

Translation of Liechtenstein Law

Disclaimer

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of this website cannot accept any liability if any of its contents should be found to be inaccurate, incomplete or out of date.

English title:	Law on Bank and Investment Firms (Banking Act)
Original German title:	Gesetz über die Banken und Wertpapierfirmen (Bankengesetz; BankG)
Serial number (LR-Nr.):	952.0
First published:	15 December 1992
First publication no. (LGBl-Nr.):	1992-108
Last amended:	3 January 2018
Date of last amendment - publication no. (LGBl-Nr.):	2017-397
Translation date:	24 April 2018

Liechtenstein Law Gazette

Year 1992

No. 108

published on 15 December 1992

Law
of 21 October 1992
on Banks and Investment
Firms (Banking Act)¹

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

I. General provisions²

Article 1³

Object and purpose

1) This Act governs the taking up, pursuit, and supervision of the business of banks and investment firms.

2) Its purpose is to protect the creditors and investors of banks and investment firms and to ensure trust in the Liechtenstein monetary, securities, and credit system as well as the stability of the financial system.

3) It also serves to implement and execute the following EEA legislation:⁴

- a) 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

¹ Title of Act amended by LGBL 2007 No. 261.

² Title preceding Article 1 amended by LGBL 2014 No. 348.

³ Article 1 amended by LGBL 2014 No. 348.

⁴ Article 1(3) shall enter into force at the same time as the decision of the EEA Joint Committee incorporating Directive 2013/36/EU (LGBL 2014 No. 348).

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, 27.6.2013, p. 338);

- b) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1);
- c) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (MiFID) (EEA Compendium of Laws: Annex IX - 31ba.01);
- d) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (EEA Compendium of Laws: Annex IX - 16c.01);
- e) Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (EEA Compendium of Laws: Annex IX - 19a.01);
- f) Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (EEA Compendium of Laws: Annex IX - 31b.01).

4) It does not affect the following provisions:⁵

- a) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 646/2012;
- b) 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.

Article 2⁶

Scope

- 1) This Act shall apply to banks and investment firms.

⁵ Article 1(4) amended by LGBL 2017 No. 397.

⁶ Article 2 amended by LGBL 2007 No. 261.

2) It applies to domestic branches established by foreign banks, financial institutions, investment firms, market operators, and data reporting services providers.⁷

3) Insofar as expressly governed by law, it also applies to:⁸

- b) local firms, investment firms with administrative powers and the operation of regulated markets, multilateral and organised trading facilities and data reporting services providers;
- c) insurance undertakings, operators trading for their own account with emission allowances, undertakings for collective investment and pension funds as well as persons trading in commodity derivatives or emission allowances for their own account only as ancillary activities if they use a high-frequency algorithmic trading technique;
- d) all persons holding commodity derivatives traded on trading venues or economically equivalent OTC contracts.

4) The rights conferred by this Act do not include the provision of services by a bank or investment firm as a counterparty in transactions carried out by:⁹

- 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 3

*Scope of business*¹⁰

1) Banks are undertakings that engage in the activities set out in paragraph 3 on a professional basis. Natural and legal persons that are not subject to this Act as a bank may not accept deposits or other repayable funds on a professional basis.¹¹

⁷ Article 2(2) amended by LGBL 2017 No. 397.

⁸ Article 2(3) amended by LGBL 2017 No. 397.

⁹ Article 2(4) inserted by LGBL 2017 No. 397.

¹⁰ Article 3 heading amended by LGBL 1998 No. 223.

¹¹ Article 3(1) amended by LGBL 1998 No. 223.

2) Investment firms are undertakings that render investment services and ancillary services on a professional basis.¹²

3) Banking activities are:

- a) the acceptance of deposits and other repayable funds; in the case of an e-money transaction in accordance with subparagraph (f), the receipt of a sum of money shall not constitute an acceptance of deposits or other repayable funds if the received sum is directly exchanged against e-money;¹³
- b) the lending of third-party funds to an indeterminate circle of borrowers;¹⁴
- c) safekeeping transactions;¹⁵
- d) the provision of investment services and ancillary services referred to in Annex 2 Sections A and B as well as the execution of other bank-related off-balance-sheet transactions;¹⁶
- e) Repealed¹⁷
- f) the issuance of electronic money pursuant to Article 3(b) of the E-Money Act.¹⁸
- g) die assumption of suretyships, guarantees, and other forms of liability for other parties where the obligation assumed is monetary in nature;¹⁹
- h) trading of foreign currency for one's own account or on behalf of others.²⁰

4) Investment services and ancillary services are services referred to in Annex 2 Sections A and B.²¹

4a) The difference objection according to § 1271 of the General Civil Code (ABGB) shall be impermissible when adjudicating legal disputes arising from:²²

¹² Article 3(2) amended by LGBL 2007 No. 261.

¹³ Article 3(3)(a) amended by LGBL 2003 No. 110.

¹⁴ Article 3(3)(b) amended by LGBL 1998 No. 223.

¹⁵ Article 3(3)(c) amended by LGBL 1998 No. 223.

¹⁶ Article 3(3)(d) amended by LGBL 2007 No. 261.

¹⁷ Article 3(3)(e) repealed by LGBL 2007 No. 261.

¹⁸ Article 3(3)(f) amended by LGBL 2011 No. 243.

¹⁹ Article 3(3)(g) inserted by LGBL 2011 No. 243.

²⁰ Article 3(3)(h) inserted by LGBL 2011 No. 243.

²¹ Article 3(4) inserted by LGBL 2007 No. 261.

²² Article 3(4a) inserted by LGBL 2016 No. 495.

- a) banking transactions, when at least one contracting party is authorised to carry out banking transactions and investment services on a professional basis;
 - b) transactions with financial instruments referred to in Annex 2 Section C(4) to (10) that are traded on a domestic or foreign regulated market or multilateral trading facilities or that are concluded under a master agreement.
- 5) The Government shall provide further details by ordinance.²³

Article 3a²⁴

Definitions and designations

- 1) For the purposes of this Act, the following definitions apply:
1. "representative office" means any part of the organisation of a foreign bank that neither concludes nor carries out activities nor arranges them for its own account;
 2. "third country" means a country that is not an EEA Member State;
 3. "reorganisation measures" means measures which are intended to preserve or restore the financial situation of a bank and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;
 4. "winding-up proceedings" means collective proceedings opened and monitored by the administrative or judicial authorities of an EEA Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;
 5. "trading venue" means a regulated market, a multilateral trading facility, or an organised trading facility;²⁵
 6. "regulated market" means a multilateral system operated and/or managed by a market operator which brings together multiple third-party buying and selling interests – 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 the rules of the system;²⁶

²³ Article 3(5) inserted by LGBL 2007 No. 261.

²⁴ Article 3a amended by LGBL 2014 No. 348.

²⁵ Article 3a(1)(5) amended by LGBL 2017 No. 397.

²⁶ Article 3a(1)(6) amended by LGBL 2017 No. 397.

- 6a. "multilateral system" means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;²⁷
- 6b. "multilateral trading facility (MTF)" means a multilateral system, operated by a bank, 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;²⁸
- 6c. "organised trading facility (OTF)" means a multilateral system which is not a regulated market or an MTF 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;²⁹
- 6d. "liquid market" means a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:³⁰
- a) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;
 - b) the number and type of market participants, including the ratio of market participants to traded instruments in a particular product;
 - c) the average size of spreads, where available;
7. "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 board of directors 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;
8. "client" means every natural or legal person, every company, trust, other collective or asset entity, for which a bank or investment firm provides services pursuant to this Act;

²⁷ Article 3a(1)(6a) inserted by LGBL 2017 No. 397.

²⁸ Article 3a(1)(6b) inserted by LGBL 2017 No. 397.

²⁹ Article 3a(1)(6c) inserted by LGBL 2017 No. 397.

³⁰ Article 3a(1)(6d) inserted by LGBL 2017 No. 397.

9. "professional client" means a client a client who possesses the experience, knowledge, and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a professional client, the client must comply with the criteria laid down in Annex 1(2);
10. "retail client" means a client as defined in Annex 1(3);
11. "eligible counterparty" means a client as defined in Annex 1(1);
12. "market operator" means person or persons who manages and/or operates the business of a regulated market and may be the regulated market itself;
13. "systemic risk" means a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy;
14. "model risk" means the potential loss a bank or investment firm may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models;
15. "systemically important institution" means an EEA parent bank or EEA parent investment firm, an EEA parent financial holding company, an EEA parent mixed financial holding company, or a bank or investment firm the failure or malfunction of which could lead to systemic risk;
16. "internal approaches" means approaches or models referred to in Article 143(1), Articles 221, 225, 259(3), Articles 283, 312(2), and Article 363 of Regulation (EU) No 575/2013;
17. "EBA" means the European Banking Authority;
18. "EIOPA" means European Insurance and Occupational Pensions Authority;
19. "ESMA" means the European Securities and Markets Authority;
20. "European Supervisory Authorities" means the EBA, ESMA, and EIOPA, providing that, unless otherwise stipulated, the EBA is competent for banks, ESMA for investment firms, and EIOPA for insurers;
21. "supervisory board" and "management board" mean the supervisory board and management board under the provisions of the SE Act in the event that a bank or investment firm is structured as a European Company (Societas Europaea);
22. "tied agent" means a natural or legal person who, under the full and unconditional responsibility of only one bank or investment firm on whose behalf it acts, promotes services pursuant to this Act to clients or

- prospective clients and/or provides advice to clients or prospective clients in respect of those services or financial instruments;
23. "total net turnover" and "gross income" mean the sum of interest earned minus interest paid (interest income), current income from securities, commissions and fees received minus commission expenses (income from commissions and fees), income from financial transactions, and other ordinary receipts of the undertaking in the preceding business year. Where the undertaking is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income in the preceding business year resulting from the consolidated annual financial accounts of the ultimate parent undertaking in the group;
 24. "parent bank in an EEA Member State" and "parent investment firm in an EEA Member State" mean a parent institution in a Member State as defined in Article 4(1)(28) of Regulation (EU) No 575/2013;
 25. "EEA parent bank" and "EEA parent investment firm" mean an EU parent institution as defined in Article 4(1)(29) of Regulation (EU) No 575/2013;
 26. "parent financial holding company in an EEA Member State" means a parent financial holding company in a Member State as defined in Article 4(1)(30) of Regulation (EU) No 575/2013;
 27. "EEA parent financial holding company" means an EU parent financial holding company as defined in Article 4(1)(31) of Regulation (EU) No 575/2013;
 28. "parent mixed financial holding company in an EEA Member State" means a parent mixed financial holding company in a Member State as defined in Article 4(1)(32) of Regulation (EU) No 575/2013;
 29. "EEA parent mixed financial holding company" means an EU parent mixed financial holding company as defined in Article 4(1)(33) of Regulation (EU) No 575/2013;
 30. "licence" means an authorisation as defined in Article 4(1)(42) of Regulation (EU) No 575/2013;
 31. "resolution authority" means the authority referred to in Article 4 of the Recovery and Resolution Act;³¹
 32. "covered deposits" means eligible credit balances which result from funds left in an account or from temporary situations deriving from normal banking transactions and which a bank is required to repay under the legal and contractual conditions applicable, including fixed-term deposits and savings deposits as well as receivables that are

³¹ Article 3a(1)(31) inserted by LGBL 2016 No. 495.

- securitised by the bank by issuing a certificate, up to an amount of CHF 100,000 or the equivalent in a foreign currency per depositor;³²
33. "covered investments" means eligible assets or financial instruments as referred to in Annex 2 Section C that an investor has entrusted to a bank or investment firm in connection with investment services and that do not exceed the amount of CHF 30,000 per individual investor.³³
34. "systematic internaliser" means a bank or an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system;³⁴
35. "management body" means the body of a bank, investment firm, market operator or data reporting services provider, which is appointed in accordance with national law, which is empowered to set the entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making and includes persons who effectively direct the business of the entity;³⁵
36. "senior management" means natural persons who exercise executive functions within a bank, an investment firm, a market operator or a data reporting services provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity;³⁶
37. "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;³⁷
38. "high-frequency algorithmic trading technique" means an algorithmic trading technique characterised by:³⁸
- a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for

32 Article 3a(1)(32) inserted by LGBL 2016 No. 495.

33 Article 3a(1)(33) inserted by LGBL 2016 No. 495.

34 Article 3a(1)(34) inserted by LGBL 2017 No. 397.

35 Article 3a(1)(35) inserted by LGBL 2017 No. 397.

36 Article 3a(1)(36) inserted by LGBL 2017 No. 397.

37 Article 3a(1)(37) inserted by LGBL 2017 No. 397.

38 Article 3a(1)(38) inserted by LGBL 2017 No. 397.

- 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;
39. "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);³⁹
40. "cross-selling practice" 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;⁴⁰
41. "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:⁴¹
- 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;

³⁹ Article 3a(1)(39) inserted by LGBL 2017 No. 397.

⁴⁰ Article 3a(1)(40) inserted by LGBL 2017 No. 397.

⁴¹ Article 3a(1)(41) inserted by LGBL 2017 No. 397.

42. "transferable securities" means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:⁴²
- 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;
 - 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;
43. "depositary receipts" means those 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;⁴³
44. "durable medium" means any instrument which:⁴⁴
- 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;
45. "central counterparty" means a legal person that interposes itself between the counterparties to the contracts traded on one or more markets, becoming the buyer to every seller and the seller to every buyer;⁴⁵
46. "data reporting services provider" means an approved publication arrangement, a consolidated tape provider, or an approved reporting mechanism;⁴⁶
47. "approved publication arrangement (APA)" means a person authorised under this Act to provide the service of publishing certain trade reports on behalf of banks, investment firms, or asset management companies;⁴⁷

⁴² Article 3a(1)(42) inserted by LGBL 2017 No. 397.

⁴³ Article 3a(1)(43) inserted by LGBL 2017 No. 397.

⁴⁴ Article 3a(1)(44) inserted by LGBL 2017 No. 397.

⁴⁵ Article 3a(1)(45) inserted by LGBL 2017 No. 397.

⁴⁶ Article 3a(1)(46) inserted by LGBL 2017 No. 397.

⁴⁷ Article 3a(1)(47) inserted by LGBL 2017 No. 397.

48. "consolidated tape provider (CTP)" means a person authorised under this Act to provide the service of collecting trade reports for certain financial instruments from regulated markets, multilateral and organised trading facilities, and approved publication arrangements and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;⁴⁸
49. "approved reporting mechanism (ARM)" means a person authorised to provide the service of reporting details of transactions to competent national authorities or to ESMA on behalf of banks, investment firms, or asset management companies;⁴⁹
50. "market maker" means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person's proprietary capital at prices defined by that person.⁵⁰

2) In addition, the definitions in Articles 4, 5, 142, 192, 242, 272, 291, 300 und 411 of Regulation (EU) No 575/2013 and Article 3 of Directive 2013/36/EU shall apply, subject to other definitions of applicable EEA law, in particular Directive 2014/65/EU and Regulation (EU) No 600/2014.⁵¹

3) By ordinance, the Government may provide further details regarding the definitions set out in paragraphs 1 and 2 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.

48 Article 3a(1)(48) inserted by LGBL 2017 No. 397.

49 Article 3a(1)(49) inserted by LGBL 2017 No. 397.

50 Article 3a(1)(50) inserted by LGBL 2017 No. 397.

51 Article 3a(2) inserted by LGBL 2017 No. 397.

II. Business activities of banks and investment firms⁵²

Article 4

*Own funds*⁵³

1) Banks and investment firms must have sufficient own funds. Their own funds may not drop below the minimum capital amount required by Article 24(4).⁵⁴

2) The own funds requirements must be met by every individual bank and investment firm subject to this Act as well as on a consolidated basis.⁵⁵

3) Repealed⁵⁶

4) In justified cases, the FMA may ease or tighten any requirements as long as doing so does not contradict any legal provisions of the EEA.⁵⁷

*Capital buffers*⁵⁸

Article 4a⁵⁹

a) Types of capital buffer

1) In addition to the Common Equity Tier 1 capital pursuant to Article 92 of Regulation (EU) No 575/2013, banks and investment firms are required to hold the following capital buffer made up of Common Equity Tier 1 capital (combined buffer requirement):

- a) a capital conservation buffer equal to 2.5% of their total risk exposure amount;
- b) an institution-specific countercyclical buffer of up to 2.5% of their total risk exposure amount, to be set in steps of 0.25 percentage points;
- c) a systemic risk buffer to mitigate long-term non-cyclical systemic or macroprudential risks, the realisation of which has serious negative

⁵² Title preceding Article 4 amended by LGBL 2007 No. 261.

⁵³ Article 4 heading amended by LGBL 2006 No. 251.

⁵⁴ Article 4(1) amended by LGBL 2011 No. 243.

⁵⁵ Article 4(2) amended by LGBL 2007 No. 261.

⁵⁶ Article 4(3) repealed by LGBL 2014 No. 348.

⁵⁷ Article 4(4) amended by LGBL 2006 No. 251.

⁵⁸ Heading preceding Article 4a inserted by LGBL 2014 No. 348.

⁵⁹ Article 4a inserted by LGBL 2014 No. 348.

consequences for the financial system or the real economy, up to 5% of the total risk exposure amount; and

- d) for global systemically important institutions (G-SIIs), a buffer of up to 3.5% of the total risk exposure amount, to be set in steps of 0.5 percentage points, or for other systemically important institutions (O-SIIs), a buffer of up to 2% of the total risk exposure amount.

2) Unless otherwise stipulated, the total risk exposure amount shall be determined in accordance with Article 92(3) of Regulation (EU) No 575/2013.

3) The Government shall provide further details by ordinance, especially regarding the amount of the applicable capital buffers in accordance with paragraph 1(b) to (d), their scope and duration of application, and the steps by which buffers are increased or reduced. It may also set out:

- a) the procedure for setting or resetting the specific amount of the buffers, the scope and duration of application of the buffers as a function of the risks for the financial system, the overall economic situation, and the requirements set out by the European Supervisory Authorities as well as the steps by which the buffers are to be increased or reduced, and the relevant notification and publication requirements;
- b) the reference values of the buffers, especially the relevant risk exposure amount and the exposures to be included in consolidation and sub-consolidation or in the case of cross-border exposures;
- c) the conditions for determining global systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs) and – to the extent necessary – for assigning banks and investment firms to the relevant subcategories.

Article 4b⁶⁰

b) Capital buffer combination

1) To the extent capital buffers must be held pursuant to Article 4a(1), the necessary capital must be fulfilled cumulatively.

2) If buffers for global systemically important institutions, buffers for other systemically important institutions, or systemic risk buffers (Article 4a(1)(c) and (d)) are combined in accordance with Article 131 of Directive 2013/36/EU, then the Government shall set out by ordinance which

⁶⁰ Article 4b inserted by LGBL 2014 No. 348.

capital buffer or which of these capital buffers shall be applied individually or cumulatively.

3) The Government may specify further exceptions to paragraph 1.

Article 4c⁶¹

c) Restrictions on distributions

1) Banks and investment firms are prohibited from making distributions to such an extent that their Common Equity Tier 1 capital would fall below the amount of the combined capital buffer requirement applicable to them in accordance with Article 4a.

2) Banks and investment firms that fail to meet the combined buffer requirement applicable to them in accordance with Article 4a must calculate the Maximum Distributable Amount (MDA) in accordance with paragraph 4 and notify the FMA of that MDA. In such cases, banks and investment firms shall refrain from undertaking any of the following actions before they have calculated the MDA:

- a) make distributions in connection with Common Equity Tier 1 capital;
- b) enter into obligations to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the bank or investment firm failed to meet its combined buffer requirement;
- c) make payments on Additional Tier 1 instruments as referred to in Articles 51 to 61 of Regulation (EU) No 575/2013.

3) Banks and investment firms that fail to meet their combined buffer requirement in accordance with Article 4a may only distribute the MDA.

4) A distribution for purposes of paragraphs 1 to 3 is any capital outflow resulting in a decrease of Common Equity Tier 1 capital or of the profits of the current business year, especially through:

- a) payment of cash dividends;
- b) distribution, redemption, or purchase by a bank or investment firm of its own shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;
- c) repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;

⁶¹ Article 4c inserted by LGBL 2014 No. 348.

d) distribution of items referred to in points (b) to (e) of Article 26(1) of Regulation (EU) No 575/2013.

5) The restrictions imposed by this Article shall not apply if the suspension or delay of a distribution:

- a) constitutes an event of default; or
- b) results in opening of bankruptcy proceedings regarding the assets of the bank or investment firm.

6) Where the application of these restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the institution, the FMA may take additional measures.

7) The Government shall provide further details by ordinance. The Government may set out in particular:

- a) how to determine the Maximum Distributable Amount referred to in paragraph 3;
- b) the procedure to be followed by a bank or investment firm for purposes of paragraph 2.

Article 4d⁶²

d) Capital conservation plan

1) Where a bank or investment firm fails to meet its combined buffer requirement in accordance with Article 4a(1), it shall submit a capital conservation plan to the FMA no later than five working days after it identified that it was failing to meet that requirement. Taking into account the scale and complexity of the activities of the bank or investment firm, the FMA may authorise a longer delay up to 10 working days.

2) The capital conservation plan shall include the following:

- a) estimates of income and expenditure and a forecast balance sheet;
- b) measures to increase the capital ratio;
- c) a plan and timeframe for the increase of own funds in order to meet the combined buffer requirement in accordance with Article 4a;
- d) any other information that the FMA considers to be necessary.

⁶² Article 4d inserted by LGBL 2014 No. 348.

3) The FMA shall approve the capital conservation plan if the plan, if implemented, would be reasonably likely to provide the bank or investment firm with sufficient capital to enable it to meet its combined buffer requirement in accordance with Article 4a within a period which the FMA considers appropriate.

4) If the FMA does not approve the capital conservation plan, it may:

- a) require the bank or investment firm to increase own funds to specified levels within periods specified by the FMA; or
- b) exercise its powers under Article 35(4) to impose more stringent restrictions on distributions than those required by Article 4c.

5) The Government shall provide further details by ordinance.

Article 5⁶³

Liquidity

1) The banks and investment firms shall provide for an adequate proportion between short-term liabilities and liquid assets or cash equivalents.

2) Adequate liquidity must be guaranteed on a consolidated basis.

Article 6

*Legal reserves*⁶⁴

1) Banks and investment firms holding funds or financial instruments of clients or issuing financial instruments must allocate at least one twentieth of their annual net profits to the legal reserves, until the legal reserves amount to one fifth of their share capital.⁶⁵

2) Where the legal reserves do not exceed one half of the share capital, they may be used only to cover losses.⁶⁶

3) Any proceeds achieved upon the issue of shares or unit certificates exceeding the par value after cover of the issuing costs shall be allocated to the capital reserves.⁶⁷

⁶³ Article 5 amended by LGBL 2014 No. 348.

⁶⁴ Article 6 heading amended by LGBL 1998 No. 223.

⁶⁵ Article 6(1) amended by LGBL 2007 No. 261.

⁶⁶ Article 6(2) amended by LGBL 1998 No. 223.

⁶⁷ Article 6(3) amended by LGBL 1998 No. 223.

Article 7⁶⁸*Deposit guarantee and investor protection*

Banks and investment firms holding funds or financial instruments of clients, as well as branches subject to Liechtenstein deposit guarantee or Liechtenstein investor protection in accordance with Article 59b(3), may provide banking or investment services only once the deposit guarantee and investor protection provisions (Articles 59b et seq.) are met. In the case of structured deposits, this obligation is deemed to be met if the structured deposit is issued by a bank which is a member of a deposit guarantee scheme recognised in accordance with this provision. If a bank or investment firm fails to fulfil its obligations, its licence shall be withdrawn by the FMA.

Article 7a⁶⁹*Risk management*

1) Banks and investment firms must provide a risk management framework as well as regulations or internal directives describing responsibilities and processes for the approval of risky business activities. In particular, they must detect, mitigate, and monitor market, credit, default, residual, settlement, liquidity, concentration, securitisation, counterparty, interest rate, reputation, operational, and legal risks as well as the risk of overindebtedness.⁷⁰

2) Banks and investment firms must ensure robust governance arrangements, which include:

- a) a clear organisational structure with well-defined, transparent, and consistent lines of responsibility;
- b) effective processes to identify, manage, monitor, and report the risks to which they are or might be exposed; and
- c) adequate internal control mechanisms, including sound administrative and accounting procedures.

3) Banks and investment firms shall have in place sound, effective and complete strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed.

⁶⁸ Article 7 amended by LGBl. 2017 No. 397.

⁶⁹ Article 7a amended by LGBl. 2007 No. 261.

⁷⁰ Article 7a(1) amended by LGBl. 2014 No. 348.

4) The strategies and processes referred to in paragraph 3 shall be subject to regular internal review and approval by the board of directors, and sufficient time shall be allocated to discuss them, to ensure that they remain comprehensive and proportionate to the nature, scale, and complexity of the activities of the bank or investment firm concerned.⁷¹

5) The internal control procedures as well as the administration and accounting of the banks and investment firms must be designed in a way that compliance with the provisions of this Act can be verified at any time.

6) Banks and investment firms shall introduce and permanently maintain remuneration policies and practices that are consistent with sound and effective risk management as set out in this Article. The FMA shall compare the data disclosed and transmitted to it relating to remuneration as set out in Article 450(1)(g), (h), and (i) of Regulation (EU) No 575/2013 and shall make this information available to the European Supervisory Authorities.⁷²

7) The Government shall provide further details by ordinance, in particular regarding:⁷³

- a) the design of the framework and processes to identify, manage, and monitor the risks referred to in paragraph 1;
- b) assurance of suitable risk management that takes account of the nature, scale, and complexity of the risks inherent in the business model and the business activities of the bank or investment firm;
- c) the design of the remuneration policies and practices, including the nature and scope of the data to be transmitted to the FMA.

Article 7b⁷⁴

Assessment of capital adequacy

1) The following banks and investment firms must meet the obligations set out in Article 7a(3) and (4) to maintain own funds on an individual basis:

- a) banks and investment firms that are neither a subsidiary in the EEA Member State where they are authorised and supervised nor a parent undertaking;

⁷¹ Article 7a(4) amended by LGBL 2014 No. 348.

⁷² Article 7a(6) amended by LGBL 2014 No. 348.

⁷³ Article 7a(7) inserted by LGBL 2014 No. 348.

⁷⁴ Article 7b inserted by LGBL 2014 No. 348.

- b) banks and investment firms that are not included in the consolidation pursuant to Article 19 of Regulation (EU) No 575/2013;
- c) groups of investment firms in regard to which the FMA has waived the application of own funds requirements on a consolidated basis provided for in Article 15 of Regulation (EU) No 575/2013.

2) The FMA may release a bank or investment firm whose central body meets the conditions provided for in Article 10 of Regulation (EU) No 575/2013 from the obligations set out in Article 7a(3) and (4).

3) Parent banks or parent investment undertakings situated in Liechtenstein must meet the obligations set out in Article 7a(3) and (4) to maintain own funds on the basis of their consolidated financial situation in accordance with Articles 18 to 24 of Regulation (EU) No 575/2013.

4) Banks and investment firms situated in Liechtenstein that are controlled by a parent financial holding company or a parent mixed financial holding company in an EEA Member State must meet the obligations set out in Article 7a(3) and (4) to maintain own funds on the basis of the consolidated financial situation of that financial holding company or mixed financial holding company in accordance with Articles 18 to 24 of Regulation (EU) No 575/2013.

5) If a parent financial holding company or a parent mixed financial holding company situated in Liechtenstein controls more than one bank or investment firm, paragraph 4 shall apply only to the bank or investment firm to which supervision on a consolidated basis applies in accordance with Article 41b.

6) Subsidiary institutions situated in Liechtenstein must apply the obligations set out in Article 7a(3) and (4) to maintain own funds on a sub-consolidated basis if those institutions, or the parent undertaking where it is a financial holding company or a mixed financial holding company, have a bank or investment firm or a financial institution or an asset management company as defined in Article 5(1)(c) of the Financial Conglomerates Act as a subsidiary in a third country, or hold a participation in such an undertaking.

Article 7c⁷⁵*Application of the provisions governing risk management and corporate governance*

1) Banks and investment firms must meet the obligations relating to risk management (Article 7a) and corporate governance (Articles 22 and 23) on an individual basis unless the FMA exempts them in accordance with Article 7 of Regulation (EU) No 575/2013.

2) Parent undertakings and subsidiaries subject to this Act and their subsidiaries not subject to this Act shall:

- a) meet the obligations set out in paragraph 1 on a consolidated or sub-consolidated basis; and
- b) ensure that the group-internal arrangements, processes, and mechanisms are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced.

3) Obligations under paragraph 1 shall not be applied in relation to subsidiary undertakings, not themselves subject to this Act, if the parent bank and parent investment firm or banks and investment firms controlled by an EEA parent financial holding company or EEA parent mixed financial holding company demonstrate to the FMA that the obligations under paragraph 1 are unlawful under the laws of the third country where the subsidiary is established.

4) The Government shall provide further details by ordinance.

Article 7d⁷⁶*Application of the provisions governing risk management, risk coverage, and internal models on a consolidated basis*

1) The FMA shall take into account the provisions relating to consolidation in accordance with Articles 6 to 24 of Regulation (EU) No 575/2013 when:

- a) reviewing risk management, risk coverage, and internal models in accordance with Articles 35a and 35b; and
- b) when exercising supervisory powers in accordance with Articles 35(4), 35a, 35c, 35d, and 35e.

⁷⁵ Article 7c inserted by LGBL 2014 No. 348.

⁷⁶ Article 7d inserted by LGBL 2014 No. 348.

2) If certain groups of investment firms are exempt from consolidated determination of own funds requirements in accordance with Article 15 of Regulation (EU) No 575/2013, then the requirements governing risk management and risk coverage apply on an individual basis in accordance with Article 35a.

Article 8⁷⁷

Allocation of risks

Receivables of a bank or investment firm from individual clients and participations and holdings in an individual undertaking must be proportionate to its own funds. The proportion must be maintained both by each bank or investment firm on its own as well as on a consolidated basis, if and to the extent that the bank or investment firm is required to fulfil the own funds requirements on a consolidated basis.

*Obligations in connection with the provision
of investment services and ancillary services⁷⁸*

Article 8a⁷⁹

a) Principles

1) Banks and investment firms must act fairly, honestly and professionally in the best interests of clients when providing investment services and ancillary services, in particular by acting in accordance with Articles 8b to 8h and 13 and by behaving in such a way as to preserve the reputation and standing of the profession.

2) Banks and investment firms must understand the financial instruments they offer or recommend, assess the compatibility of financial instruments with the needs of the clients to whom they provide investment services, and also take into account the target market referred to in Article 8b(1) and ensure that financial instruments are offered or recommended only if it is in the interest of the client.

3) The Government shall provide further details by ordinance, in particular regarding the code of conduct and organisational requirements,

⁷⁷ Article 8 amended by LGBl. 2014 No. 348.

⁷⁸ Heading preceding Article 8a inserted by LGBl. 2007 No. 261.

⁷⁹ Article 8a amended by LGBl. 2017 No. 397.

taking account of different client classifications, financial instruments, and services.

Article 8b⁸⁰

(b) Product approval process, product verification and client classification

1) Banks and investment firms manufacturing financial instruments for sale to clients shall maintain, operate and review a process for the approval of each individual financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients. The product approval process shall specify an identified target market of end clients within the relevant client classification for each financial instrument and shall ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market. The financial instruments shall be designed so that the needs of an identified target market of end clients within the relevant client classification are met and so that the strategy for distribution of the financial instruments is compatible with the identified target market. Banks and investment firms shall take reasonable steps to ensure that the financial instruments they design are sold in the target market.

2) Banks and investment firms manufacturing financial instruments shall make available to all distributors all appropriate information on the financial instrument and the product approval procedure, including the identified target market of the financial instrument.

3) Banks and investment firms shall regularly review financial instruments they offer or market, 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.

4) Where a bank or investment firm offers or recommends financial instruments which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in paragraph 2 and to understand the characteristics and identified target market of each financial instrument.

⁸⁰ Article 8b amended by LGBL 2017 No. 397.

5) Banks and investment firms shall classify and inform each client for whom they provide an investment or ancillary service into one of the client classifications defined in Annex 1 and inform the client thereof

6) The Government shall provide further details by ordinance.

Article 8c⁸¹

c) Documentation and information requirement

1) Banks and investment firms must record and document all client relationships, transactions, systems, and processes in an appropriate and traceable way.⁸²

2) Clients and potential clients must, in good time and in an intelligible form, be provided with information regarding:⁸³

a) the bank or investment firm and its services. If investment advice is provided, the bank or investment firm shall inform in good time before the investment advice is provided:

1. whether or not the advice is provided on an independent basis;
2. whether 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 bank or investment firm 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. whether the bank or investment firm 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) the financial instruments and the proposed investment strategies, including 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 in accordance with Article 8a(2);

⁸¹ Article 8c inserted by LGBL 2007 No. 261.

⁸² Article 8c(1) amended by LGBL 2014 No. 348.

⁸³ Article 8c(2) amended by LGBL 2017 No. 397.

- d) the execution venues and the best execution principles for client orders in accordance with Article 8e;
- e) 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.

3) 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.⁸⁴

4) The information referred to in paragraphs 2 and 3 may be provided in a standardised format.⁸⁵

5) Where an investment service is offered as part of a financial product which is already subject to other provisions 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 2 and 3 as well as Article 13.⁸⁶

6) In the case of cross-selling practices, the bank or investment firm 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 for a retail client resulting from cross-selling practices are likely to be different from the risks associated with the components taken separately, the bank or investment firm shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.⁸⁷

⁸⁴ Article 8c(3) amended by LGBL 2017 No. 397.

⁸⁵ Article 8c(4) amended by LGBL 2017 No. 397.

⁸⁶ Article 8c(5) inserted by LGBL 2017 No. 397.

⁸⁷ Article 8c(6) inserted by LGBL 2017 No. 397.

7) Where a bank or investment firm informs the client that investment advice is provided on an independent basis, that bank or investment firm shall:⁸⁸

- 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 bank or investment firm itself or by entities having close links with the bank or investment firm;
 2. other entities with which the bank or investment firm 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 investment firm's duty to act in the best interest of the client must be clearly disclosed and are excluded from this subparagraph.
- 8) The Government shall provide further details by ordinance.⁸⁹

Article 8d⁹⁰

d) Assessment of suitability and appropriateness, reporting to clients

1) Through appropriate measures, banks and investment firms shall ensure that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the bank or investment firm possess the necessary knowledge and competence to fulfil their obligations under Articles 8a, 8c, 8h, 8g and this Article. Evidence shall be provided to the FMA on request. The FMA shall publish the criteria to be used for assessing such knowledge and competence.

