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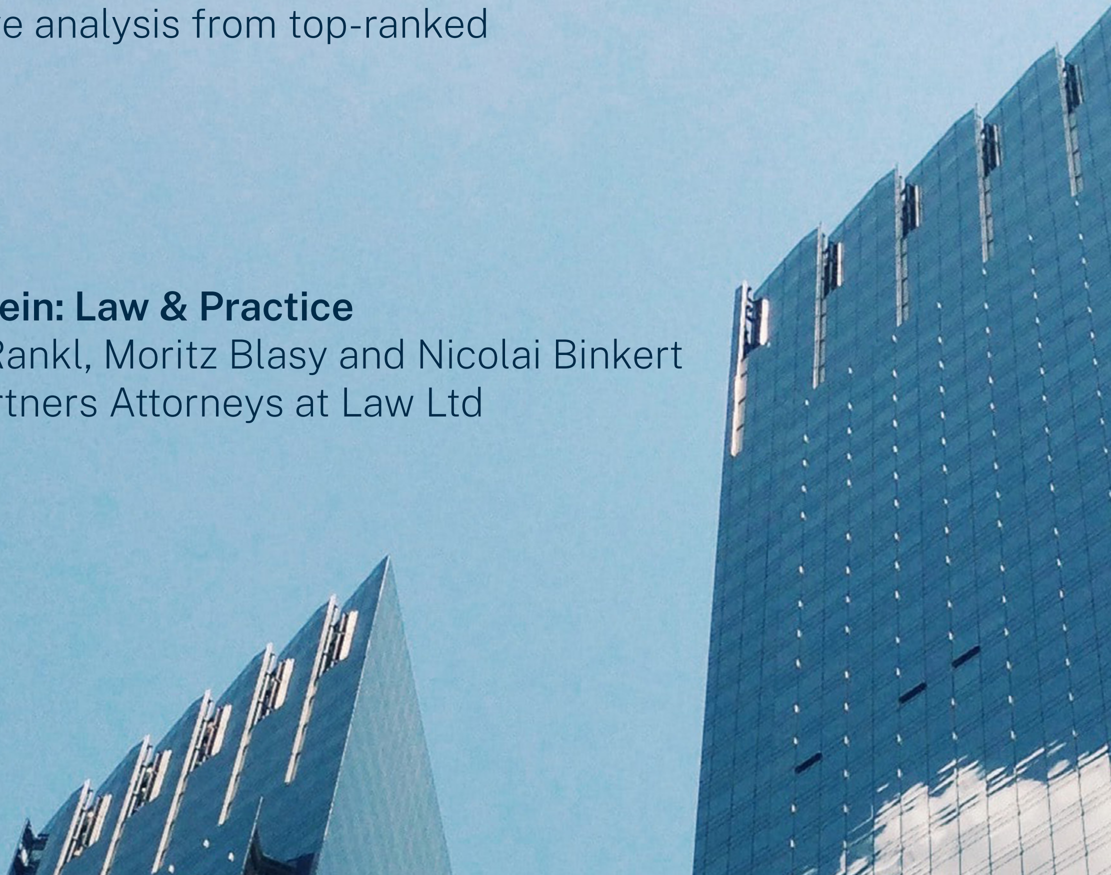

Liechtenstein: Law & Practice

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LIECHTENSTEIN

Law and Practice

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1. Legal Framework

1.1 Key Laws and Regulations

Laws and Regulations

Liechtenstein has been part of the European Economic Area (EEA) since 1995 and therefore has implemented the same regulatory standards and frameworks as other EU and EEA member states. The aforesaid framework comprises, in particular, the following laws and regulations:

- The Banking Act (*Bankengesetz* BankG) and the Banking Ordinance (*Bankenverordnung* BankV) transpose, inter alia, Directive 2013/36/EU (CRD) and Directive 2014/65 (MiFID II) into Liechtenstein law. The Banking Act is the core legislation applicable to banks and investment firms and governs the licensing process (including the "passporting" framework), the own funds requirements, the liquidity and reserve requirements, the risk management and corporate governance and the supervision through the Liechtenstein Financial Market Authority (FMA) as well as the liquidation, restructuring and insolvency of a bank or investment firm.
- The Asset Management Act (*Vermögensverwaltungsgesetz* VVG) and the Asset Management Ordinance (*Vermögensverwaltungsverordnung* VVV) transpose, inter alia, Directive 2014/65 (MiFID II) into Liechtenstein law. Given the importance of asset management services for the Liechtenstein financial market and the high threshold for obtaining a banking or investment firm license, Liechtenstein decided to implement a more accessible license for the following investment services: portfolio management, investment advice, reception and transmission of client orders and execution of client orders. Similar to the Banking Act, the Asset Management Act stipulates the requirements for obtaining the license (including passporting), own funds, liquidity, risk management and corporate governance requirements and the supervision through the FMA.
- The Payment Services Act (*Zahlungsdienstegesetz* ZDG) and the Payment Services Ordinance (*Zahlungsdiensteverordnung* ZDV) transpose Directive 2015/2366 (PSD II) into Liechtenstein law, and provide for, inter alia, the licensing requirements for payment institutions.
- The E-Money Act (*E-Geldgesetz* EGG) and the E-Money Ordinance (*E-Geldverordnung* EVV) transpose Directive 2009/110/EC

(E-Money Directive) into national law, and provide for the regulatory framework for electronic money institutions.

