

Translation of Liechtenstein Law

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Law
of 8 November 2013
**concerning Professional Trustees
and Fiduciaries
(Trustee Act)
(TrHG)**

I hereby grant My Consent to the following resolution adopted by the Liechtenstein Parliament ¹:

I. General provisions

Art. 1

Object and Purpose

1) This Law governs the licensing, the professional conduct and the supervision of trustees and trust companies.

2) Its specific purpose is to protect clients, to maintain confidence in Liechtenstein as a financial centre, to promote accessibility to the international markets and create a competitive environment.

3) It shall also serve to implement Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the Recognition of Professional Qualifications (EEA Law Directory Appendix VII - 1.01).

¹ Report and application, together with comments from the Government No. 42/2013 and 83/2013

Art. 2

Scope of validity

This Law shall apply to private individuals and legal entities engaged in the following activities as trustees or trust companies on a professional basis:

- a) Establishment of legal entities, companies and trusteeships for third parties, in the licence holder's own name and for the account of third parties and related contact and correspondence with courts and administrative authorities;
- b) Acceptance of board mandates in accordance with Art. 180a of the Liechtenstein Law on Persons and Companies and acceptance of trusteeships;
- c) Financial and business consultancy;
- d) Tax consultancy;
- e) Bookkeeping and audit review, provided this activity is not reserved for auditors and audit companies.

Art. 3

Definition of terms and designations

1) The following definitions are established for the purposes of the present Law:

- a) "Professional": the exercise of an activity, that is undertaken independently, regularly and against remuneration or of which the profit-making intention can be inferred from the frequency of the activity or on other grounds;
- b) "Full authorisation": an authority that entitles the holder to the professional exercise of all activities referred to in Art. 2;
- c) "Limited authorisation": an authority that entitles the holder to the professional exercise of the activities referred to in Art. 2 a) and b);
- d) "Qualifying holding": a direct holding or a holding in the sense of a controlling interest of at least 25 % of the capital or voting rights of a trust company;
- e) "Place of business": the place in Liechtenstein, in which a private individual performs the activity permitted under this Law;
- f) Transactions for own account (proprietary transactions): transactions in which the trustee or trust company has a self-interest based on a financial, personal or commercial relationship or an employment

relationship, giving grounds for a suspicion that the impartiality of the trustee or trust company, might be jeopardised.²

2) The personal, professional and operational titles used in this Law are to be understood as pertaining to members of both the male and female sexes.

II. Authorisation

A. Obligation and conditions of authorisation

1. Trustees

Art. 4

Obligation to obtain authorisation

Prior to commencing their professional activity trustees shall require a licence from the Liechtenstein Financial Market Authority (FMA).

Art. 5

Conditions of authorisation

- 1) Full authorisation to practice shall be granted if the applicant:
- a) has legal capacity to act;
 - b) is trustworthy as defined in Art. 6;
 - c) can produce evidence of professional training referred to in Art. 7;
 - d) holds citizenship of Liechtenstein or citizenship of a signatory state of the Agreement on the European Economic Area (EEA Agreement Signatory State) or of Switzerland or enjoys equivalent status on the basis of an international agreement;³
 - e) can demonstrate practical experience as referred to in Art. 8;
 - f) has passed the professional trustee's examination referred to in Art. 9;

² Art. 3 (1) f) inserted by LGBL 2020 no. 152.

³ Art. 5 Para. 1 d) amended by LGBL 2016 no. 146.

- g) provides evidence of liability insurance or other financial security as referred to in Art. 11;⁴
 - h) has a place of business as referred to in Art. 12; and⁵
 - i) provides evidence of the appointment of an auditor or audit company pursuant to Art. 61a.⁶
- 2) Limited authorisation to practice shall be granted if the applicant:
- a) meets the conditions for entry in the Register of Liechtenstein-based Attorneys (Attorneys Register) as defined in Art. 3 Para. 2 a) to e) of the Liechtenstein Lawyers Act;
 - b) meets the requirements set out in (1) a) b), d), e), g), h) and i); and⁷
 - c) has passed the additional examination referred to in Art. 10.
- 3) The documents referred to in Appendix VII to Directive 2005/36/EC are equivalent to the evidence referred to in Para. 1.

Art. 6

Trustworthiness

- 1) The requirement of trustworthiness referred to in Art. 5 Para. 1 b) will not be met if the applicant has a legally valid conviction for an offence or crime in connection with his professional occupation involving a custodial sentence of more than three months or a fine of more than 180 daily units.
- 2) After consideration of all the circumstances the FMA may rule that the requirement of trustworthiness has not been met if:
- a) in the last five years prior to the application the applicant has been the subject of an unsuccessful attachment order;
 - b) in the last five years prior to the application the applicant has been subject to a legally valid refusal of an application to open bankruptcy proceedings due to absence of assets sufficient to cover costs;
 - c) legally enforceable bankruptcy proceedings have been opened in respect of the applicant in the last five years prior to the application;

⁴ Art. 5 (1) g) amended by LGBL 2020 no. 152.

⁵ Art. 5 (1) h) amended by LGBL 2020 no. 152.

⁶ Art. 5 (1) i) inserted by LGBL 2020 no. 152.

⁷ Art. 5 (2) b) amended by LGBL 2020 no. 152.

- d) a legally enforceable ruling has been issued against the applicant under supervisory law on account of repeated or serious contraventions of decrees pertaining to financial market supervision;
- e) a legally enforceable disciplinary decision has been issued against the applicant;
- f) criminal proceedings involving a legally valid indictment have been opened against the applicant in connection with his professional activities;
- g) there is a legally enforceable judgement against the applicant on account of an offence or crime;
- h) in the last five years prior to the filing of the application the applicant has acted as managing director of a legal entity subject to the supervision of the FMA, in respect of which bankruptcy proceedings have been opened or an application for the opening of bankruptcy proceedings has been rejected due to lack of assets to cover costs.⁸

3) Paras. 1 and 2 shall also apply in the case of foreign rulings and proceedings. Criminal rulings and proceedings abroad may only be taken into account if the underlying offence is also liable to criminal prosecution in the courts under Liechtenstein law at the time the offence was committed.

Art. 7⁹

Proof of education

The following shall be deemed proof of education pursuant to Art. 5 Para. 1 c):

- a) proof of the successful completion of the study of law or economics at a university or college of further education;
- b) proof of successful completion of a training course:
 - 1. that demonstrates a minimum course duration of four semesters;
 - 2. for which the minimum number of points is 60 ECTS credits;
 - 3. that communicates teaching content in specialised fields that form part of the Trustee Examination referred to in Art. 9 Para. 3; this teaching content must form at least two thirds of the course; and

⁸ Art. 6 (2) h) inserted by LGBL 2020 no. 152.

⁹ Art. 7 amended by LGBL 2018 no. 212.

4. in which proof of proficiency in the teaching content referred to in no. 3 is to be provided by the successful completion of a standardised examination.

Art. 8

Practical experience

1) The practical work required for practising the profession of trustee shall be completed in a job covering that profession with a trustee or a trust company, an auditor or audit company, an attorney or an administrative authority of the State. Persons who have passed the attorney examination may count their practical experience completed pursuant to the Liechtenstein Lawyers Act.

2) The practical experience must be obtained in connection with the activities specified in Art. 2, and the individual areas of activity must be indicated. This must be expressly confirmed by the employer in writing.

3) The practical work must be for three years in full time employment. At least one year shall be spent with an employer licensed to practice as a trustee in Liechtenstein. If the employment is part-time the duration shall be increased proportionately.

Art. 9

Trustee examination

1) An applicant shall be authorised by the FMA to sit the trustee examination if he meets the conditions referred to in Art. 5 Para. 1 a) to e).

2) The trustee examination shall be submitted to the Examining Board for Trustees.

3) The trustee examination shall comprise:

- a) one written paper each on accounting and auditing, private and company law, commercial register law, professional law, FMA supervision, due diligence law, commercial law, tax law, contract law, inheritance law, financial consultancy; and
- b) an oral examination in these and other specialised fields that are important for professional practice as a trustee.

4) For applicants who meet the conditions set out in Art. 5 Para. 2 a) the trustee examination shall comprise:

- a) one written paper each on accounting and auditing, tax law, financial consultancy; and
- b) an oral examination in these and other specialised fields that are important for professional practice as a trustee.

5) If the trustee examination is failed, it can be retaken after a minimum period of one year has passed. If the second examination has not been passed, a second and last repetition can be taken at least three years after the first examination.

6) The Government shall settle more specific details by ordinance.

Art. 10

Additional examination

1) An applicant shall be permitted by the FMA to sit an additional examination if he meets the conditions referred to in Art. 5 Para. 1 a) to e) and Para. 2 a) ¹⁰.

