concerning one or more financial instruments;[1]

d) investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments that directly serve the purpose of customer care; and[2]

e) execution of orders on behalf of clients.[3]

2) The provision and mediation of services referred to in paragraph 1 for third parties on a professional basis may be undertaken solely by asset management companies, subject to Article 2(2).

3) At no time may asset management companies accept or hold assets of their clients.[4]

1 Article 3(1)(c) amended by LGBl. 2014 No. 349.
2 Article 3(1)(d) amended by LGBl. 2014 No. 349.
3 Article 3(1)(e) inserted by LGBl. 2014 No. 349.
4 Article 3(3) amended by LGBl. 2014 No. 349.

Article 4

Definitions

1) For the purposes of this Act, the following definitions shall apply:

a) "tied agent" means a natural or legal person who, under the full and unconditional responsibility of only one asset management company on whose behalf it acts, provides services under Article 3(1) for clients or prospective clients and/or provides advice to clients or prospective clients in respect of those services or financial instruments;

b) "client" means any natural or legal person, any company, trust, other collective, or asset entity to which an asset management company provides services under Article 3(1);[1]

c) "professional client" means a client who possesses the experience, knowledge, and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a professional client, the client must comply with the criteria set out in the Annex;

d) "retail client" means any client who is not a professional client or eligible counterparty;[2]

e) "investment advice" means the provision of personal recommendations to a client, either upon its request or at the initiative of the asset management company, in respect of one or more transactions relating to financial instruments;

f) "portfolio management" managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;

g) "financial instruments" means the following instruments:

1. transferable securities;

2. money-market instruments;

3. units in undertakings for collective investment in transferable securities, investment undertakings, or alternative investment funds;[3]

4. options, futures, swaps, off-market forward rate agreements, and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial

1 Article 4(1)(b) amended by LGBl. 2007 No. 267.
2 Article 4(1)(d) amended by LGBl. 2007 No. 267.
3 Article 4(1)(g)(3) amended by LGBl. 2016 No. 56.

indices, or financial measures which may be settled physically or in cash;

5. options, futures, swaps, off-market forward rate agreements, and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of default or other termination event);
6. options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility (MTF);
7. options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled not otherwise mentioned in point 6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
8. derivative instruments for the transfer of credit risk;
9. financial contracts for differences; or
10. options, futures, swaps, off-market forward rate agreements, and any other derivative contracts relating to climatic variables, freight rates, emission allowances, or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by contractually agreed termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices, and measures not otherwise mentioned in this subparagraph (g) which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls;

h) "transferable securities" means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

1. shares in companies and other securities equivalent to shares in companies, partnerships, or other entities, and depositary receipts in respect of shares;
2. bonds or other forms of securitised debt, including depositary receipts in respect of such securities; or

3. any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities, or other indices or measures;

i) "money-market instruments" means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit, commercial papers, and money-market book claims of the Swiss Confederation, excluding instruments of payment;

k) "Member State" means a State that is a member of the European Economic Area;

l) "home Member State" means

1. if the asset management company is a foreign natural person, the Member State in which its head office is situated;
2. if the asset management company is a legal person, the Member State in which its registered office is situated; or
3. if the asset management company has, under its national law, no registered office, the Member State in which its head office is situated;

m) "host Member State" means a Member State

1. other than the home Member State, in which an asset management company has a branch or performs services and/or activities; or
2. in which a regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State;

n) "competent authority" means the authority of an individual State that exercises supervision over asset management companies on the basis of legal and administrative provisions;

o) "branch" means a place of business other than the head office which is part of an asset management company, which has no legal personality, and which provides services under Article 3(1) for which the asset management company has been authorised; all the places of business set up in the same Member State by an asset management company with head offices in another Member State shall be regarded as a single branch;

p) "qualifying holding" means the direct or indirect holding in an asset management company which represents 10% or more of the capital or of the voting rights, or which makes it possible to exercise a significant influence over the management of the asset management

company in which that holding subsists. Articles 25, 26, 27, and 31 of the Disclosure Act shall be applied to determine the voting rights;[1]

q) "parent undertaking" means a parent undertaking within the meaning of the accounting rules of the Law on Persons and Companies (PGR) and any undertaking that exercises a dominant influence on another undertaking;

r) "subsidiary" means a subsidiary undertaking within the meaning of the accounting rules of the Law on Persons and Companies and any undertaking on which a parent undertaking exercises a dominant influence. Every subsidiary of a subsidiary shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings;

s) "close link" means a link in which two or more natural or legal persons are linked by:

   1. participation, which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking; or

   2. control, which means the link between a parent undertaking and a subsidiary, or an equivalent relationship between a natural or legal person or an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

   A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons;

t) "regulated market" means a multilateral system which brings together multiple third-party buying and selling interests in financial instruments – admitted to trading in accordance with the rules of the system – in a way that results in the conclusion of a contract within the system and in accordance with non-discretionary rules;[2]

u) "multilateral trading facility (MTF)" means a multilateral system which brings together multiple third-party buying and selling interests in financial instruments in a way that results in the conclusion of a contract within the system and in accordance with non-discretionary rules;[3]

1 Article 4(1)(p) amended by LGBl. 2008 No. 359.
2 Article 4(1)(t) amended by LGBl. 2007 No. 267.
3 Article 4(1)(u) amended by LGBl. 2007 No. 267.

v) "on a professional basis" means independently and regularly engaging in an activity with the intention to achieve a return or other economic advantage, regardless of the purposes for which this economic advantage is intended.

2) The definitions set out in Directive 2004/39/EC and Regulation (EU) No 575/2013 apply *mutatis mutandis*.[1]

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

II. Licences

Article 5

Licensing requirement

Subject to Article 23 and Article 34, asset managing companies are required to hold a licence issued by the FMA prior to taking up business activities.

Article 6

Licensing conditions and procedures

1) A licence for operating an asset management company shall be granted on application if:

a) the company is set up in the legal form of a juridical person or a general or limited partnership;

b) the registered office and the head office of the company are situated in Liechtenstein;

c) in terms of staffing and premises, the company has a suitable permanent establishment in Liechtenstein and an organisation suitable for carrying out its tasks;

d) the general management consists of at least two persons who are trustworthy and capable of acting. At least one general manager must actually work in the company in a managing capacity and meet the requirements set out in Article 7. The general management may

1 Article 4(2) amended by LGBl. 2014 No. 349.

consist of only one general manager if it is shown that solid and prudent management of the asset management company and its continuation upon loss of the general manager's capacity to act is ensured without interruption through appropriate rules governing substitution and succession;

e) there is a workable business plan including the organisational structure of the asset management company. This business plan must in particular include details of the organisation, marketing, and implementation on the market as well as financial planning and financing for the first three business years;

f) an external audit office has been appointed in accordance with Article 43;

g) the ownership situation of the company is explained. If there are close links between the asset management company and other natural or legal persons, this must not prevent the FMA from properly exercising its oversight function;[1]

h) the professional and personal qualities of the persons entrusted with administration and general management always guarantee sound and proper business operation;

i) proof is provided of sufficient own funds as required under Article 8;

k) the initial capital pursuant to Article 8 is paid up in full at the time the licence is issued and the other conditions set out in Article 8 are met;[2]

l) the company does not hold any further special statutory licences under the Professional Trustees Act, the Lawyers Act, the Patent Attorneys Act, or the Auditors and Auditing Companies Act;

m) the company joins an investor compensation scheme.[3]

