Translation of Liechtenstein Law

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

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

I. General provisions[2]

Article 1[3]

Object and purpose

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

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

3) It also serves to transpose and implement the following EEA legislation: [4]

1 Title of Act amended by LGBl. 2007 No. 261.
2 Title preceding Article 1 amended by LGBl. 2014 No. 348.
3 Article 1 amended by LGBl. 2014 No. 348.
4 Article 1(3) introductory phrase amended by LGBl. 2022 No. 109.

a) Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms[5];[6]

b) Directive 2014/65/EU on markets in financial instruments[7];[8]

c) Directive 2001/24/EC on the reorganisation and winding up of credit institutions[9];[10]

d) Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms[11];[12]

e) Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (EEA Compendium of Laws: Annex IX - 19a.01);

f) Regulation (EU) No 600/2014 on markets in financial instruments[13];[14]

g) Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms[15];[16]

5 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, 338)

6 Article 1(3)(a) amended by LGBl. 2022 No. 109.

7 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, 349)

8 Article 1(3)(b) amended by LGBl. 2022 No. 109.

9 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, 15)

10 Article 1(3)(c) amended by LGBl. 2022 No. 109.

11 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, 1)

12 Article 1(3)(d) amended by LGBl. 2022 No. 109.

13 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, 84)

14 Article 1(3)(f) amended by LGBl. 2022 No. 109.

15 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, 190)

16 Article 1(3)(g) inserted by LGBl. 2023 No. 148.

i) Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology[17].[18]

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.[19]

5) Repealed[20]

Article 2[21]

Scope

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

2) Repealed[22]

3) Insofar as expressly governed by law, it also applies to:[23]

a) financial holding companies, mixed financial holding companies, and mixed-activity holding companies;

a[bis]) domestic branches of banks, financial institutions, and investment firms situated in another EEA Member State;[24]

b) local firms, investment firms with administrative powers, the operation of regulated markets, multilateral and organised trading facilities, to the extent they are operated by market operators, and data reporting services providers;[25]

c) insurance undertakings, operators trading for their own account with emission allowances, undertakings for collective investment and pension funds as well as persons trading in commodity derivatives or

17 Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, 1)

18 Article 1(3)(i) inserted by LGBl. 2024 No. 173. It shall enter into force at the same time as Decision of the EEA Joint Committee No 185/2023 of 5 July 2023 amending Annex IX (Financial Services) to the EEA Agreement.

19 Article 1(4) amended by LGBl. 2022 No. 109.

20 Article 1(5) repealed by LGBl. 2018 No. 213.

21 Article 2 amended by LGBl. 2007 No. 261.

22 Article 2(2) repealed by LGBl. 2022 No. 109.

23 Article 2(3) amended by LGBl. 2014 No. 348.

24 Article 2(3)(abis) inserted by LGBl. 2022 No. 109.

25 Article 2(3)(b) amended by LGBl. 2022 No. 109.

emission allowances for their own account only as ancillary activities if they use a high-frequency algorithmic trading technique;[26]

d) all persons holding commodity derivatives traded on trading venues or economically equivalent OTC contracts.[27]

4) The rights conferred by this Act do not include the provision of services by a bank or investment firm as a counterparty in transactions carried out by:[28]

a) public bodies dealing with public debt;

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

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

5) The provisions of Regulation (EU) No 575/2013 and its implementing provisions shall apply to banks that are not credit institutions in accordance with Article 4(1)(1) of Regulation (EU) No 575/2013 as if such banks were credit institutions in accordance with Article 4(1)(1) of Regulation (EU) No 575/2013.[29]

5) This Act shall not apply to the Liechtensteinische Post Aktiengesellschaft in the provision of its services under Article 18a of the Liechtenstein Postal Service Act.[30]

Article 3[31]

Scope of business

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

26 Article 2(3)(c) inserted by LGBl. 2017 No. 397.
27 Article 2(3)(d) amended by LGBl. 2022 No. 109.
28 Article 2(4) inserted by LGBl. 2017 No. 397.
29 Article 2(5) inserted by LGBl. 2022 No. 109.
30 Article 2(6) inserted by LGBl. 2023 No. 154.
31 Article 3 amended by LGBl. 2022 No. 109.

2) Investment firms are undertakings that offer to the public or provide investment services and ancillary services as set out in paragraph 4 on a professional basis.

3) Banking transactions are:

a) the acceptance of deposits and other repayable funds;

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

c) safekeeping transactions;

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

e) trading of foreign currency for one's own account or on behalf of others;

f) the execution of bank-related off-balance-sheet transactions;

g) the issuance of covered bonds under the European Covered Bonds Act.[32]

4) Investment services and ancillary services are services referred to in Annex 2 Sections A and B that relate to one or more of the financial instruments listed in Section C of that Annex. Only persons holding a licence to provide investment services may also provide the ancillary services referred to in Annex 2 Section B on a professional basis.

5) The following are not considered deposits and other repayable funds within the meaning of paragraph 3(a):

a) funds that constitute consideration under a contract for assignment of ownership or a contract for services, or that are transferred as a security deposit;

b) benefits relating to the issue of bonds or other standardised and mass-issued debt securities or non-certificated rights with the same function, if:

   1. the raising of funds takes place after the issuance of a prospectus in accordance with Regulation (EU) 2017/1129[33] and the EEA Securities Prospectus Implementation Act or if there is no prospectus requirement; and

   2. the issuing undertaking does not perform any other banking transactions as set out in Article 3;

32 Article 3(3)(g) inserted by LGBl. 2023 No. 144.

33 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, 12)

c) client funds that are accepted by investment firms solely for the purpose of providing investment services and on which the investment firms do not pay interest;

d) funds received from insurance undertakings as defined in the Insurance Supervision Act or from recognised pension schemes and the receipt of which is inextricably linked to a life insurance contract or a pension relationship;

e) funds received from clients by electronic money institutions in the course of their activities under the Electronic Money Act and exchanged directly for electronic money;

f) funds received by payment institutions from payment service users for the provision of payment services under the Payment Services Act;

g) Liabilities vis-à-vis:

1. the European Central Bank or the Swiss National Bank, the members of the European System of Central Banks, state bodies of public debt regulation, and foreign central banks in the performance of their public functions;
2. one of the counterparties referred to in Article 8(1)(a) and (c) to (p) of the Deposit Guarantee and Investor Compensation Act;
3. undertakings within a group (group companies);
4. depositors with associations and foundations, provided that these pursue a non-material purpose or serve common self-help and are not active in the financial sector;
5. shareholders of the bank or investment firm and persons economically or familiarly related to them.

6) No investment services are provided by persons who:

a) only provide services pursuant to Article 3(1) of the Asset Management Act or provide such services only as a governing body for legal persons, trusts, other collectives, or asset entities;

b) provide investment services as part of an economic activity other than those covered by this Act only on an occasional basis, and this activity is regulated by statutory provisions or professional codes of conduct;

c) as part of another economic activity, provide only investment advice and do not receive any special remuneration for that purpose;

d) engage in trading in commodity derivatives as well as in derivatives referred to in point 10 of Annex 2 Section C, as part of a corporate group not primarily engaged in the financial sector, for the account of other group companies;

e) provide investment services only to the European Central Bank, the Swiss National Bank, the members of the European System of Central Banks, state bodies of public debt regulation, and foreign central banks in the performance of their public functions;

f) provide investment services only for their parent undertakings, their subsidiaries, or other subsidiaries of their parent undertaking;

g) provide investment services only as part of an employee participation scheme or, in addition to such services, provide only services in accordance with subparagraph (f).

7) Banks whose licence includes the provision of banking transactions as referred to in paragraph 3(a) and (b) may additionally, without further licences under special legislation:

a) provide investment services and ancillary services as referred to in Annex 2 Sections A and B;

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

c) issue electronic money as referred to in Article 3(1)(b) of the Electronic Money Act.

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

a) banking transactions, when at least one contracting party is authorised to carry out banking transactions and investment services on a professional basis;

b) transactions with financial instruments referred to in Annex 2 Section C(4) to (10) that are traded on a domestic or foreign regulated market or multilateral trading facilities or that are concluded under a master agreement.

9) The Government may provide further details by ordinance.

Article 3a[34]

Definitions and designations

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

34 Article 3a amended by LGBl. 2014 No. 348.

1. "representative office" means any part of the organisation of a foreign bank that neither concludes nor carries out activities nor arranges them for its own account;

1a. "representative office manager" means the natural person designated to manage the operation of the representative office and to represent the representative office externally;[35]

2. "third country" means a country that is not an EEA Member State;

3. "reorganisation measures" means measures which are intended to preserve or restore the financial situation of a bank and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

4. "winding-up proceedings" means collective proceedings opened and monitored by the administrative or judicial authorities of an EEA Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;

5. "trading venue" means a regulated market, a multilateral trading facility, or an organised trading facility;[36]

6. "regulated market" means a multilateral system operated and/or managed by a market operator which brings together multiple third-party buying and selling interests – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under the rules of the system;[37]

6a. "multilateral system" means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;[38]

6b. "multilateral trading facility (MTF)" means a multilateral system, operated by a bank, an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract;[39]

6c. "organised trading facility (OTF)" means a multilateral system which is not a regulated market or an MTF and in which multiple third-party

35 Article 3a(1)(1a) inserted by LGBl. 2022 No. 109.
36 Article 3a(1)(5) amended by LGBl. 2017 No. 397.
37 Article 3a(1)(6) amended by LGBl. 2017 No. 397.
38 Article 3a(1)(6a) inserted by LGBl. 2017 No. 397.
39 Article 3a(1)(6b) inserted by LGBl. 2017 No. 397.

buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract;[40]

6d. "liquid market" means a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:[41]

a) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;

b) the number and type of market participants, including the ratio of market participants to traded instruments in a particular product;

c) the average size of spreads, where available;

7. "group" means a group as defined in Article 4(1)(138) of Regulation (EU) No 575/2013;[42]

7a. "third-country group" means a group whose parent undertaking is established in a third country;[43]

7b. "predominantly commercial group" means any group of which the main business is not:[44]

a) the performance of banking transactions as referred to in Article 3(3) or other activity listed in Annex I of Directive 2013/36/EU;

b) the provision of investment services as referred to in Article 3(4); or

c) acting as a market maker in relation to commodity derivatives;

8. "client" means every natural or legal person, every company, trust, other collective or asset entity, for which a bank or investment firm provides services pursuant to this Act;

9. "professional client" means a client a client who possesses the experience, knowledge, and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a professional client, the client must comply with the criteria laid down in Annex 1(2);

10. "retail client" means a client as defined in Annex 1(3);

40 Article 3a(1)(6c) inserted by LGBl. 2017 No. 397.
41 Article 3a(1)(6d) inserted by LGBl. 2017 No. 397.
42 Article 3a(1)(7) amended by LGBl. 2022 No. 109.
43 Article 3a(1)(7a) inserted by LGBl. 2022 No. 109.
44 Article 3a(1)(7b) inserted by LGBl. 2022 No. 294.

11. "eligible counterparty" means a client as defined in Annex 1(1);
12. "market operator" means person or persons who manages and/or operates the business of a regulated market and may be the regulated market itself;
13. "systemic risk" means a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy;
14. "model risk" means the potential loss a bank or investment firm may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models;
15. "systemically important institution" means an EEA parent bank or EEA parent investment firm, an EEA parent financial holding company, an EEA parent mixed financial holding company, or a bank or investment firm the failure or malfunction of which could lead to systemic risk;

15a. "global systemically important institution (G-SII)" means a G-SII as defined in Article 4(1)(133) of Regulation (EU) No 575/2013;[45]

16. "internal approaches" means approaches or models referred to in Article 143(1), Articles 221, 225, 259(3), Articles 283, 312(2), and Article 363 of Regulation (EU) No 575/2013;
17. "EBA" means the European Banking Authority;[46]
18. "EIOPA" means the European Insurance and Occupational Pensions Authority;
19. "ESMA" means the European Securities and Markets Authority;

19a. "ESRB" means the European Systemic Risk Board;[47]

20. "European Supervisory Authorities" means the EBA, EIOPA, ESMA and the ESRB within the scope of their responsibilities;[48]
21. "supervisory board" and "management board" mean the supervisory board and management board under the provisions of the SE Act in the event that a bank or investment firm is structured as a European Company (Societas Europaea);
22. "tied agent" means a natural or legal person who, under the full and unconditional responsibility of only one bank or investment firm on whose behalf it acts, promotes investment services and/or ancillary services under this Act to clients or prospective clients and/or provides

45 Article 3a(1)(15a) inserted by LGBl. 2022 No. 109.
46 Article 3a(1)(17) amended by LGBl. 2019 No. 214.
47 Article 3a(1)(19a) inserted by LGBl. 2022 No. 109.
48 Article 3a(1)(20) amended by LGBl. 2022 No. 109.

advice to clients or prospective clients in respect of those investment services and/or ancillary services or financial instruments;[49]

23. "total net turnover" and "gross income" mean the sum of interest earned minus interest paid (interest income), current income from securities, commissions and fees received minus commission expenses (income from commissions and fees), income from financial transactions, and other ordinary receipts of the undertaking in the preceding business year. Where the undertaking is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income in the preceding business year resulting from the consolidated annual financial accounts of the ultimate parent undertaking in the group;
24. "parent bank in an EEA Member State" and "parent investment firm in an EEA Member State" mean a parent institution in a Member State as defined in Article 4(1)(28) of Regulation (EU) No 575/2013;
25. "EEA parent bank" and "EEA parent investment firm" mean an EU parent institution as defined in Article 4(1)(29) of Regulation (EU) No 575/2013;
26. "parent financial holding company in an EEA Member State" means a parent financial holding company in a Member State as defined in Article 4(1)(30) of Regulation (EU) No 575/2013;
27. "EEA parent financial holding company" means an EU parent financial holding company as defined in Article 4(1)(31) of Regulation (EU) No 575/2013;
28. "parent mixed financial holding company in an EEA Member State" means a parent mixed financial holding company in a Member State as defined in Article 4(1)(32) of Regulation (EU) No 575/2013;
29. "EEA parent mixed financial holding company" means an EU parent mixed financial holding company as defined in Article 4(1)(33) of Regulation (EU) No 575/2013;
30. "licence" means an authorisation as defined in Article 4(1)(42) of Regulation (EU) No 575/2013;
31. "consolidated supervisory authority" means an authority responsible for supervision on a consolidated basis of EEA parent banks and EEA parent investment firms and of banks and investment firms controlled by EEA parent financial holding companies or EEA parent mixed financial holding companies;[50]

49 Article 3a(1)(22) amended by LGBl. 2019 No. 214.

50 Article 3a(1)(31) amended by LGBl. 2015 No. 211.

31a. "consolidated basis" means on the basis of the consolidated situation as defined in Article 4(1)(47) of Regulation (EU) No 575/2013;[51]

31b. "sub-consolidated basis" means on a sub-consolidated basis as defined in Article 4(1)(49) of Regulation (EU) No 575/2013;[52]

32. "mixed financial holding company" means a mixed financial holding company as defined in the Financial Conglomerates Act.[53]

33. Repealed[54]

34. "systematic internaliser" means a bank or an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system;[55]

35. "management body" means the body of a bank, investment firm, market operator or data reporting services provider, which is appointed in accordance with national law, which is empowered to set the entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making and includes persons who effectively direct the business of the entity;[56]

36. "senior management" means natural persons who exercise executive functions within a bank, an investment firm, a market operator or a data reporting services provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity;[57]

36a. "branch manager" means the natural person designated to manage the business and represent the branch externally;[58]

36b. "key function holders" means persons who have a significant influence on the management of a bank or investment firm, but who are neither members of the board of directors nor of the senior management and are identified as such by the bank or investment firm on the basis of a risk-based approach; these include, in particular, the domestic and foreign 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;[59]

51 Article 3a(1)(31a) inserted by LGBl. 2022 No. 109.
52 Article 3a(1)(31b) inserted by LGBl. 2022 No. 109.
53 Article 3a(1)(32) amended by LGBl. 2015 No. 211.
54 Article 3a(1)(33) repealed by LGBl. 2019 No. 105.
55 Article 3a(1)(34) inserted by LGBl. 2017 No. 397.
56 Article 3a(1)(35) inserted by LGBl. 2017 No. 397.
57 Article 3a(1)(36) inserted by LGBl. 2017 No. 397.
58 Article 3a(1)(36a) inserted by LGBl. 2022 No. 109.
59 Article 3a(1)(36b) inserted by LGBl. 2022 No. 109.

37. "algorithmic trading" means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;[60]
38. "high-frequency algorithmic trading technique" means an algorithmic trading technique characterised by:[61]
    a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access;
    b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and
    c) high message intraday rates which constitute orders, quotes or cancellations;
39. "direct electronic access" means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access);[62]
40. "cross-selling practice" means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package;[63]
41. "structured deposit" means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a bank is required to repay in full at maturity under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a

60 Article 3a(1)(37) inserted by LGBl. 2017 No. 397.
61 Article 3a(1)(38) inserted by LGBl. 2017 No. 397.
62 Article 3a(1)(39) inserted by LGBl. 2017 No. 397.
63 Article 3a(1)(40) inserted by LGBl. 2017 No. 397.

credit balance where its principal is only repayable at par under a particular guarantee or agreement provided by the bank or a third party, on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:[64]

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

b) a financial instrument or combination of financial instruments;

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

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

42. "transferable securities" means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:[65]

a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;

b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;

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

42a. "financial instrument" means the instruments referred to in Annex 2 Section C, including instruments issued by means of distributed ledger technology;[66]

42b. "switching of financial instruments" means selling a financial instrument and buying another financial instrument or exercising a right to make a change with regard to an existing financial instrument;[67]

42c. "make-whole clause" means a clause that aims to protect the investor by ensuring that, in the event of early redemption of a bond, the issuer is required to pay to the investor holding the bond an amount equal to the sum of the net present value of the remaining coupon payments

64 Article 3a(1)(41) inserted by LGBl. 2017 No. 397.
65 Article 3a(1)(42) inserted by LGBl. 2017 No. 397.
66 Article 3a(1)(42a) amended by LGBl. 2024 No. 173.
67 Article 3a(1)(42b) inserted by LGBl. 2022 No. 294.

expected until maturity and the principal amount of the bond to be redeemed;[68]

43. "depositary receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;[69]

44. "durable medium" means any instrument which:[70]

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

    b) allows the unchanged reproduction of the information stored;

44a. "electronic format" means any durable medium other than paper;[71]

45. "central counterparty" means a legal person that interposes itself between the counterparties to the contracts traded on one or more markets, becoming the buyer to every seller and the seller to every buyer;[72]

46. "data reporting services provider" means an approved publication arrangement, a consolidated tape provider, or an approved reporting mechanism;[73]

47. "approved publication arrangement (APA)" means a person authorised under this Act to provide the service of publishing certain trade reports on behalf of banks, investment firms, or asset management companies;[74]

48. "consolidated tape provider (CTP)" means a person authorised under this Act to provide the service of collecting trade reports for certain financial instruments from regulated markets, multilateral and organised trading facilities, and approved publication arrangements and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;[75]

49. "approved reporting mechanism (ARM)" means a person authorised to provide the service of reporting details of transactions to competent

68 Article 3a(1)(42c) inserted by LGBl. 2022 No. 294.
69 Article 3a(1)(43) inserted by LGBl. 2017 No. 397.
70 Article 3a(1)(44) inserted by LGBl. 2017 No. 397.
71 Article 3a(1)(44a) inserted by LGBl. 2022 No. 294.
72 Article 3a(1)(45) inserted by LGBl. 2017 No. 397.
73 Article 3a(1)(46) inserted by LGBl. 2017 No. 397.
74 Article 3a(1)(47) inserted by LGBl. 2017 No. 397.
75 Article 3a(1)(48) inserted by LGBl. 2017 No. 397.

national authorities or to ESMA on behalf of banks, investment firms, or asset management companies;[76]

50. "market maker" means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person's proprietary capital at prices defined by that person.[77]

51. "resolution authority" means a resolution authority as referred to in Article 3(1)(5) of the Recovery and Resolution Act;[78]

52. "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;[79]

53. "exceptions to policy transactions (ETP transactions)" means transactions concluded by banks or investment firms on an exceptional basis in derogation from their internal instructions.[80]

1a) Where the terms "bank", "investment firm", "parent bank in an EEA Member State", "parent investment firm in an EEA Member State", "EEA parent bank", "EEA parent investment firm", 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:[81]

a) financial holding companies and mixed financial holding companies with a licence pursuant to Article 30a^{quater}(1) or (2);

b) designated banks or investment firms 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 30a^{quater}(7); and

c) financial holding companies, mixed financial holding companies, banks, or investment firms designated upon demand by the FMA pursuant to Article 41p(4)(e).

76 Article 3a(1)(49) inserted by LGBl. 2017 No. 397.
77 Article 3a(1)(50) inserted by LGBl. 2017 No. 397.
78 Article 3a(1)(51) inserted by LGBl. 2022 No. 109.
79 Article 3a(1)(52) inserted by LGBl. 2022 No. 109.
80 Article 3a(1)(53) inserted by LGBl. 2022 No. 109.
81 Article 3a(1a) inserted by LGBl. 2022 No. 109.

2) The definitions in Directives 2013/36/EU and 2014/65/EU and Regulations (EU) No 575/2013 and 600/2014 shall apply *mutatis mutandis*.[82]

3) By ordinance, the Government may provide further details regarding the definitions set out in paragraphs 1 and 2 and define other terms used in this Act.

4) The designations of persons and functions contained in this Act shall apply to persons of female and of male gender.

II. Business activities[83]

A. Own funds[84]

Article 4

Principle[85]

1) Banks and investment firms must have sufficient own funds.[86]

2) The own funds requirements must be met by every individual bank and investment firm subject to this Act as well as on a consolidated basis.[87]

3) Repealed[88]

4) In justified cases, the FMA may ease or tighten any requirements as long as doing so does not contradict any legal provisions of the EEA.[89]

82 Article 3a(2) amended by LGBl. 2022 No. 109.
83 Title preceding Article 4 amended by LGBl. 2022 No. 109.
84 Title preceding Article 4 inserted by LGBl. 2022 No. 109.
85 Article 4 heading amended by LGBl. 2022 No. 109.
86 Article 4(1) amended by LGBl. 2022 No. 109.
87 Article 4(2) amended by LGBl. 2007 No. 261.
88 Article 4(3) repealed by LGBl. 2014 No. 348.
89 Article 4(4) amended by LGBl. 2006 No. 251.

B. Capital buffers[90]

1. Types of capital buffer and combined buffer requirement[91]

Article 4a[92]

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 and investment firms shall hold the following capital buffers made up of Common Equity Tier 1 capital:

a) a capital conservation buffer in accordance with Article 4b;

b) an institution-specific countercyclical capital buffer in accordance with Article 4c;

c) for G-SIIs, a G-SII buffer as set out in Article 4h, and for other systemically important institutions (O-SIIs), an O-SII buffer in accordance with Article 4i;

d) a systemic risk buffer in accordance with Article 4l; 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 and investment firms 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 35c(1)(a) and Article 35c^{bis}; and

c) the recommendation for additional own funds set out in Article 35c^{ter}.

4) Banks and investment firms shall not use Common Equity Tier 1 capital that is maintained to meet one of the elements of the combined

90 Title preceding Article 4a inserted by LGBl. 2022 No. 109.

91 Title preceding Article 4a amended by LGBl. 2022 No. 109.

92 Article 4a amended by LGBl. 2022 No. 109.

buffer requirement set out in paragraph 2 to meet the other applicable elements of their combined buffer requirement.

5) Banks and investment firms 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 Article 58b or 58c of the Recovery and Resolution Act.[93]

6) Investment firms which do not hold a licence for the provision of investment services as referred to in Annex 2 Section A(1)(3) or (6) shall be exempt from the application of the provisions of this Section.

2. Capital conservation buffer[94]

Article 4b[95]

Calculation

1) 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.

2) The Government may, on the recommendation of the Financial Stability Council, exempt small and medium-sized investment firms from compliance with the requirement set out in Article 4a(1)(a), provided that this does not jeopardise the stability of the domestic financial system. Full reasons must be given for any exemption. The Government shall explain why exempting small and medium-sized investment firms from compliance with the requirement set out in Article 4a(1)(a) does not jeopardise the stability of the domestic financial system, as well as clearly define the small and medium-sized investment firms to which the exemption applies.

3) The FMA shall notify the ESRB of any exemption pursuant to paragraph 2.

93 Article 4a(5) amended by LGBl. 2023 No. 148.
94 Title preceding Article 4b inserted by LGBl. 2022 No. 109.
95 Article 4b amended by LGBl. 2022 No. 109.

4) For the classification as a small or medium-sized investment firm, the Government shall refer to Recommendation 2003/361/EC[96].

5) The Government may provide further details regarding the exemption of small and medium-sized investment firms by ordinance.

3. Institution-specific countercyclical capital buffer[97]

Article 4c[98]

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 4d;

b) the countercyclical buffer rates for relevant exposures located in other EEA Member States or third countries as set out in Article 4g;

c) where applicable, the countercyclical buffer rates recognised under Article 4e for relevant exposures located in other EEA Member States;

d) where applicable, the countercyclical buffer rates recognised under Article 4f 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

96 Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, 36)

97 Title preceding Article 4c inserted by LGBl. 2022 No. 109.

98 Article 4c amended by LGBl. 2022 No. 109.

575/2013 or incremental default and migration risk under Part Three Title IV Chapter 5 of Regulation (EU) No 575/2013 shall be applied.

3) Article 4b(2) to (5) shall apply *mutatis mutandis*.

Article 4d[99]

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;

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;

   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 and investment firms 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.

99 Article 4d amended by LGBl. 2022 No. 109.

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 and investment firms 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 and investment firms 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 and investment firms 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;

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 4e[100]

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 and investment firms 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 and investment firms must use the increased buffer rate for the purposes of calculating the institution-specific countercyclical capital buffer;

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 4f[101]

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

100 Article 4e inserted by LGBl. 2022 No. 109.

101 Article 4f inserted by LGBl. 2022 No. 109.

relevant exposures in a third country for banks and investment firms 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 and investment firms licensed in Liechtenstein if it has reasonable doubt that the rate set by the third-country authority is sufficient to protect banks or investment firms 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 and investment firms 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 and investment firms must use the increased buffer rate for the purposes of calculating the institution-specific countercyclical capital buffer;

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 4g[102]

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 and investment firms 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 and investment firms 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 4e or set by the Government under Article 4f, 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 4e or no increased buffer rate has been set under Article 4f, a buffer rate of 2.5% of the total risk exposure amount.

4. Capital buffers for systemically important institutions (G-SII and O-SII buffers)[103]

Article 4h[104]

Additional capital buffer requirements for G-SIIs

1) The FMA shall determine which groups or banks and investment firms are G-SIIs on a consolidated basis. The following may be G-SIIs:

102 Article 4g inserted by LGBl. 2022 No. 109.
103 Title preceding Article 4h inserted by LGBl. 2022 No. 109.
104 Article 4h inserted by LGBl. 2022 No. 109.

a) a group headed by an EEA parent bank, EEA parent investment firm, EEA parent financial holding company, or EEA parent mixed financial holding company; or

b) banks or investment firms that are not subsidiaries of an EEA parent bank, EEA parent investment firm, 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, bank or investment firm 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[105].

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,

105 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, 1)

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 Regulation (EU) No 575/2013.

6) 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, bank or investment firm that has an overall score as referred to in paragraph 2 that is lower than the cut-off score of the lowest sub-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 4i[106]

Additional capital buffer requirements for O-SIIs

1) The FMA shall determine which groups or banks and investment firms 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 bank, EEA parent investment firm, EEA parent financial holding company, EEA parent mixed financial holding company, parent bank, parent investment firm, parent financial holding company, or parent mixed financial holding company; or

b) banks or investment firms.

2) For the determination of O-SIIs pursuant to paragraph 1, the FMA uses the following criteria to assess systemic relevance:

a) the size of the group, bank or investment firm;

b) the interconnectedness with the financial system;

c) the importance for the economy of the EEA or Liechtenstein; or

d) the cross-border activity of the group between EEA Member States and between EEA Member States and third countries.

106 Article 4i inserted by LGBl. 2022 No. 109.

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 group, bank or investment firm headed by an EEA parent bank or EEA parent investment firm, 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 EFTA Surveillance Authority 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 before the publication as referred to in Article 4k(3). The notification must contain:

a) the O-SII buffer rate;

b) a justification for why the O-SII buffer effectively and proportionately mitigates the risk;

c) an assessment of the likely positive or negative impact of the O-SII buffer on the internal market.

Article 4k[107]

Review, notification, and publication of classification as systemically important institutions

1) The FMA shall annually review the classification of groups, banks or investment firms 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, banks or investment firms 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;

c) where applicable, reasons for why discretion has been exercised or not in accordance with Article 4h(6).

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 [108]

Article 4l[109]

Additional capital buffer requirements for systemic risk

1) In order to prevent or mitigate macroprudential or systemic risks (Article 3a(1)(13)) not covered by Regulation (EU) No 575/2013 or Articles 4c to 4k, 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 and investment firms 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 Regulation (EU) No 575/2013. The Government may set different

107 Article 4k inserted by LGBl. 2022 No. 109.

108 Title preceding Article 4l inserted by LGBl. 2022 No. 109.

109 Article 4l inserted by LGBl. 2022 No. 109.

systemic risk buffers for one or more subsets of banks or investment firms. 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 Regulation (EU) No. 575/2013. It may obtain the opinion of the Financial Stability Council before setting the systemic risk buffer.

2) The systemic risk buffer 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.

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 4m(7);

d) sectoral exposures as identified in subparagraph (b) in other EEA Member States, within the framework of recognition in accordance with Article 4n;

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 4c;

b) the G-SII buffer as set out in Article 4h;

c) the O-SII buffer as set out in Article 4i.

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 4n.

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[110] 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:

a) the exposures or subsets of exposures as referred to in paragraph 3 for which a systemic risk buffer is to be maintained;

110 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)

b) the banks or investment firms or subsets of banks and investment firms that must maintain a systemic risk buffer; and

c) the amount of the systemic risk buffer rate.

Article 4m[111]

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 EFTA Surveillance Authority;

b) the ESRB;

c) the competent or designated authorities of the EEA Member States concerned, where a bank or investment firm for which one or more systemic risk buffer rates have been set in accordance with Article 4l 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 or investment firms 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;

f) a justification for why the systemic risk buffer does not duplicate the functioning of the O-SII buffer under Article 4i, 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.

111 Article 4m inserted by LGBl. 2022 No. 109.

4) Where the decision to set the systemic risk buffer rate on any exposure or subset of exposures referred to in paragraph 4l(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 4n 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 4l(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 4l(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 or investment firm 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 EBA in accordance with Article 19 of Regulation (EU) No 1093/2010[112].

7) Where the decision to set the systemic risk buffer rate on any exposure or subset of exposures referred to in paragraph 4l(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.

112 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, 12)

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 and investment firms 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;

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 4n[113]

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 and investment firms 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 and investment firms licensed in Liechtenstein, that systemic risk buffer shall be cumulative with the systemic risk buffer set by the Government in accordance with Article 4l, 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.

113 Article 4n inserted by LGBl. 2022 No. 109.

Article 4o[114]

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 4h and to an O-SII buffer in accordance with Article 4i, the higher buffer shall apply.

2) Where a bank or investment firm is subject to a systemic risk buffer in accordance with Article 4l 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 procedure set out in Article 4i(4) shall apply.

6. Capital conservation measures [115]

Restrictions on distributions

Article 4p[116]

a) General provisions

1) Banks and investment firms that meet the combined buffer requirement in accordance with Article 4a(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 and investment firms that fail to meet their combined buffer requirement applicable in accordance with Article 4a(2) shall calculate the maximum distributable amount (MDA) in accordance with Article 4q 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 or investment firm failed to meet its combined buffer requirement; or

114 Article 4o inserted by LGBl. 2022 No. 109.

115 Title preceding Article 4p inserted by LGBl. 2022 No. 109.

116 Article 4p inserted by LGBl. 2022 No. 109.

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 or investment firm of its own shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;

c) repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;

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

4) Banks and investment firms failing to meet their combined buffer requirement in accordance with Article 4a(2) shall not distribute more than the MDA in accordance with Article 4q 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 or investment firm.

6) Where the application of the restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the bank or investment firm, the FMA may take measures in accordance with Articles 28, 35, and 35c.

Article 4q[117]

b) Calculation of the maximum distributable amount (MDA)

1) Banks and investment firms shall calculate the MDA as referred to in Article 4p(2) 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 4p(2).

117 Article 4q inserted by LGBl. 2022 No. 109.

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 4p(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 4p(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 or investment firm 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 35c(1) and Article 35c^{bis}, 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 or investment firm 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 35c(1) and Article 35c^{bis}, 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 or investment firm 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 35c(1) and Article 35c^{bis}, 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 or investment firm 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 35c(1) and Article 35c[bis], 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 and investment firms 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 4r[118]

c) Distribution where combined buffer requirement is not met

Where a bank or investment firm fails to meet the combined buffer requirement in accordance with Article 4a(2) and intends to distribute any of its distributable profits or undertake an action referred to in Article 4p(2), it shall notify the FMA without delay and provide the following information:

a) the amount of capital maintained by the bank or investment firm, 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 4q(1);
d) the amount of distributable profits it intends to allocate between the following:
   1. dividend payments;

118 Article 4r inserted by LGBl. 2022 No. 109.

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 4s[119]

Failure to meet the combined capital buffer requirement

A bank or investment firm shall be considered as failing to meet the combined buffer requirement in accordance with Article 4a(2) for the purposes of Articles 4p to 4r 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 35c(1) und Article 35c^{bis};

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 35c(1) und Article 35c^{bis};

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 35c(1) und Article 35c^{bis}.

Restriction on distributions in case of failure to meet the leverage ratio buffer requirement

Article 4t[120]

a) General provisions

1) Banks and investment firms 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.

119 Article 4s inserted by LGBl. 2022 No. 109.
120 Article 4t inserted by LGBl. 2022 No. 109.

2) Banks and investment firms 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 4u 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 or investment firm 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 and investment firms 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 4u through any action referred to in paragraph 2.

4) Article 4p(3) shall apply *mutatis mutandis*.

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 or investment firm.

Article 4u[121]

b) Calculation of the maximum distributable amount

1) Banks and investment firms 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 4t(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

121 Article 4u inserted by LGBl. 2022 No. 109.

distribution of profits or any payment related to the actions referred to in Article 4(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 4t(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 or investment firm 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 35c(1) and Article 35c^{bis} 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 or investment firm 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 35c(1) and Article 35c^{bis} 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 or investment firm 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 35c(1) and Article 35c^{bis} 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 or investment firm 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 35c(1) and Article 35c^{bis} 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.

5) Banks and investment firms 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 4v[122]

c) Distribution where leverage ratio buffer requirement is not met

Where a bank or investment firm 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 4t(2), it shall notify the FMA and provide the following information:

a) the amount of capital maintained by the bank or investment firm, 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 4u(1);
d) the amount of distributable profits it intends to allocate between the following:
   1. dividend payments;
   2. share buybacks;

122 Article 4v inserted by LGBl. 2022 No. 109.

3. 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 4w[123]

Failure to meet the leverage ratio buffer requirement

A bank or investment firm 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 4t to 4v 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 35c(1) and Article 35c[bis] that is not sufficiently covered by Article 92(1)(d) of Regulation (EU) No 575/2013.

Article 4x[124]

Capital conservation plan

1) Where a bank or investment firm fails to meet its combined buffer requirement in accordance with Article 4a(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 or investment firm.

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

123 Article 4w inserted by LGBl. 2022 No. 109.

124 Article 4x inserted by LGBl. 2022 No. 109.

c) a plan and a timeframe for the increase of own funds in order to fulfil the combined buffer requirement in accordance with Article 4a(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 in accordance with paragraph 4.

4) The FMA shall approve the capital conservation plan only if the plan would be reasonably likely to allow the bank or investment to meet its combined buffer requirement in accordance with Article 4a(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 or investment firm to increase own funds to specified levels within specified periods; or

b) exercise its powers under Article 35(4) or Article 35c(1)(i) to impose more stringent restrictions on distributions than those required by Articles 4p and 4r.

6) The Government may provide further details by ordinance regarding the content of the capital conservation plan.

C. Measures relating to specific exposures and in the event of threats to the stability of the financial system[125]

Article 4y[126]

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, 125 and 164 of Regulation (EU) No 575/2013 than provided for in that Regulation.

2) The Government may provide further details by ordinance.

125 Title preceding Article 4y inserted by LGBl. 2022 No. 109.

126 Article 4y inserted by LGBl. 2022 No. 109.

Article 4z[127]

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.

D. Netting agreements[128]

Article 4z[bis129]

Recognition of contractual netting agreements

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.