⁸⁸ Article 8c(7) inserted by LGBL 2017 No. 397.

⁸⁹ Article 8c(8) inserted by LGBL 2017 No. 397.

⁹⁰ Article 8d amended by LGBL 2017 No. 397.

2) When providing investment advice or portfolio management, a bank or investment firm shall obtain the necessary information regarding the clients' or potential clients' financial situation, including their ability to bear losses, and their investment objectives, including their risk tolerance, as well as their knowledge and experience in the investment field, so as to enable the bank or investment firm to recommend to the clients or potential clients the investment services or financial instruments that are suitable for them. Where a bundle of services or products is envisaged, the assessment shall consider whether the overall bundled package is appropriate.

3) When investment services other than those referred to in paragraph 2 are provided, information must be obtained from clients or potential clients regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the bank or investment firm to assess whether the investment service or product envisaged is appropriate for the client. Where a bundle of services or products is envisaged, the assessment shall consider whether the overall bundled package is appropriate. Where the bank or investment firm considers, on the basis of the information provided by the client under the first paragraph, that the product or service is not appropriate to the client or potential client, the bank or investment firm shall warn the client or potential client. In the event of missing or insufficient information from clients regarding their knowledge and experience, the bank or investment firm shall warn those clients and point out that it is not in a position to determine whether the investment service or product envisaged is appropriate for them. These warnings may be provided in a standardised format.

4) In the case of execution-only transactions, banks and investment firms shall be exempted from obtaining the information referred to in paragraph 3 under certain conditions, provided that they notify the client and no conflicts of interest exist.

5) In the case of professional clients and eligible counterparties, the bank or investment firm may assume that they have sufficient knowledge and experience in relation to any investment service or ancillary service and are in a position to bear the investment risk financially. There is no obligation towards professional clients and eligible counterparties to provide a statement on suitability and appropriateness.

6) The Government shall provide further details by ordinance, in particular regarding the exemption clause for execution-only transactions and the obligation to provide a statement on suitability and appropriateness to the client.

Article 8e⁹¹*e) Best execution of client orders*

1) Banks and investment firms shall arrange for best execution of client orders in the interest of the client with respect to price, quantity, quality, and time, and shall take the requisite measures.

2) Following execution of a transaction, each bank or investment firm shall inform the client where the order was executed.⁹²

3) For financial instruments subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014, each trading venue and systematic internaliser and for other financial instruments each execution venue shall make available to the public, without any charges, data relating to the quality of execution of transactions on that venue on at least an annual basis. Periodic reports shall include details about price, costs, speed and likelihood of execution for individual financial instruments.⁹³

4) The Government shall provide further details by ordinance.⁹⁴

Article 8f⁹⁵*(f) Record-keeping and reporting of transactions*

Banks and investment firms must comply with the record-keeping, reporting and publication obligations under Regulation (EU) No 600/2014. The Government shall provide further details by ordinance, in particular in connection with the record-keeping obligations.

Article 8g⁹⁶*g) Reporting obligations*

1) Banks and investment firms shall report in a suitable form to their clients on the services provided to them.

2) The Government shall provide further details by ordinance on the duty to report.

⁹¹ Article 8e inserted by LGBl. 2007 No. 261.

⁹² Article 8e(2) amended by LGBl. 2017 No. 397.

⁹³ Article 8e(3) inserted by LGBl. 2017 No. 397.

⁹⁴ Article 8e(4) inserted by LGBl. 2017 No. 397.

⁹⁵ Article 8f amended by LGBl. 2017 No. 397.

⁹⁶ Article 8g inserted by LGBl. 2007 No. 261.

Article 8h⁹⁷*h) Dealing with conflicts of interest and disclosure of inducements*

1) Banks and investment firms shall take all appropriate steps to identify and to prevent or manage potential conflicts of interest between themselves – including their managers, tied agents and employees, or any person directly or indirectly linked to them by control – and their clients or between one client and another. This applies to all conflicts of interest that may arise in the course of providing any investment and ancillary services, or combinations thereof, including any conflicts of interest caused by the receipt of incentives from third parties or by the bank's or investment firm's own remuneration and other incentive structures.⁹⁸

2) A bank or investment firm which provides investment services to clients 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 investment firm could offer a different financial instrument which would better meet that client's needs. Moreover, in the course of providing any investment and ancillary services, banks and investment firms may grant or accept fees, commissions or any monetary or non-monetary benefits (inducements) only under the conditions specified by ordinance.⁹⁹

3) Banks and investment firms must disclose the inducements in accordance with the ordinance. The disclosure of inducements may be in summary form and general in content, e.g. as part of the general or other pre-formulated conditions of business. Banks and investment firms are required to disclose other details if demanded by the client.

4) The Government shall provide further details by ordinance regarding the identification and handling of conflicts of interest, the disclosure of unavoidable conflicts of interest, and the disclosure of inducements.¹⁰⁰

⁹⁷ Article 8h inserted by LGBL 2007 No. 261.

⁹⁸ Article 8h(1) amended by LGBL 2017 No. 397.

⁹⁹ Article 8h(2) amended by LGBL 2017 No. 397.

¹⁰⁰ Article 8h(4) amended by LGBL 2017 No. 397.

Article 8i¹⁰¹*Holding financial instruments belonging to clients and client funds*

1) A bank or investment firm shall, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard the ownership rights of clients, especially in the event of the insolvency of the bank or investment firm, and to prevent the use of a client's financial instruments on own account except with the client's express consent.

2) A bank or investment firm shall, when holding funds belonging to clients, make adequate arrangements to safeguard the rights of clients and, except in the case of a bank, prevent the use of client funds for its own account.

3) A bank or investment firm shall not conclude title transfer financial collateral arrangements with retail clients under Article 392(2)(2) of the Law on Property to secure or cover existing or future, actual, possible or probable obligations of the clients.

4) The Government shall provide further details by ordinance, in particular regarding the protection of financial instruments and client funds.

Article 8k¹⁰²*Algorithmic trading*

1) A bank or investment firm that engages in algorithmic trading shall have in place effective systems and risk controls suitable to the business it operates to ensure that its 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) A bank or investment firm referred to in paragraph 1 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 bank or investment firm shall have in place effective business continuity arrangements to deal with any failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure that they meet the requirements laid down in paragraph 1 and this paragraph.

¹⁰¹ Article 8i inserted by LGBl. 2017 No. 397.

¹⁰² Article 8k inserted by LGBl. 2017 No. 397.

3) A bank or investment firm that engages in a high-frequency algorithmic trading technique shall store in an approved form accurate and time-sequenced records of all its placed orders, including cancellations of orders, executed orders and quotations on trading venues and shall make them available to the FMA upon request.

4) This provision also applies to insurance undertakings, operators dealing on own account in emission allowances, undertakings for collective investment undertakings and pension funds, as well as persons dealing on own account in commodity derivatives or emission allowances only as an ancillary activity if they use a high-frequency algorithmic trading technique.

5) The Government shall provide further details by ordinance regarding the requirements for the operation of algorithmic trading.

Article 8l¹⁰³

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

1) A bank or investment firm receiving an instruction to provide a service referred to in Annex 2 Section A on behalf of a client through the medium of another bank, investment firm or asset management company may rely on client information transmitted by the latter bank, investment firm or asset management company. The bank, investment firm or asset management company which mediates the instructions shall remain responsible for the completeness and accuracy of the information transmitted.

2) The bank or investment firm 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 bank, investment firm or asset management company. The bank, investment firm or asset management company which mediates the instructions shall remain responsible for the suitability for the client of the recommendations or advice provided.

3) The bank or investment firm which receives client instructions or orders through the medium of another bank, investment firm or asset management company 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.

¹⁰³ Article 8l inserted by LGBl. 2017 No. 397.

Article 9

Transactions with governing bodies

Transactions by the bank with members of its governing bodies and external audit office, with its significant shareholders, and with persons and companies close to these three categories must conform to the generally acknowledged principles of the banking business.

Article 10

*Business report, consolidated business report, interim financial statement, consolidated interim financial statement*¹⁰⁴

1) Banks and investment firms shall compile a business report for each business year, consisting of the annual financial statement and the annual report. The annual financial statement shall consist of the balance sheet, the income statement, and the notes.¹⁰⁵

2) To the extent that they are obliged to do so, banks and investment firms shall also compile a consolidated business report for each business year, consisting of the consolidated annual financial statement and the consolidated annual report. The consolidated annual financial statement shall consist of the consolidated balance sheet, the consolidated income statement, and the consolidated notes.¹⁰⁶

3) By ordinance, the Government shall specify which banks and investment firms shall also compile a cash-flow statement as an additional part of the annual financial statement, a consolidated cash-flow statement as an additional part of the consolidated annual financial statement, an interim financial statement, and a consolidated interim financial statement.¹⁰⁷

4) The business report, the consolidated business report, the interim financial statement, and the consolidated interim financial statement shall be compiled in accordance with the provisions of the Law on Persons and Companies (PGR) and the provisions of this Act. If the annual financial statement, the consolidated annual financial statement, the interim financial statement, and the consolidated interim financial statement are compiled in

¹⁰⁴ Article 10 heading amended by LGBL 1998 No. 223.

¹⁰⁵ Article 10(1) amended by LGBL 2007 No. 261.

¹⁰⁶ Article 10(2) amended by LGBL 2007 No. 261.

¹⁰⁷ Article 10(3) amended by LGBL 2007 No. 261.

accordance with the international accounting standards of the IASB, then Article 1139 PGR shall apply.¹⁰⁸

5) The business report, the consolidated business report, the interim financial statement, and the consolidated interim financial statement shall be disclosed.¹⁰⁹

6) By ordinance, the Government shall specify how the business reports, the consolidated business reports, the interim financial statements, and the consolidated interim financial statements shall be compiled and in what form, to what extent, and by what deadlines they shall be disclosed.¹¹⁰

7) The business reports, the consolidated business reports, the interim financial statements, and the consolidated interim financial statements, as well as the information necessary for the determination of monetary, credit, and currency policies and the compilation of banking statistics shall be submitted to the FMA.¹¹¹

Article 11

External audit requirement

1) Each year, banks and investment firms must submit to an audit of their business activities by an external audit office recognised by the FMA.¹¹²

2) At all times, banks and investment firms must grant the external audit office access to the books, receipts, business correspondence, and minutes of the board of directors and the senior management, they must keep all documents available that are usually required in the Liechtenstein banking business to determine and value assets and liabilities, and they must provide all information necessary for fulfilling the audit requirement.¹¹³

3) The internal audit department shall submit its reports to the external audit office and shall provide it with all information that the external audit office needs to fulfil the audit requirements. The internal audit department

¹⁰⁸ Article 10(4) amended by LGBL 2004 No. 265.

¹⁰⁹ Article 10(5) amended by LGBL 1998 No. 223.

¹¹⁰ Article 10(6) amended by LGBL 1998 No. 223.

¹¹¹ Article 10(7) amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

¹¹² Article 11(1) amended by LGBL 2007 No. 261.

¹¹³ Article 11(2) amended by LGBL 2007 No. 261.

and the external audit office shall coordinate their audit activities. As far as possible, duplication shall be avoided.¹¹⁴

Article 12¹¹⁵

Rehypothecation

1) Banks or investment firms intending to rehypothecate or carry over a pledge must obtain authorisation from the pledger by means of a specific deed for each individual case.

2) The bank or investment firm may only rehypothecate or carry over a pledge for the amount for which the pledge is liable to the bank.

3) The bank or investment firm must obtain an attestation from the creditor in writing that:

- a) the pledge serves exclusively to secure the claim related to the rehypothecation or carryover transaction;
- b) no rights to the pledge are granted to third parties.

Article 13¹¹⁶

Publicity

1) Both in Liechtenstein and abroad, banks and investment firms shall abstain from misleading or obtrusive publicity, especially using their Liechtenstein domicile or Liechtenstein institutions. Publicity serving to market products or services must be recognisable as such.

2) The Government shall provide further details by ordinance.

Article 14¹¹⁷

Banking secrecy

1) The members of the governing bodies of banks and their employees as well as any persons otherwise working for such banks shall keep secret all facts that they are entrusted with or that become available to them as a

¹¹⁴ Article 11(3) amended by LGBl. 1998 No. 223.

¹¹⁵ Article 12 amended by LGBl. 2007 No. 261.

¹¹⁶ Article 13 amended by LGBl. 2007 No. 261.

¹¹⁷ Article 14 amended by LGBl. 2007 No. 261.

result of business relations with clients. The obligation of secrecy shall apply without any time limit.

2) Paragraph 1 is without prejudice to the legal provisions on the obligation to give testimony or information to the criminal courts, supervisory bodies, and the Financial Intelligence Unit (FIU) as well as the provisions on cooperation with the FIU and other supervisory authorities.¹¹⁸

3) The provisions of paragraphs 1 and 2 shall apply *mutatis mutandis* to the members of the governing bodies of investment firms and their employees as well as to any persons working for such investment firms.

Article 14a¹¹⁹

Outsourcing

1) Banks and investment firms may outsource business areas within Liechtenstein and abroad.

2) Outsourcing of data processing within Liechtenstein and abroad is permissible only if:

- a) in the interest of the protection of confidentiality, adequate security precautions are complied with; and
- b) the client is informed of the outsourcing when the data are transmitted.

3) The Government shall provide further details by ordinance, especially the conditions under which outsourcing in general is permissible as well as the additional conditions for outsourcing to third countries.

Article 14b¹²⁰

Appointment of tied agents

1) As part of their investment services and ancillary services, banks and investment firms may appoint tied agents for the purposes of promoting their business, entering into new business relationships, or receiving orders from clients or potential clients and transmitting them, placing financial instruments, and providing advice in respect of the investment services, ancillary services, and financial instruments offered by that bank or

¹¹⁸ Article 14(2) amended by LGBL 2016 No. 35.

¹¹⁹ Article 14a amended by LGBL 2007 No. 261.

¹²⁰ Article 14b inserted by LGBL 2007 No. 261.

investment firm, provided that the latter are subject to registration according to Article 35(8).¹²¹

2) Banks and investment firms that appoint tied agents must monitor them appropriately and are liable without limitation for any action or omission on the part of the tied agent when acting on behalf of the bank or investment firm.

3) The Government shall provide further details concerning tied agents by ordinance, especially the preconditions for registering them or the demands placed on them.

III. Taking up of business¹²²

A. Licences¹²³

1. Principles¹²⁴

Article 15

Licensing requirement¹²⁵

1) Banks and investment firms require a licence issued by the FMA to take up their business.¹²⁶

2) If the bank or investment firm forms part of a foreign group working in the financial sector, the licence shall be granted only if, in addition to the conditions set out in Articles 18 to 24:¹²⁷

- a) the group is subject to consolidated supervision equivalent to Liechtenstein supervision;¹²⁸
- b) the supervisory authority of the home country does not object to the establishment of a subsidiary.¹²⁹

¹²¹ Article 14b(1) amended by LGBL 2017 No. 397.

¹²² Title preceding Article 15 amended by LGBL 2014 No. 348.

¹²³ Title preceding Article 15 amended by LGBL 2014 No. 348.

¹²⁴ Title preceding Article 15 amended by LGBL 2014 No. 348.

¹²⁵ Article 15 heading amended by LGBL 1998 No. 223.

¹²⁶ Article 15(1) amended by LGBL 2007 No. 261.

¹²⁷ Article 15(2) introductory phrase amended by LGBL 2010 No. 389.

¹²⁸ Article 15(2)(a) amended by LGBL 1998 No. 223.

¹²⁹ Article 15(2)(b) amended by LGBL 1998 No. 223.

3) When considering the application for a licence, the economic needs of the market may not be taken into account.¹³⁰

4) Operation of a domiciliary bank is prohibited. Domiciliary banks are banks that do not maintain a physical presence in the domiciliary country and that are not part of group operating in the financial sector that is subject to appropriate consolidated supervision and governed by Directive 2005/60/EC or equivalent regulation.¹³¹

Article 16

*Business names*¹³²

1) Nomenclature indicating activities as a bank or investment firm may only be used in the business name, the designation of the purpose of the business, and business advertising of undertakings that have obtained a licence as a bank or investment firm.¹³³

2) Banks, financial institutions, and investment firms situated in a foreign country may use their business names in Liechtenstein subject to paragraph 1. If there is a danger of confusion, an explanatory supplement may be required.¹³⁴

3) Banks and investment firms may use the name of a parent undertaking in their own business name only if the parent undertaking exercises a dominant influence due to a majority holding. Moreover, if significant components of the name of a foreign bank or investment firm are used in the business name, a differentiating supplement must be used which makes it clear that the bank or investment firm is a Liechtenstein subsidiary of a specific foreign bank or investment firm.¹³⁵

4) The FMA shall review the permissibility of the business name from a supervisory perspective. The business name may not be misleading, and in particular it may not give rise to any false assumptions concerning the scope of business activities.¹³⁶

¹³⁰ Article 15(3) amended by LGBL 1998 No. 223.

¹³¹ Article 15(4) inserted by LGBL 2009 No. 184.

¹³² Article 16 heading amended by LGBL 1998 No. 223.

¹³³ Article 16(1) amended by LGBL 2007 No. 261.

¹³⁴ Article 16(2) amended by LGBL 2007 No. 261.

¹³⁵ Article 16(3) amended by LGBL 2014 No. 348.

¹³⁶ Article 16(4) amended by LGBL 1998 No. 223, LGBL 1999 No. 87 and LGBL 2004 No. 176.

2. Conditions¹³⁷

Article 17

*General conditions and procedures*¹³⁸

1) The licence for operating a bank or investment firm shall be granted if all conditions set out in this Article and Articles 18 to 24 are met.¹³⁹

1a) Every application for granting of a licence must be accompanied by a programme of operations, setting out in particular the types of business envisaged and the organisational structure of the bank or investment firm.¹⁴⁰

2) The FMA shall communicate the granting of every licence under paragraph 1 to the EFTA Surveillance Authority and the European Supervisory Authorities. The FMA shall also notify them and the competent authorities of the other EEA Member States of every granting of a licence of a subsidiary with at least one parent undertaking subject to the law of a third country, as well as the acquisition of a holding in a bank by such a parent undertaking by virtue of which the bank becomes a subsidiary.¹⁴¹

2a) As the consolidating supervisor, the FMA shall transmit to the affected competent authorities of the other EEA Member States and the European Supervisory Authorities all information about persons with close links to banks and investment firms as well as about the group of banks and investment firms in accordance with Article 7a(2), Article 7c(2), and Article 20(2) to (4). The information must in particular include details about the structure and corporate governance and the group, including:¹⁴²

- a) well-defined, transparent, and consistent lines of responsibility;
- b) effective processes to identify, manage, monitor, and report the risks to which they are or might be exposed;
- c) adequate internal control mechanisms, including sound administrative and accounting procedures; and
- d) remuneration policies and practices that are consistent with and conducive to sound and effective risk management.

¹³⁷ Title preceding Article 17 inserted by LGBL 1998 No. 223.

¹³⁸ Article 17 heading amended by LGBL 1998 No. 223.

¹³⁹ Article 17(1) amended by LGBL 2017 No. 397.

¹⁴⁰ Article 17(1a) inserted by LGBL 2007 No. 261.

¹⁴¹ Article 17(2) amended by LGBL 2017 No. 397.

¹⁴² Article 17(2a) inserted by LGBL 2014 No. 348.

3) Every refusal shall be substantiated and notified to the applicant within six months after receipt of the application or, if the application is incomplete, within six months after the required information has been submitted. In any event, a decision shall be made within twelve months after receipt of the application.¹⁴³

4) Prior to granting a licence to a bank or investment firm, the FMA must consult the competent authorities of another EEA Member State if:¹⁴⁴

- a) a subsidiary or a subsidiary of the parent undertaking of a bank, financial institution, insurance undertaking, or investment firm licensed in another EEA Member State is to be established;
- b) a subsidiary of a market operator licensed in another EEA Member State is to be established;
- c) the bank or investment firm to be established is controlled by the same natural or legal persons as a bank, financial institution, insurance undertaking, or investment firm licensed in another EEA Member State.

5) Shareholders with a qualifying holding must meet the demands placed in the interest of ensuring sound and prudent management of the bank or investment firm.¹⁴⁵

6) Where paragraph 4 applies, the FMA shall in particular consult the competent authorities of other EEA Member States when assessing the suitability of the shareholders and the reputation and experience of members of the senior management and the board of directors who also serve in leading functions in other undertakings in the same group. The FMA shall exchange all information with the competent authorities of other EEA Member States concerning the suitability of the participating shareholders and the reputation and experience of members of the senior management and board of directors when such information is relevant to the granting of licences as well as the ongoing monitoring of compliance with operating conditions.¹⁴⁶

7) The Government shall provide details by ordinance. It may in particular define the detailed requirements regarding the programme of operations as well as regarding participating shareholders and acquisition interests for banks and investment firms.¹⁴⁷

¹⁴³ Article 17(3) amended by LGBL 1998 No. 223.

¹⁴⁴ Article 17(4) amended by LGBL 2017 No. 397.

¹⁴⁵ Article 17(5) amended by LGBL 2007 No. 261.

¹⁴⁶ Article 17(6) amended by LGBL 2014 No. 348.

¹⁴⁷ Article 17(7) inserted by LGBL 2014 No. 348.

Article 17a¹⁴⁸*Exemption for banks which are permanently affiliated to a central body*

1) The FMA may, in accordance with Article 10 of Regulation (EU) No 575/2013, partially or fully waive the application of the following requirements to a bank which is permanently affiliated to a central body which supervises it and which is established in Liechtenstein:

- a) preparation of a programme of operations (Article 17(1a));
- b) professional and personal suitability of the members of the board of directors and senior management (Article 19);
- c) organisation, senior management, and audit (Article 22(1) to (3)); and
- d) initial and minimum capital (Article 24).

2) The following provisions apply to an exemption under paragraph 1 for the entirety of the central body and the banks and investment firms affiliated to it:

- a) capital buffers (Articles 4a to 4d);
- b) cross-border activity (Articles 30b to 30l);
- c) information exchange and professional secrecy (Articles 30h and 31a to 34);
- d) supervisory powers, powers to impose penalties, and right of appeal (Article 35(2) and (4a) as well as Articles 62 to 63c); and
- e) review processes (Articles 7a to 7d, 22, 23, and 35a to 35e).

Article 18

Legal form and registered office¹⁴⁹

1) Banks and investment firms may be established only in the legal form of a limited company or a European Company (SE). In justified cases, the FMA may permit exceptions.¹⁵⁰

2) The registered office and the head office must be situated in Liechtenstein.¹⁵¹

¹⁴⁸ Article 17a inserted by LGBL 2014 No. 348.

¹⁴⁹ Article 18 heading amended by LGBL 1998 No. 223.

¹⁵⁰ Article 18(1) amended by LGBL 2007 No. 261.

¹⁵¹ Article 18(2) inserted by LGBL 1998 No. 223.

Article 19¹⁵²*Guarantee of sound and proper business operation*

1) The professional and personal qualities of the members of the board of directors and the senior management as well as of the heads of the internal audit department of a bank or investment firm must at all times guarantee sound and proper business operation.

2) When appraising the requirement under paragraph 1, the FMA shall take into account entries in databases of the European Supervisory Authorities in accordance with Article 63c(6).

Article 20¹⁵³*Incompatibility, close links*

1) The members of the board of directors and the senior management of a bank or investment firm may not be members of the FMA, the FMA Complaints Commission, or their governing bodies.

2) If close links exist between the bank or investment firm and other natural or legal persons, the FMA shall grant the licence only if these links do not obstruct the proper fulfilment of its supervisory duties.¹⁵⁴

3) The proper supervision of banks or investment firms may furthermore not be obstructed by legal or administrative provisions of a third country or by difficulties in their application to which natural or legal persons are subject that have close links with the bank or investment firm.

4) Upon request of the FMA, banks and investment firms must demonstrate that the provisions in paragraphs 2 and 3 are met.

Article 21

1) The articles of association and regulations must precisely define the material and geographic scope of business of the bank or investment firm.¹⁵⁵

¹⁵² Article 19 amended by LGBL 2014 No. 348.

¹⁵³ Article 20 amended by LGBL 2007 No. 261.

¹⁵⁴ Article 20(2) amended by LGBL 2014 No. 348.

¹⁵⁵ Article 21(1) amended by LGBL 2007 No. 261.

2) Activities other than banking or investment services must be expressly mentioned in the articles of association.¹⁵⁶

3) The articles of association and the regulations shall require approval by the FMA to be valid.¹⁵⁷

Article 22

Organisation

1) Banks and investment firms must be organised in accordance with their scope of business.¹⁵⁸

2) Banks and investment firms shall require:¹⁵⁹

- a) a board of directors responsible for overall direction, supervision, and control;
- b) a senior management responsible for business operations, consisting of at least two members who perform their activities with joint responsibility and who may not simultaneously be members of the board of directors;
- c) an internal audit department that reports directly to the board of directors;
- d) risk management independent of operational activities in accordance with Article 7a; and
- e) appropriate procedures for employees to report infringements of this Act and Regulation (EU) No 575/2013 internally through a specific, independent, and autonomous channel.

2a) Banks and investment firms that are significant shall require, in addition to paragraph 2, a risk committee, a nomination committee, a remuneration committee, and an audit committee of the board of directors.¹⁶⁰

2b) The FMA may also require banks and investment firms that are significant:¹⁶¹

- a) to develop internal credit risk assessment capacity and to use it for calculations of own funds requirements for credit risk where their

¹⁵⁶ Article 21(2) amended by LGBL 2007 No. 261.

¹⁵⁷ Article 21(3) amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

¹⁵⁸ Article 22(1) amended by LGBL 2007 No. 261.

¹⁵⁹ Article 22(2) amended by LGBL 2014 No. 348.

¹⁶⁰ Article 22(2a) inserted by LGBL 2014 No. 348.

¹⁶¹ Article 22(2b) inserted by LGBL 2014 No. 348.

- exposures are material in absolute terms and where they have at the same time a large number of material counterparties;
- b) to develop internal specific risk assessment capacity and to use it for calculations of own funds requirements for specific risk of debt instruments and for internal calculations of own funds requirements for default and mitigation risk where their exposures to specific risk are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers.
- 3) In special cases, the FMA may approve an exception subject to conditions, as long as the exception does not contradict any EEA legal provisions.¹⁶²
- 4) The distribution of functions between the board of directors and the senior management must guarantee proper monitoring of business conduct.
- 5) The members of the senior management and the board of directors must have the necessary knowledge, skills, and experience to collectively understand the activities of the bank and the investment firm, including the risks.¹⁶³
- 6) All members of the senior management and the board of directors shall commit sufficient time to perform their functions. Each member of the board of directors shall act with honesty, integrity, and independence of mind to effectively control the senior management and assess its decisions.¹⁶⁴
- 7) The bank or investment firm must make available adequate human and financial resources to the induction and training of the members of the senior management and the board of directors.¹⁶⁵
- 8) Attention shall be paid to diversity when selecting the members of the senior management and the board of directors. The FMA shall transmit to the European Supervisory Authorities the information on promoting diversity in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013.¹⁶⁶
- 9) By way of derogation from paragraph 2(a) and (b), a bank or investment firm may have a supervisory board and a management board,

¹⁶² Article 22(3) amended by LGBL 1998 No. 223, LGBL 1999 No. 87 and LGBL 2004 No. 176.

¹⁶³ Article 22(5) amended by LGBL 2014 No. 348.

¹⁶⁴ Article 22(6) inserted by LGBL 2014 No. 348.

¹⁶⁵ Article 22(7) inserted by LGBL 2014 No. 348.

¹⁶⁶ Article 22(8) inserted by LGBL 2014 No. 348.

with the proviso that overall direction be jointly vested in the supervisory board and the management board, the supervision functions in the supervisory board, and senior management in the management board. In that case, the provisions governing the board of directors shall apply to the supervisory board and the management board, and the provisions governing the senior management shall apply to the board of management, *mutatis mutandis*. The FMA may specify in the licence what duties of the board of directors are to be carried out only by the supervisory board and what duties only by the management board; for the other duties, the management board and the supervisory board shall be jointly responsible.¹⁶⁷

- 10) The Government shall provide further details by ordinance. The Government may set out in particular:¹⁶⁸
- a) in what cases a bank or investment firm may be exempted from the obligations set out in paragraph 2;
 - b) when a bank or investment firm is significant for purposes of paragraphs 2a and 2b;
 - c) the composition and duties of the governing bodies, officeholders, and committees referred to in paragraphs 2 and 2a;
 - d) the detailed requirements for internal risk assessment and calculation of own funds in accordance with paragraph 2b, the reporting obligations of the bank and investment firm to the FMA and the European Supervisory Authorities in this regard, information exchange between the FMA and the European Supervisory Authorities, and remedial measures of the FMA if risk approaches are likely incorrect;
 - e) how many mandates a member of the board of directors or the senior management may have;
 - f) how the diversity requirements set out in paragraph 8 are to be met.

Article 23

Responsibilities of the board of directors

1) The board of directors shall be responsible for the overall direction, supervision, and control of the bank or investment firm.¹⁶⁹

2) In particular, the board of directors shall have the following responsibilities that may not be transferred:

¹⁶⁷ Article 22(9) inserted by LGBL 2014 No. 348.

¹⁶⁸ Article 22(10) inserted by LGBL 2014 No. 348.

¹⁶⁹ Article 23(1) amended by LGBL 2007 No. 261.

- a) defining the organisation and the issuance of rules for corporate governance and control and for management of the risk strategy, especially by ensuring a separation of duties in the organisation and measures to prevent conflicts of interest, as well as regular review and adjustment thereof;¹⁷⁰
- b) specifying the accounting system, financial control, and financial planning, inasmuch as required by the type and scope of the business activities;
- c) appointing and dismissing the persons entrusted with management and representation;
- d) supervising the persons entrusted with management, also with respect to compliance with the legal provisions, articles of association, and regulations, and with respect to the economic development of the undertaking;
- e) compiling the business report and approving the interim financial statement, as well as preparing the general meeting and executing its resolutions;¹⁷¹
- f) monitoring of disclosure and communication.¹⁷²

Article 24

*Initial and minimum capital*¹⁷³

1) By the time business is taken up, the initial capital must be fully paid up and amount to:¹⁷⁴

- a) for banks, at least 10 million Swiss francs or the equivalent in euros or US dollars;
- b) for investment firms under this Act, at least 730 000 Swiss francs or the equivalent in euros or US dollars.

2) In justified cases and depending on the nature and scale of the scope of business, the FMA may prescribe a different initial capital. The initial capital may not be less than CHF 1 million for banks or the equivalent in euros or US dollars.¹⁷⁵

¹⁷⁰ Article 23(2)(a) amended by LGBL 2014 No. 348.

¹⁷¹ Article 23(2)(e) amended by LGBL 1998 No. 223.

¹⁷² Article 23(2)(f) inserted by LGBL 2014 No. 348.

¹⁷³ Article 24 heading amended by LGBL 2011 No. 243.

¹⁷⁴ Article 24(1) amended by LGBL 2014 No. 348.

¹⁷⁵ Article 24(2) amended by LGBL 2017 No. 342.

2a) The FMA shall inform the EFTA Surveillance Authority and the EBA of the reasons for prescribing a different initial capital for banks of less than CHF 5 million.¹⁷⁶

3) The initial capital is made up of capital and reserves as defined in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013.¹⁷⁷

4) The programme of operations must show that capital will not fall below the initial capital, taking into account the initial expenses (minimum capital).¹⁷⁸

5) The Government shall provide further details by ordinance.¹⁷⁹

Article 25¹⁸⁰

Repealed

Article 26

Notification requirement

1) Banks and investment firms must notify or submit the following to the FMA:¹⁸¹

- a) the composition of the board of directors, the senior management, and the head of the internal audit department;
- b) the articles of association and the regulations;
- c) the organisation;
- d) the subsidiaries, branches, and agencies;¹⁸²
- e) any qualifying holdings in companies operating in the financial sector;¹⁸³
- f) the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the

¹⁷⁶ Article 24(2a) inserted by LGBL 2017 No. 342.

¹⁷⁷ Article 24(3) amended by LGBL 2014 No. 348.

¹⁷⁸ Article 24(4) amended by LGBL 2014 No. 348.

¹⁷⁹ Article 24(5) amended by LGBL 2014 No. 348.

¹⁸⁰ Article 25 repealed by LGBL 2010 No. 389.

¹⁸¹ Article 26(1) introductory phrase amended by LGBL 2007 No. 261.

¹⁸² Article 26(1)(d) amended by LGBL 1998 No. 223.

¹⁸³ Article 26(1)(e) amended by LGBL 2007 No. 261.

amounts of those holdings or, where there are no qualifying holdings, of the 20 largest shareholders;¹⁸⁴

g) the external audit office.

2) Banks and investment firms must notify the FMA of changes to the facts enumerated in paragraph 1 without delay. This notification must occur prior to any public announcement.¹⁸⁵

3) Amendments to the articles of association and the regulations concerning the scope of business, the share capital, or the organisation, as well as any change of the external audit office shall additionally require approval by the FMA. Any respective entries in the Commercial Register shall only be permissible after approval by the FMA.¹⁸⁶

4) In the case of undertakings that must be included in the consolidation of own funds under Article 4(2), the provisions of paragraphs 1 and 2 shall apply *mutatis mutandis*.¹⁸⁷

5) Banks and investment firms shall notify the FMA without delay in all cases where their counterparties in repurchase agreements and reverse repurchase agreements or securities-lending and commodities-lending transactions or securities-borrowing and commodities-borrowing transactions have not met their obligations.¹⁸⁸

6) Banks and investment firms that meet the definition of a systematic internaliser must inform the FMA thereof. The FMA shall transmit the notification to the European Supervisory Authorities.¹⁸⁹

Article 26a

*Qualifying holdings*¹⁹⁰

1) Every proposed direct or indirect acquisition and every proposed direct or indirect disposal of a qualifying holding in a bank or investment firm must be notified in writing to the FMA by the person or persons interested in the acquisition and the disposal. Every proposed direct or

¹⁸⁴ Article 26(1)(f) amended by LGBL 2014 No. 348.

¹⁸⁵ Article 26(2) amended by LGBL 2007 No. 261.

¹⁸⁶ Article 26(3) amended by LGBL 2013 No. 6.

¹⁸⁷ Article 26(4) inserted by LGBL 1998 No. 223.

¹⁸⁸ Article 26(5) inserted by LGBL 2007 No. 261.

