

## Translation of Liechtenstein Law

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<b>English title:</b>	Law of 11 December 2008 on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (Due Diligence Act; SPG)
<b>Original German title:</b>	Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung (Sorgfaltspflichtgesetz; SPG)
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**Law**  
of 11 December 2008  
**on Professional Due Diligence for the  
Prevention of Money Laundering, Organised  
Crime and Financing of Terrorism  
(Due Diligence Act; SPG)**

I hereby grant My consent to the following Resolution adopted by Parliament:<sup>1</sup>

Art. 1<sup>2</sup>

*Object and Purpose*

1) This Act governs the application of due diligence in the professional exercise of activities covered by this Act.

2) Its purpose is to combat money laundering, organised crime, and terrorist financing within the meaning of the Criminal Code (§§ 165, 278 to 278d StGB).

3) It shall also serve to implement and/or execute the following EEA legal provisions:<sup>3</sup>

- a) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, amending Regulation (EU) no. 648/2012 of the European Parliament

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<sup>1</sup> Report and application, together with comments from the Government No. 124/2008 and 160/2008

<sup>2</sup> Art. 1 amended by LGBL 2017 no. 161.

<sup>3</sup> Art. 1 (3) comes into force at the same time as the Decision of the EEA Joint Committee concerning the adoption of Directive (EU) 2015/849 (LGBL 2017 no. 161).

and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ. L 141 of 5.6.2015, P. 73);

- b) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EU) no. 1781/2006 (OJ. L 141 of 5.6.2015, P. 1).

4) It does not affect the provisions of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EU) no. 1781/2006.<sup>4</sup>

## Art. 2

### *Terminology and designations*

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

- a) Repealed<sup>5</sup>
- b) "Common-benefit, tax-exempt entity" shall mean entities that pursue exclusively common-benefit or charitable objectives, the performance of which serves to benefit the general public and which are demonstrably exempt from income tax in their state of domicile. In particular there is deemed to be a benefit to the general public if the activity serves the common good in a charitable, religious, humanitarian, scientific, cultural, moral, social, sporting or ecological sense, even if the activity is only of benefit to a specific category of persons;<sup>6</sup>
- c) "Business relationship" shall mean a business, professional or commercial relationship which is conducted in connection with the professional activities of the person subject to due diligence and which is expected, at the time when the contact is established, to exist for a certain duration in time;
- d) "Occasional transactions" shall mean operations and transactions, especially money exchange, cash subscription of medium-term notes and bonds, cash buying or selling of bearer securities and cashing of

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<sup>4</sup> Art. 1 (4) shall cease to apply upon entry into force of the Decision of the EEA Joint Committee concerning the adoption of Regulation (EU) 2015/847 (LGBL 2017 no. 161).

<sup>5</sup> Art. 2 (1) a) repealed by LGBL 2017 no. 161.

<sup>6</sup> Art. 2 (1) b) amended by LGBL 2017 no. 161.

- cheques, unless the operation or transaction is carried out via an existing account or custody account in the name of the client;<sup>7</sup>
- e) "Beneficial owner" shall mean a natural person on whose initiative or in whose interest a transaction or activity is carried out or a business relationship is ultimately constituted. In the case of legal entities, the beneficial owner is also the natural person in whose possession or under whose control the legal entity ultimately is situated. The Government shall provide further details by ordinance;
  - f) "Legal entity" shall mean a legal person, company, trust, or other collective or asset entity, irrespective of its legal form;
  - g) "Shell bank" shall mean a bank, a financial institution as defined in Art. 3 no. 2 of Directive (EU) 2015/849 or an institution that carries out activities equivalent to those of a bank or a financial institution registered in a state in which it has no physical presence, involving meaningful mind and management and which is not affiliated to any regulated financial group;<sup>8</sup>
  - h) "Politically exposed persons" shall mean natural persons who are, or were up to one year ago entrusted with prominent public functions, and their immediate family members, or persons known to be close associates of such persons. The Government shall provide further details by ordinance;<sup>9</sup>
  - i) "Third country" shall mean a State that is not a Member of the European Economic Area (EEA);
  - k) "National risk analysis" shall mean the measures taken periodically to determine and assess existing risks of money laundering and terrorist financing, as well as all data protection problems associated therewith, in order to promote the understanding and reduction of existing risks;<sup>10</sup>
  - l) "Bureau de change" shall mean natural or legal persons whose activities consist in the exchange of legal tender at the official exchange rate or of virtual currencies against legal tender and vice versa. Virtual currencies shall be understood to be digital monetary units, which can be exchanged for legal tender, used to purchase goods or services or to preserve value and thus assume the function of legal tender;<sup>11</sup>
  - m) "Correspondent relationship":<sup>12</sup>

<sup>7</sup> Art. 2 (1) d) amended by LGBL 2017 no. 161.

<sup>8</sup> Art. 2 (1) g) amended by LGBL 2017 no. 161.

<sup>9</sup> Art. 2 (1) h) amended by LGBL 2017 no. 161.

<sup>10</sup> Art. 2 (1) k) inserted by LGBL 2017 no. 161.

<sup>11</sup> Art. 2 (1) l) inserted by LGBL 2017 no. 161.

<sup>12</sup> Art. 2 (1) m) inserted by LGBL 2017 no. 161.