127 Article 4z inserted by LGBl. 2022 No. 109.

128 Title preceding Article 4zbis inserted by LGBl. 2022 No. 109.

129 Article 4zbis inserted by LGBl. 2022 No. 109.

E. Liquidity, legal reserves, and deposit guarantee and investor protection[130]

Article 5[131]

Liquidity

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

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

Article 6

Legal reserves[132]

1) Banks and investment firms holding funds or financial instruments of clients or issuing financial instruments must allocate at least one twentieth of their annual net profits to the legal reserves, until the legal reserves amount to one fifth of their share capital.[133]

2) Where the legal reserves do not exceed one half of the share capital, they may be used only to cover losses.[134]

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.[135]

Article 7[136]

Deposit guarantee and investor protection

Banks accepting deposits as referred to in Article 3(3)(a), or banks and investment firms rendering investment services as referred to in Article 3(4), may render banking or investment services only once they have joined

130 Title preceding Article 5 inserted by LGBl. 2022 No. 109.
131 Article 5 amended by LGBl. 2014 No. 348.
132 Article 6 heading amended by LGBl. 1998 No. 223.
133 Article 6(1) amended by LGBl. 2007 No. 261.
134 Article 6(2) amended by LGBl. 1998 No. 223.
135 Article 6(3) amended by LGBl. 1998 No. 223.
136 Article 7 amended by LGBl. 2019 No. 105.

a protection organisation under the Deposit Guarantee and Investor Compensation Act.

F. Risk management and corporate governance[137]

Article 7a[138]

Principle[139]

1) Banks and investment firms must provide a risk management framework as well as regulations or internal directives describing responsibilities and processes for the approval of risky business activities. In particular, they must detect, mitigate, and monitor market, credit, default, residual, settlement, liquidity, concentration, securitisation, counterparty, interest rate, reputation, operational, and legal risks as well as the risk of overindebtedness.[140]

2) Banks and investment firms must ensure robust governance arrangements, which include:[141]

a) a clear organisational structure with well-defined, transparent, and consistent lines of responsibility and adequate personnel resources;

b) effective processes to identify, manage, monitor, and report the risks to which they are or might be exposed;

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

d) clear principles and effective procedures for aggregating risk data and risk reporting.

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

4) The strategies and processes referred to in paragraph 3 shall be subject to regular internal review and approval by the board of directors,

137 Title preceding Article 7a inserted by LGBl. 2022 No. 109.
138 Article 7a amended by LGBl. 2007 No. 261.
139 Article 7a heading amended by LGBl. 2022 No. 109.
140 Article 7a(1) amended by LGBl. 2014 No. 348.
141 Article 7a(2) amended by LGBl. 2022 No. 109.

and sufficient time shall be allocated to discuss them, to ensure that they remain comprehensive and proportionate to the nature, scale, and complexity of the activities of the bank or investment firm concerned.[142]

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

6) Banks and investment firms shall introduce and permanently maintain gender neutral remuneration policies and practices that are consistent with sound and effective risk management as set out in this Article. The FMA shall use the information disclosed in accordance with the criteria for disclosure established in Article 450(1)(g), (h), (i) and (k) of Regulation (EU) No 575/2013 as well as the information provided by banks and investment firms in accordance with Article 26(1)(k) on the gender pay gap to benchmark remuneration trends and practices. The FMA shall provide the EBA with that information.[143]

7) The Government shall provide further details by ordinance, in particular regarding:[144]

a) the design of the framework and processes to identify, manage, and monitor the risks referred to in paragraph 1;

b) assurance of suitable risk management that takes account of the nature, scale, and complexity of the risks inherent in the business model and the business activities of the bank or investment firm;

c) the design and the scope of the remuneration policies and practices, including the nature and scope of the data to be transmitted to the FMA;[145]

d) the minimum requirements on the principles and effective procedures for the aggregation of risk data and risk reporting;[146]

e) the minimum requirements for placing, internal reporting, and supervision of certain categories of ETP transactions.[147]

142 Article 7a(4) amended by LGBl. 2014 No. 348.
143 Article 7a(6) amended by LGBl. 2022 No. 109.
144 Article 7a(7) inserted by LGBl. 2014 No. 348.
145 Article 7a(7)(c) amended by LGBl. 2022 No. 109.
146 Article 7a(7)(d) inserted by LGBl. 2022 No. 109.
147 Article 7a(7)(e) inserted by LGBl. 2022 No. 109.

Article 7b[148]

Assessment of capital adequacy

1) The following banks and investment firms must meet the obligations set out in Article 7a(3) and (4) on an individual basis:[149]

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

b) banks and investment firms that are not included in the consolidation pursuant to Article 19 of Regulation (EU) No 575/2013;

c) groups of investment firms in regard to which the FMA has waived the application of own funds requirements on a consolidated basis provided for in Article 15 of Regulation (EU) No 575/2013.

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

3) Parent banks or parent investment undertakings situated in Liechtenstein must meet the obligations set out in Article 7a(3) and (4) on a consolidated basis.[150]

4) Subsidiary banks or subsidiary investment firms situated in Liechtenstein must apply the obligations set out in Article 7a(3) and (4) on a sub-consolidated basis if they, or the parent undertaking where it is a financial holding company or a mixed financial holding company, have a bank or investment firm or a financial institution or an asset management company as defined in Article 5(1)(c) of the Financial Conglomerates Act as a subsidiary in a third country, or hold a participation in such an undertaking.[151]

5) Repealed[152]

6) Repealed[153]

148 Article 7b inserted by LGBl. 2014 No. 348.
149 Article 7b(1) introductory phrase amended by LGBl. 2022 No. 109.
150 Article 7b(3) amended by LGBl. 2022 No. 109.
151 Article 7b(4) amended by LGBl. 2022 No. 109.
152 Article 7b(5) repealed by LGBl. 2022 No. 109.
153 Article 7b(6) repealed by LGBl. 2022 No. 109.

Article 7c[154]

Application of the provisions governing risk management and corporate governance

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

2) Parent undertakings and subsidiaries covered by this Act shall:[155]

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.[156]

4) Obligations under paragraph 1 shall not be applied in relation to subsidiary undertakings not covered by this Act if the EEA parent bank or EEA parent investment firm demonstrates to the FMA that the obligations under paragraph 1 are unlawful under the laws of the third country where the subsidiary is established.[157]

5) Where banks or investment firms have a relationship with each other as referred to in Article 22(7) of Directive 2013/34/EU[158], the bank or investment firm with the largest balance sheet total situated in Liechtenstein shall be considered the EEA parent bank or the EEA parent

154 Article 7c inserted by LGBl. 2014 No. 348.

155 Article 7c(2) amended by LGBl. 2022 No. 109.

156 Article 7c(3) amended by LGBl. 2022 No. 109.

157 Article 7c(4) amended by LGBl. 2022 No. 109.

158 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, 19)

investment firm in an EEA Member State for the purposes of regulatory consolidation under this Act and under Part One Title II Chapter 2 of Regulation (EU) No 575/2013.[159]

6) The requirements set out in paragraph 2 shall also apply to TT service providers as referred to in Article 2(1)(i) of the Token and TT Service Provider Act as ancillary services undertakings as defined in Article 4(1)(18) of Regulation (EU) No 575/2013.[160]

7) The Government shall provide further details by ordinance.[161]

Article 7d[162]

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

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

a) reviewing risk management, risk coverage, and internal models in accordance with Articles 35a and 35b; and

b) when exercising supervisory powers in accordance with Articles 35(4), 35a, 35c, 35d, and 35e.

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

Article 8[163]

Allocation of risks

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

159 Article 7c(5) inserted by LGBl. 2022 No. 109.
160 Article 7c(6) inserted by LGBl. 2022 No. 109.
161 Article 7c(7) inserted by LGBl. 2022 No. 109.
162 Article 7d inserted by LGBl. 2014 No. 348.
163 Article 8 amended by LGBl. 2014 No. 348.

if and to the extent that the bank or investment firm is required to fulfil the own funds requirements on a consolidated basis.

G. Obligations in connection with the provision of investment services and ancillary services[164]

Article 8a[165]

Principles[166]

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

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

3) The Government shall provide further details by ordinance, in particular regarding the code of conduct and organisational requirements, taking account of different client classifications, financial instruments, and services.

Article 8b[167]

Product approval process, product verification and client classification[168]

1) Banks and investment firms manufacturing financial instruments for sale to clients shall maintain, operate and review a process for the approval of each individual financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients.

164 Title preceding Article 8a amended by LGBl. 2022 No. 109.
165 Article 8a amended by LGBl. 2017 No. 397.
166 Article 8a heading amended by LGBl. 2022 No. 109.
167 Article 8b amended by LGBl. 2017 No. 397.
168 Article 8b heading amended by LGBl. 2022 No. 109.

The product approval process shall specify an identified target market of end clients within the relevant client classification for each financial instrument and shall ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market. The financial instruments shall be designed so that the needs of an identified target market of end clients within the relevant client classification are met and so that the strategy for distribution of the financial instruments is compatible with the identified target market. Banks and investment firms shall take reasonable steps to ensure that the financial instruments they design are sold in the target market.

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

3) Banks and investment firms shall regularly review financial instruments they offer or market, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the financial instrument remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

3a) Banks and investment firms shall be exempted from the product verification requirements set out in paragraphs 1 to 3 and Article 8a(2) where the investment service they provide relates to bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties.[169]

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

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

6) The Government shall provide further details by ordinance.

169 Article 8b(3a) inserted by LGBl. 2022 No. 294.

Article 8c[170]

Documentation and information requirement[171]

1) Banks and investment firms must record and document all client relationships, transactions, systems, and processes in an appropriate and traceable way.[172]

2) Clients and potential clients must, in good time and in an intelligible form, be provided with information regarding:[173]

a) the bank or investment firm and its services. If investment advice is provided, the bank or investment firm shall inform in good time before the investment advice is provided:
   1. whether or not the advice is provided on an independent basis;
   2. whether the advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the bank or investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided;
   3. whether the bank or investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client;

b) the applicable contractual terms and business conditions;

c) the financial instruments and the proposed investment strategies, including appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with Article 8a(2);

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

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

170 Article 8c inserted by LGBl. 2007 No. 261.
171 Article 8c heading amended by LGBl. 2022 No. 109.
172 Article 8c(1) amended by LGBl. 2014 No. 348.
173 Article 8c(2) amended by LGBl. 2017 No. 397.

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

2a) Where the client is a professional client, the requirements under paragraph 2(e) shall apply exclusively to the provision of investment advice or portfolio management.[174]

3) The information about all costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the client to understand the overall cost as well as the cumulative effect on return of the investment, and where the client so requests, an itemised breakdown shall be provided. Where applicable, such information shall be provided to the client on a regular basis, at least annually, during the life of the investment.[175]

3a) Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the information on costs and charges in accordance with paragraph 2(e), the bank or investment firm may provide the information on costs and charges either in electronic format or on paper, where requested by a retail client, without undue delay after the conclusion of the transaction, provided that:[176]

a) the client has consented to provision of the information without undue delay after the conclusion of the transaction; and

b) the bank or investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information.

3b) In addition to the requirements of paragraph 3a, the bank or investment firm must give the client the option of receiving the information on costs and charges over the phone prior to the conclusion of the transaction.[177]

4) The information referred to in paragraphs 2 to 3b may be provided in a standardised format.[178]

4a) Banks and investment firms shall provide all information required to be provided by this Act to clients or potential clients in electronic format. Banks and investment firms shall inform retail clients or potential retail clients that they have the option of receiving the information on paper.

174 Article 8c(2a) inserted by LGBl. 2022 No. 294.
175 Article 8c(3) amended by LGBl. 2017 No. 397.
176 Article 8c(3a) inserted by LGBl. 2022 No. 294.
177 Article 8c(3b) inserted by LGBl. 2022 No. 294.
178 Article 8c(4) amended by LGBl. 2022 No. 294.

Retail clients or potential retail clients who have requested to receive the information on paper shall be provided with the information on paper free of charge.[179]

4b) Banks and investment firms shall inform existing clients that receive the information required to be provided by this Act on paper of the following at least eight weeks before sending that information in electronic format:[180]

a) that the client will receive that information in electronic format in future;

b) that the client has the choice either to continue receiving information on paper or to switch to information in electronic format; and

c) that an automatic switch to the electronic format will occur if the client does not request the continuation of the provision of the information on paper within that eight week period.

4c) Existing clients who already receive the information required to be provided by this Act in electronic format do not need to be informed in accordance with paragraph 4b.[181]

5) Where an investment service is offered as part of a financial product which is already subject to other provisions relating to banks and consumer credits with respect to information requirements, that service shall not be additionally subject to the obligations set out in paragraphs 2 and 3 as well as Article 13.[182]

6) In the case of cross-selling practices, the bank or investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component. Where the risks for a retail client resulting from cross-selling practices are likely to be different from the risks associated with the components taken separately, the bank or investment firm shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.[183]

7) Where a bank or investment firm informs the client that investment advice is provided on an independent basis, that bank or investment firm shall assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment

179 Article 8c(4a) inserted by LGBl. 2022 No. 294.
180 Article 8c(4b) inserted by LGBl. 2022 No. 294.
181 Article 8c(4c) inserted by LGBl. 2022 No. 294.
182 Article 8c(5) inserted by LGBl. 2017 No. 397.
183 Article 8c(6) inserted by LGBl. 2017 No. 397.

objectives can be suitably met. The investment advice must not be limited to financial instruments issued or provided by:[184]

a) the bank or investment firm itself or by entities having close links with the bank or investment firm;

b) other entities with which the bank or investment firm has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided.

8) A bank or investment firm offering investment advice or portfolio management shall be prohibited from accepting and retaining fees, commissions or any monetary or non-monetary benefits (inducements) paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the duty of the bank or investment firm to act in the best interest of the client shall be clearly disclosed and are excluded from this paragraph.[185]

9) A bank or investment firm does not act honestly, fairly, and professionally in the best interests of its clients in accordance with Article 8a(1) and does not meet the obligation set out in Article 8h where it pays or receives inducements, in connection with the provision of an investment service or an ancillary service, to or by any party except the client or a person on behalf of the client.[186]

10) The payment or receipt of inducements as referred to in paragraph 9 shall be permissible if:[187]

a) the inducements:

   1. are designed to enhance the quality of the relevant service to the client;

   2. do not impair compliance with the duty of the bank or investment firm to act in accordance with the best interest of its clients; and

   3. the existence, nature and amount of the inducement or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service; where applicable, the bank or investment firm shall also inform the client on mechanisms

184 Article 8c(7) amended by LGBl. 2022 No. 294.
185 Article 8c(8) amended by LGBl. 2022 No. 294.
186 Article 8c(9) inserted by LGBl. 2022 No. 294.
187 Article 8c(10) inserted by LGBl. 2022 No. 294.

for transferring to the client the inducement received in relation to the provision of the investment service or ancillary service; or

b) the inducements enable or are necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by their nature cannot give rise to conflicts with the duty of the bank or investment firm to act honestly, fairly and professionally in the best interests of its clients.

11) The Government shall provide further details by ordinance.[188]

Article 8d[189]

Assessment of suitability and appropriateness, reporting to clients[190]

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

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

2a) When providing either investment advice or portfolio management that involves the switching of financial instruments, the bank or investment firm shall obtain the necessary information on the client's investment and shall analyse the costs and benefits of the switching of financial instruments. When providing investment advice, the bank or investment firm shall inform the client whether or not the benefits of the switching of financial instruments are greater than the costs involved in such switching.[191]

188 Article 8c(11) inserted by LGBl. 2022 No. 294.
189 Article 8d amended by LGBl. 2017 No. 397.
190 Article 8d heading amended by LGBl. 2022 No. 109.
191 Article 8d(2a) inserted by LGBl. 2022 No. 294.

2b) The requirements laid down in paragraph 2a shall not apply to services provided to professional clients, unless those clients inform the bank or investment firm either in electronic format or on paper that they wish to benefit from the rights provided for in those provisions. The banks and asset management companies shall keep a record of these client communications.[192]

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

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

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

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

192 Article 8d(2b) inserted by LGBl. 2022 No. 294.

Article 8e[193]

Best execution of client orders[194]

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

2) Following execution of a transaction, each bank or investment firm shall inform the client where the order was executed.[195]

3) For financial instruments subject to the trading obligation in Articles 23 and 28 of Regulation (EU) No 600/2014, each trading venue and systematic internaliser and for other financial instruments each execution venue shall make available to the public, without any charges, data relating to the quality of execution of transactions on that venue on at least an annual basis. Periodic reports shall include details about price, costs, speed and likelihood of execution for individual financial instruments.[196]

4) The Government shall provide further details by ordinance.[197]

Article 8f[198]

Record-keeping and reporting of transactions[199]

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

Article 8g[200]

Reporting obligations[201]

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

193 Article 8e inserted by LGBl. 2007 No. 261.
194 Article 8e heading amended by LGBl. 2022 No. 109.
195 Article 8e(2) amended by LGBl. 2017 No. 397.
196 Article 8e(3) inserted by LGBl. 2017 No. 397.
197 Article 8e(4) inserted by LGBl. 2017 No. 397.
198 Article 8f amended by LGBl. 2017 No. 397.
199 Article 8f heading amended by LGBl. 2022 No. 109.
200 Article 8g inserted by LGBl. 2007 No. 261.
201 Article 8g heading amended by LGBl. 2022 No. 109.

1a) Article 8d(2b) shall apply *mutatis mutandis*.[202]

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

Article 8h[203]

Dealing with conflicts of interest and disclosure of inducements[204]

1) Banks and investment firms shall take all appropriate steps to identify and to prevent or manage potential conflicts of interest between themselves – including their managers, tied agents and employees, or any person directly or indirectly linked to them by control – and their clients or between one client and another. This applies to all conflicts of interest that may arise in the course of providing any investment and ancillary services, or combinations thereof, including any conflicts of interest caused by the receipt of incentives from third parties or by the bank's or investment firm's own remuneration and other incentive structures.[205]

2) A bank or investment firm which provides investment services to clients shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular, it shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the investment firm could offer a different financial instrument which would better meet that client's needs. Moreover, in the course of providing any investment and ancillary services, banks and investment firms may grant or accept fees, commissions or any monetary or non-monetary benefits (inducements) only under the conditions specified by ordinance.[206]

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

202 Article 8g(1a) inserted by LGBl. 2022 No. 294.
203 Article 8h inserted by LGBl. 2007 No. 261.
204 Article 8h heading amended by LGBl. 2022 No. 109.
205 Article 8h(1) amended by LGBl. 2017 No. 397.
206 Article 8h(2) amended by LGBl. 2017 No. 397.

4) The Government shall provide further details by ordinance regarding the identification and handling of conflicts of interest, the disclosure of unavoidable conflicts of interest, and the disclosure of inducements.[207]

H. Arrangements for the protection of financial instruments belonging to clients and clients funds; algorithmic trading[208]

Article 8i[209]

Holding financial instruments belonging to clients and client funds

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

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

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

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

Article 8k[210]

Algorithmic trading

1) A bank or investment firm that engages in algorithmic trading shall have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient

207 Article 8h(4) amended by LGBl. 2017 No. 397.
208 Title preceding Article 8i inserted by LGBl. 2022 No. 109.
209 Article 8i inserted by LGBl. 2017 No. 397.
210 Article 8k inserted by LGBl. 2017 No. 397.

capacity, are subject to appropriate trading thresholds and limits, and prevent the sending of erroneous orders or the systems' otherwise functioning in a way that may create or contribute to a disorderly market.

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

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

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

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

I. Provision of services through the medium of another bank, investment firm or asset management company; transactions with governing bodies[211]

Article 8l[212]

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

1) A bank or investment firm receiving an instruction to provide a service referred to in Annex 2 Section A on behalf of a client through the medium of another bank, investment firm or asset management company

211 Title preceding Article 8l inserted by LGBl. 2022 No. 109.
212 Article 8l inserted by LGBl. 2017 No. 397.

may rely on client information transmitted by the latter bank, investment firm or asset management company. The bank, investment firm or asset management company which mediates the instructions shall remain responsible for the completeness and accuracy of the information transmitted.

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

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

Article 9[213]

Transactions with governing bodies

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

2) Banks and investment firms 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 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

213 Article 9 amended by LGBl. 2022 No. 109.

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 external audit office 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:

a) they conform to the generally acknowledged principles of the banking business;

b) the transactions carried out with financial instruments comply with the requirements of Articles 28 and 29 of Commission Delegated Regulation (EU) 2017/565[214].

K. Accounting, reporting, and auditing[215]

Article 10

Business report, consolidated business report, interim financial statement, consolidated interim financial statement[216]

1) Banks and investment firms shall compile a business report for each business year, consisting of the annual financial statement and the annual report. The annual financial statement shall consist of the balance sheet, the income statement, and the notes.[217]

2) To the extent that they are obliged to do so, banks and investment firms shall also compile a consolidated business report for each business year, consisting of the consolidated annual financial statement and the consolidated annual report. The consolidated annual financial statement shall consist of the consolidated balance sheet, the consolidated income statement, and the consolidated notes.[218]

3) By ordinance, the Government shall specify which banks and investment firms shall also compile a cash-flow statement as an additional

214 Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, 1)

215 Title preceding Article 10 inserted by LGBl. 2022 No. 109.

216 Article 10 heading amended by LGBl. 1998 No. 223.

217 Article 10(1) amended by LGBl. 2007 No. 261.

218 Article 10(2) amended by LGBl. 2007 No. 261.

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.[219]

4) The business report, the consolidated business report, the interim financial statement, and the consolidated interim financial statement shall be compiled in accordance with the provisions of the Law on Persons and Companies (PGR) and the provisions of this Act. If the annual financial statement, the consolidated annual financial statement, the interim financial statement, and the consolidated interim financial statement are compiled in accordance with the international accounting standards of the IASB, then Article 1139 PGR shall apply.[220]

5) The business report, the consolidated business report, the interim financial statement, and the consolidated interim financial statement shall be disclosed.[221]

6) By ordinance, the Government shall specify how the business reports, the consolidated business reports, the interim financial statements, and the consolidated interim financial statements shall be compiled and in what form, to what extent, and by what deadlines they shall be disclosed.[222]

7) The business reports, the consolidated business reports, the interim financial statements, and the consolidated interim financial statements, as well as the information necessary for the determination of monetary, credit, and currency policies and the compilation of banking statistics shall be submitted to the FMA.[223]

Article 10a[224]

Internal audit department

1) Banks and investment firms shall establish an effective internal audit department on an individual and consolidated basis. The internal audit department shall report directly to the board of directors. The board of directors shall provide a special regulation governing the activities of the

219 Article 10(3) amended by LGBl. 2007 No. 261.
220 Article 10(4) amended by LGBl. 2004 No. 265.
221 Article 10(5) amended by LGBl. 1998 No. 223.
222 Article 10(6) amended by LGBl. 1998 No. 223.
223 Article 10(7) amended by LGBl. 1999 No. 87 and LGBl. 2004 No. 176.
224 Article 10a inserted by LGBl. 2022 No. 109.

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;

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 duties 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 or investment firm. 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 belonging to the same group, regardless of whether the activities and processes are outsourced or not. Banks and investment firms shall ensure timely remediation of deficiencies identified by the internal audit department.

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

6) 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.

7) In addition to its reporting obligations under paragraph 6, the internal audit department shall have the right to report at any time to the

board of directors, the senior management, the external audit office, and the FMA.

8) The Government shall provide further details by ordinance.

Article 11

External audit requirement

1) Each year, banks and investment firms must submit to an audit of their business activities by an external audit office recognised by the FMA.[225]

2) At all times, banks and investment firms must grant the external audit office access to the books, receipts, business correspondence, and minutes of the board of directors and the senior management, they must keep all documents available that are usually required in the Liechtenstein banking business to determine and value assets and liabilities, and they must provide all information necessary for fulfilling the audit requirement.[226]

3) The external audit office shall the right to inspect all documents, working papers, and IT systems of the internal audit department.[227]

L. Rehypothecation and publicity[228]

Article 12[229]

Rehypothecation

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

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

225 Article 11(1) amended by LGBl. 2007 No. 261.
226 Article 11(2) amended by LGBl. 2007 No. 261.
227 Article 11(3) amended by LGBl. 2022 No. 109.
228 Title preceding Article 12 inserted by LGBl. 2022 No. 109.
229 Article 12 amended by LGBl. 2007 No. 261.

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

a) the pledge serves exclusively to secure the claim related to the rehypothecation or carryover transaction;

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

Article 13[230]

Publicity

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

2) The Government shall provide further details by ordinance.

M. Banking secrecy[231]

Article 14[232]

Principle[233]

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

2) Paragraph 1 is without prejudice to the statutory provisions on the obligation to give testimony or information to the criminal courts, supervisory bodies, and the Financial Intelligence Unit (FIU), the provisions on cooperation with the FIU and other supervisory authorities, and the provisions on the disclosure of information on the identity of shareholders (Article 367b PGR).[234]

230 Article 13 amended by LGBl. 2007 No. 261.
231 Title preceding Article 14 inserted by LGBl. 2022 No. 109.
232 Article 14 amended by LGBl. 2007 No. 261.
233 Article 14 heading amended by LGBl. 2022 No. 109.
234 Article 14(2) amended by LGBl. 2021 No. 226.

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

N. Outsourcing; appointment of tied agents[235]

Article 14a[236]

Outsourcing

1) Banks and investment firms may enter into agreements with third parties for the outsourcing of processes, services, or activities. Outsourcing must comply with the relevant guidelines issued by the European Supervisory Authorities.

2) Outsourcing shall not result in delegation of the duties and responsibilities of the board of directors or senior management or adversely affect ongoing compliance with the provisions of 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 external audit office 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 shall provide further details by ordinance, especially regarding the conditions under which outsourcing is permissible.

Article 14b[237]

Appointment of tied agents

1) As part of their investment services and ancillary services, banks and investment firms may appoint tied agents for the purposes of promoting their business, entering into new business relationships, or receiving orders

235 Title preceding Article 14a inserted by LGBl. 2022 No. 109.
236 Article 14a amended by LGBl. 2022 No. 109.
237 Article 14b inserted by LGBl. 2007 No. 261.

from clients or potential clients and transmitting them, placing financial instruments, and providing advice in respect of the investment services, ancillary services, and financial instruments offered by that bank or investment firm, provided that the latter are subject to registration according to Article 35(8).[238]

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

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

O. Data processing[239]

Article 14c[240]

Processing of personal data

Banks and investment firms 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 or investment services and ancillary services as referred to in Article 3(3) and (4), to the extent necessary for the provision of those activities and services.

238 Article 14b(1) amended by LGBl. 2017 No. 397.
239 Title preceding Article 14c inserted by LGBl. 2022 No. 109.
240 Article 14c inserted by LGBl. 2018 No. 304.

III. Taking up of business[241]

A. Licensing of banks and investment firms[242]

1. Principles[243]

Article 15

Licensing requirement[244]

1) Banks and investment firms require a licence issued by the FMA to take up their business.[245]

2) If the bank or investment firm forms part of a foreign group working in the financial sector, the licence shall be granted only if, in addition to the conditions set out in Articles 18 to 24:[246]

a) the group is subject to consolidated supervision equivalent to Liechtenstein supervision;[247]

b) the supervisory authority of the home country does not object to the establishment of a subsidiary.[248]

3) When considering the application for a licence, the economic needs of the market may not be taken into account.[249]

4) Operation of a domiciliary bank is prohibited. Domiciliary banks are banks that do not maintain a physical presence in the domiciliary country and that are not part of group operating in the financial sector that is subject to appropriate consolidated supervision and governed by Directive (EU) 2015/849 or equivalent regulation.[250]

241 Title preceding Article 15 amended by LGBl. 2014 No. 348.
242 Title preceding Article 15 amended by LGBl. 2022 No. 109.
243 Title preceding Article 15 amended by LGBl. 2014 No. 348.
244 Article 15 heading amended by LGBl. 1998 No. 223.
245 Article 15(1) amended by LGBl. 2007 No. 261.
246 Article 15(2) introductory phrase amended by LGBl. 2010 No. 389.
247 Article 15(2)(a) amended by LGBl. 1998 No. 223.
248 Article 15(2)(b) amended by LGBl. 1998 No. 223.
249 Article 15(3) amended by LGBl. 1998 No. 223.
250 Article 15(4) amended by LGBl. 2020 No. 307.

Article 16

Business names[251]

1) Nomenclature indicating activities as a bank or investment firm may only be used in the business name, the designation of the purpose of the business, and business advertising of undertakings that have obtained a licence as a bank or investment firm.[252]

2) Banks, financial institutions, and investment firms situated in a foreign country may use their business names in Liechtenstein subject to paragraph 1. If there is a danger of confusion, an explanatory supplement may be required.[253]

3) Banks and investment firms may use the name of a parent undertaking in their own business name only if the parent undertaking exercises a dominant influence due to a majority holding. Moreover, if significant components of the name of a foreign bank or investment firm are used in the business name, a differentiating supplement must be used which makes it clear that the bank or investment firm is a Liechtenstein subsidiary of a specific foreign bank or investment firm.[254]

4) The FMA shall review the permissibility of the business name from a supervisory perspective. The business name may not be misleading, and in particular it may not give rise to any false assumptions concerning the scope of business activities.[255]

2. Conditions[256]

Article 17

General conditions and procedures[257]

1) The licence for operating a bank or investment shall be granted – where necessary subject to restrictions and stipulations – if all conditions set out in this Article and Articles 18 to 24 are met.[258]

251 Article 16 heading amended by LGBl. 1998 No. 223.
252 Article 16(1) amended by LGBl. 2007 No. 261.
253 Article 16(2) amended by LGBl. 2007 No. 261.
254 Article 16(3) amended by LGBl. 2014 No. 348.
255 Article 16(4) amended by LGBl. 1998 No. 223, LGBl. 1999 No. 87 and LGBl. 2004 No. 176.
256 Title preceding Article 17 inserted by LGBl. 1998 No. 223.
257 Article 17 heading amended by LGBl. 1998 No. 223.
258 Article 17(1) amended by LGBl. 2022 No. 109.

1a) Every application for a licence shall be accompanied in particular by the following documentation:[259]

a) a programme of operations, setting out in particular the types of business envisaged and the organisational structure of the bank or investment firm, indicating parent undertakings, financial holding companies, and mixed financial holding companies within the group; and

b) a description of the governance arrangements referred to in Article 7a(2).

2) 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 holding 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.[260]

2a) As the consolidating supervisor, the FMA shall transmit to the affected competent authorities of the other EEA Member States and the EBA all information about persons with close links to banks and investment firms as well as about the group of banks and investment firms in accordance with Article 7a(2), Article 7c(2), and Article 20(2) to (4). The information must in particular include details about the structure and corporate governance and the group, including:[261]

a) well-defined, transparent, and consistent lines of responsibility;

b) effective processes to identify, manage, monitor, and report the risks to which they are or might be exposed;

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

d) remuneration policies and practices that are consistent with and conducive to sound and effective risk management.

3) The FMA shall decide on an application for a licence within 12 months of receipt of the complete application. Every refusal shall be substantiated and notified to the applicant within six months of receipt of the application

259 Article 17(1a) amended by LGBl. 2022 No. 109.

260 Article 17(2) amended by LGBl. 2019 No. 105.

261 Article 17(2a) introductory phrase amended by LGBl. 2022 No. 109.

or, if the application is incomplete, within six months after the required information has been submitted.[262]

4) Prior to granting a licence to a bank or investment firm, the FMA must consult the competent authorities of another EEA Member State if:[263]

a) a subsidiary or a subsidiary of the parent undertaking of a bank, financial institution, insurance undertaking, or investment firm licensed in another EEA Member State is to be established;

b) a subsidiary of a market operator licensed in another EEA Member State is to be established;

c) the bank or investment firm to be established is controlled by the same natural or legal persons as a bank, financial institution, insurance undertaking, or investment firm licensed in another EEA Member State.

5) Shareholders with a qualifying holding must meet the demands placed in the interest of ensuring sound and prudent management of the bank or investment firm.[264]

6) Where paragraph 4 applies, the FMA shall in particular consult the competent authorities of other EEA Member States when assessing the suitability of the shareholders and the reputation and experience of members of the senior management and the board of directors who also serve in leading functions in other undertakings in the same group. The FMA shall exchange all information with the competent authorities of other EEA Member States concerning the suitability of the participating shareholders and the reputation and experience of members of the senior management and board of directors when such information is relevant to the granting of licences as well as the ongoing monitoring of compliance with operating conditions.[265]

7) The Government shall provide further details by ordinance. It may, in particular, specify the more detailed requirements for the documentation that must accompany the application for a licence.[266]

262 Article 17(3) amended by LGBl. 2022 No. 109.
263 Article 17(4) amended by LGBl. 2017 No. 397.
264 Article 17(5) amended by LGBl. 2007 No. 261.
265 Article 17(6) amended by LGBl. 2014 No. 348.
266 Article 17(7) amended by LGBl. 2022 No. 109.

Article 17a[267]

Exemption for banks which are permanently affiliated to a central body

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

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

b) preparation of a programme of operations (Article 17(1a));

c) internal audit department (Article 22(2)(c));

d) risk management (Article 22(2)(d));

e) initial and minimum capital (Article 24).

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

a) capital buffers (Articles 4a to 4x);

b) risk management (Article 7a);

c) the internal audit department (Article 10a);

d) cross-border activity (Articles 30b to 30e and 30i to 30l[quinquies]);

e) information exchange and professional secrecy (Articles 30f, 30h and 31a to 34);

f) supervisory powers, powers to impose penalties, and right of appeal (Article 35(2) and (4), Articles 62 to 63c); and

g) review processes (Article 7a to 7d, 22, 23 and 35a to 35e).

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 central body as a whole and to the banks and investment firms affiliated to it. Within the scope of this obligation, the central body shall in particular ensure and monitor the solvency and liquidity of the central body as a whole and of the banks and investment firms affiliated to it. The central body shall ensure that the senior managers of the affiliated banks or investment firms comply with the requirements under Articles 19 and 22(5) and (6).

267 Article 17a amended by LGBl. 2022 No. 109.

Article 18

Legal form and registered office[268]

1) Banks and investment firms may be established only in the legal form of a limited company or a European Company (SE). In justified cases, the FMA may permit exceptions.[269]

2) The registered office and the head office must be situated in Liechtenstein.[270]

Article 19[271]

Guarantee of sound and proper business operation

1) Banks and investment firms must ensure that the members of the board of directors and the senior management as well as the head of the internal audit department guarantee sound and proper business operation at all times in professional and personal terms; in the case of banks and investment firms that are significant, this also applies to all other holders of key functions. The members of the board of directors and senior management shall in particular comply with the requirements set out in Article 22(5) and (6)(a) as well as the mandate limits set out in Article 22(10)(e).

2) When assessing the requirements set out in paragraph 1, the FMA shall take into account the entries in databases of the European Supervisory Authorities as referred to in Article 63c(6).

3) The FMA may at any time verify whether the requirements set out in paragraph 1 are met. A review shall be carried out in any case if there are reasonable grounds to suspect that:

a) in connection with a bank or investment firm, money laundering within the meaning of § 165 StGB, terrorist financing within the meaning of § 278d StGB, corruption within the meaning of §§ 304 to 309 StGB, insider dealing within the meaning of Article 6 EWR-MDG, market manipulation within the meaning of Article 7 EWR-MDG, criminal breach of trust within the meaning of § 153 StGB, or fraud within the meaning of §§ 146 to 148 StGB or a comparable offence takes place, has taken place, or has been attempted; or

268 Article 18 heading amended by LGBl. 1998 No. 223.
269 Article 18(1) amended by LGBl. 2007 No. 261.
270 Article 18(2) inserted by LGBl. 1998 No. 223.
271 Article 19 amended by LGBl. 2022 No. 109.

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 the members of the board of directors or the senior management, the head of the internal audit department of a bank or investment firm, or other holders of key functions do not or no longer meet the requirements set out in paragraph 1, the FMA shall take the necessary measures, in particular their removal pursuant to Article 35(2)(r).

5) The Government shall provide further details by ordinance.

Article 20[272]

Incompatibility, close links

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

2) If close links exist between the bank or investment firm and other natural or legal persons, the FMA shall grant the licence only if these links do not obstruct the proper fulfilment of its supervisory duties.[273]

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

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

Article 21

Articles of association and regulations[274]

1) The articles of association and regulations must precisely define the material and geographic scope of business of the bank or investment firm.[275]

272 Article 20 amended by LGBl. 2007 No. 261.
273 Article 20(2) amended by LGBl. 2014 No. 348.
274 Article 21 heading inserted by LGBl. 2019 No. 105.
275 Article 21(1) amended by LGBl. 2007 No. 261.