¹⁸⁹ Article 26(6) inserted by LGBL 2017 No. 397.

¹⁹⁰ Article 26a heading amended by LGBL 2009 No. 184.

indirect increase or every proposed direct or indirect reduction of a qualifying holding 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 of the bank or investment firm were to be reached or crossed in either direction, or the bank or investment firm were to become a subsidiary of an acquirer, or the bank or investment firm were to no longer be a subsidiary of the person disposing of the qualifying holding.¹⁹¹

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:¹⁹²

- 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 an EEA Member State;¹⁹³
- b) a parent undertaking of an undertaking referred to in subparagraph (a);
or¹⁹⁴
- c) a natural or legal person controlling an undertaking referred to in subparagraph (a).¹⁹⁵

3) If a bank or investment firm 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 bank or investment firm are admitted to trading on a regulated market, the bank or investment firm shall, at least annually, inform the FMA of the identity of known shareholders of qualifying holdings and the amount of such holdings.¹⁹⁶

4) If the influence of shareholders with qualifying holdings or of persons interested in acquiring such holdings might interfere with sound and prudent management, the FMA shall take the necessary measures to bring this state of affairs to an end. These measures may be directed against the bank or investment firm, the members of the board of directors and the

¹⁹¹ Article 26a(1) amended by LGBL 2017 No. 397.

¹⁹² Article 26a(2) introductory phrase amended by LGBL 2014 No. 348

¹⁹³ Article 26a(2)(a) amended by LGBL 2016 No. 49.

¹⁹⁴ Article 26a(2)(b) amended by LGBL 2009 No. 184.

¹⁹⁵ Article 26a(2)(c) amended by LGBL 2009 No. 184.

¹⁹⁶ Article 26a(3) amended by LGBL 2017 No. 397.

senior management, as well as natural and legal persons who fail to meet their notification obligations under paragraph 1.¹⁹⁷

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.¹⁹⁸

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 EEA Member States. The cooperation shall in particular include an exchange of all information relevant to assessing the acquisition or increase of a holding.¹⁹⁹

7) By ordinance, the Government shall provide further details about the procedure and criteria for assessing the acquisition, the increase, the disposal, or the reduction of qualifying holdings.²⁰⁰

3. Expiration, withdrawal, and revocation²⁰¹

Article 27²⁰²

Lapse of the licence

1) Licences shall lapse if:

- a) business has not been taken up within one year;
- b) business has no longer been pursued for at least six months;
- c) the licence is renounced in writing;
- d) bankruptcy proceedings have been opened with legal effect; or
- e) the company has been removed from the Commercial Register.²⁰³

2) 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

¹⁹⁷ Article 26a(4) inserted by LGBL 2014 No. 348.

¹⁹⁸ Article 26a(5) amended by LGBL 2017 No. 397.

¹⁹⁹ Article 26a(6) inserted by LGBL 2014 No. 348.

²⁰⁰ Article 26a(7) amended by LGBL 2017 No. 397.

²⁰¹ Title preceding Article 27 inserted by LGBL 1998 No. 223.

²⁰² Article 27 amended by LGBL 2007 No. 261.

²⁰³ Article 27(1)(e) amended by LGBL 2013 No. 6.

licence to the competent authorities of the EEA Member States in which the bank or investment firm operated under Article 30b or 30c, the EFTA Surveillance Authority, and the European Supervisory Authorities.²⁰⁴

Article 28

*Withdrawal of the licence; dissolution and removal*²⁰⁵

- 1) Licences shall be withdrawn if:²⁰⁶
- a) the conditions under which the licence was granted are no longer met;
 - a^{bis}) the licence holder obtained the licence surreptitiously by providing false information or if the FMA was unaware of significant circumstances;²⁰⁷
 - b) the licence holder no longer meets the following requirements:²⁰⁸
 - 1. the own funds requirements under Articles 92 to 386 of Regulation (EU) No 575/2013 or the additional requirements of the FMA under Article 35c(1)(a) of this Act;
 - 2. the requirements for large exposures under Articles 387 to 403 of Regulation (EU) No 575/2013;
 - 3. the liquidity requirements under Articles 411 to 428 of Regulation (EU) No 575/2013 or the additional requirements of the FMA under Article 35d; or
 - 4. fulfilment of its obligations toward creditors, in particular security for the assets entrusted to it by depositors;
 - c) the licence holder has committed a serious misdemeanour under Article 63 or a serious contravention under Article 63a(1) or (2);²⁰⁹
 - d) the licence holder fails to comply with the FMA's demands to restore a lawful state of affairs; or²¹⁰
 - e) the licence holder systematically or repeatedly violates the legal obligations.²¹¹

²⁰⁴ Article 27(2) amended by LGBL 2017 No. 397.

²⁰⁵ Article 28 heading amended by LGBL 1998 No. 223.

²⁰⁶ Article 28(1) amended by LGBL 2007 No. 261.

²⁰⁷ Article 28(1)(a^{bis}) inserted by LGBL 2017 No. 397.

²⁰⁸ Article 28(1)(b) amended by LGBL 2014 No. 348.

²⁰⁹ Article 28(1)(c) amended by LGBL 2014 No. 348.

²¹⁰ Article 28(1)(d) inserted by LGBL 2014 No. 348.

²¹¹ Article 28(1)(e) inserted by LGBL 2014 No. 348.

2) In the case of banks and investment firms, the withdrawal of the licence entails dissolution and removal from the Commercial Register.²¹²

3) The withdrawal of the licence must be substantiated, communicated to the affected parties, and, upon becoming final, be published in the official journal at the expense of the licence holder. The FMA shall notify every withdrawal of a licence to the competent authorities of the EEA Member States in which the bank or investment firm operated under Article 30b or 30c, the EFTA Surveillance Authority, and the European Supervisory Authorities with an indication of the reasons.²¹³

4) A company situated in Liechtenstein or the Liechtenstein branch of a company situated abroad that performs activities under Article 3 without a licence may be dissolved 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.²¹⁴

5) The FMA shall take the measures necessary for winding up the company and settlement of current transactions, and it shall issue the requisite instructions to the liquidator.²¹⁵

6) The FMA shall monitor the liquidator.²¹⁶

Article 29

*Revocation of the licence*²¹⁷

1) The FMA may amend or revoke licences if the licence holder obtained the licence surreptitiously by providing false information or if the FMA was unaware of significant circumstances.²¹⁸

2) The revocation of a licence shall be published in the official journal at the expense of the licence holder.²¹⁹

²¹² Article 28(2) amended by LGBL 2013 No. 6.

²¹³ Article 28(3) amended by LGBL 2014 No. 348.

²¹⁴ Article 28(4) amended by LGBL 1998 No. 223 and LGBL 2004 No. 176.

²¹⁵ Article 28(5) amended by LGBL 1998 No. 223 and LGBL 2004 No. 176.

²¹⁶ Article 28(6) amended by LGBL 1998 No. 223, LGBL 1999 No. 87 and LGBL 2004 No. 176.

²¹⁷ Article 29 heading amended by LGBL 1998 No. 223.

²¹⁸ Article 29(1) amended by LGBL 1998 No. 223 and LGBL 2004 No. 176.

²¹⁹ Article 29(2) amended by LGBL 2014 No. 348.

4. Supervision taxes and fees²²⁰

Article 30²²¹

Principle

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

B. Representative offices²²²

Article 30a

Licence²²³

1) The establishment of a representative office by a bank requires a licence issued by the FMA.²²⁴

2) The licence shall be granted if:²²⁵

- a) the bank is subject to supervision in the country of its registered office or head office equivalent to Liechtenstein supervision;²²⁶
- b) the persons entrusted with management of the representative office guarantee sound and proper business operation;²²⁷
- c) the supervisory authority of the home country does not raise any objections against the establishment of the representative office.²²⁸

3) Within four months after the end of the business year, the representative office shall submit a summary activity report and the business report of the represented bank to the FMA, as well as within one month after the end of the business year an attestation that the representative office has not engaged in any banking activities.²²⁹

²²⁰ Title preceding Article 30 amended by LGBL 2004 No. 176.

²²¹ Article 30 amended by LGBL 2004 No. 176.

²²² Title preceding Article 30a inserted by LGBL 1998 No. 223.

²²³ Article 30a heading inserted by LGBL 1998 No. 223.

²²⁴ Article 30a(1) amended by LGBL 2007 No. 261.

²²⁵ Article 30a(2) introductory phrase inserted by LGBL 1998 No. 223.

²²⁶ Article 30a(2)(a) amended by LGBL 2007 No. 261.

²²⁷ Article 30a(2)(b) inserted by LGBL 1998 No. 223.

²²⁸ Article 30a(2)(c) inserted by LGBL 1998 No. 223.

²²⁹ Article 30a(3) inserted by LGBL 1998 No. 223 and amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

4) The representative office must notify the FMA in advance of any change of staff in its management.²³⁰

C. Relationship with the European Economic Area²³¹

1. Establishment of branches and freedom to provide services²³²

Article 30b²³³

Branches of Liechtenstein banks or investment firms

1) Liechtenstein banks or investment firms must notify the FMA in advance if they:²³⁴

- a) wish to establish a branch within the territory of another EEA Member State; or
- b) wish to use tied agents established in another EEA Member State in which they have not established a branch.

2) The following information and documents must be included with the notification under paragraph 1:²³⁵

- a) the EEA Member State in whose territory the branch is to be established or the EEA Member States in which no branch exists but in which they plan to use tied agents established there;
- b) a programme of operations setting out, inter alia, the type of the activities envisaged and the organisational structure of the branch, and indicating whether the branch intends to use tied agents and the identity of those tied agents;
- c) where tied agents are to be used in an EEA Member State in which an investment firm has not established a branch, a description of the intended use of the tied agents and an organisational structure, including reporting lines, indicating how the agents fit into the corporate structure of the investment firm;

²³⁰ Article 30a(4) inserted by LGBL 1998 No. 223 and amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

²³¹ Title preceding Article 30b inserted by LGBL 1998 No. 223.

²³² Title preceding Article 30b amended by LGBL 2007 No. 261.

²³³ Article 30b amended by LGBL 2007 No. 261.

²³⁴ Article 30b(1) amended by LGBL 2017 No. 397.

²³⁵ Article 30b(2) amended by LGBL 2017 No. 397.

- d) the address in the host Member State from which documents of the bank or investment firm may be obtained;
- e) the names of those responsible for the management of the branch or of the tied agent.

3) Within three months after the receipt of all the information, the FMA shall transmit the information under paragraph 2 to the competent authority of the host Member State, provided that in view of the intended activities, there is no reason to doubt the adequacy of the administrative structures and the financial situation of the bank or investment firm. The FMA shall notify the bank or investment firm that the information has been transmitted.

4) Moreover, the FMA shall communicate the following information to the competent authority of the host Member State:²³⁶

- a) in the case of a bank: the amount and composition of the own funds and the sum of the own funds requirements under Article 92 of Regulation (EU) No 575/2013 as well as detailed information on the deposit guarantee scheme to ensure protection of the bank's depositors;
- b) in the case of an investment firm: the amount and composition of the own funds and the sum of the own funds requirements under Article 92 of Regulation (EU) No 575/2013 as well as detailed information on the investor protection scheme to ensure protection of the branch's investors.
- c) in the case of a financial institution: the amount and composition of the own funds and the total risk exposure amounts of its parent bank calculated in accordance with Article 92(3) and (4) of Regulation (EU) No 575/2013.

5) If the FMA refuses to transmit the information referred to in paragraph 2 to the competent authority of the host Member State, it shall state the reasons to the bank or investment firm concerned within three months after receipt of all information. In the case of such refusal or lack of communication by the FMA, Article 62 shall apply *mutatis mutandis*.

6) The bank or investment firm must notify the FMA in writing of any changes to the content of the information set out in paragraph 2, banks also of any changes to the information set out in paragraph 4(a), second phrase, and investment firms also of any changes to the information set out in paragraph 4(b), second phrase, at least one month before the changes are carried out. The FMA shall notify the competent

²³⁶ Article 30b(4) amended by LGBl. 2014 No. 348.

authority of the host Member State accordingly. Paragraphs 3 and 5 shall apply *mutatis mutandis*.²³⁷

7) The FMA shall notify the EFTA Surveillance Authority and the European Supervisory Authorities of the number and type of cases in which it has refused to transmit the information pursuant to paragraphs 3 and 6 to the competent authorities of the host Member State.²³⁸

8) The use of tied agents situated within the territory of another EEA Member State shall be deemed equivalent to the establishment of a branch of an investment firm.

9) If a bank or investment firm situated in another EEA Member State has established several branches in one and the same Member State, these branches shall be considered to constitute a single branch.

Article 30c²³⁹

Freedom to provide services of Liechtenstein banks or investment firms

1) Liechtenstein banks or investment firms intending to pursue their business within the territory of another EEA Member State for the first time under the freedom to provide services must notify the FMA of the following:

- a) the EEA Member State in whose territory they intend to pursue the business;
- b) the business they intend to pursue;
- c) the names and addresses of any tied agents to be used within the territory of another EEA Member State who are situated in Liechtenstein.

2) The Government shall determine by ordinance the permissible business activities of a bank or investment firm operating under the freedom to provide services.

3) The FMA shall draw the attention of the competent authority of the host Member State to the notification referred to in paragraph 1 within one month of receipt.

4) Banks and investment firms must notify the FMA of any changes to the content of the information set out in paragraph 1 at least one

²³⁷ Article 30b(6) amended by LGBL 2017 No. 397.

²³⁸ Article 30b(7) amended by LGBL 2014 No. 348.

²³⁹ Article 30c amended by LGBL 2007 No. 261.

month before the changes are carried out. The FMA shall notify the competent authority of the host Member State accordingly.²⁴⁰

Article 30d²⁴¹

Branches of banks, financial institutions, and investment firms from the European Economic Area

1) The establishment of a branch of banks, financial institutions, and investment firms situated in another EEA Member State or the use of a tied agent established in an EEA Member State outside its home Member State is permissible if they:²⁴²

- a) carry out one or more of its permitted activities and are supervised by the competent authorities of the home Member State;
- b) have transmitted all the information to the home Member State regarding:²⁴³
 1. the programme of operations (Article 30b(2)(b));
 2. the address (Article 30b(2)(d));²⁴⁴
 3. the senior managers (Article 30b(2)(e));²⁴⁵
 4. the own funds (Article 30b(4)(a));
 5. the deposit guarantee scheme for banks (Article 30b(4)(a));
 6. the investor protection scheme for investment firms (Article 30b(4)(b));
 7. the total risk exposure amounts of the parent bank for financial institutions (Article 30b(4)(c)).

2) In addition to the information under paragraph 1(b)(7), an attestation by the competent authorities of the home Member State must be presented that the financial institution meets the following conditions:²⁴⁶

- a) the financial institution is a subsidiary of a bank or the jointly owned subsidiary of several banks;

²⁴⁰ Article 30c(4) amended by LGBL 2017 No. 397.

²⁴¹ Article 30d amended by LGBL 2007 No. 261.

²⁴² Article 30d(1) introductory phrase amended by LGBL 2017 No. 397.

²⁴³ Article 30d(1)(b) introductory phrase amended by LGBL 2017 No. 397.

²⁴⁴ Article 30d(1)(b)(2) amended by LGBL 2017 No. 397.

²⁴⁵ Article 30d(1)(b)(3) amended by LGBL 2017 No. 397.

²⁴⁶ Article 30d(2) introductory phrase amended by LGBL 2014 No. 348.

- b) the articles of association of the financial institution permit the activities mentioned;
- c) the parent undertaking or undertakings are licensed as banks in the EEA Member State in which the financial institution is situated;²⁴⁷
- d) the activities in question are actually carried out within the territory of the same EEA Member State;²⁴⁸
- e) the parent undertaking or undertakings hold 90% or more of the voting rights attaching to shares in the capital of the financial institution;²⁴⁹
- f) the parent undertaking or undertakings satisfy the FMA regarding the prudent management of the financial institution and have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;²⁵⁰
- g) the financial institution is effectively included in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with the provisions governing supervision on a consolidated basis set out in Articles 41b to 41q of this Act and the own funds and liquidity requirements on an individual basis set out in Articles 11 to 24 of Regulation (EU) No 575/2013, in particular for the purposes of the own funds requirements set out in Article 92 of Regulation (EU) No 575/2013, for the control of large exposures provided for in Part Four of Regulation (EU) No 575/2013, and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of Regulation (EU) No 575/2013.²⁵¹

3) The Government shall determine by ordinance the permissible business activities of the branch of a bank, financial institution, or investment firm.

4) Within two months of receipt by the FMA of the information referred to in paragraphs 1 and 2 of the competent authority of the home Member State, the FMA shall indicate to the bank, financial institution, or investment firm 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.²⁵²

²⁴⁷ Article 30d(2)(c) amended by LGBL 2014 No. 348.

²⁴⁸ Article 30d(2)(d) amended by LGBL 2014 No. 348.

²⁴⁹ Article 30d(2)(e) inserted by LGBL 2014 No. 348.

²⁵⁰ Article 30d(2)(f) inserted by LGBL 2014 No. 348.

²⁵¹ Article 30d(2)(g) inserted by LGBL 2014 No. 348.

²⁵² Article 30d(4) amended by LGBL 2017 No. 397.

5) On receipt of the communication referred to in paragraph 4, or failing such communication by the FMA upon the expiry of two months from the date of transmission of the communication by the competent authority of the home Member State, the bank, financial institution, or investment firm may establish the branch and commence business or the tied agent may commence activities. The establishment of the branch may not be made dependent on a domestic licence or on any initial capital.²⁵³

6) Repealed²⁵⁴

7) Every half year, the bank, financial institution, or investment firm must submit a report to the FMA about the branch's activities.

8) If the financial institution no longer meets the conditions set out in paragraphs 1 and 2 and the competent authorities of the home Member State have notified the FMA accordingly, the activities of the financial institution 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 depositors and investors.²⁵⁵

9) When fulfilling the responsibilities delegated to the FMA under this Act, the FMA may require information from the branches of the banks, financial institutions, and investment firms that are needed to assess their compliance with the applicable provisions. The FMA may in particular require information from banks in order to allow the FMA to assess whether a branch is significant in accordance with Article 30m.²⁵⁶

10) The provisions of this Article shall apply *mutatis mutandis* to financial holding companies, mixed financial holding companies, and mixed-activity holding companies.²⁵⁷

11) Where a bank or investment firm 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 relating to branches.²⁵⁸

12) If a bank or investment firm situated in another EEA Member State has established several places of business in one and the same Member

253 Article 30d(5) amended by LGBL 2017 No. 397.

254 Article 30d(6) repealed by LGBL 2017 No. 397.

255 Article 30d(8) amended by LGBL 2014 No. 348.

256 Article 30d(9) amended by LGBL 2014 No. 348.

257 Article 30d(10) amended by LGBL 2014 No. 348.

258 Article 30d(11) amended by LGBL 2017 No. 397.

State, these places of business shall be considered to constitute a single branch.

Article 30e²⁵⁹

Freedom to provide services of banks, financial institutions, and investment firms from the European Economic Area

1) A first-time activity in Liechtenstein under the freedom to provide services of a bank, financial institution, or investment firm 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 activities in accordance with Article 30d(3);
- b) an attestation that the transmitting authority has licensed and supervises the bank, financial institution, or investment firm;²⁶⁰
- c) an attestation that the planned activities are covered by the licence issued by the competent authorities of the home Member State;²⁶¹
- d) the names and addresses of any tied agents not domiciled in Liechtenstein who may be appointed.

2) On receipt of the notification, the bank, financial institution, or investment firm may begin to provide the services in question.

3) In addition to the information under paragraph 1, an attestation by the competent authorities of the home Member State must be presented that the financial institution meets the following conditions:

- a) the financial institution is a subsidiary of a bank or the jointly owned subsidiary of several banks;
- b) the articles of association of the financial institution permit the activities mentioned;
- c) the parent undertaking or undertakings are licensed as banks in the EEA Member State in which the financial institution is situated;²⁶²
- d) the activities in question are actually carried out within the territory of the same EEA Member State;

²⁵⁹ Article 30e amended by LGBL 2007 No. 261.

²⁶⁰ Article 30e(1)(b) amended by LGBL 2014 No. 348.

²⁶¹ Article 30e(1)(c) amended by LGBL 2014 No. 348.

²⁶² Article 30e(3)(c) amended by LGBL 2014 No. 348.

- e) the parent undertaking or undertakings hold 90% or more of the voting rights attaching to shares in the capital of the financial institution;²⁶³
- f) the parent undertaking or undertakings satisfy the FMA regarding the prudent management of the financial institution and have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;²⁶⁴
- g) the financial institution is effectively included in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with the provisions governing supervision on a consolidated basis set out in Articles 41b to 41q of this Act and the own funds and liquidity requirements on an individual basis set out in Articles 11 to 24 of Regulation (EU) No 575/2013, in particular for the purposes of the own funds requirements set out in Article 92 of Regulation (EU) No 575/2013, for the control of large exposures provided for in Part Four of Regulation (EU) No 575/2013, and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of Regulation (EU) No 575/2013.²⁶⁵
- 4) The FMA shall indicate to the bank, financial institution, or investment firm the conditions, including any code of conduct, under which, in the interests of the general good, the activities shall be carried out in Liechtenstein.
- 5) The FMA shall publish the information referred to in paragraph 1(d) in an appropriate manner.²⁶⁶
- 6) If the financial institution no longer meets the conditions set out in paragraph 3 and the competent authorities have notified the FMA accordingly, the activities of the financial institution 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 depositors and investors.²⁶⁷
- 7) The provisions of this Article shall apply *mutatis mutandis* to financial holding companies, mixed financial holding companies, and mixed-activity holding companies.²⁶⁸

²⁶³ Article 30e(3)(e) amended by LGBL 2014 No. 348.

²⁶⁴ Article 30e(3)(f) amended by LGBL 2014 No. 348.

²⁶⁵ Article 30e(3)(g) amended by LGBL 2014 No. 348.

²⁶⁶ Article 30e(5) amended by LGBL 2017 No. 397.

²⁶⁷ Article 30e(6) amended by LGBL 2014 No. 348.

²⁶⁸ Article 30e(7) amended by LGBL 2014 No. 348.

8) Investment firms from EEA Member States shall have access to regulated markets, central counterparties, and clearing and settlement systems domiciled in Liechtenstein as banks.

2. Cooperation with competent authorities of other EEA Member States and the European Supervisory Authorities in general²⁶⁹

Article 30f²⁷⁰

Principle

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.

Article 30g²⁷¹

Joint action against abuse

1) Where the FMA has good reasons to suspect that acts contrary to the provisions of Directive 2014/65/EC or of Regulation (EU) No 600/2014, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another EEA Member State, it shall notify the competent authority and ESMA in as specific a manner as possible.

²⁶⁹ Title preceding Article 30f amended by LGBL 2014 No. 348.

²⁷⁰ Article 30f amended by LGBL 2007 No. 261.

²⁷¹ Article 30g amended by LGBL 2017 No. 397.

2) If a competent authority of another EEA Member State notifies the FMA that an entity is carrying out or has carried out acts contrary to the provisions of this Act in Liechtenstein, the FMA shall take appropriate measures against that entity. The FMA shall notify the communicating authority and ESMA of the measures taken and the procedure.

Article 30h

*Exchange of information*²⁷²

1) The FMA shall transmit to a requesting competent authority of an EEA Member State all information which the latter needs to exercise its duties of supervision, provided that:²⁷³

- a) doing so does not violate the sovereignty, security, public order, or other substantial national interests of Liechtenstein;²⁷⁴
- b) the recipients and the persons employed with and instructed by the competent authorities are subject to an obligation of secrecy equivalent to that of Article 31a;²⁷⁵
- c) it is guaranteed that the information given will only be used for the purpose of financial market supervision, in particular the supervision of banks, investment firms, or regulated markets within the meaning of Article 3(1)(m) of the Market Abuse Act on which financial instruments are traded; and²⁷⁶
- d) information that comes from abroad is given with the express consent of the authority that disclosed that information, and if it is guaranteed that the information will only be forwarded, if at all, for the purpose to which such foreign authority has given its consent.²⁷⁷

2) The FMA may request the competent authorities of other EEA Member States to transmit all information necessary to fulfil the duties pursuant to this Act. It may forward the information received to the bodies listed in Article 31. The FMA shall transmit the information to other bodies or natural or legal persons only in compliance with paragraph 1(d) *mutatis mutandis*, except in duly justified circumstances. In this last case,

²⁷² Article 30h heading amended by LGBL 2007 No. 261.

²⁷³ Article 30h(1) introductory phrase amended by LGBL 2007 No. 261.

²⁷⁴ Article 30h(1)(a) amended by LGBL 2007 No. 261.

²⁷⁵ Article 30h(1)(b) amended by LGBL 2007 No. 261.

²⁷⁶ Article 30h(1)(c) amended by LGBL 2008 No. 226.

²⁷⁷ Article 30h(1)(d) amended by LGBL 2007 No. 261.

the FMA shall without delay inform the authority that transmitted the information.²⁷⁸

3) The supervisory bodies as referred to in Article 31, administrative authorities and bodies, and natural and legal persons receiving confidential information may use it in the course of their duties only for the following purposes:²⁷⁹

- a) to check that the licensing conditions for banks and investment firms are met;²⁸⁰
- b) to monitor, on a consolidated or institutional basis, the conduct of business, especially with regard to solvency, large exposures, administrative and accounting procedures, internal control mechanisms, and the liquidity of banks and investment firms as well as branches of banks, financial institutions, and investment firms.²⁸¹
- c) to monitor the proper functioning of trading venues;²⁸²
- d) to impose sanctions;²⁸³
- e) in appeals against decisions by the FMA pursuant to Article 62; or²⁸⁴
- f) in the extrajudicial mechanism for investors' complaints provided for in Article 62a.²⁸⁵

3a) The FMA shall notify the European Supervisory Authorities which authorities or bodies may receive information in accordance with paragraph 2.²⁸⁶

4) This Article as well as Articles 14, 30q, 30r, and 31a shall not prevent the FMA from transmitting information to the following authorities for the purposes of their duties:²⁸⁷

- a) European central banks, the Swiss National Bank, and other bodies with a similar function in their capacity as monetary authorities, where this information is relevant to their respective tasks provided by law, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing, and securities settlement systems, and safeguarding the stability of the financial system;

²⁷⁸ Article 30h(2) amended by LGBL 2007 No. 261.

²⁷⁹ Article 30h(3) introductory phrase amended by LGBL 2007 No. 261.

²⁸⁰ Article 30h(3)(a) amended by LGBL 2007 No. 261.

²⁸¹ Article 30h(3)(b) amended by LGBL 2014 No. 348.

²⁸² Article 30h(3)(c) amended by LGBL 2008 No. 226.

²⁸³ Article 30h(3)(d) amended by LGBL 2007 No. 261.

²⁸⁴ Article 30h(3)(e) amended by LGBL 2007 No. 261.

²⁸⁵ Article 30h(3)(f) amended by LGBL 2007 No. 261.

²⁸⁶ Article 30h(3a) inserted by LGBL 2014 No. 348.

²⁸⁷ Article 30h(4) amended by LGBL 2014 No. 348.

- b) contractual or institutional protection systems as referred to in Article 113(7) of Regulation (EU) No 575/2013;
- c) protection schemes for the benefit of depositors and investors as referred to in Article 7;
- d) where applicable, other public authorities entrusted with the oversight of payments systems;
- e) the EFTA Surveillance Authority and the European Supervisory Authorities.

5) This Article as well as Articles 14, 30q, 30r, and 31a likewise shall not prevent the authorities or bodies referred to in paragraph 4 from transmitting information to the FMA that it needs to perform its duties under this Act.²⁸⁸

6) In emergency situations referred to in Article 41f, the FMA may forward information to the Standing Committee of the EFTA States, the European Supervisory Authorities, the competent authorities of the other EEA Member States, and the Swiss National Bank, if the information is needed for the performance of their duties provided by law.²⁸⁹

7) The Government shall provide further details by ordinance.²⁹⁰

Article 30i²⁹¹

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

1) The competent authority of an EEA Member State may request the FMA in matters concerning the law of supervision to cooperate 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 and in compliance with Article 30h(1):

- a) carry out the verifications or investigations itself;
- b) allow the requesting authority to carry out the verification or investigation; or
- c) allow external audit offices or experts to carry out the verification or investigation.

²⁸⁸ Article 30h(5) amended by LGBL 2011 No. 243.

²⁸⁹ Article 30h(6) amended by LGBL 2014 No. 348.

²⁹⁰ Article 30h(7) inserted by LGBL 2011 No. 243.

²⁹¹ Article 30i amended by LGBL 2007 No. 261.

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

4) With respect to branches of banks, financial institutions, or investment firms in Liechtenstein 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.

5) Notwithstanding the provisions of this Article and the powers set out in Article 41o(1), the FMA may, in the context of its responsibilities under this Act, carry out its own on-the-spot verifications or inspections of the activities performed in Liechtenstein of the branches of foreign banks, financial institutions, or investment firms, or it may have auditors or experts do so. The FMA may, for supervisory purposes, demand information from a branch on its activities. Before carrying out its own verifications and inspections, the FMA shall consult the competent authorities of the home Member State. After its own verifications and inspections, the FMA shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the bank or investment firm or the stability of the financial system in Liechtenstein.²⁹²

6) When defining its supervisory audit programme in accordance with Article 35a(4), the FMA shall take due account of the information of the competent authorities of the host Member State obtained in accordance with paragraph 5 *mutatis mutandis*, and it shall also take account of the stability of the financial system in the host Member State.²⁹³

7) The FMA may request the cooperation of the competent authorities of another EEA Member State in a supervisory activity or for an on-the-spot verification or in an investigation.²⁹⁴

Article 30k²⁹⁵

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

²⁹² Article 30i(5) amended by LGBl. 2014 No. 348.

²⁹³ Article 30i(6) amended by LGBl. 2014 No. 348.

²⁹⁴ Article 30i(7) inserted by LGBl. 2014 No. 348.

²⁹⁵ Article 30k amended by LGBl. 2007 No. 261.

provided for in Article 30i or to exchange information as provided for in Article 30h only where:

- a) judicial proceedings have already been initiated in respect of the same actions and the same persons before domestic authorities; or
- b) 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, indicating the reason for the refusal.

Article 30l²⁹⁶

Powers of the FMA as the authority of the home Member State for activities performed in the host Member State

1) As the authority of the home Member State, the FMA shall without delay take appropriate measures so that a bank, financial institution, investment firm, or the foreign branches thereof put an end to irregular situations in the host Member State or shall take appropriate measures to terminate the infringement. The FMA shall promptly inform the competent authorities in the host Member State of the measures it has taken.

2) If, as the authority of the home Member State, the FMA withdraws the licence of a bank, financial institution, or investment firm, it shall inform the competent authorities of the host Member State.

3) If, as the authority of the home Member State, the FMA has any objections to the measures taken by the competent authorities of the host Member State, the FMA may request the assistance of the European Supervisory Authorities.

Article 30l^{bis}²⁹⁷

Information and intervention of the authorities of the home Member State in the case of infringements under the freedom to provide services or by branches

1) If a foreign bank or investment firm, situated in another EEA Member State and carrying on business in Liechtenstein under the freedom to provide services or through a branch, violates provisions of this Act or

²⁹⁶ Article 30l amended by LGBl. 2014 No. 348.

²⁹⁷ Article 30lbis inserted by LGBl. 2014 No. 348.

of Regulation (EU) No 575/2013, the code of conduct, or professional guidelines, or if such a violation is imminent, the FMA shall notify the competent authorities of the home Member State.

2) If the competent authorities of the home Member State withdraw the licence, the FMA shall take all necessary measures to protect the clients in Liechtenstein.

Article 301^{ter}298

Precautionary measures of the FMA as the authority of the host Member State

1) Pending effective measures by the competent authorities of the home Member State, the FMA may, in emergency situations, take any precautionary measures to protect against financial instability or to protect depositors, investors, or other service recipients in Liechtenstein. The FMA shall without delay inform the competent authorities of the other EEA Member States concerned, the EFTA Surveillance Authority, and the European Supervisory Authorities.

2) Any precautionary measure shall be proportionate to the protection purpose referred to in paragraph 1. Such precautionary measures may include a suspension of payment. They shall not result in a preference for the creditors of the bank and investors of the bank or investment firm in Liechtenstein over creditors and investors in other EEA Member States.

3) Any precautionary measure shall cease to have effect when the administrative or judicial authorities of the home Member State take reorganisation measures under Article 2 of Directive 2001/24/EC. The FMA shall terminate precautionary measures when those measures have become obsolete due to the measures taken by the authorities of the home Member State in accordance with Article 301^{bis}(1).

Article 301^{quater}299

Measures of the FMA as the authority of the host Member State where intervention by the authorities of the home Member State is insufficient

If the competent authorities of the home Member State fail to meet their obligations to put an end to the infringement under Article 301^{bis}(1)

²⁹⁸ Article 301^{ter} inserted by LGBl. 2014 No. 348.

²⁹⁹ Article 301^{quater} inserted by LGBl. 2014 No. 348.

without delay or if the measures they have taken are insufficient, the FMA as the authority of the host Member State may:

- a) request the assistance of the European Supervisory Authorities; and
- b) after informing the competent authorities of the home Member State, take the necessary measures to protect clients and market functions; in particular, the FMA may prevent the conclusion of further transactions in Liechtenstein.

Article 30l^{quinquies}300

Reasons and communication

1) Any measure taken by the FMA involving a penalty or a restriction on activities under Articles 30l to 30l^{quater} shall be properly reasoned and communicated to the bank, financial institution, or investment firm.

2) The FMA shall inform the EFTA Surveillance Authority and the European Supervisory Authorities of the number and type of measures taken under Articles 30l^{ter} and 30l^{quater}.

3. Cooperation with the competent authorities of EEA Member States in respect of significant branches³⁰¹

Article 30m³⁰²

Designation as significant branch

1) The FMA may make a request to the consolidating supervisor, where Article 41e(1) applies, and otherwise to the competent authorities of the home Member State for a Liechtenstein branch of a bank or investment firm situated in the European Economic Area other than an investment firm subject to Article 95 of Regulation (EU) No 575/2013 to be considered as significant.³⁰³

2) In its request under paragraph 1, the FMA shall provide reasons for considering the branch to be significant with particular regard to the following:

300 Article 30l^{quinquies} inserted by LGBL 2014 No. 348.

301 Title preceding Article 30m amended by LGBL 2011 No. 243.

302 Article 30m amended by LGBL 2011 No. 243.

303 Article 30m(1) amended by LGBL 2014 No. 348.

- a) whether the market share of the branch in terms of deposits exceeds 2% in Liechtenstein;
- b) the importance of the branch for systemic liquidity and the payment, clearing, and settlement systems in Liechtenstein; and³⁰⁴
- c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of Liechtenstein.