1a) The licensing conditions set out in paragraph 1 must be met on a permanent basis.[4]

2) The application must be submitted in German, and the materials to be submitted must be submitted as originals in German or English. The FMA may also accept applications and materials in other languages. The materials may not be older than three months. The FMA may demand a certified translation of applications in a foreign language and of materials not submitted in English.[5]

1 Article 6(1)(g) amended by LGBl. 2009 No. 185.
2 Article 6(1)(k) amended by LGBl. 2014 No. 349.
3 Article 6(1)(m) inserted by LGBl. 2014 No. 349.
4 Article 6(1a) inserted by LGBl. 2009 No. 185.
5 Article 6(2) amended by LGBl. 2013 No. 62.

3) A decision shall be made on the granting of a licence within six months at the latest of receipt of the complete materials submitted.

4) The FMA shall include the licensed asset management companies in a directory. This directory shall be open to the public and shall be updated on a monthly basis. Online access to the register shall be made available.

5) The Government shall provide further details by ordinance.

Article 7

General management

1) General management within the meaning of this Act is the actual act of managing by a natural person (general manager). A general manager within the meaning of Article 6(1)(d) must:

a) have Liechtenstein citizenship, the citizenship of a Member State or of Switzerland, or enjoy equivalent status on the basis of international treaties. The FMA may grant exceptions in justified cases worthy of special consideration if there are no opposing public interests;

b) taking into account his other obligations, the organisation of the asset management company, and his place of residence, be able to fulfil his responsibilities in the asset management company without reproach;

c) be sufficiently qualified for the intended position, on the basis of his education and professional experience; he must have a minimum of three years of relevant full-time practical experience;

d) actually be working for the company in a managing capacity;

e) be given the necessary powers for purposes of general management. In particular, these powers include signatory rights entered in the Commercial Register and extensive powers to issue internal instructions;[1]

f) either be a shareholder or an employee in a long-term employment relationship; and

g) actually work at the Liechtenstein registered office with a workload appropriate to the demands of the company.

2) One and the same person may only be general manager of at most two asset management companies.

1 Article 7(1)(e) amended by LGBl. 2013 No. 6.

3) Proof of actual management activities must be presented by appropriate means.

4) The general manager shall be responsible for the professionally sound and proper provision of services and for compliance with the legal requirements, including notification requirements.

5) The Government shall provide further details by ordinance.

Article 8[1]

Own funds and initial capital

1) An asset management company must on a permanent basis hold own funds that are appropriate to the risks into which it enters. At no time may its own funds fall below the amount set out in paragraph 2.

2) The initial capital shall be no less than:

a) 100,000 Swiss francs or the equivalent in euros or US dollars;

b) 150,000 Swiss francs or the equivalent in euros or US dollars, provided that the asset management company additionally offers reinsurance mediation or other insurance mediation.

3) The initial capital shall be composed of one or more of the components referred to in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013.

4) The initial capital and the own funds must be put up by each asset management company subject to this Act as well as on a consolidated basis.

5) The audit office must perform an annual audit of the availability on a permanent basis of the required initial capital and own funds amounts.

6) In justified cases, the FMA may require professional liability insurance and, depending on the type and scope of the group of clients, a deviating amount of initial capital.

7) The Government shall provide further details by ordinance.

1 Article 8 amended by LGBl. 2014 No. 349.

Article 9

Content and scope of the licence

1) The licence entitles the asset management company to provide and mediate the services under Article 3(1) on a professional basis.

2) The licence may be granted with conditions.

Article 10

Changes subject to approval and notification

1) The following changes require approval in advance by the FMA:

a) any intended personnel changes to the general management and an intended change of the audit office; and

b) any intended change to the articles of association and business rules that concern the group of clients, equity capital, or organisation.[1]

2) Any intended personnel changes to the board of directors shall require notification to the FMA in advance.

3) All information shall be made available to the FMA that it needs to comprehensively assess the changes referred to in paragraphs 1 and 2 and to satisfy itself that all licensing conditions continue to be met. In cases under paragraph 1, entries in the Commercial Register are permissible only after approval by the FMA, and in cases under paragraph 2 only after notification to the FMA.[2]

3a) The asset management company shall immediately notify the FMA in writing if a licensing condition is no longer met.[3]

4) The Government may provide further details by ordinance.

1 Article 10(1)(b) amended by LGBl. 2009 No. 185.
2 Article 10(3) amended by LGBl. 2013 No. 6.
3 Article 10(3a) inserted by LGBl. 2009 No. 185.

Article 10a

Qualifying holdings[1]

1) The FMA shall be notified of any intended direct or indirect acquisition, any intended direct or indirect increase, or any intended sale of a qualifying holding in an asset management company.[2]

2) The FMA shall consult the authority that is competent for the authorisation of the acquiring party or the undertaking whose parent undertaking or controlling person intends the acquisition or increase, if the acquisition or increase of a holding within the meaning of paragraph 1 is intended by:[3]

a) an asset management company, bank, investment firm, management company under the UCITS Act, or manager (AIFM) under the AIFM Act registered in an EEA Member State;[4]

b) a parent undertaking of an undertaking referred to in subparagraph (b); or[5]

c) a natural or legal person controlling an undertaking referred to in subparagraph (a).[6]

3) By ordinance, the Government shall provide further details on the procedure and criteria for assessing the acquisition, increase, or sale of qualifying holdings.[7]

1 Article 10a heading inserted by LGBl. 2009 No. 185.
2 Article 10a(1) inserted by LGBl. 2009 No. 185.
3 Article 10a(2) introductory sentence inserted by LGBl. 2009 No. 185.
4 Article 10a(2)(a) amended by LGBl. 2013 No. 62.
5 Article 10a(2)(b) inserted by LGBl. 2009 No. 185.
6 Article 10a(2)(c) inserted by LGBl. 2009 No. 185.
7 Article 10a(3) inserted by LGBl. 2009 No. 185.

III. Rights and duties

A. General provisions

Article 11

Protection of designations, business name

1) Designations suggesting activities as an asset management company may only be used in the business name, the designation of the purpose of the business, and business advertising of companies that have received a licence as an asset management company.

2) The business name is subject to approval by the FMA from a supervisory perspective.

Article 12

Delegation of activities

1) The asset management company may delegate one or more of its activities to third parties for purposes of efficient general management or for providing its services.