1. the provision of banking services by one bank as the correspondent to another bank as the respondent; this shall include the holding of a current account or other liability account and the provision of services associated therewith such as cash management, international funds transfers, cheque clearing, services in connection with payable-through accounts and foreign exchange ;
  2. the relationships between banks and financial institutions as defined in Art. 3 no. 2 of Directive (EU) 2015/849, both with and between one another, where similar services are provided by a correspondent institution to a respondent institution; this shall include relationships established for securities transactions or funds transfers;
- n) "Legal entities established on a discretionary basis" shall mean a legal entity with one or more discretionary beneficiaries;<sup>13</sup>
- o) "Discretionary beneficiaries" shall mean persons belonging to the category of beneficiaries specified by the donor, founder or trustor and whose possible beneficial interest is placed within the discretion of the foundation board, board of directors or trustee or another body appointed for the purpose. This shall also include persons whose beneficial interest is placed within the discretion of the foundation board, board of directors or trustee or another body appointed for that purpose, exclusively in terms of amount or time;<sup>14</sup>
- p) "Recipient of a distribution" shall mean a discretionary beneficiary who receives an allotment from the assets or the proceeds of a legal entity established on a discretionary basis. This economic benefit may consist of both bankable and non-bankable assets;<sup>15</sup>
- q) "Transaction-related documents" shall mean all documents that make it possible to reconstruct individual transactions, including the amount and currency;<sup>16</sup>
- r) "Members of the executive body" shall mean natural persons who are members of the management, the board of directors, the supervisory board, the managing board or persons in a comparable function;<sup>17</sup>
- s) "Group" shall mean a group of undertakings that consists of a parent undertaking, its subsidiary undertakings and the undertakings in which the parent undertaking or its subsidiary undertakings have an interest, as well as undertakings that are connected to one another by

<sup>13</sup> Art. 2 n) inserted by LGBL 2017 no. 161.

<sup>14</sup> Art. 2 o) inserted by LGBL 2017 no. 161.

<sup>15</sup> Art. 2 p) inserted by LGBL 2017 no. 161.

<sup>16</sup> Art. 2 q) inserted by LGBL 2017 no. 161.

<sup>17</sup> Art. 2 r) inserted by LGBL 2017 no. 161.

- a relationship as defined in Art. 1097 of the Liechtenstein Persons and Companies Act;<sup>18</sup>
- t) "Suppliers to legal entities" shall mean natural or legal persons holding one of the following authorities:<sup>19</sup>
1. authorisation for full or limited exercise of the activity as defined in Art. 3 (1) b) or c) of the Trustee Act;
  2. authorisation under the Law on the Supervision of Persons in accordance with Art. 180a of the Persons and Companies Act; or
  3. authorisation under the Business Act that subject to no. 1 and 2 entitles the holder to provide services as referred to in Art. 3 (1) k) no. 2 to 5;
- u) "States with strategic deficiencies" shall mean states whose national systems for the prevention of money laundering and terrorist financing pursuant to the delegated acts of the Commission referred to in Art. 9 (2) of Directive (EU) 2015/849, or according to the assessments of international organisations established to prevent money laundering and financing of terrorism exhibit strategic deficiencies that pose significant threats to the financial system;<sup>20</sup>
- v) "Supervisory authority" shall mean the Financial Market Authority (FMA) or the Liechtensteinische Rechtsanwaltskammer (Liechtenstein Bar Association);<sup>21</sup>
- w) "Members of tax consultancy professions" shall mean natural or legal persons who hold one of the following authorities:<sup>22</sup>
1. authorisation for the full exercise of the activities as defined in Art. 3 (1) b) of the Trustee Act; or
  2. authorisation under the Act on Auditors and Audit Companies;
- x) "External bookkeepers" shall mean natural or legal persons who provide services for third parties as defined in Art. 3 (1) n) and who hold one of the following authorities:<sup>23</sup>
1. authorisation for the full exercise of the activities as defined in Art. 3 (1) b) of the Trustee Act;
  2. authorisation under the Act on Auditors and Audit Companies; or

<sup>18</sup> Art. 2 s) inserted by LGBL 2017 no. 161.

<sup>19</sup> Art. 2 t) inserted by LGBL 2017 no. 161.

<sup>20</sup> Art. 2 u) inserted by LGBL 2017 no. 161.

<sup>21</sup> Art. 2 v) inserted by LGBL 2017 no. 161.

<sup>22</sup> Art. 2 w) inserted by LGBL 2017 no. 161.

<sup>23</sup> Art. 2 x) inserted by LGBL 2017 no. 161.

3. authorisation under the Business Act to perform the function of a bookkeeper;
- y) "EEA Home State" shall mean an EEA Member State in which the registered office or head office of the person subject to due diligence is located;<sup>24</sup>
- z) "European supervisory authorities" shall mean the European Banking Authority (EBA), die the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).<sup>25</sup>
- 2) Terms used to designate persons, professions or functions in this Act are to be understood as referring to both the male and female genders.

### Art. 3

#### *Scope of application*

- 1) This Act shall apply to persons subject to due diligence. These are:
- a) banks and investment firms licensed under the Banking Act;
- b) e-money institutions licensed under the E-Money Act;
- c) undertakings for collective investment that market their unit certificates or units; the due diligence is to be performed by the self-managed undertaking for collective investment and in the case of an externally managed undertaking for collective investment by the management company in accordance with the UCITSG or IUG or the manager of alternative investment funds pursuant to the AIFMG;<sup>26</sup>
- d) insurance undertakings licensed under the Insurance Supervision Act, insofar as they offer direct life assurance;
- e) the Liechtensteinische Post Aktiengesellschaft, insofar as it pursues activities beyond its universal service that must be reported to the FMA;
- f) exchange bureaux;
- g) insurance brokers licensed under the Insurance Mediation Act, insofar as they broker life insurance contracts and other services for investment purposes;

<sup>24</sup> Art. 2 y) inserted by LGBL 2017 no. 161.