- The Token and Trusted Technology Service Provider Act (Token- und VT-Dienstleister-Gesetz; TVTG) and the Token and Trusted Technology Service Provider Ordinance (*Token- und VT-Dienstleister-Verordnung* TVTV), which govern the use of blockchain technology and the token economy in Liechtenstein.
- The Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* SAG) and the Recovery and Resolution Ordinance (*Sanierungs- und Abwicklungsverordnung* SAV) transpose Directive 2014/59/EU (BRRD) into Liechtenstein law, and implement, inter alia, resolution tools and requiring banks and investment firms to prepare restructuring plans laying out the actions to be taken to restore the financial stability of an institution in the event of a significant deterioration in its financial position.
- The EEA Securities Prospectus Implementation Act (*EWR-Wertpapierprospekt-Durchführungsgesetz* EWR-WPPDG) facilitates the implementation of Regulation (EU) 2017/1129 (Prospectus Regulation), and establishes the framework for drawing up prospectuses and for offering securities to the public in Liechtenstein.
- The Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz* FMAG) lays out the internal organisation of the FMA, the supervisory instruments available to the FMA, and its competencies.

As mentioned above, Liechtenstein is a member of the EEA so many EU regulations are directly applicable in Liechtenstein – eg, Regulation (EU) No 575/2013 (CRR), Regulation (EU) No 648/2012 (EMIR), Regulation (EU) 2017/1129 (Prospectus Regulation) and (once it has been added to the EEA acquis) Regulation (EU) 2023/1114 (MiCAR).

Authorities

The Liechtenstein Financial Market Authority (FMA) is an independent institution under public law that supervises financial market participants in Liechtenstein. Liechtenstein does not participate in the Single Supervisory Mechanism (SSM), so no institution in Liechtenstein is subject to supervision by the European Central Bank (ECB). However, as Liechtenstein is part of the Swiss franc monetary area, the Swiss National Bank (SNB) acts as the national bank of Liechtenstein, which means that financial institutions in Liechtenstein must comply with certain reporting requirements vis-à-vis the SNB.

2. Authorisation

2.1 Licences and Application Process

Authorisation Requirements

Banks and investment firms require a licence from the FMA in order to commence their business activities (see below for the scope of regulated activities). If the bank or investment firm is part of a foreign group active in the financial sector, a licence will only be granted if the group is subject to consolidated supervision comparable to Liechtenstein supervision and if the home country supervisory authority raises no objections to the establishment of a subsidiary. The operation of a domiciliary bank – ie, a Liechtenstein-licensed bank that has no physical presence in Liechtenstein, is prohibited.

A banking or investment firm license will be granted if the applicant meets the following requirements:

- The applicant is a company limited by shares (*Aktiengesellschaft* AG) or a European Company (*Europäische Gesellschaft* SE).
- The seat and headquarters are in Liechtenstein.
- The members of the board of directors and the executive board as well as the head of the internal audit department warrant the proper conduct of business at all times (fit and proper test), both professionally and personally.
- The statutes and regulations of the applicant precisely define the material and geographical scope of business of the bank or investment firm.
- The applicant is organised in an appropriate manner for its business activities and has at least a board of directors (*Verwaltungsrat*) responsible for overall management, supervision and control, an executive management (*Geschäftsleitung*) responsible for operations, consisting of at least two members acting jointly, an internal audit department, a risk management department as well as appropriate procedures for employees to report potential or actual violations of the Banking Act though a dedicated, independent and autonomous channel.
- The applicant has a minimum statutory capital of CHF10,000,000 in the case of banks or CHF730,000 in the case of investment firms. In practice, however, the FMA typically requires a statutory capital that exceeds the minimum requirements depending, inter alia, on the institution's business model.

Process

Upon receipt of the application, the FMA will send the applicant an acknowledgement of receipt. If facts relevant to the license change during the authorisation procedure, the applicant must immediately submit updated documents or documents adapted to the new situation. All information provided by the applicant will be treated confidentially and is subject to official secrecy in accordance with Article 31a of the Banking Act. The duration of the authorisation procedure depends primarily on the conclusiveness and completeness of the information and documents provided in the application. The FMA shall decide on an application for a licence within 12 months of receipt of the complete application. Any rejection shall be reasoned and the applicant shall be notified within six months of receipt of the application or, if the application is incomplete, within six months of submission of the required information.

Prior to submitting the application, a draft version of the definitive licence application (application for preliminary review) can be submitted to the FMA. The preliminary review application must be structured in the same way, but its content must be limited to the most important aspects. During the informal preliminary review, the FMA will assess the material aspects in relation to their non-approvability and any potential "red flags". This primary application/assessment has proven to be an invaluable tool in the past, particularly given that the FMA in this informal process views itself as a supporting service provider and sparring partner.

Fees

The administrative charges for the application process amount to CHF100,000 in the case of a banking license and CHF30,000 in the case of an investment firm license. Additional charges will accrue for filings with the Liechtenstein Commercial Register and legal and notary services.

Regulated Activities

Banks are companies that carry out one or more of the following transactions on a commercial basis:

- the acceptance of deposits and other repayable funds;
- the lending of third-party funds to an undefined group of borrowers;
- the custody business;
- the assumption of sureties, guarantees and other liabilities for others, provided that the obligation assumed is for monetary payments;
- trading in foreign exchange for its own account or for the account of third parties;
- the execution of bankable off-balance sheet transactions; and
- the issue of covered bonds in accordance with the law on European Covered Bonds (*Gesetz über Europäische gedeckte Schuldverschreibungen* EuGSVG).

Banks duly licensed to carry out the deposit and lending business are also permitted to provide investment services and ancillary investment services (see below) and payment services within the meaning of the Payment Service Act (*Zahlungsdienstegesetz* ZDG) and also to issue e-money within the meaning of the E-Money Act (*E-Geldgesetz* EGG).

