Translation of Liechtenstein Law

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Law

of 5 December 2024

on the Activities and Supervision of Banks, Financial Holding Companies, and Mixed Financial Holding Companies (Banking Act; BankG)

I hereby grant My consent to the following Resolution adopted by Parliament:[1]

I. General provisions

Article 1

Object and purpose

1) This Act governs the taking up, pursuit, and supervision of the business of banks, financial holding companies, and mixed financial holding companies on an individual, sub-consolidated, and consolidated basis.

2) Its purpose is to protect the creditors and investors of banks and to safeguard the functioning of and confidence in the Liechtenstein monetary and credit system as well as to ensure the stability of the financial system.

1 Report and Motion of the Government No. 74/2024 and Statement of the Government No. 137/2024

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

a) Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions[2];

b) Directive 2014/65/EU on markets in financial instruments[3];

c) Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms[4];

d) Directive 2014/49/EU on deposit guarantee schemes[5];[6]

e) Directive 2001/24/EC on the reorganisation and winding up of credit institutions[7];

f) Regulation (EU) No 575/2013 on prudential requirements for credit institutions[8];

g) Regulation (EU) 2019/2033 on the prudential requirements of investment firms[9];[10]

2 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338)

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

4 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190)

5 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149)

6 Article 1(3)(d) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2014/49/EU into the EEA Agreement.

7 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 (OJ L 125, 5.5.2001, p. 15)

8 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)

9 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1)

10 Article 1(3)(g) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Regulation (EU) 2019/2033 into the EEA Agreement.

h) Regulation (EU) 2020/1503 on European crowdfunding service providers for business[11].[12]

4) The version currently in force of the EEA legislation referred to in this Act 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

Scope

1) Subject to paragraphs 2 to 8, this Act shall apply to banks, financial holding companies, and mixed financial holding companies licensed under this Act.

2) Insofar as expressly regulated by law, it shall also apply to:

a) financial holding companies and mixed financial holding companies without a licence pursuant to Article 26(1) or (2) as well as mixed activity holding companies;

b) EEA credit institutions and EEA financial institutions operating in Liechtenstein under the freedom to provide services or under the freedom of establishment through a branch;

c) Subsidiaries to be included in prudential consolidation pursuant to Part One, Title II, Chapter 2 of Regulation No 575/2013;

d) natural and legal persons who carry out or offer to carry out banking activities as referred to in Article 6(1) on a professional basis without the required licence.

3) The provisions of Regulation (EU) No 575/2013 and its implementing measures shall apply to banks that are not credit institutions within the meaning of Article 4(1)(1) of that Regulation as if they were credit institutions within the meaning of Article 4(1)(1) of that Regulation.

11 Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1)

12 Article 1(3)(h) shall enter into force at the same time as Decision of the EEA Joint Committee No 30/2024 of 2 February 2024 amending Annex IX (Financial services) to the EEA Agreement.

4) Articles 48, 52, 53, 63 to 88, 90 to 167, 169 to 173, 176 to 188 and 243 to 251 of this Act and the associated ordinances shall apply to:

a) investment firms under the Investment Firms Act that must comply with the requirements of Regulation (EU) No 575/2013 pursuant to Article 1(2) of Regulation (EU) 2019/2033;

b) investment firms under the Investment Firms Act that must comply with the requirements of Regulation (EU) No 575/2013 based on a decision of the Financial Market Authority (FMA) pursuant to Article 1(5) of Regulation (EU) 2019/2033 or pursuant to Article 60 of that Act.

5) With the exception of Articles 94 to 116, this Act shall also apply to central securities depositories that provide the banking-type ancillary services permitted to them under Article 54 or 56 of Regulation (EU) No. 909/2014[13] in accordance with Section C of the Annex to that Regulation.

6) Subject to paragraph 2(c), it shall not apply to the following undertakings or persons, provided they do not exceed the scope of their respective licences or authorisations:

a) electronic money institutions under the Electronic Money Act;

b) payment institutions under the Payment Services Act;

c) insurance undertakings under the Insurance Supervision Act;

d) recognised pension schemes under the Occupational Pensions Act;

e) institutions for occupational retirement provision under the Pension Funds Act;

f) alternative investment fund managers (AIFMs) under the Alternative Investment Fund Managers Act;

g) undertakings for collective investment in transferable securities (UCITS) and management companies under the UCITS Act;

h) management companies under the Investment Undertakings Act;

i) investment firms under the Investment Firms Act; subject to paragraph 4 and Article 17(1);

k) asset management companies under the Asset Management Act;

l) mortgage bond institutions under the Mortgage Bond Act;

13 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1)

m) central counterparties as referred to in Article 2(1) of Regulation (EU) No 648/2012[14], insofar as they perform the activities permitted to them under Articles 14 and 15 of that Regulation;

n) central securities depositories if they provide the core services permitted to them under Articles 16 and 19 of Regulation (EU) No 909/2014 in accordance with Section A of the Annex to that Regulation and non-banking ancillary services in accordance with Section B of the Annex to that Regulation;

o) the Liechtensteinische Post Aktiengesellschaft when providing its services under Article 18a of the Liechtenstein Postal Service Act;

p) […][15]

q) […][16]

r) professional trustees under the Trustee Act;

s) providers of crypto-asset services as referred to in Regulation (EU) 2023/1114[17], provided that their business models or the crypto-asset services they offer require holding clients' funds.[18]

7) It shall not apply to the receipt of funds by:

a) the State or the municipalities; and

b) international organisations.

8) It shall not apply to undertakings whose business activities exclusively comprise:

a) the pawnbroking industry through the granting of loans against pledges (Article 365 of the Property Act);

b) the conclusion of leasing contracts as lessor (finance leasing business);

c) the lending business as referred to in Article 6(1)(b), provided that the lending of funds is made exclusively from own funds;

14 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1)

15 Article 2(6)(p) shall enter into force at the same time as Decision of the EEA Joint Committee No 30/2024 of 2 February 2024 amending Annex IX (Financial services) to the EEA Agreement.

16 Article 2(6)(q) shall enter into force at the same time as Decision of the EEA Joint Committee No 30/2024 of 2 February 2024 amending Annex IX (Financial services) to the EEA Agreement.

17 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40)

18 Article 2(6)(s) inserted by LGBl. 2025 No. 116.

d) the operation of exchange bureau business as referred to in Article 6(2)(e);

e) safe custody services as referred to in Article 6(2)(f);

f) the factoring business referred to in Article 6(1)(h), provided it is carried out exclusively from own funds.

Article 3

Definitions and designations

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

1. "third-country bank" means an undertaking with its registered office in a third country that holds a licence to carry out banking activities under the law of its country of domicile;
2. "investment firm" means an investment firm as referred to in Article 4(1)(1) of the Investment Firms Act;
3. "institution" means an institution as referred to in Article 4(1)(3) of Regulation (EU) No 575/2013;
4. "representative office" means any part of the organisation of a bank, EEA credit institution, EEA financial institution, or third-country bank that neither concludes nor carries out activities nor arranges them for its own account;
5. "insurance undertaking" means an insurance undertaking as referred to in Article 4(1)(5) of Regulation (EU) No 575/2013;
6. "board of directors" means the body of a bank, financial holding company, or mixed financial holding company which is appointed in accordance with the law or the statutes, which is empowered to set the strategy, objectives and overall direction, and which oversees and monitors management decision-making;
7. "senior management" means the natural persons who in accordance with the law or the statutes exercise executive functions within a bank, financial holding company, or mixed financial holding company and who are responsible, and accountable to the board of directors, for the day-to-day management of the entity;
8. "key function holders" means persons who have a significant influence on the management of a bank, but who are neither members of the board of directors nor of the senior management and are identified as such by the bank on the basis of a risk-based approach; these include, in particular, the branch managers as well as the heads of the internal control functions and the chief financial officer, to the extent that they are not members of senior management;

9. "representative office manager" means the natural person designated to manage the operation of the representative office and to represent the representative office externally;
10. "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;
11. "model risk" means the potential loss a bank 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;
12. "parent undertaking" means a parent undertaking as referred to in Article 4(1)(15) of Regulation (EU) No 575/2013;
13. "subsidiary" means a subsidiary as referred to in Article 4(1)(16) of Regulation (EU) No 575/2013;
14. "branch" means a branch as referred to in Article 4(1)(17) of Regulation (EU) No 575/2013;
15. "branch manager" means the natural person designated to manage the business and represent the branch externally;
16. "ancillary services undertaking" means an ancillary services undertaking as referred to in Article 4(1)(18) of Regulation (EU) No 575/2013;
17. "asset management company" means a management company as referred to in Article 3(1)(4) of the UCITS Act or an AIFM as referred to in Article 4(1)(2) of the AIFM Act including, unless otherwise specified, third-country undertakings carrying on similar activities and governed by the law of a third country whose supervisory and legal requirements are at least equivalent to those in the European Economic Area (EEA);
18. "financial holding company" means a financial holding company as referred to in Article 4(1)(20) of Regulation (EU) No 575/2013;
19. "mixed financial holding company" means a mixed financial holding company as referred to in Article 4(1)(21) of Regulation (EU) No 575/2013;
20. "mixed activity holding company" means a mixed activity holding company as referred to in Article 4(1)(22) of Regulation (EU) No 575/2013;
21. "financial institution" means a financial institution as referred to in Article 4(1)(26) of Regulation (EU) No 575/2013;
22. "financial sector entity" means a financial sector entity as referred to in Article 4(1)(27) of Regulation (EU) No 575/2013;

23. "parent institution in an EEA Member State" means a parent institution in an EEA Member State as referred to in Article 4(1)(28) of Regulation (EU) No 575/2013;
24. "EEA parent institution" means an EEA parent institution as referred to in Article 4(1)(29) of Regulation (EU) No 575/2013;
25. "parent financial holding company in an EEA Member State" means a parent financial holding company in an EEA Member State as referred to in Article 4(1)(30) of Regulation (EU) No 575/2013;
26. "EEA parent financial holding company" means an EEA parent financial holding company as referred to in Article 4(1)(31) of Regulation (EU) No 575/2013;
27. "parent mixed financial holding company in an EEA Member State" means a parent mixed financial holding company in an EEA Member State as referred to in Article 4(1)(32) of Regulation (EU) No 575/2013;
28. "EEA parent mixed financial holding company" means an EEA parent mixed financial holding company as referred to in Article 4(1)(33) of Regulation (EU) No 575/2013;
29. "systemically important institution" means an EEA parent institution, and EEA parent financial holding company, an EEA parent mixed financial holding company, or an institution the failure or malfunction of which could lead to systemic risk;
30. "participation" means a participation as referred to in Article 4(1)(35) of Regulation (EU) No 575/2013;
31. "qualifying holding" means a qualifying holding as referred to in Article 4(1)(36) of Regulation (EU) No 575/2013;
32. "control" means control as referred to in Article 4(1)(37) of Regulation (EU) No 575/2013;
33. "close links" means close links as referred to in Article 4(1)(38) of Regulation (EU) No 575/2013;
34. "competent authority" means a competent authority as referred to in Article 4(1)(40) of Regulation (EU) No 575/2013;
35. "consolidating supervisor" means a consolidating supervisor as referred to in Article 4(1)(41) of Regulation (EU) No 575/2013;
36. "EBA" means the European Banking Authority;
37. "EIOPA" means the European Insurance and Occupational Pensions Authority;
38. "ESMA" means the European Securities and Markets Authority;
39. "ESRB" means the European Systemic Risk Board;

40. "European Supervisory Authorities" means the EBA, EIOPA, ESMA and the ESRB within the scope of their responsibilities;
41. "licence" means an authorisation as referred to in Article 4(1)(42) of Regulation (EU) No 575/2013;
42. "home Member State" means a home Member State as referred to in Article 4(1)(43) of Regulation (EU) No 575/2013;
43. "host Member State" means a host Member State as referred to in Article 4(1)(44) of Regulation (EU) No 575/2013;
44. "third country" means a country that is not an EEA Member State;
45. "ESCB central banks" means central banks that are members of the European System of Central Banks (ESCB) as referred to in Article 4(1)(45) of Regulation (EU) No 575/2013;
46. "central bank" means a central bank as referred to in Article 4(1)(46) of Regulation (EU) No 575/2013 and the Swiss National Bank within the scope of the responsibilities assigned to it;
47. "consolidated situation" means the consolidated situation as referred to in Article 4(1)(47) of Regulation (EU) No 575/2013;
48. "consolidated basis" means on the basis of the consolidated situation as referred to in Article 4(1)(48) of Regulation (EU) No 575/2013;
49. "sub-consolidated basis" means on a sub-consolidated basis as referred to in Article 4(1)(49) of Regulation (EU) No 575/2013;
50. "financial instrument" means a financial instrument as referred to in Article 4(1)(50) of Regulation (EU) No 575/2013;
51. "own funds" means own funds as referred to in Article 4(1)(118) of Regulation (EU) No 575/2013;
52. "operational risk" means operational risk as referred to in Article 4(1)(52) of Regulation (EU) No 575/2013;
53. "credit risk mitigation" means credit risk mitigation as referred to in Article 4(1)(57) of Regulation (EU) No 575/2013;
54. "securitisation" means securitisation as referred to in Article 4(1)(61) of Regulation (EU) No 575/2013;
55. "securitisation position" means a securitisation position as referred to in Article 4(1)(62) of Regulation (EU) No 575/2013;
56. "securitisation special purpose entity" means a securitisation special purpose entity as referred to in Article 4(1)(66) of Regulation (EU) No 575/2013;

57. "discretionary pension benefits" means discretionary pension benefits as referred to in Article 4(1)(73) of Regulation (EU) No 575/2013;
58. "trading book" means the trading book as referred to in Article 4(1)(86) of Regulation (EU) No 575/2013;
59. "regulated market" means a regulated market as referred to in Article 4(1)(92) of Regulation (EU) No 575/2013;
60. "leverage" means leverage as referred to in Article 4(1)(93) of Regulation (EU) No 575/2013;
61. "risk of excessive leverage" means the risk of excessive leverage as referred to in Article 4(1)(94) of Regulation (EU) No 575/2013;
62. "internal approaches" means the following models or approaches for determining the own funds requirements in accordance with Regulation (EU) No 575/2013:
    a) the Internal Ratings Based Approach (Article 143(1) of Regulation (EU) No 575/2013);
    b) the Internal Models Approach (Article 221 of Regulation (EU) No 575/2013);
    c) the Own Estimates Approach (Article 225 of Regulation (EU) No 575/2013);
    d) the Advanced Measurement Approaches (Article 312(2) of Regulation (EU) No 575/2013);
    e) the Internal Model Method (Articles 283 and 363 of Regulation (EU) No 575/2013); and
    f) the Internal Assessment Approach (Article 259(3) of Regulation (EU) No 575/2013);
63. "resolution authority" means a resolution authority as referred to in Article 3(1(5) of the Recovery and Resolution Act;
64. "global systemically important institution" or "G-SII" means a G-SII as referred to in Article 4(1)(133) of Regulation (EU) No 575/2013;
65. "non-EEA global systemically important institution" or "non-EEA G-SII" means a non-EEA G-SII as referred to in Article 4(1)(134) of Regulation (EU) No 575/2013;
66. "group" means a group as referred to in Article 4(1)(138) of Regulation (EU) No 575/2013;
67. "third-country group" means a group whose parent undertaking is established in a third country;

68. "gender neutral remuneration policy" means a remuneration policy based on equal pay for male and female workers for equal work or work of equal value;
69. "exceptions to policy transactions" or "ETP transactions" means transactions concluded by banks on an exceptional basis in derogation from their internal instructions;
70. "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;
71. "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;
72. "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;
73. "significant bank" means a bank that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities; banks that have been designated as G-SIIs pursuant to Article 101 or as O-SIIs pursuant to Article 102 are in any event deemed to be significant banks;
74. "persons acting in concert" means natural or legal persons who, on the basis of an explicit or implicit agreement between them, decide to acquire or increase a qualifying holdings in a bank;
75. "netting agreements" means bilateral contracts for novation and other bilateral agreements; a bilateral contract for novation exists if mutual claims and obligations are automatically amalgamated in such a way that the novation fixes one single net amount and a single binding new contract is created that causes the previous contracts to expire;
76. "outsourcing" means agreements, in whatever form, between a bank and a service provider under which the service provider performs a

process, provides a service, or carries out an activity that would otherwise have to be performed by the bank itself.

2) Where the terms "institution", "parent institution in an EEA Member State", "EEA parent institution", and "parent undertaking" are used in this Act, they shall, in order to ensure compliance with the requirements on a consolidated and sub-consolidated basis as well as the exercise of supervisory powers by the FMA as the consolidating supervisor, also be understood to mean the following:

a) financial holding companies and mixed financial holding companies with a licence pursuant to Article 26(1) or (2);

b) designated institutions controlled by an EEA parent financial holding company or EEA parent mixed financial holding company or by a parent financial holding company or parent mixed financial holding company in an EEA Member State, where such a parent is not subject to a licensing requirement under Article 26(3); and

c) financial holding companies, mixed financial holding companies, or institutions designated upon demand by the FMA pursuant to Article 154(5)(d).

3) The definitions in the applicable EEA legislation, in particular Directive 2013/36/EU and Regulation (EU) No 575/2013, shall apply *mutatis mutandis*.

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

II. Business lines and banking activities

A. In general

Article 4

Banks and financial institutions

1) Banks are undertakings with a licence under this Act which:

a) provide one or more banking activities on a professional basis as referred to in Article 6(1); or

b) provide investment services or perform investment activities on a professional basis in accordance with Annex 1 Section A(3) or (6) of

the Investment Services Act and meet the other requirements as referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013.

2) Banks are deemed to be credit institutions as referred to in Article 4(1)(1) of Regulation (EU) No 575/2013 if:

a) their licence includes the provision of banking activities as referred to in Article 6(1)(a) and (b); or

b) their licence includes an investment service or investment activity in accordance with Annex 1 Section A(3) or (6) of the Investment Services Act and they meet the other requirements as referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013.

3) Banks as referred to in paragraph 1(a) whose licence includes the provision of one or more of the banking activities as referred to in Article 6(1)(b) to (k) are deemed to be financial institutions.

Article 5

EEA credit institutions and EEA financial institutions

1) EEA credit institutions are credit institutions as referred to in Article 4(1)(1) of Regulation (EU) No 575/2013 that have their registered office in another EEA Member State.

2) EEA financial institutions are financial institutions as referred to in Article 4(1)(26) of Regulation (EU) No 575/2013 that have their registered office in another EEA Member State.

Article 6

Banking activities and other services

1) Banking activities are:

a) the acceptance of deposits and other repayable funds (deposit business);

b) the lending of third-party funds to an indeterminate circle of borrowers (lending business);

c) the safekeeping and administration of financial instruments for the account of others (safe custody business);

d) the assumption of suretyships, guarantees, and other forms of liability for other parties where the obligation assumed is monetary in nature (guarantee business);

e) the issuance, administration, and collection of bills of exchange, cheques, or travellers' cheques, provided that this is not a payment service as referred to in Article 2(2) of the Payment Services Act (cheque and bill of exchange business);

f) the purchase of bills of exchange and cheques (discount business);

g) trading of foreign currency, cheques, or bills of exchange for one's own account or on behalf of others (foreign exchange and currency business);

h) the ongoing purchase of receivables on the basis of framework contracts with or without recourse (factoring business);

i) the issuance of covered bonds under the European Covered Bonds Act;

k) the execution of bank-related off-balance-sheet transactions.

2) Banks that are deemed to be credit institutions under Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act may also provide or exercise the following other services without any further licences under special laws:

a) investment services and/or investment activities as well as ancillary services in accordance with Annex 1 Sections A and B of the Investment Services Act;

b) data reporting services providers as referred to in Article 2(1)(34) and (36) of Regulation (EU) No 600/2014[19], insofar as they are data reporting services providers of limited relevance for the internal market in accordance with the implementing act adopted on the basis of Article 2(3) of Regulation (EU) No 600/2014;

c) payment services as referred to in Article 2(2) of the Payment Services Act;

d) the issuance of electronic money as referred to in Article 3(1)(b) of the Electronic Money Act;

e) the over-the-counter purchase and sale of foreign means of payment (e.g. banknotes, cheques, travellers' letters of credit and instructions) and travellers' cheques (exchange bureau business);

f) the safe custody of third-party assets and the rental of premises and containers for the safekeeping of valuables (safe deposit box management services).

19 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 (OJ L 173, 12.6.2014, p. 84)

Article 7

Prohibition on carrying out banking activities without a licence

Natural or legal persons who do not have a licence under this Act may neither carry out banking activities on a professional basis as referred to in Article 6(1) nor offer to do so.

Article 8

Publicity

1) Natural or legal persons who do not have a licence in accordance with Article 16(1) may not advertise the provision of banking activities in any form, in particular not in advertisements, prospectuses, circulars, or electronic media.

2) Both in Liechtenstein and abroad, banks 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.

3) EEA credit institutions and EEA financial institutions operating in Liechtenstein in accordance with Articles 44 to 47 may advertise their services via all available communication channels. Paragraph 2 shall apply *mutatis mutandis*.

Article 9

Prohibition of the use of misleading designations in business names and business purpose

1) Undertakings that do not have a licence under this Act may not use designations in their business name or in the designation of their business purpose that suggest that they operate as a bank.

2) EEA credit institutions, EEA financial institutions, and third-country banks may use their business name in Liechtenstein, provided that the business name is not misleading and does not give rise to false assumptions concerning their scope of business activities. In the event of there being any danger of confusion, the FMA may require that the business name be accompanied by certain explanatory particulars.

Article 10

Prohibition of operation of a domiciliary bank

Operation of a domiciliary bank is prohibited. Domiciliary banks are banks which:

a) do not maintain a physical presence in Liechtenstein; and

b) are not part of a group which:

1. operates in the financial sector and is subject to the provisions of Directive (EU) 2015/849[20] or equivalent regulation at consolidated level; and
2. is subject to equivalent supervision by a competent authority with regard to the provisions set out in point 1.

Article 11

Deposit guarantee and investor protection

Banks which, pursuant to their licence, accept deposits or other repayable funds or provide or may provide investment services and/or investment activities as well as ancillary services in accordance with Annex 1 Sections A and B of the Investment Services Act must belong to a protection scheme in accordance with the Deposit Guarantee and Investor Compensation Act.

20 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)

Article 12

Banking secrecy

1) The members of the governing bodies of banks, financial holding companies, and mixed financial holding companies and their employees as well as any persons otherwise working for such undertakings shall keep secret all facts that they are entrusted with or that become available to them as a result of business relations with clients or their activities. The obligation of secrecy shall apply without any time limit.

2) This is which prejudice to:

a) the statutory provisions on the obligation to give testimony or information to the courts, prosecution authorities, the FMA, recognised audit firms, and the Financial Intelligence Unit (FIU);

b) the provisions on cooperation with the FIU and other supervisory authorities;

c) the obligations to disclose information about depositors or investors to the protection scheme in accordance with the Deposit Guarantee and Investor Compensation Act; and

d) the provisions on the disclosure of information on the identity of shareholders pursuant to Article 367b of the Law on Persons and Companies.

B. Special provisions under civil law

Article 13

Difference objection

The difference objection according to § 1271 of the General Civil Code (ABGB) shall be impermissible when adjudicating legal disputes arising from banking activities as referred to in Article 6(1) or other services as referred to in Article 6(2) when at least one contracting party is authorised to carry out banking activities or other services on a professional basis.

Article 14

Rehypothecation

1) A bank 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 may only rehypothecate or carry over a pledge for the amount for which the pledge is liable to the bank.

3) It 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; and

b) no rights to the pledge are granted to third parties.

4) The Government may provide further details by ordinance.

C. Data processing

Article 15

Processing of personal data

Banks may process personal data, including special categories of personal data and personal data relating to criminal convictions and offences, for the purpose of providing banking activities as referred to in Article 6(1) or other services as referred to in Article 6(2), to the extent necessary for the provision of these services.

III. Licensing of banks, financial holding companies and mixed financial holding companies

A. Licensing requirement, conditions, and procedure for banks

1. Licensing requirement

Article 16

Principle

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

2) Branches of EEA credit institutions or EEA financial institutions operating in Liechtenstein in accordance with Articles 44 to 47 do not require a licence under this Act.

Article 17

Obligation to obtain a licence as a bank for certain investment firms

1) An investment firm which provides an investment service in accordance with Annex 1 Section A(3) and (6) of the Investment Services Act and which already holds an authorisation in accordance with Article 5 of the Investment Firms Act must apply for a licence as a bank under this Act within six months if:

a) the average of monthly total assets, calculated over a period of 12 consecutive months, is equal to or exceeds 30 billion euros or the equivalent in Swiss francs; or

b) the average of monthly total assets calculated over a period of 12 consecutive months is less than 30 billion euros or the equivalent in Swiss francs, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that individually have total assets of less than 30 billion euros or the equivalent in Swiss francs and that carry out an activity referred to in Annex 1 Section A(3) or (6) of the Investment Services Act is equal to or exceeds 30 billion euros or the equivalent in Swiss francs, both calculated as an average over a period of 12 consecutive months.

2) Until a licence is granted under this Act, the investment firm may continue to carry out its activities on the basis of its authorisation under the Investment Firms Act.

3) If an investment firm has not complied with its obligation to apply for a licence under this Act within the period specified in paragraph 1, the FMA may make use of all its powers under Article 154 to ensure the lawfulness of the scope of the business activities of the investment firm concerned.

4) If the average total assets for five consecutive years following the granting of the licence under paragraph 1 are below the thresholds set out in that paragraph, an application for authorisation under the Investment Firms Act must be submitted within six months. If this authorisation is granted, the FMA must simultaneously withdraw the licence as a bank in accordance with Article 33(1)(m).

5) In cases of relicensing, the FMA shall ensure that the process is as streamlined as possible and that information from existing licences is taken into account.

6) The Government may provide further details by ordinance, in particular regarding the information and documents required for the application referred to in paragraph 1.

2. Licensing conditions

Article 18

Initial and minimum capital

1) The initial capital of a bank shall be at least 10 million euros or the equivalent in Swiss francs or US dollars (minimum capital). By the time business is taken up, the initial capital must be fully paid up. It must be freely available to the bank without restriction or encumbrance.

2) The initial capital shall consist exclusively of one or more of the components set out in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013.

3) In justified cases and depending on the nature and scale of the scope of business, the FMA may prescribe a different initial capital. For banks, the deviating initial capital prescribed by the FMA may not be less than 5 million euros or the equivalent in Swiss francs or US dollars.

4) Taking into account the initial expenses, capital must at no time fall below the initial capital required at the time of licensing; this must be shown in the programme of operations.

Article 19

Legal form and registered office

1) Banks may be established only in the legal form of a limited company or a European Company (SE).

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

Article 20

Business name

1) The business name of a bank may not be misleading, and in particular it may not give rise to any false assumptions concerning the scope of business activities.

2) Banks 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 participation. Moreover, if significant components of the name of and EEA credit institution, an EEA financial institution, or a third-country bank are used in the business name, differentiating particulars must be used which make it clear that the bank is a Liechtenstein subsidiary of that foreign undertaking.

3) The FMA shall examine whether the business name complies with the requirements under paragraphs 1 and 2 and may require changes to the business name if necessary. If the business name is not changed, the FMA may make use of all its powers under Article 154.

Article 21

Organisational requirements

1) Banks must be organised in accordance with their scope of business. They must have the following in particular:

a) a board of directors consisting of at least three members for governance, supervision, and control; if the board of directors consists of five or more members, it may delegate the duties not expressly reserved to it by this Act to a committee formed from among its members; the committee must have at least three members;

b) a senior management responsible for operations with a total workload of at least 200 percent, consisting of at least two members who are jointly responsible for their activities and may not be members of the board of directors at the same time.

2) The division of responsibilities between the board of directors and the senior management shall ensure proper monitoring of management activities.

3) The members of the board of directors and senior management shall comply with the requirements of Article 63 at all times. They may not be members of the FMA, the FMA Complaints Commission, or their governing bodies.

4) The organisation, rules, procedures, and mechanisms shall comply with the requirements of Article 71 and enable sound and effective risk management at all times.

5) The Government may provide further details regarding the organisational requirements by ordinance.

Article 22

Shareholders

1) Shareholders who hold, directly or indirectly, a qualifying holding in the bank must meet the demands placed in the interest of ensuring sound and prudent management of the bank. For that purpose, they shall meet the requirements set out in Article 60(1).

2) If the influence of shareholders could impair prudent and sound management, the FMA shall take the necessary measures to put an end to this situation. These measures may be directed against the bank, its shareholders, the members of the board of directors and senior management.

3) The FMA may reject an application for a licence if it cannot be proven in the application that all shareholders who hold, directly or indirectly, qualifying holdings in the bank meet the requirements set out in Article 60(1).

4) If close links exist between the bank 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.

5) The proper supervision of banks 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.

6) Upon request of the FMA, banks shall demonstrate that the provisions in paragraphs 4 and 5 are met.

Article 23

Articles of association and regulations

1) The content of the articles of association shall be governed by Article 279 of the Law on Persons and Companies. Furthermore, the articles of association and regulations must precisely define the material and geographic scope of business of the bank.

2) Activities other than banking activities as referred to in Article 6(1) or other services as referred to in Article 6(2) must be expressly mentioned in the articles of association.

3) The business regulations shall define the organisation as well as the principles of business activity and financial management of the bank. They shall contain in particular:

a) the responsibilities and powers of the board of directors, the senior management, the risk management function, the compliance function, the internal audit department and, where they are to be established by the bank, the committees of the board of directors;

b) an allocation of powers and rules governing risk management in accordance with Article 79;

c) provisions on transactions with governing bodies and employees.

4) Any amendment to the articles of association and business regulations shall require the approval of the FMA.

5) Banks shall ensure ongoing compliance with the articles of association and regulations.

6) The Government may provide further details by ordinance.

3. Licensing procedure

Article 24

Application for a licence

1) Anyone intending to operate as a bank must submit a written application to the FMA. The application for a licence as a bank must contain sufficient proof of compliance with the licensing conditions set out in Articles 18 to 23. The FMA shall be notified immediately of any change in the facts relevant to the assessment of compliance with the

licensing requirements during the ongoing procedure for granting a licence.

2) The Government may provide further details by ordinance, in particular regarding the information and documents required for the application.

Article 25

Decision on application for a licence

1) The licence as a bank shall be granted if a complete application has been submitted and all requirements under Articles 18 to 23 have been met.

2) The licence must be granted in writing, otherwise it shall be deemed null and void. If necessary, it may be subject to corresponding terms and conditions, refer only to one or more of the banking activities set out in Article 6(1), and exclude parts of individual banking activities from the scope of the licence.

3) The FMA shall decide on an application for a licence within six months of receipt of the complete application. If not all required information and documents have been submitted by the applicant within 12 months of receipt of the application, the FMA shall reject the application.

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

a) is a subsidiary of an EEA credit institution;

b) is a subsidiary of the parent undertaking of an EEA credit institution;

c) is controlled by the same natural or legal person as an EEA credit institution.

5) Prior to granting a licence to a bank, the FMA must consult the competent authorities for the supervision of insurance undertakings or investment firms of another EEA Member State if the bank:

a) is a subsidiary of an insurance undertaking or investment firm with its registered office in another EEA Member State;

b) is a subsidiary of the parent undertaking of an insurance undertaking or an investment firm with its registered office in another EEA Member State;

c) is controlled by the same natural or legal persons as an insurance undertaking or investment firm with its registered office in another EEA Member State.

6) Where paragraph 4 or 5 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 the requirements set out in this Act.

7) If the bank is part of a third-country group, the licence shall be granted only if, in addition to the conditions set out in Articles 18 to 23:

a) the group is subject to consolidated supervision equivalent to Liechtenstein supervision;

b) the authority responsible for the supervision of the parent undertaking with its registered office in a third country or the authority responsible for the supervision of the third-country bank does not object to the establishment of a subsidiary in Liechtenstein.

8) When considering the application, the FMA may not take the economic needs of the market into account.

9) The FMA shall communicate every licence as referred to in 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 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 participation in a bank by such a parent undertaking by virtue of which the bank becomes a subsidiary. If a licence is granted to a bank, the FMA shall additionally communicate which deposit guarantee scheme the bank has joined.

B. Licensing requirement, conditions, and procedure for financial holding companies and mixed financial holding companies

Article 26

Licensing requirement

1) Parent financial holding companies, mixed parent financial holding companies, EEA parent financial holding companies, and mixed EEA parent financial holding companies subject to supervision on a consolidated basis by the FMA pursuant to Article 161 require a licence issued by the FMA.

2) Other financial holding companies or mixed financial holding companies subject to supervision on a consolidated basis by the FMA pursuant to Article 161 require a licence issued by the FMA if they are obliged to comply with the requirements of this Act or Regulation (EU) No 575/2013 on a sub-consolidated basis.

3) On application, the FMA may exempt a financial holding company or mixed financial holding company from the licensing requirement under paragraph 1 or 2 if:

a) the financial holding company's activity is solely to acquire or hold participations in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to banks or financial institutions is solely to acquire or hold participations in subsidiaries;

b) the financial holding company or mixed financial holding company has not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the resolution authority pursuant to the Recovery and Resolution Act or by another resolution authority pursuant to Directive 2014/59/EU;

c) a subsidiary bank is designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis and is given all the necessary means and legal authority to discharge those obligations in an effective manner;

d) the financial holding company or mixed financial holding at no time engages, directly or indirectly, in taking business, operational, or financial decisions affecting the group or its subsidiaries that are banks or financial institutions; and

e) there is no impediment to the effective supervision of the group on a consolidated basis.

4) To assess whether the conditions set out in paragraph 3 are met, the FMA may request all information and documents as referred to in Article 27.

5) Financial holding companies or mixed financial holding companies not subject to a licensing requirement pursuant to paragraph 3 shall not be excluded from the perimeter of consolidation as laid down in this Act and in Regulation (EU) No 575/2013.

Article 27

Application for a licence as a financial holding company or mixed financial holding company

1) Anyone intending to operate as a financial holding company or mixed financial holding company must submit a written application to the FMA. The application for a licence as a bank must contain sufficient proof of compliance with the licensing conditions set out in Articles 28. The financial holding companies referred to in Article 26(1) and 2 shall provide the FMA as the consolidating supervisor or, where an authority of another EEA Member State is responsible for supervision on a consolidated basis, as the competent authority in the country where they are established with the necessary information.

2) Until the granting of the licence pursuant to Article 28, the FMA may make use of all powers under Articles 154 to 158 to ensure that the requirements under this Act or Regulation (EU) No 575/2013 are also met on a consolidated or sub-consolidated basis for the duration of the licensing procedure. In particular, it may designate a bank within a group that is responsible for ensuring compliance with the requirements under this Act or Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis for the duration of the licensing procedure.

3) The Government shall provide further details by ordinance, in particular regarding the data, information, and documentation required for the application.

Article 28

Decision on the application for a licence

1) The licence for financial holding companies and mixed financial holding companies pursuant to Article 26(1) or (2) shall be granted by the FMA as the consolidating supervisor if:

a) the group's internal policies, procedures, and distribution of tasks and responsibilities are adequate for the purpose of complying with the requirements imposed by this Act and Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis and are at least suitable to:
   1. effectively steer and coordinate all the subsidiaries of the financial holding company or mixed financial holding company as referred to in Article 26(1) or (2);
   2. resolve or prevent intra-group conflicts; and
   3. effectively enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company as referred to in Article 26(1) throughout the group;
b) the structural organisation of the group of which the financial holding company or mixed financial holding company as referred to in Article 26(1) or (2) is part does not obstruct or otherwise prevent the effective supervision of the subsidiary banks or parent banks as concerns the individual, consolidated and, where appropriate, sub-consolidated obligations to which they are subject. When assessing that criterion, the FMA shall take into account, in particular:
   1. the group's internal positioning of the financial holding company or mixed financial holding company as referred to in Article 26(1) or (2);
   2. the shareholding structure; and
   3. the group's internal role of the financial holding company or mixed financial holding company as referred to in Article 26(1) or (2); and
c) the requirements set out in Article 60(1) and Article 135 are complied with.

2) The licence must be granted in writing, otherwise it shall be deemed null and void. If necessary, it may be subject to corresponding terms and conditions.

3) The FMA shall decide on an application for a licence within four months of receipt of the complete application. If necessary, in addition to rejecting the application, the FMA may also order measures pursuant to

Article 154(5). If the applicant has not submitted all required information and documents within six months of receipt of the application, the FMA shall reject the application and, if necessary, make use of its powers under Article 154(5).

