

Translation of Liechtenstein Law

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English title:	Law of 10 May 2019 implementing Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (EEA Securities Prospectus Implementation Act; EWR-WPPDG)
Original German title:	Gesetz vom 10. Mai 2019 zur Durchführung der Verordnung (EU) 2017/1129 über den Prospekt, der beim öffentlichen Angebot von Wertpapieren oder bei deren Zulassung zum Handel an einem geregelten Markt zu veröffentlichen ist (EWR-Wertpapierprospekt-Durchführungsgesetz; EWR-WPPDG)
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Law

of 10 May 2019

**implementing Regulation (EU) 2017/1129 on
the prospectus to be published when securities
are offered to the public or admitted to trading
on a regulated market (EEA Securities
Prospectus Implementation Act; EWR-
WPPDG)**

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

I. General provisions**Art. 1***Object*

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

¹ Report and application, together with comments from the Government no. 12/2019 and 28/2019

2) The currently applicable version of the EEA regulation referred to in (1) can be found in the publication of the Decisions of the EEA Joint Committee in the Liechtenstein Legal Gazette pursuant to Art. 3 k) of the Public Announcement Act.

Art. 2

Designations

Terms used to designate persons and functions in this Act are to be understood as referring to both the male and female genders.

Art. 3

Exemption from the obligation to publish a prospectus

Offers of securities to the public are exempted from the obligation to publish a prospectus in accordance with Art. 3 (1) of Regulation (EU) 2017/1129, insofar as:

- a) these offers are not subject to notification in accordance with Art. 25 of Regulation (EU) 2017/1129; and
- b) the total consideration of such an offer in the European Economic Area (EEA) is less than a monetary amount calculated over a period of 12 months which shall not exceed EUR 8 000 000 or the equivalent in CHF.

II. Liability

Art. 4

Liability for the prospectus

1) The persons responsible for the prospectus and supplements to it shall be clearly identified in the prospectus by their name and function, and in the case of legal entities by their name and registered office. The prospectus must contain declarations from the persons in question that to the best of their knowledge the information provided in the prospectus is correct and does not contain any details that might alter the import of the prospectus.

2) Depending on the case in question, responsible persons shall be understood at the very least as the issuer, or its administrative, management or supervisory body, the person offering the securities, the person applying for admission to trading on a regulated market or the guarantor. They shall be liable to each investor for the loss that investor has incurred due to incorrect information in the prospectus or in its supplements, unless they demonstrate that they are in no way at fault.

3) The persons referred to in (1) and (2) shall also be liable for their assistants and authorised agents, unless they can demonstrate that they applied the due diligence required in the circumstances in the selection, training and supervision of such persons.

4) Liability may not be excluded or restricted in advance to the detriment of investors.

5) No liability shall be attached to information in the summary referred to in Art. 7 of Regulation (EU) 2017/1129 or in the specific summary of an EU Growth Prospectus as referred to in Art. 15 (1) subparagraph 2 of Regulation (EU) 2017/1129 and any translations thereof, unless:

- a) when read together with other sections of the prospectus the summary is misleading, inaccurate or inconsistent; or
- b) when read together with other sections of the prospectus it does not convey the key information that would assist investors when considering whether to invest in the securities.

6) Liability for information in a registration document or a standard registration document will only be accepted if this document is used as a constituent part of an approved prospectus. This shall be without prejudice to Art. 4 and 5 of Directive 2004/109/EC, if the information to be provided in accordance with these articles is included in a standard registration form.

Art. 5

Solidarity and recourse

If more than one person is liable to make recompense for a loss, each of them shall be jointly and severally liable with the others, insofar as the loss can be personally attributed to them on the basis of their own culpability and the circumstances.

Art. 6

Place of jurisdiction

The Princely Court of Justice shall have jurisdiction over:

- a) Claims of investors arising from a legal relationship with Liechtenstein-based issuers, offerors or other responsible persons; or
- b) Claims by Liechtenstein-based investors arising from a legal relationship with foreign issuers or offerors who offer a prospectus to the public in Liechtenstein.