Investment firms are companies that carry out one or more of the following transactions on a commercial basis:

- Investment services, namely:
  (a) the reception and transmission of orders in relation to one or more financial instruments;
  (b) the execution of orders on behalf of clients;
  (c) dealing on own account;
  (d) portfolio management;
  (e) investment advice;
  (f) the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
  (g) the placing of financial instruments without a firm commitment basis;
  (h) the operation of a multilateral trading facility (MTF); and/or
  (i) the operation of an organised trading facility (OTF).
- Ancillary services, namely:
  (a) the safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management, but excluding the maintenance of securities accounts at the top tier level;
  (b) the granting of credits or loans to an investor to allow him/her to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
  (c) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
  (d) foreign exchange services, where these are connected to the provision of investment services;
  (e) investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
  (f) services related to underwriting; and/or
  (g) investment services and ancillary services related to the underlying assets of certain derivatives, where these are connected to the provision of investment or ancillary services.

Passporting

Any bank or investment firm duly licensed in another EU/EEA member state may carry out

banking and/or investment services in Liechtenstein on the back of the freedom to provide services or the freedom of establishment, meaning that the license obtained in the home member state is notified or "passported" to Liechtenstein as the host member state by the supervisory authority of the respective home member state.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Any intended direct or indirect acquisition or disposal of a participation of 10% or more in a Liechtenstein bank or investment firm or any intended direct or indirect increase or reduction of a qualifying holding with the result that the capital or voting rights in a bank or investment firm would reach, exceed or fall below the thresholds of 20%, 30% or 50% or that the bank or investment firm would become a subsidiary of an acquirer or would no longer be a subsidiary of a seller must be notified to the FMA in writing without delay by the person or persons interested in the acquisition or disposal.

Acting in Concert and Significant Influence

In accordance with the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01), the FMA also takes into account:

- "acting in concert", where multiple persons act in concert in relation to an intended acquisition resulting in the aggregation of their holdings in order to determine whether such persons acquire a qualifying holding or cross any relevant threshold; and
- "significant influence", where a proposed acquisition not reaching the 10% threshold does trigger reporting obligations if such holding would enable the proposed acquirer to exercise a significant influence over the target undertaking – eg, the acquirer is also a member of the management board of the target.

Filing Documentation

The scope of information and documentation to be filed with the FMA is determined in Commission Delegated Regulation (EU) 2017/1946 (Ownership Control Regulation) and covers, inter alia:

- information on the identity of the proposed acquirer – eg, registered address, legal form, persons who effectively direct the business and ultimate beneficial owners;
- information on any proceedings and investigations – eg, criminal records, criminal, civil or enforcement procedures and refusal of registrations, authorisations or licenses;
- information on financial interests and non-financial interests or relationships of the proposed acquirer with current shareholders, members of the management or supervisory board or the target undertaking itself;
- information on the group of the proposed acquirer – eg, structure chart of the group, relationships between financial and non-financial entities within the group; and
- information on the acquisition itself – eg, intention of acquisition, acquisition price, financing of acquisition.

Reduced information requirements apply for certain acquirers who are authorised and supervised within the European Union/European Economic Area.

Process

The FMA has to confirm the completeness of the required documentation within two business days. Once confirmed, the FMA has 60 business days to evaluate the intended acquisition. If the FMA does not raise a written objection within the assessment period, the acquisition shall be deemed authorised. The FMA may also attach conditions and requirements to the acquisition and set a deadline for the completion of the intended acquisition.

4. Governance

4.1 Corporate Governance Requirements

The corporate governance requirements for Liechtenstein banks are laid out in the Banking Act (*Bankengesetz*) and the Banking Ordinance (*Bankenverordnung*), supplemented by various guidelines issued by the FMA. These rules are designed to promote effective supervision of a bank's business activities, from the definition of the necessary bodies within a bank to the requirements to be met by the staff performing these functions.

Board of Directors and Management Responsibilities

The senior management of a Liechtenstein bank consists of the members of the board of directors (*Verwaltungsrat*) and the members of the executive management (*Geschäftsleitung*). The board of directors, comprising a minimum of three members, holds the primary responsibility for the bank's governance. It ensures that the bank's strategic goals are in compliance with regulatory standards and reflect the interests of its stakeholders. The board of directors is also responsible for establishing a sound organisational framework and overseeing the bank's risk management system. The executive management of a Liechtenstein bank must consist of at least two members, distinct from the members of the board of directors, to ensure that operational decisions are free from supervisory conflicts. This structure enforces a strict division between management and oversight roles, which helps maintain objectivity and reduce potential conflicts of interest.

The FMA assesses both management and board members by means of a so-called fit and proper test, which ensures that persons in these key positions have the required qualifications, experience and integrity (see **4.2 Registration and Oversight of Senior Management**).

Risk Governance and Internal Audit

Liechtenstein banks are required to have a comprehensive risk management framework, which sets forth in regulations or internal policies the basic principles of risk management as well as the responsibilities and procedures for the approval of risky transactions. In particular, they must identify, limit, and monitor market, credit, default, residual, settlement, liquidity, concentration, securitisation, counterparty, interest rate, reputational, operational, legal, and over-indebtedness risks. This includes the appointment of an independent risk officer (a member of senior management) who heads the risk department and is responsible for ensuring the integrity of the risk management framework. The risk department is overseen by the board of directors and, if the institution is of significant importance, by a risk committee composed of members of the board of directors.

The internal audit function must review the effectiveness and adequacy of the internal control system and the propriety of all activities and processes of entities within the same group, whether outsourced or not. Banks and invest-

ment firms must ensure that any deficiencies identified by the internal audit function are rectified in a timely manner. The internal audit function must report directly to the board of directors and operate independently from the day-to-day business of the bank.

Outsourcing

When a bank outsources critical functions, it remains fully responsible for ensuring that these services comply with applicable regulations. The outsourcing agreement must include provisions for the monitoring and control of outsourced activities to ensure that they are subject to the same risk management and compliance framework. The guidelines on outsourcing arrangements (EBA/GL/2019/02) of the European Banking Authority (EBA) are applicable.

