

Translation of Liechtenstein Law

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Electronic Money Ordinance (EGV)
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Pursuant to Article 6(2), Article 9a(4), Article 9d(5), Article 9f(7), Article 13(6), Article 18a(4), Article 18c(3), Article 38a(2), Article 39(10), and Article 50a of the Electronic Money Act (EGG) of 17 March 2011, LGBL 2011 No. 151, as amended, the Government issues the following Ordinance:

I. General provisions

Article 1

Object and purpose

1) This Ordinance, implementing the Electronic Money Act, lays down detailed rules on:

- a) the licensing of electronic money institutions;
- b) the performance of the business activities of electronic money institutions;
- c) the approval and reporting obligations;
- d) the audit firms.

2) It serves to transpose Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions¹.

¹ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7)

3) The version currently in force of the EEA legislation referred to in this Ordinance is referenced in the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Law Gazette pursuant to Article 3(k) of the Promulgation Act.

Article 2

Designations

The designations of persons used in this Ordinance shall be understood to mean all persons regardless of their gender, unless the designations of persons refer expressly to a specific gender.

II. Licensing of electronic money institutions

Article 3

Application for a licence

1) The following information and documents shall be submitted with the application for a licence referred to in Article 6 of the Electronic Money Act:

- a) a programme of operations setting out in particular the type of electronic money services envisaged;
- b) a business plan including a forecast budget calculation for the first 3 financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
- c) evidence that the electronic money institution holds initial capital as provided for in Article 8 of the Electronic Money Act;
- d) a description of the measures taken for safeguarding customers' funds in accordance with Article 11 of the Electronic Money Act;
- e) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, as well as arrangements on the use of ICT services as referred to in Regulation (EU) 2022/2554², which

² Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending

demonstrates that those governance arrangements and internal control mechanisms are proportionate, appropriate, sound and adequate;

- f) a description of the procedure in place to monitor, handle and follow up a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the reporting obligations of the payment institution laid down in Chapter III of Regulation (EU) 2022/2554;
- g) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and of the off-site or on-site checks that the applicant undertakes to perform on them at least annually, as well as a description of outsourcing arrangements, and of its participation in a national or international payment system;
- h) the identity of persons holding in the electronic money institution, directly or indirectly, qualifying holdings within the meaning of point 36 of Article 4(1) of Regulation (EU) No 575/2013³, the size of their holdings and evidence of their suitability taking into account the need to ensure the sound and prudent management of a payment institution;
- i) the identity of the members of the board of directors, the general management, and the heads of the internal audit department, as well as evidence that they are of good repute and possess appropriate knowledge and experience to perform electronic payment services;
- k) the name of the audit firm (Article 17(1) EGG) and a declaration that it accepts the engagement in accordance with Article 40a of the Electronic Money Act;
- l) the applicant's legal form and articles of association;
- m) the registered office and address of the applicant's head office;
- n) a description of the process in place to file, monitor, track and restrict access to sensitive payment data;
- o) a description of business continuity arrangements including a clear identification of the critical operations, effective ICT business continuity policy and plans and ICT response and recovery plans and

Commented [JH1]: Fussnote: "zur Änderung der Verordnung (EU) Nr. 646/2012" statt "...Nr. 648/2012" im Originaltext

Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (OJ L 333, 27.12.2022, p. 1)

- ³ 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)

a procedure to regularly test and review the adequacy and efficiency of such plans in accordance with Regulation (EU) 2022/2554;

- p) a description of the principles and definitions applied for the collection of statistical data on performance, transactions and fraud;
- q) a security policy document, including a detailed risk assessment in relation to its services and a description of security control and mitigation measures taken to adequately protect users against the risks identified, including fraud and illegal use of sensitive and personal data;
- r) for applicants which are subject to the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849⁴ and Regulation (EU) 2023/1113⁵, a description of the internal control mechanisms which the applicant has established in order to comply with those obligations.

2) For the purposes of paragraph 1(d) to (g), the applicant shall present a description of the audit arrangements and the organisational arrangements the applicant has set up with a view to taking all reasonable steps to protect the interests of the users and to ensure continuity and reliability in the performance of electronic money services.