3) The FMA and the competent authorities of the home Member State and, where Article 41e(1) applies, the consolidating supervisor, shall do everything within their power to reach a joint decision on the designation of the branch as being significant.

4) If no joint decision is reached within two months of receipt of a request under paragraph 2, the FMA shall take its own decision within a further period of two months on whether the branch is significant. In taking its decision, the FMA shall take into account any views and reservations of the consolidating supervisor or the competent authority of the home Member State.

5) The decisions referred to in paragraphs 3 and 4 shall be set out in a document containing full reasons and shall be transmitted to the competent authorities concerned. Decisions of the competent authorities of other EEA Member States shall be applied in Liechtenstein.

6) The designation of a branch as being significant shall not affect the rights and responsibilities in relation to the branch under this Act.

Article 30n³⁰⁵

Cooperation in emergency situations

1) The FMA shall transmit information in accordance with Article 41h(4)(c) and (d) to the competent authority of the home Member State in which a significant branch of a Liechtenstein bank or investment firm is situated.

2) The FMA shall plan and coordinate supervisory activities in emergency situations in accordance with Article 41e(1)(c) in cooperation with the competent authorities of the home Member State in which a significant branch of a Liechtenstein bank or investment firm is situated.

³⁰⁴ Article 30m(2)(b) amended by LGBL 2014 No. 348.

³⁰⁵ Article 30n amended by LGBL 2011 No. 243.

3) The FMA shall also transmit the following to the competent authorities of the home Member State in which a significant branch of a Liechtenstein bank or investment firm is situated:³⁰⁶

- a) the results of the risk assessment of banks and investment firms with such branches in accordance with Article 35a and, where applicable, Article 41e(3)(a); and
- b) decisions to strengthen own funds, governance arrangements, and liquidity requirements under Articles 35c and 35d where relevant to the branches in question.

4) In the case of operational steps in regard to liquidity risks, the FMA shall consult the competent authorities of the host Member State in which significant branches of a Liechtenstein bank or investment firm are situated.³⁰⁷

5) Where the competent authorities of the home Member State have not consulted the FMA, or where, following such consultation, the FMA maintains that the measures to restore liquidity are not adequate, the FMA may involve the European Supervisory Authorities and request their assistance.³⁰⁸

Article 30o³⁰⁹

Colleges of supervisors

1) Where the FMA is the competent authority supervising a bank or investment firm with significant branches in other EEA Member States, and where Article 41h on the establishment of colleges of supervisors by the consolidating supervisor does not apply, the FMA shall establish and chair a college of supervisors to facilitate the cooperation with the competent authorities of the EEA Member States in respect of the significant branches.

2) When defining the framework for the establishment and functioning of the college as well as when deciding who shall participate in the college, the FMA shall apply Article 41h(11), (13), and (14) *mutatis mutandis*.

³⁰⁶ Article 30n(3) inserted by LGBL 2014 No. 348.

³⁰⁷ Article 30n(4) inserted by LGBL 2014 No. 348.

³⁰⁸ Article 30n(5) inserted by LGBL 2014 No. 348.

³⁰⁹ Article 30o amended by LGBL 2011 No. 243.

D. Relationship to third countries³¹⁰

1. Establishment of branches from third countries³¹¹

Article 30p³¹²

Principle

1) The establishment of a branch of a bank or investment firm situated outside the European Economic Area shall be subject to a licence.

2) The FMA shall grant the licence if:

- a) the bank or investment firm is subject to consolidated supervision equivalent to Liechtenstein supervision;
- b) the bank or investment firm is adequately organised and has sufficient qualified staff and financial resources to operate a branch in Liechtenstein;
- c) the supervisory authority of the home Member State does not object to the establishment of the branch and agrees to immediately notify the FMA if circumstances arise that could seriously jeopardise the interests of creditors;³¹³
- d) the other provisions of this Act and the associated ordinances are complied with *mutatis mutandis*.

3) The FMA shall notify the EFTA Surveillance Authority and the European Supervisory Authorities of licences granted to branches of banks situated outside the European Economic Area.³¹⁴

4) Within four months of the end of the business year, the branch shall publish its annual financial statement together with the annual financial statement of the foreign bank or investment firm and shall transmit them together with the business report of the bank to the FMA.

5) The annual financial statement of the foreign bank or investment firm must be published in German in accordance with the accounting and classification rules applicable to its main office.

³¹⁰ Title preceding Article 30p amended by LGBL 2011 No. 243.

³¹¹ Title preceding Article 30p amended by LGBL 2011 No. 243.

³¹² Article 30p amended by LGBL 2011 No. 243.

³¹³ Article 30p(2)(c) amended by LGBL 2014 No. 348.

³¹⁴ Article 30p(3) amended by LGBL 2014 No. 348.

6) The annual financial statement of the branch shall include the receivables and payables in relation to the main office and the other branches of the bank or investment firm as well as in relation to undertakings in the banking or financial business that are directly or indirectly controlled by the bank or investment firm. This also applies to contingent or pending transactions.

7) When taking up and pursuing their business, branches of banks or investment firms situated in third states may not be treated more favourably than the branches of banks or investment firms situated in the European Economic Area.

2. Cooperation with the competent authorities of third countries³¹⁵

Article 30q³¹⁶

Exchange of information, supervisory activities, on-the-spot verifications, and investigations

1) As part of its financial market supervision, the FMA shall cooperate closely with the competent authorities of a third country in a supervisory activity, for an on-the-spot verification, in an investigation, or in the exchange of information in accordance with Articles 30h and 30i *mutatis mutandis*.

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

Article 30r³¹⁷

Cooperation agreements

1) The FMA may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries if:³¹⁸

- a) the exchange of information is intended for the performance of supervisory tasks;

³¹⁵ Title preceding Article 30q inserted by LGBL 2011 No. 243.

³¹⁶ Article 30q amended by LGBL 2011 No. 243.

³¹⁷ Article 30r inserted by LGBL 2011 No. 243.

³¹⁸ Article 30r(1) amended by LGBL 2014 No. 348.

- b) the transmission of information is subject to professional confidentiality equivalent to that of Article 31a; and
- c) it is ensured that the information from another EEA Member State is transmitted only with the express agreement of the transmitting authorities and where applicable solely for the purposes for which those authorities gave their agreement.

2) The FMA may conclude cooperation agreements providing for the exchange of information with third country authorities, bodies, and natural or legal persons responsible for:³¹⁹

- a) the supervision of banks, financial institutions, insurance undertakings, investment firms, UCITS management companies, AIFMs, or financial markets;³²⁰
- b) the liquidation and bankruptcy of banks, financial institutions, or investment firms and other similar procedures;
- c) the carrying out of statutory audits of the accounts of banks, financial institutions, insurance undertakings, or investment firms, in the performance of their supervisory functions, or the management of compensation schemes in the performance of their functions;³²¹
- d) oversight of the bodies involved in the liquidation and bankruptcy of banks, financial institutions, investment firms and other similar procedures;³²²
- e) oversight of persons charged with carrying out statutory audits of the accounts of banks, financial institutions, insurance undertakings, or investment firms; or³²³
- f) oversight of persons active on emission allowance markets or agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets.³²⁴

³¹⁹ Article 30r(2) introductory phrase amended by LGBL 2014 No. 348.

³²⁰ Article 30r(2)(a) amended by LGBL 2017 No. 397.

³²¹ Article 30r(2)(c) amended by LGBL 2017 No. 397.

³²² Article 30r(2)(d) amended by LGBL 2017 No. 397.

³²³ Article 30r(2)(e) amended by LGBL 2017 No. 397.

³²⁴ Article 30r(2)(f) inserted by LGBL 2017 No. 397.

IIIa. Regulated markets, multilateral and organised trading facilities, local firms, and investment firms with administrative powers³²⁵

Article 30s³²⁶

Regulated markets

1) The operation of a regulated market requires a licence issued by the FMA. The licence shall be granted if:

- a) the regulated market has clear and transparent rules regarding the admission of financial instruments to trading;
- b) transparent and non-discriminatory access, based on objective criteria, to or membership of the regulated market is ensured;
- c) there are effective systems for the smooth conclusion of transactions on the regulated market and for the settlement thereof;
- d) fair and transparent trading on the regulated market and oversight thereof by the bodies of the regulated markets are ensured; and
- e) appropriate procedures are in place for employees to report infringements of this Act or of Regulation (EU) No 600/2014 internally through a specific, independent and autonomous channel.

2) Article 11(1) and (2), Article 17(2), Article 30e(1), (4), and (5), and Articles 30l to 30l^{quinquies} shall apply *mutatis mutandis* to the operators of regulated markets.

3) A regulated market must have in place effective systems, procedures and arrangements to ensure its trading systems are resilient. The trading systems must be able to ensure orderly trading under conditions of severe market stress.

4) Regulated markets must adopt tick size regimes for certain financial instruments.

5) All trading venues and their members or participants must synchronise the business clocks they use to record the date and time of any reportable event.

6) Regulated market operators may suspend or remove from trading a financial instrument which no longer complies with the rules of the

³²⁵ Title preceding Article 30s amended by LGBL 2017 No. 397.

³²⁶ Article 30s amended by LGBL 2017 No. 397.

regulated market. They must publish their decision on the suspension or removal and communicate it to the FMA. The FMA may require other trading venues and systematic internalisers to also suspend or remove the relevant financial instrument from trading. The FMA shall publish its decision without delay in an appropriate manner and communicate it to ESMA and the competent authorities of the other EEA Member States.

7) The licence issued pursuant to paragraph 1 shall lapse if:

- a) operations have not been taken up within one year;
- b) business has no longer been pursued for at least six months; or
- c) the licence is renounced in writing.

8) The FMA may withdraw the licence issued pursuant to paragraph 1 if:

- a) the conditions under which the licence was granted are no longer met;
- b) the operator has obtained the licence by making false statements or by any other irregular means; or
- c) the operator has seriously and systematically infringed the provisions of this Act or Regulation (EU) No 600/2014.

9) The FMA shall communicate each lapse and withdrawal of a licence to the EFTA Surveillance Authority and ESMA.

10) In the event of grievances, Article 39 shall apply *mutatis mutandis* to the notification requirements of external audit offices of a regulated market vis-à-vis the FMA.

11) The Government shall provide further details by ordinance.

Article 30t³²⁷

Multilateral and organised trading facilities

1) The operation of a multilateral or organised trading facility requires a licence issued by the FMA. The licence shall be granted if:

- a) there are effective systems for the smooth conclusion of transactions on the multilateral or organised trading facility and for the settlement

³²⁷ Article 30t amended by LGBL 2017 No. 397.

thereof, including the establishment of effective contingency arrangements to cope with risks of systems disruption;

- b) fair and transparent trading on the multilateral or organised trading facility and oversight thereof by the bodies of the multilateral or organised trading facility are ensured; and
- c) appropriate procedures for employees to report infringements of this Act or Regulation (EU) No 600/2014 internally through a specific, independent, and autonomous channel.

2) Market operators may operate a multilateral or organised trading facility without a licence issued pursuant to paragraph 1, subject to prior verification of their compliance with the requirements of this Article.

3) Article 11(1) and (2), Article 17(2), Article 30c(1) and (3), Article 30e(1) and (4), and Articles 30l to 30l^{quinquies} shall apply *mutatis mutandis* to the operators of multilateral and organised trading facilities. With regard to the exercise of the freedom to provide services, the FMA as the competent authority of the home Member State of a multilateral trading facility, shall, at the request of the competent authority of the host Member State, communicate to the competent authority of the host Member State the identity of the remote members or participants of the multilateral trading facility. Conversely, the FMA as the authority of the host Member State may also request the same from the competent authority of the home Member State of a multilateral trading facility operating in Liechtenstein.

4) All trading venues and their members or participants must synchronise the business clocks they use to record the date and time of any reportable event.

5) Operators of multilateral and organised trading facilities may suspend or remove from trading a financial instrument which no longer complies with the rules of the trading facility. They must publish their decision on the suspension or removal and communicate it to the FMA. The FMA may require other trading venues and systematic internalisers to also suspend or remove the relevant financial instrument from trading. The FMA shall publish its decision without delay in an appropriate manner and communicate it to ESMA and the competent authorities of the other EEA Member States.

6) The operator of a multilateral trading facility may apply for registration of the multilateral trading facility as an SME growth market. The multilateral trading facility must meet specific requirements in order to register. The FMA may cancel the registration if the operator so requests or the specific requirements for multilateral trading facilities are no longer met.

7) Article 30s(7) to (9) shall apply *mutatis mutandis* to the lapse and withdrawal of licences issued pursuant to paragraph 1.

8) In the event of grievances, Article 39 shall apply *mutatis mutandis* to the notification requirements of external audit offices of multilateral or organised trading facilities vis-à-vis the FMA.

9) The Government shall provide further details by ordinance.

Article 30u³²⁸

Local firms

1) Local firms in accordance with Article 4(1)(4) of Regulation (EU) No 575/2013 that benefit from the freedom of establishment or provide services specified in Articles 34 and 35 of Directive 2014/65/EU require a licence issued by the FMA. The licence shall be issued if:³²⁹

- a) the initial capital of the local firm is 100,000 Swiss francs or the equivalent in euros or US dollars; and
- b) the conditions set out in Articles 16 to 24 are met.

2) The Government shall provide further details by ordinance regarding the licensing procedure and the operation of a local firm.

Article 30v³³⁰

Investment firms with administrative powers

1) Investment firms which hold clients' money or securities and which offer one or more investment services set out in points 1, 2, 4, and 5 of Annex 2 Section A(1) (investment firms with administrative powers) require a licence issued by the FMA. The licence shall be granted if:³³¹

- a) the initial capital, by way of derogation from Article 24(1), is at least 125,000 Swiss francs or the equivalent in euros or US dollars; and
- b) the conditions set out in Articles 16 to 24 are met.

2) The FMA may allow an investment firm with administrative powers to hold financial instruments for their own account as part of their execution of investors' orders, if the following conditions are met:

³²⁸ Article 30u inserted by LGBL 2014 No. 348.

³²⁹ Article 30u(1) introductory phrase amended by LGBL 2017 No. 397.

³³⁰ Article 30v inserted by LGBL 2014 No. 348.

³³¹ Article 30v(1) amended by LGBL 2017 No. 342.

- a) such positions arise only as a result of the investment firm's failure to match investors' orders precisely;
- b) the total market value of all such positions is subject to a ceiling of 15% of the firm's initial capital;
- c) the investment firm meets the requirements set out in Articles 92 to 95 and Part Four of Regulation (EU) No 575/2013;
- d) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

3) The holding of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing for their own account in relation to the services set out in paragraph 1. Separate books must be kept for the client assets and the assets of the investment firm with administrative powers.

4) Investment firms with administrative powers may take up their business only once they meet the investment protection requirements set out in Article 7. If, despite appropriate measures having been taken, an investment firm with administrative powers fails to meet its obligations, the FMA shall withdraw its licence.

5) Furthermore, the following provisions shall apply *mutatis mutandis* to investment firms with administrative powers:

- a) the provisions of this Act, with the exception of the rules governing capital buffers (Articles 4a et seq.);
- b) Articles 16, 17, and 23 to 30 of Directive 2014/65/EU; and³³²
- c) the provisions of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (EEA Compendium of Laws: Annex IX - 31bab.01).

6) The Government shall provide further details by ordinance. It may define additional exceptions under paragraph 5(a), provided that they are compatible with investor protection and the public interest.

³³² Article 30v(5)(b) amended by LGBL 2017 No. 397.

IIIb. Position limits and position management controls in commodity derivatives and reporting³³³

Article 30w³³⁴

Principle

1) The FMA shall establish position limits on the size of a net position which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts. The position limits shall apply to all persons who hold commodity derivatives traded on trading venues or economically equivalent OTC contracts.

2) Operators of trading venues where commodity derivatives or emission allowances or derivatives thereof are traded must report certain information on the various positions to the FMA and ESMA in order to ensure compliance with the position limits. If investment firms trade in OTC contracts which are equivalent to commodity derivatives traded on trading venues, they are also subject to a reporting requirement.

3) The Government shall provide further details by ordinance, in particular regarding establishment of the position limits and the reporting requirements.

IIIc. Data reporting services³³⁵

Article 30x³³⁶

Principle

1) The commercial operation of the data reporting services provider of an APA, a CTP, or an ARM requires a licence issued by the FMA.

2) The FMA shall grant a licence to a data reporting services provider only once the applicant demonstrates that all requirements for the operation of a data reporting services provider have been met.

³³³ Title preceding Article 30w inserted by LGBL 2017 No. 397.

³³⁴ Article 30w inserted by LGBL 2017 No. 397.

³³⁵ Title preceding Article 30x inserted by LGBL 2017 No. 397.

³³⁶ Article 30x inserted by LGBL 2017 No. 397.

3) The licence must specify the data reporting services which the data reporting services provider may provide. A data reporting services provider seeking to extend its business to include additional data reporting services shall apply for extension of its licence.

4) All members of the management body of a data reporting services provider must:

- a) commit sufficient time to perform their duties;
- b) be of good repute; and
- c) guarantee sound and proper business operation at all times, in terms of both their professional and their personal qualities.

5) By way of derogation from paragraph 1, banks, investment firms, or market operators operating a trading venue may operate the data reporting services of an APA, a CTP, and an ARM, subject to the prior verification of their compliance with this Article and Article 30y. Such a service shall be included in their licence.

6) The FMA shall register all data reporting services providers it licenses. The register shall be publicly accessible and shall contain information on the licensed services. It shall be updated on a regular basis.

7) The FMA shall notify any licences granted pursuant to paragraph 1 to the EFTA Surveillance Authority and ESMA.

8) The licence issued pursuant to paragraph 1 shall be valid in the EEA Member States, subject to acceptance by the host Member State, and entitles a data reporting services provider to provide the licensed services throughout the EEA. A licence issued by another EEA Member State shall allow a data reporting services provider to provide the services in Liechtenstein for which it has been licensed.³³⁷

9) Article 30s(7) to (9) shall apply *mutatis mutandis* to the lapse and withdrawal of licences issued pursuant to paragraph 1.

10) In the event of grievances, Article 39 shall apply *mutatis mutandis* to the notification requirements of external audit offices of a data reporting services provider vis-à-vis the FMA.

11) A data reporting services provider must inform the FMA of all members of its management body and of any changes to its membership.

12) The Government shall provide further details by ordinance, in particular regarding the operation of a data reporting services provider.

³³⁷ Article 30x(8) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2014/65/EU and Regulation (EU) No 600/2014.

Article 30y³³⁸*Organisational requirements for APAs, CTPs, and ARMs*

1) An APA must have adequate policies and arrangements in place to make public the information about the trade in shares, depositary receipts, ETFs, certificates, bonds, structured finance products, emission allowances, derivatives and similar financial instruments as close to real time as is technically possible, on a reasonable commercial basis. The APA must be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information on a non-discriminatory basis.

2) A CTP must have adequate policies and arrangements in place to collect the information made public about the trade in shares, depositary receipts, ETFs, certificates and other similar financial instruments, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis.

3) An ARM must have adequate policies and arrangements in place to report information on financial instruments as quickly as possible, and no later than the close of the working day following the day upon which the transaction took place.

4) By ordinance, the Government shall provide further details regarding individual data reporting services providers.

IV. Supervision³³⁹**A. General provisions³⁴⁰**Article 31³⁴¹*Organisation and implementation*

The following bodies are mandated to implement this Act:

³³⁸ Article 30y inserted by LGBL 2017 No. 397.

³³⁹ Title preceding Article 31 amended by LGBL 2007 No. 261.

³⁴⁰ Title preceding Article 31 inserted by LGBL 2014 No. 348.

³⁴¹ Article 31 amended by LGBL 2004 No. 176.

- a) the Financial Market Authority (FMA);
- b) the external audit offices;
- c) the Court of Justice;
- d) the extrajudicial mediation body.³⁴²

Article 31a³⁴³

Official secrecy

1) The bodies charged with implementing this Act, any persons consulted by such bodies as well as all representatives of the authorities shall be subject to official secrecy without a time limit as regards the confidential information that becomes known to them during their official activities.

2) Confidential information as set out in paragraph 1 may be transmitted in accordance with this Act and Regulation (EU) No 575/2013.³⁴⁴

2a) The FMA is authorised to transmit information to the external audit offices that is necessary for the fulfilment of its responsibilities.³⁴⁵

3) If bankruptcy or winding-up proceedings have been initiated against a bank or investment firm by the decision of a court, confidential information that does not relate to third parties may be disclosed in civil or commercial law proceedings if this is necessary for the proceedings concerned.

4) Without prejudice to the requirements of criminal law 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 of financial market supervision.³⁴⁶

³⁴² Article 31(d) inserted by LGBL 2014 No. 348.

³⁴³ Article 31a inserted by LGBL 2007 No. 261.

³⁴⁴ Article 31a(2) amended by LGBL 2014 No. 348.

³⁴⁵ Article 31a(2a) inserted by LGBL 2014 No. 348.

³⁴⁶ Article 31a(4) amended by LGBL 2017 No. 397.

5) The FMA may transmit confidential information that it received from a non-competent authority of an EEA Member State to the following authorities:³⁴⁷

- a) the competent authorities of other EEA Member States;
- b) the European Supervisory Authorities.

6) The FMA is authorised to publish the results of performed stress tests and to transmit those results to the European Supervisory Authorities for public announcement.³⁴⁸

Article 31b³⁴⁹

Cooperation with other domestic authorities

1) Within the framework of its 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 notify the FMA of all changes to entries in the Commercial Register that refer to a bank or investment firm. The Office of Justice shall also give the FMA electronic access to the data in the Commercial Register.³⁵⁰

Article 31c³⁵¹

Cooperation with the European Supervisory Authorities

The FMA shall fulfil its responsibilities in cooperation with the European Supervisory Authorities.

Article 32³⁵²

Data processing

The bodies entrusted with implementation of this Act may process all data necessary to fulfil the responsibilities under this Act, including personal profiles and sensitive personal data concerning administrative or

³⁴⁷ Article 31a(5) amended by LGBL 2014 No. 348.

³⁴⁸ Article 31a(6) inserted by LGBL 2014 No. 348.

³⁴⁹ Article 31b inserted by LGBL 2007 No. 261.

³⁵⁰ Article 31b(2) amended by LGBL 2013 No. 6.

³⁵¹ Article 31c inserted by LGBL 2014 No. 348.

³⁵² Article 32 amended by LGBL 2014 No. 348.

criminal prosecutions of and penalties imposed on persons responsible for the governance and senior management of a bank, investment firm, or branch of a bank, financial institution, or investment firm.

Article 33³⁵³

Transmission of information to parliamentary investigative commissions

1) The FMA may transmit information relating to the supervision of banks and investment firms to parliamentary investigative commissions if:

- a) the investigative commission has a legislative mandate or a mandate defined by a resolution of the Liechtenstein Parliament to investigate or audit the activities of the FMA;
- b) the information is absolutely necessary to fulfil the mandate referred to in subparagraph (a);
- c) persons with access to the information are subject to professional confidentiality that is equivalent to that of Article 31a; and
- d) the information – to the extent it originates from another EEA Member State – is transmitted only with the express agreement of the competent authorities that communicated the information and solely for the purposes for which those authorities gave their agreement.

2) If the transmission of information relating to supervision includes the processing of personal data, then this shall be done in accordance with the provisions of the Data Protection Act.

3) Information obtained by way of Articles 30h(2), 30r(2), 31a(5), and 31b or through an on-the-spot inspection referred to in Article 30i(5) shall not be transmitted in accordance with paragraph 1, unless there is express agreement by the competent authorities that provided the information, or of the competent authorities of the EEA Member State in which the on-the-spot inspection was carried out.

Article 34³⁵⁴

Transmission of information via clearing and settlement systems

1) Taking account of official secrecy set out in Article 31a, the FMA may transmit information regarding the licensing conditions, risk management, monitoring of the proper functioning of trading venues,

³⁵³ Article 33 amended by LGBL 2014 No. 348.

³⁵⁴ Article 34 amended by LGBL 2014 No. 348.

sanctions, appeals against decisions, and investors' complaints (Article 30h(3)) as well as information on cooperation agreements (Article 30r) to clearing and settlement systems, provided such information is necessary in their opinion to ensure the proper functioning of such bodies in the event of violations or possible violations of market participants.

2) In the case referred to in paragraph 1, the FMA may transmit information that it received from a non-competent authority of another EEA Member State in accordance with Article 31a(5) only with the express agreement of the competent authority of the other EEA Member State.

B. FMA³⁵⁵

1. Responsibilities and powers³⁵⁶

Article 35

1) The FMA shall monitor compliance with the provisions of this Act, Regulation (EU) No 575/2013 and Regulation (EU) No 600/2014. The FMA shall take the necessary measures directly, in cooperation with other supervisory bodies, or by reporting to the Office of the Public Prosecutor.³⁵⁷

1a) The FMA is the competent authority for the purposes of Article 458(1) of Regulation (EU) No 575/2013.³⁵⁸

2) The FMA shall have all powers necessary to perform its duties and may in particular:³⁵⁹

- a) demand from all persons and entities subject to this Act and to the FMA's supervision and from their external audit offices all information and documents necessary for execution of this Act;³⁶⁰
- b) order or carry out extraordinary audits;³⁶¹
- c) issue decisions and decrees for action, cease and desist, and declaration;³⁶²

³⁵⁵ Title preceding Article 35 amended by LGBL 2014 No. 348.

³⁵⁶ Title preceding Article 35 amended by LGBL 2014 No. 348.

³⁵⁷ Article 35(1) amended by LGBL 2017 No. 397.

³⁵⁸ Article 35(1a) inserted by LGBL 2014 No. 348.

³⁵⁹ Article 35(2) introductory phrase amended by LGBL 2007 No. 261.

³⁶⁰ Article 35(2)(a) amended by LGBL 2007 No. 261.

³⁶¹ Article 35(2)(b) amended by LGBL 2007 No. 261.

- d) make public announcements and in particular publish final decisions and decrees;³⁶³
- e) impose temporary prohibitions to practice a profession;³⁶⁴
- f) request the Office of the Public Prosecutor to apply for measures for securing the forfeiture of assets in accordance with the Code of Criminal Procedure;³⁶⁵
- g) in justified exceptional cases, prohibit the bank or investment firm from making disbursements, receiving payments, or executing transactions with financial instruments.³⁶⁶
- h) require the following legal or natural persons to provide all information that is necessary in order to carry out the tasks of the FMA, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:³⁶⁷
 - 1. banks or investment firms established in Liechtenstein;
 - 2. financial holding companies established in Liechtenstein;
 - 3. mixed financial holding companies established in Liechtenstein;
 - 4. mixed-activity holding companies established in Liechtenstein;
 - 5. persons belonging to the entities referred to in points 1 to 4;
 - 6. third parties to whom the entities referred to in points 1 to 4 have outsourced operational functions or activities;
- i) conduct all necessary investigations of any person referred to in subparagraph (h) established or located in Liechtenstein, including:³⁶⁸
 - 1. the right to require the submission of documents;
 - 2. examining the books and records of the persons referred to in subparagraph (h) and taking copies or extracts from such books and records;
 - 3. obtaining written or oral explanations from any person referred to in subparagraph (h) or their representatives or staff; and
 - 4. interviewing any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of the investigation;

³⁶² Article 35(2)(c) amended by LGBL 2007 No. 261.

³⁶³ Article 35(2)(d) amended by LGBL 2017 No. 397.

³⁶⁴ Article 35(2)(e) amended by LGBL 2007 No. 261.

³⁶⁵ Article 35(2)(f) amended by LGBL 2016 No. 161.

³⁶⁶ Article 35(2)(g) inserted by LGBL 2009 No. 188.

³⁶⁷ Article 35(2)(h) inserted by LGBL 2014 No. 348.

³⁶⁸ Article 35(i) inserted by LGBL 2014 No. 348.

- k) subject to other conditions set out in EEA law, conduct all necessary on-the-spot inspections of legal persons referred to in subparagraph (h) and any other undertaking included in consolidated supervision where the FMA is the consolidating supervisor, after prior notification of the competent authorities concerned;³⁶⁹
- l) suspend the voting rights of a shareholder until the time at which no benefit would be gained from violations arising from the exercise of voting rights, but at the most up to five years;³⁷⁰
- m) require the provision of information including all relevant documentation from any person regarding the size and purpose of a position or exposure entered into via a commodity derivative, and any assets or liabilities in the underlying market;³⁷¹
- n) request any person to take steps to reduce the size of the position or exposure;³⁷²
- o) limit the ability of any person from entering into a commodity derivative, including by introducing limits on the size of a position any person can hold at all times in accordance with Article 30w;³⁷³
- p) suspend the marketing or sale of financial instruments or structured deposits where the conditions of Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are met;³⁷⁴
- q) suspend the marketing or sale of financial instruments or structured deposits where the bank or investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Article 8b;³⁷⁵
- r) require the removal of a natural person from the management body of a bank, investment firm or market operator;³⁷⁶

³⁶⁹ Article 35(k) inserted by LGBL 2014 No. 348.

³⁷⁰ Article 35(2)(l) amended by LGBL 2017 No. 397.

³⁷¹ Article 35(2)(m) inserted by LGBL 2017 No. 397.

³⁷² Article 35(2)(n) inserted by LGBL 2017 No. 397.

³⁷³ Article 35(2)(o) inserted by LGBL 2017 No. 397.

³⁷⁴ Article 35(2)(p) inserted by LGBL 2017 No. 397.

³⁷⁵ Article 35(2)(q) inserted by LGBL 2017 No. 397.

³⁷⁶ Article 35(2)(r) inserted by LGBL 2017 No. 397.

- s) impose a temporary ban on a bank or investment firm from being a member, client or participant in a regulated market, a multilateral trading facility or an organised trading facility;³⁷⁷
- t) demand existing recordings of telephone conversations or electronic communications or other data traffic records held by a bank, investment firm, or financial institution;³⁷⁸
- u) require the suspension of trading in a financial instrument;³⁷⁹
- v) require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements.³⁸⁰

The associated costs shall be borne by the persons concerned in accordance with Article 26(5) of the FMA Act.³⁸¹

3) The FMA shall in particular be responsible for:³⁸²

- a) the granting and withdrawal of licences;³⁸³
- b) approving the articles of association and the regulations of the banks and investment firms and amendments thereto;³⁸⁴
- c) verifying audit reports;³⁸⁵
- d) granting licences to representative offices;³⁸⁶
- e) punishing contraventions under Article 63a.³⁸⁷

4) If the FMA learns of violations of this Act, Regulation (EU) No 575/2013 or other deficits, it shall issue the decrees necessary to bring about a proper state of affairs and to eliminate the deficits.³⁸⁸

4a) Repealed³⁸⁹

4b) In the exercise of its general duties, the FMA shall duly consider the potential impact of its decisions on the stability of the financial system

³⁷⁷ Article 35(2)(s) inserted by LGBL 2017 No. 397.

³⁷⁸ Article 35(2)(t) inserted by LGBL 2017 No. 397.

³⁷⁹ Article 35(2)(u) inserted by LGBL 2017 No. 397.

³⁸⁰ Article 35(2)(v) inserted by LGBL 2017 No. 397.

³⁸¹ Article 35(2) concluding sentence amended by LGBL 2015 No. 211.

³⁸² Article 35(3) introductory phrase amended by LGBL 2004 No. 176.

³⁸³ Article 35(3)(a) amended by LGBL 2017 No. 397.

³⁸⁴ Article 35(3)(b) amended by LGBL 2007 No. 261.

³⁸⁵ Article 35(3)(c) inserted by LGBL 1998 No. 223.

³⁸⁶ Article 35(3)(d) inserted by LGBL 1998 No. 223.

³⁸⁷ Article 35(3)(e) amended by LGBL 2014 No. 348.

³⁸⁸ Article 35(4) amended by LGBL 2014 No. 348.

³⁸⁹ Article 35(4a) repealed by LGBL 2014 No. 348.

in all other EEA Member States concerned and, in particular in emergency situations, based on the information available at the relevant time.³⁹⁰

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 documents from the persons concerned as if these persons were subject to this Act.³⁹¹

6) The FMA may assign an expert as its observer to a bank or investment firm if the claims of creditors appear endangered by serious deficits. The external audit office appointed under the Banking Act may be entrusted with this responsibility. The costs shall be borne by the bank or investment firm. The observer shall monitor the activities of the governing bodies, in particular the implementation of the measures ordered, and shall report to the FMA on an ongoing basis. The observer shall enjoy the unrestricted right to inspect the business activities and the books and files of the bank or investment firm.³⁹²

7) The FMA shall inform the Government of any general difficulties that Liechtenstein banks and investment firms have with respect to a branch or the provision of services under Article 3 in a third country. The Government shall forward this notification to the EFTA Surveillance Authority.³⁹³

8) The FMA shall keep a publicly accessible register on the banks, investment firms, branches of foreign banks, financial institutions and investment firms, tied agents, and the external audit offices authorised to audit banks, investment firms, and regulated markets. The register shall be updated monthly. It may be accessed via a retrieval procedure.³⁹⁴

9) The FMA shall compile a list containing all parent financial holding companies or parent mixed financial holding companies in EEA Member States that control banks or investment firms for whose supervision on a consolidated basis the FMA is responsible. The list shall be transmitted to the competent authorities of the other EEA Member States, the EFTA Surveillance Authority, and the European Supervisory Authorities.³⁹⁵

³⁹⁰ Article 35(4b) inserted by LGBL 2011 No. 243.

³⁹¹ Article 35(5) inserted by LGBL 1998 No. 223 and amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

³⁹² Article 35(6) amended by LGBL 2007 No. 261.

³⁹³ Article 35(7) amended by LGBL 2007 No. 261.

³⁹⁴ Article 35(8) inserted by LGBL 2007 No. 261.

³⁹⁵ Article 35(9) amended by LGBL 2014 No. 348.

2. Supervisory review and evaluation³⁹⁶

Article 35a³⁹⁷

Review and evaluation of risk management and risk coverage

1) With a frequency and intensity that is commensurate to the importance and business activity of the bank or investment firm, the FMA shall review whether the organisation, capital adequacy, and liquidity ensure sound risk management and solid risk coverage. In this review, consisting of at least one stress test annually and covering all requirements of this Act and of Regulation (EU) No 575/2013, the FMA shall assess the risks:

- a) to which the bank or investment firm is exposed;
- b) that the bank or investment firm poses to the financial system;
- c) revealed by stress testing.