Liechtenstein Bankers Association

The Liechtenstein banking industry has organised itself through the establishment of the Liechtenstein Bankers Association (*Liechtensteinischer Bankenverband*), whose objectives are to protect and represent the rights and interests of the banking industry, to engage in self-regulation, to preserve and promote Liechtenstein as a banking and financial centre, and to promote professional education and training in the banking industry. To this end, the Liechtenstein Bankers Association has issued a code of conduct and guidelines for its members.

4.2 Registration and Oversight of Senior Management

In Liechtenstein, the registration and oversight of senior management of banks are governed by the Banking Act (*Bankengesetz*), the Banking Ordinance (*Bankenverordnung*), and guidelines issued by the FMA. These rules ensure that senior managers are fit and proper, able to manage risk effectively and comply with governance standards. The key requirements are set out below:

Fit and Proper Requirements

The FMA requires banks' senior management to meet strict fit and proper criteria to ensure that they have the necessary professional skills and experience, as well as personal integrity, to fulfil their duties. The fit and proper assessment covers three main areas:

Professional qualifications

Senior managers must demonstrate that they have the necessary education, qualifications and professional experience relevant to the banking sector. This includes experience in managerial positions in financial institutions or similar positions. The FMA assesses whether the candidate has the ability to perform the specific responsibilities associated with the position, such as risk management, compliance, or general management functions.

Personal integrity

A key component of the fit and proper assessment is the assessment of a manager's integrity and reputation. Individuals must demonstrate impeccable conduct and ethical behaviour. The FMA examines their personal and professional history, including any involvement in criminal activities, regulatory breaches or financial mismanagement. A clean record of fraud, money laundering, insider trading and other financial crimes is essential.

Time commitment

Senior managers must devote sufficient time to their duties. The FMA requires that senior managers have sufficient availability to perform their duties effectively. They should not hold excessive external directorships or engagements that could impair their ability to perform their banking

duties. The Banking Ordinance stipulates a maximum number of other mandates that a member of the board of directors or executive management may hold at the same time. In banks or investment firms of significant importance, a person may not be a member of the senior management if he or she is already a member of the senior management of another bank or investment firm, or a member of the senior management of two other banks or investment firms. Similarly, a person may not be a member of the board of directors if he/she is already a member of the board of directors of another bank or investment firm and is already a member of the board of directors of two other banks or investment firms, or is a member of the board of directors of four other banks or investment firms.

Registration with the FMA

All members of senior management must be registered and approved by the FMA prior to assuming office. The bank must submit a detailed application to the FMA, providing information on the individual's professional background, qualifications and clean criminal record. Potential conflicts of interest must also be disclosed. The FMA then conducts a thorough assessment of the person's suitability. The regulator reserves the right to reject an appointment if the individual does not meet the required standards. Once approved, senior managers are officially registered with the FMA and their details are maintained in regulatory records for ongoing supervision.

4.3 Remuneration Requirements

In Liechtenstein, the remuneration rules applicable to banks are designed to promote prudent risk management, to align incentives with long-term performance and to avoid excessive risk-taking. These rules focus on aligning remuneration structures with risk management and sustainable performance. Banks must ensure that their remuneration policies are consistent with sound and effective risk management, do not encourage excessive risk-taking that could jeopardise the financial stability of the bank, are gender neutral and align the interests of management, staff and shareholders with the long-term health of the institution. These principles apply to all employees whose professional activities have a material impact on the institution's risk profile, but with particular emphasis on senior management and staff in control functions such as compliance, risk management and internal audit.

Fixed and Variable Remuneration

The bank must ensure that fixed and variable remuneration components of risk-taking personnel are well balanced to avoid excessive risk-taking to bolster bonus payments.

Fixed remuneration

Fixed remuneration is the guaranteed, regular salary that employees receive. It must reflect the individual's role, responsibilities and skills. This component should be sufficient to ensure that employees do not become overly dependent on variable pay, thereby reducing the incentive for short-term risk-taking.

Variable remuneration

The performance-related variable remuneration components may include bonus payments, stock options or other incentives and must not exceed 100% or, in certain cases, 200%, of fixed compensation. The determination of the variable component must be based on a combination of individual, business unit and overall bank performance, whereby also non-financial factors (risk management, compliance and adherence to ethical standards, etc) should be factored in. In order to align variable compensation with the

long-term development of the bank, a certain portion (at least 40%) of the remuneration must be deferred for a period of at least four to five years. In addition, banks and investment firms must implement clawback and malus arrangements of up to 100% of the variable remuneration, which allow the bank to withhold or claw back variable remuneration if the recipient's performance deteriorates or if there are adverse developments such as misconduct, regulatory breaches or poor financial results that occur after payment.

5. AML/KYC

5.1 AML and CFT Requirements

Liechtenstein's anti-money laundering (AML) and counter-terrorist financing (CTF) laws comply with and implement international standards, particularly those set by the Financial Action Task Force (FATF) and the European Union. Given Liechtenstein's strong focus on international clients and business, often acting as a financial hub and gateway to the European Economic Area (EEA), Liechtenstein has implemented stringent AML/CTF measures to ensure that its banking sector operates transparently and securely, minimising the risk of illicit activities. The aforementioned rules have been implemented in the Liechtenstein Due Diligence Act (*Sorgfaltspflichtgesetz* SPG) and the Due Diligence Ordinance (*Sorgfaltspflichtverordnung* SPV), which apply to banks and other financial institutions.

Risk-Based Approach

Liechtenstein's AML/CTF regime follows a risk-based approach (RBA), which requires banks to identify, assess, and manage risks related to money laundering and terrorist financing. This approach is in line with the recommendations of the FATF and EU directives, in particular the EU anti-money laundering directives. Banks must allocate resources and implement measures commensurate with the risk profile of their customers, products and services.