2) The additional examination consists of an oral examination on the basic principles of private and company law, commercial register law, professional law, FMA supervision, due diligence law, commercial law, accounting and auditing, tax law and financial consultancy.

3) In other respects Art. 9 Para. 2 and 5 shall apply *mutatis mutandis* to the performance of the additional examination.

4) The Government shall settle more specific details by ordinance.

Art. 11

Liability insurance and other financial security

1) The liability insurance referred to in Art. 5 Para. 1 g) must:

- a) cover the liability for damage arising from dereliction of professional duties in connection with activities referred to in Art. 2 a), c), d) and e);
- b) provide a sum insured of at least 1 million Swiss Francs for each loss event and 2 million Swiss Francs for all loss events in one year;

¹⁰ Art. 10 Para. 1 amended by LGBL 2014 no. 278.

- c) provide runoff cover for at least three years, with the assumption of the initial risk being sufficient in the event of a simple change of insurance;
- d) allow for an excess of a maximum of 10 % of the sum insured per loss event. The FMA may permit deviations from this on request in justified cases; and
- e) contractually oblige the insurance company immediately to inform the FMA of the suspension or discontinuation of the insurance cover.

2) The following are exempt from the obligation to take out liability insurance:

- a) persons covered as an insured person by another liability insurance that satisfies the requirements set out in Para. 1 that was taken out by another person;
- b) persons who provide other equivalent security. Para. 1 c) shall apply *mutatis mutandis*. The FMA shall determine whether an equivalent security has been provided in individual cases.

Art. 12

Place of business

The place of business referred to in Art. 5 Para. 1 h) shall have the space, personnel and organisation required for practising the profession of trustee.

2. Trust companies

Art. 13

Obligation to obtain authorisation

Trust companies shall require a licence issued by the FMA before commencing their commercial activities.

Art. 14

Conditions of Authorisation

1) A license for the full performance of the profession shall be granted upon application if:

- a) a person who meets the conditions set out in Art. 5 Para. 1 a) to f) is actually employed in the management of the company;
- b) the company is established in the legal form of a public limited company, a private limited company, a general partnership, a limited partnership, a Liechtenstein establishment or a trust enterprise with legal personality;
- c) the registered office and headquarters of the company are located in Liechtenstein;
- d) shareholders, partners or persons holding a qualifying holding in the company satisfy the requirements established in the interests of a sound and prudent management of a trust company;
- e) the members of the managing board and other members of the management team are trustworthy (Art. 6);¹¹
- f) the company itself is trustworthy by application mutatis mutandis of Art. 6 (2) a) to d), f) and g) as well as (3);¹²
- g) evidence is provided of liability insurance or another form of financial security as referred to in Art. 11; and¹³
- h) evidence is provided of the appointment of an auditor or audit company pursuant to Art. 61a.¹⁴

2) A license for limited authorisation to practice will be granted on application, if:

- a) the management of the company includes a person actually performing management functions in the company who:
 1. fulfils the conditions for entry in the Register of Attorneys referred to in Art. 3 Para. 2 a) to e) of the Liechtenstein Lawyers Act;
 2. meets the conditions referred to in Art. 5 Para. 1 a), b), d) and e); and
 3. has successfully completed the additional examination referred to in Art. 10; and

¹¹ Art. 14 (1) e) amended by LGBl. 2020 no. 152.

¹² Art. 14 (1) f) amended by LGBl. 2020 no. 152.

¹³ Art. 14 (1) g) inserted by LGBl. 2020 no. 152.

¹⁴ Art. 14 (1) h) inserted by LGBl. 2020 no. 152.

b) the conditions set out in (1) b) to h) have been met.¹⁵

B. Authorisation procedure

Art. 15

Authorisation application

- 1) The application for authorisation to practice as a trustee or trust company is to be submitted to the FMA.
- 2) The application shall be accompanied by the documents required as evidence of meeting the conditions referred to in Art. 5 and 14 including a curriculum vitae in the original; the FMA may permit copies instead of original documents and may require a certified translation for documents issued in a foreign language. Documents presented as evidence of trustworthiness may not be more than three months old at the time of presentation.
- 3) The FMA shall send the applicant an acknowledgement of receipt within three working days of receipt of the completed application.
- 4) A decision will be made in respect of the application for authorisation within six weeks from receipt of the completed application. The FMA may extend this deadline as appropriate in exceptional circumstances.
- 5) The Government shall settle more specific details by ordinance.

Art. 16

Granting of authorisation and its scope

- 1) Authorisation will be granted if the statutory conditions have been met. It may be granted subject to restrictions or conditions.
- 2) The authorisation will be granted either in the form of a full authorisation or a limited authorisation.
- 3) The authorisation is strictly personal and not transferrable to third parties.

¹⁵ Art. 14 (2) b) amended by LGBl. 2020 no. 152.

Art. 17

Certificate for entry in the commercial register

The FMA issues a certificate for trust companies for the attention of the Liechtenstein Office for Justice, confirming that the legal conditions have been met and that the trust company will be granted the authorisation after entry in the Commercial Register. Without this certificate the company may not be entered in the Commercial Register.

Art. 18

Register of trustees and trust companies

1) The FMA shall record the authorised trustees and trust companies in a publicly accessible register that can be downloaded on the FMA website.

2) The register must contain:

- a) for trustees: name and forename, title and place of business;
- b) for trust companies: business name, legal form, registered office and the name and forename of the person who actually manages the business.

3) The register shall be regularly updated by the FMA.

III. Rights and duties

A. General¹⁶

Art. 19

Professional, trade and company designation

1) Trustees shall use the professional designation "Trustee" or another designation of trade or profession approved by the FMA. Trustees with a limited authorisation to practice shall also indicate this fact in an appropriate manner in the course of their business.

¹⁶ Heading before Art. 19 inserted by LGBl. 2020 no. 152.

2) Trust companies shall choose a company name that is neither misleading nor in contravention of decrees pertaining to financial market supervision; they shall refer to the practice of trust activities in an appropriate manner in the course of their business. The company name and any change in the company name must be approved by the FMA.

Art. 20

Obligation to maintain professional standards

1) Trustees and trust companies shall conduct their business in a diligent, honest and professional manner in accordance with professional standards in the best interests of their clients and shall also conduct themselves in a way that safeguards the good repute of the profession.

2) The professional standards shall contain provisions in respect of:

- a) good repute of the profession;
- b) integrity;
- c) publicity;
- d) fees;
- e) training and further education;
- f) data security;
- g) procedures for transfer of mandates.¹⁷
- h) Repealed¹⁸

Art. 21

Obligation of confidentiality

1) Trustees and trust companies shall be obliged to maintain confidentiality in respect of matters entrusted to them and circumstances of which they have otherwise become aware in their professional capacity, which require confidentiality in the interests of their clients. The statutory provisions concerning the obligation to act as a witness or the obligation of disclosure to criminal courts, the Financial Intelligence Unit (FIU) and the supervisory bodies are reserved.¹⁹

¹⁷ Art. 20 (2) g) amended by LGBL 2020 no. 152.

¹⁸ Art. 20 (2) h) repealed by LGBL 2020 no. 152.

¹⁹ Art. 21 Para. 1 amended by LGBL 2016 no. 43.

2) The right of trustees and trust companies to confidentiality may not be circumvented by judicial or other official measures, in particular by the hearing of agents of the trustee or the trust company or by ordering the surrender of written instruments, image, sound or data media (documents) or by confiscating the same; special regulations concerning the delimitation of this prohibition shall be reserved.

Art. 21a²⁰

Avoidance of conflicts of interests

1) For the avoidance of conflicts of interests, trustees and trust company shall be obliged:

- a) to keep client deposits strictly separate from their own assets;
- b) not to conduct business for their own account (ban on proprietary transactions);²¹
- c) to disclose and report conflicts of interests to clients.

2) The Government may lay down more specific regulations by ordinance.

Art. 21b²²

Outsourcing

1) Trustees and trust companies may transfer activities completely or partially to service providers by written agreement. The following may not be outsourced:

- a) Activities referred to in Art. 2 a) and b);
- b) Functions and duties of the Board of Directors or supervisory board or the senior management.

2) In the event of outsourcing in accordance with (1) the trustee and the trust company shall themselves retain full responsibility for the performance of their duties under this Act.

3) Trustees and trust companies shall guarantee the smooth operation of the outsourced activities.

²⁰ Art. 21a inserted by LGBl. 2020 no. 152.

²¹ Art. 21a (1) b) enters into force on 1 January 2021.

²² Art. 21b inserted by LGBl. 2020 no. 152. Art 21b enters into force on 1 January 2021.

4) Activities may not be outsourced in such a way that may give rise to one of the following:

- a) Impairment of the quality of governance;
- b) Excessive increase in the operational risk;
- c) Impairment of the FMA's ability to monitor the compliance of the trustee and the trust company with their obligations; or
- d) Impairment of the functioning of the auditor or audit company.