2) Activities other than banking or investment services must be expressly mentioned in the articles of association.[276]

3) The articles of association shall require approval by the FMA to be valid.[277]

Article 22

Organisation

1) Banks and investment firms must be organised in accordance with their scope of business.[278]

2) Banks and investment firms shall require:[279]

a) a board of directors responsible for overall direction, supervision, and control;

b) a senior management responsible for business operations, consisting of at least two members who perform their activities with joint responsibility and who may not simultaneously be members of the board of directors;

c) an internal audit department as referred to in Article 10a that reports directly to the board of directors;[280]

d) risk management independent of operational activities in accordance with Article 7a; and

e) appropriate procedures for employees to report potential or actual infringements of this Act and Regulations (EU) No 575/2013 and 600/2014 internally through a specific, independent, and autonomous channel.[281]

2a) Banks and investment firms that are significant shall require, in addition to paragraph 2, a risk committee, a nomination committee, a remuneration committee, and an audit committee of the board of directors.[282]

276 Article 21(2) amended by LGBl. 2007 No. 261.
277 Article 21(3) amended by LGBl. 2019 No. 105.
278 Article 22(1) amended by LGBl. 2007 No. 261.
279 Article 22(2) amended by LGBl. 2014 No. 348.
280 Article 22(2)(c) amended by LGBl. 2022 No. 109.
281 Article 22(2)(e) amended by LGBl. 2022 No. 294.
282 Article 22(2a) inserted by LGBl. 2014 No. 348.

2b) The FMA may require banks and investment firms that are significant:[283]

a) to use internal models 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) to use internal models for calculating own funds requirements for the specific risk of debt instruments and for internal calculations of own funds requirements for default and mitigation risk in accordance with Part Three Title 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.

3) In special cases, the FMA may approve an exception subject to conditions, as long as the exception does not contradict any EEA legal provisions.[284]

4) The distribution of functions between the board of directors and the senior management must guarantee proper monitoring of business conduct.

5) Banks and investment firms shall ensure that the members of the senior management and the board of directors have the necessary knowledge, skills, and experience to collectively understand the activities of the bank and the investment firm, including the risks. The composition of the senior management and the board of directors shall reflect an adequately broad range of experience.[285]

6) All members of the senior management and the board of directors shall commit sufficient time to perform their functions and shall demonstrate this to the FMA upon request. Each member of the board of directors shall:[286]

a) act with honesty, integrity, and independence of mind; being a member of affiliated companies or affiliated entities does not in itself constitute an obstacle to acting with independence of mind;

b) effectively monitor, assess, and, if necessary, challenge the decisions of the senior management; and

283 Article 22(2b) amended by LGBl. 2022 No. 109.
284 Article 22(3) amended by LGBl. 1998 No. 223, LGBl. 1999 No. 87 and LGBl. 2004 No. 176.
285 Article 22(5) amended by LGBl. 2022 No. 109.
286 Article 22(6) amended by LGBl. 2022 No. 109.

c) oversee and monitor decision-making of the senior management.

7) The bank or investment firm must make available adequate human and financial resources to the induction and training of the members of the senior management and the board of directors.[287]

8) Attention shall be paid to diversity when selecting the members of the senior management and the board of directors. The FMA shall transmit to the EBA the information on promoting diversity in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013.[288]

8a) Attention shall be paid when selecting the members of the board of directors that an appropriate minimum number of independent members is achieved at all times.[289]

9) By way of derogation from paragraph 2(a) and (b), a bank or investment firm may have a supervisory board and a management board, with the proviso that overall direction be jointly vested in the supervisory board and the management board, the supervision functions in the supervisory board, and senior management in the management board. In that case, the provisions governing the board of directors shall apply to the supervisory board and the management board, and the provisions governing the senior management shall apply to the board of management, *mutatis mutandis*. The FMA may specify in the licence what duties of the board of directors are to be carried out only by the supervisory board and what duties only by the management board; for the other duties, the management board and the supervisory board shall be jointly responsible.[290]

10) The Government shall provide further details by ordinance. The Government may set out in particular:[291]

a) in what cases a bank or investment firm may be exempted from the obligations set out in paragraph 2;

b) when a bank or investment firm is significant for purposes of paragraphs 2a and 2b;

c) the composition and duties of the governing bodies, officeholders, and committees referred to in paragraphs 2 and 2a;

d) the detailed requirements for the internal models referred to in paragraph 2b, the reporting obligations of the bank and investment firm

287 Article 22(7) inserted by LGBl. 2014 No. 348.
288 Article 22(8) amended by LGBl. 2022 No. 109.
289 Article 22(8a) inserted by LGBl. 2022 No. 109.
290 Article 22(9) inserted by LGBl. 2014 No. 348.
291 Article 22(10) inserted by LGBl. 2014 No. 348.

to the FMA and the EBA in this regard, information exchange between the FMA and the European Supervisory Authorities, and remedial measures of the FMA if risk approaches are likely incorrect;[292]

e) how many mandates a member of the board of directors or the senior management may have;

f) how the diversity requirements set out in paragraph 8 are to be met.

Article 23

Responsibilities of the board of directors

1) The board of directors shall be responsible for the overall direction, supervision, and control of the bank or investment firm.[293]

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

a) defining the organisation and the issuance of rules for corporate governance and control and for management of the risk strategy, especially by ensuring a separation of duties in the organisation and measures to prevent conflicts of interest, as well as regular review and adjustment thereof;[294]

b) specifying the accounting system, financial control, and financial planning, inasmuch as required by the type and scope of the business activities;

c) appointing and dismissing the persons entrusted with management and representation;

d) supervising the persons entrusted with management, also with respect to compliance with the legal provisions, articles of association, and regulations, and with respect to the economic development of the undertaking;

e) compiling the business report and approving the interim financial statement, as well as preparing the general meeting and executing its resolutions;[295]

f) monitoring of disclosure and communication.[296]

292 Article 22(10)(d) amended by LGBl. 2022 No. 109.
293 Article 23(1) amended by LGBl. 2007 No. 261.
294 Article 23(2)(a) amended by LGBl. 2014 No. 348.
295 Article 23(2)(e) amended by LGBl. 1998 No. 223.
296 Article 23(2)(f) inserted by LGBl. 2014 No. 348.

Article 24

Initial and minimum capital[297]

1) By the time business is taken up, the initial capital must be fully paid up and amount to (minimum capital):[298]

a) for banks, at least 10 million Swiss francs or the equivalent in euros or US dollars;

b) for investment firms under this Act, at least 730,000 Swiss francs or the equivalent in euros or US dollars.[299]

2) In justified cases and depending on the nature and scale of the scope of business, the FMA may prescribe a different initial capital. The initial capital may not be less than CHF 1 million for banks or the equivalent in euros or US dollars.[300]

2a) The FMA shall inform the EFTA Surveillance Authority and the EBA of the reasons for prescribing a different initial capital for banks of less than CHF 5 million[301]

3) The initial capital is made up of capital and reserves as defined in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013.[302]

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.[303]

5) The Government shall provide further details by ordinance.[304]

297 Article 24 heading amended by LGBl. 2011 No. 243.
298 Article 24(1) introductory phrase amended by LGBl. 2022 No. 109.
299 Article 24(1)(b) amended by LGBl. 2017 No. 342.
300 Article 24(2) amended by LGBl. 2017 No. 342.
301 Article 24(2a) inserted by LGBl. 2017 No. 342.
302 Article 24(3) amended by LGBl. 2014 No. 348.
303 Article 24(4) amended by LGBl. 2022 No. 109.
304 Article 24(5) amended by LGBl. 2014 No. 348.

Article 25[305]

Repealed

Article 26

Notification requirement

1) Banks and investment firms must notify or submit the following to the FMA:[306]

a) the composition of the board of directors, the senior management, and the head of the internal audit department;

b) the articles of association;[307]

b[bis]) by 31 March of each year at the latest, a complete list of all regulations in force;[308]

c) the organisation;

d) the subsidiaries and branches, including the branch manager;[309]

e) any qualifying holdings in companies operating in the financial sector;[310]

f) the external audit office;[311]

g) the key functions and their holders;[312]

h) without delay the reasons for the exit of a person referred to in Article 19(1);[313]

i) the establishment of a representative office in another EEA Member State or a third country;[314]

k) by 31 May of each year at the latest, the information referred to in Article 450(1)(g) to (i) and (k) of Regulation (EU) No 575/2013, as well as information on the gender pay gap.[315]

1a) Banks and investment firms whose shares are admitted to trading on a regulated market shall, at least annually, inform the FMA of the names

305 Article 25 repealed by LGBl. 2010 No. 389.
306 Article 26(1) introductory phrase amended by LGBl. 2007 No. 261.
307 Article 26(1)(b) amended by LGBl. 2019 No. 105.
308 Article 26(1)(bbis) inserted by LGBl. 2019 No. 105.
309 Article 26(1)(d) amended by LGBl. 2022 No. 109.
310 Article 26(1)(e) amended by LGBl. 2007 No. 261.
311 Article 26(1)(f) amended by LGBl. 2022 No. 109.
312 Article 26(1)(g) amended by LGBl. 2022 No. 109.
313 Article 26(1)(h) inserted by LGBl. 2022 No. 109.
314 Article 26(1)(i) inserted by LGBl. 2022 No. 109.
315 Article 26(1)(k) inserted by LGBl. 2022 No. 109.

of the shareholders known to them with qualifying holdings and the sizes of such holdings 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 holdings.[316]

1b) Banks and investment firms whose shares are not admitted to trading on a regulated market shall report to the FMA by 31 March of each year at the latest a complete list of the names and sizes of holdings of all direct and indirect shareholders who, as natural or legal persons, have a holding in the bank or investment firm.[317]

2) Banks and investment firms must notify the FMA of changes to the facts enumerated in paragraph 1 without delay. This notification must occur prior to any public announcement.[318]

3) Amendments to the articles of association concerning the scope of business, the share capital, or the organisation, as well as any change of the external audit office shall additionally require approval by the FMA. Any respective entries in the Commercial Register shall be permissible only after approval by the FMA.[319]

4) Banks and investment firms shall, with respect to undertakings to be included in prudential consolidation pursuant to Article 18 of Regulation (EU) No 575/2013, report to the FMA information on these undertakings, their organisation, liability and representation relationships, ownership, voting rights ,and on their supervision.[320]

5) Banks and investment firms shall notify the FMA without delay in all cases where their counterparties in repurchase agreements and reverse repurchase agreements or securities-lending and commodities-lending transactions or securities-borrowing and commodities-borrowing transactions have not met their obligations.[321]

6) Banks and investment firms that meet the definition of a systematic internaliser must inform the FMA thereof. The FMA shall transmit the notification to the European Supervisory Authorities.[322]

316 Article 26(1a) inserted by LGBl. 2022 No. 109.
317 Article 26(1b) inserted by LGBl. 2022 No. 109.
318 Article 26(2) amended by LGBl. 2007 No. 261.
319 Article 26(3) amended by LGBl. 2019 No. 105.
320 Article 26(4) amended by LGBl. 2022 No. 109.
321 Article 26(5) inserted by LGBl. 2007 No. 261.
322 Article 26(6) inserted by LGBl. 2017 No. 397.

7) The Government may provide further details by ordinance on the notification or submission requirements, especially on the content and deadlines.[323]

Article 26a

Qualifying holdings[324]

1) Every proposed direct or indirect acquisition and every proposed direct or indirect disposal of a qualifying holding in a bank or investment firm 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 investment firm or causing the bank or investment firm 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, 26, 26a, 27 and 31 of the Disclosure Act shall apply to determination of the voting rights.[325]

1a) 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.[326]

2) The FMA shall consult the authority responsible for licensing the acquirer or the undertaking whose parent undertaking or controlling person intends to make the acquisition or increase, if the acquisition or the increase of a holding as referred to in paragraph 1 is proposed by:[327]

a) a bank, investment firm, insurance company, asset management company, management company under the Law on Certain Undertakings for Collective Investment in Transferable Securities (UCITSG) or the Investment Undertakings Act (IUG), or alternative investment fund manager or administrator under the Alternative Investment Fund Managers Act (AIFMG), if licensed in an EEA Member State;[328]

323 Article 26(7) inserted by LGBl. 2019 No. 105.
324 Article 26a heading amended by LGBl. 2009 No. 184.
325 Article 26a(1) amended by LGBl. 2022 No. 109.
326 Article 26a(1a) inserted by LGBl. 2022 No. 109.
327 Article 26a(2) introductory phrase amended by LGBl. 2014 No. 348.
328 Article 26a(2)(a) amended by LGBl. 2016 No. 49.

b) a parent undertaking of an undertaking referred to in subparagraph (a); or[329]

c) a natural or legal person controlling an undertaking referred to in subparagraph (a).[330]

3) If a bank or investment firm becomes aware of an acquisition, disposal, increase, or reduction as referred to in paragraph 1, it shall inform the FMA without delay; this shall also apply in the case of a proposed acquisition, disposal, increase, or reduction as referred to in paragraph 1.[331]

4) Repealed[332]

5) If a holding is acquired or increased despite opposition by the FMA, the voting rights of the acquirer may not be exercised until the opposition has been amended or eliminated through legal remedies or has been withdrawn by the FMA; any votes nevertheless cast shall be null and void.[333]

6) When assessing the acquisition or the increase of a holding in accordance with paragraph 2, the FMA shall cooperate with the competent authorities of the other EEA Member States. The cooperation shall in particular include an exchange of all information relevant to assessing the acquisition or increase of a holding.[334]

7) The Government may provide further details by ordinance, in particular on the form of notification and the criteria for assessing influence that impairs prudent and sound business management.[335]

Article 26b[336]

Procedure for assessing the acquisition of qualifying holdings

1) The FMA shall acknowledge receipt of the notification under Article 26a(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.

329 Article 26a(2)(b) amended by LGBl. 2009 No. 184.
330 Article 26a(2)(c) amended by LGBl. 2009 No. 184.
331 Article 26a(3) amended by LGBl. 2022 No. 109.
332 Article 26a(4) repealed by LGBl. 2022 No. 109.
333 Article 26a(5) amended by LGBl. 2017 No. 397.
334 Article 26a(6) inserted by LGBl. 2014 No. 348.
335 Article 26a(7) amended by LGBl. 2022 No. 109.
336 Article 26b inserted by LGBl. 2022 No. 109.

2) Within 60 working days as from the date of the written acknowledgement of receipt of the notification under paragraph 1 and all documents required under Article 26c(3), the FMA shall carry out the assessment of the acquisition of the qualifying holding (assessment period).

3) The FMA shall oppose the proposed acquisition in writing if, on the basis of the assessment criteria set out in Article 26c(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.

4) 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.

5) 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.

6) 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 that is necessary to complete the assessment, specifying the additional information needed. For the period between the date of request for information by the FMA and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted, 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.

7) By way of derogation from paragraph 6, the FMA may extend the interruption of the assessment period to 30 working days if the proposed acquirer:

a) is situated in a third country or is 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.

Article 26c[337]

Criteria for assessing the acquisition or disposal of qualifying holdings

1) In assessing a notification provided for in Article 26a(1), the FMA shall, in order to ensure the sound and prudent management of the bank or investment firm in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that bank or investment firm, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

a) the reliability of the proposed acquirer;

b) the reliability, knowledge, skills, and experience of the person who will be a member of the board of directors or of the senior management of the bank or investment firm and will direct its business as a result of the proposed acquisition;

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

d) whether:

   1. the bank or investment firm 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 or the Electronic Money Act; and

   2. the group to which the bank or investment firm 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 StGB or terrorist financing within the meaning of § 278d StGB is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

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

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

337 Article 26c inserted by LGBl. 2022 No. 109.

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 26a(1), the FMA shall treat the proposed acquirers in a non-discriminatory manner.

Article 26d[338]

Adverse effect on prudent and sound business management by shareholders

Where the influence of shareholders or proposed acquirers of holdings could adversely affect prudent and sound business management, the FMA shall take appropriate measures to put an end to that situation. Such measures may be directed against the bank or investment firm, 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 26a(1) and (1a).

3. Expiration, withdrawal, and revocation[339]

Article 27[340]

Lapse of the licence

1) Licences shall lapse if:

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

b) business has no longer been pursued for at least six months;

c) the licence is renounced in writing;

d) bankruptcy proceedings have been opened with legal effect; or

e) the company has been removed from the Commercial Register.[341]

2) The lapse of a licence shall be determined by the FMA, communicated to the affected party, and published in the Official Journal at the expense of the affected party. The FMA shall notify every lapse of a licence to the competent authorities of the EEA Member States in which the bank or

338 Article 26d inserted by LGBl. 2022 No. 109.
339 Title preceding Article 27 inserted by LGBl. 1998 No. 223.
340 Article 27 amended by LGBl. 2007 No. 261.
341 Article 27(1)(e) amended by LGBl. 2013 No. 6.

investment firm operated under Article 30b or 30c, the EFTA Surveillance Authority, and the European Supervisory Authorities.[342]

Article 28

Withdrawal of the licence[343]

1) Licences shall be withdrawn if:[344]

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

a[bis]) the licence holder obtained the licence surreptitiously by providing false information or otherwise or if the FMA was unaware of significant circumstances;[345]

b) the licence holder no longer meets the following requirements:[346]

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 35c(1)(a) and Article 35c[bis];[347]
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 35d; or[348]
4. fulfilment of its obligations toward creditors, in particular security for the assets entrusted to it by depositors;

c) the licence holder has committed a serious misdemeanour under Article 63 or a serious contravention under Article 63a(1) or (2);[349]

d) the licence holder fails to comply with the FMA's demands to restore a lawful state of affairs; or[350]

e) the licence holder systematically or repeatedly violates the legal obligations.[351]

342 Article 27(2) amended by LGBl. 2022 No. 109.
343 Article 28 heading amended by LGBl. 2022 No. 109.
344 Article 28(1) amended by LGBl. 2007 No. 261.
345 Article 28(1)(abis) amended by LGBl. 2019 No. 214.
346 Article 28(1)(b) amended by LGBl. 2014 No. 348.
347 Article 28(1)(b)(1) amended by LGBl. 2022 No. 109.
348 Article 28(1)(b)(3) amended by LGBl. 2022 No. 109.
349 Article 28(1)(c) amended by LGBl. 2014 No. 348.
350 Article 28(1)(d) amended by LGBl. 2019 No. 214.
351 Article 28(1)(e) inserted by LGBl. 2014 No. 348.

2) The withdrawal of the licence must be substantiated, communicated to the affected parties, and, upon becoming final, be published in the Official Journal at the expense of the affected party. The FMA shall notify every withdrawal of a licence to the competent authorities of the EEA Member States in which the bank or investment firm operated under Article 30b or 30c, the EFTA Surveillance Authority, and the European Supervisory Authorities with an indication of the reasons.[352]

3) Repealed[353]

4) Repealed[354]

5) Repealed[355]

6) Repealed[356]

Article 29[357]

Dissolution and removal

1) In the case of banks and investment firms, the lapse or withdrawal of the licence shall entail dissolution and removal from the Commercial Register.

2) Repealed[358]

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

352 Article 28(2) amended by LGBl. 2022 No. 109.
353 Article 28(3) repealed by LGBl. 2022 No. 109.
354 Article 28(4) repealed by LGBl. 2022 No. 109.
355 Article 28(5) repealed by LGBl. 2022 No. 109.
356 Article 28(6) repealed by LGBl. 2022 No. 109.
357 Article 29 amended by LGBl. 2022 No. 109.
358 Article 29(2) repealed by LGBl. 2023 No. 148.

4. Supervision taxes and fees[359]

Article 30[360]

Principle

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

B. Representative offices of banks from EEA Member States or third countries[361]

Article 30a[362]

Establishment and operation of a representative office by banks from another EEA Member State

1) The establishment of a representative office of a bank 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 manager or managers;

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 a bank situated in another EEA Member State if there is reason to believe that transactions subject to licensing requirements are being carried out in violation of Article 3.

359 Title preceding Article 30 amended by LGBl. 2004 No. 176.
360 Article 30 amended by LGBl. 2004 No. 176.
361 Title preceding Article 30a amended by LGBl. 2022 No. 109.
362 Article 30a amended by LGBl. 2022 No. 109.

Article 30a[bis][363]

Establishment and operation of a representative office by banks from third countries

1) The establishment of a representative office of a bank situated in a third country 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 30a(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 banks situated in third countries must notify the FMA prior to their opening as to which banking transactions the bank conducts in its home country, who has a qualifying holding in the bank, and which activities are planned in Liechtenstein.

2) Article 30a(2) and (3) shall apply *mutatis mutandis*.

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

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

b) there is reason to believe that transactions subject to licensing requirements are being carried out in violation of Article 3; or

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

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.

Article 30a[ter][364]

Powers vis-à-vis representative offices

In the case of representative offices of banks situated in an EEA Member State or third country, the FMA may, for the purpose of monitoring compliance with the requirements under Articles 3 as well as 30a and 30a[bis], take the following action in particular:

363 Article 30abis inserted by LGBl. 2022 No. 109.

364 Article 30ater inserted by LGBl. 2022 No. 109.

a) obtain or request the presentation of the information referred to in Article 35(2)(a) or (i);

b) order or carry out extraordinary audits in accordance with Article 35(2)(b);

c) take measures as referred to in Article 35(4);

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

B^bis. Licensing of financial holding companies and mixed financial holding companies[365]

Article 30a^quater[366]

Principles

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 41c 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 41c 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) The financial holding companies referred to in paragraph 1 or 2 shall provide the FMA as the consolidating supervisor or, where an authority of another EEA Member State is competent for supervision on a consolidated basis, as the competent authority in the country where they are established with the following information:

a) the structural organisation of the group of which the financial holding company or the mixed financial holding company is part, indicating its subsidiaries and, where applicable, parent undertakings, and the registered office and type of activity undertaken by each of the entities within the group;

365 Title preceding Article 30aquater inserted by LGBl. 2022 No. 109.

366 Article 30aquater inserted by LGBl. 2022 No. 109.

b) information regarding the persons effectively directing the financial holding company or mixed financial holding company, indicating compliance with the requirements set out in Article 41i(1);

c) information regarding compliance with the criteria set out in Article 17(5) and Article 26c(1) concerning shareholders and members, where the financial holding company or mixed financial holding company has a bank as its subsidiary;

d) the internal organisation and distribution of tasks within the group;

e) all other information required by the FMA that is necessary to carry out the examination referred to in paragraphs 6 and 7.

4) As the consolidating supervisor, the FMA shall decide on an application for a licence within six months of receipt of the complete application. Every refusal shall be substantiated and notified to the applicant within four months of receipt of the application or, if the application is uncomplete, within four months after the required information has been submitted. If necessary, the FMA may, in addition to refusing the application, also order measures pursuant to Article 41p(4).

5) 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 26b by the FMA, the FMA shall coordinate with the consolidating supervisor; the assessment period referred to in Article 26b(2) shall be interrupted for a period exceeding 20 working days until the procedure set out in this Article is complete.

6) The licence pursuant to paragraph 1 or 2 shall be granted – where necessary subject to restrictions and stipulations – 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 paragraph 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 paragraph 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 paragraph 1 or 2 is part does not obstruct or otherwise prevent the effective supervision of the subsidiary banks, subsidiary investment firms, parent banks, or parent investment firms 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 and the role of the financial holding company or mixed financial holding company as referred to in paragraph 1 or 2; and
2. the shareholding structure; and

c) the requirements set out in Article 26c(1) and Article 41i are complied with.

7) No licence shall be required from the FMA as the consolidating supervisor for financial holding companies or mixed financial holding companies as referred to in paragraph 1 or 2 if:

a) the financial holding company's activity is solely to acquire or hold holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to banks, investment firms, or financial institutions is solely to acquire or hold holdings 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[367];

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;

367 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, 190)

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, investment firms, or financial institutions;

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

8) Financial holding companies or mixed financial holding companies not subject to a licensing requirement pursuant to paragraph 7 shall not be excluded from the perimeter of consolidation as laid down in this Act and in Regulation (EU) No 575/2013.

9) Financial holding companies or mixed financial holding companies as referred to in paragraph 1 or 2 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 paragraph 6 or, to the extent applicable, the conditions set out in paragraph 7 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.

10) The FMA as the consolidating supervisor shall share all the information it has received pursuant to paragraph 9 with the competent authority in the Member State where the financial holding company or mixed financial holding company with a licence pursuant to paragraph 1 or 2 is established.

11) If a mixed financial holding company pursuant to paragraph 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.

12) If the FMA as the consolidating supervisor determines that the conditions set out in paragraph 7 are not or are no longer met, the financial holding company or mixed financial holding company shall apply for a licence pursuant to this article.

13) The Government shall provide further details by ordinance. It may in particular specify:

a) the information to be included with the application pursuant to paragraph 3; and

b) the more detailed requirements for the conditions set out in paragraph 6.

Article 30a^{quinquies}[368]

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 30a^{quater}(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 30a^{quater}(6), (7) and (12) as well as Article 41p 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 30a^{quater}(6), (7) and (12) as well as Article 41p, taking into account in particular, to the extent applicable, whether:

a) the conditions set out in Article 30a^{quater}(6) or (7) are met;

b) the FMA has determined in accordance with Article 41p(4) that the conditions set out in Article 30a^{quater}(6) are no longer met and it has exercised its powers in accordance with Article 30a^{septies}, 30a^{octies} or 41p;

c) the FMA has determined in accordance with Article 30a^{quater}(12) that the conditions set out in Article 30a^{quater}(7) 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 30a^{quater}(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 30a^{quater}(1) or (2) with a registered office in Liechtenstein is not subject to consolidated supervision by the FMA, the

368 Article 30aquinquies inserted by LGBl. 2022 No. 109.

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. 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 Regulation (EU) No 1093/2010. 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 30a[quater](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[369].

Article 30a[sexies][370]

Intermediate EEA parent undertaking

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

369 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, 48)

370 Article 30asexies inserted by LGBl. 2022 No. 109.

2) The FMA may allow Liechtenstein banks or investment firms 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 whose licence pursuant to Article 15 covers the performance of banking transactions under Article 3(a) and (b);

b) a bank from another EEA Member State which has a licence to carry out the activities listed in Annex I(1) and (2) of Directive 2013/36/EU;

c) a financial holding company or mixed financial holding company with a licence pursuant to Article 30a^{quater}(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 licensed pursuant to Article 15 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 whose licence pursuant to Article 15 covers the performance of banking transactions as referred to in Article 3(a) and (b) nor a bank from another EEA Member State which has a licence to carry out the activities listed in Annex I(1) and (2) of Directive 2013/36/EU 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 investment firm in the EEA of the third-country group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheets, where an 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 banks and investment firms 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 a bank or investment firm 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 bank or investment firm 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 bank or investment firm 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 pursuant to Article 41p(4)(e).

Article 30a^septies[371]

Lapse of the licence

1) Licences pursuant to Article 30a^quater(1) or (2) shall lapse if:

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

371 Article 30asepties inserted by LGBl. 2022 No. 109.

b) activities as a licensed financial holding company or mixed financial holding company has not been taken up within one year;

c) activities as a licensed financial holding company or mixed financial holding company have not been pursued for at least six months;

d) the licence is renounced in writing;

e) bankruptcy proceedings have been opened with legal effect; or

f) the company has been removed from the Commercial Register.

2) The lapse of a licence shall be determined by the FMA, communicated to the affected party, and published in the Official Journal at the expense of the affected party. If the financial holding company or mixed financial holding company is situated in another EEA Member State, the FMA shall notify the competent authority of the EEA Member State in which the financial holding company or mixed financial holding company has its registered office of the lapse of the licence.

Article 30a^octies[372]

Withdrawal of the licence

1) Licences pursuant to Article 30a^quater(1) or (2) shall be withdrawn if:

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

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

c) the licence holder no longer meets the requirements set out in Article 28(1)(b) on a consolidated or sub-consolidated basis;

d) the licence holder has committed a serious misdemeanour under Article 63(2)(a), (c), (e), (f) or (k) or a serious contravention under Article 63a(1) or (2);

e) the licence holder fails to comply with the FMA's demands to restore a lawful state of affairs; or

f) the licence holder systematically or repeatedly violates the legal obligations.

2) The withdrawal of the licence must be substantiated, communicated to the affected party, and, upon becoming final, be published in the Official Journal at the expense of the affected party. If the financial holding company or mixed financial holding company has its registered office in another EEA

372 Article 30aocties inserted by LGBl. 2022 No. 109.

Member State, the FMA shall inform the competent authority of the EEA Member State in which the financial holding company or mixed financial holding company has its registered office of the withdrawal of the licence.

Article 30a^novies[373]

Dissolution and removal

1) In the case of financial holding companies and mixed financial holding companies, the lapse or withdrawal of the licence pursuant to Article 30a^quater(1) or (2) shall entail dissolution and removal from the Commercial Register.

2) At the same time as the notification pursuant to Article 30a^septies(2) or Article 30a^octies(2) the FMA shall, in accordance with Article 41p(4)(e), designate another financial holding company or mixed financial holding company or another bank or investment firm 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 30a^quater(1) or (2).

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

C. Relationship with the European Economic Area[374]

1. Establishment of branches and freedom to provide services[375]

Article 30b[376]

Branches of Liechtenstein banks or investment firms

1) Liechtenstein banks or investment firms must notify the FMA in advance if they:[377]

373 Article 30anovies inserted by LGBl. 2022 No. 109.
374 Title preceding Article 30b inserted by LGBl. 1998 No. 223.
375 Title preceding Article 30b amended by LGBl. 2007 No. 261.
376 Article 30b amended by LGBl. 2007 No. 261.
377 Article 30b(1) amended by LGBl. 2017 No. 397.

a) wish to establish a branch within the territory of another EEA Member State; or

b) wish to use tied agents established in another EEA Member State in which they have not established a branch.[378]

2) The following information and documents must be included with the notification under paragraph 1:[379]

a) the EEA Member State in whose territory the branch is to be established or the EEA Member States in which no branch exists but in which they plan to use tied agents established there;

b) a programme of operations setting out, inter alia, the type of the activities envisaged and the organisational structure of the branch, and indicating whether the branch intends to use tied agents and the identity of those tied agents;

c) where tied agents are to be used in an EEA Member State in which an investment firm has not established a branch, a description of the intended use of the tied agents and an organisational structure, including reporting lines, indicating how the agents fit into the corporate structure of the investment firm;

d) the address in the host Member State from which documents of the bank or investment firm may be obtained;

e) the names of the responsible branch managers or of the tied agent.[380]

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

4) Moreover, the FMA shall communicate the following information to the competent authority of the host Member State:[381]

a) in the case of a bank: the amount and composition of the own funds and the sum of the own funds requirements under Article 92 of Regulation (EU) No 575/2013 as well as detailed information on the deposit guarantee scheme to ensure protection of the bank's depositors;

378 Article 30b(1)(b) amended by LGBl. 2019 No. 214.
379 Article 30b(2) amended by LGBl. 2017 No. 397.
380 Article 30b(2)(e) amended by LGBl. 2022 No. 109.
381 Article 30b(4) amended by LGBl. 2014 No. 348.

b) in the case of an investment firm: the amount and composition of the own funds and the sum of the own funds requirements under Article 92 of Regulation (EU) No 575/2013 as well as detailed information on the investor protection scheme to ensure protection of the branch's investors.

c) in the case of a financial institution: the amount and composition of the own funds and the total risk exposure amounts of its parent bank calculated in accordance with Article 92(3) and (4) of Regulation (EU) No 575/2013.

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

6) The bank or investment firm must notify the FMA in writing of any changes to the content of the information set out in paragraph 2, banks also of any changes to the information set out in paragraph 4(a), second phrase, and investment firms also of any changes to the information set out in paragraph 4(b), second phrase, at least one month before the changes are carried out. The FMA shall notify the competent authority of the host Member State accordingly. Paragraphs 3 and 5 shall apply *mutatis mutandis*.[382]

7) 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 6 to the competent authorities of the host Member State.[383]

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

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

382 Article 30b(6) amended by LGBl. 2017 No. 397.

383 Article 30b(7) amended by LGBl. 2022 No. 109.

Article 30c[384]

Freedom to provide services of Liechtenstein banks or investment firms

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

a) the EEA Member State in whose territory they intend to pursue the business;

b) the business they intend to pursue;

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

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

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

4) Banks and investment firms must notify the FMA of any changes to the content of the information set out in paragraph 1 at least one month before the changes are carried out. The FMA shall notify the competent authority of the host Member State accordingly.[385]

Article 30d[386]

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

1) The establishment of a branch of banks, financial institutions, and investment firms situated in another EEA Member State or the use of a tied agent established in an EEA Member State outside its home Member State is permissible if the parent undertaking:[387]

a) carries out one or more of its permitted activities and the branch is likewise supervised by the competent authorities of the home Member State;[388]

384 Article 30c amended by LGBl. 2007 No. 261.
385 Article 30c(4) amended by LGBl. 2017 No. 397.
386 Article 30d amended by LGBl. 2007 No. 261.
387 Article 30d(1) introductory phrase amended by LGBl. 2019 No. 214.
388 Article 30d(1)(a) amended by LGBl. 2019 No. 214.

b) has transmitted all the information to the home Member State regarding:[389]

1. the programme of operations (Article 30b(2)(b));
2. the address (Article 30b(2)(d));[390]
3. the branch managers (Article 30b(2)(e));[391]
4. the own funds (Article 30b(4)(a));
5. the deposit guarantee scheme for banks (Article 30b(4)(a));
6. the investor protection scheme for investment firms (Article 30b(4)(b));
7. the total risk exposure amounts of the parent bank for financial institutions (Article 30b(4)(c)).

2) In addition to the information under paragraph 1(b)(7), an attestation by the competent authorities of the home Member State must be presented that the financial institution meets the following conditions:[392]

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

b) the articles of association of the financial institution permit the activities mentioned;

c) the parent undertaking or undertakings are licensed as banks in the EEA Member State in which the financial institution is situated;[393]

d) the activities in question are actually carried out within the territory of the same EEA Member State;[394]

e) the parent undertaking or undertakings hold 90% or more of the voting rights attaching to shares in the capital of the financial institution;[395]

f) the parent undertaking or undertakings satisfy the FMA regarding the prudent management of the financial institution and have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;[396]

389 Article 30d(1)(b) introductory phrase amended by LGBl. 2019 No. 214.
390 Article 30d(1)(b)(2) amended by LGBl. 2017 No. 397.
391 Article 30d(1)(b)(3) amended by LGBl. 2022 No. 109.
392 Article 30d(2) introductory phrase amended by LGBl. 2014 No. 348.
393 Article 30d(2)(c) amended by LGBl. 2014 No. 348.
394 Article 30d(2)(d) amended by LGBl. 2014 No. 348.
395 Article 30d(2)(e) inserted by LGBl. 2014 No. 348.
396 Article 30d(2)(f) inserted by LGBl. 2014 No. 348.

g) the financial institution is effectively included in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with the provisions governing supervision on a consolidated basis set out in Articles 41b to 41q of this Act and the own funds and liquidity requirements on an individual basis set out in Articles 11 to 24 of Regulation (EU) No 575/2013, in particular for the purposes of the own funds requirements set out in Article 92 of Regulation (EU) No 575/2013, for the control of large exposures provided for in Part Four of Regulation (EU) No 575/2013, and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of Regulation (EU) No 575/2013.[397]

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

4) Within two months of receipt by the FMA of the information referred to in paragraphs 1 and 2 of the competent authority of the home Member State, the FMA shall indicate to the bank, financial institution, or investment firm the required notifications and conditions, including any code of conduct, under which, in the interests of the general good, the activities shall be carried out in Liechtenstein.[398]

5) On receipt of the communication referred to in paragraph 4, or failing such communication by the FMA upon the expiry of two months from the date of transmission of the communication by the competent authority of the home Member State, the bank, financial institution, or investment firm may establish the branch and commence business or the tied agent may commence activities. The establishment of the branch may not be made dependent on a domestic licence or on any initial capital.[399]

6) For branches of banks and financial institutions with registered offices in another EEA Member State, Articles 5, 7a to 9, 12 to 14c and 16 of this Act and, depending on their business purpose, Articles 36 and 44 to 70 of Commission Delegated Regulation (EU) 2017/565 as well as Articles 4 and 5 and Part III of the Payment Services Act shall apply. For branches of investment firms with registered offices in another EEA Member State, Articles 8a and 8c to 8h of this Act as well as Articles 36 and 44 to 70 of Commission Delegated Regulation (EU) 2017/565 shall apply.[400]

397 Article 30d(2)(g) inserted by LGBl. 2014 No. 348.
398 Article 30d(4) amended by LGBl. 2017 No. 397.
399 Article 30d(5) amended by LGBl. 2017 No. 397.
400 Article 30d(6) amended by LGBl. 2022 No. 109.

