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 transpose and implement the following EEA legislation:[1]

a) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and 2011/61/EU (OJ L 173, 12.6.2014, p. 349);[2]

a[bis]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and

1 Article 1(2) introductory phrase amended by LGBl. 2017 No. 398.
2 Article 1(2)(a) amended by LGBl. 2017 No. 398.

amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84);[3]

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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176/338, 27.6.2013, p. 338).[4]

3) It is without prejudice to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.[5]

Article 2

Scope

1) Asset management companies are subject to this Act. They are also deemed investment firms within the meaning of Directives 2013/36/EU and 2014/65/EU.[6]

1a) This Act also applies to third-country firms which provide or mediate asset management for third parties through branches established in Liechtenstein.[7]

2) This Act does not apply to:

a) banks and investment firms within the meaning of the Banking Act;[8]

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;

3 Article 1(2)(abis) inserted by LGBl. 2017 No. 398.
4 Article 1(2)(b) shall enter into force at the same time as the EEA Joint Committee Decision incorporating Directive 2013/36/EU.
5 Article 1(3) inserted by LGBl. 2017 No. 398.
6 Article 2(1) amended by LGBl. 2017 No. 398.
7 Article 2(1a) inserted by LGBl. 2017 No. 398.
8 Article 2(2)(a) amended by LGBl. 2007 No. 267.

e) persons which exclusively have holdings in undertakings that do not constitute financial instruments within the meaning of Article 4(1)(10);[9]

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 providing a service referred to in Article 3(1) where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;[10]

h) persons providing investment services consisting exclusively in the administration of employee-participation schemes;[11]

i) persons providing investment services which only involve both the administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;[12]

k) the members of the European System of Central Banks and other national bodies performing similar functions in the EEA, other public bodies charged with or intervening in the management of the public debt in the EEA and international financial institutions established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems;[13]

l) undertakings for collective investment in transferable securities especially 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 depositories and managers of such facilities;[14]

9 Article 2(2)(e) amended by LGBl. 2017 No. 398.
10 Article 2(2)(g) amended by LGBl. 2017 No. 398.
11 Article 2(2)(h) amended by LGBl. 2017 No. 398.
12 Article 2(2)(i) amended by LGBl. 2017 No. 398.
13 Article 2(2)(k) amended by LGBl. 2017 No. 398.
14 Article 2(2)(l) amended by LGBl. 2017 No. 398.

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;[15]

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

o) central securities depositories that are regulated as such under EEA law, to the extent that they are regulated under that EEA law; and[16]

p) the other activities referred to in Article 2 of Directive 2014/65/EU.[17]

3) The rights conferred by this Act shall not extend to the provision of services as counterparty in transactions carried out by:[18]

a) public bodies dealing with public debt;

b) members of the European System of Central Banks performing their tasks as provided for by the Treaty on the Functioning of the European Union and by Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank; or

c) other central banks in the EEA performing equivalent functions under national provisions.

Article 2a[19]

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

15 Article 2(2)(m) amended by LGBl. 2017 No. 398.
16 Article 2(2)(o) inserted by LGBl. 2017 No. 398.
17 Article 2(2)(p) inserted by LGBl. 2017 No. 398.
18 Article 2(3) amended by LGBl. 2017 No. 398.
19 Article 2a inserted by LGBl. 2013 No. 62.

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

Scope of business

1) Asset management within the meaning of this Act encompasses the following services:[20]

a) Investment services and activities:
   1. portfolio management;
   2. investment advice;
   3. reception and transmission of orders in relation to one or more financial instruments;
   4. execution of orders on behalf of the client;

b) Ancillary services:
   1. 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;
   2. advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.

2) The provision and mediation of services referred to in paragraph 1 for third parties on a professional basis or as part of a regular occupation may be undertaken solely by asset management companies, subject to Article 2(2).[21]

3) At no time may asset management companies accept or hold assets of their clients.[22]

20 Article 3(1) amended by LGBl. 2017 No. 398.
21 Article 3(2) amended by LGBl. 2017 No. 398.
22 Article 3(3) amended by LGBl. 2014 No. 349.

Article 4[23]

Definitions and designations

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

1. "asset management company" means a company in the legal form referred to in Article 6(1)(a), the regular occupation or business of which is to carry out asset management;
2. "portfolio management" means 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;
3. "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;
4. "execution of orders on behalf of clients" means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients and includes the conclusion of agreements to sell financial instruments issued by an investment firm or a bank at the moment of their issuance. This does not include the mere transmission of securities orders by the asset management company to the custodian bank as part of portfolio management, if the custodian bank executes these orders accordingly;
5. "dealing on own account" means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;
6. "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);
7. "professional client" means a client meeting the criteria laid down in Annex 1(II);
8. "retail client" means a client as defined in Annex 1(III);
9. "eligible counterparty" means a client as defined in Annex 1(I);
10. "financial instruments" means those instruments specified in Annex 2;
11. "on a professional basis" means independently and regularly engaging in an activity with the intention to achieve a return or other economic

23 Article 4 amended by LGBl. 2017 No. 398.

advantage, regardless of the purposes for which this economic advantage is intended;

12. "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, promotes services as referred to in Article 23(1) to clients or prospective clients;

13. "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 licensed; 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;

14. "competent authority" means the authority of an individual State that exercises supervision over asset management companies on the basis of legal and administrative provisions; in Liechtenstein, this is the Financial Market Authority;

15. "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, 26a, 27, and 31 of the Disclosure Act shall be applied to determine the voting rights;

16. "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;

17. "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;

18. "group" means a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries have a holding as well as undertakings subject to uniform management (on the basis of provisions set out in contracts or articles of association, identical majority of managing body or senior management, letters of responsibility issued, and the like), but without a link between them in terms of capital; the companies within a group are the group companies;

19. "close links" means a situation in which two or more natural or legal persons are linked by:
    a) participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;
    b) 'control' which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in the accounting rules of the Law on Persons and Companies, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered to be a subsidiary of the parent undertaking which is at the head of those undertakings; or
    c) a permanent link of both or all of them to the same person by a control relationship;
20. "third-country firm" means a firm that would be an asset management company within the meaning of this Act if its head office or registered office were located within the EEA;
21. "management body" means the body of an asset management company which is appointed in accordance with national law, which is empowered to set the company's strategy, objectives and overall direction, and which oversees and monitors management decision-making. As a rule, this is the board of directors;
22. "senior management" means natural persons who exercise executive functions within an asset management company and who are responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;
23. "cross-selling practice" or "bundled services" means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package;
24. "structured deposit" means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a bank is required to repay in full at maturity under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where its principal is only repayable at par under a particular guarantee or agreement provided by the bank or a third party, on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:

a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;

b) a financial instrument or combination of financial instruments;

c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or

d) a foreign exchange rate or combination of foreign exchange rates;

25. "Member State" means a State which is a member of the European Economic Area (EEA);

26. "home Member State" means:

a) if the asset management company is a foreign natural person, the Member State in which its head office is situated;

b) if the asset management company is a legal person, the Member State in which its registered office is situated; or

c) if the asset management company has, under its national law, no registered office, the Member State in which its head office is situated;

27. "host Member State" means a Member State:

a) other than the home Member State, in which an asset management company has a branch or performs services and/or activities; or

b) 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;

28. "durable medium" means any instrument which:

a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information; and

b) allows the unchanged reproduction of the information stored;

29. "central securities depository" means a legal person that operates a securities settlement system and provides at least one of the following services:

a) initial recording of securities in a book-entry system; or

b) providing and maintaining securities accounts at the top tier level;

30. "significant asset management company" means an asset management company that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities. In any event, an asset management company is not significant if it employs fewer than 250 people, achieves an annual turnover of less than 100

million Swiss francs, or its annual balance sheet total is less than 90 million Swiss francs;

31. "algorithmic trading" means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;

32. "high-frequency algorithmic trading technique" means an algorithmic trading technique characterised by:

    a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access;

    b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and

    c) high message intraday rates which constitute orders, quotes or cancellations;

33. "direct electronic access" means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access);

34. "trading venue" means a regulated market, a multilateral trading facility or an organised trading facility;

35. "regulated market" means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Article 30s of the Banking Act;

36. "multilateral trading facility (MTF)" means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract;
37. "organised trading facility (OTF)" means a multilateral system which is not a regulated market or a multilateral trading facility and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract;
38. "product approval process" means the process to be followed by each bank and investment firm which manufactures financial instruments for sale to clients before the financial instrument is marketed or distributed to clients;
39. "target market for financial instruments" means the market of the financial instrument, to be defined in the product approval process by a bank or investment firm which manufactures financial instruments for sale to clients, where such market is specified for end clients within the relevant client classifications for each financial instrument and where it is ensured that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market;
40. "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 debt register claims of the Swiss Confederation, and excluding instruments of payment;
41. "transferable securities" means all classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:
    a) shares in companies and other securities equivalent to shares in companies, partnerships, or other entities, and depositary receipts in respect of shares;
    b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; or
    c) 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;

42. "depositary receipts" means securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer.

2) In addition, the definitions of the Banking Act and of applicable EEA law, in particular Directive 2014/65/EU, Regulation (EU) No 600/2014, Regulation (EU) No 575/2013, and Directive 2013/36/EU shall apply on a supplementary basis.

3) By ordinance, the Government may provide further details regarding the definitions set out in paragraph 1 and define other terms used in this Act.

4) The designations of persons and functions contained in this Act shall apply to persons of female and of male 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) the asset management company has a suitable permanent establishment in Liechtenstein and establishes adequate policies and procedures sufficient to ensure compliance of the company including

its management body, senior management, employees and tied agents with its obligations under this Act as well as appropriate rules governing personal transactions by such persons;[24]

d) the asset management company has a senior management as referred to in Article 7 and a management body as referred to in Article 7a;[25]

e) a programme of operations including the organisational structure of the asset management company and information on the types of business envisaged;[26]

f) an auditor is appointed in accordance with Article 43;[27]

g) the FMA has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings in the asset management company and the amounts of those holdings;[28]

h) the professional and personal qualities of the members of the management body and the senior 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;[29]

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; Article 7 of the Banking Act applies *mutatis mutandis*;[30]

n) appropriate procedures are in place for employees to report infringements of this Act internally through a specific, independent and autonomous channel.[31]

1a) The licensing conditions set out in paragraph 1 must be met on a permanent basis.[32]

24 Article 6(1)(c) amended by LGBl. 2017 No. 398.
25 Article 6(1)(d) amended by LGBl. 2017 No. 398.
26 Article 6(1)(e) amended by LGBl. 2017 No. 398.
27 Article 6(1)(f) amended by LGBl. 2017 No. 398.
28 Article 6(1)(g) amended by LGBl. 2017 No. 398.
29 Article 6(1)(k) amended by LGBl. 2014 No. 349.
30 Article 6(1)(m) amended by LGBl. 2017 No. 398.
31 Article 6(1)(n) inserted by LGBl. 2017 No. 398.
32 Article 6(1a) inserted by LGBl. 2009 No. 185.