5) The provisions of the Due Diligence Act are reserved.

Art. 21c²³

Financial standing/credit-worthiness

Trustees and trust companies must have sufficient financial resources at their disposal to meet their financial obligations when due at all times.

Art. 22

Reporting and approval obligations and duty of disclosure

1) Trustees and trust companies shall inform the FMA immediately and in writing of any change in the circumstances on which authorisation is based, in particular changes that are required for the assessment of trustworthiness pursuant to Art. 6.

2) The following circumstances shall require the prior approval of the FMA:

- a) a change in the person who actually manages the business, a member of the managing board or another member of the management team of a trust company;
- b) a change in a qualifying holding in a trust company;
- c) a change in the company name of a trust company;
- d) a change in the liability insurance or other financial security.

3) All information and documents are to be made available to the FMA and all reports that it requires to perform its duties, if it so requests.

²³ Art. 21c inserted by LGBL 2020 no. 152.

B. Governance²⁴

Art. 22a²⁵

Basic principle

1) Trustees and trust companies shall establish regulations for corporate management and control (governance) as well as risk management. These regulations must guarantee the effective and prudent management of the business and also provide for the separation of functions in the organisation and for the prevention of conflicts of interest. It must be established who monitors their application and who is responsible for them.

2) Trustees and trust companies shall assign corporate management and control (governance) and risk management to different persons. If the distribution of functions is unfeasible due to the nature, extent and complexity of the duties, the FMA may upon request grant exemption to the separation of functions.

3) The existence of the regulations referred to in (1) for the corporate management and control (governance) and risk management must be verified by the auditor or the audit company.

Art. 22b²⁶

Internal controls

1) Trustees and trust companies must operate an effective internal control system. This system must cover as a minimum: administrative and accounting procedures, an internal control framework, appropriate reporting mechanisms at all levels of the company and a monitoring function for compliance with legal and corporate requirements.

2) The internal control system must include an effective system to guarantee the communication of information. It must be appropriate to the size, nature, scale and complexity of the operations of the trustee or the trust company and subject to regular inspection.

²⁴ Heading before Art. 22a inserted by LGBI. 2020 no. 152.

²⁵ Art. 22a inserted by LGBI. 2020 no. 152. Art. 22a enters into force on 1 January 2021.

²⁶ Art. 22b inserted by LGBI. 2020 no. 152. Art. 22b enters into force on 1 January 2021.

Art. 22c²⁷*Risk management*

1) Trustees and trust companies are obliged to establish effective risk management procedures appropriate to their size and internal organisation.

2) The risk management shall include the strategies, processes and reporting procedures that are necessary to detect, assess, monitor and manage the risks incurred or potential risks at all times and to report on them.

C. Accounting and reporting²⁸Art. 22d²⁹*Accounting*

1) Trustees and trust companies that are not companies as defined by Art. 1063 PGR shall comply with the accounting regulations of Section 1., 2. (with the exception of Sub-section 3) and Section 4 of Chapter 20 of the PGR applying to such companies.

2) The provisions concerning the abbreviated balance sheet and profit and loss statement referred to in Art. 1068 Section 4 PGR shall not apply to any trustees and trust companies, irrespective of their legal form.

Art. 22e³⁰*Obligation concerning external audit*

1) Trustees and trust companies must have their business operations audited every year by an external independent auditor or an external independent audit company as referred to in Art. 61 a.

²⁷ Art. 22c inserted by LGBL 2020 no. 152. Art. 22c enters into force on 1 January 2021.

²⁸ Heading before Art. 22d inserted by LGBL 2020 no. 152.

²⁹ Art. 22d inserted by LGBL 2020 no. 152. Art. 22d shall apply for the first time to financial years that commence after 31 December 2020.

³⁰ Art. 22e inserted by LGBL 2020 no. 152. Art. 22e shall apply for the first time to financial years that commence after 31 December 2020.

2) They shall grant the auditor or audit company access to the records of the company and its books at all times and provide all information that is required for the performance of the audit mandate.

3) They shall bear the expense of the external audit.

IV. Termination of authorisation

Art. 23

Revocation

1) The authorisation will be revoked by the FMA, if:

- a) the holder of the authorisation has obtained it deviously by giving false information or in a manner that is otherwise unlawful; or
- b) significant facts were not known at the time of granting the authorisation.

2) The FMA shall consult the Liechtenstein Institute of Professional Trustees and Fiduciaries before revoking an authorisation.

3) Revocation of an authorisation will be published in the official journal at the expense of the authorisation holder.

Art. 24

Expiry

1) The authorisation shall expire, if:

- a) the holder of the authorisation dies or becomes legally incapacitated or is deleted from the commercial register;
- b) no business activities are commenced within one year from granting of the authorisation;
- c) the business activity ceases for at least one year;
- d) the authorisation is relinquished in writing;
- e) exercise of the profession has been permanently prohibited in disciplinary proceedings;³¹

³¹ Art. 24 (1) e) inserted by LGBL 2020 no. 152.

- f) a decision has been made to initiate liquidation proceedings in respect of the authorisation holder; or³²
- g) bankruptcy proceedings have been lawfully opened in respect of the authorisation holder or the petition for bankruptcy on the part of the authorisation holder has been refused in the absence of sufficient assets to cover costs.³³

2) The FMA may extend the time limits mentioned in Para. 1 b) and c) as appropriate, on request, if circumstances warrant.

3) The expiry of an authorisation shall be published in the official journal at the expense of the authorisation holder.

Art. 25

Withdrawal

1) The authorisation may be withdrawn by the FMA, if:

- a) the conditions for granting are no longer met or requirements or conditions associated with the authorisation are not complied with;
- b) there has been a serious dereliction of statutory obligations or failure to comply with official instructions, in particular failure to restore the legitimacy of the situation as instructed by the FMA.

2) The FMA shall consult the Institute of Professional Trustees and Fiduciaries before withdrawing an authorisation.

3) The withdrawal of an authorisation will be published in the official journal at the expense of the authorisation holder.

Art. 26

Compulsory winding up

1) A company that practices an activity referred to in Art. 2 without authorisation shall be wound up at the request of the FMA by the Office for Justice, if required for the purposes of this Law.

2) The FMA shall take the measures required in order to accomplish the liquidation and winding up of the ongoing business and shall give the necessary instructions to the liquidator.

³² Art. 24 (1) f) inserted by LGBL 2020 no. 152.

³³ Art. 24 (1) g) inserted by LGBL 2020 no. 152.

3) The FMA shall be responsible for the selection of the liquidator to be appointed. The Office for Justice shall appoint and dismiss the liquidator.

4) The regulations on liquidation under Art. 130 and subsequent articles of the Liechtenstein Persons and Companies Act (PGR), in particular concerning the apportionment of costs under Art. 133 Para. 6 PGR, shall otherwise apply *mutatis mutandis*.

5) The FMA shall consult the Institute of Professional Trustees and Fiduciaries before taking any measures for the compulsory winding up of a business.

6) The winding up of an unauthorised company shall be published in the official journal at the expense of the responsible person or from the assets.

Completion of mandates³⁴

Art. 27³⁵

a) Basic principle

1) If in the event that an authorisation is terminated the proper completion of mandates cannot be guaranteed, the professional ethics committee shall coordinate the completion of the mandates of the authorisation holder.

2) The professional ethics committee shall draw up a settlement plan which shall specifically contain particulars of:

- a) the persons responsible for this function; and
- b) the criteria for the acceptance of mandates by trustees and trust companies.

3) The professional ethics committee shall make provision for customer care.

³⁴ Subject heading before Art. 27 inserted by LGBl. 2020 no. 152.

³⁵ Art. 27 amended by LGBl. 2020 no. 152.

Art. 27a³⁶*b) Co-operation*

1) For the performance of its functions referred to in Art. 27 (1) the professional ethics committee shall have extensive rights to information vis-à-vis the courts, the liquidator and the FMA; it is obliged to observe confidentiality.

2) The FMA shall inform the professional ethics committee immediately of the termination of an authorisation.

3) The professional ethics committee shall inform the FMA immediately of:

- a) a liquidation case;
- b) the settlement plan;
- c) the provision of customer care.

Art. 27b³⁷*c) Costs*

1) The costs of winding up of mandates shall be borne by the previous authorisation holder (Originator pays principle).

2) If mandates are transferred the associated costs shall be borne by the trustees and trust companies accepting the mandates.

³⁶ Art. 27a inserted by LGBL 2020 no. 152.

³⁷ Art. 27b inserted by LGBL 2020 no. 152.

