

Translation of Liechtenstein Law

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Electronic Money Act (EGG)

of 17 March 2011

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

I. General provisions

Article 1

Object and purpose

1) This Act governs the taking up, pursuit, and supervision of the business of electronic money institutions and aims to protect those involved in electronic money business and to safeguard confidence in the Liechtenstein financial market.

2) It also serves to transpose Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7; EEA Compendium of Laws: Annex IX-15.01).

Article 2

Scope

1) This Act applies to the issuance on a professional basis of electronic money by electronic money issuers.

¹ Report and Motion of the Government No. 133/2010 and Opinion of the Government No. 6/2011

- 2) It does not apply to monetary value:
- a) stored on instruments as referred to in Article 2(4)(l) of the Payment Services Act; and
 - b) used for payment transactions as referred to in Article 2(4)(m) of the Payment Services Act.
- 3) The provisions set out in Chapter II do not apply to electronic money issuers as referred to in points 2 to 6 of Article 3(1)(c).

Article 3

Definitions and designations

- 1) For the purposes of this Act, the following definitions shall apply:
- a) "electronic money institution" means a legal person that – without falling within the scope of points 2 to 6 of subparagraph (c) – is entitled under Article 4 or in its home Member State under Article 3 of Directive 2009/110/EC to issue electronic money within the European Economic Area;²
 - b) "electronic money" means electronically or magnetically stored monetary value as represented by a claim on the electronic money issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in Article 3(1)(28) of the Payment Services Act, and which is accepted by a natural or legal person other than the electronic money issuer;
 - c) "electronic money issuers" mean
 1. electronic money institutions;
 2. banks;
 3. postal institutions entitled to issue electronic money under the Postal Act or under the law of their home Member State;
 4. the European Central Bank and other central banks in the European Economic Area (EEA) when not acting in their capacity as monetary authority or other public authorities;
 5. the State, the municipalities, municipal associations, and the public administration or corresponding local authorities under public law of EEA Member States when acting in their capacity as public authorities; and

² Article 3(1)(a) amended by LGBL 2019 No. 106.

6. branches as referred to in Article 24;³
- d) "average outstanding electronic money" means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six months, calculated on the first calendar day of each month and applied for that month;
 - e) "agent" means a natural or legal person which provides payment services as referred to in Article 5(2)(a) on behalf of an electronic money institution;
 - f) "customer" means a person in a pre-contractual or contractual relationship with an electronic money issuer;
 - g) "electronic money services" means the issuance of electronic money by electronic money issuers and, in relation to electronic money institutions, the provision of services under Article 5(2);
 - h) "host Member State" means either of the following:
 - 1. the EEA Member State in which the registered office of the electronic money institution is situated, or
 - 2. if the electronic money institution has, under its national law, no registered office, the EEA Member State in which its head office is situated;
 - i) "host Member State" means the EEA Member State other than the home Member State in which an electronic money institution has an agent or a branch or provides electronic money services.

2) The definitions contained in the applicable EEA rules, in particular Directive 2009/110/EC, shall apply *mutatis mutandis*.

3) The designations used in the Act to denote persons and functions include persons of male and female gender.

³ Article 3(1)(c)(6) amended by LGBL 2017 No. 410.

II. Electronic money institutions

A. Licensing

Article 4

Licensing requirement

Anyone intending to issue electronic money as a business activity in Liechtenstein requires a licence as an electronic money institution issued by the Financial Market Authority (FMA). The issuance of electronic money as a business activity may begin only after receipt of this licence. This article is subject to Articles 24, 26, and 30.

Article 5

Scope of licence

1) The licence is valid in all EEA Member States and entitles the electronic money institution concerned to issue electronic money on the basis of the freedom to provide services or the freedom of establishment within the EEA.

2) In addition to issuing electronic money, the following activities are covered by the licence:

- a) the provision of payment services as set out in Article 3(1)(20) of the Payment Services Act. The provisions of Article 8(3) and (5) of the Payment Services Act shall apply *mutatis mutandis* to funds received in connection with this activity and not related to the issuance of electronic money;
- b) the granting of credit related to payment services referred to in points 20(d), (e), and (g) of Article 3(1) of the Payment Services Act. Credits granted in this context may not be granted from funds received for the issuance of electronic money or from funds held under Article 11;
- c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the payment services referred to in point (a);
- d) the operation of payment systems as defined in Article 3(1)(27) of the Payment Services Act; or
- e) business activities that do not consist in the issuance of electronic money, provided that no other legal provisions are violated as a result.

3) Electronic money institutions may not take deposits or other repayable funds from the public within the meaning of Article 3 of the Banking Act.

4) Any funds received by electronic money institutions from their customers shall be exchanged for electronic money without delay, unless such funds consist in compensation for other electronic money services. Such funds shall not constitute either a deposit or other repayable funds received from the public within the meaning of Article 3 of the Banking Act.

Article 6

Application

1) Anyone intending to act as an electronic money institution must apply in writing to the FMA.