<sup>25</sup> Art. 2 z) inserted by LGBL 2017 no. 161.

<sup>26</sup> Art. 3 (1) c) amended by LGBL 2017 no. 161.

- h) payment service providers with a licence under the Payment Service Act;<sup>27</sup>
- i) asset management companies licensed under the Asset Management Act;
- k) service providers for legal entities that provide one of the following services on a professional basis for the account of third parties:<sup>28</sup>
  - 1. establishment of companies or other legal entities;
  - 2. performance of the management or executive function of a company, the function of partner in a partnership or a comparable function in another legal person or appointment of another person for the afore-mentioned functions;
  - 3. provision of a head office, a business, postal or administrative address and other related services for a legal entity;
  - 4. performance of the function of a member of a foundation board of a foundation, trustees of a trust or a similar legal entity or appointment of another person for the afore-mentioned functions;
  - 5. performance of the function of nominee shareholder for another person, where the company concerned is not listed on a regulated market and subject to the disclosure requirements in conformity with EEA law or similar international standards, or appointment of another person for the afore-mentioned functions;
- l) casinos and providers of online gaming licensed under the Gambling Act;<sup>29</sup>
- m) lawyers and law firms with an authorisation under the Lawyers Act, as well as legal agents as referred to in Art. 108 of the Lawyers Act, insofar as they provide tax advice to their clients or assist in the planning and execution of financial or real estate transactions concerning the following:<sup>30</sup>
  - 1. buying and selling of undertakings or real estate;
  - 2. management of client funds, securities or other assets of the client;
  - 3. opening or management of accounts, custody accounts or safe deposit boxes;
  - 4. procurement of contributions necessary for the creation, operation or management of legal entities; or

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<sup>27</sup> Art. 3 (1) h) amended by LGBL 2017 no. 161.

<sup>28</sup> Art. 3 (1) k) amended by LGBL 2017 no. 161.

<sup>29</sup> Art. 3 (1) l) amended by LGBL 2016 no. 198.

<sup>30</sup> Art.3 (1) m) introductory sentence amended by LGBL 2017 no. 161.



5. the management of trusts, companies, foundations or similar legal entities;<sup>31</sup>
- n) members of tax consultancy professions and external bookkeepers, insofar as they assist their clients in the planning and execution of financial and real estate transactions concerning the operations referred to in m) nos. 1 to 5;<sup>32</sup>
- o) repealed<sup>33</sup>
- p) real estate agents, insofar as their activities cover the purchase or sale of real estate;
- q) persons trading in goods, insofar as payment is made in cash and the amount involved is 10 000 Francs or more, irrespective of whether the transaction is executed in a single operation or in several operations which appear connected;<sup>34</sup>
- r) repealed<sup>35</sup>
- s) repealed<sup>36</sup>
- t) repealed<sup>37</sup>
- u) repealed<sup>38</sup>
- v) repealed<sup>39</sup>

2) Liechtenstein branches, agents and representative offices of foreign undertakings that perform activities as referred to in (1) a) to i) are also persons subject to due diligence.<sup>40</sup>

3) The following persons subject to due diligence shall immediately notify the competent supervisory authority in writing when they have commenced business activities:<sup>41</sup>

- a) bureaux de change as referred to in (1) f);
- b) service providers for legal entities that provide services on a professional basis as referred to in (1) k) nos. 2 to 5 and hold a relevant authority under the Business Act;

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31 Art. 3 (1) m) no. 5 amended by LGBL 2017 no. 161.

32 Art. 3 (1) n) amended by LGBL 2017 no. 161.

33 Art. 3 (1) o) repealed by LGBL 2017 no. 161.

34 Art. 3 (1) q) amended by LGBL 2017 no. 161.

35 Art. 3 (1) r) repealed by LGBL 2017 no. 161.

36 Art. 3 (1) s) repealed by LGBL 2017 no. 161.

37 Art. 3 (1) t) repealed by LGBL 2017 no. 161.

38 Art. 3 (1) u) repealed by LGBL 2017 no. 161.

39 Art. 3 (1) v) repealed by LGBL 2017 no. 161.

40 Art. 3 (3) amended by LGBL 2017 no. 161.

41 Art. 3 (3) amended by LGBL 2017 no. 161.

- c) lawyers, law firms and legal agents as referred to in (1) m);
- d) members of tax consultancy professions as referred to in (1) n) with the exception of trustees and trust companies with an authorisation for the full exercise of their profession in accordance with Art. 3 (1) b) of the Trustee Act;
- e) external bookkeepers as referred to in (1) n) with the exception of trustees and trust companies with an authorisation for the full exercise of their profession in accordance with Art. 3 (1) b) of the Trustee Act;
- f) real estate agents as referred to in (1) p);
- g) persons trading in goods, as referred to in (1) q).

#### Art. 4

This Act shall not apply to:

- a) institutions exclusively operating in the field of occupational old age, disability, and survivors' provision;
- b) Repealed<sup>42</sup>
- c) Repealed<sup>43</sup>

## II. Due Diligence

#### Art. 5

##### *Scope of Due Diligence*

- 1) In the cases referred to in (2), the persons subject to due diligence shall perform the following duties taking a risk-based approach:<sup>44</sup>
- a) identification and verification of the identity of the contracting party (Art. 6);

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<sup>42</sup> Art. 4 b) repealed by LGBL 2017 no. 161.

<sup>43</sup> Art. 4 c) repealed by LGBL 2017 no. 161.

<sup>44</sup> Art. 5 (1) introductory sentence amended by LGBL 2017 no. 161.