V. Relationship with the European Economic Area and Third States

A. Foreign trustees practising in Liechtenstein

1. Establishment

Art. 28

Basic principle

1) Persons, who hold citizenship of another signatory state of the EEA Agreement or having equivalent status on the basis of an international treaty and who are authorised in accordance with the provisions of their state of origin to perform the activities referred to in Art. 2 on a commercial basis may establish an office for the performance of these activities in Liechtenstein.

2) The persons referred to in Para. 1 shall, in addition to the professional standards applying in their state of origin, be subject to the same professional standards and rules as native Liechtenstein trustees in respect of all activities that they perform in Liechtenstein.

Art. 29

Conditions of authorisation

1) Establishment as referred to in Art. 28 shall require authorisation from the FMA.

2) The applicant shall provide the following evidence of:

- a) the authorisation referred to in Art. 28 Para. 1;
- b) fulfilment of the conditions referred to in Art. 5 Para. 1 a) and b);
- c) a professional qualification that is comparable with the professional qualification of a native Liechtenstein trustee;
- d) two years practising as a trustee as the main profession on a self-employed basis in the state of origin within the last ten years, insofar as the profession of trustee or the relevant training is not regulated in that state;

- e) the successful completion of the qualifying examination referred to in Art. 30;
- f) the existence of liability insurance or other financial security as defined in Art. 11;
- g) the place of business as referred to in Art. 12.

3) Evidence of educational qualifications will be accepted in accordance with the provisions of the Law on the Recognition of Professional Qualifications.

Art. 30

Qualifying examination

1) The qualifying examination is a state examination referring exclusively to the professional skills of the applicant, by which his ability to exercise the profession of trustee in Liechtenstein is assessed.

2) The qualifying examination must take into account the fact that the applicant holds a professional qualification to exercise the profession of trustee in his state of origin.

3) The FMA shall decide on admission to the qualifying examination. Admission to the qualifying examination will be refused if the applicant does not meet the statutory requirements or does not provide the required documentation and declarations.

4) The examination subjects are the compulsory subjects, private and company law, tax law, professional law for trustees, FMA supervision, due diligence law and two optional subjects. The applicant has to select one optional subject each from the two following optional subject groups, and must specify one of the two optional subjects selected for the written examination and one for the oral examination:

- a) contract law or inheritance law;
- b) practice of accounting and auditing or financial consultancy.

5) In other respects Art. 9 Para. 2 and 5 shall apply *mutatis mutandis* to the completion of the qualifying examination.

6) The Government shall settle more specific details by ordinance.

2. Free movement of services

Art. 31

Basic principle

1) Persons, who hold citizenship of another signatory state of the EEA Agreement or having equivalent status on the basis of an international treaty and who are authorised in accordance with the provisions of their state of origin to perform the professional activities referred to in Art. 2 may temporarily perform these activities in Liechtenstein.

2) The persons referred to in Para. 1 shall, in addition to the professional standards applying in their state of origin, be subject to the same professional standards and rules as native Liechtenstein trustees in respect of all activities that they perform in Liechtenstein.

Art. 32

Conditions

1) Before commencing activities in Liechtenstein the persons referred to in Art. 31 Para. 1 must notify the FMA in writing. The FMA shall confirm receipt of the notification in writing.

2) The notification is to be accompanied by:

- a) a certificate evidencing that the practitioner legitimately performs the activity concerned in his state of origin and that at the time of presentation of the certificate he is not prohibited from performing this activity, even temporarily;
- b) evidence of a professional qualification;
- c) evidence of citizenship;
- d) evidence of two years of practice as a trustee as the main profession on a self-employed basis in the state of origin within the last ten years, insofar as the profession of trustee or the relevant training is not regulated in that state; and
- e) evidence of the existence of liability insurance or other financial security as defined in Art. 11.

3) This notification shall be renewed every year if the practitioner intends to perform services in Liechtenstein temporarily or occasionally during the year in question. It is to be renewed immediately, if a significant change should take place in the situation previously certified.

4) The FMA shall be obliged to prohibit the provision of services and if applicable inform the courts or administrative bodies if the conditions of Para. 2 have not been, or are no longer being met.

Art. 33

Professional designation

Any person engaged in an activity as referred to in Art. 31, shall use the professional designation that he is entitled to use in his state of origin in accordance with the law applying in that state, in the language or one of the languages of the state of origin.

B. Activity of Liechtenstein registered trustees and trust companies abroad

Art. 34

Reporting obligation

If trustees or trust companies with their registered offices in Liechtenstein intend to establish a branch or subsidiary abroad they shall inform the FMA of this fact. The FMA is to be given the information required for oversight on request.

VI. Disciplinary Law

A. General

Art. 35³⁸

Disciplinary offences

Any person who, as a trustee or an effective manager of a trust company or member of the executive management or of the supervisory board

³⁸ Art. 35 amended by LGBL 2020 no. 152.

or board of directors of a trust company, culpably violates the professional standards, commits a disciplinary offence.

Art. 36

Statute of limitation

1) The prosecution of a person involved in disciplinary proceedings on account of a disciplinary offence shall be excluded by reason of the statute of limitations, if:

- a) no disciplinary proceedings have been opened within one year from the investigating officer becoming aware of the circumstances on which a disciplinary offence is based; or
- b) no disciplinary decision has been passed by the professional ethics committee within five years from the ending of the circumstances on which a disciplinary offence is based.

2) If prior to expiry of the time limit referred to in Para. 1 criminal judicial or supervisory proceedings for the same circumstances are pending or if preliminary criminal investigations are conducted because of them, the time limit for the duration of such proceedings shall be suspended.

3) If a disciplinary offence also constitutes an offence punishable under criminal law and if the statute of limitations under criminal law is longer than the limit mentioned in Para. 1 b), that limit shall be replaced by the limit under criminal law.

4) If the person concerned repeats a similar disciplinary offence within the period of limitation, the statute of limitations referred to in Para. 1 shall not apply until the statute of limitations for this disciplinary offence has also expired.

Art. 37

Disciplinary penalties

1) Disciplinary penalties shall be:

- a) a written reprimand;
- b) fines of up to 50 000 Swiss Francs;
- c) ban on practising the profession of trustee for up to one year;
- d) permanent ban on practising the profession of trustee.

2) The disciplinary penalties referred to in Para. 1 c) and d) may be partly or fully waived on the condition that a probationary period of at least one year and a maximum of three years is established, provided it can be assumed that the threat of such penalty will suffice to deter the person concerned from committing further disciplinary offences.

3) A fine may also be imposed in addition to the disciplinary penalty referred to in Para. 1 c) and d).

4) When imposing a disciplinary penalty attention shall be paid in particular to the severity of the negligence and the income and assets of the person concerned.

Art. 38

Provisional measures

1) The professional ethics committee may take provisional measures against a person involved in disciplinary proceedings if:³⁹

- a) criminal proceedings have been brought against that person in connection with their professional activity or the person has been finally convicted of a crime or misdemeanour by the court; and
- b) the provisional measure is necessary in view of the nature and seriousness of the imputed disciplinary offence due to serious disadvantages to be taken into account, in particular for clients of the person concerned or the good repute of the profession.

2) Before a provisional measure is resolved upon, the person concerned shall be given an opportunity to state his opinion.

3) Provisional measures are:

- a) supervision of the practice of the profession by the professional ethics committee;
- b) temporary ban on the employment of staff;
- c) temporary ban on practice of the profession.

4) Provisional measures shall be cancelled, modified or replaced by another if it transpires that the requirements for ordering them do not or no longer apply or if circumstances have changed significantly.

5) Provisional measures shall lose their force upon the final conclusion of the disciplinary proceedings.

³⁹ Art. 38 (1) amended by LGBl. 2020 no. 152.

6) The professional ethics committee is obliged to arrange for the implementation of the provisional measures and monitor compliance with them. Art. 27b shall apply mutatis mutandis to the responsibility for the settlement of the relevant costs.⁴⁰

7) The professional ethics committee shall request the cooperation of the FMA in case of need.⁴¹

Art. 39

Rights of the person concerned

1) The person involved in disciplinary proceedings shall be entitled to full rights as a party, in particular the right to view documents and ask questions.

2) He may consult an attorney in order to safeguard his rights.

3) Subject to Art. 49 he has no right to reimbursement of legal costs.

Art. 40

Exclusion and rejection of members of the professional ethics committee and the investigating officer

1) The members of the professional ethics committee and the investigating officer may not participate in disciplinary proceedings if they:

- a) have a personal interest in the case;
- b) are or were married to, live or have lived in a registered partnership with, live or have lived in a de facto union with the person involved in the disciplinary proceedings or the informant, or are related by blood or by marriage to that person up to the 4th degree of relationship. Adoptive, step-parent/child or guardianship relationships are deemed to be equivalent to a natural parent/child relationship; or
- c) are representatives, authorised agents or employees of the person concerned or the informant.