1b) In any case, the licence shall be refused if:[33]

a) taking into account the need to ensure the sound and prudent management of an asset management company, the FMA is not satisfied as to the suitability of the shareholders or members that have qualifying holdings, or the conditions for the guarantee of sound and proper business operation are not met;

b) close links exist between the asset management company and other natural or legal persons that prevent the effective exercise of the FMA's supervisory functions;

c) close links exist between an asset management company and a natural or legal person domiciled outside the EEA and if the laws, regulations or administrative provisions of the country concerned or difficulties involved in their enforcement prevent the effective exercise of the FMA's supervisory functions.

1c) The licence referred to in paragraph 1 applies in all Member States and entitles an asset management company to provide services in accordance with Article 3(1) throughout the EEA.[34]

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.[35]

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.

4a) The FMA shall notify each issue of a licence in accordance with paragraph 1 to the European Securities and Market Authority (ESMA) and to the EFTA Surveillance Authority.[36]

5) The Government may provide further details by ordinance.[37]

33 Article 6(1b) inserted by LGBl. 2017 No. 398.
34 Article 6(1c) inserted by LGBl. 2017 No. 398.
35 Article 6(2) amended by LGBl. 2013 No. 62.
36 Article 6(4a) inserted by LGBl. 2017 No. 398.
37 Article 6(5) amended by LGBl. 2017 No. 398.

Article 7

Senior management[38]

1) Subject to paragraph 1b, the senior management must consist of at least two persons (senior managers) who:[39]

a) must be capable of acting and of sufficiently good repute;

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

c) must be sufficiently qualified for the intended responsibilities on the basis of their education and professional experience;

d) must actually work for the company in a management capacity;

e) must have the powers necessary for senior management. This includes in particular signature authority entered in the Commercial Register and full powers to issue instructions;

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

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

1a) In addition to the prerequisites set out in paragraph 1, at least one of the senior managers as referred to in paragraph 1 must:[40]

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.

38 Article 7 heading amended by LGBl. 2017 No. 398.
39 Article 7(1) amended by LGBl. 2017 No. 398.
40 Article 7(1a) inserted by LGBl. 2017 No. 398.

1b) Deviating from paragraph 1, the senior management may consist of only one senior manager as referred to in paragraph 1a if it is shown that:[41]

a) effective, solid and prudent management of the asset management company is ensured;

b) the interests of clients and the integrity of the market are adequately considered; and

c) continuation of the asset management company upon loss of the senior manager's capacity to act is ensured without interruption through appropriate rules governing substitution and succession.

2) One and the same person may only be senior manager of at most two asset management companies.[42]

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

4) The senior management shall be responsible for the professionally sound and proper provision of services and for compliance with the legal requirements, including notification requirements.[43]

5) The Government may provide further details by ordinance.[44]

Article 7a[45]

Management body

1) The members of the management body of the asset management company shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties, especially oversight of the senior management. The overall composition of the management body shall reflect an adequately broad range of experience.

2) All members of the management body shall commit sufficient time to perform their functions in the asset management company. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the asset management company's activities, including the main risks.

41 Article 7(1b) inserted by LGBl. 2017 No. 398.
42 Article 7(2) amended by LGBl. 2017 No. 398.
43 Article 7(4) amended by LGBl. 2017 No. 398.
44 Article 7(5) amended by LGBl. 2017 No. 398.
45 Article 7a inserted by LGBl. 2017 No. 398.

3) Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor the senior management's decision-making.

4) The asset management company shall devote adequate human and financial resources to the induction and training of members of the management body and the senior management.

5) When recruiting members to the management body, the asset management company must engage a broad set of qualities and competences and for that purpose put in place a proportionate policy promoting diversity on the management body.

6) The number of directorships a member of the management body can hold at the same time shall take into account individual circumstances and the nature, scale and complexity of the asset management company's business.

7) In a significant asset management company, members of the management body may at the same time hold only one of the following combinations of functions:

a) one executive directorship with two non-executive directorships;

b) four non-executive directorships.

8) Directorships in organisations which do not pursue predominantly commercial objectives, as well as functions as the representative of a Member State, shall not be taken into account for the purposes of paragraph 7(b).

9) The FMA may authorise members of the management body to hold one additional non-executive directorship, derogating from paragraph 7. The FMA shall regularly inform ESMA of such authorisations.

Article 7b[46]

Governance arrangements

1) The management body shall define governance arrangements. These arrangements shall ensure effective and prudent management of the asset management company, including the segregation of duties in

46 Article 7b inserted by LGBl. 2017 No. 398.

the organisation and the prevention of conflicts of interest. The management body shall define who oversees and is accountable for implementation of these arrangements. This must be done in a way that promotes the integrity of the market and client interests.

2) The arrangements referred to in paragraph 1 shall comply with the following principles:

a) the management body must have the overall responsibility for the asset management company and approve and oversee the implementation of the asset management company's strategic objectives, risk strategy and internal governance;

b) the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;

c) the management body must oversee the process of disclosure and communications;

d) the management body must be responsible for providing effective oversight of senior management;

e) the chairman of the management body in its supervisory function of an asset management company must not exercise simultaneously the functions of a senior manager within the same asset management company, unless justified by the asset management company and approved by the FMA.

3) Without prejudice to the requirements established in paragraph 2, those arrangements shall also ensure that the management body define, approve and oversee:

a) the organisation of the firm for the provision of services referred to in Article 3(1), including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the asset management company has to comply with;

b) a policy as to services offered or provided as referred to in Article 3(1), in accordance with the risk tolerance of the firm and the characteristics and needs of the clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;

c) a remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients.

4) The management body shall monitor and periodically assess the adequacy and the implementation of the asset management company's strategic objectives in the provision of services as set out in Article 3(1), the effectiveness of the asset management company's governance arrangements and the adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.

5) Members of the management body shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

6) Significant asset management companies must establish a nomination committee composed of members of the management body who do not perform any executive function in the asset management company concerned.

7) The nomination committee shall carry out the following:

a) Identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies, evaluate the balance of knowledge, skills, diversity and experience of the management body and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected. Furthermore, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target.

b) Periodically, and at least annually, assess the structure, size, composition and performance of the management body and make recommendations to the management body with regard to any changes.

c) Periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly.

d) Periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

8) In performing its duties, the nomination committee shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by

any one individual or small group of individuals in a manner that is detrimental to the interests of the asset management company as a whole.

9) The nomination committee shall be able to use any forms of resources that it considers to be appropriate, including external advice, and shall receive appropriate funding to that effect from the asset management company.

10) Where the management body does not have any competence in the process of selection and appointment of any of its members, paragraphs 6 to 9 shall not apply.

Article 7c[47]

General organisational requirements

1) The asset management company shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 20 from adversely affecting the interests of its clients.

2) Where the arrangements made in accordance with paragraph 1 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 to the client the general nature and/or sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on its behalf. This disclosure shall:

a) be made in a durable medium; and

b) include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

3) The asset management company must have adequate arrangements in place to obtain information on each financial instrument it offers or recommends and on the respective product approval procedure in order to understand the characteristics and specific target market of each financial instrument.

47 Article 7c inserted by LGBl. 2017 No. 398.

4) The asset management company shall also regularly review financial instruments it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the financial instrument remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

5) The asset management company shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To that end the asset management company shall employ appropriate and proportionate systems, resources and procedures.

6) The asset management company shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory investment services to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the asset management company compliance with all obligations.

7) The asset management company shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. The asset management company must ensure that it is able to calculate the financial position of the company with sufficient accuracy at all times.

8) An asset management company shall not conclude title transfer financial collateral arrangements with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients.

9) The policies, processes and arrangements referred to in this paragraph shall be without prejudice to all other requirements under this Act and Regulation (EU) No 600/2014, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and incentives.

10) The Government may provide further details by ordinance.

Article 8[48]

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 auditor must examine annually whether the amount of the initial capital and the required own funds backing is available on a permanent basis.[49]

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 may provide further details by ordinance.[50]

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.

48 Article 8 amended by LGBl. 2014 No. 349.
49 Article 8(5) amended by LGBl. 2017 No. 398.
50 Article 8(7) amended by LGBl. 2017 No. 398.

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 senior management and an intended change of the auditor; and [51]

b) any intended change to the articles of association and business rules that concern the group of clients, equity capital, or organisation.[52]

2) Any intended personnel changes to the management body shall require notification to the FMA in advance.[53]

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.[54]

3a) The asset management company shall immediately notify the FMA in writing if a licensing condition is no longer met.[55]

4) The Government may provide further details by ordinance.

Qualifying holdings[56]

Article 10a[57]

a) Notification requirements

1) Every proposed direct or indirect acquisition and every proposed direct or indirect disposal of a qualifying holding in an asset management company must be notified in writing to the FMA without delay by the person or persons interested in the acquisition and the disposal. Every proposed direct or indirect increase or every proposed direct or indirect

51 Article 10(1)(a) amended by LGBl. 2017 No. 398.
52 Article 10(1)(b) amended by LGBl. 2009 No. 185.
53 Article 10(2) amended by LGBl. 2017 No. 398.
54 Article 10(3) amended by LGBl. 2013 No. 6.
55 Article 10(3a) inserted by LGBl. 2009 No. 185.
56 Heading preceding Article 10a inserted by LGBl. 2017 No. 398.
57 Article 10a amended by LGBl. 2017 No. 398.

reduction of a qualifying holding in an asset management company must also be notified if, as a consequence of the increase or reduction, the thresholds of 20%, 30%, or 50% of the capital or voting rights were to be reached or crossed in either direction, or so that the asset management company would become its subsidiary (the 'proposed acquisition'), or the asset management company were to no longer be a subsidiary of the person disposing of the qualifying holding.