Art. 7

Statute-barring

A claim to compensation against the persons responsible under the preceding provisions shall expire under the Statute of Limitations in one year from the date on which the injured party became aware of the loss and the identity of the person liable to pay compensation, but in any case once ten years have passed since the date of the action causing the loss.

Art. 8

Liability of the FMA

The civil liability of the FMA shall be governed by Art. 21 of the Financial Market Authority Act with the proviso that its liability only applies to the approval of prospectuses.

III. Oversight

Art. 9

Competent authority

1) The FMA is the competent authority for Liechtenstein in accordance with Art. 31 (1) of Regulation (EU) 2017/1129 and performs the duties and applies the powers assigned to a competent authority under Regulation (EU) 2017/1129 and this Act.

2) The FMA may assign the duties in connection with the electronic publication of the approved prospectuses and the associated documents to third parties by a resolution which establishes:

- a) the duties to be assigned and the conditions under which they are to be performed;
- b) a clause that obliges the relevant third parties to guarantee on the basis of their actions and the way their organisation is structured, that conflicts of interest will be avoided and information that they obtain in the course of performing the tasks assigned to them is not used improperly or in a way that promotes unfair competition; and
- c) all agreements between the FMA and third parties to whom duties are assigned.

3) Assignment of duties does not affect the responsibility of the FMA to monitor compliance with Regulation (EU) 2017/1129 and this Act and to approve the prospectuses.

Art. 10

Powers of the FMA

1) The FMA shall monitor compliance with the provisions of Regulation (EU) 2017/1129 and this Act. It shall take the measures required for enforcement directly, in collaboration with other supervisory authorities or by referring to the Public Prosecution Service.

2) The FMA is empowered in particular:

- a) to require issuers, offerors or persons applying for admission to trading on a regulated market to include additional information in the prospectus, where this is necessary for the protection of investors;
- b) to require issuers, offerors or persons applying for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents that are necessary for enforcement;
- c) to require auditors or audit companies and managers of the issuer, offeror or person applying for admission to trading on a regulated market, as well as financial intermediaries commissioned to carry out the offer of securities to the public or to apply for admission to trading on a regulated market to provide the information necessary for enforcement;
- d) to suspend an offer of securities to the public or admission to trading on a regulated market for a maximum of ten consecutive working

days on any single occasion where there are reasonable grounds for suspecting that there has been an infringement of Regulation (EU) 2017/1129 or this Act;

- e) to prohibit or suspend advertisements for a maximum of ten consecutive working days or require issuers, offerors or persons applying for admission to trading on a regulated market, or relevant financial intermediaries to cease advertisements or suspend them for a maximum of ten consecutive working days on any single occasion where there are reasonable grounds for suspecting that there has been an infringement of Regulation (EU) 2017/1129 or this Act;
- f) to prohibit an offer of securities to the public or admission to trading on a regulated market where it finds that there has been an infringement of Regulation (EU) 2017/1129 or this Act, or there are reasonable grounds for suspecting that there would be an infringement of these regulations;
- g) to suspend trading on a regulated market, multilateral trading facility (MTF) or an organised trading facility (OTF) for a maximum of ten consecutive working days on any single occasion or require the relevant regulated markets, MTF or OTF to suspend trading on a regulated market or an MTF for a maximum of ten consecutive working days if there are sufficient grounds for suspecting that there has been an infringement of Regulation (EU) 2017/1129 or this Act;
- h) to prohibit trading on a regulated market, an MTF or an OTF if it finds that there has been an infringement of Regulation (EU) 2017/1129 or this Act;
- i) to make public the fact that an issuer, an offeror or a person applying for admission to trading on a regulated market is failing to comply with his/her obligations;
- k) to suspend the scrutiny of a prospectus submitted for approval or suspend or restrict an offer of securities to the public or an admission to trading on a regulated market, if the FMA is making use of its power to impose bans or restrictions pursuant to Art. 42 of Regulation (EU) No. 600/2014, as long as such ban or restriction applies;
- l) to refuse approval of any prospectus drawn up by a specific issuer, offeror or person applying for admission to trading on a regulated market for a maximum of five years, if that issuer, offeror or person applying for admission to trading on a regulated market has repeatedly committed a serious violation of Regulation (EU) 2017/1129 or this Act;
- m) to disclose all material information which may have an effect on the valuation of the securities offered to the public or admitted to trading on a regulated market, or to require the issuer to disclose that infor-

mation, in order to guarantee the protection of investors or the smooth operation of the market;