4) Where the FMA carries out a licensing procedure under this Article concurrently with the examination referred to in Article 22 of Directive 2013/36/EU by the competent authority of another EEA Member State, the FMA shall coordinate with that authority. Where a consolidating supervisor in another EEA Member State carries out a procedure as referred in Article 21a of that Directive with a financial holding company or a mixed financial holding company concurrently with a procedure as referred to in Article 59 by the FMA, the FMA shall coordinate with the consolidating supervisor; the assessment period referred to in Article 59(2) shall be interrupted for a period exceeding 20 working days until the procedure set out in this Article is complete.

5) The Government may provide further details by ordinance, in particular regarding the more detailed requirements for the conditions set out in paragraph 1.

Article 29

Permanent compliance with licensing conditions

1) Financial holding companies or mixed financial holding companies shall report or submit the following information to the FMA as the consolidating supervisor for the ongoing monitoring of the group structure and the assessment of compliance with the conditions set out in Article 28(1) or, to the extent applicable, the conditions set out in Article 26(3) on an annual basis, by no later than 31 March of the following year, as of the reporting date of 31 December:

a) a complete listing of all entities in a group, including the classification of each of these entities in accordance with Regulation (EU) No 575/2013; and

b) a complete listing of all owners and beneficiaries of the financial holding company or mixed financial holding company.

2) The FMA as the consolidating supervisor shall share all the information it has received pursuant to paragraph 1 with the competent authority in the Member State where the financial holding company or mixed financial holding company with a licence pursuant to Article 26(1) or (2) is established.

3) If the FMA as the consolidating supervisor determines that the conditions under Article 26(3) are not or are no longer met, it shall notify the financial holding company or mixed financial holding company concerned without delay. The financial holding company or mixed financial holding company concerned must apply for a licence pursuant to Article 26(1) or (2) within three months of the FMA's notification. If the application for a licence has not been submitted within three months, the FMA may make use of all its powers under Article 154(5).

4) The Government may provide further details regarding the reporting and submission obligations set out in paragraph 1, in particular the content and deadlines, by ordinance.

Article 30

Joint decision concerning licences and supervision of financial holding companies and mixed financial holding companies

1) If a financial holding company or mixed financial holding company as referred to in Article 26(1) or (2) with a registered office in another EEA Member State is subject to consolidated supervision by the FMA, the FMA as the consolidating supervisor shall work together for the purposes of Article 26(3), Article 28(1), Article 29(3) and Article 154(5) with the competent authority of the EEA Member State in which the financial holding company or mixed financial holding company has its registered office. As the consolidating supervisor, the FMA shall prepare an assessment for the purposes of Article 26(3), Article 28(1), Article 29(3) and Article 154(5), taking into account in particular, to the extent applicable, whether:

a) the conditions set out in Article 26(3) or Article 28(1) are met;

b) the FMA has determined in accordance with Article 154(5) that the conditions set out in Article 28(1) are no longer met and it has exercised its powers in accordance with Article 35, 36 or 154(5);

c) the FMA has determined in accordance with Article 29(3) that the conditions set out in Article 26(3) are no longer met.

2) As the consolidating supervisor, the FMA shall forward its assessment to the competent authority in the EEA Member State where the financial holding company or the mixed financial holding company as referred to in Article 26(1) or (2) has its registered office. It shall endeavour to reach a joint decision with the competent authority of the EEA Member State in which the financial holding company or mixed financial holding company has its registered office within two months of the transmission of an assessment. The joint decision shall be duly

documented and reasoned. The FMA shall communicate the joint decision to the financial holding company or mixed financial holding company.

3) If a financial holding company or mixed financial holding company as referred to in Article 26(1) or (2) with a registered office in Liechtenstein is not subject to consolidated supervision by the FMA, the FMA shall work together comprehensively with the consolidating supervisor. It shall endeavour to reach a joint decision with the consolidating supervisor within two months of the transmission of an assessment.

4) In the event of disagreement, the FMA shall refrain from taking a decision and shall refer the matter in cases exclusively involving competent authorities of EFTA States to the EFTA Surveillance Authority in accordance with Article 19 of Regulation (EU) No 1093/2010[21]. In cases involving both the FMA and competent authorities of Member States of the European Union, the FMA shall refer the matter to the EFTA Surveillance Authority and the EBA in accordance with Article 19 of that Regulation. The FMA shall take its decision jointly with the other competent authority in conformity with the decision of the EFTA Surveillance Authority or the decision of the EFTA Surveillance Authority and the EBA. The matter shall not be referred to the EFTA Surveillance Authority and the EBA after the end of the two-month period or after a joint decision has been reached.

5) In the case of mixed financial holding companies as referred to in Article 26(1) or (2) where neither the FMA as the consolidating supervisor nor the competent authority in the Member State where the mixed financial holding company has its registered office is the coordinator pursuant to Article 19 of the Financial Conglomerates Act, the agreement of the coordinator shall be required for the purposes of decisions or joint decisions referred to in this Article. Where the agreement of the coordinator is required, disagreements shall be referred to the EFTA Surveillance Authority and the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 or to the EFTA Surveillance Authority and EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010[22].

21 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12)

22 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48)

C. Establishment of an intermediate EEA parent undertaking

Article 31

Principle

1) To the extent that a Liechtenstein institution and at least one other institution situated in the EEA are part of the same third-country group, they shall have a single intermediate EEA parent undertaking that is established in the EEA.

2) The FMA may allow Liechtenstein institutions as referred to in paragraph 1 to have two intermediate EEA parent undertakings where the FMA determines that the establishment of a single intermediate EEA parent undertaking would:

a) be incompatible with a mandatory requirement for separation of activities imposed by the rules or supervisory authorities of the third country where the ultimate parent undertaking of the third-country group has its head office; or

b) render resolvability less efficient than in the case of two intermediate EEA parent undertakings according to an assessment carried out by the competent resolution authority of the intermediate EEA parent undertaking.

3) The following shall be considered intermediate EEA parent undertakings:

a) a bank deemed in accordance with Article 4(2) to be a credit institution under Regulation (EU) No 575/2013;

b) an EEA credit institution;

c) a financial holding company or mixed financial holding company with a licence pursuant to Article 26(1) or (2); or

d) a financial holding company or mixed financial holding company from another EEA Member State with a licence pursuant to Article 21a of Directive 2013/36/EU.

4) By way of derogation from paragraph 3, an intermediate EEA parent undertaking may be an investment firm authorised pursuant to Article 5 of the Investment Firms Act and subject to the Recovery and Resolution Act or an investment firm from another EEA Member State with a licence pursuant to Article 5(1) of Directive 2014/65/EU and subject to Directive 2014/59/EU, provided that:

a) neither a bank that is deemed to be a credit institution as referred to in Article 4(2) of Regulation (EU) No 575/2013 nor an EEA credit

institution belongs to the third-country group referred to in paragraph 1; or

b) a second intermediate EEA parent undertaking must be set up in connection with investment activities to comply with a mandatory requirement as referred to in paragraph 2.

5) Paragraphs 1 to 4 shall not apply where the total value of the assets in the EEA of the third-country group is less than 40 billion euros or the equivalent in Swiss francs. The total value of assets in the EEA of the third-country group shall be the sum of:

a) the total value of assets of each bank or credit institution in the EEA of the third-country group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheets, where the bank's or credit institution's balance sheet is not consolidated; and

b) the total value of each branch of the third-country group licensed in the EEA in accordance with this Act, Directive 2014/65/EU, or Regulation (EU) No 600/2014.

6) The FMA shall notify the following information in respect of each third-country group operating in its jurisdiction to the EBA:

a) the names and the total value of assets of supervised institutions belonging to a third-country group; and

b) the name and the type as referred to in paragraph 3 of any intermediate EEA parent undertaking set up in Liechtenstein and the name of the third-country group of which it is part.

7) The FMA shall ensure that an institution whose supervision falls within in its jurisdiction:

a) has an intermediate EEA parent undertaking;

b) is an intermediate EEA parent undertaking;

c) is the only institution in the EEA of the third-country group; or

d) is part of a third-country group with a total value of assets in the EEA of less than 40 billion euros or the equivalent in Swiss francs.

8) If a Liechtenstein institution is part of a third-country group which, contrary to the provisions of this Article, does not have an intermediate EEA parent undertaking, the FMA may provisionally designate one of the licence holders referred to in paragraph 3 as an intermediate EEA parent undertaking.

9) For the purposes of this Article, the term "institution" shall also cover investment firms as referred to in Article 3(1)(2).

D. Lapse and withdrawal of bank licences

Article 32

Lapse of the licence

1) The licence of a bank shall lapse if the licence is renounced in writing and:

a) all banking activities been completed beforehand; and

b) the written renunciation is accompanied by a confirmation from a recognised audit firm that all banking activities have been completed.

2) The lapse of a licence shall be determined by the FMA and communicated to the party concerned. The FMA shall publish the lapse in the Official Journal and on its website at the expense of the party concerned. The entry in the register as referred to in Article 168 shall be removed by the FMA. The FMA shall notify the competent authorities of the EEA Member States in which the bank was active pursuant to Articles 40 to 43, the EFTA Surveillance Authority, and the EBA of each lapse of a licence.

Article 33

Withdrawal of the licence

1) Licences shall be withdrawn by the FMA if:

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

b) business has not been carried out for at least six months;

c) bankruptcy proceedings have been instituted in respect of the assets of the bank or a bankruptcy petition has been dismissed with legal effect for lack of assets to cover costs;

d) the bank decides to dissolve and liquidate the company;

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

f) the bank obtained the licence dishonestly by providing false information or in any other manner;

g) the bank no longer meets the following requirements:

   1. the own funds requirements under Articles 92 and 93 to 386 of Regulation (EU) No 575/2013 or the additional requirements of the FMA under Article 154(3)(a);

   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 428az of Regulation (EU) No 575/2013 or the additional requirements of the FMA under Article 157; or
4. fulfilment of its obligations toward creditors, in particular security for the assets entrusted to it by depositors;

h) the bank has committed a misdemeanour as referred to in Article 245(1)(c) or (2)(b), an offence under the Criminal Code, or an offence under other laws referred to in Article 5(1) of the Financial Market Authority Act;

i) the bank has committed a serious, repeated, or systematic contravention as referred to in Article 246(1);

k) the bank does not meet the FMA's demands to restore a lawful state of affairs;

l) the bank systematically, seriously, or repeatedly violates its legal obligations; or

m) the bank solely provides an investment service under its licence in accordance with Annex 1 Section A(3) or (6) of the Investment Services Act and its average total assets have been below the thresholds set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 for five consecutive years.

2) The legally effective withdrawal of the licence shall be published in the Official Journal and on the FMA website at the expense of the licence holder. The entry in the register as referred to in Article 168 shall be removed by the FMA. The FMA shall notify the competent authorities of the EEA Member States in which the bank was active pursuant to Articles 40 to 43, the EFTA Surveillance Authority, and the EBA of each withdrawal of a licence, with reasons.

Article 34

Consequences of the lapse or withdrawal of a licence

1) If the licence is withdrawn pursuant to Article 33(1)(b) to (m), the FMA shall at the same time order the termination of all banking activities and transfer those activities to a suitable person who is appointed as a resolution administrator.

2) The FMA shall determine the duties and powers of the resolution administrator necessary for the termination of all banking activities. The powers may include some or all of the powers that the senior managers of the bank have under its instruments of incorporation and under the provisions of Law on Persons and Companies applicable to the bank in

question, including the power to exercise some or all of the senior managers' administrative functions. The FMA shall determine whether the resolution administrator temporarily replaces the senior managers or whether they must temporarily cooperate with the resolution administrator. The FMA may impose on the senior managers the obligation to consult the resolution administrator and obtain the resolution administrator's consent before taking certain decisions or measures. The FMA shall publicly announce the appointment of a resolution administrator on its website and instruct the Office of Justice to enter the resolution administrator, including the resolution administrator's signing authority, in the Commercial Register. In addition, the FMA may arrange for the signing authorities of existing members of the senior management to be removed or amended in the Commercial Register.

3) The resolution administrator must at all times provide a professional and personal guarantee for the orderly termination of the banking activities. The requirements under Article 63 shall apply *mutatis mutandis*. The FMA may issue the necessary instructions to the resolution administrator for the termination of pending banking activities. If the resolution administrator does not meet or no longer meets the requirements or does not comply with the FMA's instructions, the FMA shall take the necessary measures in accordance with Article 154(3), in particular the dismissal of the resolution administrator in accordance with Article 154(3)(s) and the simultaneous appointment of another suitable resolution administrator.

4) The resolution administrator must report to the FMA at regular intervals on the progress of the termination of pending banking activities. The content and frequency of the reports shall be determined by the FMA. The FMA may at any time request additional information and documents on the progress of the termination of open banking activities.

5) If the licence has been withdrawn pursuant to Article 33(1)(d) or if the supreme body has decided to dissolve and liquidate the bank after the withdrawal of the licence in accordance with Article 33(1)(b), (c) and (e) to (m) and if not all banking activities have been terminated, the FMA shall appoint the liquidator for the duration of the termination of all still pending banking activities, by way of derogation from Articles 132 and 133 of the Law on Persons and Companies. The FMA shall instruct the Office of Justice to enter the liquidator and the liquidator's signing authority in the Commercial Register and publish the appointment of a liquidator on its website. By way of derogation from paragraph 1, the FMA may also instruct the liquidator to terminate all banking activities at the same time as it appoints the liquidator. The liquidator must at all times

meet the personal and professional requirements set out in paragraph 3 and comply with the reporting obligations set out in paragraph 4 and the instructions issued by the FMA. The FMA may issue the liquidator with the instructions necessary for the termination of pending banking activities. If the liquidator does not meet or no longer meets the requirements or does not comply with the FMA's instructions, the FMA shall take the necessary measures, in particular the dismissal of the liquidator in accordance with Article 154(3)(s) and the simultaneous appointment of another suitable liquidator. Paragraph 4 shall apply *mutatis mutandis*. Article 146 of the Law on Persons and Companies shall not apply in the event of dissolution and liquidation in accordance with this paragraph.

6) If the FMA withdraws a licence in accordance with Article 33(1)(b), (c) and (e) to (m), it may at the same time decree the dissolution and liquidation of the bank, provided this is necessary to protect creditors and to safeguard confidence in Liechtenstein's monetary, securities, and credit system and the stability of the financial system. Such a decree shall have the same effect as a resolution to liquidate by the supreme body and must be entered in the Commercial Register. Article 146 of the Law on Persons and Companies shall not apply in the event of dissolution and liquidation in accordance with this paragraph.

7) If the FMA has decreed the dissolution and liquidation in accordance with paragraph 6, it shall appoint the liquidator. At the same time, the liquidator shall be assigned the task of terminating ongoing banking activities. The FMA shall take the measures necessary for the termination of ongoing banking activities and the implementation of the liquidation and shall issue the necessary instructions to the liquidator. The liquidator appointed by the FMA shall at all times provide personal and professional guarantees for the orderly dissolution and liquidation and the termination of ongoing business. The requirements set out in Article 63 shall apply *mutatis mutandis*. If the liquidator does not meet or no longer meets the requirements or does not comply with the instructions of the FMA, the FMA shall take the necessary measures, in particular the dismissal of the liquidator in accordance with Article 154(3)(s) and the simultaneous appointment of another suitable liquidator. The FMA shall instruct the Office of Justice to enter the liquidator and the liquidator's signing authority in the Commercial Register. Articles 132 and 133 of the Law on Persons and Companies shall not apply.

8) The FMA may appoint the following persons as resolution administrators and liquidators:

a) one or more members of the senior management;

b) one or more key function holders;

c) an audit firm recognised in accordance with Article 124; or

d) provided that they have thorough knowledge of banking and finance:

1. an audit firm that has a licence under the Auditors Act or is registered under Article 69 of the Auditors Act; or

2. a lawyer or a law firm under the Lawyers Act.

9) The discontinuation of the licence does not prevent the resolution administrator or liquidator from continuing to carry out business of the bank that is subject to a licence, to the extent necessary for the purposes of terminating the banking activities or of the liquidation proceedings. The acceptance of new deposits or other new repayable funds and the provision of other banking activities or investment services and/or the performance of investment services for clients in accordance with Article 3(1)(1) of the Investment Services Act are not permitted. Until all banking activities have been terminated, the bank is deemed to be a person subject to due diligence in accordance with Article 3(1) of the Due Diligence Act. Articles 12, 72, 75, 92(1)(b), (d) to (f), (h) and (l) to (n) as well as Articles 93, 119, 120 and 246 shall continue to apply until all banking activities have been fully terminated.

10) A resolution administrator or liquidator appointed by the FMA is entitled to remuneration from the bank. If the amount of the remuneration is not recognised by the bank, the FMA shall determine the remuneration and order the bank to pay it.

11) If a licence has lapsed in accordance with Article 32 or if the FMA has withdrawn the licence in accordance with Article 33, the bank shall, within 30 days of receipt of the written renunciation by the FMA or after the corresponding decree withdrawing the licence has become legally effective:

a) abandon the provision of banking activities and other services in accordance with Article 6 as a business purpose and amend the articles of association accordingly; and

b) register with the Office of Justice the removal from the Commercial Register of the company name and purpose entries under the heading "Legal name" and "Purpose" that refer to the bank or other business subject to a licence.

12) Proof of the entries in the Commercial Register in accordance with paragraph 11(b) must be provided to the FMA. If proof is not provided, the FMA shall inform the Office of Justice. The Office of Justice must decree the dissolution and liquidation of the company in accordance with Article 971 of the Law on Persons and Companies.

E. Lapse and withdrawal of licences for financial holding companies and mixed financial holding companies

Article 35

Lapse of the licence

1) Licences as referred to in Article 26(1) or (2) shall lapse if:

a) no bank is any longer a subsidiary of a licensed financial holding company or mixed financial holding company;

b) the licence is renounced in writing to the FMA.

2) The lapse of a licence shall be determined by the FMA and communicated to the party concerned. The FMA shall publish the lapse in the Official Journal and on its website at the expense of the party concerned. The entry in the register as referred to in Article 168 shall be removed by the FMA. The FMA shall notify the competent authorities of the EEA Member States in which the financial holding company or mixed financial holding company has its registered office of any lapse of a licence.

Article 36

Withdrawal of the licence

1) Licences as referred to in Article 26(1) or (2) shall be withdrawn by the FMA if:

a) the conditions under which the licence was granted are no longer met;

b) the financial holding company or mixed financial holding company obtained the licence surreptitiously by providing false information or otherwise or if the FMA was unaware of significant circumstances;

c) the financial holding company or mixed financial holding company no longer meets the requirements set out in Article 33(1)(g) on a consolidated or sub-consolidated basis;

d) the financial holding company or mixed financial holding company has committed a misdemeanour as referred to in Article 245(2)(b), an offence under the Criminal Code, or an offence under other laws referred to in Article 5(1) of the Financial Market Authority Act;

e) the financial holding company or mixed financial holding company has committed a serious, repeated, or systematic contravention as referred to in Article 246(1);

f) the financial holding company or mixed financial holding company does not meet the FMA's demands to restore a lawful state of affairs;

g) the financial holding company or mixed financial holding company systematically, seriously, or repeatedly violates its legal obligations;

h) the financial holding company or mixed financial holding company decides to dissolve and liquidate the company; or

i) bankruptcy proceedings have been instituted in respect of the assets of the financial holding company or mixed financial holding company or a bankruptcy petition has been dismissed with legal effect for lack of assets to cover costs.

2) The legally effective withdrawal of the licence shall be published in the Official Journal and on the FMA website at the expense of the financial holding company or mixed financial holding company. The entry in the register as referred to in Article 168 shall be removed by the FMA. The FMA shall notify the competent authorities of the EEA Member States in which the financial holding company or mixed financial holding company has its registered office of any withdrawal of a licence.

Article 37

Consequences of the lapse or withdrawal of a licence

At the same time as the notification pursuant to Article 35(2) or Article 36(2) the FMA shall, in accordance with Article 154(5)(d), designate another financial holding company or mixed financial holding company or another bank or EEA credit institution within the group which shall be responsible for ensuring compliance with the requirements under this Act and Regulation (EU) No 575/2013 on a consolidated basis until a new licence is granted pursuant to Article 26(1) or (2).

IV. Relationship with the European Economic Area and third countries

A. European Economic Area

1. Requirements for establishing branches and exercising freedom to provide services

Article 38

Activities of Liechtenstein banks, financial holding companies, and mixed financial holding companies in other EEA Member States

1) Banks that are deemed to be credit institutions under Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act may provide the activities covered by their licence as set out in Annex 1 of this Act or investment services and/or perform investment activities in accordance with Annex 1 Sections A and B of the Investment Services Act in other EEA Member States in accordance with Articles 40 and 41 through a branch or under the freedom to provide services. For the provision of investment services and/or the performance of investment activities, they may also use tied agents in accordance with Article 3(1)(16) of the Investment Services Act which have their registered office either in Liechtenstein or in another EEA Member State.

2) Banks that are deemed to be financial institutions pursuant to Article 4(3) of this Act and their subsidiaries may carry out the activities covered by their licence as set out in Annex 1(2) to (12) and (15) in other EEA Member States in accordance with Articles 42 and 43 through a branch or under the freedom to provide services, provided they meet the following additional requirements:

a) They are a subsidiary of a bank or a joint subsidiary of several banks that are deemed to be credit institutions under Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act.

b) The activities in question belong to the scope of business described in the bank's articles of association and are actually carried out in Liechtenstein.

c) The parent undertaking or undertakings hold 90% or more of the voting rights attaching to shares in the capital of the bank in question.

d) The parent undertaking or undertakings satisfy the competent authority of the host Member State regarding the prudent management of the bank in question and have declared, with the prior

approval of the FMA, that they jointly and severally guarantee the commitments entered into by the bank.

e) The bank in question is effectively included in the supervision of the parent undertaking or undertakings on a consolidated basis in accordance with this Act and Title VII, Chapter 3 and Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013, in particular for the purpose of the own funds requirements set out in Article 92 of that Regulation, for the control of large exposures provided for in Part Four of that Regulation, and for the purposes of the limitation of participations provided for in Articles 89 and 90 of that Regulation.

3) Paragraph 2 and Articles 42 and 43 shall apply *mutatis mutandis* to financial holding companies or mixed financial holding companies and their subsidiaries.

Article 39

Activities of EEA credit institutions, EEA financial institutions, and financial holding companies or mixed financial holding companies from the EEA

1) EEA credit institutions may provide the activities covered by their authorisation as set out in Annex I to Directive 2013/36/EU or investment services and/or investment activities as set out in Sections A and B of Annex I to Directive 2014/65/EU, when referring to the financial instruments provided for in Section C of Annex I to that Directive, in Liechtenstein in accordance with Articles 44 and 45 through a branch or under the freedom to provide services. To provide investment services and/or perform investment activities, they may also use tied agents as referred to in Article 4(1)(29) of Directive 2014/65/EU which have their registered office either in Liechtenstein or in another EEA Member State.

2) EEA financial institutions and their subsidiaries may carry out the activities covered by their authorisation as set out in Annex I(2) to (12) and (15) of Directive 2013/36/EU in Liechtenstein in accordance with Articles 46 and 47 through a branch or under the freedom to provide services, provided that they meet the conditions set out in Article 34(1) of Directive 2013/36/EU.

3) Paragraph 2 and Articles 46 and 47 shall apply *mutatis mutandis* to financial holding companies with registered offices in another EEA Member State or mixed financial holding companies with registered offices in another EEA Member State and their subsidiaries.

2. Procedure for establishing branches and exercising freedom to provide services

Article 40

Branches in another EEA Member State of Liechtenstein banks deemed to be credit institutions

1) Banks that are deemed to be credit institutions under Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act shall notify the FMA in advance of the establishment of a branch in another EEA Member State. The notification must contain the following information:

a) the EEA Member State in which the branch is to be established;

b) a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the branch;

c) the address in the host Member State from which documents of the bank may be obtained;

d) the names of the branch managers.

2) In addition to the information referred to in paragraph 1, the FMA shall notify the competent authorities of the host Member State of the following:

a) the amount and composition of own funds;

b) the sum of the own funds requirements under Article 92 of Regulation (EU) No 575/2013; and

c) details of the deposit guarantee scheme designed to protect the branch's depositors.

3) The FMA shall communicate the information to the competent authority of the host Member State within three months of receipt, provided that it has no reason to doubt the adequacy of the administrative structures and the financial situation of the bank in question in view of the planned activity. It shall notify the bank in question of the communication.

4) Where the FMA refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the bank concerned within three months of receiving all the information. In the case of such refusal or lack of communication by the FMA, Article 243 shall apply *mutatis mutandis*.

5) In the event of a change in any of the information communicated pursuant to paragraph 1(b) to (d), the bank shall give written notice of the change in question to the FMA at least one month before making the

change. The FMA shall inform the competent authorities of the host Member State. Paragraphs 3 and 4 shall apply *mutatis mutandis*.

6) The FMA shall notify the EFTA Surveillance Authority and the EBA of the number and type of cases in which it has refused to transmit the information pursuant to paragraphs 3 and 5 to the competent authorities of the host Member State.

7) Banks that are deemed to be credit institutions under Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act and that provide or wish to provide one or more investment services and/or investment activities in accordance with Article 3(1)(1) of the Investment Services Act in other EEA Member States through a tied agent with its registered office in another EEA Member State must notify the FMA in advance. The notification must contain all the information specified in Article 47(2) of the Investment Firms Act. The procedure is governed by Articles 13 to 16, 18 and 20 of Commission Implementing Regulation (EU) 2017/2382[23].

Article 41

Freedom to provide services in another EEA Member State of Liechtenstein banks that are deemed to be credit institutions

1) Banks that are deemed to be credit institutions under Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act shall notify the FMA before commencing for the first time one or more activities in accordance with Annex 1 of this Act or one or more investment services and/or investment activities in accordance with Article 3(1)(1) of the Investment Services Act in other EEA Member States under the freedom to provide services. The notification must contain the following information:

a) the EEA Member State in which they intend to carry out their activities; and

b) the intended activities.

2) The FMA shall forward the information referred to in paragraph 1 to the competent authority of the host Member State within one month of receipt.

3) Banks that are deemed to be credit institutions under Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act must notify the FMA

23 Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council (OJ L 340, 20.12.2017, p. 6)

in advance, stating the name of the tied agent in other EEA Member States under the freedom to provide services, before commencing for the first time one or more investment services and/or investment activities in accordance with Article 3(1)(1) of the Investment Services Act. The notification must contain all the information referred to in Article 45(2) of the Investment Firms Act. The FMA shall forward the notification to the competent authority of the host Member State within one month of receipt. The procedure is governed by Articles 13 to 16, 18 and 20 of Commission Implementing Regulation (EU) 2017/2382.

Article 42

Branches in another EEA Member State of Liechtenstein banks deemed to be financial institutions

1) Banks that are deemed to be financial institutions in accordance with Regulation (EU) No 575/2013 pursuant to Article 4(3) of this Act shall notify the FMA in advance of the establishment of a branch in another EEA Member State. The notification must contain the following information:

a) the EEA Member State in which the branch is to be established;

b) a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the branch;

c) the address in the host Member State from which documents of the bank may be obtained;

d) the name of the branch managers; and

e) the information on compliance with the requirements set out in Article 38(2).

2) Upon receipt of the notification, the FMA shall examine whether the requirements set out in Article 38(2) are met. If the requirements are met, the FMA shall issue a confirmation to that effect, which shall be sent to the competent authorities of the host Member State together with the other information under paragraph 1.

3) In addition to the information referred to in paragraph 1, the FMA shall notify the competent authorities of the host Member State of the following:

a) the amount and composition of own funds; and

b) the total risk exposure amounts of the parent bank calculated in accordance with Article 92(3) and (4) of Regulation (EU) No 575/2013.

4) The FMA shall communicate the information to the competent authority of the host Member State within three months of receipt, provided that it has no reason to doubt the adequacy of the administrative structures and the financial situation of the bank in question in view of the planned activity. It shall notify the bank in question of the communication.

5) Where the FMA refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the bank concerned within three months of receiving all the information. In the case of such refusal or lack of communication by the FMA, Article 243 shall apply *mutatis mutandis*.

6) In the event of a change in any of the information communicated pursuant to paragraph 1(b) to (d), the bank shall give written notice of the change in question to the FMA at least one month before making the change. The FMA shall inform the competent authorities of the host Member State. Paragraphs 4 and 5 shall apply *mutatis mutandis*.

7) If the requirements set out in Article 38(2) are no longer met, the FMA shall inform the competent authority of the host Member State accordingly.

8) The FMA shall notify the EFTA Surveillance Authority and the EBA of the number and type of cases in which it has refused to transmit the information pursuant to paragraph 4 or 6 to the competent authorities of the host Member State.

Article 43

Freedom to provide services in another EEA Member State of Liechtenstein banks that are deemed to be financial institutions

1) Banks that are deemed to be financial institutions in accordance with Regulation (EU) No 575/2013 pursuant to Article 4(3) of this Act and their subsidiaries shall notify the FMA before commencing for the first time one or more activities in accordance with Annex 1 in other EEA Member States under the freedom to provide services. The notification must contain the following information:

a) the EEA Member State in which they intend to carry out their activities; and

b) the intended activities.

2) The FMA shall forward the information referred to in paragraph 1 to the competent authority of the host Member State within one month of receipt.

Article 44

Branches of EEA credit institutions in Liechtenstein

1) EEA credit institutions may establish a branch in Liechtenstein if:

a) the competent authority of the home Member State has provided the FMA with all information in accordance with Article 35(1) to (3) of Directive 2013/36/EU; and

b) the deadline set out in paragraph 4 has expired.

2) If an EEA credit institution has established several branches in Liechtenstein, they shall be considered a single branch.

3) Within two months of receiving the information referred to in paragraph 1 from the competent authority of the home Member State at the FMA, the FMA shall communicate to the EEA credit institution the required notifications and conditions under which, in the interests of the general good, the activities shall be carried out in Liechtenstein in accordance with paragraph 6.

4) On receipt of the communication referred to in paragraph 3, or if no communication has been received from the FMA, within two months after the competent authority of the home Member State forwarded the communication, the EEA credit institution may establish the branch and commence its business operations.

5) In the event of a change in any of the information communicated pursuant to paragraph Article 35(2)(b) to (d) of Directive 2013/36/EU, the EEA credit institution shall give written notice of the change in question to the FMA at least one month before making the change. Paragraph 3 shall apply *mutatis mutandis*.

6) For branches of EEA credit institutions, Articles 8, 12, 14, 20, 72, 76, 78, 79, 87, 88 and 120(8) of this Act as well as Articles 4 and 5 and Part III of the Payment Services Act shall apply. When providing investment services and/or performing investment activities as set out in Annex I Sections A and B of Directive 2014/65/EU, when referring to the financial instruments provided for in Section C of Annex I to that Directive, Articles 6, 7, 8(2), 9 to 15, 17, 18 and 20 to 23 of the Investment Services Act and Articles 14 to 16 of Regulation (EU) No 600/2014 shall also apply. The branch manager shall be responsible for compliance with the requirements set out in paragraph 1 and this paragraph.

7) When fulfilling the responsibilities delegated to the FMA under this Act, the FMA may require EEA credit institutions to report to it every six months on the activities of the branches. These reports may be requested only in order to supervise compliance with the requirements applicable

to the branches. The FMA may in particular require information from EEA credit institutions in order to allow the FMA to assess whether a branch is significant in accordance with Article 52.

8) EEA credit institutions may provide one or more investment services and/or perform one or more investment activities as set out in Article 4(1)(2) of Directive 2014/65/EU in Liechtenstein through a tied agent in accordance with Article 3(1)(16) of the Investment Services Act if the competent authority of the home Member State has provided the FMA with all information in accordance with Article 35(7) of the aforementioned Directive and the deadline set out in paragraph 4 has expired. The procedure is governed by Articles 13 to 16, 18 and 20 of Commission Implementing Regulation (EU) 2017/2382.

Article 45

Freedom to provide services of EEA credit institutions in Liechtenstein

1) A first-time activity in Liechtenstein of an EEA credit institution under the freedom to provide services shall require notification by the competent authority of the home Member State to the FMA in accordance with Article 39 of Directive 2013/36/EU.

2) The EEA credit institution may start providing the relevant services after receipt of the notification by the FMA.

3) The provision of investment services and/or the performance of investment activities as set out in Article 4(1)(2) of Directive 2014/65/EU in Liechtenstein under the freedom to provide services through the use of tied agents in accordance with Article 3(1)(16) of the Investment Services Act shall require notification by the competent authority in accordance with Article 34(5) of that Act. The procedure is governed by Articles 13 to 16, 18 and 20 of Commission Implementing Regulation (EU) 2017/2382. The FMA shall publish the relevant information in the register as referred to in Article 168.

Article 46

Branches of EEA financial institutions in Liechtenstein

1) EEA financial institutions and their subsidiaries may establish a branch in Liechtenstein if:

a) the competent authority of the home Member State has provided the FMA with all information in accordance with Article 35(1) to (3) of Directive 2013/36/EU and has transmitted confirmation that the

requirements set out in Article 34(1) of that Directive have been met; and

b) the deadline set out in paragraph 3 has expired.

2) Within two months of receiving the information referred to in paragraph 1 from the competent authority of the home Member State at the FMA, the FMA shall communicate to the EEA financial institution the required notifications and conditions under which, in the interests of the general good, the activities shall be carried out in Liechtenstein in accordance with paragraph 5.

3) On receipt of the communication referred to in paragraph 2, or if no communication has been received from the FMA, within two months after the competent authority of the home Member State forwarded the communication, the EEA financial institution may establish the branch and commence its business operations.

4) In the event of a change in any of the information communicated pursuant to paragraph Article 35(2)(b) to (d) of Directive 2013/36/EU, the EEA financial institution shall give written notice of the change in question to the FMA at least one month before making the change. Paragraph 3 shall apply *mutatis mutandis*.

5) Articles 8, 12, 14, 20, 72, 76, 78, 79, 87, 88 and 120(8) of this Act as well as Articles 4 and 5 and Part III of the Payment Services Act shall apply to branches of EEA financial institutions. The branch manager shall be responsible for compliance with the requirements set out in paragraph 1 and this paragraph.

6) When fulfilling the responsibilities delegated to the FMA under this Act, the FMA may require EEA financial institutions to report to it every six months on the activities of the branches. These reports may be requested only in order to supervise compliance with the requirements applicable to the branches. The FMA may in particular require information from EEA credit institutions in order to allow the FMA to assess whether a branch is significant in accordance with Article 52.

7) If the competent authority of the home Member State informs the FMA that the EEA financial institution no longer meets the requirements set out in Article 34(1) of Directive 2013/36/EU, the activities of the EEA credit institution in Liechtenstein shall be subject to this Act. The FMA shall have all powers vis-à-vis the EEA financial institution under Article 154, in particular to ensure that banking activities or other services under Article 6 are provided in Liechtenstein only if the EEA financial institution has a licence under Article 16.

Article 47

Freedom to provide services of EEA financial institutions in Liechtenstein

1) A first-time activity in Liechtenstein of an EEA financial institution or its subsidiary under the freedom to provide services shall require notification by the competent authority of the home Member State to the FMA in accordance with Article 39 of Directive 2013/36/EU.

2) The EEA financial institution may start providing the relevant services after receipt of the notification by the FMA.

3) If the competent authority of the home Member State informs the FMA that the EEA financial institution no longer meets the requirements set out in Article 34(1) of Directive 2013/36/EU, the activities of the EEA credit institution in Liechtenstein shall be subject to this Act. The FMA shall have all powers vis-à-vis the EEA financial institution under Article 154, in particular to ensure that banking activities or other services under Article 6 are provided in Liechtenstein only if the EEA financial institution has a licence under Article 16.

3. Supervision in the context of freedom to provide services and the establishment of branches

Article 48

Supervision of the activities of branches of EEA credit institutions or EEA financial institutions; on-the-spot checks and investigations

1) The competent authority of the home Member State may, in connection with the supervision of an EEA credit institution or EEA financial institution that is subject to its supervision and operates through a branch in Liechtenstein:

a) request the FMA to cooperate with an on-the-spot check or an investigation in a branch; or

b) after having informed the FMA in advance, carry out itself or through the intermediary of persons it appoints for that purpose on-the-spot checks of the information required for supervision.

2) If the FMA receives a request pursuant to paragraph 1, it may comply with it within the framework of its competence by:

a) carrying out the on-the-spot check or investigations itself; or

b) mandating recognised audit firms or experts to carry out the check or investigation.