2) The FMA shall consult the authority responsible for licensing the acquirer or the undertaking whose parent undertaking or controlling person intends to make the acquisition or increase, if the acquisition or the increase of a holding as referred to in paragraph 1 is proposed by:

a) a bank, investment firm, insurance company, asset management company, management company under the Law on Certain Undertakings for Collective Investment in Transferable Securities (UCITSG) or the Investment Undertakings Act (IUG), or alternative investment fund manager or administrator under the Alternative Investment Fund Managers Act (AIFMG), if licensed in a Member State;

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

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

3) If an asset management company becomes aware of an acquisition, disposal, increase, or reduction as referred to in paragraph 1, it shall inform the FMA without delay. If shares of the asset management company are admitted to trading on a regulated market, the asset management company shall, at least annually, inform the FMA of the identity of known shareholders of qualifying holdings and the amount of such holdings.

4) The FMA shall take measures similar to those set out in Article 41(3)(m) against natural or legal persons who fail to comply with their notification requirements under paragraph 1.

5) If a holding is acquired or increased despite opposition by the FMA, the voting rights of the acquirer may not be exercised until the opposition has been amended or eliminated through legal remedies or has been withdrawn by the FMA; any votes nevertheless cast shall be null and void.

6) When assessing the acquisition or the increase of a holding in accordance with paragraph 2, the FMA shall cooperate with the competent authorities of the other Member States. The cooperation shall

in particular include an exchange of all information relevant to assessing the acquisition or increase of a holding.

Article 10b[58]

b) Procedure

1) In determining whether a qualifying holding exists, the FMA shall not take into account those voting rights or shares held by banks or investment firms as a result of providing services in connection with the underwriting business (Annex 2, Section A(1)(6) of the Banking Act), provided that:

a) those rights are not exercised or otherwise used to intervene in the management of the issuer; and

b) they sell dispose of those rights or shares within one year of acquisition.

2) The notification of an interested person as referred to in Article 10a(1) shall be made in writing, indicating the size of the intended holding or reduction of the holding as well as the information necessary to verify the criteria set out in Article 10c(1).

3) The FMA shall, within at most two working days following receipt of the notification and the documents required for the purposes of Article 10c(1), confirm such receipt to the proposed acquirer. It shall at the same time inform the proposed acquirer of the expiry of the assessment period referred to in paragraph 4.

4) Within at most 60 working days as from the date of the acknowledgement of receipt, the FMA must carry out the assessment of the acquisition or increase of the holding (assessment period).

5) The FMA may, during the assessment period and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed. For the period between the date of request for information by the FMA and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the FMA for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

58 Article 10b inserted by LGBl. 2017 No. 398.

6) The FMA may extend the interruption of the assessment period to 30 working days if the proposed acquirer:

a) is situated in a third country or is regulated by a competent authority of a third country; or

b) is a natural or legal person not subject to supervision by the FMA under the Banking Act, the Law on Certain Undertakings for Collective Investment in Transferable Securities (UCITSG), the Investment Undertakings Law, the Law on Alternative Investment Fund Managers (AIFMG), this Act, or the Insurance Supervision Act.

7) If the FMA opposes the acquisition or increase, it shall inform the proposed acquirer in writing and provide reasons within two days of the conclusion of the assessment, but in any case within the assessment period. If the proposed acquisition is not opposed in writing within the assessment period, the acquisition or increase shall be deemed to be approved.

8) The FMA may make the reasons for the decision accessible to the public at the request of the proposed acquirer. The FMA may also make such disclosure in the absence of a request if there is a legitimate interest in doing so. Unless there is an exceptional legitimate public interest, the disclosure shall be made in anonymous form.

9) The FMA may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

10) Where the FMA is notified of two or more proposed acquisitions, increases, or disposals of qualifying holdings in the same asset management company, the FMA shall in any event treat the proposals of the notifying parties in a non-discriminatory manner.

Article 10c[59]

c) Assessment

1) The FMA shall, in order to ensure the sound and prudent management of the asset management company in which an acquisition or increase is proposed, and having regard to the likely influence of the proposed acquirer on the asset management company, appraise the suitability of the proposed acquirer and the soundness of the proposed acquisition or increase against the following criteria:

59 Article 10c inserted by LGBl. 2017 No. 398.

a) the reputation of the proposed acquirer;

b) the reputation and experience of any person who will direct the asset management company as a result of the proposed acquisition or increase;

c) the financial soundness of the proposed acquirer, in particular in relation to the business pursued and envisaged in the asset management company in which the holding is proposed to be acquired;

d) whether:

1. the asset management company is able to comply and will continue to comply with the prudential requirements relevant to it; and

2. the group of which the asset management company will become a part due to the acquisition or increase has a structure that makes or will make effective supervision, a reasonable allocation of responsibilities, and effective exchange of information between the FMA and the other competent authorities possible;

e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2) The FMA may oppose the acquisition or increase if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information or documents provided are incomplete.

III. Rights and duties

A. General commissions

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 management or for providing its services.

2) Delegation of main activities is prohibited.[60]

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[61]

5) The Government may provide further details by ordinance, especially the scope and preconditions of delegation.[62]

Article 13[63]

Conversion

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)(b).

60 Article 12(2) amended by LGBl. 2017 No. 398.
61 Article 12(4) repealed by LGBl. 2007 No. 267.
62 Article 12(5) amended by LGBl. 2017 No. 398.
63 Article 13 amended by LGBl. 2017 No. 398.

B. Investor protection

Article 14[64]

Code of conduct

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 14 to 17, 19, and 20, and their conduct must uphold the honour and respect of their profession.

2) They must understand the financial instruments they offer or recommend, assess the compatibility of the financial instruments with the needs of the clients to whom they provide investment services, and ensure that financial instruments are offered or recommended only when this is in the interest of the client. The identified target market of end clients must also be taken into account.

3) Asset management companies must ensure and demonstrate to the FMA on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the asset management company possess the necessary knowledge and competence to fulfil their obligations under Articles 14 to 17, 19, and 20.

4) The Government may provide further details by ordinance.

Article 15[65]

Client profile, suitability for the client

1) When providing investment advice or portfolio management the asset management company shall obtain the necessary information regarding the client's or prospective client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including his ability to bear losses, and his investment objectives including his risk tolerance so as to enable the asset management company to recommend to the client or prospective client the investment services and financial instruments that are suitable

64 Article 14 amended by LGBl. 2017 No. 398.
65 Article 15 amended by LGBl. 2017 No. 398.

for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.

2) When providing investment services other than those referred to in paragraph 1, asset management companies shall ask the client or prospective client to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the asset management company to assess whether the investment service or product envisaged is appropriate for the client. Where a bundle of services or products is envisaged pursuant to Article 4(1)(23), the assessment shall consider whether the overall bundled package is appropriate.

3) Where the asset management company considers, on the basis of the information received under paragraph 2, that the product or service is not appropriate to the client or prospective client, the asset management company shall point this out to the client or prospective client. That warning may be provided in a standardised format.

4) Where clients or prospective clients refuse to provide the information referred to under paragraph 2, or where they provide insufficient information, the asset management company shall warn them that it is not in a position to determine whether the service or product envisaged is appropriate for them. That warning may be provided in a standardised format.

5) Where an asset management company provides investment advice recommending a package of services or products bundled pursuant to Article 4(1)(23), the asset management company shall ensure that the overall bundled package is suitable.

6) When the service provided by the asset management company consists only of execution of orders on behalf of the client or of reception and transmission of client orders with or without ancillary services, the asset management company may provide the service without the need to obtain the information or make the determination provided for in paragraph 2 where the following conditions are met:

a) The services relate to any of the following financial instruments:

   1. shares admitted to trading on a regulated market or on an equivalent third-country market or on a multilateral trading facility, where those are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative;

2. bonds or other forms of securitised debt admitted to trading on a regulated market or on an equivalent third country market or on a multilateral trading facility, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
3. money-market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
4. shares or units in UCITS, excluding structured UCITS as referred to in the second subparagraph of Article 36(1) of Regulation (EU) No 583/2010;
5. structured deposits, excluding those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term;
6. other non-complex financial instruments for the purpose of this paragraph.

For the purpose of this subparagraph, if the requirements and the procedure laid down under the third and the fourth subparagraphs of Article 4(1) of Directive 2003/71/EC are fulfilled, a third-country market shall be considered to be equivalent to a regulated market.

b) The service is provided at the initiative of the client or prospective client.

c) The client or prospective client has been clearly informed that in the provision of that service the asset management company is not required to assess the appropriateness of the financial instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant code of conduct. Such a warning may be provided in a standardised format.

d) The asset management company complies with its obligations under Article 7c(1) and Article 20.

Article 15a[66]

Provision of services through the medium of another asset management company, bank, or investment firm

1) An asset management company receiving an instruction to provide a service referred to in Article 3(1) on behalf of a client through the medium of another asset management company, bank, or investment firm may rely on client information transmitted by the latter asset management company, bank, or investment firm. The asset management company, bank, or investment firm which mediates the instructions will remain responsible for the completeness and accuracy of the information transmitted.

2) The asset management company which receives an instruction to undertake services on behalf of a client in that way shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another asset management company, bank, or investment firm. The asset management company, bank, or investment firm which mediates the instructions will remain responsible for the suitability for the client of the recommendations or advice provided.

3) The asset management company which receives client instructions or orders through the medium of another asset management company, bank, or investment firm shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with the relevant provisions of this Act.

Article 16[67]

Duty to disclose

1) Clients and prospective clients must in good time be provided with appropriate information on the asset management company and its services, financial instruments, and proposed investment strategies, execution venues, as well as all costs and associated fees. This information shall include the following:

66 Article 15a inserted by LGBl. 2017 No. 398.
67 Article 16 amended by LGBl. 2017 No. 398.

a) If investment advice is provided, the asset management company shall inform in good time before the investment advice is provided whether:

   1. the advice is provided on an independent basis;

   2. the advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the asset management company or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided;

   3. the asset management company will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client;

b) the applicable contractual terms and business conditions;

c) information on the financial instruments and the proposed investment strategies. This information must include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market;

d) the execution venues and the best execution principles for client orders in accordance with Article 16b;

e) information on all costs, associated charges and fees, including information relating to both investment and ancillary services, including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments;

f) the principles for avoiding and addressing conflicts of interest.