Customer Due Diligence (CDD)

Banks in Liechtenstein must carry out comprehensive customer due diligence (CDD) at the start of a business relationship and on an ongoing basis throughout its duration. CDD requirements include:

- identification and verification of clients – ie, name, date of birth, address and nationality in the case of natural persons and corporate structure, legal form and persons authorised to represent the entity in the case of legal entities;
- identification of ultimate beneficial owners, focusing on the prevention of the concealment of funds through complex legal structures; and
- ongoing monitoring, which requires banks to monitor transactions on an ongoing basis to ensure that they are consistent with the customer's profile and risk level.

Enhanced due diligence requirements apply in relation to clients, transactions or situations that pose a higher risk, such as:

- relationships with politically exposed persons (PEPs) – ie, individuals who hold prominent public positions and are more susceptible to corruption;
- business relationships or transactions involving high-risk countries, particularly those identified by the FATF as having strategic AML/CTF deficiencies; and
- complex or unusually large transactions with no apparent economic or legal purpose.

Suspicious Activity Reporting (SAR)

If a Liechtenstein bank identifies suspicious activity, a report must be filed with the Liechtenstein Financial Intelligence Unit (FIU), the central authority responsible for receiving and analysing reports of suspected money laundering or terrorist financing in Liechtenstein. Suspicious activity reports (SARs) must be submitted without informing the client in order to ensure confidentiality and to avoid tipping off the potential perpetrator.

Record-Keeping

The information and documents collected by a Liechtenstein bank in the course of carrying out its due diligence requirements have to be retained for at least ten years after the end of the relationship or the execution of a transaction. These records must be accessible to regulators and law enforcement authorities upon request, ensuring transparency and traceability.

Internal Controls and Training

Given the complexity of the AML/CTF regulations, banks must implement internal policies and controls to ensure compliance with the AML/CTF requirements. These policies and controls include:

- the appointment of a compliance officer responsible for overseeing the implementation of AML/CTF measures and liaising with the FMA and the FIU;
- regular staff training to ensure that employees are properly trained on AML/CTF requirements, in particular on how to detect suspicious activities; and
- independent audits.

Cross-Border Co-operation and Information Sharing

As mentioned above, Liechtenstein's financial market has a strong emphasis on international business, so cross-border co-operation is key for Liechtenstein. As a result, Liechtenstein works closely with other EEA and FATF countries to ensure a co-ordinated approach to financial crime – eg, by exchanging information with foreign counterparts when investigating cross-border money laundering or terrorist financing activities. It is also a member of the Egmont Group, which further promotes co-operation between FIUs worldwide.

Virtual Assets and Fintech Regulation

In line with EU and FATF guidelines, Liechtenstein has also extended its AML/CTF requirements to the virtual asset sector. Virtual asset service providers, which are subject to the Token and Trusted Technology Service Provider Act, must comply with the same AML/CTF rules as traditional financial institutions. This includes customer identification, transaction monitoring and suspicious activity reporting. Given Liechtenstein's progressive stance on fintech and blockchain technology, these regulations ensure that the growing sector operates transparently and mitigates the risk of abuse for illicit purposes.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

Liechtenstein's deposit guarantee scheme is governed by the Deposit Guarantee and Investor Compensation Act (*Einlagensicherungs- und Anlegerentschädigungsgesetz* EAG) and the Deposit Guarantee and Investor Compensation Ordinance (*Einlagensicherungs- und Anlegerentschädigungsverordnung* EAV) trans-

posing Directive 2014/49/EU (Deposit Guarantee Scheme Directive) and Directive 97/9/EC (Investor-Compensation Scheme Directive) into national law.

Protection Scheme

The protection scheme has two legs, namely the deposit guarantee scheme and the investor compensation scheme.

Deposit guarantee scheme (DGS)

The DGS covers deposits up to CHF100,000 per depositor and bank. For joint accounts, the deposit guarantee limit is CHF100,000 per depositor. This means that each holder of a joint account is entitled to protection up to the maximum limit independently. It covers almost all deposits of natural or legal persons, with a few exceptions such as deposits of other financial institutions, deposits of public authorities and government bodies and deposits of certain investment vehicles such as funds (UCITS and AIF).

In certain cases, temporary high balances in excess of CHF100,000 are also covered for a certain period of time. For example, deposits resulting from the sale of private property, insurance payments or pension capital can be protected up to CHF750,000 for a maximum of six months from the occurrence of the compensation event.

Investor compensation scheme (ICS)

The ICS protects clients of investment firms in case of financial failure. This protection is limited to CHF30,000 per investor. The scheme covers securities and other financial instruments held by banks or investment firms that are lost due to insolvency or mismanagement.

Administration and Structure

Both schemes are administered by the *Einlagensicherungs- und Anlegerentschädigungs-Stiftung SV*, which operates as a Protected Cell Company (PCC), a unique legal structure that allows assets and liabilities to be segregated into separate “cells” within a single legal entity. This means that the foundation can handle different types of insolvency events or compensation claims separately, ensuring that funds earmarked for one purpose cannot be used for another. Each participating financial institution is required to contribute to the fund, ensuring that the necessary financial resources are available in the event of insolvency.

In the event of a bank failure or insolvency, the EAS activates its compensation mechanism. There is no need for depositors to file claims as the compensation process is usually automatic. The EAS aims to compensate depositors within seven working days, ensuring quick access to protected funds. This fast payout time is in line with EU standards and reflects the importance of maintaining financial stability and public confidence in the banking system.

Funding Mechanism

The DGS and the ICS are financed by contributions from banks and investment firms operating in Liechtenstein. These institutions are required to pay an annual contribution based on the size of their deposit base, which is calculated in proportion to the total amount of deposits they hold. In addition, the Foundation may collect extraordinary contributions if necessary, should the funds fall below a threshold necessary to cover a major insolvency event. The funding mechanism is designed to be robust and sufficient to meet potential claims, with an emphasis on ensuring that funds are readily available to compensate depositors in a timely manner.