- b) identification and verification of the identity of the beneficial owner (Art. 7);
- b<sup>bis</sup>) identification and verification of the identity of the recipient of the distribution of legal entities established on a discretionary basis and the beneficiary of life assurance policies and other insurances with investment-related objectives (Art. 7a and 7b);<sup>45</sup>
- c) establishment of a business profile (Art. 8); and
- d) supervision of business relationships at a level that is commensurate with the risk (Art. 9).
  - 2) Due diligence duties shall be performed in the following cases:
    - a) when establishing a business relationship;
    - b) when carrying out occasional transactions:<sup>46</sup>
      - 1. amounting to 15,000 Francs or more, irrespective of whether the transaction is carried out in a single operation or in several operations which appear to be linked; or
      - 2. involving transfers of funds as defined in Art. 3 no. 9 of Regulation (EU) 2015/847 of more than 1,000 Francs;
    - c) when there are doubts about the authenticity or adequacy of previously obtained data on the identity of the contracting party or the beneficial owner. The Government shall provide further details by ordinance;
    - d) when there is suspicion of money laundering, a predicate offence of money laundering, organised crime, or terrorist financing, regardless of any derogation, exemption or threshold;
    - e) when occasional transactions in cash amounting to 10 000 Francs or more are carried out by persons referred to in Art. 3 (1) q), irrespective of whether the transaction is carried out in a single operation or in several operations which appear to be linked;<sup>47</sup>
    - f) with reference to casinos and providers of online gaming referred to in Art. 3 (1) l) in connection with winnings or stakes in gaming, or with both, when carrying out transactions to the value of 2 000 Francs or more, irrespective of whether the transaction is carried out in a single operation or in several operations which appear to be linked;<sup>48</sup>

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<sup>45</sup> Art. 5 (1) bbis inserted by LGBL 2017 no. 161.

<sup>46</sup> Art. 5 (2) b) amended by LGBL 2017 no. 161.

<sup>47</sup> Art. 5 (2) e) inserted by LGBL 2017 no. 161.

<sup>48</sup> Art. 5 (2) f) inserted by LGBL 2017 no. 161.

g) with reference to exchange bureaux as referred to in Art. 3 (1) f) in connection with the conversion of virtual currencies into legal tender and vice versa of 1 000 Francs, irrespective of whether the transaction is carried out in a single operation or in several operations which appear to be linked.<sup>49</sup>

3) If the due diligence duties cannot be performed:

- a) the person subject to due diligence may not establish the business relationship or carry out the desired transaction and must verify whether a report under Art. 17 is necessary. This provision is subject to Art. 18;
- b) the person subject to due diligence must discontinue the existing business relationship irrespective of other statutory or contractual provisions, but subject to Art. 35 and 35a, and a proper record of outward movements of assets must be kept. This does not affect any reporting obligations referred to in Art. 17 to 19.<sup>50</sup>

4) By ordinance, the Government shall specify the procedure in cases where the information and documents required to identify and verify the identity of the contracting party and the beneficial owner are not fully available upon establishing the business relationship.

#### Art. 6

##### *Identification and verification of the identity of the contracting party*

1) The persons subject to due diligence shall identify the contracting party and verify the contracting party's identity by means of documents with probative value.

2) If, over the course of the business relationship, doubts arise concerning the identity of the contracting party, the persons subject to due diligence must repeat the identification and verification of the identity of the contracting party.

3) The Government shall provide further details by ordinance.

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<sup>49</sup> Art. 5 (2) g) inserted by LGBL 2017 no. 161.

<sup>50</sup> Art. 5 (3) b) amended by LGBL 2017 no. 161.

*Identification and verification of the identity of the beneficial owner*<sup>51</sup>

## Art. 7

*a) Basic Principle*<sup>52</sup>

- 1) The persons subject to due diligence shall identify the beneficial owner.
- 2) They shall verify the identity of the beneficial owner by means of risk-based and adequate measures, to satisfy themselves that the person in question is actually the beneficial owner. In the case of a legal entity, this includes risk-based and adequate measures to determine the ownership and control structure of the contracting party.
- 3) If, over the course of the business relationship, doubts arise concerning the identity of the beneficial owner, the persons subject to due diligence must repeat the identification and verification of the identity of the beneficial owner.
- 4) The Government shall provide further details by ordinance.

Art. 7a<sup>53</sup>*b) Legal entities organised on a discretionary basis*

- 1) When dealing with legal entities organised on a discretionary basis, persons subject to due diligence shall obtain sufficient information concerning the persons in whose interest the legal entity has primarily been established or is primarily operated, in order to ensure that they are able to establish their identity at the time of paying out.
- 2) When dealing with legal entities established on a discretionary basis, the persons subject to due diligence shall establish the identity of the recipient of the distribution and take appropriate steps to verify that identity at the time of paying out; for persons subject to due diligence referred to in Art. 3 (1) a) this shall only apply to assets that are entered in their books. If the recipient of the distribution is a legal entity, its beneficial owners are to be identified as the recipients of the distribution and their identities are to be verified.

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<sup>51</sup> Subject heading before Art. 7 inserted by LGBL 2017 no. 161.

<sup>52</sup> Art. 7 subject heading amended by LGBL 2017 no. 161.

<sup>53</sup> Art. 7a inserted by LGBL 2017 no. 161.

3) Persons subject to due diligence that provide services on a professional basis, as referred to in Art. 3 (1) k) no. 2 or 4, for a legal entity organised on a discretionary basis are obliged to convey the information obtained in accordance with (1) and (2) to other persons subject to due diligence as referred to in Art. 3 (1), with whom the relevant legal entity has an appropriate business relationship immediately after the information is obtained, and without being requested to do so, if assets that are held in the books of the other person subject to due diligence as referred to in Art. 3 (1) are involved.