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 may be provided in a standardised format. The information about all costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the client to understand the overall cost as well as the cumulative effect on return of the investment, and where the client so requests, an itemised breakdown shall be provided. Where applicable,

such information shall be provided to the client on a regular basis, at least annually, during the life of the investment.

3) Where an investment service as referred to in Article 3(1) is offered as part of a financial product which is already subject to other provisions of EEA or domestic law relating to banks and consumer credits with respect to information requirements, that service shall not be additionally subject to the obligations set out in paragraphs 1 and 2 as well as Article 17.

4) Where an asset management company informs the client that investment advice is provided on an independent basis, that asset management company shall:

a) assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met, and the investment advice must not be limited to financial instruments issued or provided by:
   1. the asset management company itself or by entities having close links with the asset management company;
   2. other entities with which the asset management company has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided;

b) not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the asset management company's duty to act in the best interest of the client must be clearly disclosed and are excluded from this subparagraph.

5) When providing portfolio management as referred to in Article 3(1)(a), the asset management company shall not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the asset management company's duty to act in the best interest of the client shall be clearly disclosed and are excluded from this paragraph.

6) As a rule, asset management companies do not act conscientiously, fairly, honestly, and professionally in accordance with the best interests of their clients where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service or an ancillary service, to or by any party except the client or a person on behalf of the client, other than where the payment or benefit:

a) is designed to enhance the quality of the relevant service to the client; and

b) does not impair compliance with the asset management company's duty to act in accordance with the best interest of its clients.

7) The existence, nature and amount of the fee or commission referred to in paragraph 6, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service. Where applicable, the asset management company shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service. Inducements may be disclosed in a summarised form and in general terms.

8) Payments or benefits which enable or are necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by their nature cannot give rise to conflicts with the asset management company's duties to act honestly, fairly and professionally in accordance with the best interests of its clients, are not subject to the requirements set out in paragraph 6.

9) When an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the asset management company shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component. Where the risks resulting from such an agreement or package offered to a retail client are likely to be different from the risks associated with the components taken separately, the asset management company shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.

10) The Government may provide further details by ordinance.

Obligation to execute orders on terms most favourable to the client [68]

Article 16a[69]

a) In general

1) Asset management companies shall take all sufficient steps to obtain, when executing orders for clients, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, where there is a specific instruction from the client the asset management company shall execute the order following the specific instruction.

2) Where an asset management company executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs relating to execution, which shall include all expenses incurred by the client which are directly relating to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

3) For the purposes of delivering best possible result in accordance with the paragraph 1 where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the asset management company's order execution policy that is capable of executing that order, the asset management company's own commissions and the costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.

4) An asset management company shall not receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading venue or execution venue.

5) Following execution of a transaction on behalf of a client the asset management company shall inform the client where the order was executed.

68 Heading preceding Article 16a inserted by LGBl. 2017 No. 398.
69 Article 16a inserted by LGBl. 2017 No. 398.

Article 16b[70]

b) Order execution policy

1) The asset management company must establish and implement effective arrangements for complying with its obligations under Article 16a(1) to (3). In particular, the asset management company must establish and implement an order execution policy to allow it to obtain, for its client orders, the best possible result in accordance with Article 16a(1) to (3).

2) The order execution policy shall include, in respect of each class of financial instruments, information on the different venues where the asset management company executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the asset management company to obtain on a consistent basis the best possible result for the execution of client orders.

3) Asset management companies must provide appropriate information to their clients on their order execution policy. That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the asset management company for the client. Asset management companies must obtain the prior consent of their clients to the order execution policy.

4) Where the order execution policy provides for the possibility that client orders may be executed outside a trading venue, the asset management company shall, in particular, inform its clients or prospective clients about that possibility. Asset management companies must obtain the prior express consent of their clients before proceeding to execute their orders outside a trading venue. Asset management companies may obtain such consent either in the form of a general master agreement or in respect of individual transactions.

Article 16c[71]

c) Duty to report, monitor, and demonstrate

1) Each asset management company that executes client orders shall report on an annual basis, for each class of financial instruments, on the top five execution venues in terms of trading volumes of client orders which the asset management company executed in the preceding year.

70 Article 16b inserted by LGBl. 2017 No. 398.
71 Article 16c inserted by LGBl. 2017 No. 398.

The report must summarise and make public information on the quality of execution obtained.

2) Asset management companies that execute client orders shall monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. In this respect, they shall take account of, inter alia, the information made public by trading venues, systematic internalisers, and execution venues as well as the information referred to in paragraph 1. Each asset management company shall notify clients with whom it has an ongoing client relationship of any material changes to its order execution arrangements or execution policy.

3) The obligations set out in paragraphs 1 and 2 shall not apply if the asset management company has the client orders executed by a bank or investment firm maintaining the account or custody account.

4) At the request of a client, the asset management company must demonstrate that it has executed the client orders in accordance with the asset management company's own execution policy. The asset management company must demonstrate to the FMA, at its request, that it has complied with the obligations under Articles 16a to 16c.

Article 16d[72]

Client order handling

1) Asset management companies entitled to execute orders on behalf of clients shall implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders relative to other client orders.

2) The procedures or arrangements referred to in paragraph 1 shall allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the asset management company.

3) Where a client limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue cannot be executed immediately under prevailing market conditions, the asset management

72 Article 16d inserted by LGBl. 2017 No. 398.

company must, unless the client expressly instructs otherwise, take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants. The asset management company is deemed to comply with that obligation by transmitting the client limit order to a trading venue. The FMA may waive the obligation to make public a limit order that is unusual in scale compared with normal market size.

Article 16e[73]

Algorithmic trading

1) Asset management companies that engage in algorithmic trading shall have in place effective systems and risk controls suitable to the business they operate. The purpose therefore shall be to ensure that the asset management company's trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market.

2) Such asset management companies shall also have in place effective systems and risk controls to ensure the trading systems cannot be used for any purpose that is contrary to market abuse legislation or to the rules of a trading venue to which it is connected. The asset management companies shall have in place effective business continuity arrangements to deal with any failure of their trading systems and shall ensure their systems are fully tested and properly monitored to ensure that they meet the requirements laid down in paragraph 1 and this paragraph.

3) Asset management companies that engage in a high-frequency algorithmic trading technique shall store in an approved form accurate and time sequenced records of all their placed orders, including cancellations of orders, executed orders and quotations on trading venues and shall make them available to the FMA upon request.

4) The rules set out in banking legislation on algorithmic trading shall apply *mutatis mutandis*.

73 Article 16e inserted by LGBl. 2017 No. 398.

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[74]

Duty to conclude written agreements

1) The asset management company must conclude a written agreement with the client on the rights and duties and other conditions.

2) The Government may provide further details by ordinance.

Article 19[75]

Reporting to clients

1) The asset management company shall provide the client with adequate reports on the service provided in a durable medium. Those reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

2) Where an asset management company provides portfolio management or has informed the client that it will carry out a periodic assessment of suitability, the required periodic report shall contain an updated statement of how the investment meets the client's preferences, objectives and other characteristics of the retail client.

3) When providing investment advice, the asset management company shall, before the transaction is made, provide the client with a statement on suitability in a durable medium specifying the advice given

74 Article 18 amended by LGBl. 2017 No. 398.
75 Article 19 amended by LGBl. 2017 No. 398.

and how that advice meets the preferences, objectives and other characteristics of the retail client.

4) Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, the asset management company may provide the written statement on suitability in a durable medium immediately after the client is bound by any agreement, provided that:

a) the client has consented to receiving the suitability statement without undue delay after the conclusion of the transaction; and

b) the asset management company has given the client the option of delaying the transaction in order to receive the statement on suitability in advance.

5) The Government may provide further details by ordinance.

Article 20[76]

Prevention of conflicts of interest

1) Asset management companies shall take all appropriate steps to identify and to prevent or manage potential conflicts of interest between themselves – including their senior management, tied agents, and employees, or any person directly or indirectly linked to them by control – and their clients or between one client and another that arise in the course of providing their services as referred to in Article 3(1). This also applies to conflicts of interest caused by the receipt of incentives from third parties or by the asset management company's own remuneration and other incentive structures.

2) Each asset management company shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular, it shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the asset management company could offer a different financial instrument which would better meet that client's needs.

3) The Government may provide further details by ordinance.

76 Article 20 amended by LGBl. 2017 No. 398.

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.[77]

Article 22[78]

Recording and storage obligations

1) Asset management companies shall arrange for records to be kept of all services, activities and transactions undertaken by it which shall be sufficient to enable the FMA to fulfil its supervisory tasks and to perform the enforcement actions under this Act, Regulation (EU) No 600/2014, and market abuse legislation and in particular to ascertain that the asset management company has complied with all obligations including those with respect to clients or prospective clients and to the integrity of the market.

2) Records shall include the recording of telephone conversations or electronic communications relating to, at least, the provision of services that relate to the reception, transmission and execution of client orders. This shall also apply even if such conversations and communications do not lead to the provision of such services.

3) The asset management company shall take all reasonable steps to record relevant telephone conversations and electronic communications as referred to in paragraph 2, made with, sent from or received by equipment provided by the asset management company to an employee or contractor or the use of which by an employee or contractor has been accepted or permitted by the asset management company. The asset management company shall also take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant

77 Article 21(2) amended by LGBl. 2016 No. 42.
78 Article 22 amended by LGBl. 2017 No. 398.

telephone conversations and electronic communications on privately-owned equipment which the asset management company is unable to record or copy.

4) The asset management company shall notify new and existing clients that telephone communications or conversations between the asset management company and its clients that result or may result in transactions will be recorded. It shall be sufficient for such notification to be made once, before the provision of investment services.

5) The asset management company shall not provide, by telephone, investment services and activities to clients who have not been notified in advance about the recording of their telephone conversations or electronic communications, where such investment services and activities relate to the reception, transmission and execution of client orders. Orders may be placed by clients through other channels, however such communications must be made in a durable medium such as mails, faxes, emails or documentation of client orders made at meetings. In particular, the content of relevant face-to-face conversations with a client may be recorded by using written minutes or notes. Such orders shall be considered equivalent to orders received by telephone.

6) The records kept in accordance with this article shall be provided to the client involved upon request and shall be kept for a period of five years and, where requested by the FMA, for a period of up to seven years.