2) The members of the professional ethics committee and the investigating officer may ask to be excluded of their own accord or may be rejected by the person involved or the informant, if:

⁴⁰ Art. 38 (6) inserted by LGBL 2020 no. 152.

⁴¹ Art. 38 (7) inserted by LGBL 2020 no. 152.

- a) a close friendship exists with the person involved or the informant or there is a personal enmity towards that person or there is a particular relationship of obligation or dependency between them; or
 - b) they could be prejudiced in the case for other reasons.
- 3) The following shall decide whether there are grounds for exclusion or refusal:
- a) in the case of the chairman of the professional ethics committee: the presiding judge of the Liechtenstein Court of Appeal;
 - b) in the case of other members of the committee or the investigating officer: the chairman of the professional ethics committee.
- 4) There is no right of appeal against the decisions referred to in Para. 3.

Art. 41⁴²

Suspension of the proceedings

If criminal or supervisory proceedings are brought in respect of circumstances on which the attributed disciplinary offence in question is based, the professional ethics committee may suspend the disciplinary proceedings until such proceedings are concluded with legally enforceable effect. This shall not affect the order for provisional measures.

Art. 42

Discontinuation of the Proceedings

The professional ethics committee may discontinue the disciplinary proceedings at any stage of the proceedings, if:

- a) there are no grounds for pursuing the case further;
- b) the fault of the person concerned is insignificant and his conduct has had no consequences or only minor consequences; or
- c) a sanction has already been imposed in respect of the circumstances on which the alleged disciplinary offence in question is based by a court or supervisory authority.

⁴² Art. 41 amended by LGBL 2020 no. 152.

Art. 42a⁴³*Reporting to the FMA*

1) The professional ethics committee shall inform the FMA immediately of:

- a) the opening of disciplinary proceedings;
- b) the order for, suspension or cancellation of provisional measures;
- c) suspension or discontinuation of provisional proceedings.

2) The investigating officer may inform the FMA of the performance of investigations pursuant to Art. 43.

Art. 42b⁴⁴*FMA's right of inspection*

If disciplinary proceedings are launched in respect of circumstances that provide a basis for disciplinary proceedings, the FMA shall have the right to inspect the relevant case files of the professional ethics committee.

Art. 42c⁴⁵*Reporting*

1) The professional ethics committee shall issue a report on its operation every year, including a detailed schedule of all disciplinary investigations and disciplinary proceedings.

2) The report referred to in (1) shall be issued as of 31 December every year and submitted to the Government by 30th April of the following year at the latest.

⁴³ Art. 42a inserted by LGBI. 2020 no. 152.

⁴⁴ Art. 42b inserted by LGBI. 2020 no. 152.

⁴⁵ Art. 42c inserted by LGBI. 2020 no. 152.

B. Disciplinary proceedings

Art. 43

Performance of investigations

- 1) The investigating officer shall carry out investigations on his own initiative or upon notification in the event of suspicion of a disciplinary offence.
- 2) He may, after examination, terminate an investigation into a disciplinary offence without further proceedings, giving a short written indication of the considerations that influenced his decision for a reason listed in Art. 42 a) or b).
- 3) If the investigating officer terminates the investigation he shall notify the person concerned of this fact, if he has already been examined.
- 4) No right of appeal exists in respect of the decision to terminate the investigation.

Art. 44

Opening of disciplinary proceedings

- 1) The investigating officer shall report the findings of his investigations to the professional ethics committee and request the opening of disciplinary proceedings.
- 2) The professional ethics committee shall decide immediately without a verbal hearing, whether disciplinary proceedings are to be opened or to be terminated for a reason listed in Art. 42. The decision to bring proceedings must also include the appointment of an investigator. There is no right of appeal against decision to open or terminate proceedings.
- 3) The investigator shall conduct further investigations within the disciplinary proceedings.

Art. 45

Referral for verbal hearing or termination of the disciplinary proceedings

- 1) Upon conclusion of the investigation the investigator shall submit a report to the professional ethics committee on the results of the

investigation and an application for referral to a verbal hearing or for discontinuation of the disciplinary proceedings.

2) The professional ethics committee shall decide without a verbal hearing, whether the case is to be referred to a verbal hearing or whether the disciplinary proceedings are to be discontinued for a reason listed in Art. 42. The decision to terminate shall be delivered to the investigating officer and the person concerned.

3) The referral decision shall specifically list the allegations and indicate the arrangements to be made in preparation for the verbal hearing.

4) There is no right of appeal against referral and termination decisions.

Art. 46

Verbal hearing

1) The time and place of the verbal hearing shall be determined by the Chairman of the professional ethics committee. The person concerned and his legal representative, if he has one, are to be summoned to the verbal hearing, with a reference being made to the referral decision and notification of the members of the professional ethics committee at least two weeks beforehand.

2) The proceedings are not held in public.

3) Deliberations and ballots shall be secret.

Art. 47

Disciplinary decision

1) The disciplinary decision of the professional ethics committee shall either acquit the person concerned or pronounce them guilty. If a disciplinary penalty is imposed, the decision shall also pronounce on the penalty.

2) In the event of a guilty verdict the committee may also decide not to impose a penalty, if from the circumstances of the case and on the basis of the personality of the person concerned it can be assumed that the pronouncement of a guilty verdict alone will be sufficient to deter him from further disciplinary offences.

3) The disciplinary decision is to be announced together with the reasons for the decision once the verbal hearing has been concluded and is to

be delivered to the person concerned and the investigating officer within four weeks.

4) The professional ethics committee shall inform the FMA and the Liechtenstein Institute of Professional Trustees and Fiduciaries of its decision in writing. The Institute of Professional Trustees and Fiduciaries shall be bound by an obligation of confidentiality.

Art. 48

Enforcement of the decision

1) Legally enforceable decisions of the professional ethics committee are enforcement orders such as defined in the Enforcement Regulation.

2) If a person actually engaged in the management of a trust company is so penalised, the trust company concerned shall be jointly and severally liable for fines and the costs of the proceedings.

Art. 49

Costs borne by third parties

Any person who maliciously reports a trustee or a person actually engaged in the management of a trust company for a disciplinary offence may be compelled by the professional ethics committee to pay all or some of the costs of the disciplinary proceedings.

Art. 50

Additional procedural regulations

Unless provided otherwise by this Law and insofar as the application of the provisions of the Code of Criminal Procedure is compatible with the principles and particular aspects of the disciplinary proceedings, the provisions of the Code of Criminal Procedure shall apply to the disciplinary proceedings *mutatis mutandis*.

VII. Organisation and implementation

A. General

Art. 51

Competent bodies

The following bodies shall be responsible for the implementation of this Law:

- a) the FMA;
- a^{bis}) the auditor or the audit company;⁴⁶
- b) the Liechtenstein Institute of Professional Trustees and Fiduciaries;
- c) the disciplinary bodies;
- d) the Examining Board for Trustees.

Art. 52⁴⁷

Processing of personal data

1) The FMA and the other competent domestic authorities and agencies may process personal data, including personal data concerning criminal convictions and offences of persons falling within the remit of this Law, or give instructions for such data to be processed, insofar as this is necessary for the performance of their duties under this Law.

2) The obligation of the Institute of Professional Trustees and Fiduciaries to inform and communicate under Art. 14 and 34 of Regulation (EU) 2016/679 and the right of the person concerned to receive information from the Institute of Professional Trustees and Fiduciaries under Art. 15 of Regulation (EU) 2016/679 do not apply, insofar as the fulfilment of such duties would involve the disclosure of information that, on account of overriding legitimate interests of the Institute of Professional Trustees and Fiduciaries or third parties must remain confidential. Art. 33 Para. 2 and Art. 34 Para. 2 of the Data Protection Act shall apply *mutatis mutandis*.

⁴⁶ Art. 51 abis) inserted by LGBL 2020 no. 152.

⁴⁷ Art. 52 amended by LGBL 2018 no. 313.

Art. 53

Official secrecy

1) The entities responsible for the implementation of this Law and any other persons engaged by them shall be bound by official secrecy for a period unlimited in time with respect to confidential information of which they become aware in the course of their official business.

2) The information subject to official secrecy may not be disclosed. Provisions of criminal law and particular statutory provisions are reserved.

B. FMA**1. Duties and powers**

Art. 54

Duties

1) The FMA shall be responsible for the supervision of trustees and trust companies. It is responsible in particular for:

- a) the granting, revocation and withdrawal of authorisations;
- b) verifying that the conditions for authorisation have been complied with and conducting appropriate checks;
- c) admission to the trustee examination, the additional examination and the qualifying examination;
- d) keeping a register of authorised trustees and trust companies;
- e) cooperation with Liechtenstein and foreign authorities;
- f) disciplinary action for infringements referred to in Art. 81;
- g) verification of the audit report referred to in Art. 61b (3).⁴⁸

2) The FMA may engage the services of third parties in order to ensure performance and fulfilment of its functions. The third parties engaged are released from the obligation of confidentiality towards the FMA.