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

8) If the financial institution no longer meets the conditions set out in paragraphs 1 and 2 and the competent authorities of the home Member State have notified the FMA accordingly, the activities of the financial institution in Liechtenstein shall become subject to Liechtenstein provisions. The FMA shall take appropriate measures to prevent further transactions from being initiated in Liechtenstein and to safeguard the interests of depositors and investors.[401]

9) When fulfilling the responsibilities delegated to the FMA under this Act, the FMA may require information from the branches of the banks, financial institutions, and investment firms that are needed to assess their compliance with the applicable provisions. The FMA may in particular require information from banks in order to allow the FMA to assess whether a branch is significant in accordance with Article 30m.[402]

10) The provisions of paragraphs 1 to 9 shall apply *mutatis mutandis* to subsidiaries of financial institutions that perform activities as a financial institution.[403]

11) Where a bank or investment firm uses a tied agent established in a Member State outside its home Member State, such tied agent shall be assimilated to the branch, where one is established, and shall in any event be subject to the provisions relating to branches.[404]

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

Article 30e[405]

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

1) A first-time activity in Liechtenstein under the freedom to provide services of a bank, financial institution, or investment firm shall require

401 Article 30d(8) amended by LGBl. 2014 No. 348.
402 Article 30d(9) amended by LGBl. 2014 No. 348.
403 Article 30d(10) amended by LGBl. 2022 No. 109.
404 Article 30d(11) amended by LGBl. 2017 No. 397.
405 Article 30e amended by LGBl. 2007 No. 261.

notification by the competent authority of the home Member State to the FMA. This notification shall contain the following:

a) information concerning the planned activities (programme of operations); these activities must be permissible activities in accordance with Article 30d(3);

b) an attestation that the transmitting authority has licensed and supervises the bank, financial institution, or investment firm;[406]

c) an attestation that the planned activities are covered by the licence issued by the competent authorities of the home Member State;[407]

d) the names and addresses of any tied agents not domiciled in Liechtenstein who may be appointed.

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

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

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

b) the articles of association of the financial institution permit the activities mentioned;

c) the parent undertaking or undertakings are licensed as banks in the EEA Member State in which the financial institution is situated;[408]

d) the activities in question are actually carried out within the territory of the same EEA Member State;

e) the parent undertaking or undertakings hold 90% or more of the voting rights attaching to shares in the capital of the financial institution;[409]

f) the parent undertaking or undertakings satisfy the FMA regarding the prudent management of the financial institution and have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;[410]

g) the financial institution is effectively included in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with the provisions governing supervision

406 Article 30e(1)(b) amended by LGBl. 2014 No. 348.
407 Article 30e(1)(c) amended by LGBl. 2014 No. 348.
408 Article 30e(3)(c) amended by LGBl. 2014 No. 348.
409 Article 30e(3)(e) amended by LGBl. 2014 No. 348.
410 Article 30e(3)(f) amended by LGBl. 2014 No. 348.

on a consolidated basis set out in Articles 41b to 41q of this Act and the own funds and liquidity requirements on an individual basis set out in Articles 11 to 24 of Regulation (EU) No 575/2013, in particular for the purposes of the own funds requirements set out in Article 92 of Regulation (EU) No 575/2013, for the control of large exposures provided for in Part Four of Regulation (EU) No 575/2013, and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of Regulation (EU) No 575/2013.[411]

3a) Banks and financial institutions as referred to in paragraph 1 shall be subject to Articles 8a to 8l, 13, 14, 14b(2) and (3), 14c and 16 of this Act and, depending on their business purpose, Articles 4 and 5 and Part III of the Payment Services Act.[412]

4) The FMA shall indicate to the bank, financial institution, or investment firm the conditions, including any code of conduct, under which, in the interests of the general good, the activities shall be carried out in Liechtenstein.

5) The FMA shall publish the information referred to in paragraph 1(d) in an appropriate manner.[413]

6) If the financial institution no longer meets the conditions set out in paragraph 3 and the competent authorities have notified the FMA accordingly, the activities of the financial institution in Liechtenstein shall become subject to Liechtenstein provisions. The FMA shall take appropriate measures to prevent further transactions from being initiated in Liechtenstein and to safeguard the interests of depositors and investors.[414]

7) The provisions of this Article shall apply *mutatis mutandis* to financial holding companies, mixed financial holding companies, and mixed-activity holding companies.[415]

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

411 Article 30e(3)(g) amended by LGBl. 2014 No. 348.
412 Article 30e(3a) inserted by LGBl. 2022 No. 109.
413 Article 30e(5) amended by LGBl. 2017 No. 397.
414 Article 30e(6) amended by LGBl. 2014 No. 348.
415 Article 30e(7) amended by LGBl. 2014 No. 348.

2. Cooperation with competent authorities and bodies of other EEA Member States and the European Supervisory Authorities in general[416]

Article 30f[417]

Principle

1) Within the framework of its supervision of banks and investment firms, and in particular of their branches as referred to in Article 30b and 30d, the FMA shall cooperate closely with the competent authorities of the other EEA Member States in accordance with this Act.

2) It shall exchange all necessary information with the competent authorities from other EEA Member States within the framework of cooperation in accordance with Article 30h in order to perform its duties under this Act and Regulations (EU) Nos 575/2013 and 600/2014.

Article 30g[418]

Joint action against abuse

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

416 Title preceding Article 30f amended by LGBl. 2022 No. 109.
417 Article 30f amended by LGBl. 2022 No. 109.
418 Article 30g amended by LGBl. 2017 No. 397.

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

Article 30h

Exchange of information[419]

1) The FMA shall transmit to a requesting competent authority of an EEA Member State all information which the latter needs to exercise its duties of supervision, provided that:[420]

a) doing so does not violate the sovereignty, security, public order, or other substantial national interests of Liechtenstein;[421]

b) the recipients and the persons employed with and instructed by the competent authorities are subject to an obligation of secrecy equivalent to that of Article 31a;[422]

c) it is guaranteed that the information given will be used only for the purpose of financial market supervision, in particular the supervision of banks, investment firms, or trading venues on which financial instruments are traded; and[423]

d) information that comes from abroad is given with the express consent of the authority that disclosed that information, and if it is guaranteed that the information will only be forwarded, if at all, for the purpose to which such foreign authority has given its consent.[424]

2) Subject to the conditions of paragraph 1, the FMA may also transmit information to the following authorities and bodies in other EEA Member States for the purposes and performance of its supervisory tasks:[425]

a) 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,

419 Article 30h heading amended by LGBl. 2007 No. 261.
420 Article 30h(1) introductory phrase amended by LGBl. 2007 No. 261.
421 Article 30h(1)(a) amended by LGBl. 2007 No. 261.
422 Article 30h(1)(b) amended by LGBl. 2007 No. 261.
423 Article 30h(1)(c) amended by LGBl. 2020 No. 158.
424 Article 30h(1)(d) amended by LGBl. 2007 No. 261.
425 Article 30h(2) amended by LGBl. 2022 No. 109.

clearing and settlement systems and the safeguarding of stability of the financial system;

b) 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;

c) contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;

d) reorganisation bodies or authorities aiming at protecting the stability of the financial system;

e) authorities or bodies charged with responsibility for maintaining the stability of the financial system in EEA Member States through the use of macroprudential rules;

f) where appropriate, other public authorities responsible for overseeing payment systems;

g) authorities or bodies involved in the liquidation and bankruptcy of banks or investment firms and in other similar procedures;

h) competent authorities or bodies responsible for the application of rules on structural separation within a banking group;

i) financial intelligence units in accordance with Article 32 of Directive (EU) 2015/849 and competent authorities responsible for supervising compliance with that Directive;

k) deposit guarantee schemes within the meaning of Directive 2014/49/EU[426] or investor compensation schemes within the meaning of Directive 97/9/EC[427];

l) persons performing the statutory audit of the annual financial statements of banks or investment firms, insurance undertakings, and financial institutions;

m) the Standing Committee of the EFTA States, the EFTA Surveillance Authority, and the European Supervisory Authorities.

3) The FMA shall notify the European Supervisory Authorities which authorities or bodies may receive information pursuant to paragraph 2.[428]

4) 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. It may forward the information

426 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, 149)

427 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, 22)

428 Article 30h(3) amended by LGBl. 2022 No. 109.

received to the bodies referred to in Article 31. 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(d). The FMA must without delay notify the authority that transmitted the information.[429]

5) Articles 14 and 31a shall not prevent the transmission of information to authorities and bodies as referred to in paragraphs 1 and 2.[430]

6) In emergency situations as referred to in Article 41f, the FMA may forward information to the Standing Committee of the EFTA States, the European Supervisory Authorities, and the competent authorities of the other EEA Member States, if this information is necessary for the performance of their respective statutory duties.[431]

7) The Government may provide further details regarding information exchange by ordinance.[432]

Article 30i[433]

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

1) The competent authority of an EEA Member State may request the FMA in matters concerning the law of supervision to cooperate in a supervisory activity or for an on-the-spot verification or in an investigation.

2) Where the FMA receives a request with respect to an on-the-spot verification or an investigation, it shall, within the framework of its powers and in compliance with Article 30h(1):

a) carry out the verifications or investigations itself;

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

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

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

4) With respect to branches of banks, financial institutions, or investment firms in Liechtenstein subject to supervision by competent

429 Article 30h(4) amended by LGBl. 2022 No. 109.
430 Article 30h(5) amended by LGBl. 2022 No. 109.
431 Article 30h(6) amended by LGBl. 2022 No. 109.
432 Article 30h(7) amended by LGBl. 2022 No. 109.
433 Article 30i amended by LGBl. 2007 No. 261.

foreign authorities, those authorities may, after informing the FMA, themselves or through the intermediary of persons they instruct for the purpose, carry out on-the-spot verification of the information necessary for supervision.

5) Notwithstanding the provisions of this Article and the powers set out in Article 41o(1), the FMA may, in the context of its responsibilities under this Act, carry out its own on-the-spot verifications or inspections of the activities performed in Liechtenstein of the branches of foreign banks, financial institutions, or investment firms, or it may have auditors or experts do so. The FMA may, for supervisory purposes, demand information from a branch on its activities. Before carrying out its own verifications and inspections, the FMA shall consult the competent authorities of the home Member State. After its own verifications and inspections, the FMA shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the bank or investment firm or the stability of the financial system in Liechtenstein.[434]

6) When defining its supervisory audit programme in accordance with Article 35a(4), the FMA shall take due account of the information of the competent authorities of the host Member State obtained in accordance with paragraph 5 *mutatis mutandis*, and it shall also take account of the stability of the financial system in the host Member State.[435]

7) The FMA may request the cooperation of the competent authorities of another EEA Member State in a supervisory activity or for an on-the-spot verification or in an investigation.[436]

Article 30k[437]

Refusal to cooperate

1) The FMA may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification, or supervisory activity as provided for in Article 30i or to exchange information as provided for in Article 30h only where:

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

434 Article 30i(5) amended by LGBl. 2014 No. 348.
435 Article 30i(6) amended by LGBl. 2014 No. 348.
436 Article 30i(7) inserted by LGBl. 2014 No. 348.
437 Article 30k amended by LGBl. 2007 No. 261.

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

2) In the case of such a refusal, the FMA shall notify the requesting competent authority accordingly, indicating the reason for the refusal.

Article 30k^bis[438]

Information obligations of the FMA as authority of the home Member State in the case of activities carried out in the host Member State

1) Where banks or investment firms operate through a branch in other EEA Member States within the scope of Article 30b, the FMA shall without delay transmit to the competent authorities of the host Member State all information pertaining to liquidity supervision in accordance with Part Six of Regulation (EU) No 575/2013 and Articles 41a to 41q of this Act of the activities performed the branch, where such information serves to protect depositors and investors in the host Member State.

2) The FMA 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 shall inform the competent authorities of the host Member State how the latter's information has been taken into account in accordance with paragraphs 1 and 2 and Article 30f. Upon request, the FMA shall provide explanations upon request.

Article 30l[439]

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

1) If a bank or investment firm or its foreign branches violate provisions of this Act or of Regulation (EU) No 575/2013, or if such a violation is imminent, the FMA, as the authority of the home Member State, shall without delay take the measures necessary to bring about a lawful state of affairs and to eliminate the deficits or to take the measures necessary to remedy the situation at an early stage. The FMA shall promptly inform the

438 Article 30kbis inserted by LGBl. 2022 No. 109.
439 Article 30l amended by LGBl. 2014 No. 348.

competent authorities in the host Member State of the measures it has taken.[440]

2) Repealed[441]

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

Article 30l^bis[442]

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

1) If banks or investment firms or financial institutions situated in another EEA Member State that operate in Liechtenstein by way of the freedom to provide services or through a branch violate provisions of this Act or of Regulation (EU) No 575/2013, or if such a violation is imminent, the FMA shall notify the competent authorities of the home Member State.[443]

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

Article 30l^ter[444]

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

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

440 Article 30l(1) amended by LGBl. 2022 No. 109.
441 Article 30l(2) repealed by LGBl. 2022 No. 109.
442 Article 30lbis inserted by LGBl. 2014 No. 348.
443 Article 30lbis(1) amended by LGBl. 2022 No. 109.
444 Article 30lter inserted by LGBl. 2014 No. 348.

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

3) Any precautionary measure shall cease to have effect when the administrative or judicial authorities of the home Member State take reorganisation measures under Article 2 of Directive 2001/24/EC. The FMA shall terminate precautionary measures when those measures have become obsolete due to the measures taken by the authorities of the home Member State in accordance with Article 30l^{bis}(1).

Article 30l^{quater}[445]

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

If the competent authorities of the home Member State fail to meet their obligations to put an end to the infringement under Article 30l^{bis}(1) without delay or if the measures they have taken are insufficient, the FMA as the authority of the host Member State may:

a) request the assistance of the European Supervisory Authorities; and

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

Article 30l^{quinquies}[446]

Reasons and communication

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

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

445 Article 30lquater inserted by LGBl. 2014 No. 348.

446 Article 30lquinquies inserted by LGBl. 2014 No. 348.

3. Cooperation with the competent authorities of EEA Member States in respect of significant branches[447]

Article 30m[448]

Designation as significant branch

1) The FMA may make a request to the consolidating supervisor, where Article 41e(1) applies, and otherwise to the competent authorities of the home Member State for a Liechtenstein branch of a bank or investment firm situated in the European Economic Area other than an investment firm subject to Article 95 of Regulation (EU) No 575/2013 to be considered as significant.[449]

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

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

b) the importance of the branch for systemic liquidity and the payment, clearing, and settlement systems in Liechtenstein; and[450]

c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of Liechtenstein.

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

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

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

447 Title preceding Article 30m amended by LGBl. 2011 No. 243.
448 Article 30m amended by LGBl. 2011 No. 243.
449 Article 30m(1) amended by LGBl. 2014 No. 348.
450 Article 30m(2)(b) amended by LGBl. 2014 No. 348.

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

Article 30n[451]

Cooperation in emergency situations

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

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

3) The FMA shall also transmit the following to the competent authorities of the home Member State in which a significant branch of a Liechtenstein bank or investment firm is situated:[452]

a) the results of the risk assessment of banks and investment firms with such branches in accordance with Article 35a and, where applicable, Article 41e(3)(a); and

b) decisions to strengthen own funds, governance arrangements, and liquidity requirements under Articles 35c and 35d where relevant to the branches in question.

4) In the case of operational steps in regard to liquidity risks, the FMA shall consult the competent authorities of the host Member State in which significant branches of a Liechtenstein bank or investment firm are situated.[453]

5) Where the competent authorities of the home Member State have not consulted the FMA, or where, following such consultation, the FMA maintains that the measures to restore liquidity are not adequate, the FMA may involve the EBA and request its assistance.[454]

451 Article 30n amended by LGBl. 2011 No. 243.
452 Article 30n(3) inserted by LGBl. 2014 No. 348.
453 Article 30n(4) inserted by LGBl. 2014 No. 348.
454 Article 30n(5) amended by LGBl. 2022 No. 109.

Article 30o[455]

Colleges of supervisors

1) Where the FMA is the competent authority supervising a bank or investment firm with significant branches in other EEA Member States, and where Article 41h on the establishment of colleges of supervisors by the consolidating supervisor does not apply, the FMA shall establish and chair a college of supervisors to facilitate the reaching of a joint decision on the designation of a branch as being significant and the exchange of information under Article 30h. The establishment and functioning of the college shall be based on written arrangements determined, after consulting the competent authorities concerned, by the FMA. The FMA shall decide which competent authorities participate in a meeting or in an activity of the college.[456]

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

D. Relationship with third countries[457]

Article 30p[458]

Exchange of information, supervisory activities, on-site verifications, and investigations

1) In the context of its financial market supervision, the FMA shall work closely together with the competent authorities and bodies of a third country in supervisory activities, on-site verifications, investigations, or exchange of information, applying Articles 30h to 30k *mutatis mutandis*.[459]

1a) If a Liechtenstein bank is part of the same third-country group as a branch of a bank having its registered office outside the EEA, and if that branch is supervised by the competent authority of another EEA Member State, the FMA shall cooperate closely with that authority 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

455 Article 30o amended by LGBl. 2011 No. 243.
456 Article 30o(1) amended by LGBl. 2022 No. 109.
457 Title preceding Article 30p inserted by LGBl. 2019 No. 311.
458 Article 30p amended by LGBl. 2019 No. 311.
459 Article 30p(1) amended by LGBl. 2022 No. 109.

the requirements applicable to third-country groups from being circumvented and to prevent any detrimental impact on the financial stability of the EEA.[460]

2) Subject to paragraph 1 and Article 30q, cooperation with the competent authorities of a third country is otherwise governed by Article 26(b)(3) and (4) FMAG *mutatis mutandis*.

Article 30q[461]

Cooperation agreements

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

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

b) the transmission of information is subject to professional secrecy equivalent to that of Article 31a; und

c) it is ensured that the information from another EEA Member State is transmitted only with the express agreement of the transmitting authorities and where applicable solely for the purposes for which those authorities gave their agreement.

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

a) the supervision of banks, financial institutions, insurance undertakings, investment firms, UCITS management companies, AIFMs, or financial markets;

b) the liquidation and bankruptcy of banks, financial institutions, or investment firms and other similar procedures;

c) the carrying out of statutory audits of the accounts of banks, financial institutions, investment 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, financial institutions, investment firms and other similar procedures;

460 Article 30p(1a) inserted by LGBl. 2022 No. 109.

461 Article 30q amended by LGBl. 2019 No. 311.

e) oversight of persons charged with carrying out statutory audits of the accounts of banks, financial institutions, insurance undertakings, or investment firms; or

f) for the purpose of ensuring a consolidated overview of financial and spot markets, oversight of persons active on emission allowance markets or agricultural derivatives markets.

E. Relationship with international organisations[462]

Article 30r[463]

Exchange of information

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;

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;

462 Title preceding Article 30r inserted by LGBl. 2022 No. 109.

463 Article 30r amended by LGBl. 2022 No. 109.

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 31a.

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 14 and 31a shall not preclude the transmission of information to authorities and bodies as referred to in paragraph 1.

IIIa. Regulated markets, multilateral and organised trading facilities, local firms, and investment firms with administrative powers[464]

Article 30s[465]

Regulated markets

1) The operation of a regulated market requires a licence issued by the FMA. The licence shall be granted – where necessary subject to restrictions and stipulations – if:[466]

a) the regulated market has clear and transparent rules regarding the admission of financial instruments to trading;

b) transparent and non-discriminatory access, based on objective criteria, to or membership of the regulated market is ensured;

464 Title preceding Article 30s amended by LGBl. 2017 No. 397.

465 Article 30s amended by LGBl. 2017 No. 397.

466 Article 30s(1) introductory phrase amended by LGBl. 2022 No. 109.

c) there are effective systems for the smooth conclusion of transactions on the regulated market and for the settlement thereof;

d) fair and transparent trading on the regulated market and oversight thereof by the bodies of the regulated markets are ensured; and

e) appropriate procedures are in place for employees to report infringements of this Act or of Regulation (EU) No 600/2014 internally through a specific, independent and autonomous channel.

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

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

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

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

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

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

a) operations have not been taken up within one year;

b) business has no longer been pursued for at least six months; or

c) the licence is renounced in writing.

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

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

b) the operator has obtained the licence by making false statements or by any other irregular means; or

c) the operator has seriously and systematically infringed the provisions of this Act or Regulation (EU) No 600/2014.

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

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

11) The Government shall provide further details by ordinance.

Article 30t[467]

Multilateral and organised trading facilities

1) The operation of a multilateral or organised trading facility requires a licence issued by the FMA. The licence shall be granted – where necessary subject to restrictions and stipulations – if:[468]

a) there are effective systems for the smooth conclusion of transactions on the multilateral or organised trading facility and for the settlement thereof, including the establishment of effective contingency arrangements to cope with risks of systems disruption;

b) fair and transparent trading on the multilateral or organised trading facility and oversight thereof by the bodies of the multilateral or organised trading facility are ensured; and

c) appropriate procedures for employees to report infringements of this Act or Regulation (EU) No 600/2014 internally through a specific, independent, and autonomous channel.

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

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

467 Article 30t amended by LGBl. 2017 No. 397.

468 Article 30t(1) introductory phrase amended by LGBl. 2022 No. 109.

facility. Conversely, the FMA as the authority of the host Member State may also request the same from the competent authority of the home Member State of a multilateral trading facility operating in Liechtenstein.

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

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

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

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

8) In the event of deficiencies, Article 39 shall apply *mutatis mutandis* to the notification requirements of external audit offices of multilateral or organised trading facilities vis-à-vis the FMA.[469]

9) The Government shall provide further details by ordinance.

Article 30u[470]

Local firms

1) Local firms in accordance with Article 4(1)(4) of Regulation (EU) No 575/2013 which provide investment services and ancillary services referred to in Annex 2 Sections A and B, under the freedom of establishment or the freedom to provide services as set out in Articles 30b and 30c, require a licence issued by the FMA. The licence shall be granted – where necessary

469 Article 30t(8) amended by LGBl. 2019 No. 214.
470 Article 30u amended by LGBl. 2022 No. 109.

subject to restrictions and stipulations – if the initial capital of the local firm amounts to 100,000 Swiss francs or the equivalent in euros or US dollars.

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

Article 30v[471]

Investment firms with administrative powers

1) Investment firms which hold clients' money or securities and which offer one or more investment services referred to in points 1, 2, 4, and 5 of Annex 2 Section A(1) (investment firms with administrative powers) require a licence issued by the FMA. The licence shall be granted – where necessary subject to restrictions and stipulations – if:[472]

a) the initial capital, by way of derogation from Article 24(1), is at least 125,000 Swiss francs or the equivalent in euros or US dollars; and

b) the conditions set out in Articles 16 to 24 are met.

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

a) such positions arise only as a result of the investment firm's failure to match investors' orders precisely;

b) the total market value of all such positions is subject to a ceiling of 15% of the firm's initial capital;

c) the investment firm meets the requirements set out in Articles 92 and 93 to 95 and Part Four of Regulation (EU) No 575/2013;[473]

d) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

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

471 Article 30v inserted by LGBl. 2014 No. 348.
472 Article 30v(1) introductory phrase amended by LGBl. 2022 No. 109.
473 Article 30v(2)(c) amended by LGBl. 2022 No. 109.

4) Investment firms with administrative powers may take up their business only once they meet the investment protection requirements set out in the Deposit Guarantee and Investor Compensation Act.[474]

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

a) the provisions of this Act, with the exception of the rules governing capital buffers (Articles 4a et seq.);

b) Articles 16, 17, and 23 to 30 of Directive 2014/65/EU; and[475]

c) the provisions of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (EEA Compendium of Laws: Annex IX - 31bab.01).

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

IIIb. Position limits and position management controls in commodity derivatives and reporting[476]

Article 30w[477]

Principle

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

474 Article 30v(4) amended by LGBl. 2019 No. 105.
475 Article 30v(5)(b) amended by LGBl. 2017 No. 397.
476 Title preceding Article 30w inserted by LGBl. 2017 No. 397.
477 Article 30w inserted by LGBl. 2017 No. 397.

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

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

IIIc. Data reporting services[478]

Article 30x[479]

Principle

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

2) The licence shall be granted to a data reporting services provider – where necessary subject to restrictions and stipulations – if the applicant demonstrates that all requirements for the operation of a data reporting services provider have been met.[480]

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

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

a) commit sufficient time to perform their duties;

b) be of good repute; and

c) guarantee sound and proper business operation at all times, in terms of both their professional and their personal qualities.

478 Title preceding Article 30x inserted by LGBl. 2017 No. 397.

479 Article 30x inserted by LGBl. 2017 No. 397.

480 Article 30x(2) amended by LGBl. 2022 No. 109.

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

6) Repealed[481]

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

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

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

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

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

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

Article 30y[482]

Organisational requirements for APAs, CTPs, and ARMs

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

481 Article 30x(6) repealed by LGBl. 2022 No. 109.
482 Article 30y inserted by LGBl. 2017 No. 397.

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

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

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

IV. Supervision[483]

A. General provisions[484]

Article 31[485]

Organisation and implementation

The following bodies are mandated to implement this Act:

a) the Financial Market Authority (FMA);

b) the external audit offices;

c) the Court of Justice;

d) the extrajudicial mediation body.[486]

483 Title preceding Article 31 amended by LGBl. 2007 No. 261.
484 Title preceding Article 31 inserted by LGBl. 2014 No. 348.
485 Article 31 amended by LGBl. 2004 No. 176.
486 Article 31(d) inserted by LGBl. 2014 No. 348.

Article 31a[487]

Official secrecy

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

1a) The bodies and persons referred to in paragraph 1 who receive confidential information may use it in the performance of their tasks only for the following purposes:[488]

a) to check that the licensing conditions for banks or investment firms are met;

b) to monitor the performance of activities on an individual or consolidated basis, in particular with regard to the solvency, large exposures, administrative and accounting organisation, internal control mechanisms, and liquidity of banks and investment firms, as well as branches of banks, financial institutions, and investment firms;

c) to monitor the proper functioning of trading venues;

d) to impose sanctions;

e) in appeals against decisions by the FMA in accordance with Article 62; or

f) in the extrajudicial mechanism for investors' complaints provided for in Article 62a.

2) Confidential information as set out in paragraph 1 may be transmitted in accordance with this Act and Regulation (EU) No 575/2013.[489]

2a) The FMA is authorised to transmit information to the external audit offices that is necessary for the fulfilment of its responsibilities.[490]

3) If bankruptcy or winding-up proceedings have been initiated against a bank or investment firm by the decision of a court, confidential information that does not relate to third parties may be disclosed in civil proceedings if this is necessary for the proceedings concerned.[491]

487 Article 31a inserted by LGBl. 2007 No. 261.
488 Article 31a(1a) inserted by LGBl. 2022 No. 109.
489 Article 31a(2) amended by LGBl. 2014 No. 348.
490 Article 31a(2a) inserted by LGBl. 2014 No. 348.
491 Article 31a(3) amended by LGBl. 2019 No. 214.

4) Without prejudice to the requirements of criminal law or tax law, the FMA, all other administrative authorities and bodies, and other natural and legal persons may use confidential information that they receive in accordance with this Act only for purposes of fulfilling their responsibilities and tasks within the scope of this Act or for purposes for which the information was given, and/or in the case of administrative and judicial proceedings that specifically relate to the fulfilment of these tasks. If the FMA or another administrative authority or office or person providing the information gives their consent, however, then the authority receiving the information may use it for other purposes of financial market supervision.[492]

5) The FMA may transmit confidential information that it received from a non-competent authority of an EEA Member State to the following authorities:[493]

a) the competent authorities of other EEA Member States;

b) the European Supervisory Authorities.

6) The FMA is authorised to publish the results of performed stress tests and to transmit those results to the European Supervisory Authorities for public announcement.[494]

Article 31b[495]

Cooperation with other domestic authorities

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

1a) 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 supervisory duties.[496]

2) The Office of Justice shall notify the FMA of all changes to entries in the Commercial Register that refer to a bank or investment firm. The Office

492 Article 31a(4) amended by LGBl. 2017 No. 397.
493 Article 31a(5) amended by LGBl. 2014 No. 348.
494 Article 31a(6) inserted by LGBl. 2014 No. 348.
495 Article 31b inserted by LGBl. 2007 No. 261.
496 Article 31b(1a) inserted by LGBl. 2018 No. 304.

of Justice shall also give the FMA electronic access to the data in the Commercial Register.[497]

Article 31c[498]

Cooperation with the European Supervisory Authorities

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

Article 32[499]

Processing of personal data

The bodies 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 or investment firm or a branch of a bank, financial institution, or investment firm, to the extent necessary for the performance of their duties under this Act.

Article 33[500]

Transmission of information to parliamentary investigative commissions

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

a) the investigative commission has a legislative mandate or a mandate defined by a resolution of the Liechtenstein Parliament to investigate or audit the activities of the FMA;

b) the information is absolutely necessary to fulfil the mandate referred to in subparagraph (a);

c) persons with access to the information are subject to professional secrecy equivalent to that of Article 31a; and

d) the information – to the extent it originates from another EEA Member State – is transmitted only with the express agreement of the competent

497 Article 31b(2) amended by LGBl. 2013 No. 6.
498 Article 31c inserted by LGBl. 2014 No. 348.
499 Article 32 amended by LGBl. 2018 No. 304.
500 Article 33 amended by LGBl. 2014 No. 348.

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 oversight includes the processing of data in accordance with Article 32, then this shall be done in accordance with the provisions of the Data Protection Act.[501]

3) Information obtained by way of Articles 30h(4), 31a(5), and 31b or through an on-the-spot inspection referred to in Article 30i(5) shall not be transmitted in accordance with paragraph 1, unless there is express agreement by the competent authorities that provided the information, or by the competent authorities of the EEA Member State in which the on-the-spot inspection was carried out.[502]

Article 34[503]

Transmission of information via clearing and settlement systems

1) Taking account of official secrecy set out in Article 31a, the FMA may transmit information regarding the licensing conditions, risk management, monitoring of the proper functioning of trading venues, sanctions, appeals against decisions, and investors' complaints (Article 31a(1a)) to clearing and settlement systems, provided such information is necessary in its opinion to ensure the proper functioning of such bodies in the event of violations or possible violations of market participants.[504]

2) In the case referred to in paragraph 1, the FMA may transmit information that it received from a non-competent authority of another EEA Member State in accordance with Article 31a(5) only with the express agreement of the competent authority of the other EEA Member State.

501 Article 33(2) amended by LGBl. 2018 No. 304.
502 Article 33(3) amended by LGBl. 2022 No. 109.
503 Article 34 amended by LGBl. 2014 No. 348.
504 Article 34(1) amended by LGBl. 2022 No. 109.

B. FMA[505]

1. Responsibilities and powers[506]

Article 35

1) The FMA shall monitor compliance with the provisions of this Act and of Regulations (EU) No 575/2013, (EU) No 600/2014, and (EU) 2022/858. The FMA shall take the necessary measures directly, in cooperation with other supervisory bodies, or by reporting to the Office of the Public Prosecutor.[507]

1a) The FMA is the competent authority for the purposes of Article 458(1) of Regulation (EU) No 575/2013.[508]

2) The FMA shall have all powers necessary to perform its duties and may in particular:[509]

a) demand from all persons and entities subject to this Act and to the FMA's supervision and from their external audit offices all information and documents necessary for execution of this Act;[510]

b) order or carry out extraordinary audits;[511]

c) issue decisions and decrees for action, cease and desist, and declaration;[512]

d) make public announcements and in particular publish final decisions and decrees;[513]

e) impose temporary prohibitions to practice a profession;[514]

f) request the Office of the Public Prosecutor to apply for measures for securing the forfeiture of assets in accordance with the Code of Criminal Procedure;[515]

505 Title preceding Article 35 amended by LGBl. 2014 No. 348.
506 Title preceding Article 35 amended by LGBl. 2014 No. 348.
507 Article 35(1) amended by LGBl. 2024 No. 173.
508 Article 35(1a) inserted by LGBl. 2014 No. 348.
509 Article 35(2) introductory phrase amended by LGBl. 2007 No. 261.
510 Article 35(2)(a) amended by LGBl. 2007 No. 261.
511 Article 35(2)(b) amended by LGBl. 2007 No. 261.
512 Article 35(2)(c) amended by LGBl. 2007 No. 261.
513 Article 35(2)(d) amended by LGBl. 2017 No. 397.
514 Article 35(2)(e) amended by LGBl. 2007 No. 261.
515 Article 35(2)(f) amended by LGBl. 2016 No. 161.

g) in justified exceptional cases, prohibit the bank or investment firm from making disbursements, receiving payments, or executing transactions with financial instruments.[516]

h) require the following legal or natural persons to provide all information that is necessary in order to carry out the tasks of the FMA, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:[517]

   1. banks or investment firms established in Liechtenstein;
   2. financial holding companies established in Liechtenstein;
   3. mixed financial holding companies established in Liechtenstein;
   4. mixed-activity holding companies established in Liechtenstein;
   5. persons belonging to the entities referred to in points 1 to 4;
   6. third parties to whom the entities referred to in points 1 to 4 have outsourced operational functions or activities;

i) conduct all necessary investigations of any person referred to in subparagraph (h) established or located in Liechtenstein, including:[518]

   1. the right to require the submission of documents;
   2. examining the books and records of the persons referred to in subparagraph (h) and taking copies or extracts from such books and records;
   3. obtaining written or oral explanations from any person referred to in subparagraph (h) or their representatives or staff; and
   4. interviewing any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of the investigation;

k) subject to other conditions set out in EEA law, conduct all necessary on-the-spot inspections of legal persons referred to in subparagraph (h) and any other undertaking included in consolidated supervision where the FMA is the consolidating supervisor, after prior notification of the competent authorities concerned;[519]

l) suspend the voting rights of a shareholder until the time at which no benefit would be gained from violations arising from the exercise of voting rights, but at the most up to five years;[520]

516 Article 35(2)(g) inserted by LGBl. 2009 No. 188.
517 Article 35(2)(h) inserted by LGBl. 2014 No. 348.
518 Article 35(i) inserted by LGBl. 2014 No. 348.
519 Article 35(k) inserted by LGBl. 2014 No. 348.
520 Article 35(2)(l) amended by LGBl. 2017 No. 397.

m) require the provision of information including all relevant documentation from any person regarding the size and purpose of a position or exposure entered into via a commodity derivative, and any assets or liabilities in the underlying market;[521]

n) request any person to take steps to reduce the size of the position or exposure;[522]

o) limit the ability of any person from entering into a commodity derivative, including by introducing limits on the size of a position any person can hold at all times in accordance with Article 30w;[523]

p) suspend the marketing or sale of financial instruments or structured deposits where the conditions of Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are met;[524]

q) suspend the marketing or sale of financial instruments or structured deposits where the bank or investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Article 8b;[525]

r) require the removal of a natural person from the management body of a bank, investment firm or market operator;[526]

s) impose a temporary ban on a bank or investment firm from being a member, client or participant in a regulated market, a multilateral trading facility or an organised trading facility;[527]

t) demand existing recordings of telephone conversations or electronic communications or other data traffic records held by a bank, investment firm, or financial institution;[528]

u) require the suspension of trading in a financial instrument;[529]

v) require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements.[530]

w) specify modelling and parametric assumptions that the bank or investment firm 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,

521 Article 35(2)(m) inserted by LGBl. 2017 No. 397.
522 Article 35(2)(n) inserted by LGBl. 2017 No. 397.
523 Article 35(2)(o) inserted by LGBl. 2017 No. 397.
524 Article 35(2)(p) inserted by LGBl. 2017 No. 397.
525 Article 35(2)(q) inserted by LGBl. 2017 No. 397.
526 Article 35(2)(r) inserted by LGBl. 2017 No. 397.
527 Article 35(2)(s) inserted by LGBl. 2017 No. 397.
528 Article 35(2)(t) inserted by LGBl. 2017 No. 397.
529 Article 35(2)(u) inserted by LGBl. 2017 No. 397.
530 Article 35(2)(v) inserted by LGBl. 2017 No. 397.

and which are other than those determined by the EBA in accordance with Article 98(5a)(b) of Directive 2013/36/EU.[531]

The associated costs shall be borne by the persons concerned in accordance with Article 26(5) of the FMA Act.[532]

3) The FMA shall in particular be responsible for:[533]

a) the granting and withdrawal of licences;[534]

a[bis]) the granting, modification, and withdrawal of specific permissions under Article 8 or 10 of Regulation (EU) 2022/858 and the granting, modification, and withdrawal of exemptions related to specific permissions under Article 4 or 6 of that Regulation;[535]

b) approving the articles of association of the banks and investment firms and amendments thereto;[536]

c) verifying audit reports;[537]

d) prohibiting the establishment or operation of representative offices of banks situated in third countries;[538]

e) punishing contraventions under Article 63a.[539]

4) If the FMA learns of violations of this Act, Regulations (EU) No 575/2013, (EU) No. 600/2014, (EU) 2022/858, or other deficits, or if the FMA has evidence that a bank or investment firm is likely to breach this Act or those Regulations within the following 12 months, it shall take the measures necessary to bring about a lawful state of affairs and to eliminate the deficits or to take the measures necessary to remedy the situation at an early stage.[540]

4a) Repealed[541]

4b) In the exercise of its general duties, the FMA shall duly consider the potential impact of its decisions on the stability of the financial system in all

531 Article 35(2)(w) inserted by LGBl. 2022 No. 109.
532 Article 35(2) concluding sentence amended by LGBl. 2015 No. 211.
533 Article 35(3) introductory phrase amended by LGBl. 2004 No. 176.
534 Article 35(3)(a) amended by LGBl. 2017 No. 397.
535 Article 35(3)(abis) inserted by LGBl. 2024 No. 173.
536 Article 35(3)(b) amended by LGBl. 2019 No. 105.
537 Article 35(3)(c) inserted by LGBl. 1998 No. 223.
538 Article 35(3)(d) amended by LGBl. 2022 No. 109.
539 Article 35(3)(e) amended by LGBl. 2014 No. 348.
540 Article 35(4) amended by LGBl. 2024 No. 173.
541 Article 35(4a) repealed by LGBl. 2014 No. 348.

other EEA Member States concerned and, in particular in emergency situations, based on the information available at the relevant time.[542]

5) If there are grounds to assume that an activity subject to this Act is being conducted without a licence or an activity under Article 8 or 10 of Regulation (EU) 2022/858 is being conducted without a specific permission, the FMA may demand information and documents, including copies, from the persons concerned as if these persons were subject to this Act. In urgent cases, the FMA may order immediate cessation and dissolution.[543]

6) The FMA may assign an expert as its observer to a bank or investment firm if the claims of creditors appear endangered by serious deficits. The external audit office appointed under the Banking Act may be entrusted with this responsibility. The costs shall be borne by the bank or investment firm. The observer shall monitor the activities of the governing bodies, in particular the implementation of the measures ordered, and shall report to the FMA on an ongoing basis. The observer shall enjoy the unrestricted right to inspect the business activities and the books and files of the bank or investment firm.[544]

6a) Unless the concerns of the depositors and clients can be safeguarded in another manner, the FMA may, at the expense of the bank or investment firm, transfer powers in whole or in part that are vested in management bodies by law or by the articles of association to a special representative who is suited to exercise these powers.[545]

7) The FMA shall inform the Government of any general difficulties that Liechtenstein banks and investment firms have with respect to a branch or the provision of services under Article 3 in a third country. The Government shall forward this notification to the EFTA Surveillance Authority.[546]

8) The FMA shall keep a publicly accessible register in which the following shall be entered:[547]

a) banks and investment firms;

b) branches in Liechtenstein of banks, financial institutions, and investment firms situated in another EEA Member State;

c) tied agents;

542 Article 35(4b) inserted by LGBl. 2011 No. 243.
543 Article 35(5) amended by LGBl. 2024 No. 173.
544 Article 35(6) amended by LGBl. 2007 No. 261.
545 Article 35(6a) inserted by LGBl. 2022 No. 109.
546 Article 35(7) amended by LGBl. 2007 No. 261.
547 Article 35(8) amended by LGBl. 2022 No. 109.

d) the external audit offices authorised to audit banks, investment firms, financial holding companies, and mixed financial holding companies with a licence pursuant to Article 30a[quater](1) or (2) as well as market operators;

e) banks, investment firms, financial institutions, market operators, and data reporting services providers situated in another EEA Member State operating in Liechtenstein under the freedom to provide services;

f) financial holding companies and mixed financial holding companies with a licence pursuant to Article 30a[quater](1) or (2);

g) data reporting services providers.