2) By ordinance, the Government shall set out what information and evidence must accompany the application in regard to the programme of operations, the business plan including a forecast budget calculation, initial capital as set out in Article 8, persons with qualifying holdings under Article 9, safeguarding requirements as set out in Article 11, corporate governance and internal control mechanisms, organisational structure, general management, audit office, legal form and articles of association, and address of head office.

3) The electronic money institution shall without delay notify the FMA of any changes to facts referred to in paragraph 2.

Article 7

Licensing conditions and granting of the licence

- 1) The licence as an electronic money institution shall be granted if:
- a) the applicant is a legal person;
 - b) the registered office and the head office are situated in Liechtenstein;
 - c) sound and prudent management of an electronic money institution is ensured, the electronic money institution has robust governance arrangements for its electronic money business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound

administrative and accounting procedures; those arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the electronic money services provided by the electronic money institution;

- d) the persons with qualifying holdings under Article 9 satisfy the requirements to ensure the sound and prudent management of an electronic money institution, and there are no facts giving rise to doubts regarding the personal reliability of these persons;
- e) any close links between the electronic money institution and other natural or legal persons as defined in Article 4(1)(38) of Regulation (EU) No 575/2013 do not prevent effective supervision;⁴
- f) the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the electronic money institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent effective supervision;
- g) initial capital as set out in Article 8 is freely available in Liechtenstein; and
- h) the information and evidence submitted with the application meet the requirements referred to in Article 6.

2) Before a licence is granted, the FMA may, where relevant, consult other competent public authorities.

3) Within three months of receipt of an application or, should the application be incomplete, of all the information required for the licence, the FMA must either grant the licence to the applicant or communicate in writing and with reasons that the application has been refused.

4) The licence may be granted subject to terms and conditions and be restricted to individual electronic money services. Where an electronic money institution provides not only electronic money services, the FMA may require the establishment of a separate entity for the electronic money business, where the non-electronic money business of the electronic money institution impairs or is likely to impair either the financial soundness of the electronic money institution or the ability of the FMA to monitor the electronic money institution's compliance with all obligations laid down by this Act.

5) At the same time as it grants the licence, the FMA must arrange entry of the electronic money institution and the authorised electronic

⁴ Article 7(1)(e) amended by LGBL 2014 No. 351.

money services in the Electronic Money Institutions Register (Article 36).

Article 8

Capital and initial capital

1) The initial capital is composed of the paid-up capital (with the exception of cumulative preference shares), including any issue premiums and any reserves and any profit brought forward, and must be fully paid-up.

2) The initial capital shall be no less than 350 000 euros or the equivalent in Swiss francs.

3) In justified cases, the FMA may order tighter requirements provided they do not contradict EEA legislation.

4) The initial capital referred to in paragraph 2 at the same time constitutes the amount of the electronic money institution's capital that the electronic money institution must maintain at all times.

5) The Government may provide further details by ordinance.

6) The conversion of the amount in paragraph 2 shall be based on the reference rates set by the European Central Bank.

Article 9

Qualifying holdings

1) Subject to paragraphs 2 and 3, the provisions of the Banking Act, in particular Article 26a of the Banking Act, shall apply to qualifying holdings.

2) Where the influence of the persons with potential or actual qualifying holdings has a negative impact on the prudent and sound management of the electronic money institution, the FMA shall express its opposition or take other appropriate measures to counter that impact.

3) If a holding is acquired or sold despite the opposition of the FMA, the FMA may, regardless of any other measures, provide for suspension of the exercise of voting rights, the nullity of votes cast, or the annulment of those votes.

B. Performance of business activities

Article 10

Own funds

1) Electronic money institutions must always have sufficient own funds at their disposal. A level of own funds which is at least as high as the sum of the requirements set out in paragraphs 2 to 4 shall be regarded as sufficient.

2) The required own funds may at no time fall below the amount set out in Article 8(2) and calculated in accordance with the following paragraphs.

3) On the basis of an evaluation of the risk management processes, risk loss databases, and internal control mechanisms of the electronic money institution, the FMA may:

- a) require the electronic money institution to hold an amount of own funds that is 20% higher than the amount resulting from the calculation set out in paragraphs 4 to 6; or
- b) permit the electronic money institution to hold an amount of own funds that is 20% lower than the amount resulting from the calculation set out in paragraphs 4 to 6.

4) In regard to the activities referred to in Article 5(2)(a) that are not linked to the issuance of electronic money, the own funds requirements of the electronic money institution shall be calculated in accordance with Article 12 of the Payment Services Act.

5) In regard to the activity of issuing electronic money, the own funds must amount to at least 2% of the average outstanding electronic money.

6) Where an electronic money institution carries out an activity referred to in Article 5(2)(a) that is not linked to the issuance of electronic money or an activity referred to in Article 5(2)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the FMA shall allow that electronic money institution to calculate its own funds requirements on the basis of a representative portion assumed to be used for the issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the FMA. Where an electronic money institution has not completed a sufficient period of business, its own funds requirements shall be calculated on the basis of projected

outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the FMA.