7) In the case of a domestic branch of an asset management company domiciled in another Member State, the FMA shall enforce the obligation laid down in this article with regard to transactions undertaken by the branch. This is without prejudice to the possibility of the competent authority of the home Member State of the asset management company to have direct access to those records.

Article 23

Appointment of tied agents

1) Asset management companies may appoint tied agents for the purposes of promoting the services of the asset management company, soliciting business or receiving orders from clients or prospective clients and transmitting them, placing financial instruments and providing advice in respect of such financial instruments and services offered by that asset management 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.[79]

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) Repealed[80]

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 the appropriate general, commercial and professional knowledge and competence so as to be able to deliver the investment service or ancillary service and to communicate accurately all relevant information regarding the proposed service to the client or prospective client. Relevant professional experience and several years of professional activity are required.[81]

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.

79 Article 23(1) amended by LGBl. 2017 No. 398.
80 Article 23(3) repealed by LGBl. 2017 No. 398.
81 Article 23(5)(c) amended by LGBl. 2017 No. 398.

7) The register shall be publicly accessible and shall be updated on a regular basis. It may be accessed via a retrieval procedure.[82]

8) The Government may provide further details by ordinance.

Article 24[83]

Repealed

Article 25[84]

Transactions executed with eligible counterparties

1) Asset management companies entitled to receive and transmit orders and/or execute orders on behalf of clients may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Article 14(3), Article 15, Article 16(3) to (10), Articles 16a to 16c, Article 16d(1) and (2), Article 17, and Article 20(2) in respect of those transactions or in respect of any ancillary service directly relating to those transactions.

2) In their relationship with eligible counterparties, asset management companies shall act honestly, fairly and professionally. They shall communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business.

3) If the eligible counterparty requests not to be treated as such, it may, either on a general form or on a trade-by-trade basis, apply for treatment as a professional or retail client.

4) The Government may provide further details by ordinance.

82 Article 23(7) amended by LGBl. 2017 No. 398.
83 Article 24 repealed by LGBl. 2017 No. 398.
84 Article 25 amended by LGBl. 2017 No. 398.

C. Accounting and reporting

Article 26

Accounting

1) 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.

2) The provisions of Article 1068(4) of the Law on Persons and Companies regarding the consolidated balance sheet and income statement shall not apply to any asset management companies, regardless of their legal form.[85]

Article 27[86]

Obligation of external audit

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

2) At all times, the asset management companies must grant the auditor access to the documents of the company, especially the books, receipts, asset management mandates, business correspondence, and minutes of the management body and the senior management, and they 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.

85 Article 26(2) inserted by LGBl. 2017 No. 398.
86 Article 27 amended by LGBl. 2017 No. 398.

3) The Government may provide further details by ordinance, in particular the frequency and content of the reports.[87]

IV. Lapse and withdrawal of licences[88]

Article 29[89]

Repealed

Article 30[90]

Lapse

1) The licence shall lapse if:

a) business has not been taken up within one year;

b) the licence is renounced in writing;

c) bankruptcy proceedings have been opened with legal effect;

d) the company has been removed from the Commercial Register; or

e) the asset management company is converted into a management company under the IUG or UCITSG or into an authorisation holder under the AIFMG.

2) In justified cases, the FMA may, upon request, extend the deadlines referred to in paragraph 1(a).

3) The lapse of a licence shall be published in the official journal at the expense of the licence holder. The FMA shall inform every lapse of a licence to the competent authorities of the Member States in which the asset management company operated under Article 33 or 33a, the EFTA Surveillance Authority, and ESMA.

87 Article 28(3) amended by LGBl. 2017 No. 398.
88 Title preceding Article 29 amended by LGBl. 2017 No. 398.
89 Article 29 repealed by LGBl. 2017 No. 398.
90 Article 30 amended by LGBl. 2017 No. 398.

Article 31[91]

Withdrawal

1) The FMA shall withdraw the licence if:

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

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

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

d) legal obligations are violated in a serious way;

e) the FMA's demands to restore a lawful state of affairs are not met; or

f) the business activity is no longer carried out for at least six months.

2) The withdrawal of a license shall be published in the official journal at the expense of the licence holder. The FMA shall inform every lapse of a licence to the competent authorities of the Member States in which the asset management company operated under Article 33 or 33a, the EFTA Surveillance Authority, and ESMA with an indication of the reasons.

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.

91 Article 31 amended by LGBl. 2017 No. 398.

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

A. European Economic Area

Article 33[92]

Freedom to provide services of Liechtenstein asset management companies

1) Asset management companies domiciled in Liechtenstein which have been granted a licence under this Act may carry out their activities in another Member State by way of cross-border provision of services, provided that a service referred to in Article 3(1) is actually performed. Services referred to in Article 3(1)(b) may be provided only together with a service referred to in Article 3(1)(a).

2) Any asset management company wishing to provide services referred to in Article 3(1) within the territory of another Member State for the first time, or which wishes to change the range of services so provided, shall communicate the following information to the FMA:

a) the Member State in which it intends to carry out its activities;

b) a programme of operations stating in particular the investment services and/or activities as well as ancillary services which it intends to provide in the territory of that Member State; and

c) the names and addresses of any tied agents to be used in the territory of another Member State who are established in Liechtenstein.

3) The FMA shall, within one month from receipt of all the information, forward that information to the competent authority of the host Member State. The asset management company may then start to provide the relevant services in the host Member State as referred to in Article 3(1).

4) In the event of a change in the information provided in accordance with paragraph 2 above, the asset management company shall notify the FMA in writing at least one month before the changes are carried out. The FMA shall notify the competent authority of the host Member State of this change.

92 Article 33 amended by LGBl. 2017 No. 398.

Article 33a[93]

Branches of Liechtenstein asset management companies in other Member States

1) Any asset management company domiciled in Liechtenstein wishing to establish a branch within the territory of another Member State or to use tied agents established in another Member State in which it has not established a branch, shall first notify the FMA. The notification must contain the following information and documents:

a) the Member States within the territory of which it plans to establish a branch or the Member States in which it has not established a branch but plans to use tied agents established there;

b) a programme of operations setting out, inter alia, the investment services and/or activities as well as the ancillary services to be offered;

c) where established, the organisational structure of the branch and information about whether the branch intends to use tied agents and the identity of those tied agents;

d) where tied agents are to be used in a Member State in which an asset management company has not established a branch, a description of the intended use of the tied agent(s) and an organisational structure, including reporting lines, indicating how the agent(s) fit into the corporate structure of the asset management company;

e) the address in the host Member State from which documents may be obtained;

f) the names of the responsible senior managers of the branch or of the tied agent.

2) Services referred to in Article 3(1)(b) may be provided only together with a service referred to in Article 3(1)(a).

3) Where an asset management company uses a tied agent established in a Member State outside its home Member State, such tied agent shall be assimilated to the branch, where one is established, and shall in any event be subject to the provisions of this Act relating to branches.

4) Unless the FMA has reason to doubt the adequacy of the administrative structure or the financial situation of an asset management company, taking into account the activities envisaged, it shall, within three months of receiving all the information, communicate that information to the competent authority of the host Member State

93 Article 33a inserted by LGBl. 2017 No. 398.

designated as contact point and inform the asset management company concerned accordingly.

5) In addition to the information referred to in paragraph 1, the FMA shall communicate details of the accredited compensation scheme of which the asset management company is a member to the competent authority of the host Member State. In the event of a change in the particulars, the FMA shall inform the competent authority of the host Member State accordingly.

6) Where the FMA refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the asset management company concerned within three months of receiving all the information.

7) The asset management company shall give written notice to the FMA of any change to the particulars referred to in paragraph 1 at least one month before implementing the change. The FMA shall inform the competent authority of the host Member State of that change.

Activities of asset management companies from the European Economic Area within Liechtenstein[94]

Article 34[95]

a) Principle

1) Asset management companies domiciled in another Member State may provide services referred to in Article 3(1) in Liechtenstein in accordance with this Act within the framework of the establishment of a branch, by way of cross-border provision of services, or by the use of a tied agent established in a Member State outside its home Member State of the asset management company, without a licence under this Act, provided that they are authorised to do so in their home Member State.

2) Services referred to in Article 3(1)(b) may be provided only together with a service referred to in Article 3(1)(a).

94 Heading preceding Article 34 inserted by LGBl. 2017 No. 398.
95 Article 34 amended by LGBl. 2017 No. 398.

Article 34a[96]

b) Freedom to provide services

1) A first-time activity in Liechtenstein under the freedom to provide services of an asset management company shall require notification by the competent authority of the home Member State to the FMA. This notification shall contain the following:

a) information concerning the planned activities (programme of operations); these activities must be permissible services in accordance with Article 3(1);

b) an attestation that the transmitting authority has licensed and supervises the asset management company;

c) an attestation that the planned activities are covered by the licence issued by the competent authorities of the home Member State;

d) the names and addresses of tied agents to be appointed, if any, who are domiciled in the home Member State.

2) On receipt of the notification, the asset management company may begin to provide the services in question.

3) The FMA shall indicate to the asset management company the conditions, including any code of conduct, under which, in the interests of the general good, the activities shall be carried out in Liechtenstein.

4) The asset management company must notify the FMA in writing of any changes to the content of the information under paragraph 1 at least one month before making the change.

5) Asset management companies from other Member States entitled to execute client orders shall have access to regulated markets, central counterparties, and clearing and settlement systems domiciled in Liechtenstein in the same way as domestic asset management companies.

Article 34b[97]

c) Branches

1) The establishment of a branch of asset management companies domiciled in another Member State or the use of a tied agent established in another Member State is permitted in Liechtenstein if:

96 Article 34a inserted by LGBl. 2017 No. 398.
97 Article 34b inserted by LGBl. 2017 No. 398.

a) they carry out one or more of its permitted activities and are supervised by the competent authorities of the home Member State;

b) the competent authority of the home Member State has communicated the following to the FMA:

1. information on the planned establishment of a branch in Liechtenstein or, if there is no branch in Liechtenstein, the planned use of tied agents established there;
2. a programme of operations setting out, inter alia, the investment services and/or activities as well as the ancillary services to be offered;
3. where established, information about the organisational structure of the branch and whether the branch intends to use tied agents and the identity of those tied agents;
4. where tied agents are to be used, a description of the intended use of the tied agent(s) and an organisational structure, including reporting lines, indicating how the agent(s) fit into the corporate structure of the asset management company;
5. the address in Liechtenstein from which documents may be obtained;
6. the names of the responsible senior managers of the branch or of the tied agent;
7. details of the investor compensation scheme of which the asset management company is a member.