3) If on-the-spot checks or investigations are not carried out by the FMA itself, FMA employees may accompany the inspectors of the competent authority of the home Member State or persons it appoints for that purpose.

4) Notwithstanding the provisions of this subsection, the FMA, as the competent authority of the host Member State, may, within the framework of the responsibilities incumbent upon it under this Act, carry out on-the-spot checks and inspections of the activities carried out by branches of EEA credit institutions or EEA financial institutions in Liechtenstein or mandate recognised audit firms and experts to do so. For supervisory purposes, the FMA may require information from a branch about its activities. Before carrying out such checks and inspections, the FMA shall consult the competent authority of the home Member State. After such checks and inspections, the FMA shall communicate to the competent authority of the home Member State the information obtained and findings that are relevant for the risk assessment of the EEA credit institution or EEA financial institution or the stability of the financial system in Liechtenstein.

5) The FMA may request the competent authorities of another EEA Member State to cooperate in an on-the-spot check or investigation.

Article 49

Powers of the FMA as the competent authority of the home Member State

1) If a bank that carries out its activities in another EEA Member State through a branch or under the freedom to provide services violates the legal provisions of the host Member State implementing Directive 2013/36/EU or Regulation (EU) No 575/2013, the FMA shall, after notification by the competent authority of the host Member State, without delay take the measures necessary to bring about a lawful state of affairs or to remedy the situation at an early stage. For this purpose, the FMA shall in particular have all powers under Article 154 at its disposal. The FMA shall without delay inform the competent authorities of the host Member State of the measures it has taken.

2) When defining its supervisory examination programme in accordance with Article 150, the FMA shall take due account of the information of the competent authorities of the host Member State obtained in accordance with Article 48(4), and it shall also take account of the stability of the financial system in the host Member State.

Article 50

Powers of the FMA as the competent authority of the host Member State

1) If an EEA credit institution or an EEA financial institution that carries out its activities in Liechtenstein through a branch or under the freedom to provide services infringes provisions of this Act, in particular Article 44(6) or Article 46(5), or of Regulation (EU) No 575/2013, or if there is a significant risk of such an infringement, the FMA shall notify the competent authorities of the home Member State without delay.

2) If the FMA is of the opinion that the competent authority of the home Member State has not complied or will not comply with its obligations to end the infringement under paragraph 1, it may refer the matter to the EFTA Surveillance Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 in cases where only competent authorities of EFTA States are concerned and request its assistance. In cases where both the FMA and competent authorities of Member States of the European Union are concerned, the FMA shall refer the matter to the EFTA Surveillance Authority and the EBA in accordance with Article 19 of that Regulation.

3) If the competent authority of the home Member State notifies the FMA that the authorisation of an EEA credit institution or EEA financial institution operating in Liechtenstein through a branch or under the freedom to provide services has been withdrawn or has lapsed in accordance with the legal provisions of the home Member State, the FMA shall without delay take appropriate measures to ensure that no further business is conducted in Liechtenstein and that the interests of depositors and investors are protected. For this purpose, the FMA shall in particular have all powers under Article 154 at its disposal.

4) Notwithstanding paragraphs 1 to 3, the FMA shall in particular have all powers under Article 154 at its disposal to take appropriate measures to prevent or punish infringements of the provisions of this Act. This also includes the possibility of prohibiting an EEA credit institution or EEA financial institution that has committed an infringement from taking up new business activities in Liechtenstein.

Article 51

Precautionary measures

1) Pending effective measures by the competent authorities of the home Member State, the FMA may, in emergency situations, even before notifying the competent authorities of the home Member State in

accordance with Article 50(1) take any precautionary measures, including all powers under Article 154, against an EEA credit institution or EEA financial institution 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 EBA.

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 EEA credit institution or EEA financial institution 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 3 of Directive 2001/24/EC.

4) The FMA shall lift or terminate precautionary measures when those measures have become obsolete due to the measures taken by the authorities of the home Member State as referred to in Article 41 in accordance with Directive 2013/36/EU.

5) If a competent authority of another EEA Member State takes precautionary measures pursuant to Article 43 of Directive 2013/36/EU against a Liechtenstein bank and the FMA has objections to these measures, it may refer the matter to the EFTA Surveillance Authority pursuant to Article 19 of Regulation (EU) No 1093/2010 in cases where only competent authorities of EFTA States are concerned and request its assistance. In cases where both the FMA and competent authorities of Member States of the European Union are concerned, the FMA shall refer the matter to the EFTA Surveillance Authority and the EBA in accordance with Article 19 of that Regulation.

4. Significant branches

Article 52

Classification as significant branch

1) The FMA may request the consolidating supervisor or, if there is no consolidating supervisor, the competent authority of the home Member State for the Liechtenstein branch of an EEA credit institution to be

classified as significant. In its request, the FMA shall provide reasons for classifying the branch as significant with particular regard to the following:

a) whether the market share of the branch in terms of deposits exceeds 2%;

b) the likely impact of a suspension or closure of the operations of the EEA credit institution on systemic liquidity and the payment, clearing and settlement systems; and

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.

2) The FMA and the consolidating supervisor or, if there is consolidating supervisor, the competent authority of the home Member State shall do everything within their power to reach a joint decision on the designation of the branch as being significant.

3) If no joint decision is reached within two months of transmission of a request under paragraph 1, the FMA shall decide 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, if there is no consolidating supervisor, the competent authority of the home Member State.

4) The decisions referred to in paragraphs 2 and 3 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.

Article 53

Cooperation in the supervision of significant branches

1) The FMA, as consolidating supervisor or competent authority of the home Member State, must cooperate with the competent authorities of a host Member State in which a significant branch of a Liechtenstein bank is located that is deemed to be a credit institution in accordance with Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act in the tasks set out in Article 162(1)(c) and provide the information set out in Article 182(2)(c) and (d).

2) The FMA shall also transmit the following information to the competent authorities of the host Member State in which a significant branch of a Liechtenstein bank is located that is deemed to be a credit institution in accordance with Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act:

a) the results of the risk assessment of the bank in question that has established a significant branch in accordance with Article 148 and, where applicable, Article 163(2) to (5); and

b) decisions pursuant to Article 154(3) and Article 157, insofar as those decisions are relevant to the significant branches concerned.

3) The FMA shall consult the competent authorities of the host Member State where a significant branch of a Liechtenstein bank that is deemed to be a credit institution pursuant to Article 4(2) of this Act in accordance with Regulation (EU) No 575/2013 has been established with regard to the necessary operational steps to be taken by banks, where relevant for liquidity risks in the host Member State's currency.

4) Where the competent authorities of the home Member State have not consulted the FMA or where, following such consultation, the FMA maintains that the necessary operational steps are not adequate, the FMA may refer the matter to the EFTA Surveillance Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 in cases where only competent authorities of EFTA States are concerned and request its assistance. In cases where both the FMA and competent authorities of Member States of the European Union are concerned, the FMA shall refer the matter to the EFTA Surveillance Authority and the EBA in accordance with Article 19 of that Regulation.

5) Where the FMA is the competent authority supervising a bank that is deemed to be a credit institution in accordance with Regulation (EU) No 575/2013 pursuant to Article 4(2) of this Act with significant branches in other EEA Member States, and where Article 164(1) and (2) 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 coordination in the supervision of significant branches of Liechtenstein banks and the exchange of information under this Article. The establishment and functioning of the college shall be based on written arrangements determined, after consulting the competent authorities of the host Member States concerned, by the FMA. The FMA shall decide which competent authorities participate in a meeting or in an activity of the college of supervisors. 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 as referred to in Article 147(3) and the obligations referred to in paragraph 1 to 4 of this Article.

6) The FMA shall keep all members of the college of supervisors 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.

5. Representative offices of EEA credit institutions or EEA financial institutions

Article 54

Representative offices of EEA credit institutions or EEA financial institutions in Liechtenstein

1) The establishment of a representative office of an EEA credit institution or EEA financial institution situated in another EEA Member State must be notified to the FMA by the representative office manager prior to its opening. The notification shall contain the following information:

a) the planned date of opening;

b) the representative office managers; and

c) the registered office of the representative office.

2) The representative office manager shall notify the FMA without delay of any changes in the information pursuant to paragraph 1 and of the closure of the representative office.

3) The representative office manager shall be responsible for compliance with the obligations set out in paragraphs 1 and 2.

4) The FMA shall prohibit the operation of a representative office of an EEA credit institution or EEA financial institution if there is reason to believe that transactions subject to licensing requirements are being carried out in violation of Article 7 and 16.

Article 55

Powers vis-à-vis representative offices

In the case of representative offices of EEA credit institutions or EEA financial institutions, the FMA may, for the purpose of monitoring compliance with the requirements under Articles 7, 8, 16 and 54, take the following action in particular:

a) obtain or request the presentation of the information referred to in Article 154(2)(a) or (b);

b) carry out on-site inspections in accordance with Article 154(2)(c);

c) order or carry out extraordinary audits in accordance with Article 154(2)(f);

d) take measures as referred to in Article 154(3);

e) in case of repetition or continuation, require the removal of the representative office manager.

B. Third countries

Article 56

Branches and representative offices of Liechtenstein banks in third countries

1) Banks wishing to establish a branch or representative office in a third country must notify the FMA in advance in accordance with Article 92.

2) If the branch or representative office manager in the third country also holds a key function within the bank or group, they must fulfil the requirements under Article 63 at all times. In the case of significant banks, they may only take up their function after the FMA has assessed that the personal and professional requirements set out in Article 63(1) to (4) and (7) have been met and has granted approval to that effect.

Article 57

Representative offices of third-country banks in Liechtenstein

1) The establishment of a representative office of a third-country bank in Liechtenstein shall be notified to the FMA by the representative office manager prior to its opening. The content of this notification shall be governed by Article 54(1). The notification must be accompanied by a declaration by the competent authority of the home country that it has no objections to the establishment or operation of the representative office. Furthermore, representative offices of third-country banks must notify the FMA prior to their opening as to which banking activities the bank conducts in its home country, who has a qualifying holding in the bank, and which activities are planned in Liechtenstein.

2) Article 54(2) and (3) shall apply *mutatis mutandis*.

3) The FMA shall prohibit the operation of a representative office of a third-country bank if:

a) the operation of a representative office was commenced even though the notification referred to in paragraph 1 was not submitted to the FMA or submitted only incompletely;

b) the declaration of no objection by the home country authority is not available or a declaration to the contrary is subsequently made;

c) there is reason to believe that transactions subject to licensing requirements are being carried out in violation of Article 7 or 16; or

d) there are sufficient grounds to suspect that the bank is involved in transactions connected with money laundering within the meaning of § 165 of the Criminal Code or terrorist financing within the meaning of § 278d of the Criminal Code.

4) If the FMA prohibits the operation of the representative office, the competent authorities of the home country shall be notified at the latest at the same time as the prohibition.

5) For the purpose of monitoring compliance with the requirements under Articles 7, 8, 16 and this Article, Article 55 shall apply *mutatis mutandis*.

V. Requirements for banks

A. Qualifying holdings

Article 58

Qualifying holdings

1) Every proposed direct or indirect acquisition and every proposed direct or indirect disposal of a qualifying holding in a bank and every proposed direct or indirect increase or reduction of a qualifying holding causing the holding to reach, exceed, or fall below the thresholds of 20%, 30%, or 50% of the capital or voting rights of the bank or causing the bank to become a subsidiary of an acquirer or no longer to be a subsidiary of the disposer shall be notified without delay in writing to the FMA by the person or persons interested in the acquisition or disposal. Articles 25 to 27 and 31 of the Disclosure Act shall apply to determination of the voting rights.

2) The notification requirement set out in paragraph 1 shall also apply to persons acting jointly who, in aggregate, would acquire, dispose of, reach, exceed or fall below a qualifying holding. The notification may be made by all of the persons acting jointly, by several of them, or by each of them.

3) A notification pursuant to paragraph 1 by the disposer may be waived if the disposer is aware that the acquirer has already submitted a notification to the FMA pursuant to paragraph 1.

4) The FMA shall cooperate fully with the competent authorities of another EEA Member State when assessing a proposed acquisition or an increase in a participation if the proposed acquirer is one of the following natural or legal persons:

a) an EEA credit institution, an investment firm as referred to in Article 4(1)(22) of Regulation (EU) 2019/2033, an insurance or reinsurance undertaking as referred to in Article 13(1) or (4) of Directive 2009/138/EC[24], or a management company as referred to in Article 2(1)(b) of Directive 2009/65/EC[25] that is authorised in another EEA Member State;

b) a parent undertaking of an undertaking referred to in subparagraph (a) that is authorised in another EEA Member State or in a sector other than that in which the acquisition is proposed; or

c) a natural or legal person which controls an undertaking as referred to in subparagraph (a).

5) Cooperation pursuant to paragraph 4 shall include, in particular, the exchange of all information relevant to the assessment of the acquisition or increase of participations. In its decision, the FMA shall note any comments or reservations on the part of the competent authority responsible for the proposed acquirer.

6) If a bank becomes aware of an acquisition, a disposal, or a direct or indirect increase or reduction as referred to in paragraph 1, it shall notify the FMA in writing without delay; this also applies if an acquisition, disposal, increase or reduction as referred to in paragraph 1 is proposed. No notification to the FMA is required if the bank is aware that the

24 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1)

25 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32)

acquirer has already submitted a notification to the FMA pursuant to paragraph 1.

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

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

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

8) The Government may provide further details by ordinance, in particular the form and content of the notification and the criteria for assessing an influence that impairs prudent and sound management.

Article 59

Procedure for assessing the acquisition of qualifying holdings

1) The FMA shall acknowledge receipt of the notification under Article 58(1) promptly, and at the latest within two working days following receipt of the complete notification, in writing to the proposed acquirer, and shall inform the proposed acquirer of the date of the expiry of the assessment period.

2) Within 60 working days as from the date of the written acknowledgement of receipt of the notification under paragraph 1 and all information and documents required under Article 60(3), the FMA shall carry out the assessment of the proposed acquisition or proposed increase of the qualifying holding (assessment period). Carrying out the proposed acquisition or the intended increase during the assessment period is prohibited.

3) The FMA may, until no later than on the 50th working day of the assessment period referred to in paragraph 2, request in writing further information and documents that are necessary to complete the assessment, specifying the additional information and documents needed. For the period between the date of request for information and documents by the FMA and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted, but for no longer than 20 working days. Any further requests by the FMA for completion or clarification of the information shall be at its discretion; this shall not result in an interruption of the assessment period, however.

4) By way of derogation from paragraph 3, the FMA may extend the interruption of the assessment period to 30 working days if the proposed acquirer:

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

b) is a natural or legal person not subject to supervision by the FMA under this Act, the Undertakings for Collective Investment in Transferable Securities Act, the Investment Undertakings Act, the Alternative Investment Fund Managers Act, the Asset Management Act, or the Insurance Supervision Act.

5) The FMA shall oppose the proposed acquisition or proposed increase if, on the basis of the assessment criteria set out in Article 60(1), there are reasonable grounds for doing so or if the information provided by the proposed acquirer is incomplete. The decision to oppose the proposed acquisition shall be notified to the proposed acquirer in writing within two working days of completion of the assessment, and in any event not exceeding the assessment period, providing the reasons. The FMA may make accessible to the public at the request of the proposed acquirer an appropriate statement of the reasons for the decision to oppose the proposed acquisition, or also in the absence of a request by the proposed acquirer, taking into account the principles set out in Article 21a of the Financial Market Act.

6) If the FMA does not oppose the proposed acquisition within the assessment period in writing, the acquisition shall be deemed to be approved. The FMA may attach restrictions and stipulations to the acquisition and may set a deadline for completing the proposed acquisition and extend it where appropriate.

Article 60

Criteria for assessing the acquisition or increase of qualifying holdings

1) In assessing a notification provided for in Article 58(1), the FMA shall, in order to ensure the sound and prudent management of the bank in which an acquisition or increase of a qualifying holding is proposed, and having regard to the likely influence of the proposed acquirer on that bank, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition or proposed increase against all of the following criteria:

a) the reliability of the proposed acquirer;

b) the reliability, knowledge, skills, and experience as referred to in Article 63 of the person who will be a member of the board of directors

or of the senior management of the bank and will direct its business as a result of the proposed acquisition or increase;

c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the bank in which the acquisition is proposed;

d) whether:

1. the bank is able to and will be able to continue to comply with the requirements based on this Act and Regulation (EU) No 575/2013 and any other applicable law, such as in particular the Financial Conglomerates Act, the Electronic Money Act, or the Payment Services Act; and

2. the group to which the bank will belong due to the acquisition or increase is structured in such a way that effective supervision, a reasonable allocation of responsibilities, and an effective exchange of information between the FMA and the otherwise competent authorities is or becomes possible;

e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering within the meaning of § 165 of the Criminal Code or terrorist financing within the meaning of § 278d of the Criminal Code is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2) The proposed acquisition or proposed increase shall not be assessed in terms of the economic needs of the market.

3) The FMA shall publish a list specifying the information and documents that are necessary for the FMA to carry out the assessment; the FMA shall take into account the nature of the proposed acquirer and the proposed acquisition or increase.

4) Where two or more proposals to acquire, increase, or dispose of qualifying holdings in the same bank or institution have been notified to the FMA in accordance with Article 58(1), the FMA shall treat the proposed acquirers in a non-discriminatory manner.

Article 61

Impairment of prudent and sound management by qualifying shareholders or proposed acquirers

Where the influence of qualifying shareholders or proposed acquirers of qualifying holdings could impair prudent and sound management of the bank, the FMA shall take appropriate measures to put an end to that

situation. Such measures may be directed against the bank, its shareholders, the members of the board of directors and senior management, as well as natural or legal persons who fail to comply with the notification requirement pursuant to Article 58(1) and (2).

Article 62

Acquisition of a qualifying holding despite opposition by the FMA

If a participation 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.

B. Organisational requirements

1. Guarantee of proper business conduct

Professional and personal requirements for members of the board of directors and senior management as well as key function holders

Article 63

a) Principle

1) Banks must ensure that the members of the board of directors and senior management as well as the head of the internal audit department provide professional and personal guarantees of sound and proper business operation at all times by:

a) being of good repute and acting honestly, with integrity and impartially;

b) having sufficient knowledge, skills and experience to perform their duties.

2) Banks must ensure that all other key function holders also meet the requirements set out in paragraph 1.

3) Each member of the senior management or board of directors must have sufficient time to fulfil their duties.

4) Each member of the board of directors must act honestly, with integrity and impartially in order to effectively monitor, assess and, if

necessary, question the decisions of the senior management and to effectively control and supervise the decision-making of the senior management. The fact that a person is a member of an affiliated undertaking or related legal person does not in itself constitute an impediment to acting impartially.

5) The number of senior management or board of directors mandates which may be held by a member of the senior management or board of directors at the same time shall take into account individual circumstances and the nature, scale and complexity of the bank's activities. In the case of significant banks, the members of the senior management or board of directors shall not hold more than one of the following combinations of mandates at the same time:

a) one senior management or two board of directors mandates; or

b) four board of directors mandates.

6) On application, the FMA may approve the assumption of a further board of directors mandate in addition to the permissible board of directors mandates referred to in paragraph 5. The FMA shall regularly inform the EBA of such approvals.

7) Banks must ensure that the members of the senior management and the board of directors collectively have the necessary knowledge, skills and experience to understand and monitor the activities of the bank, including its risks. The composition of the senior management and the board of directors shall reflect an appropriately broad range of experience.

8) Banks must provide adequate human and financial resources for the induction and training of members of the senior management and the board of directors.

9) When selecting the members of the senior management and board of directors, care must be taken to ensure a broad set of qualities and competences as well as diversity. The FMA shall provide the EBA with information on the promotion of diversity in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013.

10) When selecting the members of the board of directors, care must be taken to ensure that an appropriate number of independent members is achieved at all times. Each bank must have at least one independent member on its board of directors.

11) The Government may provide further details by ordinance, in particular the calculation of the permissible number of board of directors or senior management mandates.

Article 64

b) Assessment

1) Persons who are intended for the board of directors or senior management or as head of the internal audit department of a bank may take up their function only after the FMA has assessed whether the personal and professional requirements referred to in Article 63(1) to (4) and (7) have been met and has issued an approval to that effect. In the case of significant banks, this shall additionally apply to all other key function holders.

2) The FMA may review at any time whether the requirements referred to in Article 63(1) to (4) and (7) are met. A review must be carried out in any case if there are reasonable grounds to suspect that:

a) in connection with a bank, money laundering as referred to in § 165 of the Criminal Code, terrorist financing as referred to in § 278d of the Criminal Code, corruption as referred to in §§ 304 to 309 of the Criminal Code, insider dealing as referred to in Article 6 of the EEA Market Abuse Regulation Implementation Act, market manipulation as referred to in Article 7 of the EEA Market Abuse Regulation Implementation Act, criminal breach of trust as referred to in § 153 of the Criminal Code, fraud as referred to in §§ 146 to 148 of the Criminal Code, or a comparable criminal offence is taking place, has taken place, or has been attempted; or

b) the natural persons referred to in Article 63(1) and (2) commit, have committed, or have attempted to commit an offence referred to in subparagraph (a).

3) In the assessment pursuant to paragraph 1, the FMA shall examine, on the basis of a submitted extract from the criminal register, whether the persons referred to in paragraph 1 have been convicted of relevant offences. It shall also take into account the entries in the databases of the European Supervisory Authorities.

4) If the members of the board of directors or senior management or the head of the internal audit department of a bank or other key function holders do not meet or no longer meet the requirements referred to in Article 63(1) to (4) and (7), the FMA shall take the necessary measures, in particular their dismissal in accordance with Article 154(3)(s).

2. Corporate organisation and governance

Article 65

Organisation

1) The organisation of banks must comply with the requirements of this Act. In particular, they must have:

a) the following committees of the board of directors, insofar as these committees are to be established by the bank:
   1. a nomination committee in accordance with Article 68;
   2. a remuneration committee in accordance with Article 69;
   3. a risk committee in accordance with Article 70; and
   4. an audit committee in accordance with the Law on Persons and Companies;
b) sound governance arrangements in accordance with Article 71;
c) a risk management function that is independent of operations in accordance with Article 73;
d) a compliance function in accordance with Article 74;
e) an internal audit department reporting directly to the board of directors in accordance with Article 75;
f) appropriate procedures for employees to report infringements of this Act and of Regulation (EU) No 575/2013 internally through a specific, independent and autonomous channel;
g) adequate procedures for documenting all services, activities and transactions and any procedures or internal control mechanisms required under this Act or Regulation (EU) No 575/2013;
h) transparent and adequate procedures for handling complaints from their clients and business partners in order to identify, analyse and resolve recurring and potential legal and operational risks.

2) Banks must retain client-related documents, business correspondence and vouchers for ten years from the end of the business relationship and/or from execution of an occasional transaction, whereas they must retain transaction-related documents, business correspondence and vouchers for ten years from conclusion of the transaction and/or from their issue.

3) A member of the senior management may not take up a position as chair or deputy chair of the board of directors within the same bank in which they previously served as a member of the senior management

until at least one year after the end of their function. This also applies in cases where the function as a member of the senior management was performed only on an interim basis. If a member of the senior management nevertheless assumes a function as chair or deputy chair of the board of directors, they shall be deemed not to have been elected.

4) The Government may provide further details by ordinance.

Article 66

Responsibilities of the board of directors

1) The board of directors shall be responsible for the governance, supervision, and control of the bank.

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

a) defining the organisation and issuing governance regulations and regulations for management of the risk strategy, as well as regular review and adjustment thereof;

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 members of the senior management;

d) supervising the members of the senior 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;

f) issuing a regulation for the activities of the internal audit department and its regular evaluation;

g) regular approval and review of the risk policy.

Article 67

Responsibilities of the senior management

1) The senior management shall bear responsibility for operations and the implementation of the strategies and business principles defined by the board of directors.

2) In particular, it shall be responsible for:

a) the development of appropriate processes for the identification, measurement, assessment, management, mitigation, monitoring, and reporting of risks assumed by the bank;

b) the operational implementation of the organisation and governance arrangements laid down by the board of directors.

3) It shall take its decisions on a sound and well-informed basis. In its decision-making process, it shall critically review and constructively challenge all propositions, explanations, and information.

4) It shall report comprehensively and regularly and, where necessary, without delay, to the board of directors on the relevant elements for the assessment of the situation of the bank and on the risks and developments that affect or may affect the bank, in particular on:

a) material decisions on business activities and risks taken;

b) the evaluation of the bank's economic and business environment;

c) the liquidity and sound capital base of the bank and assessment of the material exposures.

Article 68

Nomination committee

1) Significant banks shall establish a nomination committee composed of members of the board of directors. The members of the nomination committee shall not perform any executive function at the bank.

2) The nomination committee shall have the following responsibilities in particular:

a) identifying and recommending candidates to fill senior management vacancies or in the preparation of nominations for the general meeting for the election of members of the board of directors; for this purpose, the nomination committee shall evaluate the balance of knowledge, skills, diversity and experience of the governing body in question and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected;

b) deciding on a target for the representation of the underrepresented gender on the board of directors or senior management and developing a strategy for increasing the proportion of the underrepresented gender in order to achieve this target; the target, the strategy and its implementation shall be published in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013;

c) periodically, but at least annually, assessing the structure, size, composition and performance of the senior management and the board of directors and making recommendations with regard to any necessary changes;

d) periodically, but at least annually, assessing the knowledge, skills and experience of individual members of the board of directors and the senior management as well as of the governing body in question as a whole, and reporting its assessment to the board of directors and the senior management;

e) periodically reviewing the policy of the board of directors for selection and appointment of senior management and making recommendations to the board of directors.

3) The nominating committee, in the course of its duties, shall ensure that the decision-making of the senior management or the board of directors is not influenced by any one individual or group in a manner that is detrimental to the interests of the bank.

4) In performing its duties, the nomination committee may use any forms of resources that it considers to be appropriate, and it may also engage external advisors. It shall receive appropriate funding to that effect from the bank.

Article 69

Remuneration committee

1) Significant banks shall establish a remuneration committee.

2) The composition of the remuneration committee must ensure that the committee can competently and independently assess the remuneration policy and practice and the incentives created for risk, capital and liquidity management.

3) The remuneration committee shall have the following responsibilities in particular:

a) preparing decisions on remuneration to be taken by the board of directors, including those with an impact on the bank's risk and risk management;

b) supporting and advising the board of directors on the design of the bank's remuneration policy, including that such remuneration policy is gender-neutral and supports the equal treatment of staff of different genders;

c) supporting the board of directors in overseeing the remuneration policy, practices and processes and compliance with the remuneration policy;

d) checking whether the existing remuneration policy is still up to date and, if necessary, making proposals for changes;

e) reviewing the appointment of external remuneration consultants that the board of directors decides to engage for advice or support;

f) ensuring the adequacy of the information provided to shareholders on remuneration policies and practices, in particular on a proposed higher maximum level of the ratio between fixed and variable remuneration;

g) assessing the mechanisms and systems adopted to ensure that:

   1. the remuneration system properly takes into account all types of risks, liquidity and capital levels;

   2. the overall remuneration policy is consistent with and promotes sound and effective risk management; and

   3. the overall remuneration policy is in line with the business strategy, objectives, corporate culture and values, risk culture and long-term interest of the bank;

h) assessing the achievement of performance targets and the need for ex post risk adjustment, including the application of malus and clawback arrangements;

i) reviewing a number of possible scenarios to test how the remuneration policies and practices react to external and internal events, and back-test the criteria used for determining the award and the ex ante risk adjustment based on the actual risk outcomes;

k) overseeing the remuneration of the members of senior management, the head of the internal audit department, the head of the risk management function, the head of the compliance function and, if applicable, the heads of other independent control functions, as well as making recommendations to the board of directors on the design of remuneration.

4) The chair of the remuneration committee and the majority of its members must be members of the board of directors who do not perform any executive function at the bank in question. The members of the remuneration committee shall have collectively appropriate knowledge, expertise and professional experience concerning remuneration policies and practices, risk management and control activities, namely with regard to the mechanism for aligning the remuneration structure to banks' risk and capital profiles. When preparing relevant decisions, the remuneration

committee shall take into account the long-term interests of shareholders, investors and other involved parties such as stakeholders in the bank.

Article 70

Risk committee

1) Significant banks shall establish a risk committee. Members of the risk committee shall not perform any executive function in the bank and shall have appropriate knowledge, skills, and expertise to fully understand and monitor the risk strategy and the risk appetite. The board of directors shall retain overall responsibility for risks.

2) The risk committee shall have the following responsibilities in particular:

a) advising the board of directors on the overall current and future risk appetite and strategy of the bank;

b) supporting the board of directors in supervising implementation of the risk strategy by the senior management;

c) reviewing whether the pricing of liabilities and assets offered adequately takes into account the business model and risk strategy of the bank, and where this not the case, presenting a remedy plan;

d) examining whether incentives provided by the remuneration system take into consideration risk, capital, liquidity, and the likelihood and timing of earnings.

3) Banks which are not significant may, after prior approval by the FMA, combine the risk committee with the audit committee referred to in Article 347a of the Law on Persons and Companies. The members of the combined committee shall have the knowledge, skills, and expertise required for both committees.

Article 71

Governance arrangements

1) Banks shall have robust governance arrangements in place that in particular ensure effective and prudent management of the bank and provide for a separation of duties and functions within the organisation and appropriate measures to avoid conflicts of interest. The board of directors shall be responsible for establishing the governance arrangements. The governance arrangements shall include in particular:

a) a clear organisational structure with well-defined, transparent and consistent lines of responsibility, in particular separation of front and back office, and adequate human resources;

b) effective processes to identify, measure, assess, manage, mitigate, monitor, and report the risks to which it is or might be exposed;

c) adequate internal control mechanisms, including sound administrative and accounting procedures;

d) a gender-neutral remuneration policy and practice that is consistent with, and promotes, sound and effective risk management;

e) clear principles and effective procedures for aggregating risk data and risk reporting;

f) establishing, monitoring the implementation and maintaining effective measures to identify, assess, manage, mitigate or avoid actual and/or potential conflicts of interest at institutional, employee and shareholder level;

g) network and information systems set up and managed in accordance with Regulation (EU) 2022/2554[26].[27]

2) The arrangements, processes and mechanisms referred to in paragraph 1 shall be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the bank's activities. The requirements set out in this Article and Articles 63 to 70, 72 to 76, 78 and 79 to 84 shall be taken into account.

3) When defining the governance arrangements, the board of directors must observe the following principles:

a) It shall have the overall responsibility for the bank and shall approve and oversee the implementation of the bank's strategic objectives, risk strategy and internal governance.

b) It shall ensure the reliability of accounting, financial controlling and financial planning, including financial and operational controls and compliance with the law and relevant standards.

c) It shall oversee the process of disclosure and communications.

d) It shall be responsible for providing effective oversight of the senior management.

26 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 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)

27 Article 71(1)(g) inserted by LGBl. 2025 No. 123.

e) The chair of the board of directors may not be a member of the senior management of the same bank at the same time, unless approved by the FMA.

4) The board of directors shall regularly review and evaluate the effectiveness of the governance arrangements and shall make the necessary adjustments.

5) The Government may provide further details by ordinance.

Article 72

Transactions with governing bodies

1) Transactions of banks with members of their board of directors, their senior management, the recognised audit firm, their direct and indirect shareholders with a qualifying holding as natural or legal persons, and with the natural or legal persons related to these categories as defined in paragraph 3 must conform to the generally acknowledged principles of the banking business.

2) Banks shall appropriately document data on loans to members of their board of directors or senior management, their shareholders with qualifying holdings, as well as persons and companies related to these categories as defined in paragraph 3 and make them available to the FMA upon request.

3) Related persons and companies for the purposes of this Article are:

a) spouses or registered domestic partners, children, or parents of members of the board of directors, senior management, or shareholders;

b) a commercial undertaking in which a member of the board of directors or senior management or their close family member as referred to in subparagraph (a) has a qualifying holding of 10% or more or in which such persons are members of the senior management or of the board of directors.

4) The recognised audit firm shall regularly audit the loans granted to and transactions carried out for persons and companies as referred to in paragraph 3 and shall determine whether they conform to the generally acknowledged principles of the banking business.

Article 73

Risk management function

1) Banks shall establish a risk management function that is independent of the operational divisions. The risk management function shall have sufficient authority, stature, resources to perform its duties, and access to the board of directors and its committees, in particular the risk management committee.

2) The effectiveness of the risk management function must be ensured on a permanent basis. It must be staffed in such a way that it can perform its tasks at all times. The employees of the risk management function must:

a) have the knowledge, skills and experience of risk management techniques and procedures, markets and products to fulfil their tasks and responsibilities under this Act; and

b) engage in continuous training to maintain their professional skills and qualifications at a sufficiently high level.

3) The tasks of the risk management function shall include in particular:

a) identifying, measuring, assessing, managing, mitigating, monitoring, and reporting all material risks to the board of directors and senior management;

b) actively participating in the elaboration of the risk strategy of the bank and in all material risk management decisions;

c) ensuring a complete view of the whole range of risks, in particular the character of the existing types of risk and the risk situation of the bank.

4) Banks shall ensure that the risk management function can report directly to the board of directors, independent from senior management, and can raise concerns and warn the board of directors, where appropriate, where specific risk developments affect or may affect the bank.

5) The head of the risk management function shall be an independent member of senior management with distinct responsibility for the risk management function. If justified by the nature, scale and complexity of the bank's activities, the risk management function may be headed by a head of another function within the bank, provided there is no conflict of interest. The head of the risk management function must have sufficient expertise, independence and experience to be able to scrutinise decisions that affect the bank's exposure.

6) The head of the risk management function may be removed only by the board of directors.

7) In order to carry out its activities, the risk management function shall have a comprehensive and unrestricted right to information, inspection, and audit with respect to all documents, working papers, and IT systems. This shall also apply vis-à-vis third parties engaged by a bank as well as all undertakings of the group.

8) The Government may provide further details by ordinance.

Article 74

Compliance function

1) Banks shall establish a compliance function that is independent of the operational divisions. The compliance function shall have sufficient authority, stature, and resources appropriate to the nature, scale and complexity of the bank's business to perform its duties.

2) The effectiveness of the compliance function must be ensured on a permanent basis. It must be staffed in such a way that it can perform its tasks at all times. The employees of the compliance function must:

a) have the knowledge, skills, and other qualifications to carry out their tasks and responsibilities under this Act; and

b) engage in continuous training through appropriate programmes to maintain their professional skills and qualifications at a sufficiently high level.

3) The tasks of the compliance function shall include in particular:

a) the management of compliance risks;

b) the ongoing assessment of the compliance regulations issued by the board of directors and the possible impact of changes in the legal or regulatory environment on the bank's business activities;

c) advising the board of directors and senior management on measures to ensure compliance.

4) The compliance function shall perform its tasks as part of a structured and well-defined monitoring programme. To manage compliance risk, it shall work together with the risk management function as referred to in Article 73 and exchange all necessary information with the risk management function.

5) The position of the head of the compliance function may be combined with the position of the head of the risk management function

as referred to in Article 73 or another holder of a key function if the appointment of a separate head for the compliance function is disproportionate and there are no conflicts of interest.

6) The head of the compliance function and its employees shall not perform or manage activities which they are responsible for monitoring. Their compensation or remuneration must neither impair their objectivity nor make their objectivity appear to be impaired.

7) The head of the compliance function shall report to the board of directors and senior management in writing, regularly but at least once a year, on the activities of the compliance function, the findings made, and the measures taken. The board of directors and senior management shall take the reports of the compliance function into account in their decisions. The reports of the compliance function shall be submitted to the FMA upon request.

8) In order to carry out its activities, the compliance function shall have a comprehensive and unrestricted right to information, inspection, and audit with respect to all documents, working papers, and IT systems. This shall also apply vis-à-vis third parties engaged by a bank as well as all undertakings of the group.

9) The Government may provide further details by ordinance.

Article 75

Internal audit department

1) Bank shall, on an individual and consolidated basis, establish an effective internal audit department, which shall report directly to the board of directors. The board of directors shall provide a special regulation governing the activities of the internal audit department. The board of directors shall regularly evaluate the effectiveness of the internal audit department.

2) The effectiveness of the internal audit department must be ensured on a permanent basis. It must be staffed and technically equipped in such a way that it can perform its tasks at all times. The employees of the internal audit department must:

a) have the knowledge, skills, and other qualifications to carry out their tasks and responsibilities under this Act; and

b) engage in continuous training through appropriate programmes to maintain their professional skills and qualifications at a sufficiently high level.