7) If an electronic money institution belongs to the same group as another electronic money institution, a payment institution, a bank, an investment firm, an asset management company, or an insurance or reinsurance undertaking, the FMA shall make the necessary arrangements to prevent the multiple use of components eligible for the calculation of own funds. This shall also apply where an electronic money institution carries on other business activities (Article 5(2)) in addition to issuing electronic money.

8) Where the conditions set out in the provisions of Regulation (EU) No. 575/2013 are met, the FMA may choose not to apply paragraph 9 to electronic money institutions which are included in the consolidated supervision of the parent undertaking.⁵

9) By ordinance, the Government shall set out the details of the own funds requirements, in particular the methods of calculation and the composition of the own funds.

Article 11

Safeguarding requirements

1) Electronic money institutions must adequately safeguard the funds received directly or indirectly from customers.

2) Electronic money institutions shall inform the FMA in advance of any material change in measures taken for safeguarding of funds that have been received in exchange for electronic money issued.

3) By ordinance, the Government shall set out further details governing safeguarding requirements, especially the permissible safeguarding methods.

Article 12

Record-keeping

Electronic money institutions must keep all relevant records for ten years, subject to due diligence legislation.

⁵ Article 10(8) amended by LGBI. 2014 No. 351.

Article 13

Outsourcing of functions

1) Where an electronic money institution intends to outsource operational functions within Liechtenstein or abroad, it must inform the FMA accordingly.

2) Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of the electronic money institution's internal control and the ability of the FMA to monitor the electronic money institution's compliance with all obligations laid down in this Act.

3) An operational function is important if a defect or failure in its performance would materially impair the continuing compliance of an electronic money institution with the licensing conditions or other obligations under this Act, or its financial performance, or the soundness or the continuity of its electronic money services. When important operational functions are outsourced, the following conditions must be complied with:

- a) the outsourcing shall not result in the delegation by the general management of its responsibility;
- b) the relationship and obligations of the electronic money institution towards its customers under this Act shall not be altered;
- c) the licensing conditions of the electronic money institution must continue to be met; and
- d) none of the other conditions subject to which the electronic money institution's licence was granted shall be removed or modified.

4) The Government shall set out the details of the outsourcing of operational functions by ordinance.

Article 14

Distribution of electronic money via third parties and use of agents

1) Electronic money institutions may distribute and/or redeem electronic money through natural or legal persons which act on their behalf.

2) The issuance of electronic money via agents or persons as referred to in paragraph 1 is not permitted. The provision of payment services by agents as referred to in Article 5(2)(a) is permitted, provided that Article 16 of the Payment Services Act is complied with.

Article 15

Liability

1) Electronic money institutions shall be fully liable for any acts of their employees, or any agent, branch or entity to which activities are outsourced.

2) Where electronic money institutions rely on third parties for the performance of operational functions, those electronic money institutions shall take reasonable steps to ensure that the requirements of this Act are complied with.

3) Electronic money institutions shall ensure that agents or branches operating on their behalf inform customers of this fact.

Article 16

Accounting

1) The accounting provisions of the Banking Act and of the Law on Persons and Companies applicable to banks and investment firms shall apply to electronic money institutions *mutatis mutandis*.⁶

2) The electronic money institutions shall provide separate accounting information for the issuance of electronic money and the other activities referred to in Article 5(2), which shall be subject to an audit report. This report shall be prepared, where applicable, by the statutory auditors or an auditing company.

Article 17

External audit requirement

1) Each year, electronic money institutions must submit to an audit of their business activities by an independent audit office recognised by the FMA.

⁶ Article 16(1) amended by LGBl. 2014 No. 351.

2) At all times, electronic money institutions must grant the audit office access to the books, receipts, business correspondence, and minutes of the board of directors and the general management, they must keep all documents available that are usually required to determine and assess the assets and liabilities, and they must provide all information necessary for fulfilling the audit requirement.

Article 18

Confidentiality of the electronic money institution

1) The members of the governing bodies of electronic money institutions and their employees as well as any other persons working on behalf of such electronic money institutions are obliged to maintain the secrecy of facts that have been entrusted or made available to them pursuant to their business relationships with customers. The duty of secrecy shall not be limited in time.

2) This article is subject to the legal provisions concerning the duty to give testimony or information to the criminal courts, the Financial Intelligence Unit, and the public authorities and supervisory bodies as well as provisions concerning cooperation with the Financial Intelligence Unit and the competent public authorities and supervisory bodies.⁷

C. Lapse, withdrawal, and revocation of licences

Article 19

Lapse of the licence

- 1) Licences shall lapse if:
- a) business activities have not been taken up within one year;
 - b) business activities have no longer been undertaken 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.⁸

⁷ Article 18(2) amended by LGBL 2016 No. 37.

⁸ Article 19(1)(e) amended by LGBL 2013 No. 6.

2) Lapse of a licence must be communicated to the electronic money institution with a decree justified in writing, and upon entering into effect it shall be published in the official publication organs at the expense of the electronic money institution.