⁴⁸ Art. 54 (1) g) inserted by LGBL 2020 no. 152.

Art. 55

Powers

1) The FMA may take the measures that are necessary for the performance of its supervisory and control duties.

2) It may in particular:

- a) request trustees and trust companies and their employees to submit all information and documentation required for the execution of this Law;
- b) request the cessation of a practice that is in contravention of this Law or ordinances issued in connection with it;
- c) impose a fixed-term ban on practising as a trustee or trust company;
- d) request the dismissal of a natural person from the executive body of the trust company;⁴⁹
- e) issue decisions and orders.⁵⁰

3) If the FMA is informed of contraventions of this Law or other abuses it will take the necessary measures to restore the legitimacy of the situation and redress the abuses.

4) The FMA is empowered, in the event of suspicion of a violation of provisions of this Law, the existence of indications of such violation or for the protection of clients, to inspect the business premises of trustees and trust companies, or have them inspected (on-site inspection). Any costs arising from such action are to be borne by the trustee or the trust company if a violation of supervisory regulations is found to have occurred; in all other cases the costs are to be borne by the state.

5) If there are grounds for assuming that an activity governed by this Law is being performed without authorisation, the FMA may demand information and documentation from the persons concerned and third parties, as if persons subject to the Law were involved.

6) The FMA may inform the public in an appropriate manner that a named person or a company is not authorised to practice a profession under this Law.

⁴⁹ Art. 55 (2) d) inserted by LGBL 2020 no. 152.

⁵⁰ Art. 55 (2) e) inserted by LGBL 2020 no. 152.

Art. 56

Supervisory fees and charges

The supervisory fees and charges are governed by financial market supervisory legislation.

2. Cooperation with Liechtenstein authorities and the Liechtenstein Institute of Professional Trustees and Fiduciaries

Art. 57

Basic principle

1) In the course of its supervision the FMA shall work together with Liechtenstein authorities, the Liechtenstein Institute of Professional Trustees and Fiduciaries and the professional ethics committee to the extent that this is required for the performance of its duties.⁵¹

2) The competent authorities and agencies shall transmit data to one another in accordance with Art. 52, insofar as this is necessary for the performance of their duties.⁵²

Art. 58

Cooperation of the Courts and the Public Prosecution Service with the FMA

1) The Courts shall communicate all decisions of a disciplinary or criminal nature or decisions relating to enforcement and insolvency, that it requires for the performance of its duties under this Law, to the FMA without being asked to do so. They shall inform the FMA of the initiation of relevant proceedings.⁵³

2) The Public Prosecution Service shall inform the FMA of the opening and discontinuation of criminal proceedings and provide information concerning these proceedings.

⁵¹ Art. 57 (1) amended by LGBl. 2020 no. 152.

⁵² Art. 57 Para. 2 inserted by LGBl. 2018 no. 313.

⁵³ Art. 58 (1) amended by LGBl. 2020 no. 152.

3) The FMA shall give the Public Prosecution Service and the Court the information they require for the performance of their duties as a matter of course or on request.

Art. 59

*Cooperation of the Office of Justice with the FMA*⁵⁴

1) The FMA shall inform the Office of Justice of the granting, revocation, expiry and withdrawal of the authorisation and of any fixed-term ban on practicing as a trustee or trust company.

2) The Office of Justice shall ex officio or on request communicate all records and information to the FMA that it requires for the performance of its functions under this Law.⁵⁵

3. Cooperation with foreign authorities

Art. 60

Basic principle

1) The FMA shall provide a competent foreign authority with mutual administrative assistance or may for its part request mutual administrative assistance from a competent foreign authority to the extent that this is required for the execution of this Law.

2) The mutual administrative assistance shall consist of all information and documentation that is required for the exercise of the supervisory function in respect of trustees and trust companies, as well as persons who ought to have an equivalent authorisation.

3) As part of its supervisory function the FMA may supply information to competent foreign authorities if:

- a) the information requested can be demonstrated as necessary for the supervisory duties of the requesting foreign authority;
- b) it is not detrimental to sovereignty, security, public order or other essential national interests;

⁵⁴ Art. 59 Subject heading amended by LGBL 2020 no. 152.

⁵⁵ Art. 59 (2) inserted by LGBL 2020 no. 152.

- c) the recipients and/or the persons employed by or acting for the competent foreign authority are subject to an equivalent obligation of confidentiality;
- d) there is a guarantee that the information supplied will only be used for matters of financial market supervision;
- e) the information is only communicated for the purposes that have already been approved by the FMA beforehand in writing; and
- f) the information is only passed on for purposes to which the FMA has consented in writing beforehand; and in the case of information originating abroad there is an express consent from the authority that communicated this information and it is guaranteed that it is only passed on for the purpose to which this authority has expressly consented.

4) Art. 26b FMAG shall apply to cooperation with foreign authorities in other respects, without prejudice to Art. 61 of this Act.⁵⁶

Art. 61

Mutual assistance without formal proceedings

1) Information as defined in Art. 5, 6, 14, 19, 23 to 25 and 47 Para. 4 may on the conditions referred to in Art. 60 Para. 3 be communicated without formal proceedings.

2) The information referred to in Para. 1 may also be communicated without formal proceedings if the relevant proceedings have not yet been concluded with legally binding force; the FMA expressly refers the requesting foreign authority to this circumstance.

3) The FMA shall inform the person concerned immediately of the disclosure of information in accordance with Para. 1 or 2.

⁵⁶ Art. 60 Para. 4 amended by LGBL 2018 no. 313.

B^{bis}. Auditor and audit company⁵⁷Art. 61a⁵⁸*Appointment*

Trustees and trust companies shall appoint an auditor or an audit company that is authorised under the Auditing Act or registered under Art. 69 of the Auditing Act.

Art. 61b⁵⁹*Functions*

1) Auditors and audit companies shall verify in particular:

- a) on-going fulfilment of the authorisation conditions;
- b) compliance with professional obligations, with exception of the obligations mentioned in Art. 20;
- c) the financial report consisting of the annual financial statements and annual report.

2) Art. 21 shall apply accordingly to the obligation of confidentiality of auditors and audit companies.

3) The result of the audits referred to in (1) shall be summarised in a written audit report which must be submitted to the FMA within six months from the end of the financial year at the latest.

Art. 61c⁶⁰*Disclosure and reporting requirements*

1) Auditors and audit companies must inform the FMA immediately and in writing of all facts and decisions of which they become aware in the performance of their functions and which in particular:

⁵⁷ Heading before Art. 61a inserted by LGBL 2020 no. 152.

⁵⁸ Art. 61a inserted by LGBL 2020 no 152.

⁵⁹ Art. 61b inserted by LGBL 2020 no. 152. Art. 61b applies for the first time to the financial years commencing after 31 December 2020.

⁶⁰ Art. 61c inserted by LGBL 2020 no. 152. Art. 61c applies for the first time to the financial years commencing after 31 December 2020.

- a) might represent a violation of the authorisation conditions;
- b) might represent a violation of the professional duties, with the exception of the obligations referred to in Art. 20;
- c) might implicate a person entrusted with the management or administration of a trust company in a criminal offence; or
- d) might lead to the audit report being qualified, withheld or not issued at all.

2) If in the course of the audit the auditors or audit company establish violations of the code of practice, they shall report these to the professional ethics committee.

3) Complaints and objections must in any case be included in the audit report to be drawn up in accordance with this Law.

4) Whoever as an auditor or an audit company gives reports as referred to in (1) and (2) in good faith, does not violate any contractual or statutory obligation of confidentiality and is released from any liability in connection therewith.

C. Liechtenstein Institute of Professional Trustees and Fiduciaries

Art. 62

Composition and legal form

1) The Liechtenstein Institute of Professional Trustees and Fiduciaries (Institute of Trustees) is made up of authorised trustees and trust companies.

2) The Institute of Professional Trustees and Fiduciaries is a corporation under public law. It shall be subject to the ultimate supervision of the Government for the preservation of legitimacy.

Art. 63

Duties

1) The function of the Institute of Professional Trustees and Fiduciaries is to protect the reputation and the rights and supervise performance of the duties of trustees.

2) The Institute of Professional Trustees and Fiduciaries shall conduct its business through its managing board, provided that such business is not expressly reserved for the plenary assembly.