3) The internal audit department shall perform its tasks in an adequate, independent, risk-oriented, objective, process-independent, and impartial manner. It shall not be subject to instructions with regard to audit planning, audit execution, reporting, and the assessment of audit results. Audit planning must be set out for at least three years in advance and must be based on a documented risk assessment, which must be carried out at least once a year. The risk assessment and audit planning must cover all material business activities, control systems, and risks of the bank. Both the risk assessment and the audit planning must be approved by the board of directors.

4) The internal audit department shall audit the effectiveness and adequacy of the internal control system as well as the regularity of all activities and processes of undertakings of the same group, regardless of whether the activities and processes are outsourced or not. Banks shall ensure timely remediation of deficiencies identified by the internal audit department.

5) The employees and the head of the internal audit department may not perform any tasks that are inconsistent with the activities of the internal audit department or that would constitute a self-audit. The employees and the head of the internal audit department may not be members of the board of directors or senior management of a bank or actually manage the business of a financial holding company or mixed financial holding company with a licence as referred to in Article 26(1) or (2).

6) The head of the internal audit department must confirm its independence to the board of directors at least once a year. This confirmation must be documented. In addition, the internal audit department must immediately disclose to the board of directors any conflicts of interest that may actually or apparently impair its independence or objectivity.

7) In order to carry out its activities, the internal audit department shall have a comprehensive and unrestricted right to information, inspection, and audit with respect to all documents, working papers, and IT systems. This shall also apply vis-à-vis third parties engaged by a bank as well as all undertakings of the group.

8) The internal audit department shall report to the board of directors on a regular basis, at least annually, in an objective, complete, clear, and timely manner, at least by presenting the subject matter of the audit, the audit findings, and the measures taken. The reports of the internal audit department shall be presented to the FMA upon request.

9) In addition to its reporting obligations under paragraph 8, the internal audit department shall have the right to report at any time to the board of directors, the senior management, the recognised audit firm, and the FMA.

10) The Government may provide further details by ordinance.

Article 76

Outsourcing

1) Banks may outsource processes, services, or activities.

2) Outsourcing shall not result in delegation of the tasks and responsibilities of the board of directors or senior management or adversely affect ongoing compliance with this Act or Regulation (EU) No 575/2013 or this Act. Outsourcing must not adversely affect the quality of internal control or supervision by the FMA.

3) Outsourcing of the internal audit department shall be permissible only with the approval of the FMA. The FMA shall refuse approval if the internal audit department is not assigned to an undertaking of the same group situated in the EEA or in Switzerland or to an audit firm recognised by the FMA under this Act and if the requirements under this Article and the associated implementing provisions issued by the Government are not met.

4) The Government may provide further details by ordinance, especially regarding the conditions under which outsourcing is permissible.

Article 77

Publications concerning governance arrangements

Banks that operate a website shall explain on that website how they comply with the requirements of Articles 63, 64, 66(2)(a), 68, 71 and 72 and the requirements of the implementing provisions issued by the Government on country-specific reporting and public disclosure of return on assets in accordance with Article 119(4).

C. Requirements for internal capital, risk management and remuneration

1. Internal capital

Article 78

Assessment and adequacy of internal capital

1) Banks shall have in place sound, effective and comprehensive strategies, methods, 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.

2) The strategies, methods, and processes referred to in paragraph 1 shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale, and complexity of the activities of the institution.

2. Risk management

Article 79

Principles of risk management

1) Banks must set out the basic principles of risk management as well as the responsibilities and procedures for the licensing of risky transactions in regulations or internal guidelines. They must identify, measure, assess, manage, mitigate and monitor all material risks to which they are or could be exposed. These risks include in particular:

a) credit and counterparty risk;

b) residual risk;

c) concentration risk;

d) securitisation risk;

e) market risk;

f) interest risk;

g) operational risk, including model risk and the risks resulting from outsourcing;

h) liquidity risk;

i) risk of excessive leverage;

k) risk arising from the execution of ETP transactions.

2) The board of directors shall approve the strategies and policies for identifying, measuring, assessing, managing, mitigating, monitoring and reporting the risks the bank is or might be exposed to in relation to the status of the business cycle ("risk policy"). The risk policy also includes those posed by the macroeconomic environment. The strategies and policies and compliance therewith shall be reviewed regularly by the board of directors.

3) The board of directors and senior management shall devote sufficient time to consideration of risk issues.

4) The senior management shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in this Act and Regulation (EU) No 575/2013. The senior management shall also be involved in the valuation of assets and in the use of external credit ratings and internal models relating to those risks.

5) Banks shall establish reporting lines to the board of directors and senior management that cover all material risks and risk management policies and changes thereof.

6) The board of directors and, where one has been established, the risk committee shall be given adequate access to information on the risk situation of the bank and, if necessary and appropriate, to risk management. External expert advice may also be sought as needed.

7) The board of directors and, where one has been established, the risk committee shall determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

8) The chair of the risk committee or, if no risk committee has been established, the board of directors, may obtain information directly from the internal audit department and the risk management function.

9) The senior management shall compile all documents required for decision-making and monitoring in relation to transactions involving risk. These documents must also allow the recognised audit firm to form a reliable opinion on the business activities and the financial situation of the bank. In reporting to the board of directors, the senior management shall, in any case, communicate all material risks and comply with the risk management provisions of this Act and Regulation (EU) No 575/2013.

10) The recognised audit firm shall comment annually in its audit report on the adequacy and effectiveness of the arrangements made in relation to risk management.

11) The Government may provide further details by ordinance, in particular the requirements for the identification, measurement, assessment, management, mitigation, monitoring and reporting of risks as referred to in paragraph 1.

Article 80

Internal approaches for calculating own funds requirements

1) The FMA may require that significant banks:

a) develop internal credit risk assessment capacity and use the Internal Ratings Based Approach for calculating own funds requirements for credit risk in accordance with Part Three, Title II of Regulation (EU) No 575/2013 where their exposures are material in absolute terms and where they have at the same time a large number of material counterparties;

b) develop internal specific risk assessment capacity and use internal models for calculation of own funds requirements for specific risk of debt instruments and for internal calculations of own funds requirements for default and migration risk in accordance with Part Three, Titel IV, Chapter 5 of Regulation (EU) No 575/2013 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.

2) The FMA shall, taking into account the nature, scale and complexity of the activities of a bank, review whether it does not solely or mechanistically rely on external credit ratings for assessing a financial instrument or the creditworthiness of an entity.

3) The FMA may entrust the recognised audit firm with the review referred to in paragraph 2. The costs shall be borne by the bank.

Article 81

Supervisory benchmarking of internal approaches for calculating own funds requirements

1) Banks that use internal approaches for the calculation of risk-weighted exposure amounts or capital requirements, except for operational risk, shall report to the FMA the results of the calculations of their internal approaches for their exposures or positions that are included in the benchmark portfolios. The results shall be reported, together with an explanation of the methodologies used to produce them, at a frequency determined by the FMA, at least once a year.

2) Banks shall submit the results of the calculations referred to in paragraph 1 in accordance with the template developed by the EBA to the FMA and to the EBA. Where the FMA chooses to develop specific portfolios, it shall do so in consultation with the EBA and ensure that banks report the results of the calculations separately from the results of the calculations for EBA portfolios.

3) The FMA shall, on the basis of the information submitted by banks in accordance with paragraph 1, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those banks. The FMA shall make an annual assessment of the quality of those approaches paying particular attention to:

a) those approaches that exhibit significant differences in own fund requirements for the same exposure;

b) those approaches where there is particularly high or low diversity, and also where there is a significant and systematic underestimation of own funds requirements.

4) Where particular banks diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, the FMA shall investigate the reasons therefor. If the FMA identifies a shortfall in the own funds requirements of a bank which is not attributable to differences in the underlying risks of the exposures or positions, the FMA shall have all powers under Article 154 at its disposal to restore a lawful state of affairs.

5) In exercising its powers under paragraph 4, the FMA shall take into account the principle that the measures ordered must maintain the objectives of an internal approach and therefore must not:

a) lead to standardisation or preferred methods;

b) create wrong incentives; or

c) cause herd behaviour.

6) The FMA may entrust the recognised audit firm with the review and evaluation referred to in paragraphs 1 to 5. The costs shall be borne by the bank.

3. Remuneration

Article 82

General principles of remuneration policy

1) When establishing and applying the total remuneration policy, inclusive of salaries and discretionary pension benefits, for categories of staff whose professional activities have a material impact on their risk profile, banks shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, the scope and the complexity of their activities:

a) The remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the bank.

b) The remuneration policy is gender-neutral in all cases.

c) The remuneration policy is in line with the business strategy, objectives, values and long-term interests of the bank, and incorporates measures to avoid conflicts of interest.

d) The board of directors of the bank adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation.

e) The implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the board of directors.

f) Staff engaged in control functions are independent from the business units they oversee, have sufficient powers, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

g) The remuneration of the members of the senior management and the heads of the risk management and compliance functions is directly

overseen by the remuneration committee as referred to in Article 69 or, if such a committee has not been established, by the board of directors.

h) The remuneration policy, taking into account national practice on wage setting, makes a clear distinction between criteria for setting:
   1. the fixed remuneration component, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and
   2. the variable remuneration component, which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment.

2) Categories of staff whose professional activities have a material impact on the risk profile of the bank within the meaning of paragraph 1 shall, at least, include:

a) all members of the board of directors and senior management;
b) staff members with managerial responsibility over the bank's control functions or material business units;
c) staff members entitled to significant remuneration in the preceding financial year, if:
   1. the staff member's remuneration is not less than 500 000 euros or the equivalent in Swiss francs and equal to or greater than the average remuneration awarded to the members of the bank's board of directors and senior management; and
   2. the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile.

Article 83

Principles of remuneration policy for banks that benefit from government intervention

In the case of banks that benefit from exceptional government intervention, the following principles shall apply in addition to those set out in Article 82:

a) variable remuneration is strictly limited as a percentage of net revenue or is not granted at all where it is inconsistent with the

maintenance of a sound capital base and liquidity position in the event of potential early exit from government support.

b) The remuneration structure of the bank is aligned with sound risk management and long-term growth and is appropriately documented and disclosed. Where necessary, limits to the remuneration of the members of the senior management and board of directors shall be established.

c) The members of senior management and the board of directors of banks do not receive variable remuneration if the bank would likely infringe legislative provisions, in particular capital or liquidity requirements, without government intervention, or variable remuneration is not justified for other reasons.

Article 84

Principles for variable remuneration components

1) For variable remuneration components, the following principles additionally apply:

a) Where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the bank and when assessing individual performance, financial and non-financial criteria are taken into account.

b) The assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the bank and its business risks.

c) The total variable remuneration does not limit the bank's ability to improve its capital base.

d) Guaranteed variable remuneration is not in line with sound risk management or the principle of performance-based remuneration and must not be part of future remuneration systems.

e) Provided that the bank has a solid and sufficient capital base, guaranteed variable remuneration is exceptional and occurs only when hiring new staff and is limited to the first year of employment.

f) Fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the

operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component.

g) Banks shall set the appropriate ratios between the fixed and the variable component of the total remuneration. The following principles shall apply:

1. The variable component shall not exceed 100% of the fixed component of the total remuneration for each individual.
2. By way of derogation from point 1, the variable remuneration component may be increased by a decision of the shareholders to up to 200% of the fixed remuneration component if the following conditions are met:

aa) The decision must be preceded by a comprehensive recommendation from the bank giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base.

bb) An effective decision requires the presence of at least half of the voting capital and a majority of 66% of the votes. By way of derogation, an effective decision may be passed by a majority of 75% of the votes if the required attendance quorum is not reached.

cc) The bank shall inform all its shareholders in good time in advance of the planned decision.

dd) The bank shall, without delay, inform the FMA of the recommendation made. In particular, this information must include the proposed higher maximum ratio and the reasons therefore. Furthermore, it must be explained that this increase will not impair compliance with the obligations of the bank under this Act or Regulation (EU) No 575/2013, including the own funds obligations.

ee) The bank shall inform the FMA without delay of the decisions by its shareholders on increasing the fixed remuneration component, including any approved higher maximum ratio. The FMA benchmarks the relevant practices of banks in that regard and informs the EBA.

ff) Employees of a bank who are directly concerned by an increase in the variable remuneration component are excluded from exercising any voting rights, directly or indirectly.

gg) The appropriateness of the decision must be evaluated on a regular basis. The decision must be renewed in the event of significant changes, in particular to the business model, organisation, risk appetite, or ownership structure.

3. The bank may apply the discount rate referred to in the point 1 or 2 to a maximum of 25% of total variable remuneration provided the remuneration is paid in instruments that are deferred for a period of not less than five years.

h) Payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure or misconduct.

i) Remuneration packages relating to compensation or buy out from contracts in previous employment must align with the long-term interests of the bank including retention, deferral, performance and clawback arrangements.

k) The measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required.

l) The allocation of the variable remuneration components within the bank shall also take into account all types of current and future risk.

m) A substantial portion, and in any event at least 50%, of any variable remuneration shall consist of an appropriate balance of:

1. shares or equivalent ownership interests of the bank or share-linked instruments or equivalent non-cash instruments; and

2. Additional Tier 1 instruments within the meaning of Article 52 or Tier 2 instruments within the meaning of Article 63 of Regulation (EU) No 575/2013 or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down in accordance with that Regulation that adequately reflect the credit quality of the bank as a going concern and are appropriate to be used for the purposes of variable remuneration.

   These instruments shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the bank. The FMA may place restrictions on the types and designs of those instruments or, where appropriate, prohibit certain instruments or permit other participation options.

   This provision shall be applied to both the portion of the variable remuneration component deferred in accordance with

subparagraph l and the portion of the variable remuneration component not deferred.

n) A substantial portion, and in any event at least 40%, of the variable remuneration component is deferred over a period of four to five years and is aligned accordingly with the nature of the business, its risks and the activities of the staff member concerned. For members of the board of directors and senior management of significant banks, the deferral period must be less than five years. Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred.

   The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the staff member concerned.

o) The variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the bank as a whole, and justified according to the result of the bank and the performance of the business unit and the individual concerned.

   Without prejudice to the general principles of contract and labour law, the total variable remuneration shall as a rule be considerably contracted where subdued or negative financial performance of the bank occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

   Malus or clawback arrangements can be concluded for up to 100% of the total amount of the variable remuneration component. Banks must set specific criteria for the application of malus and clawback rules. In particular, these criteria must take into account situations in which employees have participated in or been responsible for actions that have led to significant losses, as well as situations in which employees have failed to meet the relevant professional competence or personal reliability requirements.

p) The pension policy is in line with the business strategy, objectives, values and long-term interests of the bank. If the employee leaves the bank before retirement, the voluntary pension benefits agreed as part of the variable remuneration shall be held by the bank for a period of five years in the form set out in subparagraph (m). In case of an employee reaching retirement, discretionary pension benefits should be paid to the employee in the form of instruments set out in subparagraph (m) subject to a five-year waiting period.

q) Staff members are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to

undermine the risk behaviour alignment set out in their remuneration arrangements.

r) Variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this Act or Regulation (EU) No 575/2013.

2) The provisions set out in paragraph 1(m), (n) and the second sentence of (p) do not apply to:

a) a bank that is not a large institution as defined in Article 4(1)(146) of Regulation (EU) No 575/2013 and the total assets of which are on average and on an individual or consolidated basis in accordance with this Act and that Regulation equal to or less than 5 billion euros or the equivalent in Swiss francs over the four-year period immediately preceding the current financial year;

b) a staff member whose annual variable remuneration does not exceed 50 000 euros or the equivalent in Swiss francs and does not represent more than one third of the staff member's total annual remuneration.

3) The Government may define the particularly high amount of the variable remuneration component referred to in paragraph 1(n) by ordinance.

Article 85

Publications concerning remuneration

Banks that operate a website shall explain on that website how they comply with the requirements of Articles 69 and 82 to 84.

Article 86

Benchmarking of remuneration policy

The FMA shall use the information disclosed in accordance with the criteria for disclosure established in Article 450(1)(g) to (i) and (k) of Regulation (EU) No 575/2013 as well as the information provided by banks in accordance with Article 92(1)(i) on the gender pay gap to benchmark remuneration trends and practices. The FMA shall provide the EBA with that information.

4. Application of the requirements for internal capital, risk management, and remuneration

Article 87

Internal capital adequacy assessment

1) The following banks must comply with the requirements of Article 78 on an individual basis:

a) banks which:
   1. have been licensed under Article 16 and are supervised by the FMA; and
   2. are neither a subsidiary nor a parent undertaking;

b) banks which are not included in the consolidation pursuant to Article 19 of Regulation (EU) No 575/2013.

2) A bank that is permanently affiliated to a central body in accordance with Article 10 of Regulation (EU) No 575/2013 does not have to comply with the requirements set out in Article 78 on an individual basis, subject to approval by the FMA.

3) Parent institutions shall comply with the requirements set out in Article 78 to the extent and in the manner provided for in Part One, Title II, Chapter 2, Sections 2 and 3 of Regulation (EU) No 575/2013.

4) Subsidiary institutions must meet the requirements set out in Article 78 on a sub-consolidated basis if they or their parent undertaking, provided the parent undertaking is a financial holding company or mixed financial holding company, have a bank, a financial institution, or an asset management company in a third country as a subsidiary in accordance with Article 5(1)(c) of the Financial Conglomerates Act or hold a participation in such an undertaking.

Article 88

Requirements for corporate governance, risk management, and remuneration

1) Banks shall meet the requirements set out in Articles 63 to 77 and 79 to 85 on an individual basis, unless the FMA grants an exemption under Article 7 of Regulation (EU) No 575/2013.

2) Parent undertakings and subsidiaries covered by this Act shall:

a) meet the obligations set out in paragraph 1 on a consolidated or sub-consolidated basis;

b) ensure that the group-internal arrangements, processes, and mechanisms within the meaning of paragraph 1 are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced at any time; and

c) ensure that their subsidiaries not covered by this Act, including those situated in offshore financial centres, also apply the arrangements, processes, and mechanisms referred to in subparagraph (b) and that all data and information relevant to the purpose of supervision can be produced at any time.

3) Subsidiaries not covered by this Act shall comply with the industry-specific requirements on an individual basis.

4) Obligations under paragraph 1 shall not be applied in relation to subsidiaries not covered by this Act if the EEA parent institution demonstrates to the FMA that the obligations under paragraph 1 are unlawful under the laws of the third country where the subsidiary is established.

5) The requirements set out in Articles 69, 82 and 84 shall not apply on a consolidated basis to:

a) subsidiaries established in the EEA where they are subject to specific remuneration requirements in accordance with other EEA legislation; and

b) subsidiaries established in a third country where they would be subject to specific remuneration requirements in accordance with other EEA legislation if they were established in the EEA.

6) By way of derogation from paragraph 5, the requirements set out in Article 69, 82 and 84 shall in any case apply to employees of subsidiaries that are not subject to this Act on an individual basis where:

a) The subsidiary is either an asset management company within the meaning of Article 4(1)(19) of Regulation (EU) No 575/2013 or an investment firm that provides investment services and/or investment activities in accordance with Annex 1 Section A(2) to (4), (6) and (7) of the Investment Services Act.

b) The employees of subsidiaries not subject to this Act on an individual basis carry out activities that have a direct material impact on the risk profile or the business of banks within the group.

c) The subsidiary is a significant subsidiary within the meaning of Article 4(1)(135) of Regulation (EU) No 575/2013, to which paragraph 5 does not apply.

D. Banking network

Article 89

Applicable provisions

1) A bank that is permanently affiliated to a central body established and supervised in Liechtenstein (banking network) shall be, subject to approval by the FMA, exempt on an individual basis from fulfilling the following requirements in whole or in part in accordance with Article 10 of Regulation (EU) No 575/2013:

a) compliance with the requirements of Parts Two to Eight of Regulation (EU) No 575/2013;

b) preparation of a programme of operations in accordance with Article 5 of Commission Delegated Regulation (EU) 2022/2580[28];

c) risk management (Article 65(1)(c) and Articles 73 and 79);

d) the internal audit department (Article 65(1)(e) and Article 75); and

e) initial and minimum capital (Article 18).

2) The following provisions apply to an exemption under paragraph 1 for the banking network:

a) cross-border activity (Articles 38, 40 to 43 and 49);

b) guarantee of proper business conduct, corporate organisation and governance, internal capital, risk management and remuneration (Article 63 to 86);

c) capital buffers (Articles 94 to 116);

28 Commission Delegated Regulation (EU) 2022/2580 of 17 June 2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorisation as a credit institution, and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities (OJ L 335, 29.12.2022, p. 64)

d) information exchange and professional secrecy (Articles 142 to 146 and 177 to 188); and

e) supervisory powers, powers to impose penalties, and right of appeal (Articles 154 and 243 to 250).

3) The central body shall be responsible for compliance with the provisions of this Act and of Regulation (EU) No 575/2013 applicable to the banking network. Within the scope of this obligation, the central body shall in particular ensure and monitor the solvency and liquidity of the banking network. The central body shall ensure that the members of the senior management of the affiliated banks comply with the requirements set out in Article 63(1) to (7).

E. Approval obligations and recognition of netting agreements

Article 90

Approval obligations

1) The following shall require prior approval from the FMA:

a) amendments to the articles of association and the business regulation;

b) any merger by acquisition or unification with an undertaking with its registered office in Liechtenstein, in another EEA Member State, or in a third country;

c) any direct acquisition proposed by a bank or any direct disposal proposed by a bank of qualifying holdings in:

   1. a third-country bank; or

   2. an undertaking with its registered office in a third country that would be an EEA financial institution if it had its registered office in the EEA;

d) the assumption of joint and several liability in accordance with Article 38(2)(d) for the commitments entered into by a subsidiary operating in another EEA Member State through a branch or under the freedom to provide services in accordance with Articles 42 and 43;

e) the assumption of a further board of directors mandate in accordance with Article 63(6) which is to be assumed in addition to the permissible board of directors mandates;

f) the assumption of the function of member of the board of directors, senior management or head of the internal audit department in accordance with Article 64(1);

g) the commencement of activities as a key function holder at significant banks in accordance with Article 64(1);

h) the combination of risk and audit committee in accordance with Article 70(3);

i) the simultaneous exercise of the function of chair of the board of directors and member of the senior management at the same bank in accordance with Article 71(3)(e);

k) outsourcing of the internal audit department in accordance with Article 76(3);

l) with regard to banks belonging to a banking network, the exemption from compliance with the requirements for assessing the adequacy of internal capital in accordance with Article 87(2) and the exemption from compliance with the requirements on an individual basis in accordance with Article 89(1);

m) the conclusion of netting agreements, insofar as they are not subject to recognition in accordance with Article 91;

n) a capital conservation plan in accordance with Article 116;

o) the granting of an exemption from the restriction on fee income for recognised audit firms in accordance with Article 127(3);

p) the initial engagement of a recognised audit firm or the engagement of a new recognised audit firm in accordance with Article 130(2);

q) any change of the recognised audit firm in accordance with Article 132(1).

2) When granting approvals in accordance with paragraph 1(a) to (d), the FMA shall in particular examine the effects on permanent compliance with the licensing conditions as set out in Articles 18 to 23 or 28(1) and compliance with the requirements set out in Articles 63 to 89, 94 to 118 and 135 to 139 by the applicant bank, financial holding company, or mixed financial holding company with a licence pursuant to Article 26(1) or (2).

3) The following entries in the Commercial Register shall be permissible only after the FMA has granted the corresponding approval pursuant to paragraph 1:

a) amendments to the articles of associations;

b) changes in the composition of the board of directors or senior management; and

c) change of the recognised audit firm.

4) The Government may provide further details, in particular regarding the information and documents required for the application for an approval in accordance with paragraph 1, by ordinance.

Article 91

Recognition and approval of contractual netting agreements

1) The Government may, by ordinance, specify the conditions under which contractual netting agreements shall be deemed to be recognised in accordance with Article 296(1) of Regulation (EU) No 575/2013.

2) Prior approval must be obtained from the FMA for the conclusion of contractual netting agreements as referred to in Article 296(1) of Regulation (EU) No 575/2013 that do not meet the conditions set out in paragraph 1.

F. Notification and reporting obligations and periodic reporting of financial information

Article 92

Notification and reporting obligations

1) Banks must notify the FMA of the following:

a) without delay, any changes to the programme of operations and any non-compliance with the licensing conditions set out in Articles 18 to 23;

b) no later than 31 March of each year, a complete list of all applicable regulations with reporting date 31 December;

c) without delay, the establishment of a representative office in another EEA Member State;

d) before taking up their activities, the subsidiaries in other EEA Member States or third countries as well as the branches and representative offices in third countries in accordance with Article 56(1), including the manager or managers;

e) any acquisition or disposal of a participation in an EEA credit institution, an EEA financial institution, or an undertaking referred to in Article 90(1)(c) by a bank or an undertaking to be included in prudential consolidation pursuant to Article 18 of Regulation (EU) No 575/2013 for which no prior approval of the FMA is required;

f) the key functions and their holders, unless there is an approval requirement pursuant to Article 90;

g) without delay, the reasons for the departure of a person pursuant to Article 63(1) and (2);

h) without delay, any fact that may lead to a review by the FMA of existing members of the board of directors or senior management pursuant to Article 64(2);

i) no later than 15 June of each year, the information referred to in Article 450(1)(g) to (i) and (k) of Regulation (EU) No 575/2013 and information on the gender pay gap;

k) without delay, any non-compliance with requirements set out in Regulation (EU) No 575/2013 for more than one month;

l) without delay, withdrawal from the protection scheme as referred to in Article 6 or 35 of the Deposit Guarantee and Investor Compensation Act;

m) without delay, any fact that jeopardises the ability to meet obligations to creditors;

n) without delay, the occurrence of insolvency or over-indebtedness; and

o) without delay, a decision on dissolution and liquidation.

2) Banks whose shares are admitted to trading on a regulated market shall, at least annually, inform the FMA of the names of the shareholders known to them with qualifying holdings and the sizes of such participations as shown by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies admitted to trading on a regulated market. If there are no qualifying holdings, they shall report the names of the 20 largest shareholders and the sizes of their participations.

3) Banks whose shares are not admitted to trading on a regulated market shall report to the FMA by 31 March of the following year at the latest a complete list of the names and sizes of participations of all direct and indirect shareholders who, as natural or legal persons, have a participation in the bank as of 31 December.

4) Banks shall report to the FMA once a year the number of persons in their undertaking who are remunerated 1 million euros or more or the equivalent in Swiss francs per financial year. The bank shall transmit the number of these persons to the FMA, in pay brackets of 1 million euros or the equivalent in Swiss francs, including their job responsibilities, the business area involved, and the main elements of salary, bonus, long-term award, and pension contribution. The FMA shall forward that information to the EBA.

5) Banks shall, with respect to undertakings to be included in prudential consolidation pursuant to Article 18 of Regulation (EU) No 575/2013, report annually to the FMA information on these undertakings, their organisation, liability and representation relationships, ownership, voting rights, and on their supervision.

6) Banks shall report to the FMA annually on a consolidated basis, no later than three months after the end of the calendar year, the amount of assets under management as well as the overall volume of cash receipts and payments and non-cash inward and outward payments per year, taking into account the domicile or registered office of the client's beneficial owner.

7) Banks shall notify the FMA in writing of the intended outsourcing of critical or important functions before concluding an outsourcing agreement. The FMA may require banks to provide all necessary information on service providers with whom outsourcing agreements are to be concluded or have already been concluded.

8) Banks must without delay report to the FMA any changes in the facts specified in paragraphs 1, 5 and 7. This report must be made prior to a public announcement.

9) Banks shall notify the FMA without delay upon becoming aware of the following:

a) the initiation of judicial criminal proceedings against the bank and against members of the board of directors or senior management;

b) the initiation of administrative and administrative criminal proceedings against the bank and against members of the board of directors or senior management in connection with its business activities.

10) Banks shall inform the FMA of any decision or discontinuation of proceedings as referred to in paragraph 9 and send it a copy of the decision in question.

11) The Government may provide further details regarding the notification and reporting obligations, in particular the content and deadlines, by ordinance.

Article 93

Periodic reporting of financial information

1) Banks shall report the following financial information to the FMA on a quarterly, semi-annual, or annual basis on an individual or consolidated basis:

a) the balance sheet, consisting of assets and liabilities, structured in accordance with the applicable accounting standards;

b) the income statement, structured in accordance with the applicable accounting standards; and

c) other financial information specified by ordinance in accordance with paragraph 3.

2) The reports pursuant to paragraph 1 shall be submitted in standardised form by means of electronic transmission. The transmission must meet certain minimum requirements to be announced by the FMA. If necessary, the FMA may request additional documents or information.

3) The Government shall provide further details regarding the periodic reporting of financial information, in particular the reporting dates, reporting intervals, structure and content, by ordinance. It may also provide for reporting dates or intervals that deviate from paragraph 1 for individual reports.

G. Capital buffers

1. Types of capital buffer and combined buffer requirement

Article 94

Principle

1) In addition to the Common Equity Tier 1 capital that is maintained to meet the own funds requirements set out in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013, banks shall hold the following capital buffers made up of Common Equity Tier 1 capital:

a) a capital conservation buffer in accordance with Article 95;

b) an institution-specific countercyclical capital buffer in accordance with Article 96;

c) for G-SIIs, a G-SII buffer as set out in Article 101, and for other systemically important institutions (O-SIIs), an O-SII buffer in accordance with Article 102;

d) a systemic risk buffer in accordance with Article 104; and

e) for G-SIIs, a leverage ratio buffer in accordance with Article 92(1a) of Regulation (EU) No 575/2013.

2) The combined buffer requirement is the total Common Equity Tier 1 capital required to comply with the requirements set out in paragraph 1.

3) Banks may not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement to meet the following requirements:

a) the own funds requirement set out in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013;

b) the additional own funds requirement set out in Article 154(3)(a) and Article 155; and

c) the recommendation for additional own funds set out in Article 156.

4) They shall not use Common Equity Tier 1 capital that is maintained to meet one of the elements of the combined buffer requirement set out in paragraph 2 to meet the other applicable elements of their combined buffer requirement.

5) They shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement set out in paragraph 2 to meet the risk-based components of the own funds requirements set out in Articles 92a and 92b of Regulation (EU) No 575/2013 or to meet the requirements set out in Articles 58 to 62 of the Recovery and Resolution Act.

2. Capital conservation buffer

Article 95

Calculation

The capital conservation buffer shall amount to 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 on an individual and on a consolidated basis, as applicable in accordance with Articles 6 to 24 of that Regulation.

3. Institution-specific countercyclical capital buffer

Article 96

Calculation

1) The institution-specific countercyclical capital buffer shall be equal to the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 multiplied by the weighted average of the following buffer rates:

a) the countercyclical buffer rates for relevant exposures in Liechtenstein as set out in Article 97;

b) the countercyclical buffer rates for relevant exposures located in other EEA Member States or third countries as set out in Article 100;

c) where applicable, the countercyclical buffer rates recognised under Article 98 for relevant exposures located in other EEA Member States or third countries;

d) where applicable, the countercyclical buffer rates set under Article 99 for relevant exposures located in third countries.

2) Relevant exposures comprise all exposures, with the exception of the exposure classes referred to in Article 112(a) to (f) of Regulation (EU) No 575/2013, to which the following:

a) They are subject to the own funds requirements for credit exposures set out in Part Three, Title II of Regulation (EU) No 575/2013.

b) For securitisation exposures, the own funds requirements set out in Part Three, Title II, Chapter 5b of Regulation (EU) No 575/2013 shall be applied.

c) For exposures held in the trading book, the own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of Regulation (EU) No 575/2013 or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation shall be applied.

Article 97

Setting countercyclical buffer rates in Liechtenstein

1) The FMA shall calculate on a quarterly basis a buffer guide as a reference for setting the countercyclical buffer rate. The buffer guide:

a) shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in Liechtenstein;

b) shall take into account the specificities of the Liechtenstein national economy; and

c) shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account:

1. an indicator of growth of levels of credit within Liechtenstein;
2. an indicator reflective of the changes in the ratio of credit granted in Liechtenstein to GDP; and
3. any guidance maintained by the ESRB in accordance with Article 135(1)(b) of Directive 2013/36/EU.

2) The FMA shall assess the intensity of cyclical systemic risk and the appropriateness of the countercyclical buffer rate on a quarterly basis. In so doing, the FMA shall take into account in particular:

a) the buffer guide calculated in accordance with paragraph 1;

b) the principles and guidance maintained by the ESRB in accordance with Article 135(1)(a), (c), and (d) of Directive 2013/36/EU;

c) other variables that the FMA considers relevant for addressing cyclical systemic risk.

3) The Government shall set a countercyclical buffer rate for banks at the request of the FMA, on the recommendation of the Financial Stability Council, or at its own discretion on the basis of the calculations of the FMA and taking into account the factors set out in paragraph 2. Before setting the countercyclical buffer rate, it may obtain an opinion from the Financial Stability Council.

4) The countercyclical buffer rate shall be between 0% and 2.5% of the total risk exposure amount in accordance with Article 92(3) of Regulation (EU) No 575/2013 of banks that have credit exposures in Liechtenstein. The buffer rate shall be set in steps of 0.25 percentage points or a multiple thereof. The Government may also set a buffer rate above 2.5% if this is justified after taking into account the factors referred to in paragraph 2.

5) If the countercyclical buffer rate set by the Government is more than 0% when it is first set, or if it is increased after it is first set, the Government shall decide a date from which banks must apply the buffer rate to calculate the countercyclical capital buffer. This date must be within 12 months of the publication of the buffer rate pursuant to paragraph 7. At the request of the FMA, the Government may set a shorter deadline if this is necessary on an exceptional basis to avert cyclical systemic risk. The Government may obtain an opinion from the Financial Stability Council before setting a shorter deadline.

6) If the Government reduces the existing countercyclical buffer rate at the request of the FMA, on the recommendation of the Financial Stability Council, or at its own discretion, it shall at the same time notify a period during which no increase in the buffer rate is expected.

7) The FMA shall publish quarterly on its website the countercyclical buffer rate of more than 0% set by the Government in accordance with paragraph 3 or 6, providing the following information:

a) the applicable buffer rate;

b) the relevant credit-to-GDP ratio and its deviation from the long-term trend;

c) the buffer guide calculated in accordance with paragraph 1;

d) a justification for the buffer rate;

e) where the buffer rate is increased, the date from which banks shall apply the increased buffer rate for the purpose of calculating their institution-specific countercyclical capital buffer;

f) where the date set under paragraph 5 is less than 12 months after the date of publication, a justification of why the shorter deadline is necessary to avert cyclical systemic risk; and

g) where the buffer rates are decreased, the period during which no increase in the buffer rate is expected and a justification for that period.

8) The FMA shall notify each change of the countercyclical buffer rate to the ESRB, providing the information specified in paragraph 7.

9) By ordinance, the Government may provide further details regarding the amount of the countercyclical buffer rate and the date from which an increased buffer rate is to be used for the calculation of the institution-specific countercyclical capital buffer.

Article 98

Recognition of buffer rates for exposures in other EEA Member States or third countries

1) Where a competent or designated authority of another EEA Member State or a competent or designated third-country authority has set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount in accordance with Article 92(3) of Regulation (EU) No 575/2013, the Government may, at the request of the FMA or on the recommendation of the Financial Stability Council, recognise that buffer rate for the

purposes of the calculation by banks licensed in Liechtenstein of their institution-specific countercyclical capital buffers.

2) The FMA shall publish the recognition of a countercyclical buffer rate pursuant to paragraph 1 on its website, providing the following information:

a) the applicable buffer rate of the EEA Member State or third countries;

b) the EEA Member State or third country to which it applies;

c) where the buffer rate is increased, the date from which the banks must use the increased buffer rate for the purposes of calculating the institution-specific countercyclical capital buffer; and

d) where the recognition referred to in paragraph 1 is less than 12 months after the date of publication, a justification of why the shorter deadline is necessary to avert cyclical systemic risk.

3) By ordinance, the Government may provide further details regarding the recognition of countercyclical buffer rates pursuant to paragraph 1.

Article 99

Buffer rates for exposures in third countries

1) At the request of the FMA or on the recommendation of the Financial Stability Council, the Government may set a countercyclical buffer rate for relevant exposures in a third country for banks licensed in Liechtenstein if the competent or designated third-country authority has not set and published a buffer rate. The Government may obtain an opinion from the Financial Stability Council before setting a countercyclical buffer rate for relevant exposures.