Article 20

Withdrawal of the licence

- 1) Licences shall be withdrawn if:
 - a) the conditions for granting them are no longer met;
 - b) the electronic money institution systematically and in a serious way violates the legal obligations;
 - c) the electronic money institution does not meet the FMA's demands to restore a lawful state of affairs; or
 - d) the electronic money institution would constitute a threat to the stability of the payment system by continuing its business.
- 2) Article 19(2) shall apply *mutatis mutandis*.

Article 21

Revocation of the licence

- 1) Licences shall be modified or revoked if:
 - a) the electronic money institution obtained the licence dishonestly by providing false information or in any other manner; or
 - b) the FMA was unaware of material circumstances.
- 2) Article 19(2) shall apply *mutatis mutandis*.

Article 22

Termination and liquidation

1) Lapse, withdrawal, and revocation of the licence shall entail termination and removal from the Commercial Register. The costs shall be borne by the electronic money institution.⁹

⁹ Article 22(1) amended by LGBL 2013 No. 6.

2) The FMA shall take the measures necessary for liquidation and settlement of the current transactions, and it shall issue the requisite instructions to the liquidator.

3) The FMA shall monitor the liquidator.

4) In urgent cases the FMA may take the necessary measures without prior warning and without imposing a deadline.

D. Relationship with the European Economic Area

1. Establishment of branches and freedom to provide services

Article 23

Liechtenstein electronic money institutions in other EEA Member States

1) An electronic money institution licensed in Liechtenstein wishing to establish a branch or become active for the first time in exercise of the freedom to provide services in the territory of another EEA Member State shall notify the FMA in writing.

2) In the case of establishment of a branch, the notification pursuant to paragraph 1 must include the following information:

- a) the name or company name and the address of the electronic money institution;
- b) the EEA Member State in whose territory the branch is to be established;
- c) the kind of electronic money services the electronic money institution intends to provide;
- d) the names of those responsible for the management of the branch;
- e) the organisational structure of the branch.

3) In the case of provision of electronic money services in exercise of the freedom to provide services, the notification pursuant to paragraph 1 must include the following information:

- a) the EEA Member State in whose territory the activities are to be performed;
- b) the information referred to in paragraph 2(a) and (c).

4) Within one month of receiving all the documentation, the FMA shall transmit the information referred to in paragraphs 2 and 3 to the competent authority of the host Member State.

5) If the conditions set out in paragraphs 1 and 2 are met, the FMA shall arrange for entry of the branch in the Electronic Money Institutions Register (Article 36).

6) If the competent authority of the host Member State has reasonable grounds to suspect that, in connection with the intended establishment of a branch, money laundering or terrorist financing within the meaning of Directive 2005/60/EC is taking place, has taken place or been attempted, or that the establishment of such branch could increase the risk of money laundering or terrorist financing, and communicates this to the FMA, the FMA must refuse to register the branch, or must withdraw the registration, if already made, of the branch.

Article 24

Electronic money institutions from other EEA Member States in Liechtenstein

1) The establishment of a branch or the first-time activity of an electronic money institution from the European Economic Area in Liechtenstein in exercise of the freedom to provide services requires notification to the FMA by the competent authority of the home Member State.

2) In the case of establishment of a branch, the notification pursuant to paragraph 1 must include the following information:

- a) the name or company name and the address of the electronic money institution;
- b) the kind of electronic money services the electronic money institution intends to provide;
- c) the names of those responsible for the management of the branch;
- d) the organisational structure of the branch.

3) In the case of provision of electronic money services in exercise of the freedom to provide services, the notification pursuant to paragraph 1 must include the information set out in paragraph 2(a) and (b).

4) Upon receipt of all information referred to in paragraphs 2 and 3, the FMA shall confirm to the electronic money institution that it may

establish the branch and take up business operations or commence provision of the services in question.

5) The FMA shall inform the electronic money institution of the conditions to be observed when performing the activities in Liechtenstein on grounds of public interest.

6) The electronic money institution must notify the FMA of any change to the information referred to in paragraphs 2 and 3 at least one month before the changes are carried out or, to the extent this is not possible, immediately once the obstacle to notification is removed.

7) Article 23(6) shall apply *mutatis mutandis*.

2. Use of agents and distribution of electronic money via third parties

Article 25

Use of an agent and distribution of electronic money in another EEA Member State

1) When an electronic money institution wishes to provide payment services as referred to in Article 5(2)(a) by engaging an agent or to distribute and/or redeem electronic money via natural or legal persons acting on its behalf in another EEA Member State, it shall follow the procedures set out in Article 23. In that case, before such persons may be entered in the Electronic Money Institutions Register, the FMA shall inform the competent authorities of the host Member State of its intention to register those persons and shall take their opinion into account.

2) Article 23(6) shall apply *mutatis mutandis*.

Article 26

Use of an agent and distribution of electronic money in Liechtenstein

When an electronic money institution authorised in another EEA Member State wishes to provide payment services as referred to in Article 5(2)(a) in Liechtenstein by engaging an agent or to distribute and/or redeem electronic money via natural or legal persons acting on its behalf in Liechtenstein, the procedure set out in Article 24 shall apply *mutatis mutandis*.