- n) to suspend trading in the securities or require the relevant regulated market, MTF or OTF to suspend trading, if it is of the opinion that in view of the issuer's situation such trading would be detrimental to the interests of investors;
- o) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to gain access to premises in order to inspect documents and data in any form whatsoever, if there are reasonable grounds for suspecting that documents and other data relating to the subject-matter of the inspection or investigation which may serve to prove an infringement of Regulation (EU) 2017/1129 or this Act may be located in the premises.

3) If the FMA becomes aware of infringements of Regulation (EU) 2017/1129 or this Act or other irregularities, it shall take the necessary action to enforce compliance with the law and correct irregularities.

4) If the FMA refuses to approve a prospectus pursuant to (2) l), it shall inform the European Securities and Markets Authority (ESMA).

Art. 11

Charges

The FMA's charges shall be governed by the legislation on the Financial Market Authority.

IV. Right of appeal

Art. 12

Appeal

1) Appeals may be lodged with the FMA Complaints Commission against decisions of the FMA within 14 days from notification of the decision.

2) Appeals may be lodged with the Administrative Court against decisions of the FMA Complaints Commission within 14 days from notification of the decision.

V. Penal provisions

Art. 13

Infringements and administrative offences

1) The Princely Court of Justice shall impose a custodial sentence of up to one year or a fine of up to 360 daily units for an offence on any person who:

- a) offers securities subject to an obligation to produce a prospectus, without:
 1. the prospectus or supplements to it having been approved by the FMA pursuant to Art. 20 (1) or Art. 23 (1) of Regulation (EU) 2017/1129; or
 2. the approved prospectus or the supplements to it having been published in the manner prescribed in Art. 21 (1) to (4) or (7) to (11) or Art. 23 (2) to (5) of Regulation (EU) 2017/1129;
- b) gives inaccurate favourable information or fails to disclose negative information in a prospectus or supplements to it concerning circumstances that are material to the decision whether to acquire securities pursuant to Art. 6 of Regulation (EU) 2017/1129.

2) Insofar as the infringement does not constitute a criminal offence falling within the jurisdiction of the courts, the FMA shall impose fines as set out in (3) for infringements on any person who:

- a) fails to comply with the obligation to publish a prospectus pursuant to Art. 3 or 5 of Regulation (EU) 2017/1129;
- b) fails to include the required information or warnings pursuant to Art. 6, 7 (1) to (11) or pursuant to Art. 8 to 10 of Regulation (EU) 2017/1129 in a prospectus, a prospectus summary, a base prospectus or a standard registration document or does not include it in the prescribed manner or is in breach of a publication or filing obligation concerning the final terms pursuant to Art. 8 (5) and (11) of Regulation (EU) 2017/1129 or concerning the summary pursuant to Art. 8 (5) in connection with (9) of Regulation (EU) 2017/1129;
- c) is in breach of the obligation to provide information pursuant to Art. 11 (1) and (3) of Regulation (EU) 2017/1129;
- d) is in violation of the disclosure regulations for secondary issuances as referred to in Art. 14 (1) and (2) of Regulation (EU) 2017/1129;
- e) fails to comply with the prospectus regulations for the EU Growth Prospectus pursuant to Art. 15 (1) of Regulation (EU) 2017/1129;