2) Comparable reviews shall be carried out for banks or investment firms with comparable risk profiles. The risk profile shall be determined especially taking into account the systemic risks posed by the bank or investment firm.

3) The review referred to in paragraph 1 shall be carried out at least annually according to the FMA's internal examination programme and shall include banks and investment firms:

- a) whose financial soundness is threatened;
- b) where breaches of the requirements under this Act or of Regulation (EU) No 575/2013 are suspected;
- c) which pose systemic risk to the financial system;
- d) for which the FMA deems it to be necessary on other grounds.

4) The examination programme referred to in paragraph 3 shall not prevent an investigation of branches also by the competent authorities of the host Member State on a case-by-case basis. The examination programme shall be updated annually. The examination programme shall contain information on:

- a) the tasks and resources employed by the FMA;
- b) the scheduled review at the premises, including the branches and subsidiaries in other EEA Member States;

³⁹⁶ Title preceding Article 35a inserted by LGBL 2014 No. 348.

³⁹⁷ Article 35a inserted by LGBL 2014 No. 348.

- c) the content of the examination programme;
 - d) the banks and investment firms which are intended to be subject to enhanced supervision;
 - e) the measures serving to implement enhanced supervision, especially:
 - 1. increased frequency of on-the-spot supervisory activities;
 - 2. permanent presence of the FMA or of a party mandated by the FMA;
 - 3. additional reporting obligations;
 - 4. review of programmes of operations; or
 - 5. thematic examinations monitoring specific areas of risk.
- 5) The FMA shall inform the European Supervisory Authorities:
- a) without delay when a bank or investment firm poses systemic risk;
 - b) about the application of comparable review procedures due to comparable risk profiles according to paragraph 2;
 - c) regularly about the functioning of the reviews referred to in paragraph 1 and the stress tests building on or supplementing these reviews, reviews of internal approaches in accordance with Article 35b, measures ordered in accordance with Article 35(4), the exercise of supervisory powers in accordance with Article 35c, and specific liquidity requirements in accordance with Article 35d.
- 6) The Government shall provide further details by ordinance, in particular regarding:
- a) the risks to be included in the review referred to in paragraph 1;
 - b) whether and to what extent the FMA's responsibilities may be delegated to other bodies;
 - c) which banks and investment firms are to be subject to a limited scope of review in light of the principle of proportionality.

Article 35b³⁹⁸

Ongoing review of internal models

- 1) The FMA shall review on a regular basis, and at least every three years whether:
- a) taking into account new business activities and products, the bank or investment firm complies with the conditions for the use of internal

³⁹⁸ Article 35b inserted by LGBL 2014 No. 348.

models for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013; and

b) these models are based on well developed and up-to-date methods.

2) If the FMA identifies material deficiencies in risk capture, the FMA shall rectify them or take appropriate steps, especially by requiring higher multiplication factors or imposing capital add-ons.

3) If the FMA identifies numerous overshootings for an internal risk model as referred to in Article 366 of Regulation (EU) No 575/2013 indicating a lack of precision in the model, the FMA shall:

a) issue a decree specifying how the model shall be improved promptly; or

b) revoke the permission for using the internal model.

4) If prior permission has been given to use the internal model, the FMA shall require:

a) proof that the effect of non-compliance is immaterial to the conditions under this Act or Regulation (EU) No 575/2013; or

b) submission of a plan to restore the lawful state of affairs by a deadline fixed by the FMA.

5) If the bank or investment firm is unable to restore compliance with the conditions under this Act and Regulation (EU) No 575/2013 within an appropriate deadline and has failed to demonstrate that the effect of non-compliance is immaterial:

a) the permission to use the approach shall be revoked; or

b) the permission shall be limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

6) When reviewing the internal approaches, the FMA shall take into account the benchmarks established by the European Supervisory Authorities.

7) The Government shall specify further details by ordinance. In particular, it may determine:

a) whether and to what extent the FMA's responsibilities may be delegated to other bodies;

b) that the bank or investment firm shall bear the costs for the delegation referred to in subparagraph (a);

c) what requirements the internal approaches and the review thereof by the FMA must fulfil.

3. Measures to ensure own funds and solvency³⁹⁹

Article 35c⁴⁰⁰

Supervisory powers

1) In the case of violations of the provisions of this Act or of Regulation (EU) No 575/2013 or on the basis of the results of the review and evaluation of risk management and risk coverage in accordance with Article 35a or of an internal model in accordance with Article 35b, the FMA is authorised to require the following of a bank or investment firm:

- a) to hold own funds relating to risks not covered by the capital buffer provisions set out in Articles 4a to 4d or the own funds and liquidity requirements of Regulation (EU) No 575/2013;
- b) to reinforce the risk management procedure referred to in Article 7a;
- c) to present and execute a plan to restore the lawful state of affairs by a deadline fixed by the FMA;
- d) to apply a specific provisioning policy or treatment of assets;
- e) to limit or divest from business activities that threaten the soundness of the bank or investment firm;
- f) to reduce the risk inherent in the activities, products, and systems of the bank or investment firm;
- g) to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;
- h) to use net profits to strengthen own funds;
- i) to restrict or prohibit distributions or interest payments to members or holders of Additional Tier 1 instruments; but the restriction or prohibition may not constitute an event of default of the bank or investment firm;
- k) additional notification and reporting requirements, especially on capital and liquidity positions;
- l) specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- m) the transmission of additional disclosures.

2) The FMA shall in any event impose the additional own funds requirements referred to in paragraph 1(a) on the bank or investment firm in the following cases:

³⁹⁹ Title preceding Article 35c inserted by LGBL 2014 No. 348.

⁴⁰⁰ Article 35c inserted by LGBL 2014 No. 348.

- a) failure to meet the risk management requirements under Article 7a or the requirements governing large exposures set out in Article 393 of Regulation (EU) No 575/2013;
- b) insufficient coverage of risks by capital buffers under Articles 4a to 4d or by the own funds requirements set out in Regulation (EU) No 575/2013;
- c) other measures of the FMA are unlikely to improve the risk organisation within an appropriate timeframe;
- d) own funds requirements are likely to be insufficient as a consequence of application of an internal approach in accordance with Article 35b;
- e) the risks are likely to be underestimated despite compliance with the requirements of this Act and of Regulation (EU) No 575/2013; or
- f) communication by the bank or investment firm that stress test results materially exceed its own funds requirement for the correlation trading portfolio.

3) When reviewing the appropriate level of own funds, including all risks to which a bank or investment firm is or might be exposed, the FMA shall take into account the following:

- a) the quantitative and qualitative aspects of an institution's assessment process referred to in Article 7a(3);
- b) the risk management procedure referred to in Article 7a(2);
- c) the outcome of the review and evaluation carried out in accordance with Article 35a or 35b;
- d) the systemic risk.

Article 35d⁴⁰¹

Specific liquidity requirements

The FMA may set specific liquidity requirements for a bank or investment firm where necessary to capture liquidity risks to which a bank or investment firm is or might be exposed. When assessing the necessity of specific liquidity requirements, the FMA shall take into account the following:

- a) the business model of the bank or investment firm;
- b) risk management, specifically taking into account the liquidity risks;

⁴⁰¹ Article 35d inserted by LGBl. 2014 No. 348.

- c) the outcome of the review and evaluation carried out in accordance with Article 35a;
- d) systemic risk for the liquidity of the Liechtenstein financial market.

Article 35e⁴⁰²

Specific publication requirements

- 1) The FMA may require banks and investment firms:
 - a) to publish, more than once a year by a deadline fixed by the FMA, the information on risk management, capital adequacy and liquidity, and material risk factors that must be disclosed under Part Eight of Regulation (EU) No 575/2013;
 - b) to publish information other than the business report in a manner approved by the FMA.
- 2) The FMA may require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions in accordance with Articles 7a(2), 7c(2), and 20(2) to (4).

Article 36⁴⁰³

Repealed

4. Publication requirements for the FMA⁴⁰⁴

Article 36a⁴⁰⁵

General provisions⁴⁰⁶

- 1) The FMA shall publish the following information:

⁴⁰² Article 35e inserted by LGBL 2014 No. 348.

⁴⁰³ Article 36 repealed by LGBL 2014 No. 348.

⁴⁰⁴ Title preceding Article 36a inserted by LGBL 2014 No. 348.

⁴⁰⁵ Article 36a amended by LGBL 2007 No. 261.

⁴⁰⁶ Article 36a heading amended by LGBL 2014 No. 348.

- a) the texts of laws, regulations, administrative rules and general guidance adopted in Liechtenstein in the field of prudential regulation;
- b) the manner of exercise of the options and discretions available in EEA law;
- c) the general criteria and methodologies of the supervisory review procedure; and⁴⁰⁷
- d) aggregate statistical data on key aspects of the implementation of the prudential framework in each EEA Member State, including the number and nature of supervisory measures taken in accordance with Article 35(4) and of penalties imposed in accordance with Articles 63 and of sanctions imposed in accordance with Articles 63 and 63a.⁴⁰⁸

2) The information supplied in accordance with paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the various competent authorities of the EEA Member States.

Article 36b⁴⁰⁹

Securitisation positions and consolidated undertakings

1) With regard to securitisation positions (transfer of credit risk) in accordance with Part Five of Regulation (EU) No 575/2013, the FMA shall publish:

- a) the general criteria and methodologies for the review of compliance with the provisions governing investor institutions, sponsors, and originator institutions when transferring credit risks in accordance with Articles 405 to 409 of Regulation (EU) No 575/2013; and
- b) an annual report on the outcome of the review and measures of the FMA where provisions referred to in subparagraph (a) are violated, subject to the reporting obligations set out in Article 30h(1), (2), (4), and (6), Article 30r, and Article 33.

2) If the FMA permits a bank or investment firm not to apply the own funds requirements on an individual basis in accordance with Article 7(3) of Regulation (EU) No 575/2013, it shall publish the following information:

⁴⁰⁷ Article 36a(1)(c) amended by LGBL 2014 No. 348.

⁴⁰⁸ Article 36a(1)(d) amended by LGBL 2014 No. 348.

⁴⁰⁹ Article 36b inserted by LGBL 2014 No. 348.

- a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
 - b) the number of parent banks and parent investment firms which benefit from the exercise of discretion, with an indication of how many of those banks and investment firms incorporate subsidiaries in a third country in the calculation of their own funds; and
 - c) on an aggregate basis for Liechtenstein:
 - 1. the total amount of own funds on the consolidated basis of the parent bank in an EEA Member State or of the parent investment firm in an EEA Member State which benefits from the exercise of discretion, which are held in subsidiaries in a third country;
 - 2. the percentage of total own funds on the consolidated basis of parent banks in an EEA Member State or of parent investment firms in an EEA Member State, which benefits from the exercise of discretion, represented by own funds which are held in subsidiaries in a third country; and
 - 3. the percentage of total own funds required under Article 92 of Regulation (EU) No 575/2013 on the consolidated basis of parent banks in an EEA Member State or of parent investment firms in an EEA Member State, which benefits from the exercise of discretion, represented by own funds which are held in subsidiaries in a third country.
- 3) If the FMA permits a bank or investment firm to incorporate subsidiaries on an individual basis in accordance with Article 9(1) of Regulation (EU) No 575/2013, it shall publish the following information:
- a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
 - b) the number of parent banks and parent investment firms which benefit from the exercise of discretion, and the number of such parent banks and parent investment firms which incorporate subsidiaries in a third country in the calculation of their own funds;
 - c) on an aggregate basis for Liechtenstein:
 - 1. the total amount of own funds of parent banks or parent investment firms which benefit from the exercise of discretion which are held in subsidiaries in third countries;

2. the percentage of total own funds of parent banks or parent investment firms which benefit from the exercise of discretion represented by own funds which are held in subsidiaries in a third country;
3. the percentage of total own funds required under Article 92 of Regulation (EU) No 575/2013 of parent banks or parent investment firms which benefit from the exercise of discretion represented by own funds which are held in subsidiaries in a third country.

C. External audit offices⁴¹⁰

Article 37

Recognition

1) External audit offices and audit associations that audit banks and investment firms require a licence issued by the FMA for such activities.⁴¹¹

2) The licence shall be granted to external audit offices if:⁴¹²

- a) their senior management, lead auditors, and organisation guarantee that they perform the audit mandates continuously and properly;
- b) they are organised as limited companies and dispose of adequate share capital; and
- c) they and the lead auditors hold a licence under the Auditors and Auditing Companies Act.⁴¹³

3) The external audit offices shall dedicate themselves exclusively to audit activities and immediately related transactions such as inspections, liquidations, and reorganisations. They may not engage in banking transactions, investment services, or asset management.⁴¹⁴

4) The external audit offices must be independent of the banks and investment firms to be audited.⁴¹⁵

⁴¹⁰ Title preceding Article 37 amended by LGBL 2014 No. 348.

⁴¹¹ Article 37(1) amended by LGBL 2007 No. 261.

⁴¹² Article 37(2) amended by LGBL 2011 No. 8.

⁴¹³ Article 37(2)(c) amended by LGBL 2016 No. 223.

⁴¹⁴ Article 37(3) amended by LGBL 2007 No. 261.

⁴¹⁵ Article 37(4) amended by LGBL 2007 No. 261.

5) The external audit office must maintain secrecy concerning all facts it has learned about in the course of the audit, except vis-à-vis the competent governing bodies of the bank or investment firm audited and the FMA.⁴¹⁶

6) The Government shall provide further details by ordinance.⁴¹⁷

Article 38

*Responsibilities and audit report*⁴¹⁸

1) The external audit offices shall verify whether:

- a) the business activities of the bank or investment firm conform to the law, the articles of association, and the regulations,⁴¹⁹
- b) the preconditions for granting the licence are continuously met, and⁴²⁰
- c) the form and content of the business report and the consolidated business report conform to the requirements of the law, articles of association, and regulations.⁴²¹

1a) If the FMA mandates the external audit office to review and evaluate risk management and risk coverage in accordance with Article 35a, the external audit office may waive the need to review and evaluate the same content again as part of the preparation of the audit report in the same business year. The audit report shall include a corresponding reference to the review and evaluation conducted in accordance with Article 35a.⁴²²

2) The external audit office shall summarise the results of the audits under paragraph 1 in a written audit report. The audit report shall be signed by the lead auditor and by the external audit office.⁴²³

3) The audit report shall be submitted simultaneously to the board of directors of the bank or investment firm, to the external audit office appointed under the Law on Persons and Companies, and to the FMA.⁴²⁴

⁴¹⁶ Article 37(5) amended by LGBL 2007 No. 261.

⁴¹⁷ Article 37(6) inserted by LGBL 1998 No. 223.

⁴¹⁸ Article 38 heading amended by LGBL 1998 No. 223.

⁴¹⁹ Article 38(1)(a) amended by LGBL 2007 No. 261.

⁴²⁰ Article 38(1)(b) amended by LGBL 1998 No. 223.

⁴²¹ Article 38(1)(c) amended by LGBL 1998 No. 223.

⁴²² Article 38(1a) inserted by LGBL 2017 No. 397.

⁴²³ Article 38(2) amended by LGBL 2014 No. 348.

⁴²⁴ Article 38(3)(b) amended by LGBL 2007 No. 261.

4) The Government shall set out the further main features of the audit of banks and investment firms by ordinance. The FMA shall set out details in a guideline.⁴²⁵

Article 39

Grievances

1) If the external audit office finds violations of legal provisions or other deficits, it shall impose an appropriate deadline on the bank or investment firm to bring about a lawful state of affairs. If the deadline is not met, the external audit office shall report to the FMA.⁴²⁶

2) The external audit office shall notify the FMA immediately if the imposition of a deadline appears useless, if it finds that the senior management has committed offences, or if other serious deficits exist that conflict with the purpose of this Act (Article 1).⁴²⁷

3) Notwithstanding paragraph 1, a duty to report within the meaning of paragraph 2 shall subsist:⁴²⁸

- a) in the case of serious violations of the licensing conditions by the senior management and of the rules applicable to the performance of activities;
- b) in the case of facts or decisions that might adversely affect the continuation of the activities of the bank or investment firm;
- c) in the case of facts or decisions that might lead to a rejection of the business report or the consolidated business report or to qualifications in the audit report.

4) A duty to report shall also subsist where, in the course of its audit activities, the external audit office makes determinations in accordance with paragraph 3 with respect to undertakings closely linked with the bank or investment firm subject to the audit.⁴²⁹

5) External audit offices bringing facts or decisions to the attention of the FMA in good faith shall not thereby be deemed in breach of any contractual or legal restrictions on passing on information. Meeting the information requirement in this sense does not entail any adverse consequences for the external audit office or person passing on the

⁴²⁵ Article 38(4) amended by LGBL 2014 No. 348.

⁴²⁶ Article 39(1) amended by LGBL 2007 No. 261.

⁴²⁷ Article 39(2) amended by LGBL 1998 No. 223 and LGBL 2004 No. 176.

⁴²⁸ Article 39(3) amended by LGBL 2014 No. 348.

⁴²⁹ Article 39(4) amended by LGBL 2007 No. 261.

information. Provided there are no compelling reasons not to do so, the facts and decisions shall also be brought to the attention of the board of directors of the bank or investment firm.⁴³⁰

Article 39a⁴³¹

Supervision of external audit offices

When supervising external audit offices, the FMA may in particular carry out quality controls and accompany the external audit offices in their audit work at banks and investment firms.

Article 40

Audit costs

1) The banks and investment firms shall bear the costs of the audit. The costs of the audit shall be calculated according to the rate schedule issued by the Government by ordinance.⁴³²

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

D. Court of Justice⁴³³

Article 41

Criminal jurisdiction

The Court of Justice shall have criminal jurisdiction with respect to the misdemeanours set out in Article 63(1) and (2).

⁴³⁰ Article 39(5) amended by LGBL 2014 No. 348.

⁴³¹ Article 39a inserted by LGBL 2011 No. 8.

⁴³² Article 40(1) amended by LGBL 2007 No. 261.

⁴³³ Title preceding Article 41 amended by LGBL 2014 No. 348.

E. Supervision on a consolidated basis within the framework of the EEA Agreement⁴³⁴

1. General provisions⁴³⁵

Article 41a

*Principles*⁴³⁶

1) Any bank or investment firm which has a bank or investment firm as a subsidiary or which has a holding in a bank or investment firm shall be subject to supervision of the consolidated financial situation in accordance with the provisions of this Section.⁴³⁷

2) Any bank or investment firm whose parent undertaking is a financial holding company or a mixed financial holding company shall be subject to supervision of the consolidated financial situation of the parent undertaking in accordance with the provisions of this Section.⁴³⁸

3) The inclusion of a bank, investment firm, or ancillary services undertaking as referred to in Article 4(1)(18) of Regulation (EU) No 575/2013 in the consolidation may be dispensed with if the undertaking to be included is of minor importance with respect to the consolidation.⁴³⁹

4) If the bank or investment firm is a parent undertaking, the FMA may exempt the bank or investment firm from the own funds consolidation as long as the bank or investment firm is itself a subsidiary of a parent undertaking and is in turn subject to adequate supervision.⁴⁴⁰

5) For all undertakings included in the consolidation under paragraphs 1 and 2, adequate internal control mechanisms must be provided that are relevant for the purposes of consolidated supervision.⁴⁴¹

6) Subsidiaries of a bank, investment firm, financial holding company, or mixed financial holding company that are not included in the supervision on a consolidated basis shall, upon request by the FMA,

⁴³⁴ Title preceding Article 41a amended by LGBL 2014 No. 348.

⁴³⁵ Title preceding Article 41a inserted by LGBL 2007 No. 261.

⁴³⁶ Article 41a heading inserted by LGBL 1998 No. 223.

⁴³⁷ Article 41a(1) amended by LGBL 2007 No. 261.

⁴³⁸ Article 41a(2) amended by LGBL 2014 No. 348.

⁴³⁹ Article 41a(3) amended by LGBL 2014 No. 348.

⁴⁴⁰ Article 41a(4) amended by LGBL 2007 No. 261.

⁴⁴¹ Article 41a(5) inserted by LGBL 1998 No. 223.

provide the FMA with all information that is relevant to supervision. The procedure set out in Article 41k shall apply in this regard.⁴⁴²

7) Repealed⁴⁴³

2. Competence⁴⁴⁴

Article 41b⁴⁴⁵

Competence arising from the grant of a licence

1) If the FMA has granted a licence to a parent bank in an EEA Member State or a parent investment firm in an EEA Member State or an EEA parent bank or an EEA parent investment firm, then the FMA shall be responsible for supervision on a consolidated basis.

2) If the FMA has granted a licence to a bank or investment firm whose parent undertaking is a parent financial holding company or a parent mixed financial holding company in an EEA Member State or an EEA parent financial holding company or EEA parent mixed financial holding company, then the FMA shall be responsible for supervision on a consolidated basis.

Article 41c⁴⁴⁶

Competence in connection with financial holding companies

1) Where banks or investment firms licensed in Liechtenstein and other EEA Member States have as their parent undertaking the same parent financial holding company, the same parent mixed financial holding company in an EEA Member State, the same EEA parent financial holding company, or the same EEA parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the FMA, provided the financial holding company or mixed financial holding company is situated in Liechtenstein.

2) Where the parent undertakings of banks or investment firms licensed in Liechtenstein and other EEA Member States comprise more than one

⁴⁴² Article 41a(6) amended by LGBL 2014 No. 348.

⁴⁴³ Article 41a(7) repealed by LGBL 2014 No. 348.

⁴⁴⁴ Title preceding Article 41b inserted by LGBL 2007 No. 261.

⁴⁴⁵ Article 41b amended by LGBL 2014 No. 348.

⁴⁴⁶ Article 41c amended by LGBL 2014 No. 348.

financial holding company or mixed financial holding company situated in different EEA Member States and there is a bank or investment firm in each of those EEA Member States, supervision on a consolidated basis shall be exercised by the FMA, provided that the FMA exercises supervision over the bank or investment firm with the largest balance sheet total.

3) Where more than one bank or investment firm licensed in the EEA has as its parent the same financial holding company or mixed financial holding company and none of the banks or investment firms has been licensed in the country in which the financial holding company or mixed financial holding company was set up, supervision on a consolidated basis shall be exercised by the FMA, provided that the FMA has licensed the bank or investment firm with the largest balance sheet total. This bank or investment firm shall be considered, for the purposes of this Act, as the bank or investment firm controlled by an EEA parent financial holding company or EEA parent mixed financial holding company.

4) In particular cases, the FMA may by common agreement with the competent authorities of the other EEA Member States waive the criteria referred to in paragraphs 1 to 3 if their application would be inappropriate, taking into account the banks and investment firms and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. The EEA parent bank, the EEA parent investment firm, the EEA parent financial holding company, the EEA parent mixed financial holding company, or the bank or investment firm with the largest balance sheet total shall be given an opportunity to state its opinion prior to that decision.

5) The FMA shall notify the EFTA Surveillance Authority and the European Supervisory Authorities of any agreement falling within paragraph 4.

Article 41d⁴⁴⁷

Scope of consolidation in special cases

1) If a financial holding company or mixed financial holding company under the supervision of the FMA consolidates its financial situation, the FMA is not required to supervise it on an individual basis as well.

⁴⁴⁷ Article 41d amended by LGBL 2014 No. 348.

2) When the competent authorities of another EEA Member State do not include a bank or investment firm subsidiary in supervision on a consolidated basis under one of the cases provided for in Article 19 of Regulation (EU) No 575/2013, the FMA may, provided that it exercises supervision over that subsidiary, ask the parent undertaking for information which may facilitate its supervision of that subsidiary.

3) The FMA may demand the information referred to in Article 41k from the subsidiaries of a bank or investment firm, financial holding company, or mixed financial holding company that are not included in supervision on a consolidated basis. The procedures set out in Article 41k for transmission and verification of the information shall apply.

3. Special tasks and emergency situations⁴⁴⁸

Article 41e⁴⁴⁹

Special tasks of the FMA as the consolidating supervisor

1) The FMA as the consolidating supervisor shall furthermore carry out the following tasks:

- a) coordination of the gathering and dissemination of relevant or essential information in going-concern and emergency situations;
- b) planning and coordination of consolidated supervision in going-concern situations, in close cooperation with the competent authorities of other EEA Member States and the European Supervisory Authorities;
- c) in emergency situations, in addition to planning and coordination of consolidated supervision as referred to in subparagraph (b), it shall be responsible for communication for the purpose of crisis management; in particular, its tasks shall include imposing significant penalties and ordering exceptional measures as referred to in Article 41h(4)(d) and (6), the preparation of joint assessments, the implementation of contingency plans, and communication to the public.

2) As the consolidating supervisor, the FMA shall do everything within its power to reach a joint decision with the competent authorities of other EEA Member States responsible for the supervision of subsidiaries:

⁴⁴⁸ Title preceding Article 41e inserted by LGBL 2007 No. 261.

⁴⁴⁹ Article 41e amended by LGBL 2014 No. 348.

a) on the application of Article 7a(3) and (4) and Article 35a to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 35c(1)(a) to each entity within the group of institutions and on a consolidated basis;

b) on measures referred to in Article 35d relating to liquidity supervision, taking into account the requirements governing organisation, risk treatment, and the liquidity profile of the group.

3) The joint decision pursuant to paragraph 2 shall, to an appropriate extent, take into account the risk assessment in accordance with Article 7a(3) and (4) as well as Article 35a in relation to subsidiaries and shall be reached:

a) in the case of paragraph 2(a) within four months after submission by the FMA of a report on the risks of the group in accordance with Article 7a(3) and (4), Articles 35a, and Articles 35c(1)(a) to the other relevant competent authorities of other EEA Member States;

b) in the case of paragraph 2(b) within one month after submission by the FMA of a report on the liquidity risk profile of the group to the other relevant competent authorities of other EEA Member States.

4) The FMA shall provide the joint decision pursuant to paragraph 2, including the reasons, to the EEA parent bank or EEA parent investment firm and the supervisory authorities concerned. The reasons shall include the full risk assessment carried out by the FMA and the other competent authorities, in addition to the views and reservations expressed.

5) In the event of disagreement, the FMA as the consolidating supervisor shall inform the European Supervisory Authorities on its own initiative or at the request of another supervisory authority. In that case, or in the case of a notification of the authorities responsible for supervision on an individual basis in accordance with Article 41e^{bis}(3), the FMA shall defer its decision and await any decision that the European Supervisory Authorities may take.

6) If no joint decision is reached within the periods set out in paragraph 3, the FMA as the consolidating supervisor shall decide on its own on application of Article 7a(3) and (4), Article 35a(1), (4), and (5)(a), Article 35c(1)(a), and Article 35d, but duly taking into account the risk assessment of the subsidiary carried out by the relevant competent authorities.

7) The decisions and measures of the FMA shall be based on the joint decisions in accordance with paragraph 2 and the decisions of the

authorities responsible for supervision on an individual basis in accordance with Article 41e^{bis}(1).

8) Decisions taken in accordance with paragraphs 2 and 6 shall in principle be updated annually. The FMA shall also update the decision on application of Article 35c(1)(a) and Article 35d if the authorities of other EEA Member States responsible for supervision on an individual basis request an update in writing with reasons from the FMA as the consolidating supervisor. The frequency and scope of the update shall be arranged between the FMA and the competent authorities of other EEA Member States.

Article 41e^{bis}⁴⁵⁰

Special tasks of the FMA as the authority responsible for supervision on an individual basis

1) If the FMA is responsible for the supervision of an EEA parent bank or an EEA parent financial holding company or an EEA parent mixed financial holding company on an individual or sub-consolidated basis, it shall take into account the views and reservations of the consolidating supervisor when deciding on the application of Article 7a(3) and (4), Article 35a(1), (4), and (5)(a), Article 35c(1)(a), and Article 35d. The decision shall be updated annually. The consolidating supervisor and the FMA may agree on a different updating arrangement.

2) The FMA shall base its decisions and measures on the joint decisions in accordance with Article 41e(2) and the decisions of the consolidating supervisor in accordance with Article 41e(6).

3) If the consolidating supervisor and the competent authorities of other EEA Member States do not cooperate with the FMA to the necessary extent, the FMA may request the assistance of the European Supervisory Authorities.

⁴⁵⁰ Article 41e^{bis} inserted by LGBL 2014 No. 348.

Article 41f⁴⁵¹*Emergency situations*

Where an emergency situation or a situation of adverse developments in financial markets arises which potentially jeopardises the market liquidity and the stability of the financial system in any of the EEA Member States where entities of the group have been licensed or where significant branches referred to in Article 30m are established, the FMA shall, to the extent it is responsible for supervision on a consolidated basis in accordance with Article 41b, 41c, or 41e(1), notify as soon as practicable the European Supervisory Authorities and the Swiss National Bank, when the information is relevant for the exercise of their respective statutory tasks, and shall communicate all information necessary for the pursuance of their tasks. Where possible, the FMA shall use existing channels of communication.

4. Coordination and cooperation rules⁴⁵²Article 41g⁴⁵³*Arrangements*

1) In order to facilitate and establish effective supervision, the FMA and the other competent authorities of the EEA Member States responsible for supervision on a consolidated basis shall have written coordination and cooperation arrangements in place.

2) Under these arrangements, additional tasks may be entrusted to the competent authority responsible for supervision on a consolidated basis, and procedures for the decision-making process and for cooperation with other competent authorities may be specified.

3) Where the FMA is responsible for licensing a subsidiary of a parent undertaking which is a bank or investment firm, it may, by bilateral agreement, delegate its responsibility for supervision to the competent authorities which licensed and supervise the parent undertaking so that they may assume responsibility for supervising the subsidiary. The EFTA

451 Article 41f amended by LGBL 2014 No. 348.

452 Title preceding Article 41g inserted by LGBL 2007 No. 261.

453 Article 41g inserted by LGBL 2007 No. 261.

Surveillance Authority and the European Supervisory Authorities shall be informed of the existence and the content of such agreements.⁴⁵⁴

Article 41h

*Cooperation*⁴⁵⁵

1) The FMA shall cooperate closely with the competent authorities of other EEA Member States and the European Supervisory Authorities. The FMA shall transmit upon request all relevant information and shall communicate at its own initiative all essential information that is necessary for the exercise of the functions delegated to them under Directives 2013/36/EU and 2014/65/EU as well as Regulations (EU) No 575/2013 and (EU) No 600/2014.⁴⁵⁶

2) Information referred to in paragraph 1 shall be regarded as essential if it could materially influence the assessment of the financial soundness of a bank, investment firm, or financial institution in another EEA Member State.⁴⁵⁷

3) In particular, the FMA shall, provided it is responsible for consolidated supervision of EEA parent banks or EEA parent investment firms or of banks or investment firms controlled by EEA parent financial holding companies or by EEA parent mixed financial holding companies, provide the competent authorities in other EEA Member States who supervise subsidiaries of these parents with all relevant information. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those EEA Member States shall be taken into account.⁴⁵⁸

4) The essential information referred to in paragraph 1 shall include, in particular, the following items:⁴⁵⁹

- a) identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Article 7a(2) and (6), Article 7c(2), and Article 20(2) to

⁴⁵⁴ Article 41g(3) amended by LGBL 2014 No. 348.

⁴⁵⁵ Article 41h heading inserted by LGBL 2007 No. 261.

⁴⁵⁶ Article 41h(1) amended by LGBL 2017 No. 397.

⁴⁵⁷ Article 41h(2) inserted by LGBL 2007 No. 261.

⁴⁵⁸ Article 41h(3) amended by LGBL 2014 No. 348.

⁴⁵⁹ Article 41h(4) inserted by LGBL 2007 No. 261.

(4), and of the competent authorities of the regulated entities in the group;⁴⁶⁰

- b) procedures for the collection of information from the banks or investment firms in a group, and the verification of that information;
- c) adverse developments in banks or investment firms or in other entities of a group, which could seriously affect the banks or investment firms; and
- d) significant penalties or exceptional measures taken by the FMA on the basis of this Act, especially the imposition of a specific own funds requirement under Article 35c(1)(a) and the imposition of any limitation on the use of the Advanced Measurement Approaches for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.⁴⁶¹

5) Where the FMA is responsible for supervision of a bank or investment firm controlled by an EEA parent bank or an EEA parent investment firm, it shall whenever possible contact the competent authority responsible for supervision on a consolidated basis when it needs information regarding the implementation of approaches and methodologies that may be available to that competent authority.⁴⁶²

6) The FMA shall, prior to its decision, consult the other competent authorities of EEA Member States with regard to the following items, where these decisions are of importance for the supervisory tasks of another competent authority:⁴⁶³

- a) changes in the shareholder, organisational, or management structure of the banks or investment firms in a group, which require the approval or licensing of competent authorities; and
- b) significant penalties or exceptional measures, especially the imposition of a specific own funds requirement under Article 35c and the imposition of any limitation on the use of the Advanced Measurement Approaches for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.

7) For the purposes of paragraph 6(b), the competent authority responsible for supervision on a consolidated basis shall always be consulted. However, the FMA may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the

⁴⁶⁰ Article 41h(4)(a) amended by LGBL 2014 No. 348.

⁴⁶¹ Article 41h(4)(d) amended by LGBL 2014 No. 348.

⁴⁶² Article 41h(5) inserted by LGBL 2007 No. 261.

⁴⁶³ Article 41h(6) amended by LGBL 2014 No. 348.

decision. In this case, the FMA shall, without delay, inform the other competent authorities.⁴⁶⁴

8) Where the FMA is responsible for supervision on a consolidated basis, it shall establish colleges of supervisors to facilitate the exercise of the special tasks and emergency situations referred to in Articles 41e and 41f and, where applicable and subject to the confidentiality requirements of paragraph 12, ensure appropriate coordination and cooperation with relevant third-country competent authorities.⁴⁶⁵

9) Colleges of supervisors shall provide a framework for the FMA, the European Supervisory Authorities, and the other competent authorities concerned to carry out the following tasks:^{466 467}

- a) exchanging information;
- b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;
- c) determining supervisory examination programmes based on a risk assessment of the group in accordance with Article 35a;⁴⁶⁸
- d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in paragraph 5 and Article 41f;⁴⁶⁹
- e) uniformly applying the supervisory requirements across all entities within the group, subject to the options and discretions available in EEA law;⁴⁷⁰
- f) planning and coordinating supervisory activities during the preparation of and in emergency situations referred to in Article 41e(1)(c), taking into account the work of other forums that may be established in that area.

10) The FMA shall cooperate closely with the European Supervisory Authorities and the other competent authorities participating in the colleges of supervisors. The confidentiality requirement under Article 31a shall not prevent the exchange of confidential information within colleges of supervisors. The establishment and functioning of colleges of

⁴⁶⁴ Article 41h(7) inserted by LGBL 2007 No. 261.