3. Cooperation with the competent authorities of EEA Member States

Article 27

Cooperation and exchange of information

1) In the context of supervision, the FMA shall work together with the competent authorities of the other EEA Member States, the European Central Bank, and the national central banks in their capacity as monetary and oversight authorities in accordance with this Act, and it may also exchange information for that purpose, Article 30h of the Banking Act applying *mutatis mutandis*.

1a) Subject to the following paragraphs and Article 34(5), cooperation with the competent authorities of the other EEA Member States shall be governed *mutatis mutandis* by Article 26b(2) and (4) FMAG.¹⁰

2) The FMA shall work together with the competent authorities of the host Member State in order to carry out the necessary inspections and actions in the territory of another EEA Member State in relation to persons distributing and/or redeeming electronic money on behalf of electronic money institutions, agents, branches, or entities of an electronic money institution to which activities are outsourced.

3) Whenever the competent authorities of the home Member State intend to carry out on-site inspections in Liechtenstein, the procedure shall be governed by Article 30i of the Banking Act.

4) The FMA shall provide the competent authorities referred to in paragraph 2 with all information essential and/or relevant for carrying out their supervisory duties, in particular in the case of infringements or suspected infringements by persons distributing and/or redeeming electronic money on behalf of electronic money institutions, an agent, a branch, or an entity to which activities are outsourced. In this regard, the FMA shall communicate, upon request, all relevant information and, on its own initiative, all essential information.

5) The Government may provide further details by ordinance.

¹⁰ Article 27(1a) inserted by LGBL 2018 No. 299.

E. Relationship with third countries

Article 28¹¹

Repealed

Article 29¹²

Repealed

F. Special electronic money institutions

Article 30

Principle

1) Articles 4 to 17 and 19 to 27 shall not apply to electronic money institutions provided that:¹³

- a) they have their registered office in Liechtenstein and actually pursue their business only in Liechtenstein;
- b) the average outstanding electronic money generated by the total business activities or the amount calculated by application *mutatis mutandis* of Article 10(6) does not exceed the amount of 1 million Swiss francs;
- c) the natural persons responsible for the management and operation of the business have so far never been convicted under financial criminal law or due diligence law; and
- d) their payment instruments or payment accounts are designed in such a way that a maximum amount of CHF 100 can be stored.

2) Electronic money institutions under paragraph 1 must notify the FMA in advance of the taking up of their activities. The FMA shall include them in the Electronic Money Institutions Register (Article 36).

3) Electronic money institutions under paragraph 1 shall notify the FMA:

¹¹ Article 28 repealed by LGBL 2019 No. 106.

¹² Article 29 repealed by LGBL 2019 No. 106.

¹³ Article 30(1) introductory phrase amended by LGBL 2019 No. 106.

- a) of any change in its situation which is relevant to the conditions specified in paragraph 1; and
 - b) at least annually as at 30 June on the average outstanding electronic money.
- 4) If an electronic money institution as referred to in paragraph 1 no longer meets the requirements set out in paragraph 1, it shall apply to the FMA for a licence as an electronic money institution in accordance with Article 4 within 30 days of the occurrence of the change.
- 5) The FMA shall inform the EFTA Surveillance Authority annually of:
- a) the number of electronic money institutions under paragraph 1;
 - b) the total amount of outstanding electronic money issued at 31 December of each calendar year.
- 6) This article is subject to the provisions of due diligence legislation.

G. Supervision and audit

1. General provisions

Article 31

Organisation and implementation

The following bodies are mandated to implement this Act:

- a) the FMA;
- b) the audit offices;
- c) the Office of Justice (Article 32(2));¹⁴
- d) the FMA Complaints Commission;
- e) the Court of Justice;
- f) the conciliation board.

¹⁴ Article 31(c) amended by LGBl. 2013 No. 6.

Article 32

Cooperation of domestic authorities and bodies

1) In the context of supervision, the competent domestic authorities and bodies shall work together to the extent necessary for the fulfilment of their responsibilities.

1a) The competent domestic authorities and bodies 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.¹⁵

2) The Office of Justice shall notify the FMA of all changes to entries in the Commercial Register concerning an electronic money institution. The Office of Justice shall grant the FMA electronic access to the data concerning electronic money institutions. The Government may provide further details by ordinance.¹⁶

Article 33¹⁷*Processing of personal data*

The competent domestic authorities and bodies may process or have processed personal data, including personal data relating to criminal convictions and offences, to the extent necessary for the performance of their duties under this Act.

Article 34

Official secrecy

1) The authorities and bodies mandated to implement this Act, any other persons consulted by these authorities and bodies, and all representatives of public authorities shall be subject to official secrecy without any time limits with respect to the confidential information that they gain knowledge of in the course of their official activities.

2) The information subject to official secrecy may not be transmitted to others, subject to other special legal provisions.

¹⁵ Article 32(1a) inserted by LGBL 2018 No. 299.

¹⁶ Article 32(2) amended by LGBL 2013 No. 6.

¹⁷ Article 33 amended by LGBL 2018 No. 299.