2) Delegation of main activities provided in direct contact with clients is prohibited.[1]

3) Delegation to third parties shall not relieve the asset management company of liability. The asset management company shall ensure the necessary instructions and the suitable monitoring and control of the delegatee. In particular, personal data and other materials necessary for supervision shall be kept in Liechtenstein. Delegation shall not lead to a violation of the duty of secrecy.

4) Repealed[2]

5) The Government shall, in particular, set out the scope and conditions of delegation by ordinance.

1 Article 12(2) amended by LGBl. 2007 No. 267.
2 Article 12(4) repealed by LGBl. 2007 No. 267.

Article 13[1]

Change of licence

An asset management company may be authorised as a management company under the UCITS Act or IUA or as a manager (AIFM) under the AIFM Act if it meets the respective statutory requirements. Upon receipt of the new authorisation, it must renounce its licence as an asset management company in writing in accordance with Article 30(1)(c).

B. Investor protection

Article 14

Code of conduct and professional guidelines

1) Asset management companies and their employees must provide their services conscientiously, fairly, honestly, and professionally in accordance with the best interests of their clients, especially in accordance with Articles 15 to 19, and their conduct must uphold the honour and respect of their profession.

2) The Government shall provide further details by ordinance, especially regarding client information and client classification.[2]

3) The FMA may declare professional guidelines binding.

4) The FMA may issue additional details on the code of conduct in the form of a guideline. This guideline shall serve as an interpretation aid.[3]

Article 15

Client profile

1) The asset management company shall compile a client profile so that it can provide or recommend services and financial instruments deemed appropriate for the client or the prospective client.

1 Article 13 amended by LGBl. 2016 No. 56.
2 Article 14(2) amended by LGBl. 2007 No. 267.
3 Article 14(4) amended by LGBl. 2007 No. 267.

2) For purposes of compiling the profile, the asset management company shall obtain from the client the requisite information concerning the client's financial situation, investment goals, and knowledge and experience in investing.

3) If the client or prospective client refuses to provide the information enumerated in paragraph 2 or if the information provided is insufficient, then the asset management company shall indicate to the client that such a decision will not allow the company to determine whether the service or product envisaged is appropriate for the client.

4) A refusal or insufficient information under paragraph 3 shall be documented by the asset management company in the client profile and confirmed by the client in writing.

Article 16

Duty to disclose

1) Appropriate information shall be provided in a comprehensible form to clients or prospective clients about:

a) the asset management company and its services;

b) suggested investment strategies and financial instruments; these must also include appropriate guidance on and warning of the risks associated with investments in those instruments or in respect of particular investment strategies; and

c) costs.

2) The information provided pursuant to paragraph 1 is intended to ensure that clients and prospective clients are reasonably able to understand the nature and risks of the services and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. The information provided pursuant to paragraph 1(a) and (c) may be provided in a standardised format.

3) In case the asset management company considers, on the basis of the information received under Article 15, that the product or service is not appropriate to the client or prospective client, the asset management company shall indicate this to the client or prospective client.

Article 17

Information and solicitation

1) All information, including marketing communications, addressed by the asset management company to clients or prospective clients shall be fair, clear, and not misleading. Marketing communications shall be clearly identifiable as such.

2) The asset management company may neither initiate nor tolerate that third parties engage in solicitation on its behalf that it is not permitted to engage in itself.

Article 18

Duty to conclude written agreements

The asset management company must conclude a written agreement with the client on the rights and duties and other conditions, especially:

a) the type of investments to be made;

b) the scope of the asset management powers; and

c) the compensation of the asset management company.

Article 19

Duty to respond to enquiries and provide information

The asset management company is obliged to inform the client at least once a year about the development of the investments and costs, including presentation of an asset and income statement, and, upon request, to provide the client with information on the services rendered.

Article 20

Prevention of conflicts of interest

1) Asset management companies must make all appropriate arrangements to identify potential conflicts of interest between themselves – including their general management, tied agents, and employees – and their clients or between their clients that may arise in the course of providing their services.

2) Asset management companies must make and maintain effective organisational and administrative arrangements that prevent conflicts of interest from adversely affecting the interests of their clients.

3) Where organisational or administrative arrangements made by the asset management company are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the asset management company shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business.

4) Asset management companies must disclose inducements in accordance with the Ordinance. Inducements may be disclosed in a summarised form and in general terms, e.g. in the General Terms and Conditions or in other business conditions formulated in advance. Asset management companies are required to disclose further details if so demanded by the client.[1]

5) The Government shall provide further details by ordinance, especially regarding the identification and treatment of conflicts of interest.[2]

Article 21

Duty of secrecy

1) The members of the governing bodies of the asset management companies and their employees as well as any other persons working on behalf of such companies are obliged to maintain the secrecy of facts that have been entrusted or made available to them pursuant to their business relationships with clients. The duty of secrecy shall not be limited in time.

2) This Article is subject to the legal provisions concerning the duty to give testimony or information to the criminal courts, the Financial Intelligence Unit, and the supervisory bodies.[3]

1 Article 20(4) amended by LGBl. 2007 No. 267.
2 Article 20(5) inserted by LGBl. 2007 No. 267.
3 Article 21(2) amended by LGBl. 2016 No. 42.

Article 22

Duty to keep and retain records

1) Asset management companies must keep records of all their activities which shall be sufficient to monitor compliance with the requirements under this Act and with the obligations with respect to clients.

2) Asset management companies must keep at the disposal of the FMA, for at least five years, the relevant materials relating to transactions with financial instruments (e.g. receipts, account statements).

3) The materials referred to in paragraph 2 may be recorded on image or data carriers if the recordings accurately reflect the materials and can be made readable at any time. The provisions of Article 1059 of the Law on Persons and Companies (PGR) and the associated ordinance shall apply *mutatis mutandis*.

4) This Article is subject to the obligation to keep records set out in this or other laws.

Article 23

Appointment of tied agents

1) Asset management companies may appoint tied agents for the purposes of promoting their services, initiating new business relationships, and providing advice in respect of financial instruments and services offered by the company, as long as the tied agents are entered in the register referred to in paragraph 5 or an equivalent public register of another Member State.

2) An asset management company shall remain fully and unconditionally responsible for any action or omission on the part of its tied agent when acting on behalf of the company.

3) Subject to compliance with the duty to keep and retain records under Article 22(1), tied agents may handle financial instruments and/or money of clients of the asset management company on behalf of and under the full responsibility of which they are acting. This applies to activities in Liechtenstein and – in the case of cross-border transactions – to activities in the territory of a Member State which allows a tied agent to handle clients' money.

4) The asset management company is required to:

a) monitor the activities of its tied agents to ensure that they continuously comply with the provisions of this Act;

b) ensure that a tied agent communicates in which capacity he is acting and which asset management company he is representing when he establishes contact with clients or prospective clients or before he concludes transactions with them;

c) take appropriate measures in order to avoid any negative impact that the activities of the tied agent that are not covered by the scope of this Act could have on the activities carried out by the tied agent on behalf of the asset management company.