2) Where a competent or designated third-country authority has set and published a countercyclical buffer rate, the Government may, at the request of the FMA or on the recommendation of the Financial Stability Council, set a different buffer rate for relevant exposures located in that third country with effect for banks licensed in Liechtenstein if it has reasonable doubt that the rate set by the third-country authority is sufficient to protect banks appropriately from the risks of excessive credit growth in the third country. The Government may not set the countercyclical buffer rate lower than the rate applicable in the third country unless that buffer rate is in excess of 2.5% of the total risk exposure amount. The Government may obtain an opinion from the Financial Stability Council before setting a different countercyclical buffer rate for relevant exposures located in a third country.

3) If the Government sets a countercyclical buffer rate pursuant to paragraph 2 which increases the buffer rate set by the competent or designated third-country authority, it shall decide the date from which banks must use the increased buffer rate to calculate the institution-specific countercyclical capital buffer. This date must be within 12 months of the publication of the buffer rate pursuant to paragraph 4. At the request of the FMA, the Government may set a shorter deadline if this is necessary on an exceptional basis to avert cyclical systemic risk. The Government may obtain an opinion from the Financial Stability Council before setting a shorter deadline.

4) The FMA shall publish the countercyclical buffer rates set for third countries pursuant to paragraph 1 and 2 on its website, providing the following information:

a) the applicable buffer rate;

b) the third country to which it applies;

c) a justification for the buffer rate;

d) where the buffer rate is set for the first time or is increased, the date from which the banks must use the increased buffer rate for the purposes of calculating the institution-specific countercyclical capital buffer; and

e) where the setting of an increased buffer rate pursuant to paragraph 2 is less than 12 months after the date of publication, a justification of why the shorter deadline is necessary to avert cyclical systemic risk.

5) By ordinance, the Government may provide further details regarding the setting of rates for relevant exposures in third countries.

Article 100

Application of buffer rates of competent authorities or designated authorities from an EEA Member State or third country

1) If the competent or designated authority of another EEA Member State or third country sets a countercyclical buffer rate of up to 2.5% of the total risk exposure amount in accordance with Article 92(3) of Regulation (EU) No 575/2013, banks licensed in Liechtenstein shall apply this capital buffer rate for relevant credit risk exposures located in that EEA Member State or third country.

2) If the competent authority of another EEA Member State or third country sets a countercyclical buffer rate of more than 2.5% of the total risk exposure amount in accordance with Article 92(3) of Regulation (EU) No 575/2013, banks licensed in Liechtenstein shall apply the

following buffer rates for relevant credit risk exposures located in that EEA Member State or third country:

a) if the buffer rate in excess of 2.5% has been recognised by the Government under Article 98 or set by the Government under Article 99, the buffer rate in excess of 2.5%; or

b) if the buffer rate in excess of 2.5% has not been recognised by the Government under Article 98 or no increased buffer rate has been set under Article 99, a buffer rate of 2.5% of the total risk exposure amount.

3) A countercyclical capital buffer rate set by the competent or designated authority of a third country shall apply to Liechtenstein banks 12 months after publication of the buffer rate by the third-country authority in question.

4. Capital buffers for systemically important institutions (G-SII and O-SII buffers)

Article 101

Additional capital buffer requirements for G-SIIs

1) The FMA shall determine which groups or banks are G-SIIs on a consolidated basis. The following may be G-SIIs:

a) a group headed by an EEA parent institution, an EEA parent financial holding company, or EEA parent mixed financial holding company; or

b) banks that are not subsidiaries of an EEA parent institution, EEA parent financial holding company, or EEA parent mixed financial holding company.

2) For the determination of G-SIIs pursuant to paragraph 1, the FMA shall calculate an overall score for each group or bank that may be a G-SII, on the basis of which the determination as a G-SII and the allocation into a sub-category as described in paragraph 4 shall be made. To calculate this overall score, the FMA shall use the following equally weighted, quantifiable indicators:

a) the size of the group;

b) the interconnectedness of the group with the financial system;

c) the substitutability of the financial services or financial infrastructure of the group;

d) the complexity of the group; and

e) the cross-border activity of the group between EEA Member States and between EEA Member States and third countries.

3) By way of derogation from paragraph 2, the FMA may calculate an additional overall score for the determination of G-SIIs pursuant to paragraph 1 and use the following equally weighted, quantifiable indicators for that purpose:

a) the indicators set out in paragraph 2(a) to (d); and

b) the cross-border activity of the group, excluding the activities across participating Member States as referred to in Article 4 of Regulation (EU) No 806/2014[29].

4) There shall be at least five sub-categories of G-SIIs. The lowest boundary and the boundaries between each subcategory shall be determined by the scores in accordance with the identification methodology. The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance. For the purposes of this paragraph, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market.

5) The lowest sub-category as referred to in paragraph 4 shall be assigned a G-SII buffer of 1% of the total risk exposure amount in accordance with Article 92(3) of Regulation (EU) No 575/2013. The buffer assigned to each sub-category shall increase in gradients of at least 0.5% of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation.

6) Each G-SII shall, on a consolidated basis, maintain a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated.

7) On the basis of the subcategories referred to in paragraph 4 and the cut-off scores referred to in paragraph 5, the FMA may:

a) re-allocate a G-SII from a lower sub-category to a higher sub-category;

b) allocate a group or bank that has an overall score as referred to in paragraph 2 that is lower than the cut-off score of the lowest sub-

29 Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1)

category to that sub-category or to a higher sub-category, thereby classifying it as a G-SII; or

c) on the basis of the additional overall score referred to in paragraph 3, re-allocate a G-SII from a higher sub-category to a lower sub-category.

Article 102

Additional capital buffer requirements for O-SIIs

1) The FMA shall determine which groups or banks are O-SIIs on a consolidated, sub-consolidated, or individual basis. The following may be O-SIIs:

a) a group headed by an EEA parent institution, EEA parent financial holding company, EEA parent mixed financial holding company, parent institution, parent financial holding company, or parent mixed financial holding company; or

b) banks.

2) For the determination of O-SIIs pursuant to paragraph 1, the FMA shall use the following criteria to assess systemic relevance:

a) size of the group or bank;

b) importance for the economy of the EEA or Liechtenstein;

c) cross-border activity of the group between EEA Member States and between EEA Member States and third countries; or

d) interconnectedness with the financial system.

3) The FMA may set an O-SII buffer consisting of Common Equity Tier 1 capital of up to 3% of the total risk exposure amount for each O-SII on a consolidated, sub-consolidated, or individual basis in accordance with Article 92(3) of Regulation (EU) No 575/2013. The FMA shall review the amount of the O-SII buffer at least annually.

4) Subject to authorisation by the Standing Committee of the EFTA States, the FMA may determine, for each O-SII on a consolidated, sub-consolidated, or individual basis, an O-SII buffer consisting of Common Equity Tier 1 capital higher than 3% of the total risk exposure amount in accordance with Article 92(3) of Regulation (EU) No 575/2013. The FMA shall review the amount of the O-SII buffer annually.

5) Where an O-SII is a subsidiary of a G-SII or of another O-SII which is a bank or a group headed by an EEA parent institution, and subject to an O-SII buffer on a consolidated basis, the O-SII buffer that applies on an individual or sub-consolidated basis for the O-SII shall not exceed the lower of:

a) the sum of the higher of the G-SII or the O-SII buffer rate applicable to the group on a consolidated basis and 1% of the total risk exposure amount in accordance with Article 92(3) of Regulation (EU) No 575/2013; and

b) 3% of the total risk exposure amount in accordance with Article 92(3) of Regulation (EU) No 575/2013, or the rate in excess of 3% the Standing Committee of the EFTA States has authorised to be applied to the group in accordance with paragraph 4.

6) The O-SII buffer must not have a disproportionately adverse effect on the European internal market or on the whole or parts of the financial system of other EEA Member States or of the EEA.

7) The FMA must notify the determination or change of an O-SII buffer to the ESRB one month, but where paragraph 4 applies three months, before the publication as referred to in Article 103(3). The notification must contain:

a) a justification for why the O-SII buffer effectively and proportionately mitigates the risk;

b) an assessment of the likely positive or negative impact of the O-SII buffer on the internal market; and

c) the O-SII buffer rate.

Article 103

Review, notification, and publication of classification as systemically important institutions

1) The FMA shall annually review the classification of groups or banks as G-SIIs and O-SIIs and, in the case of G-SIIs, additionally the allocation to the respective sub-categories and report the results of this review to the Government and the Financial Stability Council. The results of this review shall be transmitted to the ESRB and to the groups or banks classified as G-SIIs or O-SIIs.

2) When the classification is performed for the first time, the FMA must notify the ESRB of the following:

a) the names of the G-SIIs identified and the respective sub-category to which they have been allocated;

b) the names of the O-SIIs identifies; and

c) where applicable, reasons for why discretion has been exercised or not in accordance with Article 101(7).

3) The FMA shall publish on its website the initial classification, in the case of G-SIIs additionally indicating the sub-category, as well as the result of the review pursuant to paragraph 1.

5. Systemic risk buffer

Article 104

Additional capital buffer requirements for systemic risk

1) In order to prevent or mitigate macroprudential or systemic risks not covered by Regulation (EU) No 575/2013 or Articles 96 to 103, the Government may, at the request of the FMA, on the recommendation of the Financial Stability Council, or at its own discretion, determine that banks must maintain a systemic risk buffer of Common Equity Tier 1 capital on all or a subset of exposures as referred to in paragraph 3, in addition to the Common Equity Tier 1 capital which serves to comply with the own funds requirements under Article 92 of that Regulation. The Government may set different systemic risk buffers for one or more subsets of banks. The Government may prescribe whether the systemic risk buffer is to be maintained on an individual basis and/or on a consolidated or sub-consolidated basis in accordance with Articles 6 to 24 of that Regulation. It may obtain the opinion of the Financial Stability Council before setting the systemic risk buffer.

2) The systemic risk buffer shall be calculated in accordance with the method set out in Annex 2.

3) The Government may set the systemic risk buffer for the following exposures:

a) all exposures in Liechtenstein;

b) all or subsets of the following sectoral exposures in Liechtenstein:

1. retail exposures to natural persons from the granting of loans secured by mortgages on residential property;
2. exposures to legal persons from the granting of loans secured by mortgages on commercial immovable property;
3. exposures to natural persons excluding the exposures referred to in point 1; or
4. exposures to legal persons excluding the exposures referred to in point 2;

c) all exposures in other EEA Member States, subject to paragraph 7 and Article 105(7);

d) sectoral exposures as identified in subparagraph (b) in other EEA Member States, within the framework of recognition in accordance with Article 106;

e) all exposures in third countries.

4) The systemic buffer rate shall be set in increments of 0.5 percentage points or a multiple thereof.

5) The systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other EEA Member States or on the financial system within the EEA forming or creating an obstacle to the proper functioning of the internal market.

6) The systemic risk buffer shall not to be used to address risks that are covered by the following capital buffers:

a) the institution-specific countercyclical capital buffer as set out in Article 96;

b) the G-SII buffer as set out in Article 101; and

c) the O-SII buffer as set out in Article 102.

7) Where the Government decides to set the systemic risk buffer on the basis of exposures located in other EEA Member States, the buffer shall be set equally on all exposures located within the EEA, unless the buffer is set to recognise the systemic risk buffer rate set by another EEA Member State in accordance with Article 106.

8) The FMA shall review the systemic risk buffer at least every second year and report to the Government and the Financial Stability Council on the results of this review.

9) The Financial Stability Council may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010[30] to one or more EEA Member States which may recognise the systemic risk buffer rate referred to in paragraph 1 in accordance with Article 134 of Directive 2013/36/EU.

10) The Government may provide further details by ordinance. It may in particular set out the following:

30 Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, 1)

a) the exposures or subsets of exposures as referred to in paragraph 3 for which a systemic risk buffer is to be maintained;

b) the banks or subsets of banks that must maintain a systemic risk buffer; and

c) the amount of the systemic risk buffer rate.

Article 105

Publication of the systemic risk buffer rates

1) The FMA shall notify the following authorities of the setting or any change of the systemic risk buffer rate before to publication pursuant to paragraph 8:

a) the ESRB;

b) the competent or designated authorities of the EEA Member States concerned, where a bank for which one or more systemic risk buffer rates have been set in accordance with Article 104 is a subsidiary of a parent undertaking established in another EEA Member State.

2) The notification referred to in paragraph 1 shall contain:

a) the systemic risk buffer rates set by the Government;

b) the exposures and the banks to which the buffer rates are to apply;

c) the systemic or macroprudential risk in Liechtenstein and the reasons why the dimension of these risks threatens the stability of the financial system in Liechtenstein justifying the set systemic risk buffer rate;

d) a justification for why the systemic risk buffer is likely to be effective and proportionate to mitigate the risks;

e) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to the Government; and

f) a justification for why the systemic risk buffer does not duplicate the functioning of the O-SII buffer under Article 102, where the Government intends to establish a systemic risk buffer for all exposures.

3) Where the decision to reset the systemic risk buffer rate results in a decrease or no change from the previously set buffer rate, the FMA shall proceed only in accordance with paragraphs 1 and 2.

4) Where the decision to set the systemic risk buffer rate on any exposure or subset of exposures referred to in paragraph 104(3) results in a combined systemic risk buffer rate of up to 3% for any of those

exposures, the FMA shall notify the ESRB one month before the publication in accordance with paragraph 8. The form and content of the notification shall be in accordance with paragraph 2. A systemic risk buffer rate of another EEA Member State recognised in accordance with Article 106 shall not be included in the calculation of the combined systemic risk buffer rate.

5) Where the decision to set the systemic risk buffer rate on any exposure or subset of exposures referred to in paragraph 104(3) results in a combined systemic risk buffer rate of at a level higher than 3% and up to 5% for any of those exposures, the FMA shall notify the ESRB before the publication in accordance with paragraph 8. The form and content of the notification shall be in accordance with paragraph 2. In the notification, the FMA shall request the opinion of the Standing Committee of the EFTA States. Where the opinion of the Standing Committee of the EFTA States is negative, the Government may comply with that opinion or give reasons for not doing so.

6) Where the decision to set the systemic risk buffer rate on any exposure or subset of exposures referred to in paragraph 104(3) results in a combined systemic risk buffer rate of at a level higher than 3% and up to 5% for any of those exposures and where a bank is a subsidiary of a parent undertaking established in another EEA Member State, the FMA shall, in a notification, request the opinion of the Standing Committee of the EFTA States and of the ESRB. In the case of a negative recommendation of both the Standing Committee of the EFTA States and the ESRB and where the FMA and the competent authority of the parent undertaking disagree on the systemic risk buffer rates applicable to a subsidiary, the FMA may request the assistance of the EFTA Surveillance Authority or the EFTA Surveillance Authority and the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. Pending the decision of the EFTA Surveillance Authority or the EFTA Surveillance Authority and the EBA, the Government shall suspend the decision on the systemic risk buffer rate.

7) Where the decision to set the systemic risk buffer rate on any exposure or subset of exposures referred to in paragraph 104(3) results in a combined systemic risk buffer rate higher than 5% for any of those exposures, the FMA shall notify the ESRB before the publication in accordance with paragraph 8. The form and content of the notification shall be in accordance with paragraph 2. In its notification, the FMA shall seek authorisation of the Standing Committee of the EFTA States.

8) After setting one or more systemic risk buffer rates, the FMA shall publish the following information on its website:

a) the systemic risk buffer rates;

b) the exposures and the banks to which the systemic risk buffer applies;

c) the justification for setting or resetting the buffer rates;

d) the date from which the set or increased systemic risk buffer must be complied with; and

e) the names of the countries, if the exposures located in these countries are taken into account when setting or calculating the systemic risk buffer.

9) Where the publication of the information referred to in paragraph 8(c) could jeopardise the stability of the financial system in Liechtenstein or in another EEA Member State, that information shall not be published.

Article 106

Recognition of a systemic risk buffer rate of other EEA Member States

1) On the basis of a recommendation by the FMA or the Financial Stability Council, the Government may recognise systemic risk buffer rates of another EEA Member State for banks licensed in Liechtenstein with respect to exposures located in that EEA Member State. The FMA shall notify the recognition to the ESRB.

2) When deciding whether to recognise a systemic risk buffer rate of other EEA Member States, the Government shall take into account the information presented by the EEA Member State that sets that rate in accordance with Article 133(9) and (13) of Directive 2013/36/EU.

3) Where the Government recognises a systemic risk buffer rate of another EEA Member State for banks licensed in Liechtenstein, that systemic risk buffer shall be cumulative with the systemic risk buffer set by the Government in accordance with Article 104, provided that the two system risk buffers address different risks. Where the wo buffers address the same risks, only the higher of the two buffers shall apply.

4) By ordinance, the Government may provide further details regarding the recognition of systemic risk buffer rates.

Article 107

Interaction of G-SII, O-SII, and systemic risk buffers

1) Where a group is subject to a G-SII buffer in accordance with Article 101 and to an O-SII buffer in accordance with Article 102, the higher buffer shall apply.

2) Where a bank is subject to a systemic risk buffer in accordance with Article 104 and a G-SII buffer or O-SII buffer, the systemic risk buffer shall be cumulative with the G-SII buffer or the A-SII. Where the sum of the systemic risk buffer rate and the G-SII buffer rate or the O-SII buffer rate would be higher than 5%, the FMA shall obtain the approval of the Standing Committee of the EFTA States in accordance with Article 102(4).

6. Capital conservation measures

Restrictions on distributions

Article 108

a) General provisions

1) Banks that meet the combined buffer requirement in accordance with Article 94(2) shall not make distributions in connection with Common Equity Tier 1 capital that would cause their Common Equity Tier 1 capital to fall below the level of their combined capital buffer requirement.

2) Banks that fail to meet their combined buffer requirement applicable in accordance with Article 94(2) shall calculate the maximum distributable amount (MDA) in accordance with Article 109 and shall notify the FMA thereof. Until the MDA is calculated, the following actions shall not be taken:

a) making a distribution in connection with Common Equity Tier 1 capital;

b) creating an obligation 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 failed to meet its combined buffer requirement; or

c) making payments on Additional Tier 1 instruments as referred to in Articles 51 to 61 of Regulation (EU) No 575/2013.

3) A distribution pursuant to paragraphs 1 and 2 is any outflow of capital that results in a reduction of Common Equity Tier 1 capital or in a reduction of profits for the current business year, in particular due to:

a) payment of cash dividends;

b) issuance, redemption, or repurchase by a bank of fully or partly paid bonus shares, 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; or

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

4) Banks failing to meet their combined buffer requirement in accordance with Article 94(2) shall not distribute more than the MDA in accordance with Article 109 through any action referred to in paragraph 2.

5) The restrictions imposed by this Article shall apply only to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension or delay of payment does not constitute an event of default or result in the opening of bankruptcy proceedings in respect of the assets of the bank.

6) Where the application of the restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the bank, the FMA may make use of its powers under Article 154(3) and (5) and Article 157 or withdraw the licence under Article 33.

Article 109

b) Calculation of the maximum distributable amount (MDA)

1) Banks shall calculate the maximum distributable amount (MDA) as referred to in Article 108(2) in accordance with the method set out in Annex 3.

2) Banks shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to demonstrate that accuracy to the FMA on request.

Article 110

c) Distribution where combined buffer requirement is not met

Where a bank fails to meet the combined buffer requirement in accordance with Article 94(2) and intends to distribute any of its distributable profits or undertake an action referred to in Article 108(2), it shall notify the FMA without delay and provide the following information:

a) the amount of capital maintained by the bank, subdivided as follows:
   1. Common Equity Tier 1 capital;
   2. Additional Tier 1 capital;
   3. Tier 2 capital;
b) the amount of its interim and year-end profits;
c) the MDA calculated in accordance with Article 109; and
d) the amount of distributable profits it intends to allocate between the following:
   1. dividend payments;
   2. share buybacks;
   3. payments on Additional Tier 1 instruments;
   4. the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the bank failed to meet its combined buffer requirements.

Article 111

Failure to meet the combined capital buffer requirement

A bank shall be considered as failing to meet the combined buffer requirement in accordance with Article 94(2) for the purposes of Articles 108 to 110 where it does not have own funds in an amount and of the quality needed to meet at the same time the combined buffer requirement and each of the following requirements in:

a) Article 92(1)(a) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage under Article 154(3)(a) and Article 155;
b) Article 92(1)(b) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage under Article 154(3)(a) and Article 155; and
c) Article 92(1)(c) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage under Article 154(3)(a) and Article 155.

Restriction on distributions in case of failure to meet the leverage ratio buffer requirement

Article 112

a) General provisions

1) Banks that meet the leverage ratio buffer requirement pursuant to Article 92(1a) of Regulation (EU) No 575/2013 shall not make a distribution in connection with Tier 1 capital to an extent that would cause their Tier 1 capital to fall to a level below their leverage ratio buffer requirement.

2) Banks that fail to meet their leverage ratio buffer requirement in accordance with Article 92(1a) of Regulation (EU) No 575/2013 shall calculate the leverage ratio related maximum distributable amount (L-MDA) in accordance with Article 113 and shall notify the FMA thereof without delay. Until the MDA is calculated, the following actions shall not be undertaken:

a) making distributions in connection with Common Equity Tier 1 capital;

b) creating an obligation 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 failed to meet the leverage ratio buffer requirement; or

c) making payments on Additional Tier 1 instruments as referred to in Articles 51 to 61 of Regulation (EU) No 575/2013.

3) Banks failing to meet their leverage ratio buffer requirement in accordance with Article 92(1a) of Regulation (EU) No 575/2013 shall not distribute more than the MDA in accordance with Article 113 through any action referred to in paragraph 2.

4) Article 108(3) shall apply *mutatis mutandis* to distributions as referred to in paragraphs 1 and 2.

5) The restrictions imposed by this Article shall apply only to distributions that result in a reduction of Tier 1 capital or in a reduction of profits, and where a suspension or delay of payment does not constitute an event of default or result in the opening of bankruptcy proceedings in respect of the assets of the bank.

Article 113

b) Calculation of the maximum distributable amount

1) Banks shall calculate the leverage ratio related maximum distributable amount (L-MDA) as referred to in Article 92(1a) of Regulation (EU) No 575/2013 in accordance with the method set out in Annex 3.

2) Banks shall maintain arrangements to ensure that the amount of distributable profits and the L-MDA are calculated accurately, and shall be able to demonstrate that accuracy to the FMA on request at all times.

Article 114

c) Distribution where leverage ratio buffer requirement is not met

Where a bank fails to meet the leverage ratio buffer requirement in accordance with Article 92(1a) of Regulation (EU) No 575/2013 and intends to distribute any of its distributable profits or undertake an action referred to in Article 112(2), it shall notify the FMA and provide the following information:

a) the amount of capital maintained by the bank, subdivided as follows:
   1. Common Equity Tier 1 capital;
   2. Additional Tier 1 capital;
b) the amount of its interim and year-end profits;
c) the MDA calculated in accordance with Article 113; and
d) the amount of distributable profits it intends to allocate between the following:
   1. dividend payments;
   2. share buybacks;
   3. payments on Additional Tier 1 instruments;
   4. the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.

Article 115

Failure to meet the leverage ratio buffer requirement

A bank shall be considered as failing to meet the leverage ratio buffer requirement in accordance with Article 92(1a) of Regulation (EU) No 575/2013 for the purposes of Articles 112 to 114 where it does not have Tier 1 capital in an amount and of the quality needed to meet the following requirements at the same time:

a) Article 92(1a) of Regulation (EU) No 575/2013;

b) Article 92(1)(d) of Regulation (EU) No 575/2013;

c) the additional own funds requirement when addressing the risk of excessive leverage under Article 154(3)(a) and Article 155 that is not sufficiently covered by Article 92(1)(d) of Regulation (EU) No 575/2013.

Article 116

Requirement for a capital conservation plan

1) Where a bank fails to meet its combined buffer requirement in accordance with Article 94(2) or, where applicable, its leverage ratio buffer requirement in accordance with Article 92(1a) of Regulation (EU) No 575/2013, it shall prepare a capital conservation plan and submit it to the FMA no later than five working days after it identified that it was failing to meet that requirement. The FMA may extend this deadline to up to ten working days, taking into account the scope and complexity of the activities of the bank.

2) The capital conservation plan shall include at least the following:

a) current estimates of income and expenditure and a forecast balance sheet;

b) concrete measures to increase the capital ratio; and

c) a plan and a timeframe for the increase of own funds in order to fulfil the combined buffer requirement in accordance with Article 94(2).

3) In addition to the information referred to in paragraph 2, the FMA may demand further information necessary to approve the capital conservation plan.

4) The FMA shall approve the capital conservation plan only if the plan would be reasonably likely to allow the bank to meet its combined buffer requirement in accordance with Article 94(2) within a period which the FMA considers appropriate.

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

a) require the bank to increase own funds to specified levels within specified periods; or

b) exercise its powers under Article 154(3) to impose more stringent restrictions on distributions than those required by Articles 108 to 110.

6) The Government may provide further details by ordinance regarding the content of the capital conservation plan.

H. Measures relating to specific exposures and in the event of threats to the stability of the financial system

Article 117

Exposures secured by residential or commercial immovable property

1) In the case of exposures secured by residential or commercial immovable property, higher risk weights may be set or stricter criteria may be applied in accordance with Article 124 and 164 of Regulation (EU) No 575/2013 than provided for in that Regulation.

2) The Government may provide further details by ordinance.

Article 118

Measures for limiting systemic risk

1) Where the Financial Stability Council identifies changes in the intensity of macroprudential or systemic risk with the potential to have serious negative consequences to the financial system and the real economy, it may recommend to the Government to take one or more of the measures set out in Article 458(2) of Regulation (EU) No 575/2013.

2) The Government may, taking into account the procedure set out in Article 458(2) of Regulation (EU) No 575/2013, provide further details by ordinance on the determination of the measures, in particular on:

a) the scope of application and the duration of the measures; and

b) the frequency of the review of the measures.

I. Accounting, reporting, and special provisions under company law

Article 119

Business report, consolidated business report, interim financial statement, and consolidated interim financial statement

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

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

3) 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 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 accordance with the international accounting standards of the IASB, then Article 1139 of the Law on Persons and Companies shall apply.

4) The Government shall provide further details by ordinance. It may in particular specify:

a) how the business report, the consolidated business report, the interim financial statement, the consolidated interim financial statement, and the notes are to be prepared and provide for certain simplifications;

b) which banks 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.

Article 120

Publication of business reports and interim financial statements

1) Banks shall publish the business report (annual financial statement and annual report) and the consolidated business report (consolidated financial statement and consolidated annual report (management report)) on their website and make them available there in an easily accessible form. If banks do not operate a website, they must publish the business report and the consolidated business report in printed form. In addition, the interim financial statement and the consolidated interim financial statement must also be made available to anyone who requests it.

2) The business report and the consolidated business report shall be published in accordance with paragraph 1 and submitted to the FMA within four months of the end of the financial year, the interim financial statement and the consolidated interim financial statement within two months of the reporting date of the interim financial statement or the consolidated interim financial statement, respectively, together with the information required for the management of monetary, credit, and currency policy and banking statistics.

3) The duly approved annual financial statement and the audit report under company law, as well as the proposal for the appropriation of the result and the decision on its appropriation, stating the profit or loss for the year, unless that information is included in the annual financial statement, must be submitted to the Office of Justice by the end of the fifth month of the financial year following the balance sheet date at the latest. After the documents have been submitted, the Office of Justice shall announce in the electronic Official Journal, at the expense of the submitting banks, under which registration number the documents have been submitted to the Office of Justice and shall enter the date of submission into the Commercial Register.

4) Paragraph 3 shall apply to the disclosure of the duly approved consolidated financial statement and the associated audit report.

5) The annual report (management report) and the consolidated annual report (management report) do not have to be submitted to the Office of Justice; however, they must be available for inspection by anyone who requests them at the registered office of the company.

6) If the securities of a bank or of a company to be included in the consolidated financial statement of a bank are admitted to trading on a regulated market in an EEA Member State as defined in Article 4(1)(21) of Directive 2014/65/EU, the annual report (management report) and/or

the consolidated annual report (management report) shall be disclosed not in accordance with paragraph 5, but in accordance with paragraphs 1 to 4.

7) Banks shall disclose the duly approved annual financial statement, the duly approved consolidated financial statement, the annual report (management report), the consolidated annual report (management report), the report on the audit of the annual financial statement under company law, and the report on the audit of the consolidated financial statement in each EEA Member State in which they operate a branch. Disclosure (submission to a register, publication in an official journal, applicable language) shall be governed by the law of the respective EEA Member State.

8) Branches of EEA credit institutions, EEA financial institutions, or third-country banks shall disclose the documents of their principal establishment as referred to in the first sentence of paragraph 7, which have been prepared and audited in accordance with the law of that State, in accordance with paragraphs 1 to 5. Branches of EEA credit institutions or EEA financial institutions shall not be required to disclose separate accounting documents as referred to in the first sentence of paragraph 7 relating to their own business activities. Branches of third-country banks shall not be required to disclose separate accounting documents as referred to in the first sentence of paragraph 7 relating to their own business activities, provided that the documents to be disclosed pursuant to the first sentence have been prepared and audited in accordance with law adapted to Directive 86/635/EEC[31] or are equivalent to documents prepared in accordance with such law. If the documents have not been drawn up in German, a certified translation in German shall be enclosed. The branch manager shall be responsible for compliance with the provisions of this paragraph.

31 Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1)

Article 121

Legal reserves

1) Banks holding client 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.

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

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.

Article 122

Capital reduction

1) With respect to banks, the provisions of the Law on Persons and Companies shall apply to the reduction of share capital by repayment of shares, subject to this Article.

2) If a bank intends to reduce its share capital without simultaneously replacing it with new, fully paid-up capital up to 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 recognised audit firm 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.

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 made only pursuant to the reduction of the share capital may be made 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 be reduced to less than their respective initial capital as referred to in Article 18.

K. Audit firms

Article 123

External audit requirement

1) Each year, banks must submit to an audit of their business activities, on an individual basis and, where applicable, on a consolidated basis, by an independent audit firm recognised by the FMA in accordance with Article 124.

2) At all times, banks must grant the recognised audit firm 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.

3) The recognised audit firm shall have the right to inspect all documents, working papers, and IT systems of the internal audit department.

Article 124

Recognition by the FMA

1) Audit firms that audit banks shall require recognition by the FMA for such activities.

2) The FMA shall recognise only audit firms in the form of a public limited company with a paid-up share capital of at least 1 million Swiss francs.

3) Audit firms shall be recognised if:

a) their senior management, responsible auditors, and organisation guarantee that the audit engagements are performed continuously and properly;

b) they have a licence under the Auditors Act or are registered under Article 69 of the Auditors Act;

c) they have at least two responsible auditors with a licence under the Auditors Act;

d) the organisation of the business is precisely described in the articles of association or partnership agreement or in a regulation;

e) the members of the senior management have a good reputation and the majority have thorough knowledge of auditing, banking, finance, or law;

f) the responsible auditors have a good reputation and demonstrate thorough knowledge of the banking and investment business and the auditing of banks;

g) the audit firm undertakes to limit itself to services for third parties and to refrain from transactions for its own account and at its own risk, unless such transactions are necessary for the operation of the company (e.g. investment of own funds); and

h) the audit firm has professional liability appropriate to its business activities.

4) The FMA shall revoke recognition of the audit firm if:

a) the conditions set out in paragraph 3 are no longer met; or

b) the audit firm seriously, repeatedly, or systematically violates its responsibilities under this Act.

5) Recognition shall lapse if an audit firm renounces it in writing. A written renunciation shall be permissible only after the audit firm has terminated all engagements as a recognised audit firm under this Act.

6) The audit firm shall dedicate itself exclusively to audit activities and immediately related transactions such as inspections, liquidations, and reorganisations. It may not engage in banking transactions, investment services and/or investment activities, or asset management.

7) The audit firm may entrust the management of the audit of banks only to responsible auditors who have been notified to the FMA in advance and meet the requirements set out in paragraph 3.

8) The Government may provide further details concerning the recognition of audit firms by ordinance.

Article 125

Application for recognition

1) Every application for recognition as an audit firm must be submitted to the FMA in writing and must adequately document the requirements for recognition in accordance with Article 124.

2) The Government shall provide further details by ordinance. In particular, it may regulate the information and documents required for the application.

Article 126

Decision on application for recognition

1) Recognition must be granted in writing, otherwise it shall be deemed null and void. If necessary, it may be subject to corresponding terms and conditions.

2) The FMA shall decide on an application for recognition within 12 months of receipt of the complete application. If not all required information and documents have been submitted by the applicant within 12 months of receipt of the application, the FMA shall reject the application.

Article 127

Independence

1) The recognised audit firm must be independent from the bank subject to the audit and must form its audit opinion objectively. Its true or apparent independence must not be adversely affected.

2) The following are in particular not compatible with independence:

a) membership of the board of directors and the senior management as well as exercise of other key functions of the bank subject to the audit;

b) a direct or indirect participation in or a substantial claim against or debt due to the bank subject to the audit;

c) the involvement in the accounting or the provision of any other services which give rise to a risk that the recognised audit firm will have to review its own work; or

d) the conclusion of a contract on non-market conditions or of a contract that establishes an interest on the part of the recognised audit firm in the result of the audit.

3) The annual fee income to be expected from the engagements of a bank subject to the audit and its related undertakings may not, under normal circumstances, exceed 10% of the total annual fee income of the recognised audit firm. The FMA may approve exceptions.

Article 128

Responsibilities and reporting

1) The recognised audit firm shall audit whether the provisions of this Act, Regulation (EU) No 575/2013, other EEA legislation directly applicable to banks, or other laws referred to in Article 5(1) of the Financial Market Act have been complied with (regulatory audit).

2) It shall also audit whether the form and content of the annual report and the consolidated annual report of the bank subject to the audit conform to the requirements of the law, articles of association, and regulations (statutory audit).

3) The regulatory audit shall be carried out separately from the statutory audit. Where appropriate in individual cases, the recognised audit firm may take into account the results of the statutory audit when carrying out a regulatory audit.

4) The regulatory audit shall be carried out with the due care and diligence of a prudent and competent auditor and shall be ensured by appropriate internal quality assurance.

5) The recognised audit firm shall summarise the results of its regulatory audit comprehensively, clearly, and objectively in a written report. The report shall be signed by the responsible auditor and another person authorised to sign.

6) The recognised audit firm shall send the regulatory audit report simultaneously to the board of directors of the bank and to the FMA.

7) The FMA may rely on the accuracy and completeness of the results of the regulatory audit, unless it has reasonable doubts.

8) If the recognised audit firm has violated its duties under paragraphs 1 to 6, the FMA may demand that the responsible auditors be removed from their function, subject to Article 124(4) and Article 130(3).

9) Recognised audit firms, their governing bodies, and their employees shall be subject to a duty of secrecy for an unlimited period of time with regard to confidential information that becomes known to them in the performance of their duties. Article 26 of the Auditors Act shall apply *mutatis mutandis*.

10) The Government may set out further principles governing the audit of banks as referred to in paragraph 1 by ordinance. The FMA shall specify the details in a guideline, in particular regarding:

a) the areas, frequency, and depth of the audit;

b) the determination and reporting of findings; and

c) the structure and submission deadline of the regulatory audit report, the documents to be submitted, and the recipients.

Article 129

Notification obligations

1) The recognised audit firm is required:

a) to notify the FMA without delay of any changes to the responsible auditors notified to the FMA;

b) to notify the responsible auditor for each accepted mandate to the FMA prior to the start of the audit, but no later than 30 November of the preceding year; and

c) to submit to the FMA the annual report each year within four months of the financial year end.

2) The FMA may request information on the reasons for the departure of members of the senior management and responsible auditors notified to the FMA.

Article 130

Duties of the bank subject to the audit

1) At the beginning of each financial year, the bank subject to the audit must engage a recognised audit firm for the statutory audit and the regulatory audit.

2) The bank subject to the audit shall obtain the approval of the FMA before designating a recognised audit firm for the first time or engaging a new recognised audit firm. The FMA shall refuse its approval if the proposed recognised audit firm does not guarantee a proper statutory audit or regulatory audit under the given circumstances.

3) If a recognised audit firm does not properly perform the audit of a bank subject to the audit, the FMA may require the bank subject to the audit to engage a different recognised audit firm for the statutory audit and the regulatory audit at the beginning of the following financial year.