3) If liquidation or bankruptcy proceedings have been initiated by a court decision against an electronic money institution, then confidential information that does not relate to third parties may be used in civil or commercial proceedings, as long as it is necessary for the proceedings in question.

4) Without prejudice to the criminal law cases, 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 relating to financial market supervision.

5) The FMA is permitted, in compliance with domestic law, to transmit confidential information received from a non-competent authority of an EEA Member State to other competent authorities of EEA Member States.

2. FMA

Article 35

Responsibilities and powers

1) The FMA shall monitor execution of the provisions of this Act and the associated ordinance, and it shall take the measures necessary for execution directly, in cooperation with other supervisory bodies, or by filing charges with the Office of the Public Prosecutor.

2) The FMA shall have all necessary powers to fulfil its responsibilities and may in particular:

- a) demand from all persons and entities subject to this Act and to the FMA's supervision and from their audit offices all information and materials necessary for execution of this Act;
- b) order or carry out extraordinary audits or investigations;
- c) issue decisions and decrees for action, cease and desist, and declaration;

- d) following prior warning, publish final decisions and decrees if the party concerned refused to comply with those;
- e) impose temporary prohibitions to practice a profession;
- f) request the Office of the Public Prosecutor to apply for measures for securing the forfeiture of assets in accordance with the provisions of the Code of Criminal Procedure;¹⁸
- g) issue guidelines and recommendations and, where appropriate, binding administrative rules;
- h) in urgent cases, take all necessary measures without prior warning and without imposing a deadline.

3) The costs incurred due to misconduct shall be borne by those responsible in accordance with Article 26 of the Financial Market Authority Act.

4) The FMA shall in particular be responsible for:

- a) issuing, withdrawing, and revoking licences;
- b) maintaining the Electronic Money Institutions Register in accordance with Article 36;
- c) verifying audit reports;
- d) punishing administrative contraventions in accordance with Article 49.

5) If the FMA learns of violations of this Act or of other abuses, it shall take the measures necessary to bring about a lawful state of affairs and to remedy the abuses.

6) If there are grounds to assume that an activity subject to this Act is being conducted without a licence, the FMA may demand information and materials from the persons concerned as if these persons were subject to this Act. In urgent cases, the FMA may order immediate cessation and termination without prior warning and without imposing a deadline.

7) The FMA may assign an expert as its observer to an electronic money institution if the claims of creditors appear endangered by serious abuses. The audit office appointed by law may be entrusted with this responsibility. The costs shall be borne by the electronic money institution. The observer shall monitor the activities of the managing governing bodies, in particular the implementation of the measures ordered, and shall report to the FMA on an ongoing basis. The observer

¹⁸ Article 35(2)(f) amended by LGBL 2016 No. 161.

shall enjoy the unrestricted right to inspect the business activities and the books and files of the electronic money institution.

8) If the FMA receives complaints from persons and organisations regarding alleged violations of provisions of this Act for which the FMA is not competent, it shall alert these persons and organisations, where appropriate and without prejudice to the right to take legal action, to the possibility of invoking the conciliation board (Article 47).

Article 36

Electronic Money Institutions Register

1) The FMA shall maintain a publicly available register of the electronic money institutions authorised in Liechtenstein, including the electronic money institutions referred to in Article 30, their agents, their branches and the persons distributing and/or redeeming electronic money on their behalf, as well as of audit offices authorised to audit electronic money institutions (Electronic Money Institutions Register).

2) Electronic money services for which the electronic money institution is authorised shall also be entered in this register.

3) The register may be accessed at the FMA or via the FMA's website, and it shall be updated on a regular basis.

4) The Government may provide further details regarding maintenance of the register by ordinance.

Article 37

Supervision taxes and fees

The supervision taxes and fees shall be in accordance with financial market supervision legislation.

3. Audit office

Article 38

Recognition

1) Audit offices and audit associations that audit electronic money institutions shall require a licence issued by the FMA for such activities.

2) The licence shall be granted to audit offices if:¹⁹

- a) their general management, lead auditors, and organisation guarantee that the audit mandates are performed continuously and properly;
- b) they are organised as public limited companies and dispose of adequate share capital; and
- c) they and their lead auditors have a licence under the Auditors and Auditing Companies Act.²⁰

3) The audit offices shall dedicate themselves exclusively to audit activities and immediately related transactions such as inspections, liquidations, and reorganisations. They may not engage in electronic money services, payment services, banking transactions, investment services, or asset management.

4) The audit offices must be independent of the electronic money institutions to be audited.

5) The audit office must maintain secrecy concerning all facts it has learned about in the course of its audit, except vis-à-vis the competent bodies of the electronic money institution and the FMA.

6) The Government may provide further details by ordinance.

Article 39

Responsibilities and audit report

1) The audit offices shall verify whether:

- a) the business activities of the electronic money institution conform to the law, the associated ordinance, the articles of association, and the regulations;
- b) the conditions for granting the licence are continuously met; and

¹⁹ Article 38(2) amended by LGBL 2014 No. 351.