5) The FMA shall keep a public register of the tied agents. Tied agents shall be entered into the register:

a) whose registered office or residence is in Liechtenstein or in another Member State, the latter only in the event that the home Member State does not provide for registration of tied agents and the tied agent is appointed by a domestic asset management company;

b) who have a good reputation and are trustworthy; and

c) who possess appropriate commercial and professional knowledge so as to be able to communicate accurately and in an appropriate form all relevant information regarding the proposed service to the client or prospective client.

6) The FMA shall delete the entry in the register if the tied agent no longer meets the conditions for entry set out in paragraph 5.

7) The register shall be open to the public and shall be updated on a monthly basis. Online access to the register shall be made available.

8) The Government may provide further details by ordinance.

Article 24[1]

Professional client

With respect to the provision of investment services to professional clients, the Government may limit investor protection by ordinance.

1 Article 24 amended by LGBl. 2007 No. 267.

Article 25

Transactions with eligible counterparties

1) When providing the service referred to in Article 3(1)(c), asset management companies need not observe the provisions set out in Articles 15 to 19 in regard to an eligible counterparty. If the eligible counterparty does not wish to be treated as such, it may request treatment as a retail client in general or for each individual transaction.[1]

2) Eligible counterparties are entities in accordance with Chapter I(1) and (3) of the Annex.[2]

3) The Government may provide further details by ordinance.[3]

C. Accounting and reporting

Article 26

Accounting

Asset management companies that are not companies within the meaning of Article 1063 PGR must comply with the accounting rules of Sections 1, 2 (with the exception of Subsection 3), and 4 of Title 20 of the PGR applicable to asset management companies.

Article 27

Obligation of external audit

1) Each year, the asset management companies must submit to an audit of their conduct of business by an independent audit office pursuant to Article 43.

2) At all times, the asset management companies must grant the audit office access to the documents of the company, especially the books, receipts, asset management mandates, business correspondence, and minutes of the board of directors and the general management, and they

1 Article 25(1) amended by LGBl. 2007 No. 267.
2 Article 25(2) amended by LGBl. 2012 No. 177.
3 Article 25(3) amended by LGBl. 2007 No. 267.

must provide all information necessary for fulfilment of the audit obligation.

Article 28

Periodic reports

1) At the latest four months after the end of the business year, asset management companies must prepare a business report and submit it to the FMA.

2) Asset management companies are required to periodically submit additional reports to the FMA for statistical and supervisory purposes.

3) By ordinance, the Government shall in particular set out the frequency and content of the reports.

IV. Revocation, expiration, and withdrawal of licences

Article 29

Revocation

1) The FMA shall revoke a licence if:

a) the licence holder obtained the license dishonestly by providing false information or in any other unlawful manner; or

b) material circumstances were not known when the licence was granted.

2) The revocation of a license shall be published in the official publication organs at the expense of the licence holder.

Article 30

Expiration

1) The licence shall expire if:

a) business activities have not been initiated within one year;

b) business activities have no longer been undertaken for at least six months;

c) the licence is renounced in writing;

d) bankruptcy proceedings are legally initiated;

e) the business is removed from the Commercial Register; or[1]

f) the asset management company is transformed into a fund management.

2) In justified cases and upon application, the FMA may extend the deadlines under paragraph 1(a) and (b).

3) The expiration of a license shall be published in the official publication organs at the expense of the licence holder.

Article 31

Withdrawal

1) The FMA shall withdraw the licence if:

a) the conditions for granting it are no longer met;

b) legal obligations are violated in a serious way; or

c) the FMA's demands to restore a lawful state of affairs are not met.

2) The withdrawal of a license shall be published in the official publication organs at the expense of the licence holder.

Article 32

Compulsory termination

1) A company that provides a service under Article 3(1) without a licence may be terminated by the FMA if the purpose of this Act so requires. In urgent cases, this may be done without prior warning and without imposing a deadline.

2) The FMA shall take the measures necessary for liquidation and settlement of the current transactions, and it shall issue the requisite instructions to the liquidator.

1 Article 30(1)(e) amended by LGBl. 2013 No. 6.

V. Relationship to the European Economic Area and to third States

A. European Economic Area

Article 33

Foreign activities of Liechtenstein asset management companies

1) Asset management companies whose registered office is in Liechtenstein and which have been granted a licence under this Act may conduct their business in another Member State, either by forming a branch or by virtue of cross-border provision of services, as long as a service under Article(3)(1)(a), (b), or (c) is actually performed.

2) The provisions of Articles 30b and 30c of the Banking Act apply *mutatis mutandis*.[1]

Article 34

Activities in Liechtenstein of foreign asset management companies

1) Asset management companies whose registered office is in another Member State may provide the services under Article 3(1) in Liechtenstein, either by forming a branch or by virtue of cross-border provision of services, without a licence under this Act as long as they are authorised to do so in their home Member State.

2) The provisions of Articles 30d and 30e of the Banking Act apply *mutatis mutandis*.[2]

1 Article 33(2) amended by LGBl. 2007 No. 267.
2 Article 34(2) amended by LGBl. 2007 No. 267.

Article 35

Reporting and information duty for branches

1) Foreign asset management companies with branches in Liechtenstein must submit reports to the FMA in regular intervals for statistical purposes on the activities of these branches.

2) When exercising the powers delegated to it by this Act, the FMA may require the branches of the asset management companies to provide information that is necessary for monitoring compliance with the regulations applicable to the asset management company.

3) The Government may provide further details by ordinance.

B. Third States

Article 36

Foreign activities of Liechtenstein asset management companies

1) Asset management companies whose registered office is in Liechtenstein and which have been granted a license pursuant to this Act shall – if they intend to actively acquire clients in a third State – demonstrate to the FMA prior to initiating business activities that they hold a relevant license from the State in question or that they are not subject to a licensing requirement in that State.

2) The provision of services under Article 3(1) shall be governed *mutatis mutandis* by the legal and administrative provisions applicable in the State concerned.

Article 37

Activities in Liechtenstein of foreign asset management companies

Asset management companies or asset managers whose registered office or residence is in a third State are required to hold a licence pursuant to Article 5 for the provision of services under Article 3(1) if they actively acquire clients in Liechtenstein.

VI. Supervision

A. General provisions

Article 38

Bodies

The following bodies are mandated to implement this Act:

a) the FMA;

b) the audit offices; and

c) the Court of Justice.

Article 39

Official secrecy

1) The bodies mandated to implement this Act and any other persons consulted by these bodies 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) The information subject to official secrecy may not be transmitted to others, subject to criminal law and other special legal provisions.

3) If liquidation or bankruptcy proceedings have been initiated by a court decision against an asset management company, then confidential information that does not relate to third parties may be used in civil or commercial proceedings, as long as it is necessary for the proceedings in question.

4) Without prejudice to the criminal law cases, the FMA, all other administrative authorities and bodies, and other natural and legal persons may 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. If the FMA or another administrative authority or office or person providing the information gives their consent, however, then the authority receiving the information may use it for other purposes.