4) The persons subject to due diligence, with the exception of service providers for legal entities, shall be exempt from the obligations referred to in (1) and (2) with reference to those legal entities for which a domestic service provider provides services on a professional basis, as defined in Art. 3 (1) k) no. 2 or 4 for legal entities. The persons subject to due diligence may subsequently be confident that no circumstances as referred to in (2) have arisen, provided that they receive no relevant information from the service providers for legal entities. The persons subject to due diligence shall record the information conveyed in the due diligence file.

5) It is not necessary to identify and verify the identity of the distribution recipients as referred to in (2) in respect of common-benefit, tax-exempt legal entities as referred to in Art. 2 (1) b).

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

Art. 7b<sup>54</sup>

*c) Insurance contracts*

1) For life assurance policies and other insurances taken out for investment purposes, insurance undertakings shall perform the following duties with regard to the beneficiaries:

- a) For beneficiaries who are identified as natural persons specified by name or as legal entities, they shall record the name of that person.
- b) For beneficiaries whose identity is established from characteristics or by category or in another way, they shall obtain sufficient information in respect of these beneficiaries in order to ensure that they are able to establish their identity at the time of paying out.

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<sup>54</sup> Art. 7b inserted by LGBL 2017 no. 161.

2) The insurance undertakings shall establish the identity of the beneficiary of life assurance policies and other insurances with an investment-related objective at the time of paying out and take appropriate steps to verify that identity. If the beneficiary is a legal entity, the identity of its beneficial owners must be established and verified.

#### Art. 8

##### *Business profile*

1) The persons subject to due diligence shall establish a profile of the business relationship, including in particular information concerning the origin of the assets and the purpose and intended nature of the business relationship (business profile).

2) They shall ensure that the data and information in the business profile is up to date, by running checks at intervals appropriate to the risk involved, in order to establish whether the information and data contained in the business profile is still current.<sup>55</sup>

3) The Government shall provide further details concerning the business profile by ordinance.

#### Art. 9

##### *Risk-appropriate monitoring of the business relationship*

1) The persons subject to due diligence shall monitor their business relationships, including the transactions performed in the course of the relevant business relationship, in a timely manner, at a level that is commensurate with the risks involved, to ensure that they are consistent with the business profile (Art. 8).<sup>56</sup>

2) They shall ensure that the risks arising from the development of new products or commercial practices or from the use of new or developing technologies are assessed in advance and taken into account in the course of the risk assessment referred to in Art. 9a.<sup>57</sup>

3) They shall carry out simple investigations with reasonable effort when circumstances arise or transactions take place that deviate from the business profile.

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<sup>55</sup> Art. 8 (2) amended by LGBL 2017 no. 161.

<sup>56</sup> Art. 9 (1) amended by LGBL 2017 no. 161.

<sup>57</sup> Art. 9 (2) amended by LGBL 2017 no. 161.

4) They must carry out special investigations when circumstances arise or transactions take place giving rise to suspicion that assets are connected with money laundering, predicate offences of money laundering, organised crime, or terrorist financing. The persons subject to due diligence may not discontinue the business relationship while these investigations are being carried out.

5) The results of the investigations shall be documented in the due diligence files.

6) The Government shall provide further details by ordinance.

Art. 9a<sup>58</sup>

*Risk assessment*

1) The persons subject to due diligence shall conduct a risk assessment to determine and assess the risks confronting them in respect of money laundering, organised crime and terrorist financing.

2) Subject to Art. 10 (4) and Art. 11 (7), the risk assessment must pay special attention to the factors mentioned in Annexes 1 and 2 and the possible indicators of a potentially lower or higher risk. The risk assessment shall also take into account the results of the national risk analysis referred to in Art. 29b.

3) The risk assessment must be documented and kept up to date and submitted to the competent supervisory authority within the context of their monitoring role.

4) The persons subject to due diligence must establish criteria to identify business relationships and transactions involving higher risks in their internal instructions, and categorise the relevant business relationships and transactions accordingly.

5) The persons subject to due diligence must define effective internal control and supervisory measures to reduce the risks identified in the national risk analysis referred to in Art. 29b and the risk assessment referred to in (1). The internal control and supervisory measures shall include, in particular:

- a) establishing due diligence duties in accordance with Art. 5 (1);
- b) documentation as referred to in Art. 20; and

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<sup>58</sup> Art. 9a inserted by LGBL 2017 no. 161.



c) setting up of the internal organisation and internal instructions in the manner set out in Art. 21.

6) The risk assessment referred to in (1) and the measures to reduce the risks referred to in (5) must be appropriate and proportionate to the nature and size of the person subject to due diligence.

7) The Government shall provide further details by ordinance.

Art. 10<sup>59</sup>

*Simplified due diligence*

1) If, after conducting an appropriate risk assessment as referred to in Art. 9a, persons subject to due diligence deem that there is only a minor risk with reference to money laundering, organised crime and terrorist financing in specific areas, the person subject to due diligence may apply simplified due diligence measures as set out in Annex 1 Section B to the business relationship or transaction in question.

2) Before the persons subject to due diligence apply simplified due diligence they shall verify that the risks associated with the business relationship or transaction are only minor.

3) The persons subject to due diligence shall monitor the transactions and business relationships sufficiently to ensure that unusual or suspect transactions can be detected.