²⁰ Article 38(2)(c) amended by LGBL 2016 No. 225.

c) the form and content of the annual report and the consolidated annual report conform to the requirements of the law, articles of association, and regulations.

2) The audit office shall summarise the results of the audits under paragraph 1 in a written audit report. The audit report shall be signed by the lead auditor and the audit office.²¹

3) The audit report shall be submitted simultaneously to the board of directors of the electronic money institution, the FMA, and, where applicable, the audit office under the provisions of the Law on Persons and Companies.

4) The Government shall set out the other basic principles of the audit of electronic money institutions by ordinance. The FMA shall provide details in a guideline.²²

Article 40

Deficiencies

1) If the audit office finds violations of legal provisions or other abuses, it shall impose an appropriate deadline on the electronic money institution to bring about a lawful state of affairs. If the deadline is not met, the audit office shall report to the FMA.

2) The audit office shall notify the FMA immediately if the imposition of a deadline appears useless, or if it finds that the general management has committed offences or that other serious abuses exist which conflict with the purpose of this Act.

3) Irrespective of paragraph 1, a duty to report within the meaning of paragraph 2 shall subsist:

- a) in the case of serious violations of the law, associated ordinances, and articles of association by the general management, especially in the case of violations of the licensing conditions and the provisions applicable to the exercise of business activities;
- b) in the case of facts or decisions that might adversely affect the continuation of the activities of the electronic money institution;

²¹ Article 39(2) amended by LGBl. 2014 No. 351.

²² Article 39(4) amended by LGBl. 2014 No. 351.

c) in the case of facts or decisions that might lead to a rejection of the annual report or the consolidated annual report or to reservations in the audit report.

4) A duty to report shall also subsist where, in the course of its audit activities, the audit office makes determinations in accordance with paragraph 3 with respect to undertakings closely linked with the electronic money institution subject to the audit.

5) Audit offices bringing fact patterns 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 audit office or person passing on the information.

Article 40a²³

Supervision of audit offices

In its supervision of audit offices, the FMA may in particular carry out quality controls and accompany the audit offices in their audit activities at electronic money institutions.

Article 41

Audit costs

1) The electronic money institution shall bear the costs of the audit. The costs of the audit shall be calculated according to the fee schedule issued by the Government by ordinance.

2) Agreement on lump-sum remuneration or a specific expenditure of time for the audit is prohibited.

²³ Article 40a inserted by LGBl. 2014 No. 351.

H. Procedure and legal remedies

Article 42

Procedure

To the extent not otherwise specified in this Chapter, the provisions of the National Administration Act shall apply to the procedure.

Article 43

Legal remedies

1) Decisions and decrees of the FMA may be appealed within 14 days of service by way of complaint to the FMA Complaints Commission.

2) If no decision is made within three months of receipt of an application for a licence, even though the application contains all necessary information, a complaint may be lodged with the FMA Complaints Commission.

3) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service by way of a complaint to the Administrative Court.

III. Issuance and redeemability of electronic money

A. General provisions

Article 44

Issuance and redeemability

1) Electronic money issuers shall issue electronic money at par value on the receipt of funds.

2) Upon request by the customer, electronic money issuers shall redeem, at any moment and at par value, the monetary value of the electronic money held.

3) The contract between the electronic money issuer and the customer shall clearly and prominently state the conditions of

redemption, including any fees relating thereto, and the customer shall be informed of those conditions before being contractually bound.

4) Electronic money issuers may demand a fee only if stated in the contract in accordance with paragraph 3 and if the fees are proportionate and commensurate with the actual costs incurred by the electronic money issuer, and where:

- a) redemption is requested before the termination of the contract;
- b) the contract provides for a termination date and the customer terminates the contract before that date; or
- c) redemption is requested more than one year after the date of termination of the contract.

5) Where redemption is requested before the termination of the contract, the customer may request redemption of the electronic money in whole or in part.

6) Where redemption is requested by the customer on or up to one year after the date of the termination of the contract:

- a) the total monetary value of the electronic money held shall be redeemed; or
- b) where the electronic money institution carries out one or more of the activities listed in Article 5(2)(e) and it is unknown in advance what proportion of funds is to be used as electronic money, all funds requested by the customer shall be redeemed.

7) Notwithstanding paragraphs 4 to 6, redemption rights of a person, other than a consumer, who accepts electronic money shall be subject to the contractual agreement between the electronic money issuer and that person.

Article 45

Prohibition of interest

The granting of interest or any other benefit related to the length of time during which a customer holds the electronic money is prohibited.

B. Dispute settlement

Article 46

Court proceedings

1) Proceedings may be brought before the Court of Justice for alleged infringement by electronic money issuers of the provisions set out in this Chapter. This also applies to infringements by agents and branches that operate in Liechtenstein pursuant to the right of establishment.

2) In addition to electronic money issuers and customers, organisations dedicated nationally and in accordance with their articles of association to the protection of consumers or other topics relating to electronic money services shall be entitled to bring proceedings.

3) The Court of Justice shall alert complainants as early as possible to the option of invoking the conciliation board.

4) The general provisions of civil procedure shall apply *mutatis mutandis* to proceedings under civil law.