2) Within two months of receiving the information referred to in paragraph 1, the FMA shall indicate to the asset management company the required notifications and conditions, including any code of conduct, under which, in the interests of the general good, the activities shall be carried out in Liechtenstein.

3) On receipt of the communication referred to in paragraph 2, or if no communication has been received from the FMA within two months after the competent authority of the home Member State forwarded the notification, the asset management company may establish the branch and commence its business operations or the tied agent may take up its work. The establishment of the branch may not be made dependent on any initial capital.

4) The asset management company must notify the FMA in writing of any changes to the content of the information under paragraph 1 at least one month before making the change.

5) Every half year, the asset management company must submit a report to the FMA about the branch's activities.

6) If the asset management company no longer meets the conditions set out in paragraph 1 and the competent authorities of the home Member State have notified the FMA accordingly, the activities of the asset management company in Liechtenstein shall become subject to Liechtenstein provisions. The FMA shall take appropriate measures to prevent further transactions from being initiated in Liechtenstein and to safeguard the interests of investors.

7) When fulfilling the responsibilities delegated to the FMA under this Act, the FMA may require information from the branches of the asset management companies that are needed to assess their compliance with the applicable provisions.

8) Where an asset management company domiciled in another Member State uses a tied agent established in Liechtenstein, such tied agent shall be assimilated to the branch, provided that one is established, and shall in any event be subject to the provisions relating to branches.

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

[98]The following bodies are mandated to implement this Act and Regulation (EU) No 600/2014:

a) the FMA;

b) the auditor; and[99]

98 Article 38 introductory sentence amended by LGBl. 2017 No. 398.

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 requirements of criminal or tax law, 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.[100]

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.[101]

99 Article 38(b) amended by LGBl. 2017 No. 398.
100 Article 39(4) amended by LGBl. 2017 No. 398.
101 Article 39(5) amended by LGBl. 2007 No. 267.

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 compliance with this Act and the associated ordinances as well as applicable EEA legislation, in particular Regulation (EU) No 600/2014. The FMA shall take the measures necessary for execution. It shall exercise its powers:[102]

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 and withdrawing licences;[103]

b) verifying audit reports and annual reports;[104]

c) naming administrative agents 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(2a) and (3).[105]

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 auditors as well as the auditors' employees;[106]

102 Article 41(1) introductory phrase amended by LGBl. 2017 No. 398.
103 Article 41(2)(a) amended by LGBl. 2017 No. 398.
104 Article 41(2)(b) amended by LGBl. 2017 No. 398.
105 Article 41(2)(e) amended by LGBl. 2017 No. 398.
106 Article 41(3)(a) amended by LGBl. 2017 No. 398.

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, electronic messages or other data transmissions in the possession of asset management companies;[107]

e) demand a practice to be discontinued that conflicts with this Act, the ordinances issued in connection herewith, or Regulation (EU) No 600/2014;[108]

f) impose a temporary or, in the event of repeated serious violations, permanent prohibition on the responsible member of the asset management company's management body or another responsible natural person from performing management duties in asset management companies;[109]

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;[110]

h) suspend the marketing or sale of financial instruments or structured deposits if the conditions laid down in Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are fulfilled;[111]

i) suspend the marketing or sale of financial instruments or structured deposits where the asset management company has failed to comply with Article 7c;[112]

k) require the removal of a natural person from the management body of the asset management company;[113]

l) impose a temporary ban on an asset management company from being a member, client or participant in a regulated market, a multilateral trading facility or an organised trading facility;[114]

m) where the influence exercised by the persons referred to in Article 6(1)(g) is likely to be prejudicial to the sound and prudent

107 Article 41(3)(d) amended by LGBl. 2017 No. 398.
108 Article 41(3)(e) amended by LGBl. 2017 No. 398.
109 Article 41(3)(f) amended by LGBl. 2017 No. 398.
110 Article 41(3)(g) amended by LGBl. 2016 No. 161.
111 Article 41(3)(h) inserted by LGBl. 2017 No. 398.
112 Article 41(3)(i) inserted by LGBl. 2017 No. 398.
113 Article 41(3)(k) inserted by LGBl. 2017 No. 398.
114 Article 41(3)(l) inserted by LGBl. 2017 No. 398.

management of an asset management company, order appropriate measures to put an end to that situation. Such measures may include applications for judicial orders, the imposition of sanctions against senior managers and the senior management, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.[115]

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.

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 senior 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.

115 Article 41(3)(m) inserted by LGBl. 2017 No. 398.

C. Auditor[116]

Article 43[117]

Appointment of the auditor

1) Each asset management company must appoint an auditor or audit firm recognised by the FMA.

2) Recognition under paragraph 1 is granted where:

a) auditors have a licence under the Auditors and Auditing Companies Act and have special qualifications in the field of asset management companies;

b) audit firms have a license under the Auditors and Auditing Companies Act and responsible auditors (lead auditors) who meet the requirements of subparagraph (a).

3) The audit firms must notify the FMA of the responsible auditors to the FMA before the audit commences.

4) Auditors shall devote themselves exclusively to their auditing function and business directly relating thereto. They may not engage in any asset management and must be independent of the asset management company subject to audit.

5) The Government may provide further details by ordinance, in particular:

a) the requirements for the special qualifications of the auditors;

b) the procedure for the recognition of auditors and audit firms.

Article 44[118]

Duties of the auditor

1) Unless specified otherwise in this Act, the auditor shall audit in particular:

a) that the licensing conditions continue to be met;

116 Title preceding Article 43 amended by LGBl. 2017 No. 398.
117 Article 43 amended by LGBl. 2017 No. 398.
118 Article 44 amended by LGBl. 2017 No. 398.

b) that the provisions of this Act and the associated ordinances as well as the existing business rules (articles, instructions, etc.) are complied with; and

c) the annual reports of the asset management company.

2) Article 21 shall apply *mutatis mutandis* to the auditor's duty of secrecy.

3) The audit report with comments on supervisory law shall be transmitted no later than six months from the end of the business year simultaneously to:

a) the asset management company; and

b) the FMA.

4) The duty referred to in paragraph 3 shall cease only with the legally binding loss of licence or upon completion of liquidation, if that time is later.

5) The auditor shall be liable for all breaches of duty in accordance with the provisions of the Law on Persons and Companies concerning the audit of accounts.

6) The Government may provide further details by ordinance, in particular:

a) the detailed content of the audit report;

b) the time limit for preparation and submission of the audit report to the FMA.

Article 45[119]

Duty to report

1) Auditors shall without delay inform the FMA of any fact or decision of which they have become aware while carrying out their duties and which in particular:

a) could constitute a material breach of the provisions of this Act, the associated ordinances, existing business rules (articles, instructions, etc.), and professional guidelines declared binding under Article 14(5) that apply to the licensing or the pursuit of the activities of the asset management company and other undertakings contributing towards their business activity;

119 Article 45 amended by LGBl. 2017 No. 398.

b) could jeopardise the continued existence of the asset management company;

c) could constitute an impairment of the continuous functioning of the asset management company or an undertaking contributing towards its business activity;

d) could give rise to suspicion that a person entrusted with the administration of an asset management company may have committed a criminal offence;

e) could make it futile to impose a time limit to establish a lawful state of affairs; or

f) could result in a refusal to certify the accounts or an expression of reservations.

2) The duty to notify under paragraph 1 shall also apply with regard to undertakings having close links resulting from a control relationship with the asset management company or undertakings contributing toward its business activity.

3) If the auditor notifies in good faith any fact or decision referred to in paragraph 1 to the FMA, this shall not constitute a breach of any contractual or legal duty of secrecy. The auditor shall not be subject to any liability for such report.

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

5) The Government may provide further details by ordinance.

Article 45a[120]

Supervision of auditors

When supervising auditors, the FMA may in particular carry out quality controls and accompany the auditors during their audits of asset management companies.

120 Article 45a amended by LGBl. 2017 No. 398.

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 an administrative agent

Article 48

Basic principle

1) The FMA shall appoint an administrative agent for:

a) asset management companies that are legally incapacitated;

b) asset management companies whose licence has been withdrawn.[121]

2) The FMA shall have the administrative agent entered at the Office of Justice.[122]

3) The asset management company shall communicate the appointment of an administrative agent to the clients.

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

121 Article 48(1)(b) amended by LGBl. 2017 No. 398.
122 Article 48(2) amended by LGBl. 2013 No. 6.

5) The FMA shall determine the remuneration paid to the administrative agent. The administrative agent's remuneration and expenses are charged to the asset management company.[123]

6) The Government may provide further details by ordinance, in particular the criteria for the remuneration and personal requirements placed on the administrative agent.[124]

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.[125]

123 Article 48(5) amended by LGBl. 2017 No. 398.
124 Article 48(6) inserted by LGBl. 2017 No. 398.
125 Article 49(2) amended by LGBl. 2013 No. 6.

2. Cooperation with competent authorities of other Member States and ESMA[126]

Article 50[127]

Principle

1) Within the framework of its supervision, the FMA shall cooperate closely with the competent authorities of the other EEA Member States in accordance with this Act.

2) The FMA shall without delay provide ESMA with all information required for the performance of its tasks under this Act and Regulation (EU) No 600/2014.

Article 51[128]

Joint action against abuse

1) If the FMA has justified reasons to assume that undertakings not subject to its supervision are violating or have violated provisions of Directive 2014/65/EU or Regulation (EU) No 600/2014 within the territory of another EEA Member State, then the FMA shall communicate these circumstances to the competent authority and ESMA as precisely as possible.

2) If a competent authority of another Member State communicates to the FMA that an undertaking is violating or has violated the provisions of Directive 2014/65/EU or Regulation (EU) No 600/2014 in Liechtenstein, then the FMA shall take appropriate measures against that undertaking. The FMA shall notify the communicating authority and ESMA of the measures taken and the procedure.

126 Title preceding Article 50 amended by LGBl. 2017 No. 398.
127 Article 50 amended by LGBl. 2017 No. 398.
128 Article 51 amended by LGBl. 2017 No. 398.