4) The Government shall establish more specific details concerning simplified due diligence by ordinance. It may in particular:

- a) establish other factors and indicators that are to be taken into account in the risk assessment referred to in Art. 9a;
- b) indicate categories of customers, products, services, transactions, distribution channels or countries to which simplified due diligence may be applied, provided that the risks associated with reference to money laundering, organised crime and terrorist financing are only minor;
- c) indicate measures in addition to the measures of simplified due diligence set out in Annex 1 Section B that may be applied in the course of simplified due diligence.

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<sup>59</sup> Art. 10 amended by LGBL 2017 no. 161.

## Art. 11

*Enhanced due diligence*

1) If, after conducting an appropriate risk assessment as referred to in Art. 9a, persons subject to due diligence establish the existence of a heightened risk, they shall, in addition to the due diligence measures referred to in Art. 5 to 9, apply enhanced due diligence as set out in Annex 2 Section B to the business relationships and transactions identified in order to address or reduce the increased risk. In the cases referred to in (4) to (6) business relationships and transactions are to be assumed as presenting higher risks in all cases.<sup>60</sup>

2) Repealed<sup>61</sup>

3) Repealed<sup>62</sup>

4) With regard to business relationships and transactions with politically exposed persons, the persons subject to due diligence must:

- a) employ adequate, risk-based procedures to determine whether or not the contracting party, the beneficial owner or the recipient of distributions is a politically exposed person;<sup>63</sup>
- b) obtain the approval of at least one member of the general management before establishing a business relationship with such a contracting party or beneficial owner or - where a contracting party or a beneficial owner is recognized as a politically exposed person in the context of an existing business relationship - before continuing the business relationship;
- c) obtain the approval of at least one member of the executive body in order to continue business relationships with politically exposed persons on a yearly basis; this shall exclude persons holding important offices in Liechtenstein, members of their family or persons who are known to be close associates;<sup>64</sup>
- d) place the business relationship under continuous, enhanced supervision.<sup>65</sup>

4a) The persons subject to due diligence shall take appropriate measures to determine whether the beneficiary identified in accordance

<sup>60</sup> Art. 11 (1) amended by LGBL 2017 no. 161.

<sup>61</sup> Art. 11 (2) repealed by LGBL 2017 no. 161.

<sup>62</sup> Art. 11 (3) repealed by LGBL 2017 no. 161.

<sup>63</sup> Art. 11 (4) a) amended by LGBL 2017 no. 161.

<sup>64</sup> Art. 11 (4) c) amended by LGBL 2017 no. 161.

<sup>65</sup> Art. 11 (4) d) inserted by LGBL 2017 no. 161.

with Art. 7b (2) is a politically exposed person. These measures must be taken without fail prior to the payment of the insurance proceeds. If a politically exposed person is identified, the persons subject to due diligence shall be obliged:<sup>66</sup>

- a) to inform at least one member of the executive body before the insurance proceeds can be paid out;
- b) to place the entire business relationship under continuous, enhanced supervision.

5) In cross-border correspondent banking relationships with respondent institutions registered in a third country, persons subject to due diligence under Art. 3 (1) a) to i) shall ensure that they:<sup>67</sup>

- a) have sufficient information about the respondent institution to understand the nature of its business and to be able to determine from publicly available information the reputation of the institution and the quality of its supervision;<sup>68</sup>
- b) inspect the respondent institution's anti-money laundering and anti-terrorist financing controls;<sup>69</sup>
- c) obtain approval from at least one member of the general management before establishing new correspondent banking relationships;
- d) document the respective responsibilities with respect to fulfilment of due diligence requirements by the two institutions involved.

6) Persons subject to due diligence shall conduct enhanced monitoring of the following business relationships and transactions and, to the extent possible, investigate their background and purpose and record the results in writing:<sup>70</sup>

- a) complex structures, complex and unusually large transactions, as well as transaction patterns that have no apparent financial purpose or discernible lawful purpose;
- b) business relationships and transactions with contracting parties or beneficial owners domiciled in states with strategic deficiencies.<sup>71</sup>

7) The Government will provide more specific regulations concerning enhanced due diligence by ordinance. It may in particular:<sup>72</sup>

<sup>66</sup> Art. 11 (4a) inserted by LGBL 2017 no. 161.

<sup>67</sup> Art. 11 (5) introductory sentence amended by LGBL 2017 no. 161.

<sup>68</sup> Art. 11 (5) a) amended by LGBL 2017 no. 161.

<sup>69</sup> Art. 11 (5) b) amended by LGBL 2017 no. 161.

<sup>70</sup> Art. 11 (6) amended by LGBL 2013 Nr. 39.

<sup>71</sup> Art. 11 (6) b) amended by LGBL 2017 no. 161.

- a) set additional factors and indicators to be applied in the risk assessment referred to in Art. 9a;
- b) indicate categories of customers, products, services, transactions, distribution channels or countries, in respect of which enhanced due diligence may be applied, insofar as there is an increased risk with reference to money laundering, organised crime and terrorist financing;
- c) indicate other measures in addition to the measures of enhanced due diligence as set out in Annex 2 Section B, to be applied in the event of enhanced due diligence;
- d) notwithstanding the delegated acts of the Commission in accordance with Art. 9 (2) of Directive (EU) 2015/849 and on the basis of evaluations of international agencies for the prevention of money laundering and terrorist financing, identify additional states with strategic deficiencies;
- e) establish reporting or licensing requirements for business relationships and transactions with contracting partners or beneficial owners domiciled in states with strategic deficiencies.

Art. 12<sup>73</sup>

*Information on the payer or payee in transfers of funds*

1) The transmission of information concerning the payer or payee in transfers of funds shall be subject to Regulation (EU) 2015/847.