⁴⁶⁵ Article 41h(8) amended by LGBL 2014 No. 348.

⁴⁶⁶ Article 41h(9) inserted by LGBL 2011 No. 243.

⁴⁶⁷ Article 41h(9) introductory phrase amended by LGBL 2014 No. 348.

⁴⁶⁸ Article 41h(9)(c) amended by LGBL 2014 No. 348.

⁴⁶⁹ Article 41h(9)(d) amended by LGBL 2014 No. 348.

⁴⁷⁰ Article 41h(9)(e) amended by LGBL 2014 No. 348.

supervisors shall not affect the rights and responsibilities of the FMA under this Act.⁴⁷¹

11) After consulting with the competent authorities concerned, the FMA shall define written coordination arrangements in accordance with Article 41g regarding the establishment and functioning of the colleges.⁴⁷²

12) The following may participate in the FMA's colleges of supervisors: the competent authorities responsible for the supervision of subsidiaries of an EEA parent bank, an EEA parent investment firm, an EEA parent financial holding company, or an EEA parent mixed financial holding company, the competent authorities of a host country where significant branches as referred to in Article 30m are established, and, as appropriate, central banks and third-country competent authorities subject to confidentiality requirements that are equivalent, in the opinion of all the competent authorities, to Article 31a.⁴⁷³

13) Where the FMA is responsible for supervision on a consolidated basis, the FMA shall chair the meetings of the college of supervisors and decide which competent authorities participate in a meeting or in an activity of the college. The decision of the FMA shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the EEA Member States concerned and the obligations referred to in Article 30n.⁴⁷⁴

14) The FMA shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed, and the activities to be considered. The FMA shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.⁴⁷⁵

15) The FMA, subject to the confidentiality requirement under Article 31a, shall inform the European Supervisory Authorities of the activities of the college of supervisors, including in emergency situations, and communicate to the European Supervisory Authorities all information that is of particular relevance for the purposes of supervisory convergence.⁴⁷⁶

⁴⁷¹ Article 41h(10) amended by LGBL 2014 No. 348.

⁴⁷² Article 41h(11) inserted by LGBL 2011 No. 243.

⁴⁷³ Article 41h(12) amended by LGBL 2014 No. 348.

⁴⁷⁴ Article 41h(13) inserted by LGBL 2011 No. 243.

⁴⁷⁵ Article 41h(14) inserted by LGBL 2011 No. 243.

⁴⁷⁶ Article 41h(15) amended by LGBL 2014 No. 348.

5. Management of financial holding companies⁴⁷⁷

Article 41i⁴⁷⁸

Qualifications

Persons who effectively direct the business of a financial holding company or mixed financial holding company must be of good repute and have sufficient experience to perform these duties.

6. Mixed-activity holding companies⁴⁷⁹

Article 41k⁴⁸⁰

General control of mixed-activity holding companies

1) Where the parent undertaking of one or more banks or investment firms is a mixed-activity holding company, the FMA may, provided that it licensed those banks or investment firms or is responsible for their supervision, by approaching the mixed-activity holding company and its subsidiaries either directly or via bank or investment firm subsidiaries, require them to supply any information which would be relevant for the purpose of supervising the bank or investment firm subsidiaries.

2) The FMA may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Article 41n may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in an EEA Member State other than that in which the bank or investment firm subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in Article 41o.

⁴⁷⁷ Title preceding Article 41i amended by LGBL 2014 No. 348.

⁴⁷⁸ Article 41i amended by LGBL 2014 No. 348.

⁴⁷⁹ Title preceding Article 41k inserted by LGBL 2007 No. 261.

⁴⁸⁰ Article 41k amended by LGBL 2014 No. 348.

Article 41l⁴⁸¹*Monitoring of transactions of mixed-activity holding companies*

The FMA shall require banks and investment firms to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor, and control transactions with their parent mixed holding company and its subsidiaries appropriately. The FMA shall require the reporting by the banks and investment firms of any significant transaction with these entities in addition to the notification of cluster risks. These procedures and significant transactions shall be subject to overview by the FMA. Where these intra-group transactions are a threat to the financial situation of a bank or investment firm, the FMA shall take appropriate measures.

7. Exchange of information⁴⁸²Article 41m⁴⁸³*Principles*

1) The FMA shall transmit to the competent authorities of other EEA Member States any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise, provided that:

- a) doing so does not violate the sovereignty, security, public order, or other substantial national interests of Liechtenstein;
- b) the recipients and the persons employed with and instructed by the competent authorities are subject to an obligation of secrecy equivalent to that of Article 31a;
- c) it is guaranteed that the information given will be used only for the purpose of financial market supervision, in particular the supervision of banks, investment firms, or regulated markets.

2) The exchange of information relevant for supervision on a consolidated basis between the group companies subject to consolidated supervision shall be permissible.

⁴⁸¹ Article 41l amended by LGBL 2014 No. 348.

⁴⁸² Title preceding Article 41m inserted by LGBL 2007 No. 261.

⁴⁸³ Article 41m inserted by LGBL 2007 No. 261.

Article 41n⁴⁸⁴*Special cases*

1) Where a parent undertaking and any of its subsidiaries that are banks or investment firms are situated in different EEA Member States, the FMA shall communicate to the competent authorities of every EEA Member State all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

2) Where the FMA, as the competent authority for a parent undertaking situated in Liechtenstein, does not itself exercise supervision on a consolidated basis, it may be invited by the competent authority of the EEA Member State responsible for supervision on a consolidated basis to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to that authority.

3) In the case of financial holding companies, mixed financial holding companies, financial institutions, or ancillary services undertakings, the collection or possession of information referred to in paragraph 2 shall not imply that the FMA is required to play a supervisory role in relation to those institutions or undertakings standing alone.⁴⁸⁵

4) The FMA may exchange the information referred to in Article 41k on the understanding that the collection or possession of information does not imply that the FMA plays a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not banks or investment firms, or to subsidiaries of the kind covered in Article 41d(3).⁴⁸⁶

5) Where a bank, investment firm, financial holding company, mixed financial holding company, or mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to a licence, the FMA and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely.⁴⁸⁷

6) Where, in a group to which no banks belong, an investment firm, a financial holding company, or a mixed-activity holding company controls one or more subsidiaries which are insurance undertakings, the FMA and

⁴⁸⁴ Article 41n inserted by LGBL 2007 No. 261.

⁴⁸⁵ Article 41n(3) amended by LGBL 2014 No. 348.

⁴⁸⁶ Article 41n(4) amended by LGBL 2014 No. 348.

⁴⁸⁷ Article 41n(5) amended by LGBL 2014 No. 348.

the authorities entrusted with the public task of supervising insurance undertakings shall cooperate closely.⁴⁸⁸

Article 41o⁴⁸⁹

Verification

1) If the FMA is requested by a competent authority of another EEA Member State within the framework of supervision on a consolidated basis to carry out a verification with respect to a bank, an investment firm, a financial holding company or mixed financial holding company, an ancillary services undertaking, a mixed-activity holding company, a subsidiary of the kind covered in Article 41k, or a subsidiary of the kind covered in Article 41d(3) situated in Liechtenstein, it shall act upon that request either by carrying out the verification itself, by allowing the authority who made the request to carry it out, or by allowing an auditor or expert to carry it out. The competent authority which made the request may, if it so wishes, participate in the verification when the FMA does not carry out the verification itself. Article 41m shall apply *mutatis mutandis*.⁴⁹⁰

2) When the FMA wishes to verify information concerning institutions within the meaning of paragraph 1 situated in another EEA Member State, the FMA may request the competent authority of that EEA Member State to carry out a verification.

8. Measures against financial holding companies, mixed financial holding companies, and mixed-activity holding companies⁴⁹¹

Article 41p⁴⁹²

Principle

1) The FMA shall take the necessary measures against financial holding companies, mixed financial holding companies, and mixed-activity holding companies or their effective managers that violate Articles 41a to 41o.⁴⁹³

⁴⁸⁸ Article 41n(6) amended by LGBL 2014 No. 348.

⁴⁸⁹ Article 41o inserted by LGBL 2007 No. 261.

⁴⁹⁰ Article 41o(1) amended by LGBL 2014 No. 348.

⁴⁹¹ Title preceding Article 41p amended by LGBL 2014 No. 348.

⁴⁹² Article 41p inserted by LGBL 2007 No. 261.

⁴⁹³ Article 41p(1) amended by LGBL 2014 No. 348.

2) In this regard, the FMA shall cooperate closely with other competent authorities.

9. Relationship with third countries⁴⁹⁴

Article 41q⁴⁹⁵

Principle

1) Where a bank or investment firm, the parent undertaking of which is a bank or investment firm, a financial holding company, or a mixed financial holding company situated in a third country is not subject to consolidated supervision under Articles 41c and 41d, the FMA shall verify together with the other competent authorities of the EEA Member States affected by this constellation of undertakings whether the bank or investment firm is subject to consolidated supervision by the third-country competent authority which is equivalent to that governed by the principle laid down in this Act and the requirements governing supervisory consolidation in accordance with Articles 11 to 24 of Regulation (EU) No 575/2013.⁴⁹⁶

2) The FMA shall carry out the verification at the request of the parent undertaking or of any of the regulated entities licensed in the European Economic Area or on its own initiative, provided that it would be responsible for consolidated supervision if paragraph 4 were to apply. The FMA shall consult the other competent authorities involved.⁴⁹⁷

3) When carrying out the verification referred to in paragraph 1, the FMA shall take into account the guidance of the European Banking Committee. For this purpose, the FMA shall consult the Committee before taking a decision.

4) If no supervision or no equivalent supervision exists, the FMA shall apply the provisions of this Act and of Regulation (EU) No 575/2013 *mutatis mutandis* to the bank or investment firm. The FMA may instead apply other appropriate supervisory techniques provided they achieve the

⁴⁹⁴ Title preceding Article 41q inserted by LGBL 2007 No. 261.

⁴⁹⁵ Article 41q inserted by LGBL 2007 No. 261.

⁴⁹⁶ Article 41q(1) amended by LGBL 2014 No. 348.

⁴⁹⁷ Article 41q(2) amended by LGBL 2014 No. 348.

objectives of supervision on a consolidated basis of banks and investment firms.⁴⁹⁸

5) The supervisory techniques referred to in paragraph 4 shall, after consultation with the other competent authorities of the EEA involved, be agreed upon by the competent authority which would be responsible for consolidated supervision.

6) The FMA may, upon consultation with the other competent authorities of the EEA Member States, in particular require the establishment of a financial holding company or a mixed financial holding company which has its registered office in the European Economic Area, and apply the provisions on consolidated supervision to the consolidated position of that financial holding company or mixed financial holding company.⁴⁹⁹

7) The supervisory techniques shall be notified to the other competent authorities of the EEA Member States involved, the EFTA Surveillance Authority, and the European Supervisory Authorities.⁵⁰⁰

8) For purposes of supervision on a consolidated basis, Articles 41m and 41o shall apply *mutatis mutandis* to cooperation with competent authorities of third countries.

IVa. Capital reduction⁵⁰¹

Article 41r⁵⁰²

Repayment of capital

1) With respect to banks and investment firms, the provisions of the Law on Persons and Companies shall apply to the reduction of share capital by repayment of shares, subject to the following provisions. These provisions shall apply *mutatis mutandis* also with respect to banks and investment firms that have not been established in the legal form of limited companies.

2) If a bank or investment firm intends to reduce its share capital without simultaneously replacing it with new, fully paid-up capital up to

⁴⁹⁸ Article 41q(4) amended by LGBL 2014 No. 348.

⁴⁹⁹ Article 41q(6) amended by LGBL 2014 No. 348.

⁵⁰⁰ Article 41q(7) amended by LGBL 2014 No. 348.

⁵⁰¹ Title preceding Article 41r inserted by LGBL 2007 No. 261.

⁵⁰² Article 41r inserted by LGBL 2007 No. 261.

the previous level, the general meeting must decide on a corresponding amendment of the articles of association. This decision must be made by a majority of two thirds of the votes represented.

3) The general meeting may decide to reduce the capital only if a special audit report of the external audit office appointed according to the Banking Act has determined that the claims of creditors are fully covered and liquidity is guaranteed despite the reduction of the share capital.

4) The decision to reduce the capital shall be published in the official journal and in the form provided in the articles of association. The creditors shall be notified that they may demand satisfaction or security if they register their claims within two months calculated from the time of the announcement.⁵⁰³

5) The capital reduction may be executed after the expiry of two months from the day when the decision containing the invitation for creditors to register claims is announced, and after those creditors who have registered their claims within this time period have been paid off or secured.

6) The creditors whose claims were established before the decision is announced must be provided security if they report for that purpose within two months after the third announcement, to the extent that they may not demand satisfaction. The creditors shall be notified of this right in the announcement. Creditors shall not be entitled to demand security if they already have adequate security or if adequate security is not required in view of the company assets.

7) Payments to the shareholders may be made only pursuant to the reduction of the share capital and only after expiry of the time limit established for the creditors and after the claims filed by creditors have been satisfied or secured. A release of the shareholders from the obligation to make deposits shall likewise not take effect before the time designated and not before the satisfaction or securing of those creditors who have filed their claims on time.

8) Any book profits resulting from the capital reduction shall be allocated to the capital reserves.

9) In no case may the share capital of banks or investment firms be reduced to less than their respective initial capital (Article 24).

⁵⁰³ Article 41r(4) amended by LGBL 2014 No. 348.

V. Recovery and liquidation⁵⁰⁴

A. Recovery and resolution plans⁵⁰⁵

Article 41s⁵⁰⁶

Recovery and resolution plans

1) After any significant worsening of their financial situation, banks and investment firms shall prepare recovery plans to restore the situation as well as resolution plans.

2) Taking into account the criteria set out in paragraph 3, the FMA may reduce the demands on banks and investment firms with regard to preparation, maintenance, and updating of recovery plans.

3) The FMA shall take into account whether, given the size, business model, or interconnectedness to other banks and firms or to the financial system in general, the failure of a bank or investment firm would not have any significant negative effect on the financial markets, other banks and investment firms, or funding conditions.

4) Banks and investment firms shall cooperate closely with the FMA and exchange all information with the FMA that is necessary for the decision and for the preparation of robust resolution plans, with options for the orderly winding down of the banks and investment firms.

A^{bis}. Moratorium⁵⁰⁷

Article 42

Preconditions and application

1) A bank that is unable to meet its liabilities on time may apply to the Court of Justice for a moratorium.

⁵⁰⁴ Title preceding Article 41s inserted by LGBL 2014 No. 348.

⁵⁰⁵ Title preceding Article 41s inserted by LGBL 2014 No. 348.

⁵⁰⁶ Article 41s inserted by LGBL 2014 No. 348.

⁵⁰⁷ Title preceding Article 42 amended by LGBL 2014 No. 348.

2) The bank must simultaneously submit a statement of affairs, its latest annual financial statement, its latest interim balance sheet, and its latest audit report to the Court of Justice.

3) Any legal acts that the bank undertakes after closing its counters or after submitting the application and prior to the appointment of the interim commissioner shall not be valid vis-à-vis its creditors. Any legal acts in connection with participation in systems pursuant to the Settlement Finality Act shall be in accordance with the provisions of the Settlement Finality Act, in particular Article 15.⁵⁰⁸

Article 43

Approval

1) After having heard the FMA, the Court of Justice shall grant a moratorium for the duration of one year, unless the bank is overindebted. In justified cases, the moratorium may be extended for an additional year.⁵⁰⁹

2) The moratorium shall be publicly announced by edict.⁵¹⁰

3) The FMA shall be notified without delay about decisions of the Court of Justice granting a moratorium with respect to a participant of a system pursuant to the Settlement Finality Act.⁵¹¹

Article 44

Interim commissioner

1) The Court of Justice shall appoint an interim commissioner who shall have the same powers as the ordinary commissioner until a decision has been reached on the application or until bankruptcy proceedings are opened.

2) The external audit office appointed according to the Banking Act may be designated as interim commissioner.

⁵⁰⁸ Article 42(3) amended by LGBL 2002 No. 162.

⁵⁰⁹ Article 43(1) amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

⁵¹⁰ Article 43(2) amended by LGBL 2002 No. 162.

⁵¹¹ Article 43(3) inserted by LGBL 2002 No. 162 and amended by LGBL 2004 No. 176.

Article 45

Commissioner

1) If the Court of Justice grants the moratorium, it shall appoint respectable, reliable, and knowledgeable persons as commissioners for the bank. A bank or trust company may also be appointed commissioner.

2) If several commissioners are appointed, one commissioner must be put in charge.

3) Shareholders and former shareholders who have withdrawn from the undertaking during the year prior to the opening of bankruptcy proceedings may not be appointed commissioners.

4) The commissioner shall be subject to supervision by the Court of Justice and may be dismissed by the Court of Justice on important grounds.

Article 46

Responsibilities of the commissioner

Upon being appointed, the commissioner shall without delay determine the financial situation of the bank together with the external audit office, report on the financial situation to the Court of Justice and the bank, and take the measures necessary to maintain operations.

Article 47

Conduct of business

1) During the moratorium, the bank shall continue its business operations under the supervision of the commissioner and in accordance with the commissioner's instructions.

2) The bank may not undertake any legal acts that adversely affect the legitimate interests of the creditors or that favour individual creditors to the disadvantage of others.

3) The bank shall grant the Court of Justice and the commissioner access to all books and records and shall provide all requested information.

4) The commissioner shall be invited to all negotiations of the governing bodies of the banks; the commissioner may also order such negotiations to be held.

Article 48

Payments to creditors

- 1) Payments to creditors may be made only with the consent of the commissioner.
- 2) The commissioner is authorised to order payments to be made to the creditors from receipts from due claims of the bank according to the commissioner's best judgment. The interests of creditors privileged by legal transaction or law as well as the interests of small creditors shall be appropriately taken into account.
- 3) These payments may not exceed one half of the amounts for which cover is available in accordance with the assets as determined by the commissioner.

Article 49

Additional measures

- 1) After having heard the FMA, the Court of Justice may take further measures called for by the circumstances and in the interest of the bank or the creditors at any time during the moratorium.⁵¹²
- 2) In particular, the Court of Justice may order that the conclusion of new transactions, the alienation of real estate, the pledging of chattels, or the assumption of guarantees shall require the consent of the commissioner to be valid.
- 3) The Court of Justice shall publish such orders.

Article 50

Executions

- 1) For the duration of the moratorium, execution may be levied against the debtor only until attachment and rating.
- 2) Petitions for realisation or bankruptcy may not be granted.
- 3) The time limits for the submission of the applications for realisation shall be extended by the duration of the moratorium. Likewise, the liability

⁵¹² Article 49(1) amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

of the mortgage for the interest on the land charge (Article 290(1(3) of the Property Act) shall be extended by the duration of the moratorium.

Article 51

Extrajudicial reorganisation

1) If the bank aims at an extrajudicial reorganisation or a debt restructuring agreement, the commissioner shall assess its applications addressed to the company's governing bodies, the creditors, or the Court of Justice.

2) If, during the moratorium, the bank proves to be able to effect an extrajudicial reorganisation, the Court of Justice may extend the moratorium for an additional six months on an exceptional basis.

Article 52

Revocation of moratorium

1) Upon application of the commissioner or a creditor, the Court of Justice shall revoke the moratorium if the bank:

- a) obtained the moratorium on the basis of false information;
- b) contravenes the instructions of the commissioner;
- c) adversely affects the legitimate interests of the creditors;
- d) favours individual creditors to the disadvantage of others.

2) The Court of Justice shall publish the revocation of the moratorium.

Article 53

Lapse of the moratorium

1) The Court of Justice may declare the moratorium lapsed upon application of the commissioner if the moratorium is no longer necessary in the best judgment of the commissioner.

2) The Court of Justice shall publish the lapse of the moratorium.

B. Special provisions on bankruptcy proceedings for banks and investment firms⁵¹³

Article 54⁵¹⁴

Applicable law and opening of bankruptcy proceedings

1) Unless otherwise ordered, the provisions of the Bankruptcy Act shall apply to bankruptcy proceedings concerning the assets of banks and investment firms.

2) Articles 54 to 56g shall be applied not only to banks and investment firms, but also to other institutions and undertakings as set out in Article 2(1)(a) to (d) of the Recovery and Resolution Act.

3) Bankruptcy proceedings may be opened only on application or with the consent of the resolution authority with respect to the assets of a bank or investment firm under resolution, if it has been determined that the conditions for resolution under the Recovery and Resolution Act have been met; this provision is subject to Article 101(2)(b) of the Recovery and Resolution Act. The following requirements apply to the conduct of the bankruptcy proceedings:

- a) the Court of Justice shall notify without delay the FMA and the resolution authority of any application for the opening of bankruptcy proceedings in relation to a bank or investment firm, irrespective of whether the bank or investment firm is under resolution or a decision has been made public in accordance with Article 102(4) and (5) of the Recovery and Resolution Act;
- b) a decision shall be made on the application only once the notifications have been made under subparagraph (a) and either of the following occurs:
 1. the resolution authority has notified the Court of Justice that it does not intend to take any resolution action in relation to the bank or investment firm;
 2. a period of seven days beginning with the date on which the notifications referred to in subparagraph (a) were made has expired.

4) To the extent the Recovery and Resolution Act does not apply, bankruptcy proceedings shall be opened only on the application or with the consent of the FMA.

⁵¹³ Title preceding Article 54 amended by LGBL 2016 No. 495.

⁵¹⁴ Article 54 amended by LGBL 2016 No. 495.

5) The FMA shall have standing as a party in bankruptcy proceedings concerning the assets of banks and investment firms.

6) Bankruptcy proceedings under this Section may also be opened in relation to undertakings that are acting as banks or investment firms without a licence from the FMA.

Article 55⁵¹⁵

Bank liquidators

1) The Court of Justice shall appoint one or more bank liquidators when bankruptcy proceedings are opened. The bank liquidators shall be subject to supervision by the Court of Justice.

2) Natural or legal persons may be appointed as bank liquidators who have appropriate expertise in banking and securities law as well as in bankruptcy law.

3) On application or after hearing the FMA, the Court of Justice shall specify the details of the bank liquidators' mandate, in particular:

- a) reporting to the Court of Justice;
- b) control of the bank liquidators by the Court of Justice.

4) The bank liquidators shall report to the creditors and the FMA at least annually. In the mandate referred to in paragraph 3, the Court of Justice may provide that reporting to the creditors shall be done by way of notice on the website of the Court.

5) The bank liquidators shall move the bankruptcy proceedings forward expeditiously. In particular, they shall:

- a) determine the bankruptcy estate;
- b) secure and realise the bankruptcy assets;
- c) take care of business management within the context of the proceedings;
- d) consider the claims lodged;
- e) represent the bankruptcy estate in court;
- f) assert rights to contest under Article 70 of the Bankruptcy Act;
- g) in cooperation with the bodies in charge of the protection schemes, undertake the inventory and payout of the covered deposits and payout of compensation for the covered investments; and

⁵¹⁵ Article 55 amended by LGBL 2016 No. 495.

h) distribute proceeds from the bankruptcy estate and present a final report to the Court of Justice.

6) On application or after hearing the FMA, the Court of Justice may revoke the appointment of the bank liquidators at any time on important grounds.

7) The bank liquidators shall be entered in the Commercial Register for the duration of their work.

8) To the extent not otherwise provided in this Act, the provisions set out in Article 4 of the Bankruptcy Act governing liquidators shall apply to the bank liquidators *mutatis mutandis*.

Article 56⁵¹⁶

Prohibition of termination

1) After bankruptcy proceedings have been opened, any continuing obligations with a bank or investment firm may not be terminated by the other party for any of the following reasons, notwithstanding any statutory or contractual termination clauses:

- a) opening of bankruptcy proceedings;
- b) default of payment arising in the time before bankruptcy proceedings were opened; or
- c) worsening of the asset situations of the bank or investment firm.

2) Paragraph 1 does not apply to employment and credit agreements.

Article 56a⁵¹⁷

Class of the deposits in the bankruptcy ranking

1) The following claims shall be assigned to class 3 of bankruptcy claims according to Article 50 of the Bankruptcy Act:

- a) the part of eligible deposits of natural persons, microenterprises, and small and medium-sized enterprises that exceeds the maximum amount for covered deposits;
- b) deposits that would be considered eligible deposits of natural persons, microenterprises, and small and medium-sized enterprises if they were

⁵¹⁶ Article 56 amended by LGBL 2016 No. 495.

⁵¹⁷ Article 56a amended by LGBL 2016 No. 495.

not attributable to branches of banks or investment firms situated in the EEA which are located outside the EEA.

2) The following claims shall be assigned to class 2 of the bankruptcy claims according to Article 49 of the Bankruptcy Act:

- a) covered deposits;
- b) deposit guarantee schemes that assume the rights and duties of covered investors in the event that bankruptcy proceedings are opened.

3) Eligible deposits as referred to in paragraph 1 shall include only deposits that are in the name of a person.

4) Deposits at undertakings acting as banks or investment firms without a licence issued by the FMA shall not be privileged.

5) Transferred vested benefits in accordance with Article 12(2) of the Occupational Pensions Act shall be privileged in class 3 up to an amount of 100,000 Swiss francs, independently of the other deposits of the individual client.

Article 56b⁵¹⁸

Payout in advance of privileged deposits

1) Privileged deposits referred to in Article 56a may be paid out in advance from the available liquid assets, independently of registered claims and without any offsetting.

2) On a case-by-case basis, the Court of Justice shall establish the maximum amount of the deposits subject to payment in advance. It shall take into account the hierarchy of other creditors in accordance with Articles 47 et seq. of the Bankruptcy Act.

Article 56c⁵¹⁹

Segregation of financial instruments and shortfall

1) Financial instruments owned by a client and which the bank or investment firm holds in the name and for the account of a client shall not be considered part of the bankruptcy estate in bankruptcy proceedings concerning the assets of the bank or investment firm, but rather shall be segregated for the benefit of the client, subject to any claims of the bank or

⁵¹⁸ Article 56b inserted by LGBl. 2016 No. 495.

⁵¹⁹ Article 56c inserted by LGBl. 2016 No. 495.

investment firm against the client. The same shall apply to financial instruments which the bank or investment firm holds for the account of a client on a fiduciary basis.

2) Insofar as the bank or investment firm in bankruptcy proceedings is itself a depositor at a third party, it shall be assumed that the deposits belong to the bank's or investment firm's depositors; those deposits shall be segregated in accordance with paragraph 1. The depositary obligations toward a third-party administrator shall be performed by the bank liquidator.

3) The segregated financial instruments shall be transferred to a bank or investment firm designated by the client or delivered to the client in the form of securities.

4) If the financial instruments segregated from the bankruptcy estate are not sufficient to satisfy the clients in full, financial instruments of the same kind held by the bank or investment firm for its own account shall also be segregated insofar as necessary, even where such financial instruments have been held separately from the clients' financial instruments.

5) If the clients' claims are still not fully satisfied, the clients shall bear the shortfall in proportion to their volume of financial instruments of the missing kind. They shall have a corresponding claim for compensation against the bank or investment firm; that claim shall be considered a registered bankruptcy claim of class 4 in accordance with Article 51 of the Bankruptcy Act.

6) The segregated financial instruments shall be recorded in the inventory at their market value at the time the bankruptcy proceedings were opened. The inventory shall refer to any claims on the part of the bank or investment firm against clients that conflict with segregation.

Article 56d⁵²⁰

Establishment of the claims and registration list

1) Claims evident from properly maintained account books shall be considered registered (book claims).

2) The bank liquidator shall verify the existence and rank of claims and shall make note of them. The bank liquidator may request creditors to provide additional evidence. With regard to claims that are not book

⁵²⁰ Article 56d inserted by LGBL 2016 No. 495.

claims, the bank liquidator shall obtain a declaration by the bank or investment firm. The bank liquidator shall report to the Court of Justice about this verification and shall provide a statement on the correctness and ranking for each of the registered claims.

3) The Court of Justice shall decide whether and with what rank claims are to be recognised. No public verification hearings shall be held.

4) The decision by the Court of Justice shall be included in the registration list.

Article 56e⁵²¹

Inspection of the registration list

1) The creditors may inspect the registration list for a period of at least 20 days at the Court of Justice.

2) The Court of Justice shall give public notice of when and how the registration list may be inspected.

3) Every creditor whose claim was not included in the registration list as registered or as a book claim shall be informed in writing why the claim has been contested.

Article 56f⁵²²

Action for review

1) Creditors whose claims have been established may, within 20 days after public disclosure of the registration list, contest the correctness and ranking of registered claims before the Court of Justice. In such cases, the claim shall be considered not established in accordance with Article 66 of the Bankruptcy Act, and the creditor must at the order of the Court of Justice file an action for review in accordance with Article 67(1) of the Bankruptcy Act.

2) Articles 67 to 69 of the Bankruptcy Act shall apply *mutatis mutandis*.

⁵²¹ Article 56e inserted by LGBl. 2016 No. 495.

⁵²² Article 56f inserted by LGBl. 2016 No. 495.

Article 56g⁵²³*Realisation*

1) The bank liquidator shall decide on the type and timing of realisation and shall carry it out.

2) Assets may be realised without delay if they:

- a) are subject to rapid depreciation;
- b) generate unreasonably high administrative costs;
- c) are traded on a representative market; or
- d) are of insignificant value.

3) The bank liquidator shall draw up a realisation plan containing information on the bankruptcy assets to be realised and the nature of their realisation; the bank liquidator shall forward the realisation plan to the creditors. By a deadline set by the bank liquidator, the creditors may demand a contestable ruling by the Court of Justice on the realisation actions contained in the realisation plan.

4) Realisation actions referred to in paragraph 2 need not be included in the realisation plan.

5) The bank liquidator shall inform the Court of Justice and the FMA of the realisation plan and the intended realisation of significant parts of the assets.

6) Articles 72 and 73 of the Bankruptcy Act shall apply *mutatis mutandis* to realisation by judicial decision.

C. Special provisions on debt restructuring proceedings

Article 57

Application; interim bankruptcy administrator

1) If a bank applies for a debt restructuring moratorium, the Court of Justice shall appoint an interim bankruptcy administrator who shall have the same powers as the ordinary bankruptcy administrator until the decision on the application has been made or bankruptcy proceedings have been opened.

⁵²³ Article 56g inserted by LGBL 2016 No. 495.

2) The external audit office appointed according to the Banking Act may be designated as interim bankruptcy administrator. If a commissioner has already been appointed, the commissioner shall become the interim bankruptcy administrator.

Article 58

Bankruptcy administrator

If the Court of Justice grants the application for a debt restructuring moratorium, it shall appoint a definitive bankruptcy administrator unless a commissioner has already been appointed as bankruptcy administrator.

Article 59

Debt restructuring moratorium

1) The debt restructuring moratorium shall last for six months. If necessary, it may be extended by a further six months.

2) Any book claims shall be deemed registered.

3) Any legal acts that the bank undertakes after closing its counters or after submitting the application and prior to the appointment of the interim bankruptcy administrator shall not be valid vis-à-vis its creditors.

Article 59a⁵²⁴

Debt restructuring agreement

1) The creditors shall be publicly called on to assert any objections to the draft debt restructuring agreement presented for their inspection. No meeting of creditors shall take place.

2) The debt restructuring agreement shall be approved if the offered sum is commensurate to the remedies available to the debtor and if execution of the debt structuring agreement and full satisfaction of the recognised privileged creditors are ensured and, moreover, if a consideration of all the circumstances indicates that the interests of the totality of creditors are better served by the debt restructuring agreement than by bankruptcy proceedings.

⁵²⁴ Article 59a inserted by LGBL 2016 No. 495.

3) Claims secured by collateral may be subject to a moratorium as appropriate in the debt restructuring agreement.

4) Article 56 on prohibition of termination shall apply *mutatis mutandis*.

D. Deposit guarantee and investor protection⁵²⁵

Article 59b⁵²⁶

Principle

1) Banks and investment firms holding funds or financial instruments of clients shall ensure sufficient protection for deposits and investments in accordance with the provisions of this Section.

2) The deposit guarantee and investor protection shall also extend to the branches of Liechtenstein banks and investment firms in other EEA Member States as well as in third countries.

3) Liechtenstein branches of banks or investment firms situated outside the European Economic Area may be placed under Liechtenstein deposit guarantee and/or Liechtenstein investor protection if the deposit guarantee or investor protection scheme to which those branches belong is not equivalent to the Liechtenstein protection scheme.

4) The deposit guarantee shall encompass the covered deposits that are in the name of a person.

5) The investor protection shall encompass the covered investments.

6) An external audit office mandated by the FMA with a licence under Article 37 shall examine the legality and regularity of the protection schemes and shall comment thereon in a detailed audit report.

7) The Government shall provide further details by ordinance, in particular the exemptions from the deposit guarantee and investor protection.

⁵²⁵ Title preceding Article 59b inserted by LGBL 2016 No. 495.

⁵²⁶ Article 59b inserted by LGBL 2016 No. 495.

Article 59c⁵²⁷*Self-regulation*

1) Banks and investment firms are required to join the self-regulation of banks and investment firms or to participate in a foreign protection scheme for the purpose of deposit guarantee and investor protection.

2) The self-regulation shall be subject to approval by the FMA.

3) The self-regulation shall be approved if it:

- a) ensures payout of the covered deposits within 20 working days of receipt of the notification referred to in Article 59d;
- b) ensures payout of compensation to the protected investors at the level of the guarantee at least three months after the time at which the right to the claim and the amount of the claim have been established;
- c) ensures that each bank or investment firm disposes of liquid funds for its contributions due in addition to its statutory liquidity at all times.

4) Should the self-regulation not satisfy the requirements of paragraphs 1 to 3, the Government shall regulate the deposit guarantee by ordinance. In particular, it shall designate the body in charge of the deposit guarantee and shall define the contributions of the banks and investment firms.

Article 59d⁵²⁸*Triggering of the deposit guarantee and investor protection*

If the resolution authority or the Court of Justice has ordered resolution measures in accordance with Articles 37 et seq. of the Recovery and Resolution Act or a moratorium in accordance with Articles 42 et seq., has opened bankruptcy proceedings in accordance with Articles 54 et seq., or has granted a debt restructuring moratorium in accordance with Articles 57 et seq., then the resolution authority or the Court of Justice shall notify this immediately to the body in charge of the protection scheme and inform it of the needed amount to pay out the covered deposits and investments.

⁵²⁷ Article 59c inserted by LGBl. 2016 No. 495.

⁵²⁸ Article 59d inserted by LGBl. 2016 No. 495.