Art. 64

Plenary assembly

- 1) The following matters are reserved for the plenary assembly:
- a) election of the Chairman, the Vice-Chairman and other members of the Managing Board;
 - b) election of auditors;
 - c) election of members and substitute members of the professional ethics committee and the investigating officer;
 - d) issue of rules of procedure;
 - e) determination of the annual contributions to be paid by members of the Institute in order to meet administrative costs;
 - f) approval of the budget, income and expenditure;
 - g) approval of the annual accounts;
 - h) the issue of professional standards;
 - i) the issue of other guidelines.

2) The plenary assembly shall have a quorum if at least one quarter of the members of the Institute are present. It shall pass its resolutions with a simple majority.

3) The rules of procedure of the Institute of Professional Trustees and Fiduciaries require government approval in order to be legally valid.

Art. 65

Managing board

1) The managing board of the Institute of Professional Trustees and Fiduciaries shall consist of at least five members.

2) The Chairman, Vice-Chairman and other members of the managing board shall be elected from the ranks of the Institute members with the absolute majority of votes of those present. The period of office shall be three years. Re-election is permitted.

3) The remit of the managing board shall include:

- a) contacts with authorities, in particular the FMA, and third parties;
- b) the prescription and collection of the annual contributions payable by Institute members;
- c) settlement of disputes between Institute members;
- d) preparation of the business agenda and convocation of the plenary assembly;
- e) implementation of the resolutions of the plenary assembly;
- f) making proposals for laws and issuing opinions on bills;
- g) appointment of a member of the Examining Board for Trustees;
- h) organisation of educational and training events or collaboration with other organisers of such events;
- i) collaboration with foreign trustee organisations.

Art. 66

Membership contributions and determination of contributions

- 1) Trustees and trust companies shall pay a fixed membership contribution every year.
- 2) The membership contribution for trust companies consists of:
 - a) a fixed annual contribution; and
 - b) a variable annual contribution based on the number of employees.
- 3) The legally enforceable determination of contributions represents an enforcement order as defined in the Enforcement Regulation.

Art. 67

Publications of the Institute of Professional Trustees and Fiduciaries

The rules of procedure of the Institute of Professional Trustees and Fiduciaries and its professional standards are to be published on its website.

D. Disciplinary bodies

Art. 68

Disciplinary bodies

The bodies involved in the disciplinary proceedings are:

- a) the professional ethics committee;
- b) the investigating officer.

Art. 69

Appointment of the professional ethics committee and the investigating officer

1) The plenary assembly of the Institute of Professional Trustees and Fiduciaries shall appoint the following for a period of three years:⁶¹

- a) a professional ethics committee from its own membership;
- b) an investigating officer who meets the conditions set out in Art. 5 Para. 1 a) to d).

2) The professional ethics committee is made up of one Chairman and two associates and three substitute members.

3) If the professional ethics committee cannot exercise its functions for reasons of exclusion or rejection (Art. 40), the managing board of the Institute of Professional Trustees and Fiduciaries shall appoint other substitute members from the category of persons referred to in Para. 1 a) for an actual case.⁶²

4) The members of the Institute of Professional Trustees and Fiduciaries are obliged to accept their election to the professional ethics committee and as investigating officers.⁶³

⁶¹ Art. 69 (1) Introductory sentence amended by LGBl. 2020 no. 152.

⁶² Art. 69 Para. 3 amended by LGBl. 2014 no. 278.

⁶³ Art. 69 Para. 4 amended by LGBl. 2014 no. 278.

Art. 70

Resolutions of the professional ethics committee

The professional ethics committee makes a decision with a majority of votes with the composition of its Chairman, an associate and the investigator.

Art. 71

Duties of the professional ethics committee

1) The professional ethics committee shall rule in the disciplinary proceedings. It is responsible for the imposition of disciplinary penalties and the order of provisional measures.

2) For individual disciplinary proceedings the professional ethics committee shall appoint an investigator from its ranks, who shall be responsible for the direction of the proceedings.

3) The professional ethics committee may act autonomously and without being bound by instruction in the exercise of its duties.

Art. 72

Duties of the investigating officer

1) The investigating officer is responsible for the acceptance of reports.

2) He shall perform the function of a prosecutor in the professional ethics committee.

Art. 73

Cooperation with the courts and administrative authorities

1) The professional ethics committee shall work together with the courts and administrative authorities insofar as this is necessary for the performance of its duties.

2) The courts and administrative authorities shall inform the professional ethics committee of the opening of criminal or supervisory proceedings; such provision of information may be deferred if the notification of opening of proceedings might complicate the investigation.

3) If on account of a circumstance on which disciplinary proceedings are based, criminal court proceedings or proceedings before the FMA are pending or such proceedings are concluded, the professional ethics committee shall have the right to consult the relevant procedural files.

E. Examining Board for Trustees

Art. 74

Appointment and duties

1) The Examining Board for Trustees shall be appointed by the Government every four years. It shall consist of five members and the same number of substitute members. It shall include a Judge of the Princely Court of Justice, a trustee, an auditor, a tax expert and an asset manager. The Chairman shall be appointed by the Government.

2) The members of the Examining Board shall be independent in the performance of their duties.

3) The Examining Board shall be responsible for conducting the trustee examination, the additional examination and the qualifying examination.

4) The Government shall settle more specific details by ordinance.

VIII. Legal remedy and out-of-court settlement of disputes

A. Legal remedy

Art. 75

Appeal against FMA decisions

1) An appeal may be lodged against decisions and rulings of the FMA with the FMA Complaints Committee within 14 days from service.

2) An appeal may be lodged against decisions and rulings of the FMA Complaints Committee with the Liechtenstein Administrative Court within 14 days from service.

Art. 76

Appeal against decisions of the professional ethics committee

1) Unless otherwise specified in this Law, an appeal may be lodged against a decision of the professional ethics committee with the Liechtenstein Court of Appeal by the person concerned or the investigating officer within 14 days from service.

2) Appeals against decisions referred to in Para. 1 shall have a suspensive effect, unless the professional ethics committee specifies otherwise in the public interest.

Art. 77

Appeal against decisions of the managing board of the Institute of Professional Trustees and Fiduciaries

1) Appeals may be lodged with the Government against decisions and orders of the managing board of the Institute of Professional Trustees and Fiduciaries within 14 days from service.

2) Appeals may be lodged with the Administrative Court against decisions of the Government within 14 days from service.

Art. 78

Appeal against decisions of the Examining Board

1) Appeals may be lodged with the Government against decisions of the Examining Board for Trustees within 14 days from service.

2) Appeals may be lodged with the Administrative Court against decisions of the Government within 14 days from service.

3) The review powers of the Government and the Administrative Court are restricted to points of law and material issues. The judgement shall be reviewed exclusively in legal terms.

B. Out-of-court settlement of disputes

Art. 79

Extrajudicial conciliation board

- 1) The Government shall appoint a conciliation board by ordinance for the settlement of disputes between clients and trustees or trust companies.
- 2) The conciliation board shall have the function of mediating between the parties in disputes in an appropriate manner and thus bring about an agreement between the parties.
- 3) If no agreement can be reached between the parties they are to be referred to the ordinary legal channels.
- 4) The Government shall settle more specific details, in particular the organisational structure, composition and procedures, by ordinance.

IX. Criminal sanctions

Art. 80

Offences

- 1) Any person conducting an activity referred to in Art. 2 on a commercial basis without authority shall be punished in respect of an offence by the Princely Court of Justice with a custodial sentence of up to one year or a fine of up to 360 daily units.
- 2) The following shall be penalised for an offence by the Princely Court of Justice with a custodial sentence of up to six months or a fine of up to 180 daily units: any person who:⁶⁴
 - a) uses the professional title "trustee" or an equivalent professional or commercial designation or a professional or commercial designation or business name not approved by the FMA;
 - b) as auditor or audit company is in gross violation of the obligations mentioned in Art. 61b and 61c, in particular makes untrue statements

⁶⁴ Art. 80 (2) amended by LGBl. 2020 no. 152.

or withholds essential facts in the audit report or does not produce the prescribed reports and notifications.

3) If an offence is committed through negligence the upper limits of the relevant penalties shall be reduced by half.

4) The penalty does not remove the obligation of meeting the conditions and requirements imposed by this Law and the particular provisions.

5) The responsibility of legal persons for offences is governed by §§ 74a et seq. StGB (Criminal Code).⁶⁵

Art. 81

Infringements

1) The FMA will impose fines of up to 100,000 Swiss Francs for the following infringements:

- a) failure to comply with reporting obligations, approval requirements, duty of notification and duty of disclosure to the FMA or other contracted third parties, partial non-compliance, or failure to comply with the prescribed time limit (Art. 22, 32 and 34);⁶⁶
- b) failure to comply with an order to restore the lawful state of affairs or another order of the FMA, partial non-compliance, or failure to comply with the prescribed time limit;⁶⁷
- c) failure to comply with an order for cooperation with the FMA's investigation or mutual administrative assistance proceedings;
- d) failure to comply with conditions or requirements associated with the granting of authorisation;
- e) failure to keep proper accounting records or to retain accounting records or vouchers;⁶⁸
- f) violation of the provisions concerning conflicts of interest (Art. 21a);⁶⁹
- g) violation of the provisions concerning outsourcing (Art. 21b);⁷⁰

⁶⁵ Art. 80 (5) inserted by LGBL 2020 no. 152.