9) The FMA shall periodically review entries pursuant to paragraph 8. To the extent necessary, entries shall be updated without delay.[548]

10) The FMA must make the register referred to in paragraph 8 available free of charge on its website. In addition, the FMA must grant any person access to the register at its physical office location, so long as technically feasible.[549]

11) The FMA shall compile a list containing all parent financial holding companies or parent mixed financial holding companies in EEA Member States that control banks or investment firms for whose supervision on a consolidated basis the FMA is responsible. The list shall be transmitted to the competent authorities of the other EEA Member States, the EFTA Surveillance Authority, and the EBA.[550]

2. Supervisory review and evaluation[551]

Article 35a[552]

Review and evaluation of risk management and risk coverage

1) With a frequency and intensity that is commensurate to the importance and business activity of the bank or investment firm, the FMA shall review whether the organisation, capital adequacy, and liquidity ensure sound risk management and solid risk coverage. In this review, consisting of at least one stress test annually and covering all requirements

548 Article 35(9) amended by LGBl. 2022 No. 109.
549 Article 35(10) inserted by LGBl. 2022 No. 109.
550 Article 35(11) inserted by LGBl. 2022 No. 109.
551 Title preceding Article 35a inserted by LGBl. 2014 No. 348.
552 Article 35a inserted by LGBl. 2014 No. 348.

of this Act and of Regulation (EU) No 575/2013, the FMA shall assess the risks:

a) to which the bank or investment firm is exposed;

b) Repealed[553]

c) revealed by stress testing.

1a) 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 Article 36a(1)(c).[554]

2) The FMA may tailor the methodologies for the review and evaluation referred to in paragraph 1 to take into account banks and investment firms with a similar risk profile, especially in terms of 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 or investment firm may be exposed to, and shall not affect the institution-specific nature of measures imposed in accordance with Article 35c.[555]

3) The review referred to in paragraph 1 shall be carried out at least annually according to the FMA's internal examination programme and shall include banks and investment firms:

a) whose financial soundness is threatened;

b) where breaches of the requirements under this Act or of Regulation (EU) No 575/2013 are suspected;

c) Repealed[556]

d) for which the FMA deems it to be necessary on other grounds.

4) The examination programme referred to in paragraph 3 shall not prevent an investigation of branches also by the competent authorities of the host Member State on a case-by-case basis. The examination programme shall be updated annually. The examination programme shall contain information on:

a) the tasks and resources employed by the FMA;

b) the scheduled review at the premises, including the branches and subsidiaries in other EEA Member States;

c) the content of the examination programme;

553 Article 35a(1)(b) repealed by LGBl. 2022 No. 109.
554 Article 35a(1a) inserted by LGBl. 2022 No. 109.
555 Article 35a(2) amended by LGBl. 2022 No. 109.
556 Article 35a(3)(c) repealed by LGBl. 2022 No. 109.

d) the banks and investment firms which are intended to be subject to enhanced supervision;

e) the measures serving to implement enhanced supervision, especially:

1. increased frequency of on-the-spot supervisory activities;
2. permanent presence of the FMA or of a party mandated by the FMA;
3. additional reporting obligations;
4. review of programmes of operations; or
5. thematic examinations monitoring specific areas of risk.

5) Where a review as referred to in paragraph 1, in particular of the governance arrangements, the business model, or the activities of a bank or investment firm, gives reasonable grounds to suspect that money laundering within the meaning of § 165 StGB or terrorist financing within the meaning of § 278d StGB is being or has been committed or attempted, or there is increased risk thereof, the FMA shall, as applicable, take the necessary measures under this Act.[557]

6) The shall inform the EBA:[558]

a) without delay when a bank or investment firm poses systemic risk;

b) about the application of tailored methodologies pursuant to paragraph 2;

c) regularly about the functioning of the reviews referred to in paragraph 1 and the methodologies the FMA uses to incorporate the results of the reviews referred to in paragraph 1 into stress tests, reviews of internal approaches in accordance with Article 35b, the exercise of supervisory powers in accordance with Article 35c, and the imposition of specific liquidity requirements in accordance with Article 35d;

d) of reasonable grounds of suspicion as referred to in paragraph 5.

7) In the event of potential increased risk of money laundering or terrorist financing as referred to in paragraph 5, the FMA shall immediately notify its assessment to the EBA.[559]

8) The Government shall provide further details by ordinance, in particular regarding:[560]

a) the risks to be included in the review referred to in paragraph 1;

557 Article 35a(5) amended by LGBl. 2022 No. 109.
558 Article 35a(6) amended by LGBl. 2022 No. 109.
559 Article 35a(7) inserted by LGBl. 2022 No. 109.
560 Article 35a(8) inserted by LGBl. 2022 No. 109.

b) whether and to what extent the FMA's responsibilities may be delegated to other bodies;

c) which banks and investment firms are to be subject to a limited scope of review in light of the principle of proportionality.

Article 35b[561]

Ongoing review of internal models

1) The FMA shall review on a regular basis, and at least every three years whether:[562]

a) taking into account new business activities and products, the bank or investment firm complies with the conditions for the use of internal models for the calculation of own funds requirements under Part Three of Regulation (EU) No 575/2013; and[563]

b) these models are based on well-developed and up-to-date methods.

2) If the FMA identifies material deficiencies in risk capture, the FMA shall rectify them or take appropriate steps, especially by requiring higher multiplication factors or imposing capital add-ons.

3) If the FMA identifies numerous overshootings for an internal risk model as referred to in Article 366 of Regulation (EU) No 575/2013 indicating a lack of precision in the model, the FMA shall:

a) issue a decree specifying how the model shall be improved promptly; or

b) revoke the permission for using the internal model.

4) If a bank or investment firm has obtained prior permission to use an internal model but no longer meets the requirements for the use of that model, the FMA shall require:[564]

a) proof that the effect of non-compliance is immaterial to the conditions under this Act or Regulation (EU) No 575/2013; or

b) submission of a plan to restore the lawful state of affairs by a deadline fixed by the FMA.

561 Article 35b inserted by LGBl. 2014 No. 348.

562 Article 35b(1) introductory phrase amended by LGBl. 2022 No. 109.

563 Article 35b(1)(a) amended by LGBl. 2019 No. 214.

564 Article 35b(4) introductory phrase amended by LGBl. 2022 No. 109.

4a) The FMA shall require improvements to a plan referred to in paragraph 4(b) if it is unlikely to achieve restoration of the lawful state of affairs.[565]

5) If the bank or investment firm is unable to restore compliance with the conditions under this Act and Regulation (EU) No 575/2013 within an appropriate deadline and has failed to demonstrate that the effect of non-compliance is immaterial:

a) the permission to use the approach shall be revoked; or

b) the permission shall be limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

6) When reviewing the internal approaches, the FMA shall take into account the benchmarks established by the EBA.[566]

7) The Government shall specify further details by ordinance. In particular, it may determine:

a) whether and to what extent the FMA's responsibilities may be delegated to other bodies;

b) that the bank or investment firm shall bear the costs for the delegation referred to in subparagraph (a);

c) what requirements the internal approaches and the review thereof by the FMA must fulfil.

3. Measures to ensure own funds and solvency[567]

Article 35c[568]

Powers of the FMA[569]

1) In the case of violations of the provisions of this Act or of Regulation (EU) No 575/2013 or on the basis of the results of the review and evaluation of risk management and risk coverage in accordance with Article 35a or of an internal model in accordance with Article 35b, the FMA is authorised to require the following of a bank or investment firm:

565 Article 35b(4a) inserted by LGBl. 2022 No. 109.
566 Article 35b(6) amended by LGBl. 2022 No. 109.
567 Title preceding Article 35c inserted by LGBl. 2014 No. 348.
568 Article 35c inserted by LGBl. 2014 No. 348.
569 Article 35c heading amended by LGBl. 2022 No. 109.

a) taking into account the requirements under Article 35c[bis], to hold additional own funds that exceed the requirements of Regulation (EU) No. 575/2013;[570]

b) to reinforce the risk management procedure referred to in Article 7a;

c) to submit and execute a plan to restore the lawful state of affairs by a deadline set by the FMA, including improvements to that plan regarding scope and deadline;[571]

d) to apply a specific provisioning policy or treatment of assets;[572]

e) to restrict or limit the business, operations or network of banks or investment firms or the divestment of activities that jeopardise the soundness of the bank or investment firm;[573]

f) to reduce the risk inherent in the activities, products and systems of bank or investment firm, including outsourced activities;[574]

g) to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;

h) to use net profits to strengthen own funds;

i) to restrict or prohibit distributions or interest payments to members or holders of Additional Tier 1 instruments; but the restriction or prohibition may not constitute an event of default of the bank or investment firm;

k) additional notification and reporting requirements or shorter notification and reporting intervals, especially on capital and liquidity positions and debt;[575]

l) specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

m) the transmission of additional disclosures.

2) The FMA may impose additional reporting obligations or shorter reporting intervals on a bank or investment firm pursuant to paragraph 1(k) only if they are appropriate and proportionate with regard to the purpose and the information requested is not already available to the FMA.[576]

570 Article 35c(1)(a) amended by LGBl. 2022 No. 109.
571 Article 35c(1)(c) amended by LGBl. 2022 No. 109.
572 Article 35c(1)(d) amended by LGBl. 2022 No. 109.
573 Article 35c(1)(e) amended by LGBl. 2022 No. 109.
574 Article 35c(1)(f) amended by LGBl. 2022 No. 109.
575 Article 35c(1)(k) amended by LGBl. 2022 No. 109.
576 Article 35c(2) amended by LGBl. 2022 No. 109.

3) The information is already available to the FMA for the purposes of Articles 35a and 35b if it has been otherwise reported or may be produced by the FMA.[577]

Article 35c^{bis}[578]

Additional own funds requirement

1) The FMA shall require the bank or investment firm to hold additional own funds pursuant to Article 35c(1)(a) if they serve to cover risks incurred by the bank or investment firm due to its activities, including those reflecting the impact of economic and market developments on the risk profile of the bank or investment firm, and if it determines on the basis of the reviews pursuant to Articles 35a and 35b that:

a) a bank or investment firm 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[579];[580]

b) a bank or investment firm does not meet the risk management requirements set out in Article 7a 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 or investment firm 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 35b(4) and (5), non-compliance with the requirements for the use of the approved internal model will likely lead to inadequate own funds requirements;

577 Article 35c(3) amended by LGBl. 2022 No. 109.

578 Article 35cbis inserted by LGBl. 2022 No. 109.

579 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, 35)

580 Article 35cbis(1)(a) amended by LGBl. 2022 No. 294.

e) the bank or investment firm repeatedly fails to establish and maintain an adequate level of additional own funds to cover the guidance in accordance with Article 35c[ter]; or

f) other material institution-specific reasons exist on the basis of which the FMA deems additional own funds requirements pursuant to Article 35c(1)(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) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402 only where the amount, composition and distribution of internal capital considered adequate by the FMA, taking into account the review of the assessment carried out in accordance with Article 7a(3), 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.[581]

3) For the purposes of paragraph 2, the FMA shall assess, taking into account the risk profile of the bank or investment firm, the risks to which the bank or investment firm is exposed, including institution-specific risks or elements of such risks that:[582]

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.[583]

5) 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).

6) 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

581 Article 35cbis(2) amended by LGBl. 2022 No. 294.
582 Article 35cbis(3) amended by LGBl. 2022 No. 294.
583 Article 35cbis(4) amended by LGBl. 2022 No. 294.

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 Regulation (EU) No 575/2013.

7) 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 Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.[584]

8) Own funds that banks and investment firms 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 35c(1)(a) must consist of Tier 1 capital.

9) Own funds that banks and investment firms must hold on the basis of an additional own funds requirement imposed by the FMA pursuant to Article 35c(1)(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 or investment firm, 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.

10) When meeting an additional own funds requirement imposed pursuant to Article 35c(1)(a) to address the risks of excessive leverage, banks and investment firms 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 35c^{ter} with respect to risks of excessive leverage.

11) When meeting an additional own funds requirement imposed pursuant to Article 35c(1)(a) to address risks other than the risk of excessive leverage, banks and investment firms shall not use own funds that serve to meet any of the following:

584 Article 35cbis(7) amended by LGBl. 2022 No. 294.

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 4a(2);

c) the guidance on additional own funds referred to in Article 35c[ter] with respect to risks other than the risk of excessive leverage.

12) The imposition of an additional own funds requirement pursuant to Article 35c(1)(a) must be justified and communicated to the bank or investment firm in writing. The justification shall include an account of the full assessment pursuant to paragraphs 1 to 11 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.

13) The FMA shall inform the resolution authority of the imposition of an additional own funds requirement pursuant to Article 35c(1)(a).

Article 35c[ter][585]

Guidance on additional own funds

1) Pursuant to the strategies and processes referred to in Article 7a(3), banks and investment firms shall set their internal capital at an adequate level of own funds that is sufficient to cover all the risks that a bank or investment firm is exposed to and to ensure that the own funds of the bank or investment firm can absorb potential losses resulting from stress scenarios, including those identified under the supervisory stress test referred to in Article 35a(1).

2) The FMA shall regularly review the level of the internal capital set by each bank or investment firm in accordance with paragraph 1 as part of the reviews and evaluations performed in accordance with Articles 35a(1) and 35b, including the results of the stress tests referred to in Article 35a(1) and shall determine for each bank and investment firm the overall level of own funds it considers appropriate.

3) The FMA shall communicate its guidance on additional own funds to banks and investment funds. 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 35c(1)(a) and Article 4a(2) of this Act or Article 92(1a) of Regulation (EU) No 575/2013 which are

585 Article 35cter inserted by LGBl. 2022 No. 109.

needed to reach the overall level of own funds considered appropriate by the FMA pursuant to paragraph 2.[586]

4) Guidance on additional own funds pursuant to paragraph 3 shall be institution-specific. The guidance does not include risk aspects that are already covered by an additional own funds requirement imposed pursuant to Article 35c(1)(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 and investment firms 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 35c(1)(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 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 35c(1)(a) to address risks other than the risk of excessive leverage; and

c) the combined buffer requirement set out in Article 4a(2).

7) If a bank or investment firm 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 35c(1)(a) and, depending on which requirement the bank or investment firm is subject to, the combined buffer requirement set out in Article 4a(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 4p or 4t nor the obligation to submit a capital conservation plan pursuant to Article 4x apply.[587]

586 Article 35cter(3) amended by LGBl. 2022 No. 294.

587 Article 35cter(7) amended by LGBl. 2022 No. 294.

8) The FMA shall inform the resolution authority of the communication of guidance pursuant to paragraph 3.

Article 35d[588]

Specific liquidity requirements

The FMA may set specific liquidity requirements for a bank or investment firm where necessary to capture liquidity risks to which a bank or investment firm is or might be exposed. When assessing the necessity of specific liquidity requirements, the FMA shall take into account the following:

a) the business model of the bank or investment firm;

b) risk management, specifically taking into account the liquidity risks;

c) the outcome of the review and evaluation carried out in accordance with Article 35a;

d) Repealed[589]

Article 35e[590]

Specific publication requirements

1) The FMA may require banks and investment firms:

a) to publish, more than once a year by a deadline fixed by the FMA, the information on risk management, capital adequacy and liquidity, and material risk factors that must be disclosed under Part Eight of Regulation (EU) No 575/2013;

b) to publish information other than the business report in a manner approved by the FMA.

2) The FMA may require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions in accordance with Articles 7a(2), 7c(2), and 20(2) to (4).

3) If a bank or investment firm fails to comply with its disclosure obligations in cases other than those set out in Article 432 of Regulation

588 Article 35d inserted by LGBl. 2014 No. 348.
589 Article 35d(d) repealed by LGBl. 2022 No. 109.
590 Article 35e inserted by LGBl. 2014 No. 348.

(EU) No 575/2013 or fails to do so correctly, completely, or in a timely manner, the FMA may take measures that are appropriate and necessary to cause proper disclosure to be made.[591]

Article 36[592]

Repealed

4. Publication requirements for the FMA[593]

Article 36a[594]

General provisions[595]

1) The FMA shall publish the following information:

a) the texts of laws, regulations, administrative rules and general guidance adopted in Liechtenstein in the field of prudential regulation;

b) the manner of exercise of the options and discretions available in EEA law;

c) the general criteria and methodologies of the supervisory review procedure, including the criteria for applying the principle of proportionality as referred to in Article 35a(1a); and[596]

d) aggregate statistical data on key aspects of the implementation of the prudential framework in each EEA Member State, including the number and nature of supervisory measures taken in accordance with Article 35(4) and of penalties imposed in accordance with Articles 63 and of sanctions imposed in accordance with Articles 63 and 63a.[597]

2) The information supplied in accordance with paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the various competent authorities of the EEA Member States.

591 Article 35e(3) inserted by LGBl. 2022 No. 109.
592 Article 36 repealed by LGBl. 2014 No. 348.
593 Title preceding Article 36a inserted by LGBl. 2014 No. 348.
594 Article 36a amended by LGBl. 2007 No. 261.
595 Article 36a heading amended by LGBl. 2014 No. 348.
596 Article 36a(1)(c) amended by LGBl. 2022 No. 109.
597 Article 36a(1)(d) amended by LGBl. 2014 No. 348.

Article 36b[598]

Securitisation positions and consolidated undertakings

1) With regard to securitisation positions (transfer of credit risk) in accordance with Part Five of Regulation (EU) No 575/2013, the FMA shall publish:

a) the general criteria and methodologies for the review of compliance with the provisions governing investor institutions, sponsors, and originator institutions when transferring credit risks in accordance with Articles 405 to 409 of Regulation (EU) No 575/2013; and

b) an annual report on the outcome of the review and measures of the FMA where provisions referred to in subparagraph (a) are violated, subject to Article 30h(1) and (4) to (6) and Article 33.[599]

2) If the FMA permits a bank or investment firm not to apply the own funds requirements on an individual basis in accordance with Article 7(3) of Regulation (EU) No 575/2013, it shall publish the following information:

a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

b) the number of parent banks and parent investment firms which benefit from the exercise of discretion, with an indication of how many of those banks and investment firms incorporate subsidiaries in a third country in the calculation of their own funds; and

c) on an aggregate basis for Liechtenstein:

   1. the total amount of own funds on the consolidated basis of the parent bank in an EEA Member State or of the parent investment firm in an EEA Member State which benefits from the exercise of discretion, which are held in subsidiaries in a third country;

   2. the percentage of total own funds on the consolidated basis of parent banks in an EEA Member State or of parent investment firms in an EEA Member State, which benefits from the exercise of discretion, represented by own funds which are held in subsidiaries in a third country; and

   3. the percentage of total own funds required under Article 92 of Regulation (EU) No 575/2013 on the consolidated basis of parent banks in an EEA Member State or of parent investment firms in an EEA Member State, which benefits from the exercise of discretion,

598 Article 36b inserted by LGBl. 2014 No. 348.

599 Article 36b(1)(b) amended by LGBl. 2022 No. 109.

represented by own funds which are held in subsidiaries in a third country.

3) If the FMA permits a bank or investment firm to incorporate subsidiaries on an individual basis in accordance with Article 9(1) of Regulation (EU) No 575/2013, it shall publish the following information:

a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

b) the number of parent banks and parent investment firms which benefit from the exercise of discretion, and the number of such parent banks and parent investment firms which incorporate subsidiaries in a third country in the calculation of their own funds;

c) on an aggregate basis for Liechtenstein:

1. the total amount of own funds of parent banks or parent investment firms which benefit from the exercise of discretion which are held in subsidiaries in third countries;
2. the percentage of total own funds of parent banks or parent investment firms which benefit from the exercise of discretion represented by own funds which are held in subsidiaries in a third country;
3. the percentage of total own funds required under Article 92 of Regulation (EU) No 575/2013 of parent banks or parent investment firms which benefit from the exercise of discretion represented by own funds which are held in subsidiaries in a third country.

C. External audit offices[600]

Article 37

Recognition

1) External audit offices and audit associations that audit banks, investment firms, or financial holding companies or mixed financial holding companies with a licence pursuant to Article 30a[quater](1) or (2) shall require recognition by the FMA for such activities.[601]

600 Title preceding Article 37 amended by LGBl. 2014 No. 348.

601 Article 37(1) amended by LGBl. 2022 No. 109.

2) The FMA shall recognise only:[602]

a) audit associations to which at least 12 banks are affiliated and which have their own funds of at least one million Swiss francs or provide a security deposit of one million Swiss francs. They must have an organisationally independent internal audit department; or

b) audit firms in the form of a public limited company with a paid-up share capital of at least one million Swiss francs. Audit firms that audit only investment firms must have share capital of at least 200,000 Swiss francs.

2a) External audit offices shall be recognised if:[603]

a) their general management, lead auditors, and organisation guarantee that the audit mandates 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) their lead auditors have 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 general management have a good reputation and the majority have thorough knowledge of auditing, banking, finance, or law;

f) the lead auditors have a good reputation and demonstrate thorough knowledge of the banking and investment business and the auditing of banks and investment firms;

g) the external audit office 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 external audit office has professional liability appropriate to its business activities.

2b) The FMA shall revoke recognition of the external audit office if:[604]

a) the conditions set out in paragraph 2a are no longer met; or

b) the external audit office grossly violates its responsibilities under this Act.

2c) Recognition shall lapse if an external audit office renounces it in writing. A written renunciation shall be permissible only after the external

602 Article 37(2) amended by LGBl. 2022 No. 109.
603 Article 37(2a) inserted by LGBl. 2022 No. 109.
604 Article 37(2b) inserted by LGBl. 2022 No. 109.

audit office has terminated all engagements as an external audit office under this Act.[605]

3) The external audit offices shall dedicate themselves exclusively to audit activities and immediately related transactions such as inspections, liquidations, and reorganisations. They may not engage in banking transactions, investment services, or asset management.[606]

4) The external audit offices must be independent of the banks and investment firms to be audited.[607]

5) The external audit office must maintain secrecy concerning all facts it has learned about in the course of the audit, except vis-à-vis the competent governing bodies of the bank or investment firm audited and the FMA.[608]

6) The Government may provide further details concerning the recognition of external audit offices by ordinance.[609]

Article 37a[610]

Independence

1) The external audit office must be independent from the licence holder to be audited as referred to in Article 37(1) 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 general management or the performance of other key functions at the bank or investment firm to be audited or effective direction of the business of the financial holding company or mixed financial holding company to be audited;

b) a direct or indirect participation in or a substantial claim against or debt due to the licence holder to be audited as referred to in Article 37(1);

c) the involvement in the accounting or the provision of any other services which give rise to a risk that the external audit office will have to review its own work; or

605 Article 37(2c) inserted by LGBl. 2022 No. 109.
606 Article 37(3) amended by LGBl. 2007 No. 261.
607 Article 37(4) amended by LGBl. 2007 No. 261.
608 Article 37(5) amended by LGBl. 2007 No. 261.
609 Article 37(6) amended by LGBl. 2022 No. 109.
610 Article 37a inserted by LGBl. 2022 No. 109.

d) the conclusion of a contract on non-market conditions or of a contract that establishes an interest on the part of the external audit office in the result of the audit.

3) The annual fee income to be expected from the engagements of a licence holder to be audited as referred to in paragraph 1 and its related undertakings may not, under normal circumstances, exceed 10% of the total annual fee income of the external audit office. The FMA may grant exceptions.

Article 37b[611]

Responsibilities and reporting

1) The external audit offices shall audit (regulatory audit) whether:

a) the business activities of the licence holder to be audited as referred to in Article 37(1) conform to the law, the articles of association, and the regulations;

b) the conditions for granting the licence as set out in Article 15 or 30a[quater] are continuously met; and

c) the reporting to the FMA by the licence holder to be audited as referred to in Article 37(1), beyond the annual report, conforms to the requirements of the law.

2) The external audit office shall also audit whether the form and content of the annual report and the consolidated annual report of the licence holder to be audited as referred to in Article 37(1) 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 external audit office 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 external audit office shall summarise the results of its regulatory audit comprehensively, clearly, and objectively in a written report. The report shall be signed by the lead auditor and another person authorised to sign.

611 Article 37b inserted by LGBl. 2022 No. 109.

6) The external audit office shall send the regulatory audit report simultaneously to the board of directors of the bank or investment firm or the management body of the financial holding company or mixed financial holding company, to the external audit office under the provisions of the Law on Persons and Companies, 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 external audit office has violated its duties under paragraphs 1 to 6, the FMA may demand that the lead auditors be removed from their function, subject to Article 37(2b) and Article 38(3).

9) By ordinance, the Government may set out further principles governing the audit of licence holders to be audited as referred to in Article 37(1). The FMA shall specify the details in a guideline, in particular regarding:

a) the areas, frequency, and depth of the audit; and
b) the structure and submission deadline of the regulatory audit report, the documents to be submitted, and the recipients.

Article 37c[612]

Duties of the external audit office

1) The external audit offices are required:

a) to notify the FMA without delay of any changes to the lead auditors notified to the FMA;
b) to entrust management of bank audits only to auditors who have been notified to the FMA and meet the necessary requirements;
c) to notify the lead auditor to the FMA prior to the start of the audit, but no later than 30 November of the preceding year;
d) to submit to the FMA the annual report each year within four months of the financial year.

2) The FMA may request information on the reasons for the departure of members of the general management and lead auditors notified to the FMA.

612 Article 37c inserted by LGBl. 2022 No. 109.

Article 38[613]

Duties of the licence holder to be audited

1) At the beginning of each financial year, licence holders to be audited as referred to in Article 37(1) must engage a recognised external audit office for the audit of the annual financial statement, the audit of the consolidated financial statement, and the regulatory audit.

2) The licence holder to be audited as referred to in Article 37(1) shall obtain the approval of the FMA before designating an external audit office for the first time or engaging a new external audit office. The FMA shall refuse its approval if the proposed external audit office does not guarantee a proper statutory audit or regulatory audit under the given circumstances.

3) If an external audit office does not properly perform the audit of a licence holder to be audited as referred to in Article 37(1), the FMA may require the licence holder to be audited to engage a different external audit office for the audit of the annual financial statement, the audit of the consolidated financial statement, and the regulatory audit at the beginning of the following financial year.

Article 39

Deficiencies

1) If the external audit office finds violations of legal provisions or other deficits, it shall impose an appropriate deadline on the bank or investment firm to bring about a lawful state of affairs. If the deadline is not met, the external audit office shall report to the FMA.[614]

2) The external audit office shall notify the FMA immediately if the imposition of a deadline appears useless, if it finds that the senior management has committed offences, or if other serious deficits exist that conflict with the purpose of this Act (Article 1).[615]

3) Notwithstanding paragraph 1, a duty to report within the meaning of paragraph 2 shall subsist:[616]

a) in the case of serious violations of the licensing conditions by the senior management and of the rules applicable to the performance of activities;

613 Article 38 amended by LGBl. 2022 No. 109.
614 Article 39(1) amended by LGBl. 2019 No. 214.
615 Article 39(2) amended by LGBl. 1998 No. 223 and LGBl. 2004 No. 176.
616 Article 39(3) amended by LGBl. 2014 No. 348.

b) in the case of facts or decisions that might adversely affect the continuation of the activities of the bank or investment firm;

c) in the case of facts or decisions that might lead to a rejection of the business report or the consolidated business report or to qualifications in the audit report.

4) A duty to report shall also subsist where, in the course of its audit activities, the external audit office makes determinations in accordance with paragraph 3 with respect to undertakings closely linked with the bank or investment firm subject to the audit.[617]

5) External audit offices bringing facts or decisions to the attention of the FMA in good faith shall not thereby be deemed in breach of any contractual or legal restrictions on passing on information. Meeting the information requirement in this sense does not entail any adverse consequences for the external audit office or person passing on the information. Provided there are no compelling reasons not to do so, the facts and decisions shall also be brought to the attention of the board of directors of the bank or investment firm.[618]

Article 39a[619]

Change of external audit office

1) Upon a justified application by the licence holder to be audited as referred to in Article 37(1), the FMA may approve a change of external audit office. The FMA shall decide on an application for approval within six weeks. Before making its decision, the FMA shall consult the previous external audit office.

2) The FMA shall approve the change of the external audit office if such change does not jeopardise the purpose of the audit.

3) The licence holder to be audited as referred to in Article 37(1) shall provide the newly selected audit office with the latest report on the statutory audit and the latest report on the regulatory audit.

617 Article 39(4) amended by LGBl. 2007 No. 261.
618 Article 39(5) amended by LGBl. 2014 No. 348.
619 Article 39a amended by LGBl. 2022 No. 109.

Article 39b[620]

Supervision of external audit offices

In its supervision of external audit offices, the FMA may in particular carry out quality controls and accompany the external audit offices in their audit activities at banks or investment firms as well as financial holding companies or mixed financial holding companies with a licence pursuant to Article 30a[quater](1) or (2).

Article 40

Audit costs

1) The licence holders to be audited as referred to in Article 37(1) shall bear the costs of the audit. The costs of the audit shall be calculated according to a generally recognised fee schedule.[621]

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

D. Court of Justice[622]

Article 41

Criminal jurisdiction

The Court of Justice shall have criminal jurisdiction with respect to the misdemeanours set out in Article 63(1) and (2).

620 Article 39b inserted by LGBl. 2022 No. 109.
621 Article 40(1) amended by LGBl. 2022 No. 109.
622 Title preceding Article 41 amended by LGBl. 2014 No. 348.

E. Supervision on a consolidated basis and of licensed financial holding companies or mixed financial holding companies[623]

1. General provisions[624]

Article 41a

Principles[625]

1) Any bank or investment firm which has a bank or investment firm as a subsidiary or which has a holding in a bank or investment firm shall be subject to supervision on a consolidated basis in accordance with the provisions of this Section.[626]

2) Any bank or investment firm whose parent undertaking is a financial holding company or a mixed financial holding company shall be subject to supervision on a consolidated basis of the parent undertaking in accordance with the provisions of this Section.[627]

3) The inclusion of a bank, investment firm, or ancillary services undertaking as referred to in Article 4(1)(18) of Regulation (EU) No 575/2013 in the consolidation may be dispensed with if the undertaking to be included is of minor importance with respect to the consolidation.[628]

4) If the bank or investment firm is a parent undertaking, the FMA may exempt the bank or investment firm from the own funds consolidation as long as the bank or investment firm is itself a subsidiary of a parent undertaking and is in turn subject to adequate supervision.[629]

5) For all undertakings included in the consolidation, adequate internal control mechanisms must be provided that are relevant for the purposes of consolidated supervision.[630]

6) Subsidiaries of a bank, investment firm, financial holding company, or mixed financial holding company that are not included in the supervision on a consolidated basis shall, upon request by the FMA, provide the FMA with

623 Title preceding Article 41a amended by LGBl. 2022 No. 109.
624 Title preceding Article 41a inserted by LGBl. 2007 No. 261.
625 Article 41a heading inserted by LGBl. 1998 No. 223.
626 Article 41a(1) amended by LGBl. 2022 No. 109.
627 Article 41a(2) amended by LGBl. 2022 No. 109.
628 Article 41a(3) amended by LGBl. 2014 No. 348.
629 Article 41a(4) amended by LGBl. 2007 No. 261.
630 Article 41a(5) amended by LGBl. 2022 No. 109.

all information that is relevant to supervision. The procedure set out in Article 41k shall apply in this regard.[631]

7) Repealed[632]

2. Competence[633]

Article 41b[634]

Supervision of parent banks and parent investment firms

1) The FMA shall be responsible for supervising a parent undertaking on a consolidated basis if that parent undertaking is:

a) a parent bank or an EEA parent bank having its registered office in Liechtenstein and the FMA exercises supervision over this parent undertaking on an individual basis;

b) a parent undertaking or an EEA parent undertaking having its registered office in Liechtenstein, the FMA exercises supervision over this parent undertaking on an individual basis, and no subsidiary of this parent undertaking is a bank.

2) If a parent undertaking as referred to in paragraph 1(b) has at least one bank as a subsidiary, the FMA shall be responsible for supervision on a consolidated basis, provided that it is responsible for the supervision of the bank on an individual basis. If a parent undertaking as referred to in paragraph 1(b) has several banks as subsidiaries, the FMA shall be responsible for supervision on a consolidated basis, provided that it is responsible for the supervision of the bank with the highest balance sheet total on an individual basis.

Article 41c[635]

Supervision of parent financial holding companies

1) Where the parent undertaking of a bank or investment firm supervised by the FMA on an individual basis is a parent financial holding

631 Article 41a(6) amended by LGBl. 2014 No. 348.
632 Article 41a(7) repealed by LGBl. 2014 No. 348.
633 Title preceding Article 41b inserted by LGBl. 2007 No. 261.
634 Article 41b amended by LGBl. 2022 No. 109.
635 Article 41c amended by LGBl. 2022 No. 109.

company or parent mixed financial holding company in an EEA Member State or an EEA parent financial holding company or EEA parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the FMA.

2) Where at least two banks 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 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 within the group and the FMA is responsible for supervising the investment firm with the highest balance sheet total on an individual basis.

3) 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.

4) 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 2(b), from paragraph 3, and from Article 41b(2), simultaneously be the consolidating supervisor where the sum of the balance sheet totals of the banks it supervises is higher than that of the banks supervised on an individual basis by another competent authority.

5) 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 2(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.

6) 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 2 and 3 and Article 41b 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 the continuity of 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.