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 auditors or experts to carry out the verification or investigation.[129]

3) Where on-the-spot audits are not carried out by the FMA itself, the auditors shall be accompanied by employees of the FMA.[130]

4) With respect to domestic branches of asset management companies domiciled in another Member State that are subject to supervision by competent foreign authorities, those authorities may, after informing the FMA, themselves or through the intermediary of persons they instruct for the purpose, carry out on-the-spot verification of the information necessary for supervision.[131]

5) The FMA may request the cooperation of the competent authority of another EEA Member State in a supervisory activity or for an on-the-spot verification or in an investigation.[132]

Article 53

Exchange of information

1) The FMA shall supply a requesting competent authority of another Member State with all information that this authority needs to carry out its supervisory responsibilities pursuant to Directive 2014/65/EU and Regulation (EU) 600/2014.[133]

129 Article 52(2)(c) amended by LGBl. 2017 No. 398.
130 Article 52(3) amended by LGBl. 2017 No. 398.
131 Article 52(4) inserted by LGBl. 2017 No. 398.
132 Article 52(5) inserted by LGBl. 2017 No. 398.
133 Article 53(1) amended by LGBl. 2017 No. 398.

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 extrajudicial 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) Repealed[134]

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, bank, or market operator 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;

134 Article 54(1)(a) repealed by LGBl. 2017 No. 398.

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 and the reputation and experience of persons who effectively direct the business involved in the management of another undertaking of the same group.[135]

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.[136]

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 2014/65/EU, it shall communicate this to the competent authority of the home Member State, unless the powers of supervision have been conferred on the FMA.[137]

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

135 Article 55(3) amended by LGBl. 2017 No. 398.
136 Article 55(4) amended by LGBl. 2017 No. 398.
137 Article 56(1) amended by LGBl. 2017 No. 398.

Liechtenstein. The FMA shall without delay inform the EFTA Surveillance Authority and ESMA of such measures.[138]

3) Where the FMA ascertains that an asset management company with a branch in Liechtenstein is in breach of the provisions of this Act, the associated ordinances, or the existing business rules (articles, instructions, etc.), it shall require the asset management company concerned to put an end to its irregular situation.[139]

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 FMA shall without delay inform the EFTA Surveillance Authority and ESMA of such measures.[140]

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.

138 Article 56(2) amended by LGBl. 2017 No. 398.
139 Article 56(3) amended by LGBl. 2017 No. 398.
140 Article 56(5) amended by LGBl. 2017 No. 398.

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 extrajudicial settlements

Article 59

Decisions and decrees

1) If the FMA ascertains violations of the provisions in this Act, the associated ordinances, or Regulation (EU) No 600/2014 and, if the situation is not redressed despite warnings and the imposition of deadlines, the FMA shall take the necessary decisions and appropriate measures.[141]

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.[142]

Article 61

Dispute settlement[143]

1) The Government shall appoint a conciliation board to settle disputes between clients and asset management companies concerning the services provided.

141 Article 59(1) amended by LGBl. 2017 No. 398.
142 Article 60(3) amended by LGBl. 2007 No. 267 and LGBl. 2011 No. 551.
143 Article 61 heading amended by LGBl. 2017 No. 398.

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

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

4) The Government may provide further details by ordinance, especially concerning the organisational structure, the composition, and the procedure.[144]

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:[145]

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;

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

d) operates a branch within the meaning of Article 34b in the home Member State without a licence.

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 auditor;[146]

144 Article 61(4) amended by LGBl. 2017 No. 398.
145 Article 62(1) amended by LGBl. 2017 No. 398.

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;[147]

g) fails to observe the initial capital requirement as set out in Article 6(1)(k);[148]

h) does not have sufficient own funds as set out in Article 8;[149]

i) violates the conditions for the freedom to provide services as set out in Articles 34, 34a, and 34b.[150]

2a) The FMA shall punish with a fine for committing a contravention anyone who obtains a licence dishonestly by providing false information or in any other unlawful way, unless the act constitutes an offence falling within the jurisdiction of the courts. This fine shall be:[151]

a) in the case of legal entities, up to 6,200,000 francs or up to 10% of the total annual turnover according to the last available accounts approved by the management body or up to twice the amount of the benefit derived from the infringement to the extent that benefit can be determined and exceeds the annual turnover, even if it exceeds the amount of 6,200,000;

b) in the case of natural persons, up to CHF 6,200,000 or up to twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the amount of 6 200 000 francs.

3) The FMA shall punish with a fine of up to 100,000 francs for committing a contravention anyone who:[152]

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

146 Article 62(2)(c) amended by LGBl. 2017 No. 398.
147 Article 62(2)(f) amended by LGBl. 2017 No. 398.
148 Article 62(2)(g) amended by LGBl. 2017 No. 398.
149 Article 62(2)(h) amended by LGBl. 2017 No. 398.
150 Article 62(2)(i) inserted by LGBl. 2017 No. 398.
151 Article 62(2a) inserted by LGBl. 2017 No. 398.
152 Article 62(3) amended by LGBl. 2017 No. 398.

2. fails to have a regular audit or an audit required by the FMA carried out as a whole or in relation to individual areas;
3. fails to fulfil responsibilities vis-à-vis the auditor;
4. fails to submit the prescribed reports and notifications to the FMA or submits them late;
5. fails to comply with a demand to bring about a lawful state of affairs or with any other decree of the FMA;
6. fails to comply with a demand to cooperate in an investigation procedure of the FMA;
7. provides impermissible, false, or misleading information in advertising for an asset management company;
8. fails to comply with the code of conduct (Article 14);
9. fails to meet the organisational requirements of Article 7c for asset management companies;
10. fails to make or maintain effective organisational and administrative arrangements to prevent conflicts of interest from adversely affecting client interests;
11. violates his or her obligations when appointing tied agents as referred to in Article 23;
12. violates his or her obligations as a tied agent as referred to in Article 23;
13. as an auditor, violates his or her duties under this Act, especially under Articles 43 to 46;
14. fails to meet obligations with regard to the organization of the management body or as the management body, especially under Article 7a and 7b;
15. fails to notify the FMA in writing of the direct or indirect acquisition, the direct or indirect increase, the direct or indirect disposal, or the direct or indirect reduction of a qualifying holding in an asset management company as referred to in Article 10a;
16. during the assessment period or despite the opposition of the FMA, carries out the direct or indirect acquisition, the direct or indirect increase, the direct or indirect disposal, or the direct or indirect reduction of a qualifying holding in an asset management company as referred to in Article 10a;
17. despite being aware that as a consequence of an increase or reduction of a holding in the capital as referred to in Article 10a, fails to notify the FMA of that increase or reduction;

18. fails to comply with the provisions on algorithmic trading set out in Article 16e;
19. violates the obligation set out in Annex 1(2) to obtain the express consent of a potential counterparty to be treated as an eligible counterparty;
20. in violation of Article 34a(5), limits the access of asset management companies from other Member States to regulated markets, central counterparties, and clearing and settlement systems domiciled in Liechtenstein;
21. in violation of Article 20(1) of Regulation (EU) No 600/2014, fails to make public their transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, the volume and price of those transactions, and the time at which they were concluded;
22. as an asset management company and in violation of the first sentence of Article 20(2) of Regulation (EU) No 600/2014, fails to ensure that the information made public and the time limits within which it is published comply with the specified requirements and regulatory technical standards;
23. as an asset management company which concludes transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue, and in violation of Article 21(1) and (2) of Regulation (EU) No 600/2014, fails to make public the volume and price of those transactions and the time at which they were concluded;
24. as an asset management company and in violation of Article 21(3) of Regulation (EU) No 600/2014, fails to ensure that the information which is made public and the time limits within which it is published comply with the specified requirements and the adopted regulatory technical standards;
25. as an asset management company and in violation of Article 23(1) of Regulation (EU) No 600/2014 fails to ensure that the trades it undertakes in shares admitted to trading on a regulated market or traded on a trading venue take place on a regulated market, multilateral trading facility, organised trading facility or systematic internaliser, or a third-country trading venue assessed as equivalent;
26. as an asset management company and in violation of Article 25(1)of Regulation (EU) No 600/2014:
    a) fails to keep at the disposal of the FMA, for five years, the relevant data relating to all orders and all transactions in financial instruments which they have carried out on behalf of a client; or

b) fails to ensure that the records on transactions carried out on behalf of clients contain all the information and details of the identity of the client;

27. as an asset management company which executes transactions in financial instruments, and in violation of Article 26(1) of Regulation (EU) No 600/2014, fails to report complete and accurate details of such transactions to the FMA as quickly as possible, and no later than the close of the following working day;

28. as an operator of a trading venue or approved reporting mechanism (ARM) acting on behalf of the asset management company, and in violation of Article 26(7) of Regulation (EU) No 600/2014, fails to make a report in a complete, accurate, and timely manner;

29. as a financial counterparty as defined in Article 2(8) of Regulation (EU) No 648/2012 or non-financial counterparty that meets the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012, and in violation of Article 28(1) of Regulation (EU) No 600/2014, concludes transactions in derivatives outside of regulated markets, multilateral trading facilities, organised trading facilities, or third-country trading venues;

30. as an asset management company acting as a clearing member in accordance with Article 2(14) of Regulation (EU) No 648/2012, and in violation of Article 29(2) of Regulation (EU) No 600/2014, fails to have in place effective systems, procedures and arrangements to ensure that transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practicable using automated systems;

31. in violation of Article 30(1) of Regulation (EU) No 600/2014, concludes an indirect clearing arrangement with regard to exchange-traded derivatives which increases counterparty risk or which does not ensure that the assets and positions of the counterparty are protected sufficiently;

32. as an asset management company providing portfolio compression, and in violation of Article 31 of Regulation (EU) No 600/2014:

a) fails to make public through an approved publication arrangement (APA) in a timely manner the volumes of the transaction subject to portfolio compression and the time they were concluded;

b) fails to keep complete and accurate records of all portfolio compressions which they organize or participate in, or fails to make those records available to the FMA or ESMA;

33. in violation of Articles 40, 41 and 42 of Regulation (EU) No 600/2014, fails to comply with a restriction or prohibition imposed by ESMA, the European Banking Authority (EBA) or the FMA in regard to the marketing, distribution or sale of certain financial instruments or financial instruments with specified features or a type of financial activity or practice.