Article 59e⁵²⁹*Resolution and legal cession*

1) Within 15 working days after receiving the notification referred to in Article 59c, the body in charge of the protection scheme shall make the requisite amount available from the deposit guarantee to the person appointed for that purpose by the Court of Justice or the resolution authority. In wholly exceptional circumstances and in special cases the FMA may, on the application of the body in charge of the deposit guarantee, extend the time limit once by at most 10 days.

2) As soon as possible and at the latest within three months of the establishment of the eligibility and the amount of the claim, the body in charge of the protection scheme shall make the requisite amount available from the investor protection to the person referred to in the order of the Court of Justice or the resolution authority. In wholly exceptional circumstances and in special cases the FMA may, on the application of the body in charge of the deposit guarantee, extend the time limit once by at most an additional three months.

3) The investors must lodge their claims with the person appointed by the Court of Justice or the resolution authority within one year after formal notification by the Court of Justice or the resolution authority to the body in charge of the protection scheme, together with the account data required to transfer any compensation. Failing that, there shall be no right to compensation from investor protection, unless the investor was unable to lodge the claim in a timely manner.

4) Deposits and compensation shall be paid out without delay by the person appointed by the Court of Justice or the resolution authority, for depositors in any event within the time period referred to in paragraph 1 and for investors in any event within the time period referred to in paragraph 2. In both cases, the precondition is that the depositor or investor provided the person appointed by the Court of Justice or the resolution authority in a timely manner with the account data required for the transfer.

5) In the event of a formal denial of a claim by the person appointed by the Court of Justice or the resolution authority or if the deadlines referred to in paragraph 4 are not met, the depositor or investor concerned may institute legal action against the body in charge of the protection scheme.

⁵²⁹ Article 59e inserted by LGBI. 2016 No. 495.

6) The rights of the depositors and investors shall be transferred to the body in charge of the protection scheme to the extent of the amounts of the payout.

E. Liquidation⁵³⁰

Article 60⁵³¹

Assignment to a different bank or investment firm

In the event of a liquidation, the FMA may assign a bank or investment firm to a different domestic bank or investment firm where the funds of clients can be deposited on their behalf.

Va. Cross-border insolvency proceedings⁵³²

A. General provisions⁵³³

Article 60a⁵³⁴

Scope of application

1) Articles 60b to 60z shall apply to:

- a) banks licensed in an EEA Member State or in Switzerland; and
- b) investment firms as defined in Article 4(1)(2) of Regulation (EU) No 575/2013 and their branches located in EEA Member States other than those in which they have their registered offices.

2) In the event of application of the resolution tools and exercise of the resolution powers provided for in the Recovery and Resolution Act, Articles 60b to 60z shall also apply to the financial institutions, firms, and parent undertakings falling within the scope of that Act.

⁵³⁰ Title preceding Article 60 inserted by LGBL 2016 No. 495.

⁵³¹ Article 60 amended by LGBL 2016 No. 495.

⁵³² Title preceding Article 60a inserted by LGBL 2005 No. 13.

⁵³³ Title preceding Article 60a inserted by LGBL 2005 No. 13.

⁵³⁴ Article 60a amended by LGBL 2016 No. 495.

3) Where this Chapter refers to EEA Member States, the provisions shall apply *mutatis mutandis* to Switzerland as well.

Article 60b⁵³⁵

International competence

1) The Court of Justice shall have jurisdiction to grant a moratorium or debt restructuring moratorium and to open bankruptcy proceedings only if the bank or investment firm has been granted a licence in Liechtenstein.

2) Paragraph 1 shall apply *mutatis mutandis* to application of the resolution tools and exercise of the resolution powers.

Article 60c⁵³⁶

Information requirement and publication abroad

1) The FMA shall be informed without delay about:

- a) any decision to approve a moratorium, debt restructuring moratorium, or opening of bankruptcy proceedings and the specific consequences of those measures by the Court of Justice; and
- b) application of the resolution tools and exercise of the resolution powers by the resolution authority.

2) The FMA shall inform the competent authorities of the host Member State without delay of the decision referred to in paragraph 1(a). The competent authorities of the home Member State shall be consulted by the FMA before any voluntary winding-up decision is taken by the governing bodies of a bank or investment firm. The voluntary winding-up of a credit institution shall not preclude the adoption of a reorganisation measure or the opening of winding-up proceedings.

3) The Court of Justice shall furthermore issue an edict without delay for publication of the moratorium, the debt restructuring moratorium, or the opening of bankruptcy proceedings. The resolution authority shall then publish without delay the announcement of the application of the resolution tools and exercise of the resolution powers in the Official Journal of the European Union and in two national newspapers in each of the EEA Member States in which the bank or investment firm has a branch or provides cross-border services, in the official language or the official

⁵³⁵ Article 60b amended by LGBL 2016 No. 495.

⁵³⁶ Article 60c amended by LGBL 2016 No. 495.

languages of the States concerned. The publication shall specify in particular the purpose and legal basis of the decision taken, the time limits for lodging appeals, specifically a clearly understandable indication of the date of expiry of the time limits, and the full address of the court at which the appeals must be lodged and of the court that decides on the appeal. For purposes of publication, the documents shall be sent to the EFTA Secretariat in Brussels and the two national newspapers of each of the States concerned without delay and by the most appropriate means.

4) Article 60h shall apply to the filing of claims.

Article 60d⁵³⁷

Activities abroad

1) Upon request of the administrator, the appointment certificate shall be issued to the administrator in one or more languages of the Member States of the European Economic Area.

2) The administrator may appoint persons who support the administrator's activities abroad.

B. Bankruptcy proceedings⁵³⁸

Article 60e⁵³⁹

Bankruptcy estate

The bankruptcy proceedings shall also extend to the immoveable property of the bank or investment firm located in other EEA Member States.

⁵³⁷ Article 60d inserted by LGBL 2005 No. 13.

⁵³⁸ Title preceding Article 60e amended by LGBL 2016 No. 495.

⁵³⁹ Article 60e amended by LGBL 2016 No. 495.

Article 60f⁵⁴⁰*Delivery of the decision on the opening of bankruptcy proceedings and additional information provided to the creditors*

1) A copy of the bankruptcy edict shall be sent to the creditors whose habitual residence, domicile, or registered office is in another EEA Member State, even if the conditions in Article 1(5) of the Bankruptcy Act are met. The edict shall be accompanied by instructions under the heading "Invitation to lodge a claim. Time limits to be observed." translated into all official languages of the EEA, indicating the court at which the claim must be registered and whether creditors whose claims are preferential or secured *in rem* need to lodge their claims.

2) The bank liquidator shall also inform creditors in an appropriate form, in particular about the progress of realisation.

Article 60g⁵⁴¹*Payments after opening of bankruptcy proceedings*

1) A person making payments to a bank or investment firm that is not a legal person and against whose assets bankruptcy proceedings have been opened in another EEA Member State shall be released from the person's obligations if the person did not know of the opening of bankruptcy proceedings.

2) If the payment is made prior to publication under Article 60c, it shall be assumed until proven otherwise that the payor did not know of the opening of bankruptcy proceedings. If the payment is made after such publication, it shall be assumed until proven otherwise that the payor knew of the opening of bankruptcy proceedings.

Article 60h⁵⁴²*Assertion of claims*

1) Every creditor whose domicile, habitual residence, or registered office is in another EEA Member State shall indicate in the claim form the nature of the claim, the date on which the claim arose, and the amount of the claim, and furthermore whether the creditor asserts preference, security

⁵⁴⁰ Article 60f amended by LGBL 2016 No. 495.

⁵⁴¹ Article 60g amended by LGBL 2016 No. 495.

⁵⁴² Article 60h amended by LGBL 2016 No. 495.

in rem, or a reservation of title and what assets are covered by the security interest being invoked. The creditor shall include copies of any supporting documents with the claim form.

2) Every creditor whose domicile, habitual residence, or registered office is in another EEA Member State may lodge the claim in the official language of that State. In such a case, the claim must be lodged under the heading "*Anmeldung einer Forderung*" (Lodging of a Claim) in German. The court may, however, demand that the creditor provide a translation of the lodged claim.

C. Recognition of foreign proceedings⁵⁴³

Article 60i⁵⁴⁴

Principle

The decision of an EEA Member State on reorganisation measures and the opening of proceedings for the liquidation of a bank or investment firm shall be recognised in Liechtenstein irrespective of the conditions contained in Article 5(2) of the Bankruptcy Act. The decision shall be effective in Liechtenstein as soon as the decision becomes effective in the State in which the proceedings are opened. This shall also apply when such a reorganisation measure is not envisaged in Liechtenstein.

Article 60k⁵⁴⁵

Powers of foreign administrators and liquidators

1) Foreign administrators and liquidators shall be entitled to exercise in Liechtenstein, without any additional formalities, all the powers which they are entitled to exercise within the territory of the home Member State. The use of force and the right to rule on legal proceedings or disputes shall be excluded.

2) In exercising their powers in Liechtenstein, the administrators and liquidators shall comply with Liechtenstein law, in particular with regard to procedures for the realisation of assets and the provision of information to employees.

⁵⁴³ Title preceding Article 60i inserted by LGBl. 2005 No. 13.

⁵⁴⁴ Article 60i amended by LGBl. 2016 No. 495.

⁵⁴⁵ Article 60k inserted by LGBl. 2005 No. 13.

3) The administrators and liquidators and the persons that represent them or otherwise assist them in their work shall be subject to Liechtenstein banking secrecy (Article 14) and the associated penal provisions. Information falling within the scope of banking secrecy must be made accessible to the administrators and liquidators only if:

- a) the information is connected to the reorganisation measure or winding-up proceedings and is actually necessary for the realisation thereof; and
- b) the administrator or liquidator, any representative of the administrator or liquidator, and the administrative or judicial authorities responsible for their supervision in the home Member State are subject to a confidentiality requirement equivalent to Liechtenstein banking secrecy (Article 14).⁵⁴⁶

4) The information obtained pursuant to paragraph 3 may be used only for execution of the reorganisation measure or the winding-up proceedings.

5) The administrator and the liquidator shall provide evidence of their appointment by means of a certified copy of the decision by which they were appointed or by means of another certification issued by the administrative or judicial authority of the home Member State. A translation into German may be demanded.

Article 60l⁵⁴⁷

Comments

1) Upon application of the administrator or liquidator or upon request of any administrative or judicial authority of the home Member State, the Court of Justice shall arrange for comments pursuant to Article 12 of the Bankruptcy Act.

2) If the bank has a branch or assets in Liechtenstein, then the administrator or the otherwise competent authority must submit an application in accordance with paragraph 1.

⁵⁴⁶ Article 60k(3)(b) amended by LGBL. 2014 No. 348.

⁵⁴⁷ Article 60l inserted by LGBL. 2005 No. 13.

D. Branches⁵⁴⁸

Article 60m⁵⁴⁹

Provision of information

1) If the FMA believes that the execution of one or several reorganisation measures is necessary for banks or investment firms operating in Liechtenstein by way of a branch, then it shall notify this to the competent authorities of the home Member State.

2) The competent authority for the purposes of paragraph 1 is a competent authority referred to in Article 4(1)(40) of Regulation (EU) No 575/2013 or a resolution authority in accordance with Article 2(1)(18) of Directive 2014/59/EU with respect to the reorganisation measures taken under that Directive.

Article 60n

Banks and investment firms situated outside the European Economic Area⁵⁵⁰

1) If a bank or investment firm situated outside the European Economic Area has branches in at least two EEA Member States, then the Court of Justice must also inform the FMA without delay of the decision to grant a moratorium or debt restructuring moratorium or to open bankruptcy proceedings and the specific consequences of such decision; the resolution authority shall inform the FMA of the application of resolution tools and exercise of resolution powers. The FMA shall without delay communicate such decision and the withdrawal of the licence to the competent authorities of the other host Member States in which the bank or investment firm has established branches and which are included in the list published annually in the Official Journal of the European Union pursuant to Article 20(1) and (2) of Directive 2013/36/EU.⁵⁵¹

2) Where possible, the competent administrative and judicial authorities and liquidators shall coordinate their actions.⁵⁵²

⁵⁴⁸ Title preceding Article 60m inserted by LGBL 2005 No. 13.

⁵⁴⁹ Article 60m amended by LGBL 2016 No. 495.

⁵⁵⁰ Article 60n heading amended by LGBL 2016 No. 495.

⁵⁵¹ Article 60n(1) amended by LGBL 2016 No. 495.

⁵⁵² Article 60n(2) inserted by LGBL 2005 No. 13.

E. Applicable law⁵⁵³

Article 60o⁵⁵⁴

Principle

1) Unless otherwise provided in Articles 60p through 60z, the law of the State in which the proceedings are opened shall apply to the moratorium, the debt restructuring moratorium, the bankruptcy proceedings, the application of resolution tools, and the execution of resolution powers.⁵⁵⁵

2) The law of the State in which proceedings are opened shall determine in particular:

- a) the assets subject to administration and the treatment of assets acquired by the bank or investment firm after the opening of proceedings;⁵⁵⁶
- b) the respective powers of the bank or investment firm and the administrator or the liquidator;⁵⁵⁷
- c) the conditions under which set-offs are admissible;
- d) the effects of the opening of proceedings on current contracts;
- e) the effects of the opening of proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 60z;
- f) the claims which are to be lodged and the treatment of claims arising after the opening of proceedings;
- g) the rules governing the lodging, verification, and admission of claims;
- h) the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of proceedings by virtue of a right *in re* or through a set-off;
- i) the conditions for, and the effects of, the closure of proceedings, in particular by debt restructuring moratorium;
- k) creditors' rights after the closure of proceedings;
- l) who is to bear the costs and expenses incurred in the proceedings;

⁵⁵³ Title preceding Article 60o inserted by LGBL 2005 No. 13.

⁵⁵⁴ Article 60o inserted by LGBL 2005 No. 13.

⁵⁵⁵ Article 60o(1) amended by LGBL 2016 No. 495.

⁵⁵⁶ Article 60o(2)(a) amended by LGBL 2016 No. 495.

⁵⁵⁷ Article 60o(2)(b) amended by LGBL 2016 No. 495.

- m) the rules relating to the voidness, voidability, or unenforceability of legal acts detrimental to all the creditors.

Article 60p⁵⁵⁸

Effects on certain contracts and rights

The effects of a moratorium, debt restructuring moratorium, bankruptcy, resolution tools, and exercise of resolution powers on:⁵⁵⁹

- a) employment contracts and relationships shall be governed solely by the law of the State applicable to the contract of employment;
- b) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the State within the territory of which the immovable object is situated;
- c) rights of the bank or investment firm in respect of immovable property, a ship, or an aircraft subject to registration in a public register shall be governed solely by the law of the State under the authority of which the register is kept.⁵⁶⁰

Article 60q⁵⁶¹

Third parties rights in re

1) The opening of proceedings shall not affect the rights *in re* of creditors or third parties in respect of tangible or intangible, movable or immovable objects – both specific objects and collections of indefinite objects as a whole which change from time to time – belonging to the bank or investment firm which are situated within the territory of another EEA Member State at the time of the opening of such proceedings.⁵⁶²

2) The rights referred to in paragraph 1 shall in particular mean:

- a) the right to dispose of the object or have it disposed of and to obtain satisfaction from the proceeds of or income from that object, in particular by virtue of a lien or a mortgage;

⁵⁵⁸ Article 60p inserted by LGBL 2005 No. 13.

⁵⁵⁹ Article 60p introductory phrase amended by LGBL 2016 No. 495.

⁵⁶⁰ Article 60p(c) amended by LGBL 2016 No. 495.

⁵⁶¹ Article 60q inserted by LGBL 2005 No. 13.

⁵⁶² Article 60q(1) amended by LGBL 2016 No. 495.

- b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
- c) the right to demand the object from, and/or to require restitution by, anyone having possession or use of it contrary to the wishes of the party so entitled;
- d) a right *in re* to the beneficial use of an object.

3) The right, recorded in a public register and enforceable against third parties, under which a right *in re* within the meaning of paragraph 1 may be obtained, shall be considered a right *in re*.

4) Paragraph 1 shall not preclude the actions for voidness, voidability, or unenforceability laid down in Article 60o paragraph 2(m).

Article 60r⁵⁶³

Reservation of title

1) The opening of proceedings concerning the assets of the purchaser of an object shall not affect the seller's rights based on a reservation of title where at the time of the opening of proceedings the object is situated within the territory of an EEA Member State other than where such proceedings were opened.⁵⁶⁴

2) The opening of proceedings concerning the assets of the seller of an object, after delivery of the object, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the object sold is situated within the territory of an EEA Member State other than where such proceedings were opened.⁵⁶⁵

3) Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability, or unenforceability laid down in Article 60o(2)(m).

⁵⁶³ Article 60r inserted by LGBL 2005 No. 13.

⁵⁶⁴ Article 60r(1) amended by LGBL 2016 No. 495.

⁵⁶⁵ Article 60r(2) amended by LGBL 2016 No. 495.

Article 60s⁵⁶⁶*Set-off*

1) The opening of proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the bank or investment firm, where such a set-off is permitted by the law applicable to the bank's or investment firm's claim.⁵⁶⁷

2) Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 60o(2)(m).

Article 60t⁵⁶⁸*Lex rei sitae*

The enforcement of proprietary rights in financial instruments or other rights in such financial instruments as referred to in Article 4(1)(50)(b) of Regulation (EU) No 575/2013 the existence or transfer of which presupposes their recording in a register, an account, or a centralised deposit system held or located in an EEA Member State shall be governed by the law of the State where the register, account, or centralised deposit system in which those rights are recorded is held or located.

Article 60u⁵⁶⁹*Netting agreements*

Without prejudice to Articles 87 and 90 of the Recovery and Resolution Act, netting agreements shall be governed solely by the law of the contract which governs such agreements.

Article 60v⁵⁷⁰*Repurchase agreements*

Without prejudice to Articles 87 and 90 of the Recovery and Resolution Act, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.

⁵⁶⁶ Article 60s inserted by LGBl. 2005 No. 13.

⁵⁶⁷ Article 60s(1) amended by LGBl. 2016 No. 495.

⁵⁶⁸ Article 60t amended by LGBl. 2016 No. 495.

⁵⁶⁹ Article 60u amended by LGBl. 2016 No. 495.

⁵⁷⁰ Article 60v amended by LGBl. 2016 No. 495.

Article 60w

*Regulated markets*⁵⁷¹

1) Without prejudice to Article 60t, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions.⁵⁷²

2) Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 60o(2)(m).⁵⁷³

Article 60x⁵⁷⁴*Challenges*

Article 60o shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

- a) the act is subject to the law of a different State; and
- b) that law does not allow any means of challenging that act in that case.

Article 60y

*Protection of third-party purchasers*⁵⁷⁵

Where, by an act concluded after the opening of proceedings, the bank or investment firm disposes, for consideration, of:⁵⁷⁶

- a) an immovable object;⁵⁷⁷
- b) a ship or an aircraft subject to registration in a public register;⁵⁷⁸
- c) financial instruments;⁵⁷⁹

the validity of that act shall be governed by the law of the State in which the immovable object is situated or under the authority of which the register, account, or deposit system is kept.⁵⁸⁰

571 Article 60w heading inserted by LGBL 2005 No. 13.

572 Article 60w(1) amended by LGBL 2007 No. 261.

573 Article 60w(2) inserted by LGBL 2005 No. 13.

574 Article 60x inserted by LGBL 2005 No. 13.

575 Article 60y heading inserted by LGBL 2005 No. 13.

576 Article 60y introductory phrase amended by LGBL 2016 No. 495.

577 Article 60y(a) inserted by LGBL 2005 No. 13.

578 Article 60y(b) inserted by LGBL 2005 No. 13.

579 Article 60y(c) amended by LGBL 2007 No. 261.

580 Article 60y final phrase inserted by LGBL 2005 No. 13.

Article 60z⁵⁸¹*Pending legal disputes*

The effects of proceedings on a pending legal dispute concerning an object or a right which forms part of the estate shall be governed solely by the law of the State in which that legal dispute is pending.

VI. Procedures, legal remedies, and extrajudicial mediation body⁵⁸²Article 61⁵⁸³*Decisions and decrees*

If violations of provisions of this Act, the associated ordinances, or Regulation (EU) No 575/2013 are found, and if the situation is not remedied despite a warning and the imposition of a deadline, the competent authority shall issue the appropriate decisions and decrees.

Article 62

Legal remedies

1) Decisions and decrees of the FMA may be appealed within 14 days of service to the FMA Complaints Commission.⁵⁸⁴

1a) If no decision is made within six months of receipt of an application for a licence as a bank or investment firm, even though the application contains all necessary information, a complaint may be lodged with the FMA Complaints Commission.⁵⁸⁵

2) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service to the Administrative Court.⁵⁸⁶

⁵⁸¹ Article 60z inserted by LGBL 2005 No. 13.

⁵⁸² Title preceding Article 61 amended by LGBL 2014 No. 348.

⁵⁸³ Article 61 amended by LGBL 2014 No. 348.

⁵⁸⁴ Article 62(1) amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

⁵⁸⁵ Article 62(1a) inserted by LGBL 2007 No. 261.

⁵⁸⁶ Article 62(2) amended by LGBL 2004 No. 33 and LGBL 2004 No. 176.

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 rules on the provision of investment services are applied.⁵⁸⁷

*Extrajudicial mediation body*⁵⁸⁸

Article 62a⁵⁸⁹

*Dispute settlement*⁵⁹⁰

1) To settle disputes between clients and banks, financial institutions, or investment firms concerning investment services provided, the Government shall issue an ordinance appointing a mediation body.

2) The responsibility of the mediation body shall be to mediate disputes between the parties in a suitable manner and in this way to bring about agreement between the parties.

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

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

Article 62b⁵⁹¹

Repealed

⁵⁸⁷ Article 62(3) inserted by LGBL 2007 No. 261 and amended by LGBL 2011 No. 551.

⁵⁸⁸ Article 62 heading preceding Article 62a inserted by LGBL 2014 No. 348.

⁵⁸⁹ Article 62a inserted by LGBL 2007 No. 261.

⁵⁹⁰ Article 62a heading amended by LGBL 2017 No. 397.

⁵⁹¹ Article 62b repealed by LGBL 2017 No. 397.

VII. Penal provisions

Article 63⁵⁹²

Misdemeanours

1) The Court of Justice shall punish with a custodial sentence of up to three years for committing a misdemeanour anyone who:

- a) as a member of a governing body and employee or otherwise as a person working for a bank or investment firm or as an auditor violates the obligation of confidentiality, or anyone who induces or tries to induce someone else to do so;
- b) carries out an activity referred to in Article 3 without a licence;
- c) operates a representative office as referred to in Article 30a without a licence;
- d) operates a branch as referred to in Article 30p without a licence;
- e) operates a branch of a bank, financial institution, or investment firm before the conditions set out in Article 30d are met;
- f) fails to fulfil the requirements governing deposit guarantee or investor protection (Articles 7 and 59b et seq.);⁵⁹³
- g) operates a trading venue as referred to in Article 30s or 30t without a licence;⁵⁹⁴
- h) operates a data reporting services provider as referred to in Article 30x without a licence.⁵⁹⁵

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

- a) violates the conditions associated with a licence;
- b) uses prohibited nomenclature falsely indicating activities as a bank or investment firm;
- c) fails to make the required allocations to the legal reserves;
- d) rehypothecates or carries over pledges in violation of the provisions in Article 12;
- e) provides false information to the FMA or the external audit office;

⁵⁹² Article 63 amended by LGBL 2014 No. 348.

⁵⁹³ Article 63(1)(f) amended by LGBL 2017 No. 397.

⁵⁹⁴ Article 63(1)(g) inserted by LGBL 2017 No. 397.

⁵⁹⁵ Article 63(1)(h) inserted by LGBL 2017 No. 397.

- f) does not maintain the account books properly or does not keep the account books and receipts;
- g) as an auditor, seriously breaches duties, especially by making incorrect statements in the audit report or withholding significant facts or failing to make a required request of the bank or investment firm or failing to submit required reports and notifications;
- h) violates the conditions for the exercise of the freedom to provide services in accordance with Article 30c, 30e, 30s(2) or Art. 30t(3);⁵⁹⁶
- i) outsources data processing abroad without complying with the conditions set out in Article 14a;
- k) makes false statements in the periodic reports or notifications or withholds significant facts.

3) The responsibility of legal persons for misdemeanours set out in paragraph 1 or 2 shall be governed by Articles 74a et seq. of the Criminal Code.

4) Provided the Court of Justice has jurisdiction in the same matter on the basis of an offence set out in the Criminal Code or in this article, the Court of Justice instead of the FMA shall also be responsible for the punishment of contraventions under Article 63a. If the proceedings are terminated by the Court of Justice, jurisdiction shall revert to the FMA.

5) Where several offences coincide, Article V(5) of the Criminal Law Adjustment Act shall apply, with the proviso that:

- a) the special sentencing grounds set out in Article 63b for misdemeanours and contraventions under Articles 63 and 63a as well as the criteria for fines set out in Article 63a shall be applied; and
- b) the custodial sentence imposed in the event a fine cannot be collected may not exceed three years in the case of paragraph 1 or one year in the case of paragraph 2.

6) A guilty verdict under this Article shall not be binding on a civil court's determination of guilt or unlawfulness and the determination of damages.

7) When the offence is committed negligently, the maximum penalties set out in paragraphs 1 and 2 shall be reduced by half.

⁵⁹⁶ Article 63(2)(h) amended by LGBL 2017 No. 397.

Article 63a⁵⁹⁷*Contraventions*

1) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine in accordance with paragraph 3 for committing a contravention anyone who:

- a) obtained a licence surreptitiously by providing false information or in any other unlawful way;
- b) systematically or seriously violates the provisions governing risk management (Article 7a);
- c) repeatedly or permanently does not hold liquid assets in accordance with Article 412 of Regulation (EU) No 575/2013;
- d) in violation of Article 4c, makes payments to holders of instruments that form part of the own funds of the bank or investment firm, or when such payments to holders of own funds instruments are impermissible under Articles 28, 51, or 52 of Regulation (EU) No 575/2013;
- e) the liquidity requirements laid down by the FMA in accordance with Article 35d are not met.

2) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine of up to 200,000 Swiss francs for committing a misdemeanour anyone who:

1. fails to prepare or publish the business report, the consolidated business report, the interim financial statement, or the consolidated interim financial statement as required or does not submit it to the FMA in a timely manner;
2. fails to arrange for a regular audit or an audit required by the FMA;
3. fails to meet its obligations toward the external audit office;
4. fails to comply with a request to restore a lawful state of affairs or any other decree by the FMA;
5. engages in misleading or obtrusive publicity, especially with its Liechtenstein registered office or with Liechtenstein facilities;
6. fails to comply with the code of conduct (Articles 8a to 8h) and the professional guidelines declared binding by the FMA;
- 6a. fails to meet the organisational requirements for banks or investment firms under this Act, in particular under Articles 8b, 8f, 8g, 8i, 14a and 22;⁵⁹⁸

⁵⁹⁷ Article 63a inserted by LGBL 2014 No. 348.

7. fails to take or maintain effective organisational or administrative measures to prevent a negative impact of conflicts of interest on client interests;
8. violates the requirements relating to the appointment of tied agents;
9. violates duties as a tied agent;
10. fails to comply with the requirements governing risk management (Article 7a), unless this constitutes a contravention under paragraph 1(b);
11. as an auditor, violates duties under this Act, especially Articles 37 to 40;
12. fails to notify the FMA in writing of a direct or indirect acquisition, direct or indirect increase, direct or indirect disposal, or direct or indirect reduction of a qualifying holding in a bank or investment firm as required under Article 26a(1);⁵⁹⁹
13. during the assessment period or despite opposition by the FMA, executes the direct or indirect acquisition or the direct or indirect disposal of a qualifying holding in a bank or investment firm as well as the direct or indirect increase or the direct or indirect reduction of a qualifying holding in a bank or investment firm if, as a consequence of the increase or reduction, the thresholds referred to in Article 26a(1) would be reached or crossed in either direction, or the bank or investment firm would become a subsidiary;⁶⁰⁰
14. despite being aware that as a consequence of an increase or a reduction of a holding in the capital, the thresholds referred to in Article 26a(1) are crossed in either direction, fails to notify the FMA without delay of that increase or reduction in accordance with Article 26a(3);⁶⁰¹
15. in violation of Article 26a(3), fails to inform the FMA at least annually of the identity of known shareholders of qualifying holdings and the amount of such holdings, if shares of the bank or investment firm are admitted to trading on a regulated market;
16. fails, in violation of Article 99(1) of Regulation (EU) No 575/2013, to report to the FMA on fulfilment of the own funds requirements set out in Article 92 of Regulation (EU) No 575/2013, or makes incomplete or false statements in that regard;

⁵⁹⁸ Article 63a(2)(6a) inserted by LGBL 2017 No. 397.

⁵⁹⁹ Article 63a(2)(12) amended by LGBL 2017 No. 397.

⁶⁰⁰ Article 63a(2)(13) amended by LGBL 2017 No. 397.

⁶⁰¹ Article 63a(2)(14) amended by LGBL 2017 No. 397.

17. in relation to the data referred to in Article 101 of Regulation (EU) No 575/2013, fails to report to the FMA or makes incomplete or false statements in that regard;
18. fails to report large exposures to the FMA in accordance with Article 394(1) of Regulation (EU) No 575/2013 or makes incomplete or false statements in that regard;
19. fails to report on the liquidity position to the FMA in accordance with Article 415(1) and (2) of Regulation (EU) No 575/2013 or makes incomplete or false statements in that regard;
20. fails to report to the FMA on the leverage ratio in accordance with Article 430(1) of Regulation (EU) No 575/2013 or makes incomplete statements in that regard;
21. enters into a credit exposure exceeding the limits set out in Article 395 of Regulation (EU) No 575/2013;
22. is exposed to the credit risk of a securitisation position and fails to fulfil the conditions set out in Article 405 of Regulation (EU) No 575/2013;
23. fails to disclose the information required under Article 431(1) to (3) or Article 451(1) of Regulation (EU) No 575/2013 or makes incomplete or false statements in that regard;
24. permitted one or more persons who fail to meet the requirements set out in Article 22(6) and (7) to become or remain members of the senior management, the board of directors, or the supervisory board;
25. fails to make other required notifications to the FMA as required or on time;
26. fails to meet the own funds requirements set out in Article 92 of Regulation (EU) No 575/2013;
27. in violation of Article 28(1)(f) of Regulation (EU) No 575/2013, reduces or repays the principal amount of Common Equity Tier 1 instruments;
28. in violation of Article 28(1)(h)(i) of Regulation (EU) No 575/2013, makes preferential distributions on Common Equity Tier 1 instruments;
29. in violation of Article 28(1)(h)(ii) or Article 52(1)(l)(i) of Regulation (EU) No 575/2013, makes distributions on Common Equity Tier 1 or Additional Tier 1 instruments out of non-distributable items;
30. in violation of Article 52(1)(i) of Regulation (EU) No 575/2013, calls, redeems, or repurchases Additional Tier 1 instruments;
31. in violation of the second sentence of Article 395(5) of Regulation (EU) No 575/2013, fails to report the amount of the excesses and the name of

- the client concerned, or fails to do so correctly, completely, or without delay;
32. in violation of the first sentence of Article 396(1) of Regulation (EU) No 575/2013, fails to report the value of the exposure, or fails to do so correctly, completely, or without delay;
 33. in violation of the first half of the first sentence of Article 414 of Regulation (EU) No 575/2013, fails to report non-compliance or expected non-compliance with the requirements, or fails to do so correctly, completely, or without delay;
 34. in violation of the second half of the first sentence of Article 414 of Regulation (EU) No 575/2013, fails to submit a plan, or fails to do so correctly, completely, or in a timely manner;
 35. fails to meet the organisational requirements relating to the board of directors, or as a member of the board of directors fails to meet responsibilities, in particular under Article 23;⁶⁰²
 36. fails to comply with the rules on algorithmic trading (Article 8k);⁶⁰³
 37. as the operator of a multilateral or organised trading facility, fails to comply with the organisational requirements for such a trading system (Article 30t), in particular by failing to establish transparent rules and procedures for fair and orderly trading and to establish objective criteria for the efficient execution of orders;⁶⁰⁴
 38. as the operator of a multilateral or organised trading facility, violates the obligation to suspend or remove financial instruments from trading (Article 30t(5));⁶⁰⁵
 39. violates the obligation set out in Annex 1(1)(2) to obtain the express confirmation from a prospective counterparty that it agrees to be treated as an eligible counterparty;⁶⁰⁶
 40. as the operator of an SME growth market, does not meet the specific requirements for SME growth markets (Article 30t(6));⁶⁰⁷
 41. in violation of Article 30e(8), restricts the access of investment firms from EEA Member States to regulated markets, central counterparties, and clearing and settlement systems domiciled in Liechtenstein;⁶⁰⁸

⁶⁰² Article 63a(2)(35) amended by LGBL 2017 No. 397.

⁶⁰³ Article 63a(2)(36) inserted by LGBL 2017 No. 397.

⁶⁰⁴ Article 63a(2)(37) inserted by LGBL 2017 No. 397.

⁶⁰⁵ Article 63a(2)(38) inserted by LGBL 2017 No. 397.

⁶⁰⁶ Article 63a(2)(39) inserted by LGBL 2017 No. 397.

⁶⁰⁷ Article 63a(2)(40) inserted by LGBL 2017 No. 397.

⁶⁰⁸ Article 63a(2)(41) inserted by LGBL 2017 No. 397.

42. as the operator of a regulated market, fails to comply with the organisational requirements for such a trading arrangement (Article 30s);⁶⁰⁹
43. violates the obligation to synchronise business clocks pursuant to Article 30s(5) and Article 30t(4);⁶¹⁰
44. violates the obligation to comply with position limits and submit position reports in accordance with Article 30w;⁶¹¹
45. violates the organisational requirements relating to the management body of a data reporting services provider in accordance with Article 30x(4);⁶¹²
46. as the operator of a data reporting services provider violates the obligation to inform the FMA of all members of its management body and of any changes to its membership (Article 30x(1));⁶¹³
47. as the operator of a data reporting services provider fails to comply with the organisational requirements (Articles 30x and 30y);⁶¹⁴
48. as the operator of a trading venue and in violation of Article 3 of Regulation (EU) No 600/2014:⁶¹⁵
 - a) fails to communicate the current bid and offer prices and the depth of trading interests at those prices; or
 - b) fails to give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements it employs for making public the information referred to in point (a) to banks, investment firms, and asset management companies;
49. operates, as the operator of a trading venue as referred to in Article 4(3) of Regulation (EU) No 600/2014, systems which formalise transactions and, in violation of that provision:⁶¹⁶
 - a) fails to carry out those transactions in accordance with the rules of the trading venue;
 - b) fails to ensure that arrangements, systems and procedures are in place to prevent and detect market abuse or attempted market abuse in relation to such negotiated transactions; or

⁶⁰⁹ Article 63a(2)(42) inserted by LGBL 2017 No. 397.