⁶⁶ Art. 81 (1) a) amended by LGBL 2020 no. 152.

⁶⁷ Art. 81 (1) b) amended by LGBL 2020 no. 152.

⁶⁸ Art. 81 (1) e) inserted by LGBL 2020 no. 152.

⁶⁹ Art. 81 (1) f) inserted by LGBL 2020 no. 152.

⁷⁰ Art. 81 (1) g) inserted by LGBL 2020 no. 152.

- h) violations of the provisions concerning governance (Art. 22a), internal controls (Art. 22b) and risk management (Art. 22c);⁷¹
- i) failure to have an external audit properly conducted or a control prescribed by the FMA or failure to meet its obligations vis-à-vis the auditor or audit company (Art. 22e);⁷²
- k) provision of a service referred to in Art. 2 on a commercial basis without authority.⁷³

2) The penalty does not remove the obligation to comply with the conditions and requirements imposed by this Law and the special provisions.

3) The FMA shall impose the fines mentioned in (1) on a legal person if the infringement is committed in the exercise of the business activities of the legal person (predicate offence) by persons, either acting alone or as a member of the board of directors, the executive management, the managing board or supervisory board of the legal person or on the basis of another management position within the legal person or on the basis of rights of representation or contractual authority, on the basis of which they:⁷⁴

- a) are authorised to represent the legal person externally;
- b) exercise powers of control in a managerial position; or
- c) otherwise exercise material influence over the management of the legal person.

4) The legal person referred to in (1) shall only be deemed culpable if it has omitted to take the necessary and reasonable action to prevent such predicate offences via the persons referred to in (3).⁷⁵

5) The responsibility of the legal person for the predicate offence and the culpability of the persons referred to in (3) for the same offence are not mutually exclusive. The FMA may refrain from penalising a natural person if a fine has already been imposed on the legal person for the same infringement and there are no special circumstances to exclude a waiver of the penalty.⁷⁶

6) If an offence is committed through gross negligence the upper limit of the penalty referred to in (1) is reduced by half.⁷⁷

⁷¹ Art. 81 (1) h) inserted by LGBL 2020 no. 152.

⁷² Art 81 (1) i) inserted by LGBL 2020 no. 152.

⁷³ Art. 81 (1) k) inserted by LGBL 2020 no. 152.

⁷⁴ Art. 81 (3) inserted by LGBL 2020 no. 152.

⁷⁵ Art. 81 (4) inserted by LGBL 2020 no. 152.

⁷⁶ Art. 81 (5) inserted by LGBL 2020 no. 152.

⁷⁷ Art. 81 (6) inserted by LGBL 2020 no. 152.

Art. 82

Statute of limitations

Prosecutions shall be statute-barred after three years.

Art. 83

Liability

If contraventions are committed within the business operation of a legal entity, a general partnership or limited partnership, the criminal provisions shall apply to the persons who acted or should have acted for it, but with joint and several liability of the legal entity or the partnership for financial penalties and fines.

X. Transitional and concluding provisions

Art. 84

Implementation ordinances

The Government shall issue the ordinances required for implementation of this Law.

Art. 85

Repeal of previous law

The following are repealed:

- a) Act of 9th December 1992 on Trustees (Trustee Act; TrHG), LGBL (Liechtenstein Legal Gazette) 1993 No. 42;
- b) Act of 14th September 1994 concerning the amendment of the Act on Trustees, LGBL 1994 No. 66;
- c) Act of 16th December 1994 concerning the amendment of the Act on Trustees, LGBL 1995 No. 24;
- d) Act of 23rd March 1995 concerning the amendment of the Act of 9th December 1992 on Trustees, LGBL 1995 No. 107;
- e) Act of 31st October 1995 concerning the amendment of the Act on Trustees, LGBL 1995 No. 230;

- f) Announcement of 10th June 1997 of the revocation of the provisions of the Act of 9th December 1992 on Trustees by the decision of the State Court of the Principality of Liechtenstein of 24th April 1997 (StGH 1996/35), LGBL. 1997 No. 121;
- g) Act of 21st October 1999 concerning the amendment of the Act on Trustees, LGBL. 1999 No. 241;
- h) Act of 22nd November 2002 concerning the amendment of the Act on Trustees, LGBL. 2003 No. 22;
- i) Act of 18th June 2004 concerning the amendment of the Act on Trustees, LGBL. 2004 No. 185;
- k) Act of 25th November 2005 concerning the amendment of the Act on Trustees, LGBL. 2005 No. 282;
- l) Act of 26th April 2007 concerning the amendment of the Act on Trustees LGBL. 2007 No. 156;
- m) Act of 23rd May 2007 concerning the amendment of the Act on Trustees, LGBL. 2007 No. 178;
- n) Act of 29th May 2008 concerning the amendment of the Trustee Act, LGBL. 2008 No. 193;
- o) Act of 20th October 2010 concerning the amendment of the Trustee Act, LGBL. 2010 No. 391.

Art. 86

Rights and authorisations under previous law

1) All authorisations granted and all rights provided under previous law shall be upheld subject to Para. 2.

2) Persons holding an authorisation under the previous law, but who are not practising their profession upon entry into force of this Law, shall submit evidence of conclusion of liability insurance or another financial security as defined in Art. 11 within a time limit of three years. If this time limit is not observed, the authorisation will lapse.

3) Persons, who upon entry into force of this Law are performing the function of manager of a trust company shall continue to be authorised to practice their profession as a person actually engaged in the management of a trust company.

4) Existing liability insurance policies are to be adjusted to the provisions of Art. 11 within six months from entry into force of this Law. If the

time limit is not observed the authorisation will lapse. The FMA may extend the time limit appropriately on request if circumstances warrant.

Art. 87

Reporting obligation

1) Qualifying holdings must be reported to the FMA in writing within one year from entry into force of this Law, stating the amount of the holding and the holder of the holding.

2) Business activities that at the time of entry into force of this Law are performed in the form of a foreign representative office, branch or subsidiary as referred to in Art. 34 are to be reported to the FMA in writing within one year from entry into force of this Law.

3) The reporting obligation and duty of disclosure pursuant to Art. 22 shall also apply to criminal and supervisory proceedings that are pending at the time of entry into force of this Law.

Art. 88

Disciplinary proceedings under previous law

Previous law shall apply to disciplinary proceedings that were opened prior to the entry into force of this Law or proceedings that are opened by 1st January 2015.

Art. 89

Entry into force

1) Provided that the referendum deadline expires unutilised and subject to Para. 2 this Law shall enter into force on 1st January 2014, otherwise on the day after the announcement.

2) Art. 35 to 50 and 68 to 73 and 76 shall enter into force on 1st January 2015.

By proxy for the Prince of Liechtenstein:
signed *Alois*
Hereditary Prince

signed *Adrian Hasler*
Head of the Princely Gov-
ernment

Transitional provisions

173.520 Trustee Act (TrHG)

Liechtenstein Legal Gazette

2018

no. 212

issued on 2 November 2018

Law
of 6 September 2018
amending the Trustee Act

...

II.
Transitional provision

Licences granted and authorisations provided for under the previous law shall remain in force.

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Liechtenstein Legal Gazette

2020

no. 152

issued on 28 April 2020

Law
of 5 March 2020
amending the Trustee Act

...

II.**Transitional provisions**

1) Trustees and trust companies that at the time of entry into force of this Act hold an authorisation under the previous law have until 1 January 2021 to provide evidence of the appointment of an auditor or an audit company in accordance with Art. 5 (1) i) and Art. 14 (1) h).

2) Until the entry into force of the Auditing Act (WPG) of 5 December 2018⁷⁸ auditors and audit companies (auditing firms) that hold an authorisation under the Act of 9 December 1992 on auditors and auditing companies (WPRG) may be appointed to conduct the external audit.

3) The provisions on accounting and reporting pursuant to Art. 22d and 22e, as well as 61b and 61c shall apply for the first time to the financial years that commence after 31 December 2020.

4) The previous law shall apply to pending proceedings.

⁷⁸ LGBl. 2019 no. 17.

III.**Entry into force**

1) Subject to (2) and the referendum deadline having expired unutilised, this Law shall come into force on 1 July 2020, otherwise on the day after the promulgation.

2) Art. 21a (1) b), Art. 21b and Art. 22a to 22c enter into force on 1 January 2021.

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