7) The FMA shall notify the EFTA Surveillance Authority and the EBA of any agreement falling within paragraph 6.

Article 41d[636]

Inclusion of holding companies in consolidated supervision[637]

1) The FMA shall be responsible for supervising financial holding companies and mixed financial holding companies on a consolidated basis.[638]

2) When the competent authorities of another EEA Member State do not include a bank or investment firm subsidiary in supervision on a consolidated basis under one of the cases provided for in Article 19 of Regulation (EU) No 575/2013, the FMA may, provided that it exercises supervision over that subsidiary, ask the parent undertaking for information which may facilitate its supervision of that subsidiary.

3) The FMA may demand the information referred to in Article 41k from the subsidiaries of a bank or investment firm, financial holding company, or mixed financial holding company that are not included in supervision on a consolidated basis. The procedures set out in Article 41k for transmission and verification of the information shall apply.

Article 41d^{bis}[639]

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

636 Article 41d amended by LGBl. 2014 No. 348.
637 Article 41d heading amended by LGBl. 2022 No. 109.
638 Article 41d(1) amended by LGBl. 2022 No. 109.
639 Article 41dbis inserted by LGBl. 2022 No. 109.

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.

3. Special tasks and emergency situations[640]

Article 41e[641]

Special tasks of the FMA[642]

1) The FMA as the consolidating supervisor shall furthermore carry out the following tasks:

a) coordination of the gathering and dissemination of relevant or essential information in going-concern and emergency situations;

b) planning and coordination of consolidated supervision in going-concern situations, in close cooperation with the competent authorities of other EEA Member States and the EBA;[643]

c) in emergency situations, in addition to planning and coordination of consolidated supervision as referred to in subparagraph (b), it shall be responsible for communication for the purpose of crisis management; in particular, its tasks shall include imposing significant penalties and ordering exceptional measures as referred to in Article 41h(4)(d) and (6), the preparation of joint assessments, the implementation of contingency plans, and communication to the public.

640 Title preceding Article 41e inserted by LGBl. 2007 No. 261.
641 Article 41e amended by LGBl. 2014 No. 348.
642 Article 41e heading amended by LGBl. 2022 No. 109.
643 Article 41e(1)(b) amended by LGBl. 2022 No. 109.

2) As the consolidating supervisor, the FMA shall do everything within its power to reach a joint decision with the competent authorities of other EEA Member States responsible for the supervision of subsidiaries:

a) on the application of Article 7a(3) and (4) and Article 35a to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 35c(1)(a) to each entity within the group of institutions and on a consolidated basis;

b) on measures referred to in Article 35d relating to liquidity supervision, taking into account the requirements set out in Article 7a regarding adequate organisation, risk treatment, and the liquidity profile of the group;[644]

c) on guidance on additional own funds as referred to in Article 35c^{ter}.[645]

3) The joint decision pursuant to paragraph 2 shall be reached:[646]

a) in the case of paragraph 2(a) within four months after submission by the FMA of a report on the risks of the group in accordance with Article Articles 35c^{bis}(1) to the other relevant competent authorities of other EEA Member States;

b) in the case of paragraph 2(b) within four months after submission by the FMA of a report on the liquidity risk profile of the group to the other relevant competent authorities of other EEA Member States;

c) in the case of paragraph 2(c) within four months after submission by the FMA of a report on the risks of the group in accordance with Article Articles 35c^{ter} to the other relevant competent authorities of other EEA Member States.

4) In the joint decision pursuant to paragraph 2, the FMA as the consolidating supervisor shall also duly consider the risk assessment of subsidiaries in accordance with Articles 7a(3), 35a, 35c^{bis}, and 35c^{ter} and shall provide the joint decision, containing reasons, to the EEA parent bank or EEA parent investment firm and the supervisory authorities concerned. The reasons shall include the full risk assessment carried out by the FMA and the other competent authorities, in addition to the views and reservations expressed.[647]

644 Article 41e(2)(b) amended by LGBl. 2022 No. 109.
645 Article 41e(2)(c) inserted by LGBl. 2022 No. 109.
646 Article 41e(3) amended by LGBl. 2022 No. 109.
647 Article 41e(4) amended by LGBl. 2022 No. 109.

5) In the event of disagreement, the FMA as the consolidating supervisor shall at the request of any of the other competent supervisory authorities consult:[648]

a) the EFTA Surveillance Authority in cases involving only competent authorities of EFTA States;

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.[649]

7) 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.[650]

8) 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.[651]

9) If no joint decision is reached within the periods set out in paragraph 3, the FMA as the consolidating supervisor shall decide on its own on application of Article 7a(3), Article 35a(1), (4), and (5)(a), Article 35c(1)(a), and Articles 35c[bis] to 35d on a consolidated basis, but duly taking into account the risk assessment of the subsidiaries carried out by the relevant competent authorities.[652]

10) 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, it shall take into account the views and reservations of the consolidating

648 Article 41e(5) amended by LGBl. 2022 No. 109.
649 Article 41e(6) amended by LGBl. 2022 No. 109.
650 Article 41e(7) amended by LGBl. 2022 No. 109.
651 Article 41e(8) amended by LGBl. 2022 No. 109.
652 Article 41e(9) inserted by LGBl. 2022 No. 109.

supervisor when deciding on the application of Articles 7a(3), 35a(1), (4) and (5)(a), 35c(1)(a), and 35c[bis] to 35d.[653]

11) 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 3. The FMA as the consolidating supervisor shall provide the decision to the competent authorities of the other EEA Member States concerned and to the EEA parent bank or EEA parent investment firm.[654]

12) 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.[655]

13) The joint decisions referred to in paragraph 2 and the decisions taken by the competent authorities in the absence of a joint decision referred to in paragraph 9 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.[656]

14) Decisions taken in accordance with paragraphs 2, 8 and 9 shall in principle be updated annually. The FMA shall also update the decision on application of Article 35c(1)(a) and Articles 35c[bis] to 35d if the authority responsible for supervision of a subsidiary of an EEA parent bank, EEA investment firm, 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.[657]

Article 41e[bis][658]

Repealed

653 Article 41e(10) inserted by LGBl. 2022 No. 109.
654 Article 41e(11) inserted by LGBl. 2022 No. 109.
655 Article 41e(12) inserted by LGBl. 2022 No. 109.
656 Article 41e(13) inserted by LGBl. 2022 No. 109.
657 Article 41e(14) inserted by LGBl. 2022 No. 109.
658 Article 41ebis repealed by LGBl. 2022 No. 109.

Article 41f[659]

Emergency situations

Where an emergency situation or a situation of adverse developments in financial markets arises which potentially jeopardises the market liquidity and the stability of the financial system in any of the EEA Member States where entities of the group have been licensed or where significant branches referred to in Article 30m are established, the FMA shall, to the extent it is responsible for supervision on a consolidated basis in accordance with Article 41b, 41c, or 41e(1), notify as soon as practicable the EBA, the authorities and bodies referred to in Articles 30f and 30h(1) and (2), and the Swiss National Bank, when the information is relevant for the exercise of their respective statutory tasks, and shall communicate all information necessary for the pursuance of their tasks. Where possible, the FMA shall use existing channels of communication.

4. Coordination and cooperation rules[660]

Article 41g[661]

Arrangements

1) In order to facilitate and establish effective supervision, the FMA and the other competent authorities of the EEA Member States responsible for supervision on a consolidated basis shall have written coordination and cooperation arrangements in place.

2) Under these arrangements, additional tasks may be entrusted to the competent authority responsible for supervision on a consolidated basis, and procedures for the decision-making process and for cooperation with other competent authorities may be specified.

3) Where the FMA is responsible for licensing a subsidiary of a parent undertaking which is a bank or investment firm, it may, by bilateral agreement, delegate its responsibility for supervision to the competent authorities which licensed and supervise the parent undertaking so that they may assume responsibility for supervising the subsidiary. The EFTA

659 Article 41f amended by LGBl. 2022 No. 109.
660 Title preceding Article 41g inserted by LGBl. 2007 No. 261.
661 Article 41g inserted by LGBl. 2007 No. 261.

Surveillance Authority and the EBA shall be informed of the existence and the content of such agreements.[662]

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.[663]

Article 41h

Cooperation[664]

1) The FMA shall cooperate closely with the competent authorities of other EEA Member States and the EBA. The FMA shall transmit upon request all relevant information and shall communicate at its own initiative all essential information that is necessary for the exercise of the functions delegated to them under Directives 2013/36/EU and 2014/65/EU as well as Regulations (EU) No 575/2013 and (EU) No 600/2014.[665]

2) Information referred to in paragraph 1 shall be regarded as essential if it could materially influence the assessment of the financial soundness of a bank, investment firm, or financial institution in another EEA Member State.[666]

3) In particular, the FMA shall, provided it is responsible for consolidated supervision of EEA parent banks or EEA parent investment firms or of banks or investment firms controlled by EEA parent financial holding companies or by EEA parent mixed financial holding companies, provide the competent authorities in other EEA Member States who supervise subsidiaries of these parents with all relevant information. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those EEA Member States shall be taken into account.[667]

4) The essential information referred to in paragraph 1 shall include, in particular, the following items:[668]

662 Article 41g(3) amended by LGBl. 2022 No. 109.
663 Article 41g(4) inserted by LGBl. 2022 No. 109.
664 Article 41h heading inserted by LGBl. 2007 No. 261.
665 Article 41h(1) amended by LGBl. 2022 No. 109.
666 Article 41h(2) inserted by LGBl. 2007 No. 261.
667 Article 41h(3) amended by LGBl. 2014 No. 348.
668 Article 41h(4) inserted by LGBl. 2007 No. 261.

a) identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Article 7a(2) and (6), Article 7c(2), and Article 20(2) to (4), and of the competent authorities of the regulated entities in the group;[669]

b) procedures for the collection of information from the banks or investment firms in a group, and the verification of that information;

c) adverse developments in banks or investment firms or in other entities of a group, which could seriously affect the banks or investment firms; and

d) significant penalties or exceptional measures taken by the FMA on the basis of this Act, especially the imposition of a specific own funds requirement under Article 35c(1)(a) and the imposition of any limitation on the use of the Advanced Measurement Approaches for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.[670]

4a) 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:[671]

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 rejected or has not been acted upon within a reasonable time.

5) Where the FMA is responsible for supervision of a bank or investment firm controlled by an EEA parent bank or an EEA parent investment firm, it shall whenever possible contact the competent authority responsible for supervision on a consolidated basis when it needs information regarding the implementation of approaches and methodologies that may be available to that competent authority.[672]

6) The FMA shall, prior to its decision, consult the other competent authorities of EEA Member States with regard to the following items, where

669 Article 41h(4)(a) amended by LGBl. 2014 No. 348.
670 Article 41h(4)(d) amended by LGBl. 2014 No. 348.
671 Article 41h(4a) inserted by LGBl. 2022 No. 109.
672 Article 41h(5) inserted by LGBl. 2007 No. 261.

these decisions are of importance for the supervisory tasks of another competent authority:[673]

a) changes in the shareholder, organisational, or management structure of the banks or investment firms in a group, which require the approval or licensing of competent authorities; and

b) significant penalties or exceptional measures, especially the imposition of a specific own funds requirement under Article 35c and the imposition of any limitation on the use of the Advanced Measurement Approaches for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.

7) For the purposes of paragraph 6(b), the competent authority responsible for supervision on a consolidated basis shall always be consulted. However, the FMA may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decision. In this case, the FMA shall, without delay, inform the other competent authorities.[674]

7a) 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. They shall provide each other 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 Directive (EU) 2015/849 is involved.[675]

8) Where the FMA is responsible for supervision on a consolidated basis, it shall establish colleges of supervisors to facilitate the exercise of the special tasks and emergency situations referred to in Articles 41e and 41f and, where applicable and subject to the confidentiality requirements of paragraph 12, ensure appropriate coordination and cooperation with relevant third-country competent authorities.[676]

673 Article 41h(6) amended by LGBl. 2014 No. 348.
674 Article 41h(7) inserted by LGBl. 2007 No. 261.
675 Article 41h(7a) inserted by LGBl. 2022 No. 109.
676 Article 41h(8) amended by LGBl. 2014 No. 348.

9) Colleges of supervisors shall provide a framework for the FMA, the European Supervisory Authorities, and the other competent authorities concerned to carry out the following tasks:[677] [678]

a) exchanging information;

b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;

c) determining supervisory examination programmes based on a risk assessment of the group in accordance with Article 35a;[679]

d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in paragraph 5 and Article 41f;[680]

e) uniformly applying the supervisory requirements across all entities within the group, subject to the options and discretions available in EEA law;[681]

f) planning and coordinating supervisory activities during the preparation of and in emergency situations referred to in Article 41e(1)(c), taking into account the work of other forums that may be established in that area.

9a) For the purposes of Articles 41e(1), 41f, and 41g(1) and (2), the FMA as the consolidating supervisor shall also establish colleges of supervisors if all cross-border subsidiaries of an EEA parent bank, EEA parent investment firm, EEA parent financial holding company, or EEA parent mixed financial holding company have their registered offices in third countries, provided that the competent authorities are subject to a confidentiality requirement equivalent to Article 31a.[682]

10) The FMA shall cooperate closely with the European Supervisory Authorities and the other competent authorities participating in the colleges of supervisors. The confidentiality requirement under Article 31a shall not prevent the exchange of confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the FMA under this Act.[683]

677 Article 41h(9) inserted by LGBl. 2011 No. 243.
678 Article 41h(9) introductory phrase amended by LGBl. 2014 No. 348.
679 Article 41h(9)(c) amended by LGBl. 2014 No. 348.
680 Article 41h(9)(d) amended by LGBl. 2014 No. 348.
681 Article 41h(9)(e) amended by LGBl. 2014 No. 348.
682 Article 41h(9a) inserted by LGBl. 2022 No. 109.
683 Article 41h(10) amended by LGBl. 2014 No. 348.

11) After consulting with the competent authorities concerned, the FMA shall define written coordination arrangements in accordance with Article 41g regarding the establishment and functioning of the colleges.[684]

12) The following may participate in the FMA's colleges of supervisors: the competent authorities responsible for the supervision of financial holding companies or mixed financial holding companies with a licence pursuant to Article 30a[quater](1) or (2), subsidiaries of an EEA parent bank, an EEA parent investment firm, an EEA parent financial holding company, or an EEA parent mixed financial holding company and the competent authorities of a host country where significant branches as referred to in Article 30m are established, and, as appropriate, central banks and third-country competent authorities subject to confidentiality requirements that are equivalent, in the opinion of all the competent authorities, to Article 31a.[685]

13) Where the FMA is responsible for supervision on a consolidated basis, the FMA shall chair the meetings of the college of supervisors and decide which competent authorities participate in a meeting or in an activity of the college. The decision of the FMA shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the EEA Member States concerned and the obligations referred to in Article 30n.[686]

14) The FMA shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed, and the activities to be considered. The FMA shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.[687]

15) The FMA, subject to the confidentiality requirement under Article 31a, shall inform the European Supervisory Authorities of the activities of the college of supervisors, including in emergency situations, and communicate to the European Supervisory Authorities all information that is of particular relevance for the purposes of supervisory convergence.[688]

684 Article 41h(11) inserted by LGBl. 2011 No. 243.
685 Article 41h(12) amended by LGBl. 2022 No. 109.
686 Article 41h(13) inserted by LGBl. 2011 No. 243.
687 Article 41h(14) inserted by LGBl. 2011 No. 243.
688 Article 41h(15) amended by LGBl. 2014 No. 348.

5. Management of financial holding companies or mixed financial holding companies, external audit requirement, and outsourcing[689]

Article 41i[690]

Qualifications

1) Financial holding companies and mixed financial holding companies must ensure that the persons who effectively direct their business are of good repute and have sufficient knowledge, skills and experience to perform their duties. The requirements set out in Article 17(5) and Article 22(5) and (6)(a) as well as the mandate limits set by the Government under Article 22(10)(e) shall apply *mutatis mutandis*.

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

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 the financial holding company or mixed financial holding company or an affiliated bank or investment firm, money laundering within the meaning of § 165 StGB, terrorist financing within the meaning of § 278d StGB, corruption within the meaning of §§ 304 to 309 StGB, insider dealing within the meaning of Article 6 EWR-MDG, market manipulation within the meaning of Article 7 EWR-MDG, criminal breach of trust within the meaning of § 153 StGB, fraud within the meaning of §§ 146 to 148 StGB or a comparable offence takes 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 persons who effectively direct the business do not meet the requirements under paragraph 1, the FMA shall take the necessary measures, in particular their dismissal in accordance with Article 41p(4)(c).

5) The Government may provide further details by ordinance.

689 Title preceding Article 41i amended by LGBl. 2022 No. 109.

690 Article 41i amended by LGBl. 2022 No. 109.

Article 41i^bis[691]

External audit requirement

Financial holding companies or mixed financial holding companies with a licence pursuant to Article 30a^quater(1) or (2) must have their business activities audited each year by an independent external audit office recognised by the FMA. Article 11 shall apply *mutatis mutandis*.

Article 41i^ter[692]

Outsourcing

Financial holding companies or mixed financial holding companies with a licence pursuant to Article 30a^quater(1) or (2) may conclude agreements with third parties on the outsourcing of processes, services, or activities. Article 14a shall apply *mutatis mutandis*.

6. Mixed-activity holding companies[693]

Article 41k[694]

General control of mixed-activity holding companies

1) Where the parent undertaking of one or more banks or investment firms is a mixed-activity holding company, the FMA may, provided that it licensed those banks or investment firms or is responsible for their supervision, by approaching the mixed-activity holding company and its subsidiaries either directly or via bank or investment firm subsidiaries, require them to supply any information which would be relevant for the purpose of supervising the bank or investment firm subsidiaries.

2) The FMA may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Article 41n may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in an EEA Member State other than that in which the bank or

691 Article 41ibis inserted by LGBl. 2022 No. 109.
692 Article 41iter inserted by LGBl. 2022 No. 109.
693 Title preceding Article 41k inserted by LGBl. 2007 No. 261.
694 Article 41k amended by LGBl. 2014 No. 348.

investment firm subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in Article 41o.

Article 41l[695]

Monitoring of transactions of mixed-activity holding companies

The FMA shall require banks and investment firms to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor, and control transactions with their parent mixed holding company and its subsidiaries appropriately. The FMA shall require the reporting by the banks and investment firms of any significant transaction with these entities in addition to the notification of cluster risks. These procedures and significant transactions shall be subject to overview by the FMA. Where these intra-group transactions are a threat to the financial situation of a bank or investment firm, the FMA shall take appropriate measures.

7. Exchange of information[696]

Article 41m[697]

Principles

1) The FMA shall transmit to the competent authorities of other EEA Member States any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise, provided that:

a) doing so does not violate the sovereignty, security, public order, or other substantial national interests of Liechtenstein;

b) the recipients and the persons employed with and instructed by the competent authorities are subject to an obligation of secrecy equivalent to that of Article 31a;

695 Article 41l amended by LGBl. 2014 No. 348.

696 Title preceding Article 41m inserted by LGBl. 2007 No. 261.

697 Article 41m inserted by LGBl. 2007 No. 261.

c) it is guaranteed that the information given will be used only for the purpose of financial market supervision, in particular the supervision of banks, investment firms, or regulated markets.

2) The exchange of information relevant for supervision on a consolidated basis between the group companies subject to consolidated supervision shall be permissible.

Article 41n[698]

Special cases

1) Where a parent undertaking and any of its subsidiaries that are banks or investment firms are situated in different EEA Member States, the FMA shall communicate to the competent authorities of every EEA Member State all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

2) Where the FMA, as the competent authority for a parent undertaking situated in Liechtenstein, does not itself exercise supervision on a consolidated basis, it may be invited by the competent authority of the EEA Member State responsible for supervision on a consolidated basis to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to that authority.

3) In the case of financial holding companies, mixed financial holding companies, financial institutions, or ancillary services undertakings, the collection or possession of information referred to in paragraph 2 shall not imply that the FMA is required to play a supervisory role in relation to those institutions or undertakings standing alone.[699]

4) The FMA may exchange the information referred to in Article 41k on the understanding that the collection or possession of information does not imply that the FMA plays a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not banks or investment firms, or to subsidiaries of the kind covered in Article 41d(3).[700]

5) Where a bank, investment firm, financial holding company, mixed financial holding company, or mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to a licence, the FMA and

698 Article 41n inserted by LGBl. 2007 No. 261.
699 Article 41n(3) amended by LGBl. 2014 No. 348.
700 Article 41n(4) amended by LGBl. 2014 No. 348.

the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely.[701]

6) 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.[702]

Article 41o[703]

Verification

1) If the FMA is requested by a competent authority of another EEA Member State within the framework of supervision on a consolidated basis to carry out a verification with respect to a bank, an investment firm, a financial holding company or mixed financial holding company, an ancillary services undertaking, a mixed-activity holding company, a subsidiary of the kind covered in Article 41k, or a subsidiary of the kind covered in Article 41d(3) situated in Liechtenstein, it shall act upon that request either by carrying out the verification itself, by allowing the authority who made the request to carry it out, or by allowing an auditor or expert to carry it out. The competent authority which made the request may, if it so wishes, participate in the verification when the FMA does not carry out the verification itself. Article 41m shall apply *mutatis mutandis*.[704]

2) When the FMA wishes to verify information concerning institutions within the meaning of paragraph 1 situated in another EEA Member State, the FMA may request the competent authority of that EEA Member State to carry out a verification.

701 Article 41n(5) amended by LGBl. 2014 No. 348.
702 Article 41n(6) amended by LGBl. 2022 No. 109.
703 Article 41o inserted by LGBl. 2007 No. 261.
704 Article 41o(1) amended by LGBl. 2014 No. 348.

8. Measures against financial holding companies, mixed financial holding companies, and mixed-activity holding companies[705]

Article 41p[706]

Principle

1) Financial holding companies, mixed financial holding companies, and mixed holding companies shall comply with the provisions of this Act and Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis and, where expressly ordered, on an individual basis.

2) The FMA shall supervise the compliance of financial holding companies, mixed financial holding companies, and mixed holding companies with the provisions of this Act and Regulation (EU) No 575/2013 on an individual basis as well as on a consolidated and sub-consolidated basis. For this purpose, it shall have all the powers necessary to perform its duties, in particular, all the powers under Article 35(2) to (7).

3) In the event of infringements of the provisions of this Act or of Regulation (EU) No.575/2013, as well as on the basis of the results of the review and evaluation of risk management and risk coverage pursuant to Article 35a, the FMA is authorised to exercise all powers to which it is entitled pursuant to Article 35c with respect to financial holding companies, mixed financial holding companies, and mixed holding companies.

4) Where the FMA as the consolidating supervisor establishes that the conditions set out in Article 30a^{quater}(6) have ceased to be met, it may take appropriate measures to ensure or restore compliance with the requirements under this Act and Regulation (EU) No 575/2013 on a consolidated basis, in particular:

a) suspend the exercise of voting rights attached to shares of subsidiary banks and subsidiary investment firms held by financial holding companies or mixed financial holding companies for up to five years;

b) restrict or prohibit distributions or interest payments to shareholders of the financial holding company or mixed financial holding company;

c) require the removal of a natural person from the management body of a financial holding company or mixed financial holding company;

d) require financial holding companies or mixed financial holding companies to assign interests in their subsidiary banks or subsidiary investment firms to their shareholders;

705 Title preceding Article 41p amended by LGBl. 2014 No. 348.

706 Article 41p amended by LGBl. 2022 No. 109.

e) designate on a temporary basis another financial holding company, mixed financial holding company, bank, or investment firm within the group as responsible for ensuring compliance with the requirements under this Act or Regulation (EU) No 575/2013 on a consolidated basis;

f) require financial holding companies or mixed financial holding companies to limit, reduce, or divest from interests in banks, investment firms, other financial sector entities, or providers of ancillary services;

g) require financial holding companies or mixed financial holding companies to submit a plan to restore a lawful state of affairs within a period set by the FMA.

9. Relationship with third countries[707]

Article 41q[708]

Principle

1) Where a bank or investment firm, the parent undertaking of which is a bank or investment firm, a financial holding company, or a mixed financial holding company situated in a third country is not subject to consolidated supervision under Articles 41c and 41d, the FMA shall verify together with the other competent authorities of the EEA Member States affected by this constellation of undertakings whether the bank or investment firm is subject to consolidated supervision by the third-country competent authority which is equivalent to that governed by the principle laid down in this Act and the requirements governing supervisory consolidation in accordance with Articles 11 to 24 of Regulation (EU) No 575/2013.[709]

2) The FMA shall carry out the verification at the request of the parent undertaking or of any of the regulated entities licensed in the European Economic Area or on its own initiative, provided that it would be responsible for consolidated supervision if paragraph 4 were to apply. The FMA shall consult the other competent authorities involved.[710]

3) When carrying out the verification referred to in paragraph 1, the FMA shall take into account the guidance of the European Banking

707 Title preceding Article 41q inserted by LGBl. 2007 No. 261.
708 Article 41q inserted by LGBl. 2007 No. 261.
709 Article 41q(1) amended by LGBl. 2014 No. 348.
710 Article 41q(2) amended by LGBl. 2014 No. 348.

Committee. For this purpose, the FMA shall consult the Committee before taking a decision.

4) If no supervision or no equivalent supervision exists, the FMA shall apply the provisions of this Act and of Regulation (EU) No 575/2013 *mutatis mutandis* to the bank or investment firm. The FMA may instead apply other appropriate supervisory techniques provided they achieve the objectives of supervision on a consolidated basis of banks and investment firms.[711]

5) The supervisory techniques referred to in paragraph 4 shall, after consultation with the other competent authorities of the EEA involved, be agreed upon by the competent authority which would be responsible for consolidated supervision.

6) The FMA may, upon consultation with the other competent authorities of the EEA Member States, in particular require the establishment of a financial holding company or a mixed financial holding company which has its registered office in the European Economic Area, and apply the provisions on consolidated supervision to the consolidated position of that financial holding company or mixed financial holding company.[712]

7) The supervisory techniques shall be notified to the other competent authorities of the EEA Member States involved, the EFTA Surveillance Authority, and the EBA.[713]

8) For purposes of supervision on a consolidated basis, Articles 41m and 41o shall apply *mutatis mutandis* to cooperation with competent authorities of third countries.

IVa. Capital reduction[714]

Article 41r[715]

Repayment of capital

1) With respect to banks and investment firms, the provisions of the Law on Persons and Companies shall apply to the reduction of share capital by repayment of shares, subject to the following provisions. These

711 Article 41q(4) amended by LGBl. 2014 No. 348.
712 Article 41q(6) amended by LGBl. 2014 No. 348.
713 Article 41q(7) amended by LGBl. 2022 No. 109.
714 Title preceding Article 41r inserted by LGBl. 2007 No. 261.
715 Article 41r inserted by LGBl. 2007 No. 261.

provisions shall apply *mutatis mutandis* also with respect to banks and investment firms that have not been established in the legal form of limited companies.

2) If a bank or investment firm intends to reduce its share capital without simultaneously replacing it with new, fully paid-up capital up to the previous level, the general meeting must decide on a corresponding amendment of the articles of association. This decision must be made by a majority of two thirds of the votes represented.

3) The general meeting may decide to reduce the capital only if a special audit report of the external audit office appointed according to the Banking Act has determined that the claims of creditors are fully covered and liquidity is guaranteed despite the reduction of the share capital.

4) The decision to reduce the capital shall be published in the Official Journal and in the form provided in the articles of association. The creditors shall be notified that they may demand satisfaction or security if they register their claims within two months calculated from the time of the announcement.[716]

5) The capital reduction may be executed after the expiry of two months from the day when the decision containing the invitation for creditors to register claims is announced, and after those creditors who have registered their claims within this time period have been paid off or secured.

6) The creditors whose claims were established before the decision is announced must be provided security if they report for that purpose within two months after the third announcement, to the extent that they may not demand satisfaction. The creditors shall be notified of this right in the announcement. Creditors shall not be entitled to demand security if they already have adequate security or if adequate security is not required in view of the company assets.

7) Payments to the shareholders may be made only pursuant to the reduction of the share capital and only after expiry of the time limit established for the creditors and after the claims filed by creditors have been satisfied or secured. A release of the shareholders from the obligation to make deposits shall likewise not take effect before the time designated and not before the satisfaction or securing of those creditors who have filed their claims on time.

8) Any book profits resulting from the capital reduction shall be allocated to the capital reserves.

716 Article 41r(4) amended by LGBl. 2014 No. 348.

9) In no case may the share capital of banks or investment firms be reduced to less than their respective initial capital (Article 24).

V. Recovery and liquidation[717]

A. Recovery and resolution plans[718]

Article 41s[719]

Repealed

A^bis. Moratorium[720]

Article 42

Preconditions and application

1) A bank that is unable to meet its liabilities on time may apply to the Court of Justice for a moratorium.

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.[721]

717 Title preceding Article 41s inserted by LGBl. 2014 No. 348.
718 Title preceding Article 41s inserted by LGBl. 2014 No. 348.
719 Article 41s repealed by LGBl. 2022 No. 109.
720 Title preceding Article 42 amended by LGBl. 2014 No. 348.
721 Article 42(3) amended by LGBl. 2002 No. 162.

Article 43

Approval

1) After having heard the FMA, the Court of Justice shall grant a moratorium for the duration of one year, unless the bank is overindebted. In justified cases, the moratorium may be extended for an additional year.[722]

2) The moratorium shall be publicly announced by edict.[723]

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.[724]

Article 44

Interim commissioner

1) The Court of Justice shall appoint an interim commissioner who shall have the same powers as the ordinary commissioner until a decision has been reached on the application or until bankruptcy proceedings are opened.

2) The external audit office appointed according to the Banking Act may be designated as interim commissioner.

Article 45

Commissioner

1) If the Court of Justice grants the moratorium, it shall appoint respectable, reliable, and knowledgeable persons as commissioners for the bank. A bank or trust company may also be appointed commissioner.

2) If several commissioners are appointed, one commissioner must be put in charge.

3) Shareholders and former shareholders who have withdrawn from the undertaking during the year prior to the opening of bankruptcy proceedings may not be appointed commissioners.

4) The commissioner shall be subject to supervision by the Court of Justice and may be dismissed by the Court of Justice on important grounds.

722 Article 43(1) amended by LGBl. 1999 No. 87 and LGBl. 2004 No. 176.
723 Article 43(2) amended by LGBl. 2002 No. 162.
724 Article 43(3) inserted by LGBl. 2002 No. 162 and amended by LGBl. 2004 No. 176.

Article 46

Responsibilities of the commissioner

Upon being appointed, the commissioner shall without delay determine the financial situation of the bank together with the external audit office, report on the financial situation to the Court of Justice and the bank, and take the measures necessary to maintain operations.

Article 47

Conduct of business

1) During the moratorium, the bank shall continue its business operations under the supervision of the commissioner and in accordance with the commissioner's instructions.

2) The bank may not undertake any legal acts that adversely affect the legitimate interests of the creditors or that favour individual creditors to the disadvantage of others.

3) The bank shall grant the Court of Justice and the commissioner access to all books and records and shall provide all requested information.

4) The commissioner shall be invited to all negotiations of the governing bodies of the banks; the commissioner may also order such negotiations to be held.

Article 48

Payments to creditors

1) Payments to creditors may be made only with the consent of the commissioner.

2) The commissioner is authorised to order payments to be made to the creditors from receipts from due claims of the bank according to the commissioner's best judgment. The interests of creditors privileged by legal transaction or law as well as the interests of small creditors shall be appropriately taken into account.

3) These payments may not exceed one half of the amounts for which cover is available in accordance with the assets as determined by the commissioner.

Article 49

Additional measures

1) After having heard the FMA, the Court of Justice may take further measures called for by the circumstances and in the interest of the bank or the creditors at any time during the moratorium.[725]

2) In particular, the Court of Justice may order that the conclusion of new transactions, the alienation of real estate, the pledging of chattels, or the assumption of guarantees shall require the consent of the commissioner to be valid.

3) The Court of Justice shall publish such orders.

Article 50

Executions

1) For the duration of the moratorium, execution may be levied against the debtor only until attachment and rating.

2) Petitions for realisation or bankruptcy may not be granted.

3) The time limits for the submission of the applications for realisation shall be extended by the duration of the moratorium. Likewise, the liability of the mortgage for the interest on the land charge (Article 290(1(3) of the Property Act) shall be extended by the duration of the moratorium.

Article 51

Extrajudicial reorganisation

1) If the bank aims at an extrajudicial reorganisation or a debt restructuring agreement, the commissioner shall assess its applications addressed to the company's governing bodies, the creditors, or the Court of Justice.

2) If, during the moratorium, the bank proves to be able to effect an extrajudicial reorganisation, the Court of Justice may extend the moratorium for an additional six months on an exceptional basis.

725 Article 49(1) amended by LGBl. 1999 No. 87 and LGBl. 2004 No. 176.

Article 52

Revocation of moratorium

1) Upon application of the commissioner or a creditor, the Court of Justice shall revoke the moratorium if the bank:

a) obtained the moratorium on the basis of false information;

b) contravenes the instructions of the commissioner;

c) adversely affects the legitimate interests of the creditors;

d) favours individual creditors to the disadvantage of others.

2) The Court of Justice shall publish the revocation of the moratorium.

Article 53

Lapse of the moratorium

1) The Court of Justice may declare the moratorium lapsed upon application of the commissioner if the moratorium is no longer necessary in the best judgment of the commissioner.

2) The Court of Justice shall publish the lapse of the moratorium.

B. Special provisions on bankruptcy proceedings for banks and investment firms[726]

Article 54[727]

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 and investment firms.[728]

2) Articles 54 to 56g shall be applied not only to banks and investment firms, but also to other institutions and undertakings as set out in Article 2(1)(a) to (d) of the Recovery and Resolution Act.

726 Title preceding Article 54 amended by LGBl. 2016 No. 495.
727 Article 54 amended by LGBl. 2016 No. 495.
728 Article 54(1) amended by LGBl. 2020 No. 391.

3) Bankruptcy proceedings may be opened only on application or with the consent of the resolution authority with respect to the assets of a bank or investment firm under resolution, if it has been determined that the conditions for resolution under the Recovery and Resolution Act have been met; this provision is subject to Article 101(2)(b) of the Recovery and Resolution Act. The following requirements apply to the conduct of the bankruptcy proceedings:

a) the Court of Justice shall notify without delay the FMA and the resolution authority of any application for the opening of bankruptcy proceedings in relation to a bank or investment firm, irrespective of whether the bank or investment firm is under resolution or a decision has been made public in accordance with Article 102(4) and (5) of the Recovery and Resolution Act;

b) a decision shall be made on the application only once the notifications have been made under subparagraph (a) and either of the following occurs:

   1. the resolution authority has notified the Court of Justice that it does not intend to take any resolution action in relation to the bank or investment firm;

   2. a period of seven days beginning with the date on which the notifications referred to in subparagraph (a) were made has expired.

4) To the extent the Recovery and Resolution Act does not apply, bankruptcy proceedings shall be opened only on the application or with the consent of the FMA.

5) The FMA shall have standing as a party in bankruptcy proceedings concerning the assets of banks and investment firms.

6) Bankruptcy proceedings under this Section may also be opened in relation to undertakings that are acting as banks or investment firms without a licence from the FMA.

Article 55[729]

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.

729 Article 55 amended by LGBl. 2016 No. 495.

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.[730]

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.[731]

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;[732]

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.

730 Article 55(2) amended by LGBl. 2020 No. 391.
731 Article 55(4) amended by LGBl. 2020 No. 391.
732 Article 55(5)(f) amended by LGBl. 2020 No. 391.

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*.[733]

Article 56[734]

Prohibition of termination

1) After bankruptcy proceedings have been opened, any continuing obligations with a bank or investment firm may not be terminated by the other party for any of the following reasons, notwithstanding any statutory or contractual termination clauses:

a) opening of bankruptcy proceedings;

b) default of payment arising in the time before bankruptcy proceedings were opened; or

c) worsening of the asset situations of the bank or investment firm.

2) Paragraph 1 does not apply to employment and credit agreements.

Article 56a[735]

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:[736]

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 or investment firms 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:[737]

733 Article 55(8) amended by LGBl. 2020 No. 391.
734 Article 56 amended by LGBl. 2016 No. 495.
735 Article 56a amended by LGBl. 2016 No. 495.
736 Article 56a(1) introductory phrase amended by LGBl. 2020 No. 391.
737 Article 56a(2) introductory phrase amended by LGBl. 2020 No. 391.

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.[738]

4) Deposits at undertakings acting as banks or investment firms without a licence issued by the FMA shall not be privileged.

5) Transferred vested benefits in accordance with Article 12(2) of the Occupational Pensions Act shall be privileged in class 3 up to an amount of 100,000 Swiss francs, independently of the other deposits of the individual client.