5) The FMA is permitted, in compliance with domestic law, to transmit confidential information received from a non-competent authority of a Member State of the European Economic Area to other competent authorities of Member States of the European Economic Area.[1]

Article 40

Supervision taxes and fees

Supervision taxes and fees shall be in accordance with financial market supervision legislation.

B. Financial Market Authority (FMA)

Article 41

Responsibilities

1) The FMA shall monitor the execution of this Act and of the ordinances issued in connection herewith as well as compliance with the code of conduct and professional guidelines governing the profession that have been declared binding. The FMA shall take the measures necessary for execution. It shall exercise its powers:

a) directly;

b) in cooperation with other supervisory bodies; or

c) through application to the Office of the Public Prosecutor.

2) The FMA is in particular responsible for:

a) granting, revoking, and withdrawing licences;

b) verifying audit reports and annual reports;

c) naming custodians and deciding on their remuneration;

d) keeping a directory of the licensed asset management companies and a register of the tied agents;

e) penalising administrative contraventions in accordance with Article 62(3).

1 Article 39(5) amended by LGBl. 2007 No. 267.

3) The FMA may in particular:

a) demand all information and clarifications necessary for execution of this Act from the asset management companies and their audit offices and employees;

b) order extraordinary audits or conduct audits itself with respect to certain fact patterns;

c) issue decisions and decrees; after prior warning, it may also publish these decisions and decrees, if the asset management company fails to comply;

d) demand already existing information and recordings of telephone conversations;

e) demand a practice to be discontinued that conflicts with this Act, the ordinances issued in connection herewith, or the code of conduct or professional guidelines governing the profession that have been declared binding;

f) impose a temporary prohibition to engage in a profession;[1]

g) request the Office of the Public Prosecutor to apply for measures to secure forfeiture of assets in accordance with the Code of Criminal Procedure.[2]

4) If the FMA learns of violations of this Act or of other abuses, it shall issue the measures necessary to bring about a lawful state of affairs and to remedy the abuses.

5) If there are grounds to assume that an activity subject to this Act is being conducted without a licence, the FMA may demand information and materials from the persons concerned as if these persons were subject to this Act.

6) In individual cases, the FMA may inform the public through announcement in the official publication organs that a named undertaking is not entitled to provide services under Article 3(1). The FMA may also provide this information by way of online access.

7) The FMA shall inform the Government of any general difficulties that Liechtenstein asset management companies may experience in forming an establishment or in providing services under Article 3(1) in a third State. The Government must transmit this notification to the EFTA Surveillance Authority.

1 Article 41(3)(f) inserted by LGBl. 2007 No. 267.
2 Article 41(3)(g) amended by LGBl. 2016 No. 161.

8) The Government may provide further details by ordinance.

Article 42

Data processing

1) The FMA may process all data necessary to fulfil its responsibilities under this Act, including personal profiles and particularly sensitive data concerning administrative or criminal prosecutions of and penalties imposed on persons responsible for the governance and general management of an asset management company.

2) After termination and deregistration of the asset management company, the processed personal data shall be archived in accordance with the provisions of the Archives Act.

C. Audit offices

Article 43

Principle

1) The following may be appointed as the audit office of asset management companies:

a) auditors or auditing companies under the Auditors and Auditing Companies Act;

b) auditing companies under the Banking Act; or

c) auditors or auditing companies under the UCITS Act, the IUA, or the AIFM Act.[1]

1a) The lead auditors of the audit office must hold a licence under the Auditors and Auditing Companies Act.[2]

2) The audit offices are required to notify the lead auditors to the FMA before the audit commences.[3]

1 Article 43(1)(c) amended by LGBl. 2016 No. 56.
2 Article 43(1a) inserted by LGBl. 2016 No. 227.
3 Article 43(2) amended by LGBl. 2016 No. 227.

3) The audit office must structure its general management and its organisation so that it is able to properly execute audit mandates on a permanent basis.

4) The Government may provide further details by ordinance.

Article 44

Responsibilities

1) The audit office shall verify whether:

a) the business activities of the asset management companies conform to this Act, the ordinances issued in connection herewith, the code of conduct, the professional guidelines governing the profession declared to be binding, and any articles of association;

b) the conditions for the grant of a license are met on a permanent basis; and

c) the business report conforms to the legal requirements.

1a) When auditing asset management companies, the audit offices shall apply the audit standards set out in Article 10a(1) of the Auditors and Auditing Companies Act.[1]

2) The audit report shall be submitted simultaneously to the FMA and to the board of directors or the general partners of the asset management company at the latest six months after the end of the business year.

3) The Government may provide further details by ordinance.

Article 45

Reservations

1) If the audit office finds violations of legal provisions or other abuses, it shall impose an appropriate deadline on the asset management company to bring about a lawful state of affairs. If the deadline is not met, the audit office shall notify the FMA.

1 Article 44(1a) inserted by LGBl. 2011 No. 13.

2) The audit office shall notify the FMA immediately if:

a) the imposition of a deadline appears useless;

b) it suspects that a person entrusted with the governance of an asset management company has committed an offence; or

c) other serious abuses exist that conflict with the purpose of this Act, in particular:

1. if a substantial violation of the licensing conditions or the regulations governing the business conduct of asset management companies exists;

2. if the continuation of the asset management company is called into question; or

3. if fact patterns exist that give rise to a recommendation in the audit report that the annual statement of accounts should be approved only with qualifications or should be returned to the administration.

3) Furthermore, the audit office shall notify the FMA of any fact patterns under paragraph 2 of which it learns while performing its duties with respect to an undertaking that has close links with an asset management company it is mandated to audit.

4) Audit offices that bring fact patterns under paragraphs 2 and 3 to the attention of the FMA in good faith do not thereby violate any contractual or legal restrictions on transmitting information to others. To this extent, fulfilment of the information duty shall not entail any liability of the audit office.

5) In any event, reservations must be included in the audit report to be prepared pursuant to this Act.

Article 45a[1]

Supervision of audit offices

In its supervision of audit offices, the FMA may in particular carry out quality controls and accompany the audit offices in their audit activities at asset management companies.

1 Article 45a inserted by LGBl. 2011 No. 13.

Article 46

Audit costs

1) The asset management companies shall bear the costs of the regular and the extraordinary audits. The costs of the audit shall be calculated according to a generally recognised rate.

2) Agreement on lump-sum remuneration or a specific expenditure of time for the audit is prohibited.

D. Court of Justice

Article 47

Penal authority

The Court of Justice shall be the penal authority for misdemeanours under Article 62(1) and (2).

E. Appointment of a custodian

Article 48

Basic principle

1) The FMA shall appoint a custodian for:

a) asset management companies incapable of acting;

b) asset management companies whose licence has been revoked or withdrawn.

2) The FMA shall have the custodian entered at the Office of Justice.[1]

3) The asset management company shall communicate the appointment of a custodian to the clients.