Article 131

Reporting obligations

1) If the recognised audit firm finds violations of provisions of this Act, Regulation (EU) No 575/2013, other EEA legislation directly applicable to banks, or other laws referred to in Article 5(1) of the Financial Market Act, the recognised audit firm shall report this to the FMA.

2) The recognised audit firm shall notify the FMA without delay if it finds that the senior management has committed offences or that other serious abuses exist which conflict with the purpose of this Act.

3) Irrespective of paragraph 1, a notification obligation as referred to in paragraph 2 shall subsist:

a) in the case of serious infringements by the bank of the licensing conditions and the rules applicable to the exercise of the activity;

b) in the case of facts or decisions that could jeopardise the continued functioning of the bank subject to the audit;

c) in the case of facts or decisions that may result in the annual financial statement or consolidated financial statement being rejected or qualifications being placed on the audit report.

4) A notification obligation shall also subsist where, in the course of its audit activities, the recognised audit firm makes determinations in accordance with paragraph 3 with respect to undertakings closely linked with the bank subject to the audit.

5) Recognised audit firms 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 recognised audit firm or person passing on the information. Unless there are compelling reasons not to do so, these facts and decisions must also be brought to the attention of the board of directors of the bank subject to the audit.

Article 132

Change of audit firm

1) Upon a justified application by the bank subject to the audit, the FMA may approve a change of recognised audit firm. The FMA shall decide on an application for approval within six weeks from receipt of the required documents. Before making its decision, the FMA shall consult the previous recognised audit firm.

2) The FMA shall approve the change of the recognised audit firm if such change does not jeopardise the purpose of the audit.

3) The bank subject to the audit shall provide the newly selected recognised audit firm with the latest report on the statutory audit and the latest report on the regulatory audit.

Article 133

Supervision of the recognised audit firm

1) In its supervision of recognised audit firms, the FMA may in particular carry out quality controls and accompany the recognised audit firms in their audit activities at banks.

2) For the purposes of supervision of recognised audit firms, the FMA shall have all powers under Article 154(2) and (3)(c), (e), (k), (m), (o), (r) and (s), applied *mutatis mutandis*.

Article 134

Audit costs

1) The bank subject to the audit shall bear the costs of the audit. The costs of the audit shall be calculated according to a generally recognised fee schedule.

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

VI. Requirements for financial holding companies and mixed financial holding companies

Article 135

Personal and professional requirements for members of senior management

1) Financial holding companies and mixed financial holding companies must ensure that the members of the senior management are of good repute and have sufficient knowledge, skills and experience to perform their tasks. The requirements set out in Article 22(1) and Article 63(4) and (7) as well as the mandate limits set by the Government under Article 63 shall apply *mutatis mutandis*.

2) When appraising the requirements under paragraph 1, the FMA shall take into account entries in the databases of the EBA.

3) The FMA may at any time verify whether the requirements under paragraph 1 are met. A verification shall be carried out in any event if there are reasonable grounds to suspect that:

a) in connection with a bank, money laundering as referred to in § 165 of the Criminal Code, terrorist financing as referred to in § 278d of the Criminal Code, corruption as referred to in §§ 304 to 309 of the Criminal Code, insider dealing as referred to in Article 6 of the EEA Market Abuse Regulation Implementation Act, market manipulation as referred to in Article 7 of the EEA Market Abuse Regulation Implementation Act, criminal breach of trust as referred to in § 153 of the Criminal Code, fraud as referred to in §§ 146 to 148 of the Criminal Code, or a comparable criminal offence is taking place, has taken place, or has been attempted; or

b) the natural persons referred to in paragraph 1 commit, have committed, or have attempted to commit an offence referred to in subparagraph (a).

4) If members of the senior management do not meet the requirements under paragraph 1, the FMA shall take the necessary measures, in particular their dismissal in accordance with Article 154(5)(b).

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5) The Government may provide further details by ordinance.

Article 136

External audit requirement

Each year, financial holding companies or mixed financial holding companies with a licence pursuant to Article 26(1) or (2) must submit to an audit of their business activities, on an individual basis and, where applicable, on a consolidated basis, by an independent audit firm recognised by the FMA. Article 123(2) and (3) and Articles 124 to 134 shall apply *mutatis mutandis*.

Article 137

Outsourcing

Financial holding companies or mixed financial holding companies with a licence pursuant to Article 26(1) or (2) may outsource processes, services, or activities. Article 76 shall apply *mutatis mutandis*.

VII. Requirements for banks as well as financial holding companies and mixed financial holding companies on a consolidated basis

Article 138

Compliance with supervisory requirements on a consolidated basis

1) Banks shall comply with or ensure compliance with the supervisory requirements on a consolidated or sub-consolidated basis in accordance with this Act and Regulation (EU) No 575/2013 if they are one of the following undertakings:

a) a parent institution; or

b) an EEA parent institution.

2) Financial holding companies and mixed financial holding companies with a licence pursuant to Article 26(1) or (2) must comply with the supervisory requirements on a consolidated or sub-consolidated basis in accordance with this Act and Regulation (EU) No 575/2013 or ensure compliance with them if they are one of the following undertakings:

a) a parent financial holding company or a parent mixed financial holding company; or

b) an EEA parent financial holding company or an EEA parent mixed financial holding company.

3) Banks as well as financial holding companies and mixed financial holding companies with a licence pursuant to Article 26(1) or (2) must comply with the supervisory requirements in accordance with this Act and Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis if their parent undertaking is one of the following undertakings:

a) a parent bank or an EEA parent bank;

b) a parent investment firm or an EEA parent investment firm; or

c) a parent financial holding company or a parent mixed financial holding company or an EEA parent financial holding company or an EEA parent mixed financial holding company.

Article 139

Requirements in connection with mixed activity holding companies

1) Where a mixed activity holding company is the parent undertaking of one or more banks, those banks shall have adequate risk management procedures and internal control mechanisms, including proper reporting and accounting procedures, to identify, quantify, monitor, and control transactions with the parent undertaking and subsidiaries appropriately.

2) In addition to Article 394 of Regulation (EU) No 575/2013, banks shall report any other significant transaction with a parent undertaking to the FMA in accordance with paragraph 1.

Article 140

Application of other legislation in special cases

1) Where a mixed financial holding company is subject to equivalent provisions under this Act and under the Financial Conglomerates Act, in particular in terms of risk-oriented supervision, the FMA as the consolidating supervisor may, after consulting the other competent authorities responsible for the supervision of subsidiaries, decide that only the provisions of the Financial Conglomerates Act shall apply to that mixed financial holding company.

2) Where a mixed financial holding company is subject to equivalent provisions under this Act and under the Insurance Supervision Act, in

particular in terms of risk-oriented supervision, the FMA as the consolidating supervisor may, in agreement with the group supervisor in the insurance sector, decide that only the provisions of this Act or of the Insurance Supervision Act shall apply to that mixed financial holding company, depending on which is the most significant financial sector as defined in Article 7 of the Financial Conglomerates Act.

3) The FMA as the consolidating supervisor shall inform the EBA and EIOPA of the decisions taken under paragraphs 1 and 2.

VIII. Supervision

A. General provisions

Article 141

Organisation and implementation

The following bodies are mandated to implement this Act and Regulation (EU) No 575/2013:

a) the FMA;

b) the Court of Justice.

Article 142

Official secrecy

1) Bodies and employees of the FMA as well as any other persons consulted by them 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 received by the bodies and persons referred to in paragraph 1 in the exercise of their duties under this Act or Regulation (EU) No 575/2013 may be used by them only in the performance of their duties for the following purposes:

a) to check whether the licensing conditions for banks are met;

b) supervision on an individual or consolidated basis, in particular with regard to solvency, large exposures, administrative and accounting organisation, internal control mechanisms, and liquidity;

c) for the prosecution and punishment of misdemeanours referred to in Article 245 and contraventions referred to in Article 246;

d) in the context of appeal proceedings under Article 243 of this Act and under §§ 218 to 244 of the Code of Criminal Procedure;

e) in the context of extrajudicial proceedings for client complaints in accordance with Article 244;

f) in the context of judicial proceedings initiated under the provisions of special legislation or other special provisions of EEA law in connection with banks;

g) to perform other duties under this Act or Regulation (EU) No 575/2013 that do not fall under subparagraphs (a) to (f);

h) to exchange information and cooperate with other domestic authorities pursuant to Article 143, with clearing and settlement systems pursuant to Article 145, and with European Supervisory Authorities and competent authorities from other EEA Member States or with authorities and bodies from third countries pursuant to Article 176 to 188; and

i) to exchange information and cooperate with the EFTA Surveillance Authority and the European Commission in accordance with this Act or Regulation (EU) No 575/2013.

3) Confidential information may in principle be disclosed only in summary and aggregate form, unless this Act or Regulation (EU) No 575/2013 provides otherwise or disclosure of confidential information in a non-summary and non-aggregate form is necessary for the performance of the duties of the FMA. This provision is subject to § 53 of the Code of Criminal Procedure. In particular, the FMA has the power to provide the recognised audit firms with all information necessary for the performance of their duties.

4) If winding-up or bankruptcy proceedings have been initiated by a court decision against a bank, then confidential information that does not relate to third parties may be used in civil and commercial proceedings, as long as it is necessary for the proceedings in question.

5) 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.

Article 143

Cooperation with other domestic authorities

1) Within the scope of its responsibilities under this Act, the FMA shall work together with other domestic authorities to the extent necessary for the performance of its responsibilities. Articles 12 and 142 shall not preclude cooperation under this Article.

2) The competent domestic authorities may transmit to each other personal data, including personal data relating to criminal convictions and offences, to the extent necessary for the performance of their duties.

3) The Office of Justice shall notify the FMA of all changes to entries in the Commercial Register concerning a bank, financial holding company, or mixed financial holding company as referred to in Article 26(1) or (2).

Article 144

Transmission of information to parliamentary investigative commissions

1) The FMA may transmit information relating to the supervision of banks 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 secrecy equivalent to that of Article 142; 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 the supervisory activities of the FMA includes the processing of personal data, the investigative commission shall ensure that the processing of such data is done in accordance with data protection legislation.

3) Information obtained by way of Article 48(4) and (5), Articles 176 to 178, and Articles 180 to 185 or through an on-the-spot check referred to in Article 48(1) shall not be transmitted in accordance with paragraph 1, unless there is express agreement by the competent authorities that

provided the information, or by the competent authorities of the EEA Member State in which the on-the-spot check was carried out.

Article 145

Transmission of information via clearing and settlement systems

1) Taking account of official secrecy set out in Article 142, the FMA may transmit information to clearing and settlement systems, provided such information is necessary in the FMA's opinion to ensure the proper functioning of such bodies in the event of violations or possible violations of market participants.

2) The FMA may transmit information as referred to in paragraph 1 that it received from the European Supervisory Authorities or a competent authority of another EEA Member State only with the express agreement of the authority in question.

Article 146

Processing of personal data

The authorities, offices, and persons entrusted with implementation of this Act may process or have processed personal data, including personal data relating to criminal convictions and offences of persons entrusted with administration and management of a bank, a branch of a bank, a financial holding company or mixed financial holding company, an EEA credit institution or EEA financial institution, and representative offices, to the extent necessary for the performance of their duties under this Act.

B. FMA

1. Competence

Article 147

Principle

1) The FMA is the competent authority within the meaning of Regulation (EU) No 575/2013. It shall monitor compliance with the provisions of this Act and that Regulation on an individual, sub-consolidated, or consolidated basis by:

a) banks;

b) financial holding companies and mixed financial holding companies;

c) mixed activity holding companies;

d) EEA credit institutions and EEA financial institutions operating in Liechtenstein in accordance with Articles 44 to 53; and

e) representative offices of EEA credit institutions, EEA financial institutions, or third-country banks operating in Liechtenstein in accordance with Articles 54, 55 and 57.

2) The FMA is the competent authority within the meaning of Article 458(1) of Regulation (EU) No 575/2013.

3) In the exercise of its responsibilities under this Act or Regulation (EU) No 575/2013, the FMA shall duly consider the potential impact of its decisions on the stability of the financial system in all other EEA Member States concerned and, in particular in emergency situations, based on the information available at the relevant time.

2. Supervisory review and evaluation

Article 148

Review and evaluation of risk management and risk coverage

1) The FMA shall review the arrangements, strategies, processes and mechanisms implemented by the banks to comply with this Act and Regulation (EU) No 575/2013 and evaluate the risks:[32]

a) to which the banks are or might be exposed;

b) revealed by stress testing; and

c) revealed by digital operational resilience testing in accordance with Chapter IV of Regulation (EU) 2022/2554.

2) The review and evaluation referred to in paragraph 1 shall cover all requirements of this Act and of Regulation (EU) No 575/2013. When conducting the review and evaluation referred to in paragraph 1, the FMA shall apply the principle of proportionality in accordance with the criteria set out in paragraph 4.

32 Article 148(1) amended by LGBl. 2025 No. 123.

3) On the basis of the review and evaluation referred to in paragraph 1, the FMA shall determine whether the arrangements, strategies, processes and mechanisms implemented by a bank and its organisation, own funds, and liquidity ensure a sound management and coverage of their risks.

4) The FMA shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the bank concerned and taking into account the principle of proportionality. The review and evaluation as referred to in paragraph 1 shall be conducted at least on an annual basis for banks covered by the supervisory examination programme referred to in Article 150(2).

5) The FMA may tailor the methodologies for the review and evaluation referred to in paragraph 1 to take into account banks with a similar risk profile, in particular with regard to the business model or geographical location of exposures. Such tailored methodologies may include risk-oriented benchmarks and quantitative indicators, shall be suitable for due consideration of the specific risks that each bank may be exposed to, and shall not affect the institution-specific nature of measures imposed in accordance with Article 154(3)(a).

6) Where a review referred to in paragraph 1, in particular of the corporate governance, the business model, or the activities of a bank, gives rise to reasonable grounds to suspect that, in connection with that bank, money laundering pursuant to § 165 of the Criminal Code or terrorist financing pursuant to § 278d of the Criminal Code is being or has been committed or attempted, or there is increased risk thereof, the FMA shall immediately forward its evaluation to the EBA. If necessary, it shall take the necessary measures in accordance with this Act.

7) The FMA shall inform the EBA:

a) of the application of tailored methodologies as referred to in paragraph 5; and

b) immediately, if a bank poses a systemic risk pursuant to Article 23 of Regulation (EU) No 1093/2010.

Article 149

Technical criteria for the review and evaluation of risk management and risk coverage

1) In addition to credit, market, and operational risks, the review and evaluation referred to in Article 148 shall include at least:

a) the results of the stress test carried out in accordance with Article 177 of Regulation (EU) No 575/2013 by a bank, where they apply an Internal Ratings Based Approach;

b) the exposure to and management of concentration risk by a bank, including its compliance with the requirements on large exposures set out in Part Four of Regulation (EU) No 575/2013 and the requirements for identifying, measuring, managing, mitigating, and monitoring concentration risk in accordance with this Act;

c) the robustness, suitability and manner of application of the policies and procedures implemented by a bank for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;

d) the extent to which the own funds held by a bank in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

e) the exposure to, measurement and management of liquidity risk by a bank, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;

f) the impact of diversification effects and how such effects are factored into the risk measurement system;

g) the results of stress tests carried out by a bank using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013;

h) the geographical location of the exposures of the bank;

i) the business model.

2) For the purposes of paragraph 1(e), the FMA shall regularly carry out a comprehensive assessment of the liquidity risk management by banks and promote the development of sound internal methodologies. While conducting those reviews, the FMA shall have regard to the role played by banks in the financial markets. The FMA shall duly consider the potential impact of its decisions on the stability of the financial system in all other EEA Member States concerned.

3) The FMA shall examine whether banks have provided implicit support to a securitisation. If a bank is found by the FMA to have provided implicit support on more than one occasion, the FMA shall take appropriate measures reflective of the increased expectation that the bank will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

4) For the purposes of the determination provided for under Article 148(3), the FMA shall also consider whether the valuation adjustments taken for positions or portfolios in the trading book of the bank, as set out in Article 105 of Regulation (EU) No 575/2013, enable the bank to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

5) The FMA shall review the exposure of banks to the interest rate risk arising from non-trading book activities. The FMA shall make use of its powers set out in Article 154 of the Banking Act in particular where:

a) the economic value of equity of a bank declines by more than 15% of its Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of the six supervisory shock scenarios applied to interest rates; or

b) the net interest income of a bank experiences a large decline as a result of a sudden and unexpected change in interest rates as set out in any of the two supervisory shock scenarios applied to interest rates.

6) The FMA may refrain from exercising its powers where it considers, based on the review and evaluation referred to in paragraph 5, that the management by the bank of interest rate risk arising from non-trading book activities is adequate and that the bank is not excessively exposed to interest rate risk arising from non-trading book activities.

7) The FMA shall review the exposure to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013. The FMA shall determine the adequacy of the leverage ratio of a bank and of the arrangements, strategies, processes and mechanisms implemented by the bank to manage the risk of excessive leverage, taking into account the business model of the bank.

8) The FMA shall review the governance arrangements of banks, their corporate culture and values, and the ability of members of the board of directors and the senior management to perform their duties. For that purpose, banks shall, on request, make available to the FMA agendas and supporting documents for meetings of the board of directors, the senior management, and the committees of the board of directors and the results of the internal or external evaluation of performance of the board of directors or senior management.

Article 150

Supervisory examination programme

1) The FMA shall, at least annually, adopt a supervisory examination programme that takes into account the review and evaluation process pursuant to Article 148. The examination programme shall contain information on:

a) the tasks and resources used by the FMA;

b) the banks that are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in paragraph 3; and

c) a plan for on-site inspections at banks, including branches and subsidiaries in other EEA Member States.

2) The supervisory examination programme as referred to in paragraph 1 shall include banks:

a) for which the results of the stress tests within the framework of the review and evaluation process pursuant to Article 148 or 151 or the outcome of the supervisory review and evaluation process pursuant to Article 148 indicate significant risks to their ongoing financial soundness or indicate breaches of the requirements under this Act and Regulation (EU) No 575/2013; or

b) for which the FMA deems it to be necessary on other grounds.

3) As part of the enhanced supervision referred to in paragraph 1(b), the FMA may in particular take the following measures:

a) more frequent on-site inspections;

b) permanent presence of the FMA or one of its mandatees;

c) additional notification or reporting requirements;

d) additional or more frequent review of the operational, strategic or business plans;

e) thematic examinations monitoring specific risks that are likely to materialise.

Article 151

Supervisory stress testing

The FMA shall carry out, at least annually, stress tests to facilitate the review and evaluation process pursuant to Article 148.

Article 152

Ongoing review of internal approaches

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 complies with the conditions for the use of internal approaches for the calculation of own funds requirements under Part Three of Regulation (EU) No 575/2013; and

b) these approaches are based on well-developed and up-to-date methods.

2) If the FMA identifies material deficiencies in risk capture, the FMA shall have all the powers under Article 154 at its disposal to rectify these deficiencies by taking appropriate steps or to mitigate their consequences, 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) require the bank to improve the model promptly; or

b) revoke approval for using the internal model.

4) If a bank has obtained prior approval to use an internal approach but no longer meets the requirements for the use of that approach, 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 a lawful state of affairs by a deadline fixed by the FMA; if the requirements for application of the model cannot be fully met with the submitted plan, the FMA may require improvements.

5) If the bank is unable to be able 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 approval to use the approach shall be revoked; or

b) the approval 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 EBA.

Article 153

Application of the provisions on supervisory review and evaluation on a consolidated basis

In the review and evaluation process pursuant to Articles 148 to 152, the FMA shall take into account the provisions on consolidation set out in Articles 6 to 24 of Regulation (EU) No 575/2013.

3. Powers

Article 154

Principle

1) The FMA shall have all necessary powers to perform its duties under this Act and Regulation (EU) No 575/2013. It shall take the necessary measures directly, in cooperation with other domestic authorities, or by filing charges with the Office of the Public Prosecutor.

2) The FMA shall in particular be entitled to:

a) 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:
   1. banks with their registered office in Liechtenstein;
   2. financial holding companies with their registered office in Liechtenstein or financial holding companies with their registered office in another EEA Member State that have been licensed by the FMA in accordance with Article 26(1) or (2);
   3. mixed financial holding companies with their registered office in Liechtenstein or mixed financial holding companies with their registered office in another EEA Member State that have been licensed by the FMA in accordance with Article 26(1) or (2);
   4. mixed activity holding companies with their registered office in Liechtenstein;

5. employees, members of the board of directors or senior management and shareholders or other stakeholders of undertakings referred to in points 1 to 4; and
6. third parties with whom the undertakings referred to in points 1 to 4 have concluded outsourcing agreements, including ICT third-party service providers as referred to in Chapter V of Regulation (EU) 2022/2554;[33]

b) conduct all necessary investigations of any person referred to in subparagraph (a), including:
1. the right to demand documents;
2. examining the books and records of the persons referred to in subparagraph (a) or their governing bodies and taking copies or extracts from such books and records;
3. obtaining written or oral explanations from any person referred to in subparagraph (a) or their governing bodies, representatives, or employees; and
4. interviewing any other relevant person for the purpose of collecting information relating to the subject matter of the investigation;

c) subject to other conditions set out in EEA law, conduct all necessary on-site inspections of legal persons referred to in subparagraph (a) and any other undertaking included in consolidated supervision where the FMA is the consolidating supervisor, after prior notification of the competent authorities concerned;

d) demand existing recordings of telephone conversations or electronic communications or other data traffic records held by a bank;

e) demand all necessary information and documents from recognised audit firms;

f) order or carry out extraordinary audits.

3) Where necessary for the FMA to perform its duties under this Act or Regulation (EU) No 575/2013, if a bank infringes provisions of this Act of that Regulation, if the FMA has proof that a bank is likely to infringe this Act or that Regulation within the next 12 months, or if necessary on the basis of the results of the review and evaluation pursuant to Articles 148 and 152, the FMA may take the necessary measures. For this purpose, it has the power in particular:

33 Article 154(2)(a)(6) amended by LGBl. 2025 No. 123.

a) to require banks to hold additional own funds, taking into account the conditions set out in Article 155, that go beyond the requirements of Regulation (EU) No 575/2013;

b) to require banks to strengthen the regulations, mechanisms, strategies and processes introduced under Articles 71 and 78;

c) to require banks to submit a plan for the establishment of a lawful state of affairs and to set a deadline for the implementation of the plan and, if necessary, to impose improvements with regard to its scope and timeframe;

d) to require banks to apply a specific provisioning policy or treatment of assets;

e) to restrict or limit the business, operations or network of banks and to require the divestment of activities that jeopardise the soundness of the bani;

f) to require banks to reduce the risk inherent in the activities, products and systems of the bank, including outsourced activities;

g) to require banks to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;

h) to require banks to use net profits to strengthen own funds;

i) to restrict or prohibit capital and profit withdrawals and distributions or interest payments to shareholders or holders of Additional Tier 1 instruments; that restriction or prohibition shall not, however, constitute an event of default of the bank;

k) to impose additional reporting obligations or shorter reporting intervals on bank, in particular with regard to own funds, liquidity, and indebtedness;

l) to require banks to meet specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

m) to require banks to transmit supplementary information;

n) to impose reporting obligations on banks regarding planned transactions and to prohibit the execution of planned transactions;

o) to impose temporary prohibitions from practising a profession;

p) to specify modelling and parametric assumptions that the bank must take into account when calculating the economic value of own funds under the standardised methodology or the simplified standardised methodology by means of appropriate systems, and which are other than those determined by the EBA in accordance with Article 98(5a)(b) of Directive 2013/36/EU;

q) to prohibit banks from making payments, accepting deposits, or other repayable funds or payments, or entering into transactions in financial instruments;

r) to 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;

s) to demand the removal of a natural person from the board of directors or senior management of a bank and from their position as key function holder, resolution administrator, or liquidator;

t) in accordance with Article 21a of the Financial Market Act, to publicly disclose the name of the bank, financial holding company, or mixed financial holding company with a licence pursuant to Article 26(1) or (2) or the natural person responsible for the infringement and the nature of the infringement;

u) to request the Office of the Public Prosecutor to apply for measures for securing the forfeiture of assets in accordance with the provisions of the Code of Criminal Procedure;

v) to withdraw the licence.

4) The FMA may impose additional reporting obligations or shorter reporting intervals on a bank pursuant to paragraph 3(k) only if they are appropriate and proportionate with regard to the purpose and the information requested is not already available to the FMA.

5) Where necessary for the FMA to perform its duties under this Act or Regulation (EU) No 575/2013, if a financial holding company, mixed financial holding company, or mixed activity holding company infringes provisions of this Act of that Regulation or if the FMA has proof that a financial holding company, mixed financial holding company, or mixed activity holding company is likely to infringe this Act or that Regulation within the next 12 months, the FMA may take the necessary measures. For this purpose, where applicable in accordance with the procedure define in Article 30, it has the power in particular:

a) to suspend the exercise of voting rights attached to shares of subsidiary institutions held by financial holding companies or mixed financial holding companies for up to five years;

b) to require the removal of a natural person from the board of directors or senior management of a financial holding company or mixed financial holding company;

c) to require financial holding companies or mixed financial holding companies to assign interests in their subsidiary institutions to their shareholders;

d) to designate on a temporary basis another financial holding company, mixed financial holding company, or institution within the group as responsible for ensuring compliance with the requirements under this Act or Regulation (EU) No 575/2013 on a consolidated basis;

e) to restrict or prohibit distributions or interest payments to shareholders of the financial holding company or mixed financial holding company;

f) to require financial holding companies or mixed financial holding companies to limit, reduce, or divest from interests in banks, other financial sector entities, or ancillary services undertakings;

g) to require financial holding companies or mixed financial holding companies to establish a lawful state of affairs and to submit a plan to restore a lawful state of affairs within a period set by the FMA;

h) to exercise all powers to which it is entitled pursuant to paragraph 3.

6) If a mixed financial holding company with a licence pursuant to Article 26(1) or (2) is part of a financial conglomerate within the meaning of the Financial Conglomerates Act, the FMA as the consolidating supervisor shall, in the exercise of its supervisory powers, duly consider the possible impact on the financial conglomerate.

7) In exercising its powers under paragraphs 3 and 5, the FMA shall take into account all relevant circumstances. Where appropriate, it shall take into account the principles set out in Article 247(1).

8) The costs incurred by the FMA in exercising its powers under paragraphs 1 to 5 shall be borne by the parties concerned.

9) The FMA may assign an expert as its observer to a bank if this appears necessary for the FMA to perform its duties. A recognised audit firm may be entrusted with this responsibility. The costs shall be borne by the bank. The observer shall monitor the activities of the managing governing bodies, in particular the implementation of any 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, records, and files of the bank. The FMA may provide the observer with all information about the bank necessary for the performance of the observer's duties.

10) Unless the concerns of the depositors and clients can be safeguarded in another manner, the FMA may, at the expense of the bank, transfer powers in whole or in part that are vested in the board of directors or senior management by law or by the articles of association to a special representative who is suited to exercise these powers.

Article 155

Additional own funds requirement

1) The FMA shall require a bank to hold additional own funds pursuant to Article 154(3)(a) if they serve to cover risks incurred by the bank due to its activities, including those reflecting the impact of economic and market developments on the risk profile of the bank, and if it determines on the basis of the reviews pursuant to Articles 148 and 152 that:

a) a bank is exposed to risks or elements of risk that are not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402[34];

b) a bank does not meet the requirements set out in Articles 71 and 78 or the requirements for dealing with large exposures set out in Article 393 of Regulation (EU) No 575/2013 and it is unlikely that other measures would be sufficient to ensure that those requirements can be met within an appropriate timeframe;

c) the valuation corrections made in accordance with Article 105 of Regulation (EU) No 575/2013 for positions or portfolios in the trading book are not sufficient to enable the bank to sell or hedge out its positions in the short term without incurring material losses under normal market conditions;

d) according to the evaluation carried out in accordance with Article 152(4) and (5), non-compliance with the requirements for the use of the approved internal model will likely lead to inadequate own funds requirements;

e) the bank repeatedly fails to establish and maintain an adequate level of additional own funds to cover the guidance in accordance with Article 156(3); or

f) other material institution-specific reasons exist on the basis of which the FMA deems additional own funds requirements pursuant to Article 154(3)(a) to be necessary.

2) Risks or elements of risk as referred to in paragraph 1(a) shall be considered as not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU)

34 Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35)

No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402 only where the amounts, types and distribution of internal capital considered adequate by the FMA, taking into account the review of the assessment carried out by the bank in accordance with Article 78, are higher than the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

3) For the purposes of paragraph 2, the FMA shall assess, taking into account the risk profile of the bank, the risks to which the bank is exposed, including institution-specific risks or elements of such risks that:

a) are explicitly excluded from or not covered by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402;

b) are likely to be underestimated despite compliance with the requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

4) The internal capital considered adequate shall cover all risks or elements of risks identified as material under paragraph 3 that are not or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 or in Chapter 2 of Regulation (EU) 2017/2402.

5) Interest rate risk arising from non-trading book positions may be considered material in particular in the cases referred to in Article 149(5) unless the FMA, in performing the review and evaluation referred to in Article 148, comes to the conclusion that the management by the bank of interest rate risk arising from non-trading book activities is adequate and that the bank is not excessively exposed to interest rate risk arising from non-trading book activities.

6) Risks or elements of risk subject to transitional arrangements or grandfathering provisions under this Act or Regulation (EU) No 575/2013 shall not be deemed risks for purposes of paragraph 3(b).

7) Where additional own funds are required to address the risk of excessive leverage not sufficiently covered by Article 92(1)(d) of Regulation (EU) No 575/2013, the FMA shall determine the level of the additional own funds required under paragraph 1(a) as the difference between the internal capital considered adequate pursuant to paragraph 4 and the own funds requirements set out in Parts Three and Seven of that Regulation.

8) Where additional own funds are required to address risks other than the risk of excessive leverage not sufficiently covered by Article

92(1)(d) of Regulation (EU) No 575/2013, the FMA shall determine the level of the additional own funds required under paragraph 1(a) as the difference between the internal capital considered adequate pursuant to paragraph 4 and the own funds requirements set out in Parts Three and Four of that Regulation and in Chapter 2 of Regulation (EU) 2017/2402.

9) Own funds that banks must hold to cover the risk of excessive leverage on the basis of an additional own funds requirement imposed by the FMA pursuant to Article 154(3)(a) must consist of Tier 1 capital.

10) Own funds that banks must hold on the basis of an additional own funds requirement imposed by the FMA pursuant to Article 154(3)(a) to address risks other than the risk of excessive leverage must consist of at least 75% Tier 1 capital, and the Tier 1 capital must in turn consist of at least 75% Common Equity Tier 1 capital. Taking into account the specific situation of the bank, the FMA may require that a higher portion of the additional own funds requirement consist of Tier 1 capital or Common Equity Tier 1 capital.

11) When meeting an additional own funds requirement imposed pursuant to Article 154(3)(a) to address the risks of excessive leverage, banks shall not use own funds that serve to meet any of the following:

a) the own funds requirement set out in Article 92(1)(d) of Regulation (EU) No 575/2013;
b) the leverage ratio buffer requirement referred to in Article 92(1a) of Regulation (EU) No 575/2013;
c) the guidance on additional own funds referred to in Article 156(3) with respect to risks of excessive leverage.

12) When meeting an additional own funds requirement imposed pursuant to Article 154(3)(a) to address risks other than the risk of excessive leverage, banks shall not use own funds that serve to meet any of the following:

a) the own funds requirement set out in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013;
b) the combined buffer requirement set out in Article 94(2);
c) the guidance on additional own funds referred to in Article 156(3) with respect to risks other than the risk of excessive leverage.

13) The imposition of an additional own funds requirement pursuant to Article 154(3)(a) must be justified and communicated to the bank in writing. The justification shall include an account of the full assessment pursuant to paragraphs 1 to 12 and, additionally, in the case set out in

paragraph 1(e), the reasons for which the imposition of guidance on additional own funds is no longer considered sufficient.

14) The FMA shall inform the resolution authority of the imposition of an additional own funds requirement pursuant to Article 154(3)(a).

Article 156

Guidance on additional own funds

1) Pursuant to the strategies and processes referred to in Article 78, banks shall set their internal capital at an adequate level of own funds that is sufficient to cover all the risks that a bank is exposed to and to ensure that the own funds of the bank can absorb potential losses resulting from stress scenarios, including those identified under the supervisory stress test referred to in Article 151.

2) The FMA shall regularly review the level of the internal capital set by each bank in accordance with paragraph 1 as part of the reviews and evaluations performed in accordance with Articles 148 and 152, including the results of the stress tests referred to in Article 151 and shall determine for each bank the overall level of own funds it considers appropriate.

3) If the amount of internal capital determined in accordance with paragraph 1 does not correspond to the total amount of own funds that the FMA considers appropriate in accordance with paragraph 2, the FMA shall communicate its guidance on additional own funds to banks. Additional own funds within the meaning of the guidance shall be the own funds exceeding the own funds requirements pursuant to Parts Three, Four and Seven of Regulation (EU) No 575/2013, Chapter 2 of Regulation (EU) 2017/2402, Article 154(3)(a) and Article 94(2) of this Act or Article 92(1a) of Regulation (EU) No 575/2013 which are needed to reach the overall level of own funds considered appropriate by the FMA pursuant to paragraph 2.

4) Guidance on additional own funds pursuant to paragraph 3 shall be institution-specific. The guidance shall not include risk aspects that are already covered by an additional own funds requirement imposed pursuant to Article 154(3)(a).

5) Own funds held on the basis of guidance on additional own funds pursuant to paragraph 3 to address risks of excessive leverage shall not be used by banks to meet any of the following:

a) the own funds requirement set out in Article 92(1)(d) of Regulation (EU) No 575/2013;

b) own funds that must be held to meet the additional own funds requirement pursuant to Article 154(3)(a) to address risks of excessive leverage; and

c) the leverage ratio buffer requirement referred to in Article 92(1a) of Regulation (EU) No 575/2013.

6) Own funds held to meet the guidance on additional own funds communicated in accordance with paragraph 3 to address risks other than the risk of excessive leverage shall not be used by banks to meet any of the following:

a) the own funds requirement set out in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013;

b) own funds that must be held to meet the additional own funds requirement pursuant to Article 154(3)(a) to address risks other than the risk of excessive leverage; and

c) the combined buffer requirement set out in Article 94(2).

7) If a bank does not comply with the guidance under this Article but at the same time meets the own funds requirements under Parts Three, Four and Seven of Regulation (EU) No 575/2013 and Chapter 2 of Regulation (EU) 2017/2402, the additional own funds requirement pursuant to Article 154(3)(a) and, depending on which requirement the bank is subject to, the combined buffer requirement set out in Article 94(2) or the leverage ratio buffer requirement set out in Article 92(1a) of Regulation (EU) No 575/2013, neither restrictions on distributions set out in Article 108 or 112 nor the obligation to submit a capital conservation plan pursuant to Article 116 apply.

8) The FMA shall inform the resolution authority of the communication of guidance pursuant to paragraph 3.

Article 157

Specific liquidity requirements

The FMA may set specific liquidity requirements for a bank where necessary to capture liquidity risks to which a bank 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;

b) the regulations, process, and mechanisms set out in Article 63 to 86; and

c) the outcome of the review and evaluation carried out in accordance with Article 148.

Article 158

Specific publication requirements

1) The FMA may require banks:

a) to publish, more than once a year by a deadline fixed by the FMA, the information 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 required 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 22(4) to (6), 71(1), and 88(2) to (3).

3) If a bank fails to comply with its disclosure obligations in cases other than those set out in Article 432 of Regulation (EU) No 575/2013 or fails to do so correctly, completely, or in a timely manner, the FMA may take all measures that are appropriate and necessary to cause proper disclosure to be made.

Article 159

Application of the provisions on the powers of the FMA on a consolidated basis

In exercising its powers under Articles 154 to 158, the FMA shall take into account the provisions on consolidation set out in Articles 6 to 24 of Regulation (EU) No 575/2013.

Article 160

Reports to the EBA

To enable the EBA to assess the consistency of administrative practice in relation to supervisory review and evaluation and the resulting application of powers within the EEA, the FMA shall regularly inform the EBA about:

a) the functioning of the reviews pursuant to Article 148; and

b) the methods by which it incorporates the results of the reviews pursuant to Article 148 into stress tests pursuant to Article 151, the reviews of internal approaches pursuant to Article 152, the exercise of supervisory powers pursuant to Article 154(3), or the imposition of special liquidity requirements pursuant to Article 157.