- f) is in breach of the disclosure provisions for risk factors pursuant to Art. 16 (1) to (3) of Regulation (EU) 2017/1129;
- g) is in breach of the provisions concerning filing of a final offer price and number of securities to be issued pursuant to Art. 17 of Regulation (EU) 2017/1129;
- h) is in violation of the provisions concerning the omission of information in the prospectus or the constituent parts thereof pursuant to Art. 18 of Regulation (EU) 2017/1129;
- i) is in violation of the provisions concerning the incorporation of information by reference in a prospectus pursuant to Art. 19 (1) to (3) of Regulation (EU) 2017/1129;
- k) is in violation of the provisions concerning advertisements pursuant to Art. 22 (2) or (3) of Regulation (EU) 2017/1129;
- l) contrary to Art. 22 (4) or (5) of Regulation (EU) 2017/1129 disseminates information, even if, in the event of a contravention of Art. 22 (5) of Regulation (EU) 2017/1129 the publication of a prospectus is not required;
- m) is in breach of the language rules set out in Art. 27 of Regulation (EU) 2017/1129;
- n) fails to comply with a request from the FMA to cooperate in inspection or investigation proceedings or a request pursuant to Art. 10.

3) The fines referred to in (2) shall be as follows:

- a) for natural persons up to 770 000 Francs or up to double the benefit obtained from the violation including an averted loss, insofar as the benefit has a monetary value;
- b) for legal entities up to 5.5 million Francs or up to 3 % of their total annual turnover disclosed in the most recent financial statements available approved by the governing body, or up to double the benefit obtained from the violation including an averted loss, insofar as the benefit has a monetary value.

4) If the legal entity referred to in (3) b) is a parent company or a subsidiary of a parent company that is obliged to present consolidated accounts, the relevant total turnover shall be the total annual turnover or the corresponding income category, as disclosed in the most recent consolidated financial statements available approved by the governing body of the ultimate parent company.

5) The FMA shall impose fines on legal entities if the infringements are committed in the exercise of the business activities of the legal entity (triggering offences) by persons who either acted alone or as a member

of the Board of Directors, senior management, the executive board or supervisory board of the legal entity or on the basis of another managerial position within the legal entity on the basis of which they:

- a) are authorised to represent the legal entity vis-à-vis third parties;
- b) exercise supervisory powers in a managerial position; or
- c) otherwise have significant influence over the management of the legal entity.

6) The legal entity shall also be responsible for infringements committed by employees of the legal entity, although not culpably, if the infringement was made possible or significantly facilitated by the fact that the persons referred to in (5) have failed to take the necessary and reasonable measures to prevent such triggering offences.

7) The responsibility of the legal entity for the triggering offence and the culpability of the persons referred to in (5) or employees as referred to in (6) on account of the same offence are not mutually exclusive. The FMA may refrain from sanctioning a natural person, if a fine is already being imposed on the legal entity for the same contravention and there are no special circumstances that preclude the waiver of sanctions.

8) A conviction under this article is not binding for the civil court judges with reference to the assessment of guilt and illegality and the determination of the loss.

9) In the event of negligence, the upper limits of the penalties referred to in (3) shall be reduced by half.

Art. 14

Administrative measures

In the event of such violations as referred to in Art. 13 (1) and (2) the FMA may, without prejudice to the powers referred to in Art. 10, take the following action:

- a) publish details of the responsible natural person or legal entity and the nature of the offence in accordance with Art. 18;
- b) order the natural person or legal entity responsible for the contravention to cease the practice and refrain from repeating it.

Art. 15

Proportionality and efficiency requirement

1) When imposing penalties pursuant to Art. 13 and administrative measures pursuant to Art. 14 the Princely Court of Justice and the FMA shall take the following into account:

- a) with reference to the offence, in particular:
 1. its gravity and duration;
 2. the benefits achieved or losses prevented, insofar as they are quantifiable;
 3. injury to third parties, insofar as it is quantifiable;
 4. possible impact on the interests of small investors;
- b) with reference to the natural persons and legal entities responsible for the offence, in particular:
 1. the degree of responsibility;
 2. financial strength;
 3. willingness to cooperate with the competent authorities;
 4. previous offences;
 5. the measures that have been taken to prevent offences being repeated.