⁶¹⁰ Article 63a(2)(43) inserted by LGBL 2017 No. 397.

⁶¹¹ Article 63a(2)(44) inserted by LGBL 2017 No. 397.

⁶¹² Article 63a(2)(45) inserted by LGBL 2017 No. 397.

⁶¹³ Article 63a(2)(46) inserted by LGBL 2017 No. 397.

⁶¹⁴ Article 63a(2)(47) inserted by LGBL 2017 No. 397.

⁶¹⁵ Article 63a(2)(48) inserted by LGBL 2017 No. 397.

⁶¹⁶ Article 63a(2)(49) inserted by LGBL 2017 No. 397.

- c) fails to establish, maintain and implement systems to detect any attempt to use the waiver to circumvent other requirements of Regulation (EU) No 600/2014 or this Act or fails to report attempts to the FMA;
50. as the operator of a trading venue and in violation of Article 6 of Regulation (EU) No 600/2014:⁶¹⁷
- a) fails to make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on that trading venue; or
 - b) fails to give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements it employs for making public the information under point (a) to banks, investment firms, and asset management companies which are obliged to publish the details of their transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments;
51. as the operator of a trading venue and in violation of the first sentence of Article 7(1)(3) of Regulation (EU) No 600/2014, fails to obtain the FMA's approval of proposed arrangements for deferred publication of the details of transactions or fails to clearly disclose those arrangements to market participants and the public;⁶¹⁸
52. as the operator of a trading venue and in violation of Article 8 of Regulation (EU) No 600/2014:⁶¹⁹
- a) fails to make public current bid and offer prices and the depth of trading interests at those prices which are advertised through its systems for bonds, structured finance products, emission allowances and derivatives traded on a trading venue;
 - b) fails to give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements it employs for making public the information referred to in point (a) to banks, investment firms, and asset management companies which are obliged to publish their quotes in bonds, structured finance products, emission allowances and derivatives; or
 - c) fails to make public indicative pre-trade bid and offer prices which are close to the price of the trading interests advertised through its systems in bonds, structured finance products, emission allowances and derivatives traded on a trading venue;

⁶¹⁷ Article 63a(2)(50) inserted by LGBL 2017 No. 397.

⁶¹⁸ Article 63a(2)(51) inserted by LGBL 2017 No. 397.

⁶¹⁹ Article 63a(2)(52) inserted by LGBL 2017 No. 397.

53. as the operator of a trading venue and in violation of Article 10 of Regulation (EU) No 600/2014:⁶²⁰
- a) fails to make public the price, volume and time of the transactions executed in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue, or fails to do so in a timely manner; or
 - b) fails to give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements it employs for making public the information under point (a) to banks, investment firms, and asset management companies which are obliged to publish the details of their transactions in bonds, structured finance products, emission allowances and derivatives;
54. as the operator of a trading venue and in violation of the first sentence of Article 11(1)(3) of Regulation (EU) No 600/2014, fails to obtain the FMA's approval of proposed arrangements for deferred publication of the details of transactions or fails to clearly disclose those arrangements to market participants and the public;⁶²¹
55. as the operator of a trading venue and in violation of Article 11(3)(3) of Regulation (EU) No 600/2014, fails to publish, when the deferral time period lapses, the outstanding details of the transaction and all the details of the transactions on an individual basis;⁶²²
56. as the operator of a trading venue and in violation of Article 12(1) of Regulation (EU) No 600/2014, fails to make information available to the public, or fails to offer pre-trade and post-trade transparency data separately when doing so;⁶²³
57. as the operator of a trading venue and in violation of Article 13(1) of Regulation (EU) No 600/2014:⁶²⁴
- a) fails to ensure non-discriminatory access to published information on a reasonable commercial basis; or
 - b) fails to regularly make the information available free of charge 15 minutes after publication;

⁶²⁰ Article 63a(2)(53) inserted by LGBl. 2017 No. 397.

⁶²¹ Article 63a(2)(54) inserted by LGBl. 2017 No. 397.

⁶²² Article 63a(2)(55) inserted by LGBl. 2017 No. 397.

⁶²³ Article 63a(2)(56) inserted by LGBl. 2017 No. 397.

⁶²⁴ Article 63a(2)(57) inserted by LGBl. 2017 No. 397.

58. in violation of Article 14(1) of Regulation (EU) No 600/2014:⁶²⁵
- a) as a bank or investment firm fails to make public firm quotes in respect of those shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which it is a systematic internaliser and for which there is a liquid market; or
 - b) as a systematic internaliser, fails to disclose quotes to its clients;
59. as a systematic internaliser and in violation of Article 14(3) of Regulation (EU) No 600/2014:⁶²⁶
- a) quotes a size that is not at least the equivalent of 10 % of the standard market size of a share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue; or
 - b) for a particular share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue, provides a quote that fails to include a firm bid and offer price or prices for a size or sizes which could be up to standard market size for the class of shares, depositary receipts, ETFs, certificates or other similar financial instruments to which the financial instrument belongs;
60. as a systematic internaliser and in violation of Article 15(1) of Regulation (EU) No 600/2014:⁶²⁷
- a) fails to make public its quotes on a regular and continuous basis during normal trading hours; or
 - b) fails to make the quotes public in a manner which is easily accessible to other market participants on a reasonable commercial basis;
61. as a bank or investment firm, fails to inform the FMA of its capacity as a systematic internaliser in accordance with Article 26(6),⁶²⁸
62. as a systematic internaliser and in violation of Article 15(2) of Regulation (EU) No 600/2014, fails to execute the orders it receives from its clients in relation to the shares, depositary receipts, ETFs, certificates and other similar financial instruments for which it is a systematic internaliser at the quoted prices at the time of reception of the order, or fails to comply with the best execution obligation for clients in accordance with Article 8e;⁶²⁹

⁶²⁵ Article 63a(2)(58) inserted by LGBL 2017 No. 397.

⁶²⁶ Article 63a(2)(59) inserted by LGBL 2017 No. 397.

⁶²⁷ Article 63a(2)(60) inserted by LGBL 2017 No. 397.

⁶²⁸ Article 63a(2)(61) inserted by LGBL 2017 No. 397.

⁶²⁹ Article 63a(2)(62) inserted by LGBL 2017 No. 397.

63. as a systematic internaliser quoting in different sizes and receiving an order between those sizes, which it chooses to execute, fails to comply with its obligation under the second sentence of Article 15(4) of Regulation (EU) No 600/2014 to execute the order promptly, fairly and expeditiously at one of the quoted prices in accordance with Article 8e;⁶³⁰
64. as a systematic internaliser and in violation of Article 17(1) of Regulation (EU) No 600/2014, does not have clear standards for governing access to its quotes;⁶³¹
65. as a bank or investment firm and in violation of Article 18(1) of Regulation (EU) No 600/2014, fails to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is a liquid market and for which the bank or investment firm is a systematic internaliser;⁶³²
66. as a systematic internaliser and in violation of Article 18(2) of Regulation (EU) No 600/2014, fails to disclose to its clients on request a quote in relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market;⁶³³
67. as a systematic internaliser and in violation of the first sentence of Article 18(5) of Regulation (EU) No 600/2014, fails to make the published firm quotes available to its other clients;⁶³⁴
68. as a systematic internaliser and in violation of Article 18(6)(1) of Regulation (EU) No 600/2014, fails to enter into transactions under the published conditions with other clients;⁶³⁵
69. as a systematic internaliser and in violation of Article 18(8) of Regulation (EU) No 600/2014, fails to make published quotes and doesn't publish quotes in a manner which is easily accessible to other market participants on a reasonable commercial basis;⁶³⁶
70. as a systematic internaliser and in violation of Article 18(9) of Regulation (EU) No 600/2014;⁶³⁷

⁶³⁰ Article 63a(2)(63) inserted by LGBL 2017 No. 397.

⁶³¹ Article 63a(2)(64) inserted by LGBL 2017 No. 397.

⁶³² Article 63a(2)(65) inserted by LGBL 2017 No. 397.

⁶³³ Article 63a(2)(66) inserted by LGBL 2017 No. 397.

⁶³⁴ Article 63a(2)(67) inserted by LGBL 2017 No. 397.

⁶³⁵ Article 63a(2)(68) inserted by LGBL 2017 No. 397.

⁶³⁶ Article 63a(2)(69) inserted by LGBL 2017 No. 397.

⁶³⁷ Article 63a(2)(70) inserted by LGBL 2017 No. 397.

- a) fails to quote prices such as to ensure that the systematic internaliser complies with its obligations under Article 8e; or
 - b) fails to ensure that the quoted prices reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue;
71. as a bank or investment firm which, either on own account or on behalf of clients, concludes transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, fails to make public the volume and price of those transactions and the time at which they were concluded, in violation of Article 20(1) of Regulation (EU) No 600/2014;⁶³⁸
72. as a bank or investment firm and in violation of the first sentence of Article 20(2) of Regulation (EU) No 600/2014, fails to ensure that the published information and the time-limits within which it is published comply with the adopted requirements and regulatory technical standards;⁶³⁹
73. as a bank or investment firm which, either on own account or on behalf of clients, concludes transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue, fails to make public the volume and price of those transactions and the time at which they were concluded, in violation of Article 21(1) and (2) of Regulation (EU) No 600/2014;⁶⁴⁰
74. as a bank or investment firm and in violation of Article 21(3) of Regulation (EU) No 600/2014, fails to ensure that the published information and the time limits within which it is published comply with the adopted requirements and regulatory technical standards;⁶⁴¹
75. as the operator of a trading venue, APA, or CTP and in violation of Article 22(2) of Regulation (EU) No 600/2014, fails to store the necessary data for a sufficient period of time;⁶⁴²
76. as a bank or investment firm and in violation of Article 23(1) of Regulation (EU) No 600/2014, fails to ensure 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, systematic internaliser, or third-country trading venue assessed as equivalent, as appropriate;⁶⁴³

⁶³⁸ Article 63a(2)(71) inserted by LGBL 2017 No. 397.

⁶³⁹ Article 63a(2)(72) inserted by LGBL 2017 No. 397.

⁶⁴⁰ Article 63a(2)(73) inserted by LGBL 2017 No. 397.

⁶⁴¹ Article 63a(2)(74) inserted by LGBL 2017 No. 397.

⁶⁴² Article 63a(2)(75) inserted by LGBL 2017 No. 397.

⁶⁴³ Article 63a(2)(76) inserted by LGBL 2017 No. 397.

77. as a bank or investment firm, operates an internal matching system which executes client orders in shares, depositary receipts, ETFs, certificates and other similar financial instruments on a multilateral basis, and in violation of Article 23(2) of Regulation (EU) No 600/2014 fails to ensure that the system is authorised as a multilateral trading facility and that it complies with all relevant provisions pertaining to such authorisations;⁶⁴⁴
78. as a bank or investment firm and in violation of Article 25(1) of Regulation (EU) No 600/2014:⁶⁴⁵
- 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 it has carried out, whether on own account or on behalf of a client; or
 - b) fails to ensure that the records of transactions carried out on behalf of clients contain all the information and details of the identity of the client;
79. as the operator of a trading venue and in violation of Article 25(2) of Regulation (EU) No 600/2014:⁶⁴⁶
- a) fails to keep at the disposal of the FMA, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through its systems; or
 - b) fails to ensure that the records contain the relevant data that constitute the characteristics of the order;
80. as a bank or investment firm, executes transactions in financial instruments and, in violation of Article 26(1) to (6) 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;⁶⁴⁷
81. as the operator of a trading venue or ARM, acts on behalf of a bank or investment firm and, in violation of Article 26(7) of Regulation (EU) No 600/2014, fails to submit the report completely, accurately, or in a timely manner;⁶⁴⁸
82. as the operator of a trading venue and in violation of Article 27(1)(1) of Regulation (EU) No 600/2014, fails to provide the FMA with identifying reference data for the purpose of transaction reporting with

⁶⁴⁴ Article 63a(2)(77) inserted by LGBL 2017 No. 397.

⁶⁴⁵ Article 63a(2)(78) inserted by LGBL 2017 No. 397.

⁶⁴⁶ Article 63a(2)(79) inserted by LGBL 2017 No. 397.

⁶⁴⁷ Article 63a(2)(80) inserted by LGBL 2017 No. 397.

⁶⁴⁸ Article 63a(2)(81) inserted by LGBL 2017 No. 397.

- regard to financial instruments admitted to trading on regulated markets or traded via multilateral or organised trading facilities;⁶⁴⁹
83. as a systematic internaliser and in violation of Article 27(1)(2) of Regulation (EU) No 600/2014, fails to provide the FMA with reference data;⁶⁵⁰
 84. as a financial counterparty as defined in Article 2(8) of Regulation (EU) No 648/2012 or as a 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) or (2)(1) of Regulation (EU) No 600/2014, concludes transactions with derivatives outside regulated markets, multilateral trading facilities, organised trading facilities or third-country trading venues;⁶⁵¹
 85. fails to comply with this obligation as a third-country entity which, pursuant to Article 28(2)(1) of Regulation (EU) No 600/2014, would have to conclude transactions in derivatives on regulated markets, multilateral trading facilities, organised trading facilities, or third-country trading venues;⁶⁵²
 86. as the operator of a regulated market and in violation of Article 29(1) of Regulation (EU) No 600/2014, fails to ensure that all transactions in derivatives that are concluded on that regulated market are cleared by a central counterparty;⁶⁵³
 87. as a central counterparty, operator of a trading venue, bank, or investment firm acting as a clearing member in accordance with Article 2(14) of Regulation (EU) No 648/2012, fails to have in place effective systems, procedures and arrangements in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practicable using automated systems;⁶⁵⁴
 88. in violation of Article 30(1) of Regulation (EU) No 600/2014, concludes an indirect clearing agreement with regard to exchange-traded derivatives that increases counterparty risk or fails to ensure that the assets and positions of the counterparty are adequately protected;⁶⁵⁵

⁶⁴⁹ Article 63a(2)(82) inserted by LGBL 2017 No. 397.

⁶⁵⁰ Article 63a(2)(83) inserted by LGBL 2017 No. 397.

⁶⁵¹ Article 63a(2)(84) inserted by LGBL 2017 No. 397.

⁶⁵² Article 63a(2)(85) inserted by LGBL 2017 No. 397.

⁶⁵³ Article 63a(2)(86) inserted by LGBL 2017 No. 397.

⁶⁵⁴ Article 63a(2)(87) inserted by LGBL 2017 No. 397.

⁶⁵⁵ Article 63a(2)(88) inserted by LGBL 2017 No. 397.

89. as a bank, investment firm, or market operator, provides portfolio compression and thereby, in violation of Article 31 of Regulation (EU) No 600/2014;⁶⁵⁶
- a) fails to make public through an APA in a timely manner the volumes of transactions subject to portfolio compressions and the time they were concluded;
 - b) fails to keep complete and accurate records of all portfolio compressions which they organise or participate in or fails to make them available to the FMA or ESMA;
90. as a central counterparty and in violation of Article 35(1) of Regulation (EU) No 600/2014, clears financial instruments on a discriminatory or non-transparent basis;⁶⁵⁷
91. as the operator of a trading venue and in violation of Article 35(2) of Regulation (EU) No 600/2014, fails to formally submit a request to access a central counterparty to that central counterparty, or fails to specify in the request to which types of financial instruments access is requested;⁶⁵⁸
92. as a central counterparty and in violation of Article 35(3) of Regulation (EU) No 600/2014, fails to provide a written response in a timely manner to an operator of a trading venue requesting access; denies access in an impermissible manner; fails to provide full reasons for a denial; fails to inform the FMA and, where applicable, the foreign competent authority of the denial; or fails to make access possible for the operator of the trading venue requesting access within three months of providing a positive response to the access request;⁶⁵⁹
93. as the operator of a trading venue and in violation of Article 36(1) of Regulation (EU) No 600/2014, provides trading feeds on a discriminatory or non-transparent basis;⁶⁶⁰
94. as a central counterparty, submits a request to access a trading venue and, in violation of Article 36(2) of Regulation (EU) No 600/2014, fails to formally submit it to the trading venue, the FMA, and the competent authority of the central counterparty;⁶⁶¹
95. as the operator of a trading venue and in violation of Article 36(3) of Regulation (EU) No 600/2014, fails to provide a written response in a timely manner to a central counterparty requesting access; denies access

⁶⁵⁶ Article 63a(2)(89) inserted by LGBL 2017 No. 397.

⁶⁵⁷ Article 63a(2)(90) inserted by LGBL 2017 No. 397.

⁶⁵⁸ Article 63a(2)(91) inserted by LGBL 2017 No. 397.

⁶⁵⁹ Article 63a(2)(92) inserted by LGBL 2017 No. 397.

⁶⁶⁰ Article 63a(2)(93) inserted by LGBL 2017 No. 397.

⁶⁶¹ Article 63a(2)(94) inserted by LGBL 2017 No. 397.

- in an impermissible manner; fails to provide full reasons for a denial; fails to inform the FMA and, where applicable, the foreign competent authority of the denial; or fails to make access possible for the central counterparty requesting access within three months of providing a positive response to the access request;⁶⁶²
96. has proprietary rights to a benchmark necessary for the calculation of the value of a financial instrument and, in violation of Article 37(1) of Regulation (EU) No 600/2014, fails to ensure that central counterparties and trading venues are given non-discriminatory access at a reasonable commercial price for the purpose of trading and clearing;⁶⁶³
97. as a central counterparty, operator of a trading venue or any related entity and in violation of Article 37(1) of Regulation (EU) No 600/2014, enters into an agreement with the provider of a benchmark which prevents another central counterparty or other operator of a trading venue from obtaining access to that benchmark;⁶⁶⁴
98. in violation of Article 40, 41, or 42 of Regulation (EU) No 600/2014, fails to comply with a restriction or prohibition imposed by ESMA, EBA, or the FMA with regard to the marketing, distribution, or sale of certain financial instruments or of financial instruments with certain specified features or a type of financial activity or practice;⁶⁶⁵
99. as a market operator, bank, or investment firm operates a trading venue and, in violation of the third sentence of Article 7(1) or Article 11(1) of Regulation (EU) No 600/2014, fails to obtain the FMA's prior approval of proposed arrangements for deferred trade-publication or fails to clearly disclose those arrangements to market participants and the public;⁶⁶⁶
100. violates ordinance provisions, the contravention of which has been declared punishable.⁶⁶⁷
- 3) The fine referred to in paragraph 1 shall be:
- a) for legal persons, up to 10% of the highest annual total net revenues or gross income generated in the last three business years or up to twice the benefit obtained from the violation, insofar as the benefit can be quantified and insofar as it exceeds the total net revenues (gross income); when determining the amount for fines under paragraph 1(e),

⁶⁶² Article 63a(2)(95) inserted by LGBL 2017 No. 397.

⁶⁶³ Article 63a(2)(96) inserted by LGBL 2017 No. 397.

⁶⁶⁴ Article 63a(2)(97) inserted by LGBL 2017 No. 397.

⁶⁶⁵ Article 63a(2)(98) inserted by LGBL 2017 No. 397.

⁶⁶⁶ Article 63a(2)(99) inserted by LGBL 2017 No. 397.

⁶⁶⁷ Article 63a(2)(100) inserted by LGBL 2017 No. 397.

the discrepancy between the actual liquidity position of a bank or investment firm and the requirements governing liquidity and stable funding set out in this Act shall be taken into account;

- b) for natural persons, up to 6,200,000 Swiss francs or up to twice the benefit obtained from the violation, insofar as the benefit can be quantified and insofar as it exceeds 6,200,000 Swiss francs.

4) The FMA shall impose fines under paragraph 2 or paragraph 3(a) if the contraventions under paragraph 1 or 2 are committed in the course of business of the legal person (underlying offences) by persons who acted either on their own or as members of the board of directors, senior management, management board, or supervisory board of the legal person or pursuant to other leadership positions within the legal person, on the basis of which they:⁶⁶⁸

- a) are authorised to represent the legal person externally;
b) exercise control in a leading position; or
c) otherwise have significant influence on the business management of the legal person.

5) In the case of contraventions under paragraphs 1 and 2 committed by employees of the legal person, even though not culpably, the legal person shall be responsible also if the contravention was made possible or significantly facilitated by the fact that the persons referred to in paragraph 4 failed to take necessary and reasonable measures to prevent such underlying offences.⁶⁶⁹

6) The responsibility of the legal person for the underlying offence and the criminal liability of the persons referred to in paragraph 4 or of employees referred to in paragraph 5 for the same offence are not mutually exclusive. The FMA may refrain from punishing a natural person if a monetary fine has already been imposed on the legal person for the same violation and there are no special circumstances preventing a waiver of the punishment.

7) When the offence is committed negligently, the maximum penalties set out in paragraphs 1 to 3 shall be reduced by half.

⁶⁶⁸ Article 63a(4) introductory phrase amended by LGBL 2015 No. 211.

⁶⁶⁹ Article 63a(5) amended by LGBL 2015 No. 211.

Article 63b⁶⁷⁰*Principles of proportionality and efficiency*

1) When imposing penalties under Articles 63 and 63a, 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. financial capacity;
 3. the willingness to cooperate;
 4. reports to the internal reporting system of a bank or investment firm in accordance with Article 22(2)(e) or the FMA in accordance with Article 64a;⁶⁷¹
 5. prior infringements and the risk of repetition.

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

Article 63c⁶⁷²*Publication of sanctions and information provided to the European Supervisory Authorities*

1) On its website, the FMA shall publish all final penalties for misdemeanours under Articles 63 and 63a without delay, once the person concerned has been informed of the penalty. Such publication does not constitute a violation of official secrecy under Article 31a. The publication shall contain:

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

⁶⁷⁰ Article 63b inserted by LGBl. 2014 No. 348.

⁶⁷¹ Article 63b(1)(b)(4) amended by LGBl. 2017 No. 397.

⁶⁷² Article 63c inserted by LGBl. 2014 No. 348.

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

2) The FMA shall announce final penalties on its website in an anonymised form or shall waive publication entirely if the public announcement of personal data or anonymous publication:⁶⁷³

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

b) would endanger the stability of the financial markets or of 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 penalty 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 penalty has become final. The publication of personal data shall, however, be maintained only as long as none of the criteria referred to in paragraph 1 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 penalties, in particular also of penalties imposed but not published. This does not constitute a violation of official secrecy under Article 31a. The FMA shall also annually transmit aggregated information regarding all penalties imposed, as well as anonymised and aggregated data regarding all criminal investigations undertaken and penalties imposed. That obligation does not apply to measures of an investigatory nature. Where the FMA has disclosed a penalty to the public, it shall, at the same time, report that fact to the European Supervisory Authorities.⁶⁷⁴

Article 64

Responsibility

Where violations are committed in the business operations of a legal person, a general or limited partnership, or a sole proprietorship, then the penal provisions shall apply to the persons who acted or should have acted

⁶⁷³ Article 63c(2) introductory phrase amended by LGBL 2017 No. 397.

⁶⁷⁴ Article 63c(6) amended by LGBL 2017 No. 397.

on its behalf; the legal person, partnership, or sole proprietorship shall, however, be jointly and severally liable for monetary penalties and costs.

Article 64a⁶⁷⁵

Reporting of infringements of the law

1) The FMA shall have an effective and reliable reporting system at its disposal through which potential or actual infringements of provisions of this Act, the associated ordinances, Regulation (EU) No 575/2013, and Regulation (EU) No 600/2014 can be reported via a generally accessible, secure reporting line.

2) The reporting system shall include at least:

- a) specific procedures for the receipt of reports of infringements and their follow-up;
- b) appropriate protection for employees of banks, investment firms, and financial institutions who report infringements committed within these banks, investment firms, and financial institutions, at least against retaliation, discrimination or other types of unfair treatment;
- c) the protection of personal data in accordance with the Data Protection Act, both for the person who reports the infringement and for the natural person who is allegedly responsible for the infringement, unless disclosure of the information is required in the context of prosecutorial, judicial, or administrative procedures.

3) A report by employees of banks, investment firms, and financial institutions to the FMA shall not be considered an infringement of a contractual or legal obligation to maintain confidentiality and shall not entail any liability of the reporting person in this regard.

4) The Government may provide further details by ordinance.

⁶⁷⁵ Article 64a inserted by LGBL 2017 No. 397.

Article 65⁶⁷⁶*Obligation of the Office of the Public Prosecutor and the courts to provide information*

The Office of the Public Prosecutor shall inform the FMA of the initiation and suspension of proceedings relating to Article 63. The Court of Justice shall moreover transmit copies of judgements in this regard to the FMA.

VIII. Transitional provision

Article 66

Concessions

Concessions to operate a bank or financial company which do not meet the requirements of this Act or the associated ordinances shall be adjusted to the new law within one year after the relevant enactments have entered into force or, if necessary, they shall be withdrawn or revoked.

IX. Final provisionsArticle 67⁶⁷⁷*Implementing ordinances*

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

⁶⁷⁶ Article 65 amended by LGBL 2017 No. 397.

⁶⁷⁷ Article 67 amended by LGBL 2014 No. 348.

Article 67a⁶⁷⁸*Specification of a reference rate for amounts in euros*

The Government may issue an ordinance to specify a reference rate for calculating the amounts in euros set out in Regulation (EU) No 575/2013 and its implementing rules. The reference rate shall be reviewed annually and adjusted where necessary. Special rules on exchange rates shall remain unaffected.

Article 68

Repeal of existing law

The following enactments are hereby repealed:

- a) the Law of 21 December 1960 on Banks and Savings Banks, LGBL. 1961 No. 3;
- b) the Law of 18 November 1964 amending the Law on Banks and Savings Banks, LGBL. 1965 No. 3;
- c) the Law of 10 July 1975 amending the Law on Banks and Savings Banks, LGBL. 1975 No. 41.

Article 69

Entry into force

This Act shall enter into force on 1 January 1993.

signed Hans-Adam

signed *Hans Brunhart*
Prime Minister

⁶⁷⁸ Article 67a inserted by LGBL. 2015 No. 211.

Annex 1¹

(Article 3a(1)(9) to (1)(11))

Client classifications

1. Eligible counterparties

1) The following shall be considered eligible counterparties per se and with respect to all investment services and ancillary services:

- a) Banks, investment firms, asset management companies, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under EEA law or under the national law of an EEA Member State, national governments and their corresponding offices including public bodies that deal with public debt at national level, central banks and supranational organisations;
- b) third country entities equivalent to those entities referred to in subparagraph (a).

2) Undertakings that meet two of the three conditions referred to in point 2(1)(b) may be recognised as eligible counterparties. In transactions with such undertakings, the bank or investment firm 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 paragraph, no express confirmation must be obtained.

3) Analogously to paragraph 2, undertakings from another EEA 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.

2. Professional clients

¹ Annex 1 inserted by LGBL 2007 No. 261 and amended by LGBL 2011 No. 299, LGBL 2013 No. 54, LGBL 2013 No. 247, LGBL 2014 No. 348, LGBL 2016 No. 49 and LGBL 2017 No. 397.

1) The following shall be considered professional clients per se and with respect to all investment services, ancillary services, and financial instruments:

- a) entities which are licensed or which are required to be regulated to operate in the financial markets, namely:
 - aa) banks and financial institutions;
 - bb) investment firms and asset management companies;
 - cc) other institutions of the financial sector, notably tied agents dealing on own account;
 - dd) insurance undertakings;
 - ee) undertakings for collective investment in transferable securities, investment undertakings, their management companies, and alternative investment funds and their managers;
 - ff) pension funds and their management companies;
 - gg) commodity and commodity derivatives dealers; or
 - hh) other institutional investors;
- b) large undertakings meeting two of the following size requirements on a company basis:
 - aa) balance sheet total: equivalent of EUR 20,000,000
 - bb) net turnover: equivalent of EUR 40,000,000;
 - cc) own funds: equivalent of EUR 2,000,000;
- c) governments, municipalities, public bodies that manage public debts, central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB, and other similar international organisations;
- 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) Persons who have requested to be classified and treated as professional clients in accordance with the ordinances issued to implement this Act shall only be considered professional clients with respect to the investment services, ancillary services, and financial instruments specified in the request.

3. Retail clients

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

BankG

952.0

Annex 2¹

(Article 3(3) and (4), Article 3a(1))

Investment services, ancillary services, and financial instruments**Section A****Investment services**

1) Investment services are the following activities in relation to one or more financial instruments referred to in Section C:

1. reception and transmission of orders;
2. execution of orders on behalf of clients in the sense of agreements to buy or sell one or more financial instruments on behalf of clients. This includes the conclusion of agreements to sell financial instruments issued by a bank or investment firm at the moment of their issuance;
3. dealing on own account: dealing with financial instruments on own account, provided and to the extent that the transactions are executed by banks and investment firms or as market making or if dealing occurs outside a regulated market or multilateral trading facility on an organised, frequent, and systematic basis, by providing a system accessible to third parties serving to conclude contracts on financial instruments;
4. portfolio management: managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;
5. investment advice in the sense of a recommendation personally addressed to an investor or potential investor or the investor's or potential investor's authorised agent that is not exclusively public or distributed via information channels, concerning the purchase, sale, exchange, subscription, redemption, transfer, or holding of a financial

¹ Annex 2 inserted by LGBL 2007 No. 261 and amended by LGBL 2011 No. 299, LGBL 2013 No. 54, LGBL 2013 No. 247, LGBL 2014 No. 348, LGBL 2016 No. 49, and LGBL 2017 No. 397.

- instrument or the exercise or non-exercise of a right of purchase, sale, exchange, subscription, or redemption of a financial instrument;
6. underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
 7. placing of financial instruments without a firm commitment basis;
 8. operation of a multilateral trading facility;
 9. operation of an organised trading facility.

2) The activities referred to in Article 2 of Directive 2014/65/EU do not constitute investment services. The provisions on position limits and position management controls for commodity derivatives and on position reporting under Article 30w shall apply to such activities, however.

Section B

Ancillary services

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management, excluding the provision and maintenance of securities accounts at the top-tier level ("central maintenance service");
2. granting credits or loans to an investor to allow the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
3. advice to undertakings on capital structure, industrial strategy, and related matters and advice and services relating to mergers and the purchase of undertakings;
4. foreign exchange services where these are connected to the provision of investment services;
5. investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
6. services relating to underwriting;
7. investment services and activities as well as ancillary services of the type included under Section A or B of this Annex related to the underlying of the derivatives included under Section C , items 5, 6, 7 and 10, where these are connected to the provision of investment or ancillary services.

Section C

Financial instruments

1. Transferable securities of all classes which are negotiable on the capital market, such as:
 - a) shares in companies and other securities equivalent to shares in companies, partnerships, or other entities, including depositary receipts in respect of such securities;
 - b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
 - 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, or other indices or measures;
2. money-market instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit, and commercial papers and excluding instruments of payment;
3. units in undertakings for collective investment in transferable securities, units in investment undertakings, and units in alternative investment funds;
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; or
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, indices and measures not otherwise mentioned in this Section C, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, multilateral trading facility, or organised trading facility.
11. Emission allowances consisting of any units recognised for compliance with the requirements of emissions trading legislation.

952.0

Transitional provisions

952.0 Banking Act (BankG)

Liechtenstein Law Gazette

Year 1998

No. 223

published on 30 December 1998

Law
of 19 November 1998
**amending the Law on Banks and Investment
Firms (Banking Act)**

...

II.**Transitional provisions**

1) Branches and representative offices that already existed prior to entry into force of this Act¹ shall not require a new licence.

2) Existing concessions and licences that do not conform to the provisions of Article 14a shall be adjusted within one year after entry into force of this Act.¹

3) Nomenclature that does not conform to the provisions of Article 16(1) and (3) shall be adjusted within two years after entry into force of this Act.¹

4) Concessions and licences that do not meet the requirements of this Act and the associated ordinances shall be adjusted to the new law within one year after the relevant enactments have entered into force or, if necessary, they shall be withdrawn or revoked.

...

¹ Entry into force: 1 January 1999.

Liechtenstein Law Gazette

Year 2005

No. 13

published on 24 January 2005

Law of 26 November 2004 amending the Banking Act

...

III.

Transitional provision

This Act shall apply to proceedings that are opened after its entry into force.¹

...

¹ Entry into force: 24 January 2005.

Liechtenstein Law Gazette

Year 2007

No. 261

published on 31 October 2007

Law of 20 September 2007 amending the Banking Act

...

III.

Transitional provisions

The new law shall apply to proceedings pending at the time of entry into force¹ of this Act.

...

¹ Entry into force: 1 November 2007.

Liechtenstein Law Gazette

Year 2008

No. 226

published on 26 August 2008

Law of 26 June 2008 amending the Banking Act

...

II.

Transitional provision

The new law shall apply to administrative assistance proceedings pending at the time of entry into force¹ of this Act.

...

¹ Entry into force: 26 August 2008.

Liechtenstein Law Gazette

Year 2014

No. 348

published on 23 December 2014

Law
of 7 November 2014
amending the Banking Act

...

II.**Transitional provisions**

Article 1

Institution-specific countercyclical buffer for the years 2016 to 2018

The institution-specific countercyclical buffer referred to in Article 4a(1)(b) shall be:

- a) from 1 January 2016 to 31 December 2016, at most 0.625% of the total risk-weighted exposure amounts of the bank or investment firm calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;
- b) from 1 January 2017 to 31 December 2017, at most 1.25% of the total risk-weighted exposure amounts of the bank or investment firm calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;
- c) from 1 January 2018 to 31 December 2018, at most 1.875% of the total risk-weighted exposure amounts of the bank or investment firm calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

Article 2

Freedom of establishment and freedom to provide services

Until entry into force of the decision of the EEA Joint Committee incorporating Directive 2013/36/EU, the exercise of the freedom of establishment and of the freedom to provide services shall be in accordance with Directives 2006/48/EC, 2006/49/EC, 2009/111/EC, and 2010/76/EU.

...

Liechtenstein Law Gazette

Year 2016

No. 223

published on 7 July 2016

Law
of 11 May 2016
amending the Banking Act

...

II.**Transitional provision**

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

Liechtenstein Law Gazette

Year 2017

No. 397

published on 22 December 2017

Law
of 10 November 2017
amending the Banking Act

...

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.