Supervisory and Regulatory Oversight

The FMA supervises the EAS and ensures that it complies with national and EEA-wide rules, and also co-operates with other EEA supervisory authorities to ensure cross-border co-ordination, particularly in view of the presence of foreign banks in Liechtenstein. This co-operation is important in the context of the home-host principle, under which the home supervisor has primary responsibility, but the host country (Liechtenstein) also supervises institutions operating within its borders.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

As a member of the European Economic Area (EEA), the Basel III framework has been implemented in Liechtenstein through the Regulation (EU) No 575/2013 (Capital Requirements Regulation; CRR) and Directive 2013/36/EU (Capital Requirements Directive; CRD IV) so that Liechtenstein banks are subject to strict capital, liquidity, and risk control requirements. These regulations are incorporated into Liechtenstein's financial regulatory framework under the Banking Act (*Bankengesetz*) and Banking Ordinance (*Bankenverordnung*), and are enforced by the FMA.

Capital Requirements

Minimum capital requirements

In relation to minimum capital requirements, Liechtenstein law fully adheres to Basel III – ie, a Common Equity Tier 1 (CET1) capital ratio of 4.5%, a Tier 1 capital ratio of 6% and a total capital ratio of 8%, in each case expressed as a percentage of the total risk exposure amount.

Capital buffers

In addition to the minimum capital requirements, banks in Liechtenstein must maintain various capital buffers:

- Capital conservation buffer: In order to ensure that Liechtenstein banks do not breach the minimum capital requirements during periods of economic stress, an additional 2.5% of the total risk exposure is required as CET1 capital to absorb potential losses during such periods.
- Countercyclical capital buffer: This buffer, ranging between 0% and 2.5% of the total risk exposure, aims to protect the resilience of the Liechtenstein banking system in times of excessive credit growth so that additional capital is built up when cyclical systemic risks are increasing.
- Systemic risk buffer: The systemic risk buffer is designed to cover risks not falling within the scope of the aforementioned buffers, addressing potential serious adverse effects on the financial system and the real economy.

Liquidity Requirements

Liquidity coverage ratio (LCR)

The LCR requires banks to hold a sufficient buffer of high-quality liquid assets (HQLA) to cover net cash outflows over a 30-day stress period. The minimum LCR is 100%, meaning that the value of the bank's HQLA must be at least equal to or greater than its estimated net cash outflows over this period. High-quality liquid assets are assets that can be easily converted into cash with little or no loss in value during a crisis – eg, central bank reserves, government bonds and certain corporate bonds. The LCR ensures that banks are resilient to short-term liquidity shocks.

Net stable funding ratio (NSFR)

The NSFR is a long-term liquidity metric that requires banks to maintain a stable funding profile relative to their asset and off-balance sheet activities. It sets the available stable funding in relation to the required stable funding, which cannot be less than 100%. The NSFR requires banks to maintain sufficient stable funding to cover the required stable funding over a one-year period. Sources of stable funding include equity, long-term debt and retail and corporate deposits. The NSFR ensures that banks are less reliant on short-term, variable funding sources and can withstand long-term liquidity disruptions.

Risk Control Requirements

Internal Capital Adequacy Assessment Process (ICAAP)

ICAAP requires banks to assess their capital needs in relation to their risk profile. Banks must identify and measure all material risks (including risks not covered by regulatory minimum capital requirements) and ensure that they hold sufficient capital to cover these risks. Banks must document their ICAAP in a comprehensive report and submit it to the FMA. The regulator assesses the adequacy of the bank's capital and risk management practices as part of its supervisory review process.

Internal Liquidity Adequacy Assessment Process (ILAAP)

ILAAP is similar to ICAAP but focuses on liquidity risk. Banks must assess their liquidity needs under both normal and stressed conditions and ensure that they maintain sufficient liquid assets to meet their obligations. Like the ICAAP, the ILAAP must be submitted to the FMA, and the adequacy of the bank's liquidity risk management framework is reviewed as part of the supervisory process.

Supervisory Review and Evaluation Process (SREP)

The Supervisory Review and Evaluation Process (*Aufsichtlicher Überprüfungs- und Bewertungsprozess* SREP) is a key component of the FMA's supervision of banks in Liechtenstein. The SREP involves a thorough review of the bank's capital adequacy, liquidity position, and risk management practices. With the SREP, the FMA assesses whether a bank's internal risk controls are sufficient and whether it holds adequate capital and liquidity in relation to its risks. Under the SREP, the FMA may impose Pillar 2 capital requirements on banks, requiring them to hold additional capital above the regulatory minimum if their risk profile warrants it. These Pillar 2 requirements are based on the bank's individual risk assessment and are intended to address risks that are not fully covered by the standard Pillar 1 requirements.

Stress Testing

The FMA conducts stress tests to assess the resilience of Liechtenstein banks to adverse economic scenarios. These stress tests simulate the impact of various macroeconomic and financial shocks on the capital and liquidity positions of the bank. The results of the stress tests help the banks and the FMA to identify potential vulnerabilities and take preventive measures to strengthen the bank's risk profile.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Liechtenstein's legal and regulatory framework for bank insolvency, recovery and resolution is primarily shaped by national legislation and EU directives, ensuring that the country's regulatory framework is compatible with European stand-

ards while incorporating the specific needs and characteristics of its own financial market.

Resolution Regime

The Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* SAG) and the Recovery and Resolution Ordinance (*Sanierungs- und Abwicklungsverordnung* SAV) transpose Directive 2014/59/EU (BRRD) into Liechtenstein law and require banks and investment firms to prepare restructuring plans laying out the actions to be taken to restore the financial stability of the institution in the event of a significant deterioration in its financial position. The SAG also foresees that the FMA has to draw up a resolution plan for each bank and investment firm and respective early intervention mechanism and resolution tools (ie, sale of business, bridge institution, asset separation and bail-in).