Article 47

Extrajudicial conciliation board

1) By ordinance, the Government shall designate a conciliation board to settle disputes between electronic money issuers and customers.

2) The responsibility of the conciliation board shall be to mediate as appropriate in disputes between the parties and in that way to achieve a settlement between the parties.

3) The conciliation board also serves as a contact point for complaints by organisations that are dedicated nationally and in accordance with their articles of association to the protection of consumers or other topics relating to electronic money services.

4) If no settlement between the parties can be reached, then the parties shall be referred to the ordinary legal process.

5) In the case of cross-border disputes, the conciliation board shall work together with arbitration bodies of other EEA Member States and third countries concerned.

6) By ordinance, the Government shall provide further details, especially the organisational structure, composition, and procedure.

IV. Penal provisions

Article 48

Misdemeanours

1) 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) as a member of a governing body of, an employee of, or any other person acting on behalf of an electronic money institution, or as an auditor violates the duty of secrecy;
- b) provides electronic money services without authorisation;
- c) establishes branches and takes up business operations or provides cross-border electronic money services before all the conditions set out in Article 24 are met;
- d) engages an agent or third party before all the conditions set out in Article 26 are met;
- e) violates the provisions on own funds set out in Article 10;
- f) accepts deposits or other repayable funds in violation of Article 5(3);
- h) operates a branch of an electronic money institution within the meaning of Article 30p(1), (2), (4), (6), and (7) of the Banking Act without a licence.²⁴

2) The Court of Justice shall punish with a custodial sentence of up to six months or with a monetary penalty of up to 180 daily penalty units for committing a misdemeanour anyone who:

- a) violates terms imposed in connection with a licence;
- b) gives no, false, or incomplete information to the FMA or the audit office;
- c) does not keep account books properly or does not retain account books and receipts;
- d) as an auditor, grossly violates responsibilities, in particular by making untrue statements in the audit report or by withholding material facts, by failing to make prescribed requests to the electronic money institution, or by failing to submit prescribed reports and notifications;

²⁴ Article 48(1)(h) amended by LGBL 2011 No. 245. (This is evidently a drafting error, however: the provision would properly be Article 48(1)(g).)

e) fails to submit notifications to the FMA or submits them late, makes false statements, or withholds material facts.

3) If the offences are committed negligently, the maximum penalties are reduced by half.

Article 49

Contraventions

1) The FMA shall punish with a fine of up to 100 000 Swiss francs for committing a contravention anyone who:

- a) fails to prepare or publish the annual report, the consolidated annual report, the interim financial statement, or the consolidated interim financial statement as required;
- b) fails to have a regular audit or an audit required by the FMA carried out;
- c) fails to fulfil responsibilities vis-à-vis the audit office;
- d) fails to comply with a decree or order issued against the person by the FMA with reference to the penalties under this article;
- e) as an auditor, violates duties under this Act, especially under Articles 38 to 41.²⁵

2) If the offences are committed negligently, the maximum penalties are reduced by half.

Article 50

Responsibility

Where violations are committed in the business operations of a legal person, general or limited partnership, or sole proprietorship, 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.

²⁵ Article 49(1)(e) inserted by LGBI. 2014 No. 351.

V. Transitional and final provisions

Article 51

Existing electronic money institutions

1) Electronic money institutions domiciled in Liechtenstein that took up their business activity in accordance with Liechtenstein law prior to entry into force of this Act may continue their activity in Liechtenstein in accordance with the provisions of Directive 2000/46/EC governing mutual recognition without having to apply for a licence pursuant to Article 4 and without being obliged to comply with the provisions contained in Chapter III.

2) Electronic money institutions that are permitted to continue their business activity in accordance with paragraph 1 are obliged to provide the FMA with all relevant information by 31 May 2011 without being requested to do so, so that the FMA can decide by 30 October 2011 at the latest whether the electronic money institution fulfils the requirements of this Act, and otherwise what measures are to be taken to ensure that these requirements can be met, or whether in the event of non-compliance the license is to be withdrawn and the issuance of electronic money is to be prohibited. Electronic money institutions that fulfil the requirements of this Act shall receive a licence in accordance with Article 4 and are included in the Electronic Money Institutions Register; they are obliged to comply with the provisions of Chapter III.

Article 52

Repeal of law hitherto in force

The Law of 12 March 2003 on the business of electronic money institutions (E-Money Act), LGBI. 2003 No. 109, as amended, is hereby repealed.

Article 53

Entry into force

Provided that the referendum period expires without a referendum being called, this Act shall enter into force on 1 May 2011, otherwise on the day of its promulgation.

Representing the Reigning Prince:
signed *Alois*
Hereditary Prince

signed *Dr. Klaus*
Tschütscher
Prime Minister

950.3

Transitional provisions

950.3 Electronic Money Act (EGG)

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Law
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amending the Electronic Money Act

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II.

Transitional provision

Lead auditors that do not hold a licence under the Auditors and Auditing Companies Act but have so far been recognised for audits under this Act may continue to carry out their existing activities until 31 December 2016.

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