4. Supervision on a consolidated basis

Article 161

Competence of the FMA as consolidating supervisor

1) The FMA is responsible for supervision on a consolidated basis as the consolidating supervisor in the following cases if the parent undertaking is one of the following undertakings:

a) a parent bank or an EEA parent bank with its registered office in Liechtenstein that is supervised by the FMA on an individual basis;

b) a parent investment firm or an EEA parent investment firm with its registered office in Liechtenstein and at least one of its subsidiaries is a bank that is supervised by the FMA on an individual basis;

c) a parent investment firm or an EEA parent investment firm with its registered office in Liechtenstein and several of its subsidiaries are banks or EEA credit institutions, where the bank with the highest balance sheet total is supervised by the FMA on an individual basis;

d) a parent financial holding company, a parent mixed financial holding company, an EEA parent financial holding company or an EEA parent mixed financial holding company with its registered office in another EEA Member State and at least one of its subsidiaries is a bank that is supervised by the FMA on an individual basis.

2) If a parent undertaking is a parent investment firm or an EEA parent investment firm with its registered office in Liechtenstein and none of its subsidiaries is a bank, the FMA is competent as the consolidating supervisor for supervision on a consolidated basis only if it supervises the parent investment firm or an EEA parent investment firm on an individual basis.

3) Where at least two banks, EEA credit institutions, or investment firms licensed in EEA Member States have as their parent undertaking the same parent financial holding company or 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 if:

a) there is only one bank within the group and the FMA is responsible for supervising the bank on an individual basis;

b) there are several banks or EEA credit institutions within the group and the FMA is responsible for supervising the bank with the highest balance sheet total on an individual basis; or

c) there is no bank or EEA credit institution within the group and the FMA is responsible for supervising the investment firm with the highest balance sheet total on an individual basis.

4) To the extent that consolidation is required pursuant to Article 18(3) or (6) of Regulation (EU) No 575/2013, supervision on a consolidated basis shall be exercised by the FMA if it is responsible for supervising the bank with the largest balance sheet total on an individual basis or, where there is no bank within the group, the investment firm with the largest balance sheet total on an individual basis.

5) If the FMA is responsible for the supervision of several banks within a group on an individual basis, it shall, by way of derogation from paragraph 1(b) and (c), from paragraph 3(b), and from paragraph 4, simultaneously be the consolidating supervisor where the sum of the balance sheet totals of the banks it supervises is higher than that of the EEA credit institutions supervised on an individual basis by another competent authority.

6) If the FMA is responsible for the supervision of several investment firms within a group on an individual basis, it shall, by way of derogation from paragraph 3(c), simultaneously be the consolidating supervisor where it supervises one or more investment firms within the group with the highest balance sheet total in aggregate.

7) 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(a) to (c), 3 and 4 and appoint a different competent authority to exercise supervision on a consolidated basis where the application of the criteria referred to therein would be inappropriate, taking into account the banks or investment firms concerned and the relative importance of their activities in various EEA Member States, or the need to ensure ongoing supervision on a consolidated basis by the same competent authority. The EEA parent bank, the EEA 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, as applicable, shall be granted a hearing before the FMA takes such a decision.

8) The FMA shall notify the EFTA Surveillance Authority and the EBA of any agreement falling within paragraph 7.

Article 162

Tasks of the FMA as the consolidating supervisor

1) As the consolidating supervisor, the FMA has the following tasks:

a) It shall coordinate the gathering and dissemination of relevant or essential information in going-concern and emergency situations.

b) It shall plan and coordinate supervisory activities within the framework of consolidated supervision in going-concern situations, in close cooperation with the competent authorities of other EEA Member States and the EBA.

c) It shall plan and coordinate supervisory activities within the framework of consolidated supervision in preparation for and during emergency situations, including adverse developments in banks or in financial markets, with the competent authorities involved and, if necessary, with ESCB central banks or the Swiss National Bank; its tasks shall include in particular the ordering of exceptional measures in accordance with Article 182(2)(d) and (8)(b), the preparation of joint assessments, the implementation of contingency plans, and communication to the public.

2) The FMA, as consolidating supervisor, shall draw up a list of all financial holding companies and mixed financial holding companies as referred to in Article 11 of Regulation (EU) No 575/2013 for which it is responsible on a consolidated basis. The list shall be communicated to the competent authorities of the other EEA Member States, the EFTA Surveillance Authority, and the EBA.

3) Where the competent authorities of other EEA Member States do not cooperate with the FMA as consolidating supervisor to the extent required, the FMA may request the support of the EFTA Surveillance Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 in cases where only competent authorities of EFTA States are concerned. In cases where both the FMA and competent authorities of Member States of the European Union are concerned, the FMA may request assistance from the EFTA Surveillance Authority and the EBA in accordance with Article 19 of that Regulation.

Article 163

Joint decision

1) 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:

a) on the application of Articles 78 and 148 to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds for the application of Article 154(3)(a) to each entity within the group and on a consolidated basis;

b) on measures to address any significant matters and material findings relating to liquidity supervision, including relating to the adequacy of the organisation and the treatment of risks as required pursuant to this Act and relating to the need for institution-specific liquidity requirements in accordance with Article 157; and

c) on guidance on additional own funds as referred to in Article 156.

2) The joint decision pursuant to paragraph 1 shall be reached:

a) in the case of paragraph 1(a), within four months after submission by the FMA of a report on the risks of the group in accordance with Article 155 to the relevant competent authorities of other EEA Member States;

b) in the case of paragraph 1(b), within four months after submission by the FMA of a report on the liquidity risk profile of the group to the competent authorities of other EEA Member States in accordance with Article 157 and the implementing provisions issued by the Government for the identification, measurement, assessment, management, mitigation, and monitoring of liquidity risk in accordance with Article 79(11); and

c) in the case of paragraph 1(c) within four months after submission by the FMA of a report on the risks of the group in accordance with Article 156 to the relevant competent authorities of other EEA Member States.

3) In the joint decision, the FMA as the consolidating supervisor shall also duly consider the risk assessment performed by the competent authorities of other EEA Member States in accordance with Articles 73, 97, 104a and 104b of Directive 2013/36/EU with respect to the subsidiaries supervised by them.

4) The joint decision referred to in paragraph 1(a) or (b) shall be recorded in writing in a document, containing reasons. The FMA shall forward the joint decision to the EEA parent institution and the competent authorities of other EEA Member States concerned.

5) In the event of disagreement, the FMA as the consolidating supervisor shall at the request of any of the other competent authorities consult:

a) the EFTA Surveillance Authority in cases involving only competent authorities of EFTA States; or

b) the EFTA Surveillance Authority and the EBA in cases involving both the FMA and competent authorities of Member States of the European Union.

6) The FMA as the consolidating supervisor may also consult the EFTA Surveillance Authority and/or the EBA on its own initiative. If the FMA is not a consolidating supervisor, it may request that the competent consolidating supervisor consult the EFTA Surveillance Authority and/or the EBA.

7) If no joint decision is reached within the periods set out in paragraph 2, the FMA as the consolidating supervisor shall decide on its own on application of Articles 78, 148, 154(3)(a), 156 and 157 and the implementing provisions issued by the Government for the identification, measurement, assessment, management, mitigation, and monitoring of liquidity risk in accordance with Article 79(11) on a consolidated basis, but duly taking into account the risk assessment of the subsidiaries carried out by the relevant competent authorities.

8) If the FMA has consulted the EFTA Surveillance Authority and/or the EBA, it shall defer its decision until a decision has been taken by the EFTA Surveillance Authority or the EFTA Surveillance Authority and the EBA. If another competent supervisory authority has consulted the EFTA Surveillance Authority and/or the EBA, the FMA shall defer its decision until a decision has been taken by the EFTA Surveillance Authority or the EFTA Surveillance Authority and the EBA. The FMA as the consolidating supervisor shall take its decision in conformity with the decision of the EFTA Surveillance Authority or the decision of the EFTA Surveillance Authority and the EBA.

9) If the FMA is responsible for supervision of subsidiaries of an EEA parent bank, EEA parent financial holding company, or mixed EEA parent financial holding company on an individual or sub-consolidated basis, and if no joint decision is reached within the time periods referred to in paragraph 2, the FMA shall decide on its own on application of Articles 78, 148, 154(3)(a), 156 and 157 and the implementing provisions issued by the Government for the identification, measurement, assessment, management, mitigation, and monitoring of liquidity risk in accordance with Article 79(11) on an individual or sub-consolidated basis. When making this decision, it shall take into account the views and reservations of the consolidating supervisor. The decisions shall contain reasons and shall take into account the risk assessments, views and reservations expressed during the time periods referred to in paragraph 2. Paragraphs 4 to 6 and 8 shall apply *mutatis mutandis*.

10) Where the FMA has consulted the EFTA Surveillance Authority or the EBA pursuant to paragraphs 5 or 6, it shall consider their advice and explain any significant deviation therefrom.

11) The joint decisions referred to in paragraph 1 and the decisions taken by the competent authorities of other EEA Member States in the absence of a joint decision referred to in paragraph 7 shall be recognised as determinative by the FMA and form the basis for its supervisory activities under this Act or Regulation (EU) No 575/2013.

12) Decisions taken in accordance with paragraphs 1, 7 and 9 shall in principle be updated annually. The FMA shall also update the decision on application of Articles 154(3)(a), 156 and 157 if the authority of another EEA Member State responsible for supervision of a subsidiary of an EEA parent institution, EEA parent financial holding company, or EEA parent mixed financial holding company requests 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 164

Colleges of supervisors

1) The FMA, as consolidating supervisor, shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Articles 162, 163 and 185 and, where applicable, to ensure appropriate coordination and cooperation with the relevant third-country competent authorities.

2) Colleges of supervisors shall provide a framework for the FMA, the EBA, and the other competent authorities concerned to carry out the following tasks:

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 148;

d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Articles 182(6) and 185;

e) uniformly applying the requirements set out in this Act and Regulation No 575/2013 across all entities within the group, subject to the options and discretions available in EEA law;

f) planning and coordinating supervisory activities during the preparation of and in emergency situations referred to in Article 162(1)(c), taking into account the work of other forums that may be established in that area.

3) For the purposes of Articles 162(1), 165(1) and (2), and 185(1), the FMA as the consolidating supervisor shall also establish colleges of supervisors if all cross-border subsidiaries of an EEA parent institution, EEA parent financial holding company, or EEA parent mixed financial holding company have their registered offices in third countries, provided that the competent authorities of these third countries are subject to a duty of secrecy equivalent to that set out in Article 142 and, where applicable, in Article 29 of the Investment Services Act.

4) Cooperation and the exchange of information between the FMA, the competent authorities of other EEA Member States, and the EBA shall be governed by Articles 176 to 185. Articles 12 and 142 shall not preclude the transmission of information pursuant to paragraph 2.

5) After consulting the competent authorities concerned, the FMA shall establish written coordination and cooperation arrangements in accordance with Article 165 on the establishment and functioning of the colleges.

6) The competent authorities responsible for the supervision of financial holding companies or mixed financial holding companies with a licence pursuant to Article 26(1) or (2), subsidiaries of an EEA parent institution, EEA parent financial holding company, or EEA parent mixed financial holding company, and the competent authorities of a host Member State in which significant branches have been established as referred to in Article 52 and, where applicable, ESCB central banks and the competent authorities and central banks of third countries may participate in colleges of supervisors of the FMA, provided that they are subject to a duty of secrecy which, in the opinion of all competent authorities, is equivalent to the provisions under Article 142 and, where applicable, Article 56 of the Investment Firms Act.

7) 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 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.

8) The decisions 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 53.

9) The FMA, subject to the duty of secrecy under Article 142 and, where applicable, Article 56 of the Investment Firms Act, shall inform the EBA in accordance with Article 182(1) of the activities of the college of supervisors, including in emergency situations, and communicate to the EBA all information that is of particular relevance for the purposes of supervisory convergence.

Commented [JH2]: "ihnen" statt "ihr" im Originaltext

10) In the event of a disagreement between the FMA and the competent authorities of other EEA Member States on the functioning of colleges of supervisors, the FMA may request the assistance of the EFTA Surveillance Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 in cases where only competent authorities of EFTA

Member States are concerned. In cases where both the FMA and competent authorities of Member States of the European Union are concerned, the FMA may request assistance from the EFTA Surveillance Authority and the EBA in accordance with Article 19 of that Regulation.

Article 165

Coordination and cooperation 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 of another EEA Member State 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, it may, by bilateral agreement, delegate its responsibility for supervision under Article 28 of Regulation (EU) No 1093/2010 to the competent authority of another EEA Member State which authorised and supervises the parent undertaking so that it may assume responsibility for supervising the subsidiary. The EFTA Surveillance Authority and the EBA shall be informed of the existence and the content of such agreements.

Commented [JH3]: "übernehmen" statt "übernimmt" im Originaltext

4) If the FMA is the consolidating supervisor, but the licensed financial holding company or mixed financial holding company does not have its registered office in Liechtenstein, the FMA shall also conclude coordination and cooperation agreements as referred to in paragraph 1 with the competent authority of the EEA Member State where the parent undertaking has its registered office.

Article 166

Additional powers of the FMA as consolidating supervisor

1) To perform its tasks under this Act and Regulation (EU) No 575/2013 as consolidating supervisor, the FMA may, in addition to the powers under Article 154, in particular:

a) require information from a parent undertaking whose subsidiary is a bank with its registered office in Liechtenstein and which is not

included in supervision on a consolidated basis in one of the cases referred to in Article 19 of Regulation (EU) No 575/2013;

b) require subsidiaries of a bank, financial holding company, or mixed financial holding company that are not included in supervision on a consolidated basis to provide information in accordance with paragraph 2.

2) If a parent undertaking of one or more banks with its registered office in Liechtenstein is a mixed activity holding company, the FMA may request from the mixed activity holding company and all of its subsidiaries any information which would be relevant for the purpose of supervising those subsidiaries. It may either request the information directly from the mixed activity holding company or the subsidiaries and check the information received as part of an on-site inspection or have it check by a recognised audit firm. If the mixed activity holding company or one of its subsidiaries is an insurance undertaking, the procedure set out in Article 184 may also be used. If the mixed activity holding company or one of its subsidiaries has its registered office in another EEA Member State, Article 182(4) shall be applied.

Article 167

Assessment of the equivalence of consolidated supervision by third-country authorities

1) Where a bank, the parent undertaking of which is a third-country bank, a financial holding company, or a mixed financial holding company with its registered office in a third country is not subject to consolidated supervision under Article 161, the FMA shall verify together with the other competent authorities of the other EEA Member States affected by this constellation of undertakings whether the bank 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.

2) The FMA shall carry out the verification at the request of the parent undertaking or of any of the entities supervised in the EEA 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 from other EEA Member States.

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 on a consolidated basis exists, the FMA shall be responsible for supervision on a consolidated basis and shall apply the provisions of this Act and of Regulation (EU) No 575/2013 *mutatis mutandis* to the bank. The FMA may instead apply other appropriate supervisory techniques provided they achieve the objectives of supervision on a consolidated basis of banks. The FMA may in particular require the establishment of a financial holding company or a mixed financial holding company which has its registered office in the EEA, and apply the provisions on consolidated supervision to the consolidated position of that financial holding company or mixed financial holding company.

5) Other supervisory techniques as referred to in paragraph 4 may be applied by competent authorities of other EEA Member States within the framework of consolidated supervision as referred to in paragraph 4 only if the FMA has consented to these techniques after consulting the competent authorities of the EEA involved.

6) The supervisory techniques shall be notified to the relevant competent authorities of other EEA Member States, the EFTA Surveillance Authority, and the EBA.

7) Subject to Articles 186 and 187 of this Act, cooperation with competent authorities of third countries within the framework of consolidated supervision in accordance with this Article shall be governed by Article 26b(3) and (4) of the Financial Market Act.

5. Publication requirements for the FMA

Article 168

Register

1) The FMA shall maintain a publicly available register in which the following shall be entered:

a) banks;

b) branches of EEA credit institutions and EEA financial institutions in Liechtenstein;

c) EEA credit institutions and EEA financial institutions operating in Liechtenstein under the freedom to provide services;

d) financial holding companies and mixed financial holding companies with a licence pursuant to Article 26(1) or (2);

e) the audit firms recognised for the audit of banks, financial holding companies, and mixed financial holding companies with a licence in accordance with a licence pursuant to Article 26(1) or (2); and

f) tied agents with a registered office in another EEA Member State which are used by EEA credit institutions in accordance with Article 45(3) to provide investment services and/or investment activities in Liechtenstein under the freedom to provide services.

2) The FMA shall verify entries under paragraph 1 and update them immediately if necessary.

3) The FMA shall make the register referred to in paragraph 1 available free of charge on its website. In addition, the FMA shall grant anyone access to the register at its physical office location, so long as technically feasible.

4) The Government may provide further details by ordinance.

Article 169

Supervisory disclosure

1) The FMA shall publish the following information on its website:

a) the texts of laws, regulations, administrative rules and general guidance adopted in Liechtenstein in the field of financial services supervision;

b) the manner of exercise of the options and discretions available under Directive 2013/36/EU or Regulation (EU) No 575/2013;

c) the general criteria and methodologies of the review and evaluation pursuant to Article 148, including the criteria for applying the principle of proportionality as referred to in Article 148(2) and (4); and

d) aggregate statistical data on key aspects of the implementation of the prudential framework, including the number and nature of supervisory measures taken in accordance with Article 154(3) and of penalties imposed in accordance with Articles 245 and 246, subject to Articles 142 to 146, 177 to 179, and 188 to 189 of this Act and, where applicable, Article 52(1)(a), (b) and (f), Article 56(1) to (3) and (7), Article 86(3) and (5) to (7), and Article 89(2) and (3)(a) to (f) of the Investment Firms Act.

2) The information referred to in paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the various competent authorities of the EEA Member States. The FMA shall comply with the relevant EEA legal requirements on the common format when publishing data in accordance with paragraph 1. The data published in accordance with paragraph 1 shall be updated regularly.

Article 170

Special disclosure obligations

1) With regard to securitisation positions in accordance with Part Five of Regulation (EU) No 2017/2402, the FMA shall publish:

a) the general criteria and methodologies for the review of compliance with the provisions set out in 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 Articles 142 to 146, 177 to 179, and 188 to 189.

2) If the FMA permits a bank 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:

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 institutions which benefit from the exercise of discretion, with an indication of how many of those institutions 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 parent institutions which benefit 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 institutions, which benefit 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 institutions, which benefit from the exercise of discretion,

represented by own funds which are held in subsidiaries in a third country.

3) If, in accordance with Article 9(1) of Regulation (EU) No 575/2013, the FMA permits a bank to incorporate subsidiaries on an individual basis in its calculation in accordance with Article 6(1) of that Regulation, 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 institutions which benefit from the exercise of discretion, and the number of such parent institutions which 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 of parent institutions which benefit from the exercise of discretion which are held in subsidiaries in third countries;
2. the percentage of total own funds of parent institutions which benefit 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 of parent institutions which benefit from the exercise of discretion represented by own funds which are held in subsidiaries in a third country.

6. Reporting of breaches

Article 171

Reporting system of the FMA

1) The FMA shall have an effective and reliable reporting system at its disposal through which potential or actual breaches of provisions of this Act, the associated ordinances and Regulation (EU) No 575/2013 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 breaches and their follow-up;

b) appropriate protection for employees of banks, financial holding companies, or mixed financial holding companies who report breaches committed within these undertakings, at least against retaliation, discrimination or other types of unfair treatment;

c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with data protection legislation, unless disclosure is required in the context of prosecutorial, judicial, or administrative proceedings; and

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

3) A report by employees of banks, financial holding companies, or mixed financial holding companies to the FMA shall not be considered a breach 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.

7. Supervision taxes and fees

Article 172

Principle

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

C. Court of Justice

Article 173

Criminal jurisdiction

The Court of Justice shall have criminal jurisdiction with respect to the misdemeanours set out in Article 245.

IX. Unlawful business operations

Article 174

Powers of the FMA

1) 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, including copies, from the natural or legal persons concerned as if these persons were subject to this Act. This right also includes the power to inspect books, documents, and IT systems on site, to have extracts thereof produced and to process the necessary data.

2) If a natural or legal person carries out an activity subject to this Act without a licence, the FMA shall take the necessary measures. In particular, the FMA may demand that a lawful state of affairs be restored within a reasonable period of time and order the immediate cessation of the activity and, if necessary, the dissolution of the legal person.

3) If the natural or legal person has complied with the demand to restore a lawful state of affairs pursuant to paragraph 2 and if it is to be expected that in the future the natural or legal persons will permanently comply with the licensing provisions whose non-compliance was decisive for the measures pursuant to paragraph 2, the FMA shall, upon request, repeal the measures taken pursuant to paragraph 2 as soon as possible.

Article 175[35]

Repealed

35 Article 175 repealed by LGBl. 2025 No. 140.

X. Exchange of information and international cooperation

A. Exchange of information and international cooperation within the EEA

1. Cooperation within the European System of Financial Supervision

Article 176

Principle

1) Within the scope of its duties under this Act, the FMA shall cooperate closely with the European Supervisory Authorities and the other parties to the European System of Financial Supervision (ESFS) in accordance with Article 5(5) of the Financial Market Act.

2) For the purposes of paragraph 1, the FMA may, upon request, make all information available to the parties to the ESFS necessary for the exercise of their duties within the ESFS. For these purposes, it may make use of all its powers under Article 154. Confidential information may be passed on only in summary and aggregate form, unless:

a) this Act or Regulation (EU) No 575/2013 provides otherwise; or

b) disclosure of confidential information in a non-summary and non-aggregate form is necessary for the performance of duties within the ESFS.

3) Articles 12 and 142 shall not preclude the transmission of information pursuant to paragraph 2.

2. Exchange of information and cooperation with competent authorities of other EEA Member States, the European Supervisory Authorities, the EFTA Surveillance Authority, the Standing Committee of the EFTA States, and the European Commission

Article 177

Principle

1) The FMA shall cooperate closely with the competent authorities of the other EEA Member States and the EBA in accordance with this Act

within the framework of its supervision of banks, in particular also of their branches pursuant to Articles 40 and 42, financial holding companies and mixed financial holding companies, as well as branches of EEA credit institutions and EEA financial institutions pursuant to Articles 44 and 46.

2) It shall exchange all necessary information with the competent authorities of other EEA Member States and the EBA in accordance with Article 178(1) and Article 179 in order to perform its duties under this Act and Regulation (EU) No 575/2013, subject to the special provisions regarding the exchange of information and cooperation with the competent authorities of other EEA Member States, the EBA, and competent authorities of third countries in accordance with Articles 48 and 180 to 186.

3) For the purposes of cooperation and the exchange of information, the FMA may make use of all its powers under Article 154 and request the necessary information from other domestic authorities. If, in the context of cooperation under this subsection, the FMA receives a request from a competent authority from another EEA Member State to cooperate in monitoring, an on-the-spot check or investigation, it may also comply with this request by:

a) carrying out on-the-spot check or investigations itself;

b) permitting the requesting authority to carry out the on-the-spot check or investigation; or

c) permitting recognised audit firms or experts to carry out the on-the-spot check or investigation.

4) If on-the-spot checks or investigations are not carried out by the FMA itself, FMA employees may accompany the inspectors of the competent authority from another EEA Member State or its mandatees.

5) Articles 12 and 142 shall not preclude the transmission of information to competent authorities of other EEA Member States within the framework of cooperation and the exchange of information in accordance with Articles 178 to 186.

Article 178

Exchange of information

1) The FMA shall transmit to a requesting competent authority of another EEA Member State all information which the latter needs to exercise its duties under Directive 2013/36/EU or Regulation (EU) No 575/2013, provided that:

a) the recipients and the persons employed with and instructed by the competent authorities are subject to a duty of secrecy equivalent to that set out in Article 142;

b) it is guaranteed that the information given will be used only for the purpose of financial market supervision, in particular the supervision of banks, financial holding companies, or mixed financial holding companies; and

c) information that comes from another EEA Member State or third country 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.

2) Applying the conditions set out in paragraph 1 *mutatis mutandis*, the FMA may also transmit information to the following authorities, bodies, and persons in other EEA Member States for the purposes and performance of its duties:

a) authorities or bodies entrusted with the public duty of supervising other financial sector entities and the authorities or bodies responsible for the supervision of financial markets;

b) authorities or bodies charged with responsibility for maintaining the stability of the financial system in EEA Member States through the use of macroprudential rules;

c) authorities or bodies responsible for reorganisations or for protecting the stability of the financial system;

d) contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;

e) authorities or bodies involved in liquidation and bankruptcy proceedings or similar proceedings relating to EEA credit institutions;

f) persons performing the statutory audit of the annual financial statements of EEA credit institutions, insurance undertakings, and EEA financial institutions;

g) financial intelligence units in accordance with Article 32 of Directive (EU) 2015/849 and competent authorities responsible for supervising compliance with that Directive;

h) competent authorities or bodies responsible for the application of rules on structural separation within a banking group;

i) deposit guarantee schemes within the meaning of Directive 2014/49/EU or investor compensation schemes within the meaning of Directive 97/9/EC[36];

k) the European Central Bank, other central banks of the European System of Central Banks, and other bodies with a similar function in their capacity as monetary authorities for the purpose of the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems and the safeguarding of stability of the financial system;

l) where appropriate, other public authorities responsible for overseeing payment systems.

3) Applying the conditions set out in paragraph 1 *mutatis mutandis*, the FMA may also transmit information to the authorities of other EEA Member States that are responsible for the supervision of the bodies, authorities, and persons referred to in paragraph 2(d) to (f).

4) The FMA shall inform the EBA which authorities, bodies, and persons may receive information in accordance with paragraphs 2 and 3.

5) The FMA may request the competent authorities and bodies of other EEA Member States to provide it with any information necessary for the performance of its duties under this Act and Regulation (EU) No 575/2013. It may forward the information received to the Court of Justice, the Office of the Prosecutor, and the Financial Intelligence Unit. The FMA must without delay notify the authority that transmitted the information. Except in duly justified cases, it may forward this information to other bodies or natural or legal persons only if it complies *mutatis mutandis* with paragraph 1(c).

6) In emergency situations as referred to in Article 185, the FMA may forward information to the Standing Committee of the EFTA States, the ESRB, and the central banks referred to in paragraph 2(k) if this information is necessary for the performance of their respective statutory duties.

7) The FMA shall cooperate with the Standing Committee of the EFTA States, the EFTA Surveillance Authority, and the European Commission within the scope of its duties under this Act. For the purpose, it shall provide the Standing Committee of the EFTA States, the EFTA Surveillance Authority, and the European Commission with all information necessary for the purposes and performance of its duties under this Act, Directive

36 Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22)

2013/36/EU, Regulation (EU) No 575/2013, or other EEA legislation applicable to banks. The conditions set out in paragraph 1 shall not apply to the exchange of information under this paragraph.

Article 179

Refusal of cooperation

1) The FMA may refuse to act on a request for cooperation or to exchange information as provided for in Article 178 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;

c) doing so would violate the sovereignty, security, public order, or other substantial national interests of Liechtenstein

2) In the case of such a refusal, the FMA shall notify the requesting competent authority accordingly, indicating the reason for the refusal.

Article 180

Exchange of information and cooperation in connection with branches

1) Where banks operate through a branch in other EEA Member States within the scope of Article 40 or 42, the FMA, as the competent authority of the home Member State, shall without delay transmit to the competent authorities of the host Member States all information pertaining to liquidity supervision in accordance with Part Six of Regulation (EU) No 575/2013 and all information in connection with Articles 135, 139, 140, 142, 147, 154, 161 to 167, 182 to 185 and 246 with respect to the activities performed the branch, where such information serves to protect depositors and investors in the host Member States.

2) The FMA, as the competent authority of the home Member State, shall inform the competent authorities of all host Member States immediately where liquidity stress occurs or likely will occur. In such cases, the FMA shall provide detailed information about the planning and implementation of a recovery plan and about any prudential supervision measures taken in this regard.

3) The FMA, as the competent authority of the home Member State, shall inform the competent authorities of the host Member States how information and findings provided by the latter pursuant to Article 50 of Directive 2013/36/EU have been taken into account. Upon request, the

FMA shall provide the competent authorities of the host Member States with explanations to that effect.

4) If the FMA, as the competent authority of the home Member State, rejects the measures taken against a branch of a bank by the competent authorities of the host Member States in accordance with Article 50 of Directive 2013/36/EU, it may refer the matter to the EFTA Surveillance Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 in cases where only competent authorities of EFTA States are concerned. In cases involving both the FMA and competent authorities of Member States of the European Union, the FMA shall refer the matter to the EFTA Surveillance Authority and the EBA in accordance with Article 19 of that Regulation.

5) The FMA, as the competent authority of the host Member State, may request the competent authority of the home Member State to provide information on how the information provided in accordance with paragraphs 1 and 2 has been taken into account and what measures have been taken on this basis, and may also request additional explanations. If, in the opinion of the FMA, the measures taken by the competent authorities of the home Member States are not sufficient, the FMA may, after informing the competent authorities of the home Member States and the EBA, itself take all measures in accordance with Article 154 to protect the interests of depositors, investors, or other service recipients in Liechtenstein or to ensure the stability of the financial system.

6) The FMA may refer to the EBA and/or EFTA Surveillance Authority situations where a request for collaboration, in particular to exchange information, has been refused or rejected or has not been acted upon within a reasonable time.

Article 181

Exchange of information and cooperation in connection with third-country groups

If a Liechtenstein bank is part of the same third-country group as a branch of a third-country bank, and if that branch is supervised by the competent authority of another EEA Member State, the FMA shall cooperate closely with that authority and shall transmit to that authority all necessary information to ensure that all activities of that third-country group are subject to comprehensive supervision under this Act and Regulation (EU) No 575/2013, to prevent the requirements applicable to third-country groups from being circumvented and to prevent any detrimental impact on the financial stability of the EEA.

3. Exchange of information and cooperation with competent authorities of other EEA Member States and the EBA in the context of consolidated supervision

Article 182

Principle

1) In the context of supervision on a consolidated basis, the FMA shall cooperate closely with the competent authorities of other EEA Member States and the EBA in accordance with this Act. The FMA shall transmit upon request all relevant information and shall communicate at its own initiative all essential information that is necessary for the performance of the duties assigned to the involved competent authorities of other EEA Member States and the EBA by Directive 2013/36/EU and Regulation (EU) No 575/2013, in particular all information on:

a) persons with close links to a bank as referred to in Article 22(4);

b) all information on compliance with the requirements set out in Article 71(1) and Article 88(2) and (3) on a consolidated basis regarding the legal and organisational structure of the group and its governance.

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, EEA credit institution, or EEA financial institution in another EEA Member State. Essential information shall include, in particular, the following items:

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 22(2) to (4), Article 71(1) and Article 88(2) and (3) and of the competent authorities of the regulated entities in the group;

b) procedures for the collection of information from the banks in a group, and the verification of that information;

c) adverse developments in banks or in other entities of a group, which could seriously affect the banks; 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 154(3)(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.

3) For the purposes of cooperation and exchange of information under this Article and Articles 183 to 185, the FMA may make use of all its powers under Article 154. The FMA may, as consolidating supervisor or at the request of the competent authorities of other EEA Member States responsible for supervision on a consolidated basis, request all necessary information from other domestic authorities.

4) The FMA may request a competent authority of another EEA Member State to check information on a bank, a financial holding company, a mixed financial holding company, an EEA credit institution, an EEA financial institution, an ancillary services undertaking, a mixed financial holding company, a subsidiary under Article 184 or a subsidiary under Article 183(1)(b) with its registered office in another EEA Member State. If the FMA is requested by a competent authority of another EEA Member State to check such information within the framework of consolidated supervision, it shall comply with this request in accordance with Article 177(3).

5) In particular, the FMA shall, provided it is responsible for consolidated supervision of EEA parent institutions or banks 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.

6) The FMA may refer any of the following situations to the EFTA Surveillance Authority if only competent authorities of EFTA States are concerned, or to the EFTA Surveillance Authority and the EBA if both the FMA and competent authorities of Member States of the European Union are concerned:

a) where another competent authority has not communicated essential information; or

b) where a request for cooperation, in particular to exchange relevant information, has been refused or rejected or has not been acted upon within a reasonable time.

7) Where the FMA is responsible for supervision of a bank controlled by an EEA parent institution, it shall whenever possible contact the competent authority responsible for supervision on a consolidated basis when it needs information regarding the application of approaches and

methodologies under this Act or Regulation (EU) No 575/2013 that may be available to that competent authority.

8) 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:

a) changes in the shareholder, organisational, or management structure of the banks in a group, which require the licensing or approval of the FMA; and

b) significant penalties or exceptional measures, especially the imposition of a specific own funds requirement under Article 154(3)(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.

9) For the purposes of paragraph 8(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 decision. In this case, the FMA shall, without delay, inform the other competent authorities after taking its decision.

10) The FMA shall collaborate closely with the competent authorities of other EEA Member States, financial intelligence units, and authorities of other EEA Member States entrusted with the public duty of supervising the obliged entities referred to in points 1 and 2 of Article 2(1) of Directive (EU) 2015/849 for compliance with that Directive, within their respective competences. The FMA shall provide them with information relevant for their respective tasks, provided that such cooperation and information exchange do not impinge on any ongoing criminal or administrative inquiry, investigation, or proceedings in which either the FMA or the competent authority of another EEA Member State, the financial intelligence unit, or the authority of another EEA Member State entrusted with the public duty of supervising the obliged entities referred to in points 1 and 2 of Article 2(1) of that Directive is involved.

Article 183

Exchange of information and cooperation in connection with financial holding companies, mixed financial holding companies, mixed holding companies and other group companies

1) In the context of cooperation and exchange of information pursuant to Article 182, the FMA may provide the competent authorities of other EEA Member States involved and the EBA with all relevant information relating to the following group companies:

a) undertakings as well as mixed holding companies and their subsidiaries that are included in the supervision on a consolidated basis; and

b) subsidiaries of a bank, financial holding company, or mixed financial holding company that are not included in the supervision on a consolidated basis.

2) Where a parent undertaking and any of its subsidiaries that are banks 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.

3) 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.

Article 184

Exchange of information and cooperation in connection with group companies that are insurance undertakings or provide investment services

1) Where a bank, financial holding company, mixed financial holding company, or mixed-activity holding company supervises one or more subsidiaries that are insurance undertakings or undertakings that provide investment services and/or perform investment activities subject to authorisation, the FMA shall cooperate closely with the competent authorities from other EEA Member States that are responsible for the supervision of these undertakings. The FMA shall transmit all information that these competent authorities require to perform their duties under Directive 2013/36/EU or Regulation (EU) No 575/2013 or that is

necessary to enable the supervision of the activities and financial situation of all group companies.

2) Where the FMA as the consolidating supervisor of a group with a parent mixed financial holding company is different from the coordinator within the meaning of the Financial Conglomerates Act, the FMA and the coordinator shall cooperate for the purpose of applying this Act and Regulation (EU) No 575/2013 on a consolidated basis. In order to facilitate and establish effective cooperation, the FMA and the coordinator shall have written coordination and cooperation arrangements in place.

Article 185

Exchange of information and cooperation in emergency situations

1) Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in financial markets, which potentially jeopardises the market liquidity and the stability of the financial system in an EEA Member State where entities of a group have been licensed or where significant branches as referred to in Article 52 are established, the FMA shall, where it is responsible for supervision on a consolidated basis pursuant to Article 161, inform, as soon as practicable, the EBA, the competent authorities of other EEA Member States involved, the authorities and bodies referred to in Article 178(6), and the Swiss National Bank, if this information is relevant for the performance of their respective statutory duties, and shall communicate all information essential for the performance of their duties. The FMA shall use existing information channels as far as possible.

2) If the FMA requires information in emergency situations as referred to in paragraph 1 that is already available to one of the competent authorities of another EEA Member State referred to in Article 182(1), it shall contact this competent authority.

3) If a significant branch of a Liechtenstein bank is situated in another EEA Member State, the FMA, as the competent authority of the home Member State, shall immediately inform the authorities and branches pursuant to Article 178(6) and the Swiss National Bank in the event of an emergency situation as referred to in paragraph 1 and provide them with all information necessary for the performance of their duties. Paragraph 1 shall apply *mutatis mutandis*.

B. Exchange of information and international cooperation with third countries

Article 186

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

1) Within the scope of its duties, the FMA shall cooperate closely with the competent authorities and bodies of a third country in supervisory activities, on-the-spot checks, investigations, or the transmission of information, as well as with the central banks of third countries in their capacity as monetary authorities, applying Articles 48, 177(3), 178 and 179 *mutatis mutandis*. For the purposes of cooperation and the exchange of information, the FMA may make use of all its powers under Article 154 and request the necessary information from other domestic authorities.