2) Regulation (EU) 2015/847 shall not apply to domestic transfers of funds to a payment account of a payee, set up exclusively for payments for the supply of goods or services, if:

- a) the payee's payment service provider is subject to Regulation (EU) 2015/849;
- b) the payee's payment service provider is capable, by means of an individual transaction key for the payee, of tracing the transfer of funds back to the person who concluded an agreement with the payee concerning the supply of goods or services; and
- c) the sum transferred does not exceed 1 000 Francs.

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<sup>72</sup> Art. 11 (7) amended by LGBL 2017 no. 161.

<sup>73</sup> Art. 12 amended by LGBL 2017 no. 161.

3) Under Art. 25 of Regulation (EU) 2015/847 the FMA may establish more specific details concerning the obligations of payment service providers.

#### Art. 13

##### *Prohibited business relationships*

1) Persons subject to due diligence under Art. 3, (1) a) to h) may not conduct correspondent banking relationships with shell banks.

2) They shall take appropriate measures to ensure that they do not conduct any business relationships with undertakings allowing shell banks to use their accounts, custody accounts, or safe deposit boxes.

3) They may not hold savings books, accounts or custody accounts payable to bearer.

4) They may not keep anonymous accounts, savings books, or custody accounts or accounts, savings books, or custody accounts in fictitious names.

#### Art. 14

##### *Delegation of due diligence*

1) Insofar as fulfilment of the requirements under this Act is guaranteed, the persons subject to due diligence may delegate due diligence measures referred to in Art. 5, (1) a) to c) to:

- a) another person subject to due diligence; or
- b) a natural or legal person domiciled in another EEA Member State or third country:<sup>74</sup>
  1. whose due diligence and record-keeping requirements meet the requirements set out in Directive (EU) 2015/849;
  2. whose compliance with the requirements referred to in no. 1 is supervised in a way that is consistent with Chapter VI Section 2 of Directive (EU) 2015/849; and
  3. who is not domiciled in a state with strategic deficiencies as referred to in Art. 2 (1) u).

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<sup>74</sup> Art. 14 (1) b) amended by LGBI. 2017 no. 161.

2) Even in cases of delegation, the persons subject to due diligence shall remain responsible for compliance with due diligence requirements.

3) The FMA shall issue a list of states whose systems for the prevention of money laundering and terrorist financing meet the requirements referred to in (1) b) nos. 1 and 2, based on the assessments of international agencies for the prevention of money laundering and terrorist financing.<sup>75</sup>

4) This article does not apply to outsourcing or representation arrangements for which the outsourcing service provider or representative is to be regarded as part of the person subject to due diligence on the basis of a contractual agreement.

5) The Government shall provide further details by ordinance.

#### Art. 15<sup>76</sup>

##### *Provision of joint services*

1) If several persons subject to due diligence provide services using joint billing and the same business name, the due diligence measures referred to in Art. 5 (1) may be carried out by the person subject to due diligence who holds the mandate, working alone, provided that the business relationship is the same. This shall also apply if several persons subject to due diligence using joint billing and the same business name operate as a partner of a partnership or as a governing body or general manager of a legal entity for the account of a third party, or in a comparable function for the account of the same legal entity as third party within the meaning of Art. 3 (1) k) no. 2 or 4.

2) If several persons subject to due diligence who do not use joint billing and the same business name operate as a partner of a partnership, or as a governing body or general manager of a legal entity for the account of a third party, or in a comparable function for the account of the same legal entity as third party within the meaning of Art. 3 (1) k) no. 2 or 4, it shall be permissible to have the due diligence measures referred to in Art. 5 (1) carried out by one of the persons performing such functions, as the person subject to due diligence who holds the mandate. The persons subject to due diligence who do not personally meet these obligations shall remain responsible for compliance with the obligations.

<sup>75</sup> Art. 14 (3) amended by LGBL 2017 no. 161.

<sup>76</sup> Art. 15 amended by LGBL 2017 no. 161.

- 3) Persons subject to due diligence who do not personally meet the obligations referred to in (1) or (2) shall ensure that:
- a) they are granted access to the due diligence files on request at any time; and
  - b) a person subject to due diligence is appointed to perform the duties by means of a written agreement and the proper performance of the duties is appropriately monitored.

Art. 16<sup>77</sup>

*Global application of the due diligence standard*

1) Persons subject to due diligence referred to in Art. 3 (1) a) to i) belonging to a group shall establish strategies and procedures applicable to the entire group, including data protection strategies and procedures for exchange of information within the group, for the purpose of prevention of money laundering, organised crime and financing of terrorism. These strategies and procedures must be effectively implemented by branches, agents, representative offices and subsidiaries in EEA Member States and third countries under the majority ownership of persons subject to due diligence. In third countries in which the minimum requirements with reference to the prevention of money laundering, organised crime and financing of terrorism are less stringent than those provided under this Act, the persons subject to due diligence shall adjust their group-wide strategies and procedures to the minimum requirements under this Act, insofar as this is permitted under the foreign law.

2) The persons subject to due diligence referred to in (1) with branches, agents, representative offices and majority-owned subsidiaries in another EEA Member State shall ensure that these business establishments comply with the provisions adopted under the national law of the other EEA Member State for transposing Directive (EU) 2015/849 and for implementing Regulation (EU) 2015/847.

3) If, due to restrictions under the law of the other country, branches and the majority-owned subsidiaries located in a third country of persons subject to due diligence referred to in (1) are unable to comply with the measures required under (1), including those relating to data protection, the persons subject to due diligence must inform the FMA. In such a case the persons subject to due diligence shall take additional measures to effectively address the risk of money laundering, organised crime and

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<sup>77</sup> Art. 16 amended by LGBl. 2017 no. 161.

financing of terrorism. If these additional measures are inadequate, the FMA may:

- a) prohibit the group from entering into business relationships in the third country concerned or require it to terminate existing business relationships;
- b) prohibit the execution of transactions in the third country concerned; or
- c) if necessary require the group to cease business in the third country concerned.