4) Within one year, the custodian shall apply for the FMA to approve succession arrangements or termination.

1 Article 48(2) amended by LGBl. 2013 No. 6.

5) The FMA shall decide on the custodian's remuneration.

F. Administrative assistance

1. Cooperation with other domestic authorities

Article 49

Basic principle

1) In the context of supervision, the FMA shall work together with other domestic authorities to the extent necessary for the fulfilment of its responsibilities.

2) The Office of Justice shall communicate all changes to entries in the Commercial Register concerning an asset management company to the FMA. The Office of Justice shall also grant the FMA electronic access to the data in the Commercial Register.[1]

2. Cooperation with competent authorities of Member States

Article 50

Basic principle

In the context of supervision, the FMA shall work closely together with the competent authorities of the other Member States in accordance with this Act.

Article 51

Joint action against abuses

1) Where the FMA has good reasons to suspect that acts contrary to the provisions of Directive 2004/39/EC, carried out by undertakings not subject to its supervision, are being or have been carried out on the

1 Article 49(2) amended by LGBl. 2013 No. 6.

territory of another Member State, it shall notify this in as specific a manner as possible to the competent authority.

2) Where a competent authority of another Member State notifies the FMA that an undertaking is carrying out or has carried out acts contrary to the provisions of this Act, then the FMA shall take appropriate action against that undertaking. The FMA shall inform the notifying competent authority of the action taken and the procedure used.

Article 52

Supervisory activities, on-the-spot verifications, and investigations

1) A competent authority of a Member State may request the cooperation of the FMA in a supervisory activity or for an on-the-spot verification or in an investigation.

2) Where the FMA receives a request with respect to an on-the-spot verification or an investigation, it shall, within the framework of its powers:

a) carry out the verifications or investigations itself;

b) allow the requesting authority to carry out the verification or investigation; or

c) allow audit offices or experts to carry out the verification or investigation.

3) The FMA may request the cooperation of the competent authority of a Member State in a supervisory activity or for on-the-spot verification or in an investigation.

Article 53

Exchange of information

1) The FMA shall supply a requesting competent authority of a Member State with all information that this authority needs to carry out its supervisory responsibilities pursuant to Directive 2004/39/EC.

2) When communicating the information, the FMA shall indicate:

a) which information must be considered confidential and subject to official secrecy and therefore may only be disclosed with the express agreement of the FMA; and

b) for what purposes the communicated information may be used.

3) The FMA may request the competent authorities of other Member States to supply it with all information that the FMA needs to carry out its responsibilities pursuant to this Act. It may transmit the received information to the supervisory bodies referred to in Article 38. The FMA shall not transmit this information to other bodies or natural or legal persons without the express agreement of the competent authorities which transmitted it and solely for the purposes for which those authorities gave their agreement, except in duly justified circumstances. In this last case, the FMA shall immediately inform the authority that sent the information.

4) The supervisory bodies referred to in Article 38, administrative authorities as well as other bodies and natural and legal persons receiving confidential information may use it only in the course of their duties, in particular:

a) to check that the licensing conditions for asset management companies are met;

b) to monitor business activities on a non-consolidated or consolidated basis, especially with regard to the capital adequacy requirements imposed by law, administrative and accounting procedures, and internal control mechanisms;

c) to monitor the proper functioning of trading venues;

d) to impose sanctions;

e) in administrative appeals against decisions by the FMA under Article 60; or

f) in the out-of-court mechanism for investors' complaints provided for in Article 61.

5) This article as well as Articles 39, 57, and 58 shall not prevent the FMA from transmitting to the central banks, the European System of Central Banks, and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment systems, confidential information intended for the performance of their responsibilities; likewise such authorities or bodies shall not be prevented from communicating to the FMA such information as it may need for the purpose of performing its responsibilities provided for in this Act.

6) The Government may provide further details by ordinance.

Article 54

Refusal to cooperate

1) The FMA may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification, or supervisory activity as provided for in Article 52 or to exchange information as provided for in Article 53 only where:

a) such an investigation, on-the-spot verification, supervisory activity, or exchange of information might adversely affect the sovereignty, security, or public order of Liechtenstein;

b) judicial proceedings have already been initiated in respect of the same actions and the same persons before a domestic court; or

c) final judgment has already been delivered in Liechtenstein in respect of the same persons and the same actions.

2) In the case of such a refusal, the FMA shall notify the requesting competent authority accordingly, providing information on the grounds for refusal.

Article 55

Inter-authority consultation prior to granting a licence

1) Prior to granting a license, the FMA shall consult the competent authorities of the other Member State involved if the asset management company is:

a) a subsidiary of an investment firm or a bank authorised in another Member State;

b) a subsidiary of the parent undertaking of an investment firm or bank authorised in another Member State; or

c) controlled by natural or legal persons who simultaneously control an investment firm or bank authorised in another Member State.

2) Prior to granting a license, the FMA shall consult the competent authority of the Member State responsible for the supervision of banks or insurance undertakings if the asset management company is:

a) a subsidiary of a bank or insurance undertaking authorised in the EEA;

b) a subsidiary of the parent undertaking of a bank or insurance undertaking authorised in the EEA; or

c) controlled by natural or legal persons who simultaneously control a bank or insurance undertaking authorised in another Member State.

3) In particular, the FMA shall consult the authorities referred to in paragraphs 1 and 2 when assessing the suitability of the shareholders or members of the board and the reputation and experience of persons who effectively direct the business involved in the management of another undertaking of the same group.

4) Where the FMA is consulted by the authorities referred to in paragraphs 1 and 2, it shall transmit all information regarding the suitability of the shareholders or members and the reputation and experience of persons who effectively direct the business that is of relevance to the other competent authorities involved, for the granting of a license as well as for the ongoing assessment of compliance with operating conditions.

Article 56

Precautionary measures

1) Where the FMA has clear and demonstrable grounds for believing that an asset management company acting in Liechtenstein under the freedom to provide services or that an asset management company with a branch in Liechtenstein is in breach of the obligations under Directive 2004/39/EC, it shall communicate this to the competent authority of the home Member State, unless the powers of supervision have been conferred on the FMA.

2) If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the asset management company persists in acting in a manner that is clearly prejudicial to the interests of clients in Liechtenstein or the orderly functioning of markets, the FMA, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect clients and the proper functioning of the markets. This shall include the possibility of preventing the offending asset management company from initiating any further transactions in Liechtenstein. The EFTA Surveillance Authority shall be informed of such measures without delay.

3) Where the FMA ascertains that an asset management company with a branch in Liechtenstein is in breach of the legal provisions, code of conduct, or professional guidelines governing the profession, it shall

require the asset management company concerned to put an end to its irregular situation.

4) If the asset management company concerned fails to take the necessary steps, the FMA shall take all appropriate measures to ensure that the asset management company puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the home Member State.

5) If, despite the measures taken by the FMA, the asset management company persists in breaching the provisions referred to in paragraph 3, the FMA may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise further irregularities and, in so far as necessary, to prevent the asset management company from initiating any further transactions in Liechtenstein. The EFTA Surveillance Authority shall be informed of such measures without delay.