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

5) Repealed[153]

6) Repealed[154]

7) Convictions under this article are not binding on civil judges in respect of adjudicating liability or unlawfulness or determining damages.[155]

Article 62a[156]

Principles of proportionality and efficiency

1) When imposing penalties under Article 62, the Court of Justice and the FMA shall in particular take into account the following:

a) with respect to the infringement:
   1. the seriousness and duration;
   2. the gains generated or losses prevented, insofar as they can be quantified;
   3. losses incurred by third parties, insofar as they can be quantified;
   4. possible systemically relevant consequences;
b) with respect to the natural or legal persons responsible for the infringement:
   1. the degree of responsibility;
   2. the financial capacity of the natural or legal person responsible, as evidenced in particular by the total turnover of the legal person responsible or the annual income and net assets of the natural person responsible;

153 Article 62(5) repealed by LGBl. 2017 No. 398.
154 Article 62(6) repealed by LGBl. 2017 No. 398.
155 Article 62(7) inserted by LGBl. 2007 No. 267.
156 Article 62a inserted by LGBl. 2017 No. 398.

3. the willingness of the natural or legal person responsible to cooperate with the FMA or the Court of Justice, without prejudice to the requirement to seize the profits or prevented losses made by this person;
4. reports to the internal reporting system of an asset management company in accordance with Article 6(1)(n) or the reporting system of the FMA in accordance with Article 63a;
5. prior infringements and the risk of repetition.

2) The General Part of the Criminal Code shall apply *mutatis mutandis*.

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 63a[157]

Reporting of breaches

1) The FMA shall have an effective and reliable reporting system at its disposal through which potential or actual breaches of provisions of this Act, the associated ordinances, and Regulation (EU) No 600/2014 can be reported via a generally accessible, secure reporting channel.

2) The reporting system shall include at least:

a) specific procedures for the receipt of reports on breaches and their follow-up, including the establishment of secure communication channels for such reports;
b) appropriate protection for employees of asset management companies who report breaches committed within these companies against retaliation, discrimination, or other types of unfair treatment at a minimum;

157 Article 63a inserted by LGBl. 2017 No. 398.

c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with the Data Protection Act;

d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports a breach, unless disclosure is required in the context of prosecutorial, judicial, or administrative proceedings.

3) A report by employees of asset management companies to the FMA or ESMA shall not be considered a breach of a contractual or legal duty of secrecy and shall not entail any liability of the reporting person in this regard.

4) The Government may provide further details by ordinance.

Article 64[158]

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 management body or senior management of asset management companies and auditors.

Article 64a[159]

Publication of sanctions and information provided to ESMA

1) On its website, the FMA shall publish all final sanctions for misdemeanours and contraventions under Articles 62 without delay, once the person concerned has been informed of the sanction. Such publication does not constitute a violation of official secrecy under Article 39. The publication shall contain:

a) information on the type and nature of the infringement; and

b) the name or business name of the natural or legal person on which the sanction was imposed.

2) The FMA shall announce final sanctions on its website in an anonymised form or shall waive publication entirely if the public announcement of personal data or anonymous publication:

158 Article 64 amended by LGBl. 2017 No. 398.
159 Article 64a inserted by LGBl. 2017 No. 398.

a) would be disproportionate, taking into account the damage to the natural or legal persons concerned;

b) would endanger the stability of financial markets; or

c) would endanger ongoing criminal investigations.

3) If there are grounds for anonymous publication under paragraph 2, but if it must be assumed that these grounds will no longer apply in the foreseeable future, the FMA may refrain from anonymous publication and may publish the sanction in accordance with paragraph 1 once the grounds no longer apply.

4) The FMA shall ensure that the publication is available on the website for at least five years after the sanction has been published. The publication of personal data shall, however, be maintained only as long as none of the criteria referred to in paragraph 2 are met.

5) The FMA shall issue a decree for publication in accordance with paragraph 1; this shall not be the case for anonymous publications.

6) The FMA shall inform the European Supervisory Authorities of final sanctions, in particular also of sanctions imposed but not published. This does not constitute a violation of official secrecy under Article 39. The FMA shall also annually transmit to ESMA aggregated information regarding all sanctions imposed, as well as anonymised and aggregated data regarding all criminal investigations undertaken and criminal sanctions imposed. That obligation does not apply to measures of an investigatory nature. Where the FMA has disclosed a sanction to the public, it shall, at the same time, report that fact to ESMA.

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[160]

Implementing ordinances

The Government shall issue the ordinances necessary to implement this Act; it shall take account of the requirements, standards, and procedures of the European Supervisory Authorities in this regard.

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

160 Article 66 amended by LGBl. 2017 No. 398.

Annex 1[161]
(Article 4(1)(7) to (9))

Client classifications

I. Eligible counterparties

1. The following shall be considered eligible counterparties:
   a) banks;
   b) investment firms;
   c) asset management companies;
   d) insurance companies;
   e) undertakings for collective investment in transferable securities (UCITS) and their management companies;
   f) pension funds and their management companies;
   g) other authorised or regulated financial institutions;
   h) national governments and their corresponding offices including public bodies that deal with public debt at national level;
   i) central banks and supranational organisations;
   k) third country entities equivalent to those entities referred to in subparagraphs (a) to (i).
2. Undertakings that meet two of the three conditions referred to in point II(B)(1)(b) may be recognised as eligible counterparties. In transactions with such undertakings, the asset management company shall obtain their express confirmation that they agree to be treated as an eligible counterparty. Confirmation may be given in the form of a general agreement or in respect of each individual transaction. This arrangement shall also apply to undertakings from third countries. In the case of business relationships with eligible counterparties that existed prior to the introduction of the obligation to obtain express confirmation and that meet the criteria of this point, no express confirmation must be obtained.

161 Annex 1 inserted by LGBl. 2017 No. 398.

3. Analogously to paragraph 2, undertakings from another Member State may be recognised as eligible counterparties if they meet the criteria set out in sentence 1 of Article 30(3) of Directive 2014/65/EU according to the law of their home Member State.

II. Professional clients

A. General definition

Professional client is 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 to be a professional client, the client must comply with the following criteria.

B. Categories of client who are in any event considered to be professionals

1. The following entities shall in any event be regarded as professionals in all investment services and activities and financial instruments:
   a) entities which are authorised or regulated in another Member State or in a third country in order to operate in the financial markets:
      aa) banks;
      bb) investment firms;
      cc) other authorised or regulated financial institutions;
      dd) insurance companies;
      ee) collective investment schemes and management companies of such schemes;
      ff) pension funds and management companies of such funds;
      gg) commodity and commodity derivatives dealers;
      hh) locals;
      ii) other institutional investors;
   b) large undertakings meeting two of the following size requirements on a company basis:
      aa) balance sheet total: equivalent of 20,000,000 euros;

bb) net turnover: equivalent of 40,000,000 euros;

cc) own funds: equivalent of 2,000,000 euros;

c) national and regional governments, including public bodies that manage public debt at national or regional level, central banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;

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

2. The entities referred to in point 1(a) to (d) must however be allowed to request non-professional treatment and asset management companies may agree to provide a higher level of protection. Where the client of an asset management company is an undertaking 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 asset management 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 the client can request a variation of the terms of the agreement in order to secure a higher degree of protection.

3. 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. This higher level of protection will be provided when a client who is considered to be a professional 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 conduct of business regime. Such agreement shall specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

C. Clients who may be treated as professionals on request

1. Identification criteria

1.1 Clients other than those mentioned in Section B, including public sector bodies, local public authorities, municipalities and private individual investors, may also be allowed to waive some of the protections afforded by the code of

conduct. Asset management companies may treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. Those clients shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section B.

1.2 Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be 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 investment decisions and understanding the risks involved.

1.3 The fitness test applied to managers and directors of entities licensed under directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.

1.4 In the course of the assessment referred to in points 1.2 and 1.3, as a minimum, two of the following criteria shall 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 500,000 euros.

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

2.1 Those clients may waive the benefit of the detailed rules 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 investment service or transaction, or type of transaction or product.

b) The asset management company must give them a clear written warning of the protections and investor compensation rights 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.

2.2 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 of this section.

2.3 However, if clients have already been categorised as professionals under parameters and procedures similar to those referred to above, it is not intended that their relationships with asset management companies shall be affected by any new rules adopted pursuant to this Annex.

2.4 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 the client eligible for a professional treatment, the asset management company shall take appropriate action.

III. Retail clients

All clients who are not eligible counterparties or professional clients shall be considered retail clients.

Annex 2[162]
(Article 4(1)(10))

Financial instruments

1. Transferable securities;
2. money-market instruments;
3. units in undertakings for collective investment in transferable securities;
4. options, futures, swaps, forward rate agreements, and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
5. options, futures, swaps, forwards 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 other 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, a multilateral trading facility, or an organised trading facility, except for wholesale energy products traded on an organised trading facility that must be physically settled;
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;
8. derivative instruments for the transfer of credit risk;
9. financial contracts for differences;
10. options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates 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 other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations,

162 Annex 2 inserted by LGBl. 2017 No. 398.

indices and measures not otherwise mentioned in this Annex, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an organised trading facility, or a multilateral trading facility;

11. emission allowances consisting of any units recognised for compliance with the requirements of emissions trading legislation.

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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Liechtenstein Law Gazette
Year 2017 No. 398 published on 22 December 2017

Law
of 10 November 2017
amending the Asset Management Act

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II.

Transitional provisions

1) Until 3 July 2021, the clearing obligation set out in Article 4 of Regulation (EU) No 648/2012 and the risk mitigation techniques set out in Article 11(3) thereof shall not apply to C6 energy derivative contracts entered into by non-financial counterparties that meet the conditions in Article 10(1) of Regulation (EU) No 648/2012 or by non-financial counterparties that shall be authorised for the first time as banks or investment firms as from 3 January 2018.

2) Until 3 July 2020, C6 energy derivative contracts as referred to in paragraph 1 shall not be considered to be OTC derivative contracts for the purposes of the clearing threshold set out in Article 10(1) of Regulation (EU) No 648/2012.

3) C6 energy derivative contracts as referred to in paragraph 1 shall be subject to all other requirements laid down in Regulation (EU) No 648/2012.

4) The exemptions in accordance with paragraphs 1 and 2 shall be requested from the FMA. The FMA shall notify ESMA of the C6 energy derivative contracts which have been granted an exemption in accordance with paragraphs 1 and 2.

5) Article 26(2) shall apply for the first time to business years commencing after the entry into force of this Act.

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