Article 56a^{bis}[739]

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:[740]

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,

738 Article 56a(3) amended by LGBl. 2019 No. 105.

739 Article 56abis inserted by LGBl. 2018 No. 213.

740 Article 56abis(1) introductory phrase amended by LGBl. 2022 No. 109.

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 56a^ter[741]

Ranking of claims resulting from own funds items in the bankruptcy hierarchy

In the case of undertakings referred to in Article 2(1)(a) to (d) of the Recovery and Resolution Act, claims resulting from own funds items shall have a lower priority ranking than claims that do not result from an own funds item. To the extent that a capital instrument is only partly recognised as an own funds item, the whole instrument shall be treated as a claim resulting from an own funds item and shall rank lower than claims that do not result from an own funds item.

Article 56b[742]

Payout in advance of privileged deposits

1) Privileged deposits referred to in Article 56a may be paid out in advance from the available liquid assets, independently of registered claims and without any offsetting.

2) On a case-by-case basis, the Court of Justice shall establish the maximum amount of the deposits subject to payment in advance. It shall take into account the hierarchy of other creditors.[743]

741 Article 56ater inserted by LGBl. 2023 No. 148.
742 Article 56b inserted by LGBl. 2016 No. 495.
743 Article 56b(2) amended by LGBl. 2020 No. 391.

Article 56c[744]

Segregation of financial instruments and shortfall

1) Financial instruments owned by a client and which the bank or investment firm holds in the name and for the account of a client shall not be considered part of the bankruptcy estate in bankruptcy proceedings concerning the assets of the bank or investment firm, but rather shall be segregated for the benefit of the client, subject to any claims of the bank or investment firm against the client. The same shall apply to financial instruments which the bank or investment firm holds for the account of a client on a fiduciary basis.

2) Insofar as the bank or investment firm in bankruptcy proceedings is itself a depositor at a third party, it shall be assumed that the deposits belong to the bank's or investment firm's depositors; those deposits shall be segregated in accordance with paragraph 1. The depositary obligations toward a third-party administrator shall be performed by the bank liquidator.

3) The segregated financial instruments shall be transferred to a bank or investment firm designated by the client or delivered to the client in the form of securities.

4) If the financial instruments segregated from the bankruptcy estate are not sufficient to satisfy the clients in full, financial instruments of the same kind held by the bank or investment firm for its own account shall also be segregated insofar as necessary, even where such financial instruments have been held separately from the clients' financial instruments.

5) If the clients' claims are still not fully satisfied, the clients shall bear the shortfall in proportion to their volume of financial instruments of the missing kind. They shall have a corresponding claim for compensation against the bank or investment firm; that claim shall be considered a registered bankruptcy claim.[745]

6) The segregated financial instruments shall be recorded in the inventory at their market value at the time the bankruptcy proceedings were opened. The inventory shall refer to any claims on the part of the bank or investment firm against clients that conflict with segregation.

744 Article 56c inserted by LGBl. 2016 No. 495.

745 Article 56c(5) amended by LGBl. 2020 No. 391.

Article 56d[746]

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 or investment firm. The bank liquidator shall report to the Court of Justice about this verification and shall provide a statement on the correctness and ranking for each of the registered claims.

3) The Court of Justice shall decide whether and with what rank claims are to be recognised. No public verification hearings shall be held.

4) The decision by the Court of Justice shall be included in the registration list.

Article 56e[747]

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.[748]

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 56f[749]

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

746 Article 56d inserted by LGBl. 2016 No. 495.
747 Article 56e inserted by LGBl. 2016 No. 495.
748 Article 56e(2) amended by LGBl. 2020 No. 391.
749 Article 56f amended by LGBl. 2020 No. 391.

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 56g[750]

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.[751]

750 Article 56g inserted by LGBl. 2016 No. 495.

751 Article 56g(6) amended by LGBl. 2020 No. 391.

C. Special provisions on debt restructuring proceedings

Article 56h[752]

Applicable law

1) To the extent not otherwise provided in this Section, the provisions of the Debt Restructuring Agreement Act shall apply to the debt restructuring proceedings in respect of the assets of banks and investment firms.

2) Recovery proceedings under the Insolvency Act may not be opened.

3) In bankruptcy proceedings of a bank or investment firm, no recovery plan application takes place.

Article 57

Application; interim bankruptcy administrator

1) If a bank applies for a debt restructuring moratorium, the Court of Justice shall appoint an interim bankruptcy administrator who shall have the same powers as the ordinary bankruptcy administrator until the decision on the application has been made or bankruptcy proceedings have been opened.

2) The external audit office appointed according to the Banking Act may be designated as interim bankruptcy administrator. If a commissioner has already been appointed, the commissioner shall become the interim bankruptcy administrator.

Article 58

Bankruptcy administrator

If the Court of Justice grants the application for a debt restructuring moratorium, it shall appoint a definitive bankruptcy administrator unless a commissioner has already been appointed as bankruptcy administrator.

752 Article 56h inserted by LGBl. 2020 No. 391.

Article 59

Debt restructuring moratorium

1) The debt restructuring moratorium shall last for six months. If necessary, it may be extended by a further six months.

2) Any book claims shall be deemed registered.

3) Any legal acts that the bank undertakes after closing its counters or after submitting the application and prior to the appointment of the interim bankruptcy administrator shall not be valid vis-à-vis its creditors.

Article 59a[753]

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.[754]

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 56 on prohibition of termination shall apply *mutatis mutandis*.

Article 59b[755]

Repealed

753 Article 59a inserted by LGBl. 2016 No. 495.
754 Article 59a(1) amended by LGBl. 2020 No. 391.
755 Article 59b repealed by LGBl. 2019 No. 105.

Article 59c[756]

Repealed

Article 59d[757]

Repealed

Article 59e[758]

Repealed

D. Liquidation[759]

Article 60[760]

Assignment to a different bank or investment firm

In the event of a liquidation, the FMA may assign a bank or investment firm to a different domestic bank or investment firm where the funds of clients can be deposited on their behalf.

756 Article 59c repealed by LGBl. 2019 No. 105.
757 Article 59d repealed by LGBl. 2019 No. 105.
758 Article 59e repealed by LGBl. 2019 No. 105.
759 Heading preceding Article 60 amended by LGBl. 2019 No. 105.
760 Article 60 amended by LGBl. 2016 No. 495.

Va. Cross-border insolvency proceedings[761]

A. General provisions[762]

Article 60a[763]

Scope of application

1) Articles 60b to 60z shall apply to:

a) banks licensed in an EEA Member State or in Switzerland; and

b) investment firms as defined in Article 4(1)(2) of Regulation (EU) No 575/2013 and their branches located in EEA Member States other than those in which they have their registered offices.

2) In the event of application of the resolution tools and exercise of the resolution powers provided for in the Recovery and Resolution Act, Articles 60b to 60z shall also apply to the financial institutions, firms, and parent undertakings falling within the scope of that Act.

3) Where this Chapter refers to EEA Member States, the provisions shall apply *mutatis mutandis* to Switzerland as well.

Article 60b[764]

International competence

1) The Court of Justice shall have jurisdiction to grant a moratorium or debt restructuring moratorium and to open bankruptcy proceedings only if the bank or investment firm has been granted a licence in Liechtenstein.

2) Paragraph 1 shall apply *mutatis mutandis* to application of the resolution tools and exercise of the resolution powers.

761 Title preceding Article 60a inserted by LGBl. 2005 No. 13.
762 Title preceding Article 60a inserted by LGBl. 2005 No. 13.
763 Article 60a amended by LGBl. 2016 No. 495.
764 Article 60b amended by LGBl. 2016 No. 495.

Article 60c[765]

Information requirement and publication abroad

1) The FMA shall be informed without delay about:

a) any decision to approve a moratorium, debt restructuring moratorium, or opening of bankruptcy proceedings and the specific consequences of those measures by the Court of Justice; and

b) application of the resolution tools and exercise of the resolution powers by the resolution authority.

2) The FMA shall inform the competent authorities of the host Member State without delay of the decision referred to in paragraph 1(a). The competent authorities of the home Member State shall be consulted by the FMA before any voluntary winding-up decision is taken by the governing bodies of a bank or investment firm. The voluntary winding-up of a credit institution shall not preclude the adoption of a reorganisation measure or the opening of winding-up proceedings.

3) The Court of Justice shall furthermore issue an edict 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 or investment firm 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.[766]

4) Article 60h shall apply to the filing of claims.

765 Article 60c amended by LGBl. 2016 No. 495.

766 Article 60c(3) amended by LGBl. 2020 No. 391.

Article 60d[767]

Activities abroad

1) Upon request of the administrator, the appointment certificate shall be issued to the administrator in one or more languages of the Member States of the European Economic Area.

2) The administrator may appoint persons who support the administrator's activities abroad.

B. Bankruptcy proceedings[768]

Article 60e[769]

Bankruptcy estate

The bankruptcy proceedings shall also extend to the immoveable property of the bank or investment firm located in other EEA Member States.

Article 60f[770]

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.[771]

2) The bank liquidator shall also inform creditors in an appropriate form, in particular about the progress of realisation.

767 Article 60d inserted by LGBl. 2005 No. 13.
768 Title preceding Article 60e amended by LGBl. 2016 No. 495.
769 Article 60e amended by LGBl. 2016 No. 495.
770 Article 60f amended by LGBl. 2016 No. 495.
771 Article 60f(1) amended by LGBl. 2020 No. 391.

Article 60g[772]

Payments after opening of bankruptcy proceedings

1) A person making payments to a bank or investment firm that is not a legal person and against whose assets bankruptcy proceedings have been opened in another EEA Member State shall be released from the person's obligations if the person did not know of the opening of bankruptcy proceedings.

2) If the payment is made prior to publication under Article 60c, it shall be assumed until proven otherwise that the payor did not know of the opening of bankruptcy proceedings. If the payment is made after such publication, it shall be assumed until proven otherwise that the payor knew of the opening of bankruptcy proceedings.

Article 60h[773]

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.

772 Article 60g amended by LGBl. 2016 No. 495.
773 Article 60h amended by LGBl. 2016 No. 495.

C. Recognition of foreign proceedings[774]

Article 60i[775]

Principle

The decision of an EEA Member State on recovery measures and the opening of proceedings for the liquidation of a bank or investment firm shall be recognised in Liechtenstein irrespective of the conditions contained in Article 5(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 60k[776]

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 14) and the associated penal provisions. Information falling within the scope of banking secrecy must be made accessible to the administrators and liquidators only if:

a) the information is connected to the reorganisation measure or winding-up proceedings and is actually necessary for the realisation thereof; and

b) the administrator or liquidator, any representative of the administrator or liquidator, and the administrative or judicial authorities responsible for their supervision in the home Member State are subject to a

774 Title preceding Article 60i inserted by LGBl. 2005 No. 13.
775 Article 60i amended by LGBl. 2020 No. 391.
776 Article 60k inserted by LGBl. 2005 No. 13.

confidentiality requirement equivalent to Liechtenstein banking secrecy (Article 14).[777]

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 60l[778]

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.[779]

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[780]

Article 60m[781]

Provision of information

1) If the FMA believes that the execution of one or several reorganisation measures is necessary for banks or investment firms operating in Liechtenstein by way of a branch, then it shall notify this to the competent authorities of the home Member State.

777 Article 60k(3)(b) amended by LGBl. 2014 No. 348.
778 Article 60l inserted by LGBl. 2005 No. 13.
779 Article 60l(1) amended by LGBl. 2020 No. 391.
780 Title preceding Article 60m inserted by LGBl. 2005 No. 13.
781 Article 60m amended by LGBl. 2016 No. 495.

2) The competent authority for the purposes of paragraph 1 is a competent authority referred to in Article 4(1)(40) of Regulation (EU) No 575/2013 or a resolution authority in accordance with Article 2(1)(18) of Directive 2014/59/EU with respect to the reorganisation measures taken under that Directive.

Article 60n

Banks and investment firms situated outside the European Economic Area[782]

1) If a bank or investment firm situated outside the European Economic Area has branches in at least two EEA Member States, then the Court of Justice must also inform the FMA without delay of the decision to grant a moratorium or debt restructuring moratorium or to open bankruptcy proceedings and the specific consequences of such decision; the resolution authority shall inform the FMA of the application of resolution tools and exercise of resolution powers. The FMA shall without delay communicate such decision and the withdrawal of the licence to the competent authorities of the other host Member States in which the bank or investment firm has established branches and which are included in the list published annually in the Official Journal of the European Union pursuant to Article 20(1) and (2) of Directive 2013/36/EU.[783]

2) Where possible, the competent administrative and judicial authorities and liquidators shall coordinate their actions.[784]

E. Applicable law[785]

Article 60o[786]

Principle

1) Unless otherwise provided in Articles 60p through 60z, the law of the State in which the proceedings are opened shall apply to the moratorium,

782 Article 60n heading amended by LGBl. 2016 No. 495.
783 Article 60n(1) amended by LGBl. 2016 No. 495.
784 Article 60n(2) inserted by LGBl. 2005 No. 13.
785 Title preceding Article 60o inserted by LGBl. 2005 No. 13.
786 Article 60o inserted by LGBl. 2005 No. 13.

the debt restructuring moratorium, the bankruptcy proceedings, the application of resolution tools, and the execution of resolution powers.[787]

2) The law of the State in which proceedings are opened shall determine in particular:

a) the assets subject to administration and the treatment of assets acquired by the bank or investment firm after the opening of proceedings;[788]

b) the respective powers of the bank or investment firm and the administrator or the liquidator;[789]

c) the conditions under which set-offs are admissible;

d) the effects of the opening of proceedings on current contracts;

e) the effects of the opening of proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 60z;

f) the claims which are to be lodged and the treatment of claims arising after the opening of proceedings;

g) the rules governing the lodging, verification, and admission of claims;

h) the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of proceedings by virtue of a right *in re* or through a set-off;

i) the conditions for, and the effects of, the closure of proceedings, in particular by debt restructuring moratorium;

k) creditors' rights after the closure of proceedings;

l) who is to bear the costs and expenses incurred in the proceedings;

m) the rules relating to the voidness, voidability, or unenforceability of legal acts detrimental to all the creditors.

Article 60p[790]

Effects on certain contracts and rights

The effects of a moratorium, debt restructuring moratorium, bankruptcy, resolution tools, and exercise of resolution powers on:[791]

787 Article 60o(1) amended by LGBl. 2016 No. 495.
788 Article 60o(2)(a) amended by LGBl. 2016 No. 495.
789 Article 60o(2)(b) amended by LGBl. 2016 No. 495.
790 Article 60p inserted by LGBl. 2005 No. 13.
791 Article 60p introductory phrase amended by LGBl. 2016 No. 495.

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 or investment firm in respect of immovable property, a ship, or an aircraft subject to registration in a public register shall be governed solely by the law of the State under the authority of which the register is kept.[792]

Article 60q[793]

Third parties rights in re

1) The opening of proceedings shall not affect the rights *in re* of creditors or third parties in respect of tangible or intangible, movable or immovable objects – both specific objects and collections of indefinite objects as a whole which change from time to time – belonging to the bank or investment firm which are situated within the territory of another EEA Member State at the time of the opening of such proceedings.[794]

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 60o paragraph 2(m).

792 Article 60p(c) amended by LGBl. 2016 No. 495.
793 Article 60q inserted by LGBl. 2005 No. 13.
794 Article 60q(1) amended by LGBl. 2016 No. 495.

Article 60r[795]

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.[796]

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.[797]

3) Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability, or unenforceability laid down in Article 60o(2)(m).

Article 60s[798]

Set-off

1) The opening of proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the bank or investment firm, where such a set-off is permitted by the law applicable to the bank's or investment firm's claim.[799]

2) Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 60o(2)(m).

Article 60t[800]

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

795 Article 60r inserted by LGBl. 2005 No. 13.
796 Article 60r(1) amended by LGBl. 2016 No. 495.
797 Article 60r(2) amended by LGBl. 2016 No. 495.
798 Article 60s inserted by LGBl. 2005 No. 13.
799 Article 60s(1) amended by LGBl. 2016 No. 495.
800 Article 60t amended by LGBl. 2016 No. 495.

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 60u[801]

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 60v[802]

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 60w

Regulated markets[803]

1) Without prejudice to Article 60t, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions.[804]

2) Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 60o(2)(m).[805]

801 Article 60u amended by LGBl. 2016 No. 495.
802 Article 60v amended by LGBl. 2016 No. 495.
803 Article 60w heading inserted by LGBl. 2005 No. 13.
804 Article 60w(1) amended by LGBl. 2007 No. 261.
805 Article 60w(2) inserted by LGBl. 2005 No. 13.

Article 60x[806]

Challenges

Article 60o shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

a) the act is subject to the law of a different State; and

b) that law does not allow any means of challenging that act in that case.

Article 60y

Protection of third-party purchasers[807]

Where, by an act concluded after the opening of proceedings, the bank or investment firm disposes, for consideration, of:[808]

a) an immoveable object;[809]

b) a ship or an aircraft subject to registration in a public register;[810]

c) financial instruments;[811]

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.[812]

Article 60z[813]

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.

806 Article 60x inserted by LGBl. 2005 No. 13.
807 Article 60y heading inserted by LGBl. 2005 No. 13.
808 Article 60y introductory phrase amended by LGBl. 2016 No. 495.
809 Article 60y(a) inserted by LGBl. 2005 No. 13.
810 Article 60y(b) inserted by LGBl. 2005 No. 13.
811 Article 60y(c) amended by LGBl. 2007 No. 261.
812 Article 60y final phrase inserted by LGBl. 2005 No. 13.
813 Article 60z inserted by LGBl. 2005 No. 13.

VI. Legal remedies and extrajudicial mediation body[814]

Article 61[815]

Repealed

Article 62

Legal remedies

1) Decisions and decrees of the FMA may be appealed within 14 days of service to the FMA Complaints Commission.[816]

1a) If no decision is made within six months of receipt of an application for a licence as a bank or investment firm, even though the application contains all necessary information, a complaint may be lodged with the FMA Complaints Commission.[817]

2) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service to the Administrative Court.[818]

3) In the interest and/or on the initiative of the clients, the Office of Economic Affairs shall have all legal remedies and redresses at its disposal to ensure that the rules on the provision of investment services are applied.[819]

Article 62a[820]

Dispute settlement[821]

1) To settle disputes between clients and banks, financial institutions, or investment firms concerning investment services provided, the Government shall issue an ordinance appointing a mediation body.

814 Title preceding Article 61 amended by LGBl. 2023 No. 148.
815 Article 61 repealed by LGBl. 2023 No. 148.
816 Article 62(1) amended by LGBl. 1999 No. 87 and LGBl. 2004 No. 176.
817 Article 62(1a) inserted by LGBl. 2007 No. 261.
818 Article 62(2) amended by LGBl. 2004 No. 33 and LGBl. 2004 No. 176.
819 Article 62(3) inserted by LGBl. 2007 No. 261 and amended by LGBl. 2011 No. 551.
820 Article 62a inserted by LGBl. 2007 No. 261.
821 Article 62a heading amended by LGBl. 2017 No. 397.

2) The responsibility of the mediation body shall be to mediate disputes between the parties in a suitable manner and in this way to bring about agreement between the parties.

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

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

Article 62b[822]

Repealed

VII. Penal provisions

Article 63[823]

Misdemeanours

1) The Court of Justice shall punish with a custodial sentence of up to three years for committing a misdemeanour anyone who:

a) as a member of a governing body or employee or otherwise as a person working for a bank or investment firm or as an auditor violates the obligation of confidentiality, or anyone who induces or tries to induce someone else to do so;[824]

b) carries out or offers an activity referred to in Article 3 without a licence;[825]

c) Repealed[826]

d) Repealed[827]

e) operates a branch of a bank, financial institution, or investment firm before the conditions set out in Article 30d are met;

822 Article 62b repealed by LGBl. 2017 No. 397.
823 Article 63 amended by LGBl. 2014 No. 348.
824 Article 63(1)(a) amended by LGBl. 2019 No. 214.
825 Article 63(1)(b) amended by LGBl. 2019 No. 214.
826 Article 63(1)(c) repealed by LGBl. 2022 No. 109.
827 Article 63(1)(d) repealed by LGBl. 2019 No. 105.

f) accepts deposits as referred to in Article 3(3)(a) or provides investment services as referred to in Article 3(4) without belonging to a protection organisation under the Deposit Guarantee and Investor Compensation Act (Articles 7 and 30v);[828]

g) operates a trading venue as referred to in Article 30s or 30t without a licence;[829]

h) operates a data reporting services provider as referred to in Article 30x without a licence.[830]

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

a) violates the conditions associated with a licence;

b) uses prohibited nomenclature falsely indicating activities as a bank or investment firm;

c) fails to make the required allocations to the legal reserves;

d) rehypothecates or carries over pledges in violation of the provisions in Article 12;

e) provides false information to the FMA or the external audit office;

f) does not maintain the account books properly or does not keep the account books and receipts;

g) as an auditor, seriously breaches duties, especially by making incorrect statements in the audit report or withholding significant facts or failing to make a required request of the bank or investment firm or failing to submit required reports and notifications;

h) violates the conditions for the exercise of the freedom to provide services in accordance with Article 30c, 30e, 30s(2) or Article 30t(3);[831]

i) Aufgehoben[832]

k) makes false statements in the periodic reports or notifications or withholds significant facts.

3) The responsibility of legal persons for misdemeanours set out in paragraph 1 or 2 shall be governed by Articles 74a et seq. of the Criminal Code.

828 Article 63(1)(f) amended by LGBl. 2019 No. 105.
829 Article 63(1)(g) inserted by LGBl. 2017 No. 397.
830 Article 63(1)(h) inserted by LGBl. 2017 No. 397.
831 Article 63(2)(h) amended by LGBl. 2017 No. 397.
832 Article 63(2)(i) repealed by LGBl. 2022 No. 109.

4) Provided the Court of Justice has jurisdiction in the same matter on the basis of an offence set out in the Criminal Code or in this article, the Court of Justice instead of the FMA shall also be responsible for the punishment of contraventions under Article 63a. If the proceedings are terminated by the Court of Justice, jurisdiction shall revert to the FMA.

5) Where several offences coincide, Article V(5) of the Criminal Law Adjustment Act shall apply, with the proviso that:

a) the special sentencing grounds set out in Article 63b for misdemeanours and contraventions under Articles 63 and 63a as well as the criteria for fines set out in Article 63a shall be applied; and

b) the custodial sentence imposed in the event a fine cannot be collected may not exceed three years in the case of paragraph 1 or one year in the case of paragraph 2.

6) A guilty verdict under this Article shall not be binding on a civil court's determination of guilt or unlawfulness and the determination of damages.

7) When the offence is committed negligently, the maximum penalties set out in paragraphs 1 and 2 shall be reduced by half.

Article 63a[833]

Contraventions

1) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine in accordance with paragraph 3 for committing a contravention anyone who:

a) obtained a licence surreptitiously by providing false information or in any other unlawful way;

b) seriously, repeatedly, or systematically violates the provisions governing risk management (Article 7a);[834]

c) repeatedly or permanently does not hold liquid assets in accordance with Article 412 of Regulation (EU) No 575/2013;

c[bis]) repeatedly or permanently fails to maintain the net stable funding ratio in accordance with Article 428b of Regulation (EU) No. 575/2013 at at least 100%;[835]

d) in violation of Article 4c, makes payments to holders of instruments that form part of the own funds of the bank or investment firm, or when such

833 Article 63a inserted by LGBl. 2014 No. 348.

834 Article 63a(1)(b) amended by LGBl. 2019 No. 214.

835 Article 63a(1)(cbis) inserted by LGBl. 2022 No. 109.

payments to holders of own funds instruments are impermissible under Articles 28, 52 or 63 of Regulation (EU) No 575/2013;[836]

e) with a licence pursuant to Article 30a^{quater}(1) or (2) operates as a financial holding company or mixed financial holding company and the exception set out in Article 30a^{quater}(7) does not apply;[837]

f) as a parent bank, parent investment firm, financial holding company, or mixed financial holding company with a licence pursuant to Article 30a^{quater}(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 35c(1)(a), 35c^{bis} and 35d of this Act;[838]

g) fails to meet the liquidity requirement laid down by the FMA in accordance with Article 35d;[839]

h) in violation of Article 41r(9), reduces the share capital to less than the initial capital;[840]

i) as an external auditor violates duties under this Act, in particular under Articles 37 to 37c;[841]

k) conducts an activity under Article 8 or 10 of Regulation (EU) 2022/858 without a specific permission or fails to meet the prudential requirements set out in Article 3 or 7 of that Regulation.[842]

2) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine of up to 200,000 Swiss francs for committing a misdemeanour anyone who:

1. fails to prepare or publish the business report, the consolidated business report, the interim financial statement, or the consolidated interim financial statement as required or does not submit it to the FMA in a timely manner;
2. fails to arrange for a regular audit or an audit required by the FMA;
3. fails to meet its obligations toward the external audit office;
4. fails to comply with a demand to restore a lawful state of affairs or any other decree or order by the FMA;[843]

836 Article 63a(1)(d) amended by LGBl. 2022 No. 109.
837 Article 63a(1)(e) amended by LGBl. 2022 No. 109.
838 Article 63a(1)(f) inserted by LGBl. 2022 No. 109.
839 Article 63a(1)(g) inserted by LGBl. 2022 No. 109.
840 Article 63a(1)(h) inserted by LGBl. 2022 No. 109.
841 Article 63a(1)(i) inserted by LGBl. 2022 No. 109.
842 Article 63a(1)(k) inserted by LGBl. 2024 No. 173.
843 Article 63a(2)(4) amended by LGBl. 2019 No. 214.

5. as a representative office manager, fails to submit the notifications pursuant to Article 30a or 30a[bis] or fails to do so in a timely manner or makes incomplete or false statements in that regard;[844]
6. fails to comply with the code of conduct (Articles 8a to 8h);[845]

6a. fails to meet the organisational requirements firms under this Act, in particular under Article 8b, 8f, 8g, 8i, 14a, 22, 30a[quater](6) and 41i[ter];[846]

7. fails to take or maintain effective organisational or administrative measures to prevent a negative impact of conflicts of interest on client interests;
8. violates the requirements relating to the appointment of tied agents;
9. violates duties as a tied agent;
10. fails to comply with the requirements governing risk management (Article 7a), unless this constitutes a contravention under paragraph 1(b);
11. Repealed[847]
12. fails to notify the FMA in writing of a direct or indirect acquisition, direct or indirect increase, direct or indirect disposal, or direct or indirect reduction of a qualifying holding in a bank or investment firm as required under Article 26a(1);[848]
13. during the assessment period or despite opposition by the FMA, executes the direct or indirect acquisition or the direct or indirect disposal of a qualifying holding in a bank or investment firm as well as the direct or indirect increase or the direct or indirect reduction of a qualifying holding in a bank or investment firm if, as a consequence of the increase or reduction, the thresholds referred to in Article 26a(1) would be reached or crossed in either direction, or the bank or investment firm would become a subsidiary;[849]
14. despite being aware that as a consequence of an increase or a reduction of a holding in the capital, the thresholds referred to in Article 26a(1) are crossed in either direction, fails to notify the FMA without delay of that increase or reduction in accordance with Article 26a(3);[850]

844 Article 63a(2)(5) amended by LGBl. 2022 No. 109.
845 Article 63a(2)(6) amended by LGBl. 2022 No. 109.
846 Article 63a(2)(6a) amended by LGBl. 2022 No. 109.
847 Article 63a(2)(11) repealed by LGBl. 2022 No. 109.
848 Article 63a(2)(12) amended by LGBl. 2017 No. 397.
849 Article 63a(2)(13) amended by LGBl. 2017 No. 397.
850 Article 63a(2)(14) amended by LGBl. 2017 No. 397.

15. Repealed[851]
16. fails to submit the reports referred to in Part Seven A of Regulation (EU) No 575/2013 to the FMA or fails to do so in a timely manner or makes incomplete or false statements in that regard;[852]
17. fails to submit the notifications referred to in Article 26 or fails to do so in a timely manner or makes incomplete or false statements in that regard;[853]
18. holds or incurs exposures in excess of the limits set out in Article 395 of Regulation (EU) No 575/2013;[854]
19. 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) of Regulation (EU) No 575/2013 or fails to do so without delay or makes incomplete or false statements in that regard;[855]
20. fails to report the value of the exposure in accordance with Article 396 (1) of Regulation (EU) No. 575/2013 or fails to do so in a timely manner or makes incomplete or false statements in that regard;[856]
21. Repealed[857]
22. is exposed to the credit risk of a securitisation position and fails to fulfil the conditions set out in Article 405 of Regulation (EU) No 575/2013;
23. fails to disclose the information required under Article 431(1) to (3) or Article 451(1) of Regulation (EU) No 575/2013 or makes incomplete or false statements in that regard;
24. permitted one or more persons who fail to meet the requirements set out in Article 22(6) and (7) to become or remain members of the senior management, the board of directors, or the supervisory board;

24a. permitted one or more persons who do not meet the requirements set out in Article 41i to effectively direct the business of a financial holding company or mixed financial holding company;[858]

25. fails to make other required notifications to the FMA or fails to do so in a timely manner or makes incomplete or false statements in that regard;[859]

851 Article 63a(2)(15) repealed by LGBl. 2022 No. 109.
852 Article 63a(2)(16) amended by LGBl. 2022 No. 109.
853 Article 63a(2)(17) amended by LGBl. 2022 No. 109.
854 Article 63a(2)(18) amended by LGBl. 2022 No. 109.
855 Article 63a(2)(19) amended by LGBl. 2022 No. 109.
856 Article 63a(2)(20) amended by LGBl. 2022 No. 109.
857 Article 63a(2)(21) repealed by LGBl. 2022 No. 109.
858 Article 63a(2)(24a) inserted by LGBl. 2022 No. 109.
859 Article 63a(2)(25) amended by LGBl. 2022 No. 109.

26. fails to meet the own funds requirements set out in Article 92 of Regulation (EU) No 575/2013;
27. in violation of Article 28(1)(f) of Regulation (EU) No 575/2013, reduces or repays the principal amount of Common Equity Tier 1 instruments;
28. in violation of Article 28(1)(h)(i) of Regulation (EU) No 575/2013, makes preferential distributions on Common Equity Tier 1 instruments;
29. in violation of Article 28(1)(h)(ii) or Article 52(1)(l)(i) of Regulation (EU) No 575/2013, makes distributions on Common Equity Tier 1 or Additional Tier 1 instruments out of non-distributable items;
30. in violation of Article 52(1)(i) of Regulation (EU) No 575/2013, calls, redeems, or repurchases Additional Tier 1 instruments;
31. in violation of the second sentence of Article 395(5) of Regulation (EU) No 575/2013, fails to report the amount of the excesses and the name of the client concerned, or fails to do so correctly, completely, or without delay;
32. in violation of the first sentence of Article 396(1) of Regulation (EU) No 575/2013, fails to report the value of the exposure, or fails to do so correctly, completely, or without delay;
33. in violation of the first half of the first sentence of Article 414 of Regulation (EU) No 575/2013, fails to report non-compliance or expected non-compliance with the requirements, or fails to do so correctly, completely, or without delay;
34. in violation of the second half of the first sentence of Article 414 of Regulation (EU) No 575/2013, fails to submit a plan, or fails to do so correctly, completely, or in a timely manner;
35. fails to meet the organisational requirements relating to the board of directors, or as a member of the board of directors fails to meet responsibilities, in particular under Article 23;[860]
36. fails to comply with the rules on algorithmic trading (Article 8k);[861]
37. as the operator of a multilateral or organised trading facility, fails to comply with the organisational requirements for such a trading system (Article 30t), in particular by failing to establish transparent rules and procedures for fair and orderly trading and to establish objective criteria for the efficient execution of orders; [862]

860 Article 63a(2)(35) amended by LGBl. 2017 No. 397.
861 Article 63a(2)(36)inserted by LGBl. 2017 No. 397.
862 Article 63a(2)(37) inserted by LGBl. 2017 No. 397.

38. as the operator of a multilateral or organised trading facility, violates the obligation to suspend or remove financial instruments from trading (Article 30t(5)); [863]
39. violates the obligation set out in Annex 1(1)(2) to obtain the express confirmation from a prospective counterparty that it agrees to be treated as an eligible counterparty;[864]
40. as the operator of an SME growth market, does not meet the specific requirements for SME growth markets (Article 30t(6)); [865]
41. in violation of Article 30e(8), restricts the access of investment firms from EEA Member States to regulated markets, central counterparties, and clearing and settlement systems domiciled in Liechtenstein;[866]
42. as the operator of a regulated market, fails to comply with the organisational requirements for such a trading arrangement (Article 30s);[867]
43. violates the obligation to synchronise business clocks pursuant to Article 30s(5) and Article 30t(4); [868]
44. violates the obligation to comply with position limits and submit position reports in accordance with Article 30w;[869]
45. violates the organisational requirements relating to the management body of a data reporting services provider in accordance with Article 30x(4);[870]
46. as the operator of a data reporting services provider violates the obligation to inform the FMA of all members of its management body and of any changes to its membership (Article 30x(11);[871]
47. as the operator of a data reporting services provider fails to comply with the organisational requirements (Articles 30x and 30y);[872]
48. as the operator of a trading venue and in violation of Article 3 of Regulation (EU) No 600/2014:[873]

863 Article 63a(2)(38) inserted by LGBl. 2017 No. 397.
864 Article 63a(2)(39) inserted by LGBl. 2017 No. 397.
865 Article 63a(2)(40) inserted by LGBl. 2017 No. 397.
866 Article 63a(2)(41) inserted by LGBl. 2017 No. 397.
867 Article 63a(2)(42) inserted by LGBl. 2017 No. 397.
868 Article 63a(2)(43) inserted by LGBl. 2017 No. 397.
869 Article 63a(2)(44) inserted by LGBl. 2017 No. 397.
870 Article 63a(2)(45) inserted by LGBl. 2017 No. 397.
871 Article 63a(2)(46) inserted by LGBl. 2017 No. 397.
872 Article 63a(2)(47) inserted by LGBl. 2017 No. 397.
873 Article 63a(2)(48) inserted by LGBl. 2017 No. 397.

a) fails to communicate the current bid and offer prices and the depth of trading interests at those prices; or

b) fails to give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements it employs for making public the information referred to in point (a) to banks, investment firms, and asset management companies;

49. operates, as the operator of a trading venue as referred to in Article 4(3) of Regulation (EU) No 600/2014, systems which formalise transactions and, in violation of that provision:[874]

a) fails to carry out those transactions in accordance with the rules of the trading venue;

b) fails to ensure that arrangements, systems and procedures are in place to prevent and detect market abuse or attempted market abuse in relation to such negotiated transactions; or

c) fails to establish, maintain and implement systems to detect any attempt to use the waiver to circumvent other requirements of Regulation (EU) No 600/2014 or this Act or fails to report attempts to the FMA;

50. as the operator of a trading venue and in violation of Article 6 of Regulation (EU) No 600/2014:[875]

a) fails to make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on that trading venue; or

b) fails to give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements it employs for making public the information under point (a) to banks, investment firms, and asset management companies which are obliged to publish the details of their transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments;

51. as the operator of a trading venue and in violation of the first sentence of Article 7(1)(3) of Regulation (EU) No 600/2014, fails to obtain the FMA's approval of proposed arrangements for deferred publication of the details of transactions or fails to clearly disclose those arrangements to market participants and the public;[876]

874 Article 63a(2)(49) inserted by LGBl. 2017 No. 397.
875 Article 63a(2)(50) inserted by LGBl. 2017 No. 397.
876 Article 63a(2)(51) inserted by LGBl. 2017 No. 397.

52. as the operator of a trading venue and in violation of Article 8 of Regulation (EU) No 600/2014:[877]
    a) fails to make public current bid and offer prices and the depth of trading interests at those prices which are advertised through its systems for bonds, structured finance products, emission allowances and derivatives traded on a trading venue;
    b) fails to give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements it employs for making public the information referred to in point (a) to banks, investment firms, and asset management companies which are obliged to publish their quotes in bonds, structured finance products, emission allowances and derivatives; or
    c) fails to make public indicative pre-trade bid and offer prices which are close to the price of the trading interests advertised through its systems in bonds, structured finance products, emission allowances and derivatives traded on a trading venue;
53. as the operator of a trading venue and in violation of Article 10 of Regulation (EU) No 600/2014:[878]
    a) fails to make public the price, volume and time of the transactions executed in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue, or fails to do so in a timely manner; or
    b) fails to give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements it employs for making public the information under point (a) to banks, investment firms, and asset management companies which are obliged to publish the details of their transactions in bonds, structured finance products, emission allowances and derivatives;
54. as the operator of a trading venue and in violation of the first sentence of Article 11(1)(3) of Regulation (EU) No 600/2014, fails to obtain the FMA's approval of proposed arrangements for deferred publication of the details of transactions or fails to clearly disclose those arrangements to market participants and the public;[879]
55. as the operator of a trading venue and in violation of Article 11(3)(3) of Regulation (EU) No 600/2014, fails to publish, when the deferral time period lapses, the outstanding details of the transaction and all the details of the transactions on an individual basis;[880]

877 Article 63a(2)(52) inserted by LGBl. 2017 No. 397.
878 Article 63a(2)(53) inserted by LGBl. 2017 No. 397.
879 Article 63a(2)(54) inserted by LGBl. 2017 No. 397.
880 Article 63a(2)(55) inserted by LGBl. 2017 No. 397.