6) Any measure adopted pursuant to this article involving sanctions or restrictions on the activities of an asset management company shall be properly justified and communicated to the asset management company concerned.

3. Cooperation with competent authorities of third States

Article 57

Cooperation agreements with third States

1) The FMA may conclude cooperation agreements with the competent authorities of third States providing for the exchange of information only if the information disclosed is subject to guarantees of official secrecy at least equivalent to those required under Article 39. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

2) Subject to paragraph 1, the FMA may transfer personal data to third States in accordance with Article 8 of the Data Protection Act.

3) The FMA may also conclude cooperation agreements providing for the exchange of information with third State authorities, bodies, and natural or legal persons responsible for:

a) the supervision of banks, other financial institutions, insurance undertakings, financial markets, and asset management companies within the meaning of this Act;

b) the liquidation and bankruptcy of asset management companies and other similar procedures;

c) carrying out statutory audits of the accounts of asset management companies and other financial institutions, banks, and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;

d) overseeing the bodies involved in the liquidation and bankruptcy of asset management companies and other similar procedures; or

e) overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, banks, asset management companies, and other financial institutions.

4) When concluding a cooperation agreement under paragraph 3, it must be ensured that the information disclosed is subject to guarantees of official secrecy at least equivalent to those required under Article 39. Such exchange of information must be intended for the performance of the tasks of those authorities or bodies or natural or legal persons.

5) Cooperation agreements by the FMA under paragraphs 1 and 3 shall require the approval of the Government.

6) Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement. This also applies to information provided by third State competent authorities.

Article 58

Exchange of information with third States

1) The FMA may transmit information to the competent authorities of third States if:

a) this does not adversely affect the sovereignty, the security, or the public order of Liechtenstein;

b) the disclosure of information is not contrary to the purpose of this Act;

c) the received information is only used for the supervision of asset management companies;

d) the employees of the competent authorities and the persons mandated by the competent authorities are subject to official secrecy; and

e) in the case of information originating in another Member State or a third State, express agreement of the authorities which have transmitted it is given and, where appropriate, the information is used solely for the purposes for which those authorities gave their agreement.

2) Information provided under paragraph 1 and information received from competent authorities of third States may only be used by the competent authorities for purposes of Article 53(4).

3) The FMA may exchange information with the institutions from third States referred to in Article 57(3) only if these institutions require the information for the performance of their responsibilities under supervision law.

4) Information provided under paragraph 3 shall be subject to official secrecy. Information originating in a third State may not be disclosed without the express agreement of the competent authorities which have transmitted it and solely for the purposes for which those authorities gave their consent.

5) At any time, the FMA may obtain information concerning the activities of Liechtenstein asset management companies in third States and the economic circumstances of foreign asset management companies whose activities may affect the Liechtenstein money and credit system, if this is necessary for the purposes of this Act.

6) The provisions in paragraphs 1 to 5 shall only be applied to the extent that international agreements or cooperation agreements do not specify otherwise.

VII. Procedure, legal remedies, and out-of-court settlements

Article 59

Decisions and decrees

1) If violations of the provisions in this Act or the ordinances issued in connection herewith are found and, if the situation is not redressed despite warnings and the imposition of deadlines, the FMA shall take the necessary decisions and appropriate measures.

2) To the extent not otherwise specified by this Act, the National Administration Act applies.

Article 60

Legal remedies

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

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

3) In the interest and/or on the initiative of the clients, the Office of Economic Affairs shall have all legal remedies and redresses at its disposal to ensure that the provisions of this Act are applied.[1]

Article 61

Out-of-court arbitration body

1) The Government shall appoint an arbitration body to settle disputes between clients and asset management companies concerning the services provided.

2) The arbitration body shall be responsible for mediating as appropriate in disputes between the parties and in this way for reaching a settlement between the parties.

1 Article 60(3) amended by LGBl. 2007 No. 267 and LGBl. 2011 No. 551.

3) If no settlement between the parties can be reached, then the parties shall be referred to the ordinary legal process.

4) The Government shall provide further details by ordinance, especially concerning the organisational structure, the composition, and the procedure.

VIII. Penal provisions

Article 62

Misdemeanours and contraventions

1) The Court of Justice shall punish with a custodial sentence of up to one year or with a monetary penalty of up to 360 daily penalty units for committing a misdemeanour anyone who:

a) as a member of a governing body of, an employee of, or any other person acting on behalf of an asset management company, or as an auditor violates duties of secrecy or who induces such a violation or attempts to induce such a violation;

b) performs or mediates a service within the meaning of Article 3(1) without a licence; or

c) accepts or holds assets of third parties in breach of Article 3(3).

2) The Court of Justice shall punish with a custodial sentence of up to six months or with a monetary penalty of up to 180 daily penalty units for committing a misdemeanour anyone who:

a) violates terms imposed in connection with a licence;

b) violates the prohibition on using designations as set out in Article 11 suggesting activities as an asset management company;

c) gives false information to the FMA or the audit office;

d) does not keep account books properly or does not retain account books, materials, and receipts;

e) makes false statements or withholds material facts in the periodic reports or notifications;

f) as an auditor, grossly violates responsibilities, in particular by making untrue statements in the audit report or by withholding material facts, by failing to make prescribed requests to the asset management company, or by failing to submit prescribed reports and notifications;

g) fails to observe the initial capital requirement as set out in Article 6(1)(k); or[1]

h) does not have sufficient own funds as set out in Article 8.

3) The FMA shall punish with a fine of up to 100,000 Swiss francs for committing a contravention anyone who:

a) fails to prepare the periodic reports as required or submits them late or not at all;

b) fails to have a regular audit or an audit required by the FMA carried out as a whole or in relation to individual areas;

c) fails to fulfil responsibilities vis-à-vis the audit office;

d) fails to submit the prescribed reports and notifications to the FMA or submits them late;

e) fails to comply with a demand to bring about a lawful state of affairs or with any other decree of the FMA;

f) fails to comply with a demand to cooperate in an investigation procedure of the FMA;

g) provides impermissible, false, or misleading information in advertising for an asset management company;

h) fails to comply with the code of conduct (Articles 15 to 19) and the professional guidelines declared binding;

i) Repealed[2]

k) fails to make or maintain effective organisational and administrative arrangements to prevent conflicts of interest from adversely affecting client interests;

l) violates his or her obligations when appointing tied agents as referred to in Article 23;[3]

m) violates his or her obligations as a tied agent as referred to in Article 23; or[4]

1 Article 62(2)(g) amended by LGBl. 2007 No. 267.
2 Article 62(3)(i) repealed by LGBl. 2007 No. 267.
3 Article 62(3)(l) amended by LGBl. 2011 No. 13.
4 Article 62(3)(m) amended by LGBl. 2011 No. 13.

n) as an auditor, violates his or her duties under this Act, especially under Articles 43 to 46.[1]

4) If the offences are committed negligently, the maximum penalties are reduced by half.