2) In other respects, the General Section of the Criminal Code shall apply by analogy.

Art. 16

Responsibility

If offences are committed within the business operation of a legal entity, a general partnership, limited partnership for collective investment schemes or an investment partnership of limited partners or a sole proprietorship, the penal provisions shall apply to those persons who acted on their behalf or should have done so, however the legal entity, the partnership or the sole proprietorship shall be jointly and severally liable for fines and costs.

Art. 17

Disgorgement of benefit

1) If an offence as referred to in Art. 13 (2) is committed and a financial advantage is obtained, the FMA shall order the disgorgement of the financial benefit and oblige the beneficiary to pay an equivalent sum of money.

2) (1) shall not apply if the financial advantage is offset by compensation or other payments. If the beneficiary does not make such payments until after the disgorgement of benefits, the amount paid is to be refunded up to the amount of payments for which there is supporting evidence of payment. The amount of the financial benefit may be estimated.

3) The disgorgement of benefits shall be statute-barred after a period of five years has passed from the time when the infringement ceased.

4) The procedure shall be governed by the provisions of the National Administration Act.

5) Expiry in the case of offences as referred to in Art. 13 (1) shall be determined in accordance with §§ 20 et seq. of the Criminal Code.

Art. 18

Public announcement of sanctions and administrative measures

1) The FMA shall publish legally binding decisions concerning penalties and administrative measures imposed pursuant to Art. 13 and 14 on its website, as soon as the person affected by the decision has been informed of it; this shall not apply to measures of an investigative nature. The publication shall at the very least include the nature and substance of the infringement and the identity of the person concerned.

2) The FMA may defer the publication of decisions, publish these decisions in an anonymised form or, if a deferral or anonymity measures are not sufficient, refrain from publication if, on the basis of a proportionality assessment in the individual case, the publication of the identity of the person concerned:

- a) would compromise ongoing investigations or risk destabilising the financial markets; or
- b) would be disproportionate in the event of measures deemed to be insignificant.

3) The FMA shall make the public announcement referred to in (1) available on its website for at least five years. Personal data included in the announcement shall only be displayed on the website for as long as this is permitted under data protection legislation.

4) In accordance with Art. 43 of Regulation (EU) 2017/1129 the FMA shall report all sanctions and administrative measures imposed in accordance with Art. 13 and 14 to the ESMA.

Art. 19

Reporting of infringements

1) Issuers, offerors or persons applying for admission to trading on a regulated market shall in accordance with Art. 41 (4) of Regulation (EU) 2017/1129 establish appropriate procedures by which their employees can report actual or potential infringements of Regulation (EU) 2017/1129 internally.

2) Pursuant to Art. 41 (1) and (2) of Regulation (EU) 2017/1129 the FMA is obliged to operate an effective reporting system in order to enable reporting of actual or potential infringements of Regulation (EU) 2017/1129.

3) The Government may establish more specific regulations by Ordinance.

Art. 20

Exemption from prosecution and liability

Persons who submit reports to the FMA in accordance with Regulation (EU) 2017/1129 shall be released from any liability under civil and criminal law, if it transpires that the reports were unsubstantiated and they did not act wilfully and knowingly.

VI. Transitional and Final Provisions

Art. 21

Transitional provision

The previous Act will continue to apply to prospectuses that have been approved in accordance with the previous law, until such time as they cease to be valid, or until the end of a period of no more than twelve months from the entry into force of this Act, whichever is the earlier.

Art. 22

Repeal of previous law

The Securities Prospectus Act (WPPG) of 23 May 2007, LGBL 2007 no. 196, in its current version, is repealed.

Art. 23

Entry into force

Subject to expiration of the referendum period without a referendum being called, this Act shall enter into force on 21 July 2019 otherwise on the day of its promulgation.

By proxy for the Prince of Liechtenstein:

signed *Alois*

Hereditary Prince

signed *Adrian Hasler*

Head of the Princely Government