2) Articles 12 and 142 shall not preclude the transmission of information to authorities and bodies in accordance with paragraph 1.

3) Subject to paragraph 1 and Article 187, cooperation with the competent authorities of a third country is otherwise governed by Article 26(b)(3) and (4) of the Financial Market Act *mutatis mutandis*.

Article 187

Cooperation agreements

1) For the purposes of cooperation and exchange of information in accordance with Article 186, the FMA may conclude cooperation agreements with the competent authorities, bodies, and central banks of third countries under the following conditions:

a) The competent authorities, bodies, or central banks are subject to a duty of secrecy at least equivalent to that set out in Article 142.

b) 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 as referred to in paragraph 1 with third country authorities, bodies, or central banks of third countries responsible for:

a) the supervision of banks, insurance undertakings, investment firms, UCITS management companies, AIFMs, or financial markets;

b) the liquidation and bankruptcy of banks and other similar procedures;

c) the carrying out of statutory audits of the accounts of banks, insurance undertakings, or investment firms, in the performance of their supervisory functions, or the management of compensation schemes in the performance of their functions;

d) oversight of the bodies involved in the liquidation and bankruptcy of banks and other similar procedures;

e) oversight of persons charged with carrying out statutory audits of the accounts of banks, insurance undertakings, or investment firms; or

f) in their capacity as monetary authorities for the implementation of monetary policy and the related provision of liquidity, the monitoring of payment, clearing, and settlement systems and the maintenance of the stability of the financial system.

C. Exchange of information with international organisations

Article 188

Principle

1) The FMA may, under the conditions set out in paragraphs 2 and 3, transmit or share information with the following international organisations or bodies:

a) the International Monetary Fund and the World Bank, for the purposes of assessments for the Financial Sector Assessment Program;

b) the Bank for International Settlements, for the purposes of quantitative impact studies; and

c) the Financial Stability Board, for the purposes of its surveillance function.

2) The FMA may share confidential information with international organisations or bodies as referred to in paragraph 1 only if:

a) the relevant body has made an explicit request;

b) the request is for the purpose of performing specific tasks by the requesting body in accordance with its statutory mandate and is sufficiently justified;

c) the request is sufficiently precise as to the nature, scope, and format of the required information, and the means of its disclosure or transmission;

d) the requested information is strictly necessary for the performance of the specific tasks of the requesting body and does not go beyond the statutory tasks conferred on the requesting body;

e) the information is transmitted or disclosed exclusively to the persons directly involved in the performance of the specific task; and

f) the employed and mandated persons who have access to the information are subject to official secrecy equivalent to that under Article 142.

3) Only aggregated or anonymised information may be transmitted to a requesting international organisation or body as referred to in paragraph 1. Personal data may be transmitted only if:

a) the conditions set out in paragraph 2 are met;

b) the disclosure of personal data takes place at the premises of the FMA; and

c) the requesting international organisation or body complies with the requirements of Regulation (EU) 2016/679 when processing personal data.

4) Articles 12 and 142 shall not preclude the transmission of information to authorities and bodies as referred to in paragraph 1.

XI. Recovery and liquidation

A. Moratorium

Article 189

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.

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.

4) The Government may provide further details regarding the granting of a moratorium and the applicable procedure by ordinance.

Article 190

Approval of the moratorium

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.

2) The moratorium shall be publicly announced by edict.

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.

Article 191

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 recognised audit firm may be designated as interim commissioner.

Article 192

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 193

Responsibilities of the commissioner

Upon being appointed, the commissioner shall without delay determine the financial situation of the bank together with the recognised audit firm, report on the financial situation to the Court of Justice and the bank, and take the measures necessary to maintain operations.

Article 194

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 195

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 196

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.

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 197

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 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 198

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 199

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 200

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

Article 201

Applicable law and opening of bankruptcy proceedings

1) Unless otherwise ordered, the provisions of the Insolvency Act shall apply to bankruptcy proceedings in respect of the assets of banks. Recovery proceedings may not be opened in respect of the assets of a bank. No recovery plan application shall take place in the bankruptcy of a bank.

2) Articles 201 to 211 shall be applied not only to banks, 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 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 respect of the assets of a bank, irrespective of whether the bank 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;

   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.

5) The FMA shall have standing as a party in bankruptcy proceedings concerning the assets of banks.

6) Bankruptcy proceedings under this Section may also be opened in respect of the assets of undertakings that are provide banking activities without a licence from the FMA.

Article 202

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 insolvency 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 publication in the Official Journal.

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 Insolvency 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

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. At the request of the Court of Justice, the Office of Justice must enter the bank liquidators and their signing authority in the Commercial Register.

8) To the extent not otherwise provided in this Act, the provisions set out in Article 4 of the Insolvency Act governing insolvency administrators shall apply to the bank liquidators *mutatis mutandis*.

Article 203

Prohibition of termination

1) After bankruptcy proceedings have been opened, any continuing obligations with a bank 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 204

Class of the deposits in the bankruptcy hierarchy

1) In bankruptcy proceedings, the following claims have the same rank, which is higher than the rank of claims of unsecured creditors:

a) the part of eligible deposits of natural persons, microenterprises, and small and medium-sized enterprises that exceeds the maximum amount for covered deposits under the Deposit Guarantee and Investor Compensation Act;
b) deposits that would be considered eligible deposits of natural persons, microenterprises, and small and medium-sized enterprises if they were not attributable to branches of banks situated in the EEA which are located outside the EEA.

2) In bankruptcy proceedings, the following claims have the same rank, which is higher than the rank referred to in paragraph 1:

a) deposits covered under the Deposit Guarantee and Investor Compensation Act;
b) deposit guarantee schemes that, in a compensation case, assume the rights and duties of covered investors as referred to in Article 15 of the Deposit Guarantee and Investor Compensation Act.

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 the class referred to in paragraph 1 up to an amount of 100 000 Swiss francs, independently of the other deposits of the individual client.

Article 205

Ranking of unsecured claims resulting from debt instruments in the bankruptcy hierarchy

1) In the case of undertakings referred to in Article 2(1)(a) to (d) of the Recovery and Resolution Act, unsecured claims from debt instruments have a higher rank than claims from instruments referred to in Article 65(1)(a) to (d) of the Recovery and Resolution Act, but a lower rank than ordinary unsecured insolvency claims, to the extent that:

a) the original contractual maturity of the debt instruments is of at least one year;

b) the debt instruments contain no embedded derivatives and are not derivatives themselves;

c) the relevant contractual documentation and, where applicable, the prospectus related to the issuance of the debt instruments explicitly refer to the lower ranking under this paragraph.

2) For the purposes of paragraph 1(b), debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features.

3) For the purposes of this Article, "debt instruments" mean bonds and other forms of transferrable debt and instruments creating or acknowledging a debt.

4) The provisions on bankruptcy proceedings in the version in force on 31 December 2016 shall apply to the ranking of unsecured claims resulting from debt securities issued by the undertakings referred to in Article 2(1)(a) to (d) of the Recovery and Resolution Act prior to the entry into force of the legislative amendment of 6 September 2018.

Article 206

Payout in advance of privileged deposits

1) Privileged deposits referred to in Article 204 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.

Article 207

Segregation of financial instruments and shortfall

1) Financial instruments owned by a client and which the bank 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, but rather shall be segregated for the benefit of the client, subject to any claims of the bank against the client. The same shall apply to financial instruments which the bank holds for the account of a client on a fiduciary basis.

2) Insofar as the bank in bankruptcy proceedings is itself a depositor at a third party, it shall be assumed that the deposits belong to the bank'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 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; that claim shall be considered a registered bankruptcy claim.

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 against clients that conflict with segregation.

Article 208

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 claims, the bank liquidator shall obtain a declaration by the bank. 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 209

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 announce in the Official Journal 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 210

Action for review

1) Creditors whose claims have been established may, within 20 days after disclosure of the registration list in the Official Journal, 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 Insolvency 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 Insolvency Act.

2) Articles 67 to 69 of the Insolvency Act shall apply *mutatis mutandis*.

Article 211

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 Insolvency Act shall apply *mutatis mutandis* to realisation by judicial decision.

C. Special provisions on debt restructuring proceedings

Article 212

Applicable law

1) To the extent not otherwise provided in this Section or in the implementing provisions issued by the Government as referred to in paragraph 4, the provisions of the Debt Restructuring Agreement Act shall apply to the debt restructuring proceedings in respect of the assets of banks.

2) Recovery proceedings under the Insolvency Act may not be opened.

3) In bankruptcy proceedings in respect of the assets of a bank, no recovery plan application shall take place.

4) The Government may provide further details regarding the debt restructuring proceedings by ordinance.

Article 213

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.

2) The recognised audit firm may be designated as interim bankruptcy administrator. If a commissioner has already been appointed, the commissioner shall become the interim bankruptcy administrator.

Article 214

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 215

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 216

Debt restructuring agreement

1) The creditors shall be called upon in the Official Journal 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.

3) Claims secured by collateral may be subject to a moratorium as appropriate in the debt restructuring agreement.

4) Article 203 on prohibition of termination shall apply *mutatis mutandis*.

D. Liquidation

Article 217

Transfer of client assets to a different bank or investment firm

In the event of the liquidation of a bank, the FMA may order that the client assets and financial instruments held by that bank shall be transferred to a different domestic bank or investment firm.

XII. Cross-border bankruptcy proceedings

A. General provisions

Article 218

Scope of application

1) Articles 219 to 242 shall apply to banks and their branches in other EEA Member States.

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 219 to 242 shall also apply to the financial institutions, firms, and parent undertakings falling within the scope of that Act.

Article 219

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 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 220

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. 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 in the Official Journal 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 has a branch or provides cross-border services, in the official language or the official 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 225 shall apply to the filing of claims.

Article 221

Activities abroad

1) Upon request of the administrator, the appointment certificate shall be issued to the administrator in one or more languages of the EEA Member States.

2) The administrator may appoint persons who support the administrator's activities abroad.

B. Bankruptcy proceedings

Article 222

Bankruptcy estate

The bankruptcy proceedings shall also extend to the immoveable property of the bank located in other EEA Member States.

Article 223

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 Insolvency 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 224

Payments after opening of liquidation proceedings

1) A person making payments to a bank in respect of whose assets liquidation 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 liquidation proceedings.

2) If the payment is made prior to publication under Article 220, it shall be assumed until proven otherwise that the payor did not know of the opening of liquidation 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 225

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 *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 proceedings

Article 226

Principle

The decision of an EEA Member State on recovery measures and the opening of proceedings for the liquidation of a bank shall be recognised in Liechtenstein irrespective of the conditions contained in Article 5(3) of the Insolvency 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 if such a recovery measure is not provided for in Liechtenstein.

Article 227

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.

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 12) 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 Article 142.

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 228

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 Insolvency 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.

D. Branches

Article 229

Provision of information

1) If the FMA believes that the execution of one or several reorganisation measures is necessary for banks 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 230

Third-country banks

1) If a third-country bank 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 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.

2) Where possible, the competent administrative and judicial authorities and liquidators shall coordinate their actions.

E. Applicable law

Article 231

Principle

1) Unless otherwise provided in Articles 232 to 242, 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.

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 after the opening of proceedings;

b) the respective powers of the bank and the administrator or the liquidator;

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 242;

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;

m) the rules relating to the voidness, voidability, or unenforceability of legal acts detrimental to all the creditors.

Article 232

Effects on certain contracts and rights

The effects of a moratorium, debt restructuring moratorium, bankruptcy, resolution tools, and exercise of resolution powers on:

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 immoveable object is situated;

c) rights of the bank 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.

Article 233

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 which are situated within the territory of another EEA Member State at the time of the opening of such proceedings.

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;

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 231(2)(m).

Article 234

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.

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.

3) Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability, or unenforceability laid down in Article 231(2)(m).

Article 235

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, where such a set-off is permitted by the law applicable to the bank's claim.

2) Paragraph 1 shall not preclude the actions for voidness, voidability, or unenforceability laid down in Article 231(2)(m).

Article 236

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 237

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 238

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.

Article 239

Regulated markets

1) Without prejudice to Article 236, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions.

2) Paragraph 1 shall not preclude the actions for voidness, voidability, or unenforceability laid down in Article 231(2)(m).

Article 240

Challenges

Article 231 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 the case referred to in paragraph 1.

Article 241

Protection of third-party purchasers

Where, by an act concluded after the opening of proceedings, the bank disposes, for consideration, of an immoveable object, a ship or an aircraft subject to registration in a public register, or financial instruments, the validity of that act shall be governed by the law of the State in which the immoveable object is situated or under the authority of which the register, account, or deposit system is kept.

Article 242

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.

XIII. Legal protection

Article 243

Legal remedies and procedure

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

2) If no decision is made within six months on a complete application for a licence as a bank, a complaint may be lodged with the FMA Complaints Commission.

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

4) Unless otherwise provided for in this Act, the provisions of the National Administration Act and the Administrative Criminal Law Act shall apply to the procedure.[37]

37 Article 148(1) amended by LGBl. 2025 No. 123.

Article 244

Conciliation board

1) As the extrajudicial conciliation board pursuant to Article 4(1)(c) of the Alternative Dispute Resolution Act, the financial services conciliation board is responsible for the extrajudicial settlement of disputes between clients and banks concerning the banking services provided.

2) The responsibility of the conciliation board shall be to mediate as appropriate in disputes between clients and banks and in that way to achieve a settlement between the parties.

3) The conciliation board shall also receive and deal with complaints by organisations that are dedicated nationally and in accordance with their articles of association to the protection of consumers or other topics relating to banking services.

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

5) The Alternative Dispute Resolution Act shall apply *mutatis mutandis*.

6) The Government may provide further details by ordinance.

XIV. Penal provisions

Article 245

Misdemeanours

1) The Court of Justice shall punish with a custodial sentence of up to three years for committing a misdemeanour anyone who:

a) in violation of Article 7, provides or offers to provide banking activities on a professional basis without a licence;

b) in violation of Article 8(1), advertises the provision of banking activities without a licence;

c) in violation of Article 10, operates a domiciliary bank;

d) provides or offers to provide an activity as referred to in Article 17(1) without a licence as referred to in Article 16, even though the thresholds as referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 have been reached;

e) as a member of a governing body, employee, or otherwise as a person working for a bank, financial holding company, mixed financial holding company, or recognised audit firm, as a resolution administrator, observer, or special representative violates the obligation of confidentiality, or anyone who induces or tries to induce someone else to do so.

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) operates as a recognised audit firm without recognition pursuant to Article 124;

b) fails to keep account books properly or fails to retain account books and receipts.

3) The responsibility of legal persons for misdemeanours set out in paragraph 1 or 2 shall be governed by §§ 74a et seq. of the Criminal Code.

4) 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.

5) If the offences are committed negligently, the maximum penalties set out in paragraphs 1 and 2 shall be reduced by half.

Article 246

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 paragraphs 2 and 3 for committing a contravention anyone who:

1. in violation of Article 8(2) or (3), fails to comply with the publicity requirements;
2. in violation of Article 9(1), uses designations that suggest an activity as a bank;
3. in violation of Article 9(2), uses misleading names in its business name that give rise to false assumptions concerning the scope of its business activities;
4. in violation of Article 11, accepts deposits or other repayable funds as referred to in Article 6(1)(a) or provides investment services and/or performs investment activities as referred to in Art 6(2)(a) without belonging to a protection scheme;

5. obtained a licence surreptitiously by providing false information or in any other unlawful way;
6. in violation of Article 20(1), uses misleading designations in a business name;
7. in violation of Article 23(5), fails to ensure ongoing compliance with the articles of association and regulations;
8. violates the conditions attached to a licence as referred to in Article 25(2) or Article 28(2);
9. in violation of Article 26(1) or (2), operates as a financial holding company or mixed financial holding company without a licence and is not exempted by the FMA pursuant to Article 26(3);
10. fails to submit the information referred to in Article 29(1) to the FMA as the consolidating supervisor or fails to do so in a timely manner or makes incomplete or false statements;
11. in violation of Article 40(5) or Article 42(6), fails to notify the FMA in writing of any change in the content of the information referred to in Article 40(1)(b) to (d) or Article 42(1)(b) to (d) at least one month before making the change;
12. in violation of Article 44(4) or Article 46(3), establishes a branch in Liechtenstein and commences business operations before receiving the communication from the FMA or before the deadline expires;
13. violates the provisions applicable to branches of EEA credit institutions or EEA financial institutions under Article 44(6) or Article 46(5);
14. in violation of Article 45(2) or Article 47(2), operates under the freedom to provide services in Liechtenstein before the FMA receives the notification under Article 45 or 47;
15. in violation of Article 56(2), has permitted one or more persons who do not fulfil the requirements under Article 63 to become or remain a branch or representative office manager of a bank in a third country;
16. as a representative office manager, fails to make the notifications under Article 54 or 57 or fails to do so in a timely manner or makes incomplete or false statements;
17. in violation of Article 58(1) or (2), fails to notify the FMA in writing of the proposed direct or indirect acquisition, the proposed direct or indirect increase, the proposed direct or indirect disposal, or the proposed direct or indirect reduction of qualifying holdings in a bank;
18. in violation of Article 58(6), fails to notify the FMA without delay despite being aware that the thresholds pursuant to Article 58(1) have

been exceeded or fallen below due to an increase or decrease in a capital participation;

19. in violation of Article 59(2), during the assessment period or, in violation of Article 62, despite the opposition of the FMA, carries out the direct or indirect acquisition of a qualifying holding in a bank or the direct or indirect increase of a qualifying holding in a bank if, as a result of the increase, the thresholds referred to in Article 58(1) would be reached or crossed in either direction or the bank would become a subsidiary;
20. permitted one or more persons who do not meet the requirements set out in Article 63 to become or remain a member of senior management, a member of the board of directors, the head of the internal audit department, or a key function holder;
21. permitted that the members of the board of directors or senior management do not collectively meet the requirements set out in Article 63(7) or that the requirement for the prescribed number of independent members on the board of directors as set out in Article 63(10) is not met;
22. fails to meet the organisational requirements under this Act, in particular under Article 65(1) and (2), Articles 66 to 70, 73 to 76 and 137;
23. in violation of Article 65(3), permitted a person to take up a position as chair or deputy chair of the board of directors within the same bank in which they previously served as a member of the senior management before the expiry of a period of one year after the end of their function as a member of the senior management;
24. fails to meet the requirements for robust governance arrangements in accordance with Article 71;
25. fails to comply with the publication requirements concerning governance arrangements in accordance with Article 77 or fails to do so in a timely manner or provides incomplete or false information;
26. in violation of Article 78(2), fails to regularly review the strategies, methods, and processes referred to in Article 78(1);
27. fails to meet the risk management requirements set out in Article 79 or 139;
28. fails to meet the requirements for remuneration policy and practice set out in Articles 82 to 84;
29. fails to comply with the publication requirements concerning remuneration in accordance with Article 85 or fails to do so in a timely manner or provides incomplete or false information;

30. in violation of Article 89(3), fails as the central body of a banking network to ensure compliance with the provisions of this Act and of Regulation (EU) No 575/2013 by the banking network;
31. fails to obtain the necessary approvals from the FMA pursuant to Article 90(1) or fails to obtain them in a timely manner;
32. fails to make the notifications or reports as referred to in Article 92 or fails to do so in a timely manner or makes incomplete or false statements;
33. fails to periodically report financial information in accordance with Article 93 or fails to do so in a timely manner or makes incomplete or false statements;
34. in violation of Article 108 or 112, makes distributions or payments to holders of instruments that form part of the own funds of the bank, or when such payments to holders of own funds instruments are impermissible under Articles 28, 52 or 63 of Regulation (EU) No 575/2013;
35. in violation of Article 119, fails to prepare the business report, the consolidated business report, the interim financial statement, or the consolidated interim financial statement as required or, in violation of Article 120, fails to publish the business report, the consolidated business report, the interim financial statement, or the consolidated interim financial statement or fails to submit them to the FMA in a timely manner;
36. fails to meet the requirements for legal reserves in accordance with Article 121;
37. in violation of Article 122(9), reduces the share capital below the initial capital;
38. in violation of Article 123(1), Article 130(1) or Article 136, fails to have the ordinary audit or an extraordinary audit ordered by the FMA pursuant to Article 154(2)(f) carried out;
39. provides false information to the FMA or the recognised audit firm;
40. as a recognized audit firm or as the responsible auditor, breaches duties under this Act, in particular under Articles 124 and 127 to 129, or makes untrue statements or conceals material facts in the regulatory audit report;
41. as a recognised audit firm, fails to submit the reports and notifications required under Article 131(1) to (4);
42. permitted one or more persons who do not meet the requirements set out in Article 135(1) to become or remain members of the senior

management of a financial holding company or a mixed financial holding company;

43. in violation of Article 135(1), permitted that the members of the senior management of a financial holding company or a mixed financial holding company do not collectively meet the requirements set out in Article 63(7);
44. in violation of Article 138(1) and (2), as a parent institution or EEA parent institution, as a parent financial holding company or EEA parent financial holding company, or as a parent mixed financial holding company or EEA parent mixed financial holding company with a licence pursuant to Article 26(1) or (2) fails to ensure compliance with the prudential requirements set out in Part Three, Four, Six or Seven of Regulation (EU) No 575/2013 and under Articles 154(3)(a), 155 and 157 of this Act;
45. fails to comply with a demand to restore a lawful state of affairs as referred to in Article 154 or any other decree or order by the FMA;
46. fails to meet the additional own funds requirements prescribed by the FMA pursuant to Article 154(3)(a);
47. fails to meet the specific liquidity requirements prescribed by the FMA pursuant to Article 157;
48. fails to meet the specific publications requirements prescribed by the FMA pursuant to Article 158 or fails to do so in a timely manner or makes incomplete or false statements;
49. breaches Regulation (EU) No 575/2013 by:
    a) in violation of Article 28(1)(f), reduces or repays the principal amount of Common Equity Tier 1 instruments;
    b) in violation of Article 28(1)(h)(i), makes preferential distributions on Common Equity Tier 1 instruments;
    c) in violation of Article 28(1)(h)(ii) or Article 52(1)(l)(i), makes distributions on Common Equity Tier 1 or Additional Tier 1 instruments out of non-distributable items;
    d) in violation of Article 52(1)(i), calls, redeems, or repurchases Additional Tier 1 instruments;
    e) fails to meet the own funds requirements set out in Article 92;
    f) holds or incurs exposures in excess of the limits set out in Article 395;
    g) fails to report the amount of the excess and the name of the client or group of connected clients concerned in accordance with Article

395(5) or fails to do so without delay or makes incomplete or false statements;

h) fails to report the value of the exposure in accordance with Article 396(1) or fails to do so in a timely manner or makes incomplete or false statements;

i) is exposed to the credit risk of a securitisation position and fails to fulfil the conditions set out in Article 405;

k) fails to meet the liquidity coverage requirement set out in Article 412;

l) in violation of the first half of the first sentence of Article 414, fails to report non-compliance or expected non-compliance with the requirements or fails to do so in a timely manner or makes incomplete or false statements;

m) in violation of the second half of the first sentence of Article 414, fails to submit a plan or fails to do so in a timely manner or makes incomplete or false statements;

n) repeatedly or permanently fails to maintain the net stable funding ratio of at least 100% in accordance with Article 428b;

o) fails to submit the reports referred to in Part Seven A to the FMA or fails to do so in a timely manner or makes incomplete or false statements;

p) fails to disclose the information required under Article 431(1) to (3) or Article 451(1) or makes incomplete or false statements;

q) fails to obtain the approvals by the FMA required pursuant to Regulation (EU) No 575/2013 or fails to do so in a timely matter;

50. fails to make other notifications or reports required under this Act, Regulation (EU) No 575/2013, or by the FMA or fails to do so in a timely manner or makes incomplete or false statements.

2) Subject to paragraph 3, the fine referred to in paragraph 1 shall be:

a) for legal persons, up to 1 000 000 Swiss francs;

b) for natural person, up to 500 000 Swiss francs.

3) In the case of serious, repeated, or systematic infringements, the fine referred to in paragraph 1 shall be:

a) for legal persons, up to 10% of the highest annual total net revenues generated in the last three business years including gross income or up to twice the benefit obtained from the infringement, including an avoided loss, in so far as it can be determined; when determining the amount for fines under paragraph 1(47), the discrepancy between the actual liquidity position of a bank and the requirements governing

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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 infringement, including an avoided loss, in so far as it can be determined.

4) The FMA may estimate the benefit derived from an infringement as referred to in paragraph 3 if the benefit cannot be determined or calculated.

5) The FMA shall impose fines as referred to in paragraph 2(a) or paragraph 3(a) if the contraventions under paragraph 1 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 another leadership position within the legal person, on the basis of which they:

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.

6) For contraventions under paragraph 1 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 5 failed to take necessary and reasonable measures to prevent such underlying offences.

7) The responsibility of the legal person for the underlying offence and the criminal liability of the persons referred to in paragraph 5 or of employees referred to in paragraph 6 for the same offence are not mutually exclusive. The FMA may refrain from punishing a natural person if a 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.

8) If the offences are committed negligently, the maximum penalties under paragraphs 2 and 3 shall be reduced by half.

9) The period of limitation for prosecution shall be three years.

Article 247

Principles of proportionality and efficiency

1) When imposing penalties under Articles 245 and 246, the Court of Justice and the FMA shall take into account:

a) the gravity and the duration of the infringement;

b) the degree of responsibility of the natural or legal person responsible for the infringement;

c) the financial strength of the natural or legal person responsible for the infringement, as indicated, for example, by its total turnover in the case of a legal person or the annual income in the case of a natural person;

d) the importance of the profits gained or losses avoided by the natural or legal person responsible for the infringement, in so far as they can be determined;

e) the losses incurred by third parties as a result of the infringement, in so far as they can be determined;

f) the extent to which the natural or legal persons responsible for the infringement are willing to cooperate with the Office of the Public Prosecutor, the Court of Justice, or the FMA;

g) previous infringements by the natural or legal person responsible for the infringement;

h) all possible systemically important effects of the infringement.

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

Article 248

Publication of fines and information provided to the EBA

1) On its website, the FMA shall publish all legally effective fines imposed under Article 246, once the person affected by the decision has been informed. Such publication does not constitute a violation of official secrecy under Article 142. The publication shall contain:

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

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

2) The FMA shall publish legally effective fines imposed under Article 246 on its website in an anonymised form if:

a) where a fine is imposed on a natural person, public disclosure of the personal data would be disproportionate;
b) publication would jeopardise the stability of the financial markets or ongoing criminal investigations; or
c) publication would cause disproportionately high damage to the parties concerned, in so far as such damage can be determined.

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 fine in accordance with paragraph 2 once the grounds no longer apply.

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

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

6) The FMA shall inform the EBA of fines imposed with legal effect, in particular also of fines that have been imposed but not published. This shall not constitute a violation of official secrecy pursuant to Article 142. The FMA shall also transmit an annual summary of information on all fines imposed. The FMA shall also transmit anonymised and aggregated data on all criminal investigations conducted and penalties imposed by the courts, provided that the FMA has this data at its disposal.

Article 249

Responsibility

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

Article 250

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 245. The Court

of Justice shall moreover transmit copies of decisions in this regard to the FMA.

XV. Transitional and final provisions

Article 251

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.

Article 252

Transitional provisions

1) The licences for banks, financial holding companies, and mixed financial holding companies existing at the time of the entry into force of this Act shall remain in force within their existing scope.

2) Investment firms that meet the requirements as referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 at the time this Act enters into force must submit an application for a licence as a bank pursuant to Article 17 to the FMA by 1 February 2026. If an investment firm fails to comply with this obligation by the aforementioned deadline, Article 17(3) shall apply *mutatis mutandis*.

3) If an undertaking has applied for a licence as an investment firm under the law hitherto in force before the entry into force of this Act in order to be able to provide investment services in accordance with Annex 2 Section A(1)(3) and 6 of the law hitherto in force, and if the assets are likely to equal or exceed the amount of 30 billion euros or the equivalent in Swiss francs, the new law shall apply to the licensing procedure. The application originally submitted for a licence as an investment firm under the law hitherto in force shall be deemed to be an application for a licence under Article 16. The FMA shall inform the undertaking accordingly.

4) If an undertaking has applied for a licence as a bank, financial holding company, or mixed financial holding company under the law hitherto in force before the entry into force of this Act, the new law shall apply to the licensing procedure.

5) Undertakings or persons who, prior to the entry into force of this Act, carried out activities within the meaning of Article 6(1) for which no licence was required under the law hitherto in force:

a) may continue to carry out these activities without a corresponding licence from the FMA solely for the purposes of their termination; the conclusion of new business subject to a licence shall not permitted; Article 174 shall apply *mutatis mutandis*; or

b) shall apply to the FMA for a corresponding licence by 1 February 2026, provided that these activities are subject to a licence under the new law; the FMA may make use of all powers under this Act during that period. If no licence has been applied for by 1 February 2026, Article 174 shall apply *mutatis mutandis*.

6) The law hitherto in force shall apply to other administrative proceedings pending at the time this Act enters into force.

Article 253

Repeal of law hitherto in force

1) The Law of 21 October 1992 on Banks and Investment Firms (Banking Act; BankG), LGBl. 1992 No. 108, as amended, is hereby repealed.

2) The Law of 7 September 2023 amending the Banking Act, LGBl. 2023 No. 415, is hereby repealed.

Article 254

Entry into force

1) Provided that the referendum period expires without a referendum being called, this Act shall enter into force on 1 February 2025, otherwise on the day of its promulgation.

2) Article 1(3)(d) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2014/49/EU into the EEA Agreement.

3) Article 1(3)(g) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Regulation (EU) 2019/2033 into the EEA Agreement.

4) Article 1(3)(h) and Article 2(6)(p) and (q) shall enter into force at the same time as Decision of the EEA Joint Committee No 30/2024 of 2 February 2024 amending Annex IX (Financial services) to the EEA Agreement.

Representing the Reigning Prince:
signed *Alois*
Hereditary Prince

signed *Dr. Daniel Risch*
Prime Minister

Annex 1[38]

(Articles 38, 41 and 43)

List of activities subject to mutual recognition

Provided their licence entitles them to do so, Liechtenstein banks may perform the following activities in other EEA Member States under the freedom to provide services or freedom of establishment:

1. taking deposits and other repayable funds;
2. lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting);
3. financial leasing;
4. payment services as defined in Article 4(3) of Directive (EU) 2015/2366[39];
5. issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point (d);
6. guarantees and commitments;
7. trading for own account or for account of customers in any of the following:
   a) money market instruments (cheques, bills, certificates of deposit, etc.);
   b) foreign exchange;
   c) financial futures and options;
   d) exchange and interest-rate instruments;
   e) transferable securities;
8. participation in securities issues and the provision of services relating to such issue;

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38 Annex 1 amended by LGBl. 2025 No. 116.

39 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35)

9. advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;
10. money broking;
11. portfolio management and advice;
12. safekeeping and administration of securities;
13. credit reference services;
14. safe custody services;
15. issuing electronic money including electronic money tokens as defined in Article 3(1)(7) of Regulation (EU) 2023/1114;
16. issuing asset-referenced tokens as defined in Article 3(1)(6) of Regulation (EU) 2023/1114; and
17. crypto-asset services as defined in Article 3(1)(16) of Regulation (EU) 2023/1114.

Annex 2
(Article 104)

Calculation of the systemic risk buffer

The systemic risk buffer as referred to in Article 104 shall be calculated as follows:

$$B_{SR} = r_T * E_T + \sum_i r_i * E_i$$

"B_{SR}" is the systemic risk buffer;

"r_T" is the buffer rate applicable to the total risk exposure amount of an institution;

"E_T" is the total risk exposure amount of an institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

"i" is the index denoting the subset of exposures as referred to in paragraph 3;

"r_i" is the buffer rate applicable to the risk exposure amount of the subset of exposures i; and

"E_i" is the risk exposure amount of an institution for the subset of exposures i calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

Annex 3
(Articles 109 and 113)

Calculation of the maximum distributable amount (MDA)

1. Calculation of the maximum distributable amount (MDA) in the event of failure to meet the combined buffer requirement

1) Banks shall calculate the MDA by multiplying the sum calculated in accordance with paragraph 2 by the factor determined in accordance with paragraph 3. The MDA shall be reduced by any amount resulting from any of the actions referred to in Article 108(2).

2) The sum to be multiplied in accordance with paragraph 1 shall consist of:

a) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in Article 108(2); plus

b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in Article 108(2); minus

c) amounts which would be payable by tax if the profits specified in subparagraphs (a) and (b) were to be retained.

3) The factor shall be determined as follows:

a) where the Common Equity Tier 1 capital maintained by the bank which is not used to meet an own funds requirement set out in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in Article 154(3)(a) and Article 155, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0.

b) where the Common Equity Tier 1 capital maintained by the bank which is not used to meet an own funds requirement set out in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013 and the additional

own funds requirement addressing risks other than the risk of excessive leverage set out in Article 154(3)(a) and Article 155, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0.2.

c) where the Common Equity Tier 1 capital maintained by the bank which is not used to meet an own funds requirement set out in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in Article 154(3)(a) and Article 155, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0.4.

d) where the Common Equity Tier 1 capital maintained by the bank which is not used to meet an own funds requirement set out in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in Article 154(3)(a) and Article 155, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6.

4) The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \cdot (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \cdot Q_n$$

"Q_n" is the ordinal number of the quartile concerned.

5) Banks shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to demonstrate that accuracy to the FMA on request.

2. Calculation of the maximum distributable amount (MDA) in case of failure to meet the leverage ratio buffer requirement

1) Banks shall calculate the leverage ratio related maximum distributable amount (L-MDA) as referred to in Article 92(1a) of Regulation (EU) No 575/2013 by multiplying the sum calculated in accordance with paragraph 2 by the factor determined in accordance with

paragraph 3. The L-MDA shall be reduced by any amount resulting from any of the actions referred to in Article 112(2).

2) The sum to be multiplied in accordance with paragraph 1 shall consist of:

a) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment related to the actions referred to in Article 112(2); plus

b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment related to the actions referred to in Article 122(2); minus

c) amounts which would be payable by tax if the profits specified in subparagraphs (a) and (b) were to be retained.

3) The factor shall be determined as follows:

a) where the Tier 1 capital maintained by the bank which is not used to meet the requirement under Article 92(1)(d) of Regulation (EU) No 575/2013 and the additional own funds requirement under Article 154(3)(a) and Article 155 when addressing the risk of excessive leverage not sufficiently covered by Article 92(1)(d) of that Regulation, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of that Regulation, is within the first (that is, the lowest) quartile of the leverage ratio buffer requirement, the factor shall be 0.

b) where the Tier 1 capital maintained by the bank which is not used to meet the requirement under Article 92(1)(d) of Regulation (EU) No 575/2013 and the additional own funds requirement under Article 154(3)(a) and Article 155 when addressing the risk of excessive leverage not sufficiently covered by Article 92(1)(d) of that Regulation, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of that Regulation, is within the second quartile of the leverage ratio buffer requirement, the factor shall be 0.2.

c) where the Tier 1 capital maintained by the bank which is not used to meet the requirement under Article 92(1)(d) of Regulation (EU) No 575/2013 and the additional own funds requirement under Article 154(3)(a) and Article 155 when addressing the risk of excessive leverage not sufficiently covered by Article 92(1)(d) of that Regulation, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of that Regulation, is

within the third quartile of the leverage ratio buffer requirement, the factor shall be 0.4.

d) where the Tier 1 capital maintained by the bank which is not used to meet the requirement under Article 92(1)(d) of Regulation (EU) No 575/2013 and the additional own funds requirement under Article 154(3)(a) and Article 155 when addressing the risk of excessive leverage not sufficiently covered by Article 92(1)(d) of that Regulation, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of that Regulation, is within the fourth quartile (that is, the highest) quartile of the leverage ratio buffer requirement, the factor shall be 0.6.

4) The lower and upper bounds of each quartile of the leverage ratio buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \cdot (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \cdot Q_n$$

"Q_n" is the ordinal number of the quartile concerned.

Transitional and commencement provisions

952.0 Banking Act (BankG)

Liechtenstein Law Gazette
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Law
of 13 June 2025
amending the Banking Act

. . .

II.
Transitional provision

The law hitherto in force shall apply to procedures pending at the time of entry into force[40] of this Act.

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40 Entry into force: 1 January 2026.