While Liechtenstein is not part of the Eurozone and thus not a member of the Single Resolution Mechanism (SRM), it mirrors its principles in its national framework. The SRM ensures that if a major bank fails, it can be wound down efficiently with minimal impact on the broader financial system and economy. The SAG provides for the following resolution mechanisms:

Early intervention measures

The FMA can take early intervention measures if a bank shows signs of financial distress. These include requiring the bank to implement its recovery plan, to take measures to restore its financial situation, or to restructure its business. The goal of early intervention is to address problems before they escalate into full-blown insolvency.

Resolution tools

In the event of a bank's failure, the FMA can deploy a variety of resolution tools to ensure an orderly wind-down while preserving critical banking functions. These tools include:

- bail-in: allowing the bank's creditors to absorb losses, reducing the need for public funds;
- bridge institution: the creation of a temporary institution to take over the critical functions of the failed bank;
- asset separation: the transfer of non-performing loans or high-risk assets to a separate entity to isolate them from the banking system; and
- sale of business: selling parts of the bank or its entire business to a solvent institution.

Insolvency Procedures

The Liechtenstein insolvency law provides for two different types of proceedings, namely a bankruptcy proceeding (*Konkursverfahren*) focusing on the liquidation of a company, and a restructuring proceeding (*Sanierungsverfahren*) aiming at restoring the debtor's financial viability and allowing it to continue operating, while providing creditors with better recovery prospects than they would receive in a liquidation scenario.

Given the importance of banks and the consequences of their failure, the procedures described above are only subsidiary, so that banks are not subject to restructuring proceedings at all, and bankruptcy proceedings only with the prior consent of the FMA. Bankruptcy proceedings can be initiated if a bank is either over-indebted (*überschuldet*) or unable to pay its debts (*zahlungsunfähig*).

9. ESG

9.1 ESG Requirements

Liechtenstein, which ratified the Paris Agreement on climate change on 9 June 2017, has identified and declared climate risks as a core risk for the financial sector. As a member of the European Economic Area (EEA), Liechtenstein is participating in the EU-wide transformation of the financial sector towards a more long-term thinking and sustainable industry. This trend can also be found in Liechtenstein financing, where ESG-related margin grids or reporting and compliance obligations linked to environmental, social and/or governance (ESG) indicators and metrics are commonly used.

The main pillars of the remodelling process are the following EU regulations, which have been approved by the Joint EEA Committee and are therefore directly applicable in Liechtenstein:

Regulation (EU) 2019/876 (ESG Disclosure)

This regulation amends the Capital Requirement Regulation (Regulation (EU) No 575/2013) and introduces an obligation to disclose ESG risks applicable to large financial institutions that have issued securities admitted to trading on a regulated market in the EEA.

Regulation (EU) 2019/2088 (Sustainability-Related Disclosures)

This regulation establishes rules as to how market participants and advisers have to integrate and consider ESG risk factors in their decision-making and investment advice processes. It also foresees additional disclosure requirements for financial advisers with a view to company-related as well as product-related information and with a special emphasis on sustainability risks and adverse effects of investment decisions in that regard.

Regulation (EU) 2019/2089 (ESG Benchmarks)

This regulation requires all providers of benchmarks or indices used to measure the performance of financial instruments or investment funds to disclose whether and how ESG factors are taken into account. It focuses on increasing transparency and uniformity when it comes to indices and also introduces two new categories of benchmarks, namely the EU climate transition benchmarks and the EU Paris-aligned benchmarks.

Regulation (EU) 2020/852 (Taxonomy)

This regulation embodies the main pillar of the EU sustainability strategy and the so-called Green Deal. It provides an investment tool and classification system – the so-called green list – that facilitates sustainable investments by identifying to what degree commercial activities can be considered environmentally sustainable. It provides for additional disclosure requirements (eg, on the alignment of financial products with the taxonomy), aims to further strengthen investor protection and to avoid so-called greenwashing.

The FMA indicated in its latest report on supervisory matters relating to sustainable finance that sustainability remains a priority, and that, in view of the topic's significant relevance, its broad range of subjects, and the vast detail applicable to these, it has set supervision priorities. It is thus placing particular emphasis on the environmental aspects of ESG factors, transparency and disclosure requirements, practices in relation to identifying investors' sustainability preferences, greenwashing and the integration of ESG into risk management and business strategy.

10. DORA

10.1 DORA Requirements

Regulation (EU) 2022/2554 (Digital Operational Resilience Act; DORA) aims to strengthen the digital operational resilience of financial institutions, including banks, in the European Economic Area (EEA), which includes Liechtenstein. In particular, DORA focuses on ensuring that banks and other financial institutions can withstand, respond to and recover from information and communications technology (ICT)-related disruptions, which is critical in an era of increasing digital threats and cybersecurity risks.

DORA introduces a consistent and comprehensive framework for addressing digital risks in the financial sector, covering areas such as risk management, ICT incident reporting, testing, third-party risk management and information sharing. It aims to ensure that banks have robust systems and controls in place to protect their operations from technology failures, cyber-attacks and other digital threats.

Key Pillars of DORA

DORA focuses on several core areas that banks in Liechtenstein must address to ensure compliance and enhance their digital resilience.

ICT risk management and reporting

One of the key elements of DORA is the requirement for banks to establish a robust ICT risk management framework. Banks must adopt policies and procedures to identify, assess and mitigate the risks associated with the use of technology and digital services. This includes ensuring that ICT risks are integrated into the bank's broader risk management strategy, that banks identify potential vulnerabilities and threats to their ICT systems, including cyber threats and system failures, and that banks develop contingency plans to ensure business continuity in the event of ICT disruptions. Risk management under DORA extends beyond internal systems and requires banks to consider risks from third-party service providers and cloud-based services. Banks must ensure that any external ICT services on which they rely meet the same standards of operational resilience.