5) The General Part of the Criminal Code applies *mutatis mutandis*.

6) The FMA may publicise the imposition of final penalties and fines, if doing so gives effect to the purpose of this Act and is proportionate.[2]

7) Convictions under this article are not binding on civil judges in respect of adjudicating liability or unlawfulness or determining damages.[3]

Article 63

Responsibility

Where violations are committed in the business operations of a legal person or a general or limited partnership, then the penal provisions shall apply to the persons who acted or should have acted on its behalf; the legal person or partnership shall, however, be jointly and severally liable for monetary penalties and fines.

Article 64

Communication duty of other authorities

The courts shall submit complete copies to the FMA of all judgments and decisions to discontinue proceedings that affect members of the board or general management of asset management companies and audit offices.

1 Article 62(3)(n) inserted by LGBl. 2011 No. 13.
2 Article 62(6) amended by LGBl. 2007 No. 267.
3 Article 62(7) inserted by LGBl. 2007 No. 267.

IX. Transitional and final provisions

Article 65

Transitional provisions

1) Natural persons who, upon entry into force of this Act, are entitled to perform asset management on a professional basis – especially pursuant to Article 7(1)(c) of the Professional Trustees Act or pursuant to Article 65(a) of the Lawyers Act – as well as persons who pass the professional trustees examination or the qualification examination for professional trustees at the latest one year after entry into force of this Act are deemed to fulfil the conditions set out in Article 7(1)(c).

2) The consideration of other obligations under Article 7(1)(b) shall not apply to a person referred to in paragraph 1, provided that the person is not already a general manager of another asset management company.

3) Already existing legal persons, trusts, and other collectives and asset entities must fulfil the requirements set out in Article 11 from 1 January 2008. If they do not comply, the FMA may terminate them without prior notice pursuant to Article 32.

4) For already existing clients of persons referred to in paragraph 1, the obligations set out in Articles 15 and 16 must be fulfilled within two years of entry into force of this Act.

Article 66

Implementing ordinances

The Government shall issue the ordinances necessary to implement this Act.

Article 67

Entry into force

This Act shall enter into force on 1 January 2006.

Representing the Reigning Prince:
signed *Alois*
Hereditary Prince

signed *Otmar Hasler*
Prime Minister

Annex[1]
(Article 4(1)(c))

Professional clients

I. Categories of clients who are considered to be professionals

The following entities shall be regarded as professional clients for the purposes of this Act with respect to all services under Article 3(1) and financial instruments:

1. Entities required to be authorised or regulated to operate on the financial markets, namely:
   a) banks;
   b) investment firms;
   c) other financial institutions;
   d) insurance undertakings;
   e) undertakings for collective investment in transferable securities or investment undertakings and their management companies or alternative investment funds and their AIFMs;
   f) pension funds and their management companies;
   g) commodity and commodity derivatives dealers; or
   h) other institutional investors;
2. Large undertakings meeting two of the following size requirements on a company basis:
   a) balance sheet total: EUR 20,000,000 or the equivalent in Swiss francs;
   b) net turnover: EUR 40,000,000 or the equivalent in Swiss francs;
   c) own funds: EUR 2,000,000 or the equivalent in Swiss francs;
3. Government, municipalities, public bodies that manage public debts, central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB, and other similar international organisations;

1 Annex amended by LGBl. 2011 No. 310, LGBl. 2013 No. 62, LGBl. 2013 No. 255 and LGBl. 2016 No. 56.

4. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities mentioned above may request treatment as a retail client. In this event, the asset management companies may provide a higher level of protection. Where the client of an asset management company is an entity referred to above, the asset management company must inform it prior to any provision of services that, on the basis of the information available to the company, the client is deemed to be a professional client, and will be treated as such unless the asset management company and the client agree otherwise. The asset management company must also inform the client that it can request a variation of the terms of the agreement in order to secure a higher level of protection.

It is the responsibility of the client considered to be a professional client to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved in the investment.

This higher level of protection will be provided when a client who is considered to be a professional client enters into a written agreement with the asset management company to the effect that it shall not be treated as a professional for the purposes of the applicable code of conduct. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

II. Clients who may be treated as professionals on request

1. Identification criteria

Clients other than those mentioned in Chapter I of this Annex, including public sector bodies and private individual investors, may also be allowed to waive some of the protections afforded by the code of conduct.

Asset management companies may therefore treat any of the above clients as professionals, provided the relevant criteria and procedures mentioned below are fulfilled. These clients should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in chapter I of this Annex.

Any such waiver of the protection normally afforded by the code of conduct shall be considered valid only if an adequate assessment of the expertise, experience, and knowledge of the

client, undertaken by the asset management company, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making its own investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under special laws could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.

In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:

a) The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.

b) The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000 or the equivalent in Swiss francs.

c) The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

2. Procedure

The clients defined above may waive the protections afforded by the code of conduct only where the following procedure is followed:

a) They must state in writing to the asset management company that they wish to be treated as a professional client, either generally or in respect of a particular service or investment transaction, or type of transaction or product.

b) The asset management company must give them a clear written warning of the protections they may lose.

c) They must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, asset management companies are required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in point 1.

However, if clients have already been categorised as professionals under parameters and procedures similar to those

above, it is not intended that their relationships with asset management companies should be affected by any new rules adopted pursuant to this Annex.

Asset management companies must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the asset management company informed about any change which could affect their current categorisation. Should the asset management company become aware, however, that the client no longer fulfils the initial conditions which made it eligible for treatment as a professional client, the asset management company must take appropriate action.

Transitional provisions

950.4 Asset Management Act; VVG

Liechtenstein Law Gazette
Year 2007 No. 267 published on 31 October 2007

Law
of 20 September 2007
amending the Asset Management Act

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II.

Transitional provision

Already existing asset management companies offering reinsurance mediation or other insurance mediation must meet the additional initial capital requirement set out in Article 6(1)(k) effective 1 July 2008. Otherwise, the FMA may prohibit the asset management company from carrying out reinsurance mediation or other insurance mediation activities.

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Liechtenstein Law Gazette
Year 2014 No. 349 published on 23 December 2014

Law
of 7 November 2014
amending the Asset Management Act

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II.
Transitional provision

Asset management companies holding a licence at the time of entry into force of this Act[1] may continue to carry out their activities if they join an investor compensation scheme at the latest nine months after entry into force of this Act. Proof of joining the scheme must be provided to the FMA immediately. If this deadline is not met, Article 31(1)(a) VVG applies.

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1 Entry into force: 1 February 2015.

Liechtenstein Law Gazette
Year 2016 No. 227 published on 7 July 2016

Law
of 11 May 2016
amending the Asset Management Act

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II.
Transitional provision

Lead auditors that do not hold a licence under the Auditors and Auditing Companies Act but have so far been recognised for audits under this Act may continue to carry out their existing activities until 31 December 2016.

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