3) For the security control and risk mitigation measures referred to in paragraph 1(q), the applicant shall indicate how they ensure a high level of digital operational resilience in accordance with Chapter II of Regulation (EU) 2022/2554, in particular in relation to technical security and data protection, including for the software and ICT systems used by the applicant or the undertakings to which it outsources the whole or part of its operations. Those measures shall also include the security measures laid down in Article 101 of the Payment Services Act.

⁴ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73)

⁵ Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (OJ L 150, 9.6.2023, p. 1)

III. Performance of business activities

Article 4

General requirements for corporate organisation

1) The governance arrangements must be communicated to employees in writing and made available to them in the currently valid version. In the event of changes to business activities and procedures, the governance arrangements must be adapted promptly before they are implemented.

2) Electronic money institutions must comply with the following general organisational requirements on a permanent basis:

- a) employment of employees with sufficient knowledge and experience to perform the tasks assigned to them. Appropriate quantitative and qualitative staffing shall *inter alia* take into account the underlying business model, business strategy, and risk profile. Appropriate measures must be taken to ensure that the knowledge of employees is maintained at a high level. Appropriate measures should be taken to avoid lasting disruptions to internal procedures due to the absence or departure of employees;
- b) introduction and guarantee of smoothly functioning reporting and dissemination of information essential for the performance of assigned tasks at all relevant levels;
- c) creation and permanent application of systems and procedures for the security and protection of the integrity and confidentiality of information, in particular for the protection of electronic money institution secrecy or other professional secrecy under special laws;
- d) guarantee of the integrity, availability, authenticity, and confidentiality of data through ICT systems (hardware and software), associated ICT processes, and other ICT components;
- e) creation of appropriate policies and procedures that ensure the continuation of the performance of services in the event of a failure of people and technical systems, or that guarantee the resumption of the performance of services as soon as possible in such an event.

3) The implementation of the organisational requirements shall correspond to the nature, scale, and complexity of the services provided and other transactions subject to a licence carried out.

Article 5

Internal control framework and mechanisms

1) The electronic money institution must have an appropriate internal control framework and internal control mechanisms ("internal control system"). This includes all regulations, guidelines, mechanisms, and procedures that ensure the following:

- a) effective and efficient operations;
- b) prudent conduct of business;
- c) adequate identification, measurement, assessment, management, mitigation, monitoring, and reporting of risks;
- d) the reliability of financial and non-financial internal and external reporting;
- e) sound administrative and accounting procedures; and
- f) compliance with laws, ordinances, decisions and decrees of the FMA as well as with regulations, internal policies, processes, rules, and decisions of the electronic money institution.

2) The internal control framework shall cover the whole organisation, including the responsibilities and tasks of the board of directors and general management, and the activities of all business lines and internal units, including internal control functions, outsourced activities and distribution channels. The organisational measures of the internal control framework are integrated into the operational work processes, i.e. they are carried out during work or immediately before or after work is carried out.

3) Electronic money institutions shall have at least the following internal control mechanisms in place:

- a) oversight by the board of directors and general management: the board of directors and general management shall receive regular performance reports and critically review them (e.g. development of financial results in relation to budget and objectives); the frequency of this reporting depends on the nature, scale, and complexity of the electronic money institution's business;
- b) activity controls: all hierarchy levels concerned shall receive regular level-specific performance reports and review them critically; the frequency of this reporting depends on the nature, scale, and complexity of the electronic money institution's business;
- c) physical inspections: dual control principle, limitation of technical access to cash and valuables, periodic inventory;

- d) review of compliance with specified limits: the specified limits shall be regularly reviewed and appropriate measures taken if necessary;
- e) (financial) competencies and authorisations: regular and sporadic inspections of compliance for selected transactions;
- f) review and coordination of transactions and risk management models.

4) The internal control system must be flexible in order to be able to react quickly and appropriately to new or previously uncontrolled types of risk. For an effective internal control system, internal and external information relevant to decision-making must be prepared in a reliable, timely, accessible, and consistent manner. The electronic money institution must have a suitable management information system (MIS) that collects, distributes, and processes all relevant information on the operational business areas in a reliable and timely manner.