DORA also imposes requirements on banks for the reporting of ICT-related incidents. Any significant disruption or cyber-attack affecting the bank's digital infrastructure must be reported to the relevant supervisory authority, in this case the FMA.

ICT testing and resilience

DORA requires banks to regularly test the resilience of their ICT systems to ensure they can withstand digital disruption. This includes:

- Vulnerability assessments: Banks must regularly test their systems for potential vulnerabilities, such as outdated software, unpatched systems or poorly configured networks.
- Penetration testing: Banks are required to conduct threat-led penetration tests (TLPT) at least every three years, using simulated attacks to identify and exploit vulnerabilities in their ICT systems.
- Operational resilience testing: Banks must conduct stress tests that simulate extreme scenarios, such as large-scale cyber-attacks or ICT failures, to assess the operational impact and recovery capabilities.

Information sharing

Banks are encouraged to participate in information-sharing arrangements under DORA, particularly in the area of cybersecurity. Sharing information on emerging threats, cyber-attack methods and successful defences can help

banks improve their overall resilience to digital risks. Banks are expected to participate in industry-wide initiatives, such as sector-specific information-sharing platforms, to stay ahead of evolving digital threats.

Proportionality Principle

DORA applies the principle of proportionality, meaning that smaller banks or those with less complex digital infrastructures may be subject to less stringent requirements than larger, more systemically important institutions. The FMA ensures that the regulatory burden is appropriately scaled to the size, complexity and risk profile of each bank, allowing for a flexible approach while maintaining the overarching goal of digital resilience.

11. Horizon Scanning

11.1 Regulatory Developments

The banking sector in Liechtenstein is closely linked to European and global regulatory developments, as the country is a member of the European Economic Area (EEA). This membership requires Liechtenstein to adopt much of the regulatory framework established by the European Union (EU), particularly in the area of financial services. As the global regulatory landscape continues to evolve, a number of upcoming developments are expected to impact banks in Liechtenstein in the short to medium term. These developments are aimed at strengthening financial stability, enhancing digital resilience, promoting sustainable finance, and increasing transparency in the banking sector.

Basel III Finalisation (Basel IV)

One of the most significant upcoming regulatory changes affecting banks in Liechtenstein will be the finalisation of the Basel III framework, often referred to as Basel IV. This comprehensive reform package, developed by the Basel Committee on Banking Supervision (BCBS), will further strengthen capital and liquidity requirements for banks with the aim of enhancing financial stability and reducing systemic risk.

The changes are comprehensive and far-reaching, with a strong emphasis on limiting the use of sophisticated internal models that could lead a bank to underestimate its portfolio risk and, consequently, its capital requirements. In line with this objective, Basel IV introduces a new output floor, which limits how much a bank's internally calculated capital requirements can deviate from those calculated under the standardised model. In addition, the revised framework introduces changes to the way banks calculate risk-weighted assets (RWA), with stricter capital requirements for certain asset classes.

The implementation of Basel IV has been extended due to the COVID-19 pandemic, entering into force on 1 January 2025. Banks in Liechtenstein will need to adjust their capital adequacy calculations, adjust their portfolios and prepare for increased capital requirements.

Anti-money Laundering (AML) and Combating the Financing of Terrorism (CFT)

AML and CFT regulations continue to evolve across Europe, and Liechtenstein is expected to further strengthen its AML/CFT framework in line with international standards set by the Financial Action Task Force (FATF) and EU directives.

Sixth Anti-Money Laundering Directive (Directive (EU) 2024/1640; AMLD VI)

The Sixth Anti-Money Laundering Directive (AMLD VI) is the latest update to the EU's AML framework, and Liechtenstein will need to incorporate its provisions into national law within

the next three years. Key changes include the introduction of the concept of corporate criminal liability for AML offences, which means that banks themselves can be held liable for money laundering activities in addition to individuals. AMLD VI also increases the penalties for AML violations, with higher fines and longer prison sentences for those involved in money laundering.

EU AML Authority Regulation (Regulation (EU) 2024/1620; AMLAR)

The EU's AML Action Plan aims to create a single regulatory framework for AML across the EU and EEA. This includes the establishment of a new European Anti-Money Laundering Authority (AMLA), which will have direct supervisory powers over certain high-risk entities and provide centralised oversight of the AML regime. Liechtenstein banks will be affected by the centralisation of AML supervision, and the FMA Liechtenstein will need to coordinate closely with the new AMLA to ensure compliance. The AMLA shall apply from 1 July 2025.

Single Rulebook Regulation (Regulation (EU) 2024/1624; AMLR)

This regulation, which will come into force in July 2027, aims to streamline and standardise anti-money laundering rules across the EU/EEA by moving from a directive-based approach to a regulation-based approach, which will be directly applicable in all EU and EEA member states. This Regulation complements the other two components of the EU AML package described above. The AMLR shall apply from 10 July 2027.

Crypto-Assets

Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR) entered into force on 29 June 2023 and will be fully applicable in the EU from 30 December 2024. The aim of this regulation is to create a harmonised legal framework for persons active in the primary and secondary markets for crypto-assets. MiCAR will become directly applicable in Liechtenstein as soon as the corresponding decision of the EEA Joint Committee to incorporate the regulation into the EEA Agreement enters into force. The necessary transposition into Liechtenstein law will take place through the Act on the Implementation of Regulation (EU) 2023/1114 on Markets in Crypto Assets (EWR-MiCAR-Durchführungsgesetz, EWR-MiCAR-DG), which is currently in the legislative process and is expected to enter into force on 1 February 2025.

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