56. as the operator of a trading venue and in violation of Article 12(1) of Regulation (EU) No 600/2014, fails to make information available to the public, or fails to offer pre-trade and post-trade transparency data separately when doing so;[881]

57. as the operator of a trading venue and in violation of Article 13(1) of Regulation (EU) No 600/2014:[882]

    a) fails to ensure non-discriminatory access to published information on a reasonable commercial basis; or

    b) fails to regularly make the information available free of charge 15 minutes after publication;

58. in violation of Article 14(1) of Regulation (EU) No 600/2014:[883]

    a) as a bank or investment firm fails to make public firm quotes in respect of those shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which it is a systematic internaliser and for which there is a liquid market; or

    b) as a systematic internaliser, fails to disclose quotes to its clients;

59. as a systematic internaliser and in violation of Article 14(3) of Regulation (EU) No 600/2014:[884]

    a) quotes a size that is not at least the equivalent of 10% of the standard market size of a share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue; or

    b) for a particular share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue, provides a quote that fails to include a firm bid and offer price or prices for a size or sizes which could be up to standard market size for the class of shares, depositary receipts, ETFs, certificates or other similar financial instruments to which the financial instrument belongs;

60. as a systematic internaliser and in violation of Article 15(1) of Regulation (EU) No 600/2014:[885]

    a) fails to make public its quotes on a regular and continuous basis during normal trading hours; or

    b) fails to make the quotes public in a manner which is easily accessible to other market participants on a reasonable commercial basis;

881 Article 63a(2)(56) inserted by LGBl. 2017 No. 397.
882 Article 63a(2)(57) inserted by LGBl. 2017 No. 397.
883 Article 63a(2)(58) inserted by LGBl. 2017 No. 397.
884 Article 63a(2)(59) inserted by LGBl. 2017 No. 397.
885 Article 63a(2)(60) inserted by LGBl. 2017 No. 397.

61. as a bank or investment firm, fails to inform the FMA of its capacity as a systematic internaliser in accordance with Article 26(6);[886]

62. as a systematic internaliser and in violation of Article 15(2) of Regulation (EU) No 600/2014, fails to execute the orders it receives from its clients in relation to the shares, depositary receipts, ETFs, certificates and other similar financial instruments for which it is a systematic internaliser at the quoted prices at the time of reception of the order, or fails to comply with the best execution obligation for clients in accordance with Article 8e;[887]

63. as a systematic internaliser quoting in different sizes and receiving an order between those sizes, which it chooses to execute, fails to comply with its obligation under the second sentence of Article 15(4) of Regulation (EU) No 600/2014 to execute the order promptly, fairly and expeditiously at one of the quoted prices in accordance with Article 8e;[888]

64. as a systematic internaliser and in violation of Article 17(1) of Regulation (EU) No 600/2014, does not have clear standards for governing access to its quotes;[889]

65. as a bank or investment firm and in violation of Article 18(1) of Regulation (EU) No 600/2014, fails to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is a liquid market and for which the bank or investment firm is a systematic internaliser;[890]

66. as a systematic internaliser and in violation of Article 18(2) of Regulation (EU) No 600/2014, fails to disclose to its clients on request a quote in relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market;[891]

67. as a systematic internaliser and in violation of the first sentence of Article 18(5) of Regulation (EU) No 600/2014, fails to make the published firm quotes available to its other clients;[892]

886 Article 63a(2)(61) inserted by LGBl. 2017 No. 397.
887 Article 63a(2)(62) inserted by LGBl. 2017 No. 397.
888 Article 63a(2)(63) inserted by LGBl. 2017 No. 397.
889 Article 63a(2)(64) inserted by LGBl. 2017 No. 397.
890 Article 63a(2)(65) inserted by LGBl. 2017 No. 397.
891 Article 63a(2)(66) inserted by LGBl. 2017 No. 397.
892 Article 63a(2)(67) inserted by LGBl. 2017 No. 397.

68. as a systematic internaliser and in violation of Article 18(6)(1) of Regulation (EU) No 600/2014, fails to enter into transactions under the published conditions with other clients;[893]

69. as a systematic internaliser and in violation of Article 18(8) of Regulation (EU) No 600/2014, fails to make published quotes and doesn't publish quotes in a manner which is easily accessible to other market participants on a reasonable commercial basis;[894]

70. as a systematic internaliser and in violation of Article 18(9) of Regulation (EU) No 600/2014):[895]

    a) fails to quote prices such as to ensure that the systematic internaliser complies with its obligations under Article 8e; or

    b) fails to ensure that the quoted prices reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue;

71. as a bank or investment firm which, either on own account or on behalf of clients, concludes transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, fails to make public the volume and price of those transactions and the time at which they were concluded, in violation of Article 20(1) of Regulation (EU) No 600/2014;[896]

72. as a bank or investment firm and in violation of the first sentence of Article 20(2) of Regulation (EU) No 600/2014, fails to ensure that the published information and the time-limits within which it is published comply with the adopted requirements and regulatory technical standards;[897]

73. as a bank or investment firm which, either on own account or on behalf of clients, concludes transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue, fails to make public the volume and price of those transactions and the time at which they were concluded, in violation of Article 21(1) and (2) of Regulation (EU) No 600/2014;[898]

74. as a bank or investment firm and in violation of Article 21(3) of Regulation (EU) No 600/2014, fails to ensure that the published

893 Article 63a(2)(68) inserted by LGBl. 2017 No. 397.
894 Article 63a(2)(69) inserted by LGBl. 2017 No. 397.
895 Article 63a(2)(70) inserted by LGBl. 2017 No. 397.
896 Article 63a(2)(71) inserted by LGBl. 2017 No. 397.
897 Article 63a(2)(72) inserted by LGBl. 2017 No. 397.
898 Article 63a(2)(73) inserted by LGBl. 2017 No. 397.

information and the time limits within which it is published comply with the adopted requirements and regulatory technical standards;[899]

75. as the operator of a trading venue, APA, or CTP and in violation of Article 22(2) of Regulation (EU) No 600/2014, fails to store the necessary data for a sufficient period of time;[900]

76. as a bank or investment firm and in violation of Article 23(1) of Regulation (EU) No 600/2014, fails to ensure the trades it undertakes in shares admitted to trading on a regulated market or traded on a trading venue take place on a regulated market, multilateral trading facility, organised trading facility, systematic internaliser, or third-country trading venue assessed as equivalent, as appropriate;[901]

77. as a bank or investment firm, operates an internal matching system which executes client orders in shares, depositary receipts, ETFs, certificates and other similar financial instruments on a multilateral basis, and in violation of Article 23(2) of Regulation (EU) No 600/2014 fails to ensure that the system is authorised as a multilateral trading facility and that it complies with all relevant provisions pertaining to such authorisations;[902]

78. as a bank or investment firm and in violation of Article 25(1) of Regulation (EU) No 600/2014:[903]

    a) fails to keep at the disposal of the FMA, for five years, the relevant data relating to all orders and all transactions in financial instruments which it has carried out, whether on own account or on behalf of a client; or

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

79. as the operator of a trading venue and in violation of Article 25(2) of Regulation (EU) No 600/2014:[904]

    a) fails to keep at the disposal of the FMA, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through its systems; or

    b) fails to ensure that the records contain the relevant data that constitute the characteristics of the order;

899 Article 63a(2)(74) inserted by LGBl. 2017 No. 397.
900 Article 63a(2)(75) inserted by LGBl. 2017 No. 397.
901 Article 63a(2)(76) inserted by LGBl. 2017 No. 397.
902 Article 63a(2)(77) inserted by LGBl. 2017 No. 397.
903 Article 63a(2)(78) inserted by LGBl. 2017 No. 397.
904 Article 63a(2)(79) inserted by LGBl. 2017 No. 397.

80. as a bank or investment firm, executes transactions in financial instruments and, in violation of Article 26(1) to (6) of Regulation (EU) No 600/2014, fails to report complete and accurate details of such transactions to the FMA as quickly as possible, and no later than the close of the following working day;[905]

81. as the operator of a trading venue or ARM, acts on behalf of a bank or investment firm and, in violation of Article 26(7) of Regulation (EU) No 600/2014, fails to submit the report completely, accurately, or in a timely manner;[906]

82. as the operator of a trading venue and in violation of Article 27(1)(1) of Regulation (EU) No 600/2014, fails to provide the FMA with identifying reference data for the purpose of transaction reporting with regard to financial instruments admitted to trading on regulated markets or traded via multilateral or organised trading facilities;[907]

83. as a systematic internaliser and in violation of Article 27(1)(2) of Regulation (EU) No 600/2014, fails to provide the FMA with reference data;[908]

84. as a financial counterparty as defined in Article 2(8) of Regulation (EU) No 648/2012 or as a non-financial counterparty that meets the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012 and in violation of Article 28(1) or (2)(1) of Regulation (EU) No 600/2014, concludes transactions with derivatives outside regulated markets, multilateral trading facilities, organised trading facilities or third-country trading venues;[909]

85. fails to comply with this obligation as a third-country entity which, pursuant to Article 28(2)(1) of Regulation (EU) No 600/2014, would have to conclude transactions in derivatives on regulated markets, multilateral trading facilities, organised trading facilities, or third-country trading venues;[910]

86. as the operator of a regulated market and in violation of Article 29(1) of Regulation (EU) No 600/2014, fails to ensure that all transactions in derivatives that are concluded on that regulated market are cleared by a central counterparty;[911]

905 Article 63a(2)(80) inserted by LGBl. 2017 No. 397.
906 Article 63a(2)(81) inserted by LGBl. 2017 No. 397.
907 Article 63a(2)(82) inserted by LGBl. 2017 No. 397.
908 Article 63a(2)(83) amended by LGBl. 2019 No. 214.
909 Article 63a(2)(84) inserted by LGBl. 2017 No. 397.
910 Article 63a(2)(85) inserted by LGBl. 2017 No. 397.
911 Article 63a(2)(86) inserted by LGBl. 2017 No. 397.

87. as a central counterparty, operator of a trading venue, bank, or investment firm acting as a clearing member in accordance with Article 2(14) of Regulation (EU) No 648/2012, fails to have in place effective systems, procedures and arrangements in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practicable using automated systems;[912]

88. in violation of Article 30(1) of Regulation (EU) No 600/2014, concludes an indirect clearing agreement with regard to exchange-traded derivatives that increases counterparty risk or fails to ensure that the assets and positions of the counterparty are adequately protected;[913]

89. as a bank, investment firm, or market operator, provides portfolio compression and thereby, in violation of Article 31 of Regulation (EU) No 600/2014:[914] [915]

    a) fails to make public through an APA in a timely manner the volumes of transactions subject to portfolio compressions and the time they were concluded;

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

90. as a central counterparty and in violation of Article 35(1) of Regulation (EU) No 600/2014, clears financial instruments on a discriminatory or non-transparent basis;[916]

91. as the operator of a trading venue and in violation of Article 35(2) of Regulation (EU) No 600/2014, fails to formally submit a request to access a central counterparty to that central counterparty, or fails to specify in the request to which types of financial instruments access is requested;[917]

92. as a central counterparty and in violation of Article 35(3) of Regulation (EU) No 600/2014, fails to provide a written response in a timely manner to an operator of a trading venue requesting access; denies access in an impermissible manner; fails to provide full reasons for a denial; fails to inform the FMA and, where applicable, the foreign competent authority of the denial; or fails to make access possible for

912 Article 63a(2)(87) inserted by LGBl. 2017 No. 397.
913 Article 63a(2)(88) inserted by LGBl. 2017 No. 397.
914 Article 63a(2)(89) inserted by LGBl. 2017 No. 397.
915 Article 63a(2)(89) introductory phrase amended by LGBl. 2019 No. 214.
916 Article 63a(2)(90) inserted by LGBl. 2017 No. 397.
917 Article 63a(2)(91) inserted by LGBl. 2017 No. 397.

the operator of the trading venue requesting access within three months of providing a positive response to the access request;[918]

93. as the operator of a trading venue and in violation of Article 36(1) of Regulation (EU) No 600/2014, provides trading feeds on a discriminatory or non-transparent basis;[919]

94. as a central counterparty, submits a request to access a trading venue and, in violation of Article 36(2) of Regulation (EU) No 600/2014, fails to formally submit it to the trading venue, the FMA, and the competent authority of the central counterparty;[920]

95. as the operator of a trading venue and in violation of Article 36(3) of Regulation (EU) No 600/2014, fails to provide a written response in a timely manner to a central counterparty requesting access; denies access in an impermissible manner; fails to provide full reasons for a denial; fails to inform the FMA and, where applicable, the foreign competent authority of the denial; or fails to make access possible for the central counterparty requesting access within three months of providing a positive response to the access request;[921]

96. has proprietary rights to a benchmark necessary for the calculation of the value of a financial instrument and, in violation of Article 37(1) of Regulation (EU) No 600/2014, fails to ensure that central counterparties and trading venues are given non-discriminatory access at a reasonable commercial price for the purpose of trading and clearing;[922]

97. as a central counterparty, operator of a trading venue or any related entity and in violation of Article 37(1) of Regulation (EU) No 600/201, enters into an agreement with the provider of a benchmark which prevents another central counterparty or other operator of a trading venue from obtaining access to that benchmark;[923]

98. in violation of Article 40, 41, or 42 of Regulation (EU) No 600/2014, fails to comply with a restriction or prohibition imposed by ESMA, EBA, or the FMA with regard to the marketing, distribution, or sale of certain financial instruments or of financial instruments with certain specified features or a type of financial activity or practice;[924]

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918 Article 63a(2)(92) inserted by LGBl. 2017 No. 397.
919 Article 63a(2)(93) inserted by LGBl. 2017 No. 397.
920 Article 63a(2)(94) inserted by LGBl. 2017 No. 397.
921 Article 63a(2)(95) inserted by LGBl. 2017 No. 397.
922 Article 63a(2)(96) inserted by LGBl. 2017 No. 397.
923 Article 63a(2)(97) inserted by LGBl. 2017 No. 397.
924 Article 63a(2)(98) inserted by LGBl. 2017 No. 397.

99. as a market operator, bank, or investment firm operates a trading venue and, in violation of the third sentence of Article 7(1) or Article 11(1) of Regulation (EU) No 600/2014, fails to obtain the FMA's prior approval of proposed arrangements for deferred trade-publication or fails to clearly disclose those arrangements to market participants and the public;[925]

100. in violation of Article 7a(6), operates a remuneration policy or practice that is not consistent with sound and effective risk management;[926]

101. as a financial holding company or mixed financial holding company with a licence pursuant to Article 30a^{quater}(1) or (2), in violation of Article 30a^{quater} (9), fails to submit the information or fails to do so in a timely manner or makes incomplete or false statements in that regard;[927]

102. violates ordinance provisions, the contravention of which has been declared punishable.[928]

3) The fine referred to in paragraph 1 shall be:

a) for legal persons, up to 10% of the highest annual total net revenues or gross income generated in the last three business years or up to twice the benefit obtained from the violation, insofar as the benefit can be quantified and insofar as it exceeds the total net revenues (gross income); when determining the amount for fines under paragraph 1(e), the discrepancy between the actual liquidity position of a bank or investment firm and the requirements governing liquidity and stable funding set out in this Act shall be taken into account;

b) for natural persons, up to 6,200,000 Swiss francs or up to twice the benefit obtained from the violation, insofar as the benefit can be quantified and insofar as it exceeds 6,200,000 Swiss francs.

4) The FMA shall impose fines under paragraph 2 or paragraph 3(a) if the contraventions under paragraph 1 or 2 are committed in the course of business of the legal person (underlying offences) by persons who acted either on their own or as members of the board of directors, senior management, management board, or supervisory board of the legal person or pursuant to other leadership positions within the legal person, on the basis of which they:[929]

a) are authorised to represent the legal person externally;

925 Article 63a(2)(99) inserted by LGBl. 2017 No. 397.
926 Article 63a(2)(100) amended by LGBl. 2022 No. 109.
927 Article 63a(2)(101) inserted by LGBl. 2022 No. 109.
928 Article 63a(2)(102) inserted by LGBl. 2022 No. 109.
929 Article 63a(4) introductory phrase amended by LGBl. 2015 No. 211.

b) exercise control in a leading position; or

c) otherwise have significant influence on the business management of the legal person.

5) For contraventions under paragraphs 1 and 2 committed by employees of the legal person, even though not culpably, the legal person shall be responsible also if the contravention was made possible or significantly facilitated by the fact that the persons referred to in paragraph 4 failed to take necessary and reasonable measures to prevent such underlying offences.[930]

6) The responsibility of the legal person for the underlying offence and the criminal liability of the persons referred to in paragraph 4 or of employees referred to in paragraph 5 for the same offence are not mutually exclusive. The FMA may refrain from punishing a natural person if a monetary fine has already been imposed on the legal person for the same violation and there are no special circumstances preventing a waiver of the punishment.

7) When the offence is committed negligently, the maximum penalties set out in paragraphs 1 to 3 shall be reduced by half.

8) The period of limitation for prosecution shall be three years.[931]

Article 63b[932]

Principles of proportionality and efficiency

1) When imposing penalties under Articles 63 and 63a, the Court of Justice and the FMA shall in particular take into account the following:

a) with respect to the infringement:

1. the seriousness and duration;
2. the gains generated or losses prevented, insofar as they can be quantified;
3. losses incurred by third parties, insofar as they can be quantified;
4. possible systemically relevant consequences;

b) with respect to the natural or legal persons responsible for the infringement:

1. the degree of responsibility;

930 Article 63a(5) amended by LGBl. 2019 No. 214.
931 Article 63a(8) inserted by LGBl. 2022 No. 109.
932 Article 63b inserted by LGBl. 2014 No. 348.

2. financial capacity;
3. the willingness to cooperate;
4. reports to the internal reporting system of a bank or investment firm in accordance with Article 22(2)(e) or the FMA in accordance with Article 64a;[933]
5. prior infringements and the risk of repetition.

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

Article 63c[934]

Publication of sanctions and information provided to the European Supervisory Authorities[935]

1) On its website, the FMA shall publish all final penalties for misdemeanours under Articles 63 and 63a without delay, once the person concerned has been informed of the penalty. Such publication does not constitute a violation of official secrecy under Article 31a. The publication shall contain:

a) information on the type and nature of the infringement; and
b) the name or business name of the natural or legal person on which the sanction was imposed.

2) The FMA shall publish final penalties on its website in an anonymised form or shall waive publication entirely if the disclosure of personal data, including personal data relating to criminal convictions or offences, or anonymous publication:[936]

a) would be disproportionate, taking into account the damage to the natural or legal persons concerned; or
b) would endanger the stability of the financial markets or of ongoing criminal investigations.

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

933 Article 63b(1)(b)(4) amended by LGBl. 2017 No. 397.
934 Article 63c inserted by LGBl. 2014 No. 348.
935 Article 63c heading amended by LGBl. 2018 No. 304.
936 Article 63c(2) introductory phrase amended by LGBl. 2018 No. 304.

4) The FMA shall ensure that the publication is available on the website for at least five years after the penalty has become final. The publication of personal data shall, however, be maintained only as long as none of the criteria referred to in paragraph 1 are met.

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

6) The FMA shall inform the European Supervisory Authorities of final penalties, in particular also of penalties imposed but not published. This does not constitute a violation of official secrecy under Article 31a. The FMA shall also annually transmit aggregated information regarding all penalties imposed. That obligation does not apply to measures of an investigatory nature. The FMA shall likewise transmit anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed. Where the FMA has disclosed a penalty to the public, it shall, at the same time, report that fact to the European Supervisory Authorities.[937]

Article 64[938]

Responsibility

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

Article 64a[939]

Reporting of infringements of the law

1) The FMA shall have an effective and reliable reporting system at its disposal through which potential or actual infringements of provisions of this Act, the associated ordinances, Regulation (EU) No 575/2013, and Regulation (EU) No 600/2014 can be reported via a generally accessible, secure reporting line.

2) The reporting system shall include at least:

937 Article 63c(6) amended by LGBl. 2019 No. 214.
938 Article 64 amended by LGBl. 2019 No. 214.
939 Article 64a inserted by LGBl. 2017 No. 397.

a) specific procedures for the receipt of reports of infringements and their follow-up;

b) appropriate protection for employees of banks, investment firms, and financial institutions who report infringements committed within these banks, investment firms, and financial institutions, at least against retaliation, discrimination or other types of unfair treatment;

c) protection of personal data concerning both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, in accordance with data protection legislation, unless disclosure is required in the context of prosecutorial, judicial, or administrative proceedings.[940]

3) A report by employees of banks, investment firms, and financial institutions to the FMA shall not be considered an infringement of a contractual or legal obligation to maintain confidentiality and shall not entail any liability of the reporting person in this regard.

4) The Government may provide further details by ordinance.

Article 65[941]

Obligation of the Office of the Public Prosecutor and the courts to provide information

The Office of the Public Prosecutor shall inform the FMA of the initiation and suspension of proceedings relating to Article 63. The Court of Justice shall moreover transmit copies of judgements in this regard to the FMA.

VIII. Transitional provision

Article 66

Concessions

Concessions to operate a bank or financial company which do not meet the requirements of this Act or the associated ordinances shall be adjusted

940 Article 64a(2)(c) amended by LGBl. 2018 No. 304.
941 Article 65 amended by LGBl. 2017 No. 397.

to the new law within one year after the relevant enactments have entered into force or, if necessary, they shall be withdrawn or revoked.

IX. Final provisions

Article 67[942]

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 67a[943]

Specification of a reference rate for amounts in euros

The Government may issue an ordinance to specify a reference rate for calculating the amounts in euros set out in Regulation (EU) No 575/2013 and its implementing rules. The reference rate shall be reviewed annually and adjusted where necessary. Special rules on exchange rates shall remain unaffected.

Article 68

Repeal of existing law

The following enactments are hereby repealed:

a) the Law of 21 December 1960 on Banks and Savings Banks, LGBl. 1961 No. 3;

b) the Law of 18 November 1964 amending the Law on Banks and Savings Banks, LGBl. 1965 No. 3;

c) the Law of 10 July 1975 amending the Law on Banks and Savings Banks, LGBl. 1975 No. 41.

942 Article 67 amended by LGBl. 2014 No. 348.

943 Article 67a inserted by LGBl. 2015 No. 211.

Article 69

Entry into force

This Act shall enter into force on 1 January 1993.

signed Hans-Adam

signed *Hans Brunhart* Prime Minister

Annex 1[944]
(Article 3a(1)(9) to (1)(11))

Client classifications

1. Eligible counterparties

1) The following shall be considered eligible counterparties per se and with respect to all investment services and ancillary services:

a) Banks, investment firms, asset management companies, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under EEA law or under the national law of an EEA Member State, national governments and their corresponding offices including public bodies that deal with public debt at national level, central banks and supranational organisations;

b) third country entities equivalent to those entities referred to in subparagraph (a).

2) Undertakings that meet two of the three conditions referred to in point 2(1)(b) may be recognised as eligible counterparties. In transactions with such undertakings, the bank or investment firm shall obtain their express confirmation that they agree to be treated as an eligible counterparty. Confirmation may be given in the form of a general agreement or in respect of each individual transaction. This arrangement shall also apply to undertakings from third countries. In the case of business relationships with eligible counterparties that existed prior to the introduction of the obligation to obtain express confirmation and that meet the criteria of this paragraph, no express confirmation must be obtained.

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

2. Professional clients

944 Annex 1 inserted by LGBl. 2007 No. 261 and amended by LGBl. 2011 No. 299, LGBl. 2013 No. 54, LGBl. 2013 No. 247, LGBl. 2014 No. 348, LGBl. 2016 No. 49 and LGBl. 2017 No. 397.

1) The following shall be considered professional clients per se and with respect to all investment services, ancillary services, and financial instruments:

a) entities which are licensed or which are required to be regulated to operate in the financial markets, namely:
   aa) banks and financial institutions;
   bb) investment firms and asset management companies;
   cc) other institutions of the financial sector, notably tied agents dealing on own account;
   dd) insurance undertakings;
   ee) undertakings for collective investment in transferable securities, investment undertakings, their management companies, and alternative investment funds and their managers;
   ff) pension funds and their management companies;
   gg) commodity and commodity derivatives dealers; or
   hh) other institutional investors;
b) large undertakings meeting two of the following size requirements on a company basis:
   aa) balance sheet total: equivalent of EUR 20,000,000
   bb) net turnover: equivalent of EUR 40,000,000;
   cc) own funds: equivalent of EUR 2,000,000;
c) governments, municipalities, public bodies that manage public debts, central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB, and other similar international organisations;
d) other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

2) Persons who have requested to be classified and treated as professional clients in accordance with the ordinances issued to implement this Act shall only be considered professional clients with respect to the investment services, ancillary services, and financial instruments specified in the request.

3. Retail clients

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

Annex 2[945]

(Article 3(3) and (4), Article 3a(1))

Investment services, ancillary services, and financial instruments

Section A

Investment services

1) Investment services are the following activities in relation to one or more financial instruments referred to in Section C:

1. reception and transmission of orders;
2. execution of orders on behalf of clients in the sense of agreements to buy or sell one or more financial instruments on behalf of clients. This includes the conclusion of agreements to sell financial instruments issued by a bank or investment firm at the moment of their issuance;
3. dealing on own account: dealing with financial instruments on own account, provided and to the extent that the transactions are executed by banks and investment firms or as market making or if dealing occurs outside a regulated market or multilateral trading facility on an organised, frequent, and systematic basis, by providing a system accessible to third parties serving to conclude contracts on financial instruments;
4. portfolio management: managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;
5. investment advice in the sense of a recommendation personally addressed to an investor or potential investor or the investor's or potential investor's authorised agent that is not exclusively public or distributed via information channels, concerning the purchase, sale, exchange, subscription, redemption, transfer, or holding of a financial instrument or the exercise or non-exercise of a right of purchase, sale, exchange, subscription, or redemption of a financial instrument;

945 Annex 2 inserted by LGBl. 2007 No. 261 and amended by LGBl. 2011 No. 299, LGBl. 2013 No. 54, LGBl. 2013 No. 247, LGBl. 2014 No. 348, LGBl. 2016 No. 49, and LGBl. 2017 No. 397.

6. underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
7. placing of financial instruments without a firm commitment basis;
8. operation of a multilateral trading facility;
9. operation of an organised trading facility.

2) The activities referred to in Article 2 of Directive 2014/65/EU do not constitute investment services. The provisions on position limits and position management controls for commodity derivatives and on position reporting under Article 30w shall apply to such activities, however.

Section B

Ancillary services

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management, excluding the provision and maintenance of securities accounts at the top-tier level ("central maintenance service");
2. granting credits or loans to an investor to allow the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
3. advice to undertakings on capital structure, industrial strategy, and related matters and advice and services relating to mergers and the purchase of undertakings;
4. foreign exchange services where these are connected to the provision of investment services;
5. investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
6. services relating to underwriting;
7. investment services and activities as well as ancillary services of the type included under Section A or B of this Annex related to the underlying of the derivatives included under Section C , items 5, 6, 7 and 10, where these are connected to the provision of investment or ancillary services.

Section C

Financial instruments

1. Transferable securities of all classes which are negotiable on the capital market, such as:
   a) shares in companies and other securities equivalent to shares in companies, partnerships, or other entities, including depositary receipts in respect of such securities;
   b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
   c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, or other indices or measures;
2. money-market instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit, and commercial papers and excluding instruments of payment;
3. units in undertakings for collective investment in transferable securities, units in investment undertakings, and units in alternative investment funds;
4. options, futures, swaps, forward rate agreements, and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
5. options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
6. options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market, a multilateral trading facility, or an organised trading facility, except for wholesale energy products traded on an organised trading facility that must be physically settled;
7. options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled not otherwise mentioned in point 6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments;
8. derivative instruments for the transfer of credit risk;

9. financial contracts for differences; or
10. options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section C, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, multilateral trading facility, or organised trading facility.
11. Emission allowances consisting of any units recognised for compliance with the requirements of emissions trading legislation.

Transitional provisions

952.0 Banking Act (BankG)

Liechtenstein Law Gazette
Year 1998 No. 223 published on 30 December 1998

Law

of 19 November 1998

amending the Law on Banks and Investment Firms (Banking Act)

...

II.

Transitional provisions

1) Branches and representative offices that already existed prior to entry into force of this Act[1] shall not require a new licence.

2) Existing concessions and licences that do not conform to the provisions of Article 14a shall be adjusted within one year after entry into force of this Act.[1]

3) Nomenclature that does not conform to the provisions of Article 16(1) and (3) shall be adjusted within two years after entry into force of this Act.[946]

4) Concessions and licences that do not meet the requirements of this Act and the associated ordinances shall be adjusted to the new law within one year after the relevant enactments have entered into force or, if necessary, they shall be withdrawn or revoked.

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946 Entry into force: 1 January 1999.

Liechtenstein Law Gazette
Year 2005 No. 13 published on 24 January 2005

Law
of 26 November 2004
amending the Banking Act

...

III.

Transitional provision

This Act shall apply to proceedings that are opened after its entry into force.[947]

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947 Entry into force: 24 January 2005.

Liechtenstein Law Gazette
Year 2007 No. 261 published on 31 October 2007

Law
of 20 September 2007
amending the Banking Act

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III.
Transitional provisions

The new law shall apply to proceedings pending at the time of entry into force[948] of this Act.

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948 Entry into force: 1 November 2007.

Liechtenstein Law Gazette
Year 2008 No. 226 published on 26 August 2008

Law
of 26 June 2008
amending the Banking Act

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II.

Transitional provision

The new law shall apply to administrative assistance proceedings pending at the time of entry into force[949] of this Act.

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949 Entry into force: 26 August 2008.

Liechtenstein Law Gazette
Year 2014 No. 348 published on 23 December 2014

Law
of 7 November 2014
amending the Banking Act

. . .

II.
Transitional provisions

Article 1

Institution-specific countercyclical buffer for the years 2016 to 2018

The institution-specific countercyclical buffer referred to in Article 4a(1)(b) shall be:

a) from 1 January 2016 to 31 December 2016, at most 0.625% of the total risk-weighted exposure amounts of the bank or investment firm calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

b) from 1 January 2017 to 31 December 2017, at most 1.25% of the total risk-weighted exposure amounts of the bank or investment firm calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

c) from 1 January 2018 to 31 December 2018, at most 1.875% of the total risk-weighted exposure amounts of the bank or investment firm calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

Article 2

Freedom of establishment and freedom to provide services

Until entry into force of the decision of the EEA Joint Committee incorporating Directive 2013/36/EU, the exercise of the freedom of establishment and of the freedom to provide services shall be in accordance with Directives 2006/48/EC, 2006/49/EC, 2009/111/EC, and 2010/76/EU.

IV.

Entry into force and expiry

1) Subject to expiry of the referendum period without a referendum being called, this Act shall enter into force on 1 February 2015, otherwise on the day following its promulgation.

2) Article 1(3) shall enter into force at the same time as the EEA Joint Committee Decision incorporating Directive 2013/36/EU.[950]

3) Article 30l(3), Article 30l^{quater}, Article 30n(5), Article 41e(5), and Article 41e^{bis}(3) shall enter into force at the same time as the EEA Joint Committee Decision incorporating 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).[951]

4) Article 4a(1)(b) shall enter into force on 1 January 2016.

5) Article 1(4) and Chapter III (reference to Directive 2013/36/EU and Regulation (EU) No. 575/2013) shall expire upon entry into force of the EEA Joint Committee Decision incorporating Directive 2013/36/EU and Regulation (EU) No 575/2013.[952]

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950 Entry into force: 1 January 2020 (LGBl. 2019 No. 343).
951 Entry into force: 1 October 2016 (LGBl. 2016 No. 302).
952 Entry into force: 1 January 2020 (LGBl. 2019 No. 343).

Liechtenstein Law Gazette
Year 2016 No. 223 published on 7 July 2016

Law
of 11 May 2016
amending the Banking Act

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II.

Transitional provision

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

Liechtenstein Law Gazette
Year 2017 No. 397 published on 22 December 2017

Law
of 10 November 2017
amending the Banking Act

. . .

II.

Transitional provisions

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

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

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

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

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IV.

Entry into force and expiry

1) Subject to expiry of the referendum period without a referendum being called, this Act shall enter into force on 3 January 2018, otherwise on the day following its promulgation.

2) Article 1(3)(c) and (c[bis]) as well as Article 30x(8) shall enter into force at the same time as the EEA Joint Committee Decision incorporating Directive 2014/65/EU[953] and Regulation (EU) No 600/2014.[954]

3) Article 1(4) and Chapter III (reference to Directive 2014/65/EU and Regulation (EU) No 600/2014) shall expire upon entry into force of the EEA Joint Committee Decision incorporating Directive 2014/65/EU[955] and Regulation (EU) No 600/2014.[956]

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953 Entry into force: 3 December 2019 (LGBl. 2019 No. 318).
954 Entry into force: 3 December 2019 (LGBl. 2019 No. 318).
955 Entry into force: 3 December 2019 (LGBl. 2019 No. 318).
956 Entry into force: 3 December 2019 (LGBl. 2019 No. 318).

Liechtenstein Law Gazette
Year 2018 No. 213 published on 2 November 2018

Law
of 6 September 2018
amending the Banking Act

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IV.

Entry into force and expiry

1) This Act shall enter into force on the day following its promulgation.

2) Article 1(5) and Chapter II (reference to Regulation (EU) 2017/2395) shall expire upon entry into force of the EEA Joint Committee Decision incorporating Regulation (EU) 2017/2395.[957]

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957 Entry into force: 1 January 2020 (LGBl. 2019 No. 343).

Liechtenstein Law Gazette
2022 No. 109 published on 25 April 2022

Law
of 11 March 2022
amending the Banking Act

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III.
Transitional provisions

1) Parent financial holding companies and mixed parent financial holding companies that already existed on 1 May 2022 must apply for a licence in accordance with Article 30a^{quater}(1) or (2) by 2 May 2024. If a financial holding company or mixed financial holding company has not applied for the licence by 2 May 2024, appropriate measures shall be taken in accordance with Article 41p(4).

2) During the transitional period referred to in paragraph 1, the FMA may make use of all powers under this Act. In particular, it may designate a bank or investment firm within a group which shall be 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 under Article 30a^{quater}.

3) By way of derogation from Article 30a^{sexies}(1), third-country groups operating through more than one bank or investment firm in the EEA and with a total value of assets in the EEA equal to or greater than 40 billion euros or the equivalent in Swiss francs on 1 May 2022 shall have an intermediate EEA parent undertaking or, if 30a^{sexies}(2) applies, two intermediate EEA parent undertakings by 30 December 2023.

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VI.

Coordination provision

Upon entry into force of Decision of the EEA Joint Committee No 81/2020 of 12 June 2020 amending Annex IX (Financial Services) to the EEA Agreement, Article 26a(1) of the Banking Act shall read as follows:

"1) Every proposed direct or indirect acquisition and every proposed direct or indirect disposal of a qualifying holding in a bank or investment firm 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 investment firm or causing the bank or investment firm 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, 26, 26a, 27 and 31 of the Disclosure Act shall apply to determination of the voting rights."

VII.

Entry into force

1) Subject to expiry of the referendum period without a referendum being called, this Act shall enter into force on 1 May 2022, otherwise on the day following its promulgation.

2) Article 1(3)(e) 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) Chapter IV(a) (Transposition and implementation of EEA legislation) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive (EU) 2019/878 into the EEA Agreement.

4) Chapter IV(b) and (c) (Transposition and implementation of EEA legislation) shall enter into force at the same time as Decision of the EEA Joint Committee incorporating Regulations (EU) 2019/876 and 2020/873 into the EEA Agreement.

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Liechtenstein Law Gazette
2022 No. 294 published on 28 October 2022

Law
of 2 September 2022
amending the Banking Act

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II.

Transitional provision

The obligation to regularly inform the public pursuant to Article 8e(3) shall not apply until 27 February 2023.

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IV.

Applicability of EU acts

1) Until their incorporation into the EEA Agreement, the following shall be deemed national law:

a) Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis;

b) Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms;

c) Regulation (EU) 2021/558 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis.

2) The full text of the acts referred to in paragraph 1 is published in the Official Journal of the European Union at http://eur-lex.europa.eu; it may also be accessed on the FMA website at www.fma-li.li.

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