5) The appropriateness and effectiveness of the internal control system must be monitored on an ongoing basis. The board of directors must define the corresponding responsibilities. The inspections carried out and the results must be documented in a comprehensible and appropriate manner. If deviations and deficiencies are identified, it must be ensured that corrective measures are initiated. The appropriate bodies and hierarchical levels must be informed in a timely manner of the relevant results, problems, and measures; serious cases must be reported to the board of directors and general management.

6) The general management must ensure that the individual regulations, internal policies, mechanisms, and policies relevant to their activities are communicated to the respective employees and that the employees receive appropriate training. All employees must be familiar with the overarching principles and processes of the internal control system.

Article 6

Fitness and properness

1) Members of the board of directors and general management must regularly undergo appropriate continuing training.

2) In assessing fitness and properness, the FMA shall take into account, *inter alia*, the material and geographic scope of business and the organisation of the electronic money institution.

3) The designated persons must also be able to perform their duties in the electronic money institution properly, taking into account their other commitments and place of residence.

Article 7

Outsourcing

Articles 14 and 15 of the Banking Ordinance shall apply *mutatis mutandis* to outsourcing.

IV. Approval and reporting obligations

Article 8

Application documents

1) An application for approval of amendments to the articles of association and the business regulation as referred to in Article 18a(1)(a) of the Electronic Money Act must be accompanied by:

- a) the amended articles of associations or the amended business regulation in a form in which the amendments have been made visible for the purpose of traceability;
- b) in the case of a capital increase: the documents on the origin of assets;
- c) in the case of a new version of the articles of association or business regulation: a statement from the engaged recognised audit firm that the new version has been audited and meets the regulatory requirements.

2) An application for approval of a merger with an undertaking with its registered office in Liechtenstein, in another EEA Member State, or in a third country as referred to in Article 18a(1)(b) of the Electronic Money Act must be submitted to the FMA at least one month before the general meeting that is to decide on the approval. The application must be accompanied by:

- a) the terms of merger as referred to in Article 351a of the Law on Persons and Companies;
- b) the merger report as referred to in Article 351b of the Law on Persons and Companies.

3) The FMA may request further details and information if this is necessary for its review.

Article 9

Reporting obligations

Article 8 of the Payment Services Ordinance shall apply *mutatis mutandis* to the reporting of information by the electronic money institutions to the FMA.

V. Audit firms

Article 10

Application for recognition

The application for recognition as an audit firm as referred to in Article 38a of the Electronic Money Act must be accompanied by the following materials in particular:

- a) documents on the origin and significant ownership of share capital and the form of its payment;
- b) the business report;
- c) a list of engagements at electronic money institutions and payment institutions;
- d) supporting documents for the qualifications and impeccable repute and good reputation of the responsible auditors and general management;
- e) all documents showing compliance with the requirements set out in Article 38(2) and (3) and Article 38c of the Electronic Money Act.

Article 11

Quality assurance of the audit of electronic money institutions

1) Quality assurance must be carried out in accordance with the provisions of professional law.

2) The audit firm shall establish rules and measures for quality assurance, including quality assurance during the engagement, and shall ensure that these are complied with on a permanent basis. The quality assurance rules must cover the undertaking and engagement level.

3) The responsible auditor shall be responsible for the overall quality of the regulatory audit at the engagement level and shall have the following tasks in particular:

- a) the instruction, planning, execution, and monitoring of the audit engagement;
- b) guarantee of the appropriateness and factual accuracy of the reporting;
- c) performance of reviews in accordance with the rules and procedures laid down by the audit firm for this purpose.

4) Sufficient and appropriately detailed audit documentation that is clear and comprehensible for a knowledgeable third party must be prepared in a timely manner for each individual regulatory audit.

VI. Final provisions

Article 12

Repeal of law hitherto in force

The Electronic Money Ordinance (EGV) of 12 April 2011, LGBI. 2011 No. 158, as amended, is hereby repealed.

Article 13

Entry into force

This Ordinance shall enter into force on 1 July 2025.

The Government:
signed *Brigitte Haas*
Prime Minister