4) The FMA is obliged to inform the European Supervisory Authorities in the cases referred to in (3).

5) The Government may issue more specific regulations by Ordinance.

#### Art. 16a<sup>78</sup>

##### *Sharing information between persons subject to due diligence*

1) The sharing of information in the following circumstances shall take precedence over all officially recognised obligations of confidentiality:

- a) in the context of a delegation as referred to in Art. 14; and
- b) in the use of the correspondent banking services as referred to in Art. 2 (1) m).

2) Art. 17 (2) shall apply *mutatis mutandis*.

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<sup>78</sup> Art. 16a inserted by LGBI. 2017 no. 161.



### III. Obligations on suspicion of money laundering, organised crime and terrorist financing<sup>79</sup>

#### Art. 17<sup>80</sup>

##### *Obligation to report to the FIU*

1) Where suspicion of money laundering, a predicate offence of money laundering, organised crime, or terrorist financing exists, the persons subject to due diligence must immediately report to the Financial Intelligence Unit (FIU) in writing; in this connection responsibility for submitting reports shall lie with the member appointed at executive level to ensure compliance with the Act. Likewise the supervisory authorities and all offices of the National Administration are subject to the obligation to report to the FIU. The Government shall specify the procedure for submitting reports, by ordinance.

2) Lawyers, law firms and legal agents as well as auditors, auditing companies, and audit offices under special legislation shall not be required to report to the FIU if they have received the information concerned:

- a) from or on a client when they are endeavouring to ascertain the legal position on behalf of their client; or
- b) in their capacity as defence counsel or representative of that client, in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received before, during, or after such proceedings.

#### Art. 18<sup>81</sup>

##### *Execution of transactions*

1) Persons subject to due diligence may not execute transactions in respect of which there is an obligation to report suspicions in accordance with Art. 17 (1), until such a report has been submitted. If an advance notification regarding such transactions is not possible or it would frustrate efforts to pursue a person suspected of being involved in money laundering, predicate offences of money laundering, organised crime, or terrorist financing, the report referred to in Art. 17 (1) may exceptionally

<sup>79</sup> Heading before Art. 17 amended by LGBl. 2016 no. 33.

<sup>80</sup> Art. 17 amended by LGBl. 2017 no. 161.

<sup>81</sup> Art. 18 amended by LGBl. 2016 no. 33.

be submitted immediately after the transaction has been executed. The right to take legal action is reserved.<sup>82</sup>

2) The persons subject to due diligence shall execute customer orders that involve significant assets in a form that enables the transaction referred to in (1) to be tracked. The FIU may approve exemptions to this process

3) Irrespective of any suspicious transaction reports submitted, the FIU may suspend the execution of a current transaction that might be connected with money laundering, predicate offences to money laundering, organised crime or terrorist financing for a maximum period of two working days. The reasons for such a measure must be stated, provided that this does not jeopardise ongoing investigations or analyses in Liechtenstein or abroad or violate current agreements concerning cooperation arrangements with foreign authorities. During the period of the prescribed measure the FIU may analyse the transaction, examine the reasons for suspicion and subsequently forward the results of the analysis to the prosecution authorities.<sup>83</sup>

4) The FIU is authorised to order a measure as referred to in (3) at the request of an FIU of another EEA Member State.<sup>84</sup>

#### Art. 18a<sup>85</sup>

##### *Freezing assets in the event of suspicion of terrorist financing*

If the suspicious transaction report has been submitted due to indications of terrorist financing, the persons subject to due diligence shall freeze assets until an order is received from the competent prosecution authorities, but for no longer than a period of ten working days from receipt of the report pursuant to Art. 17 (1) by the FIU.

#### Art. 18b<sup>86</sup>

##### *Ban on disclosure*

1) The persons subject to due diligence, as well as their executive bodies and employees, may not inform the contracting party, the benefi-

<sup>82</sup> Art. 18 (1) amended by LGBL 2017 no. 161.

<sup>83</sup> Art. 18 (3) inserted by LGBL 2017 no. 161.

<sup>84</sup> Art. 18 (4) inserted by LGBL 2017 no. 161.

<sup>85</sup> Art. 18a inserted by LGBL 2016 no. 33.

<sup>86</sup> Art. 18b amended by LGBL 2017 no. 161.

cial owner, or third parties, with the exception of the supervisory authorities or the competent prosecution authorities, that they:

- a) are submitting, have submitted or intend to submit a report to the FIU pursuant to Art. 17 (1); or
- b) have received instructions from the FIU pursuant to Art. 18 (3).

2) The supervisory authorities and the official bodies that have submitted a report in accordance with Art. 17 (1) shall also be subject to the ban on disclosure referred to in (1).

3) The prohibition set out in (1) shall not apply to the provision of information between:

- a) persons subject to due diligence as referred to in Art. 3 (1) a) to i) or between these institutions and their branches and subsidiary undertakings in which they have a majority holding in a Member State or in third countries, provided that these branches and subsidiary undertakings adhere to the strategies and procedures applying throughout the group as referred to in Art. 16 without restriction and the strategies and procedures applying throughout the group meet the requirements of Directive (EU) 2015/849. The FIU may order a ban on disclosure as referred to in (1) in individual cases;
- b) persons subject to due diligence as referred to in Art. 3 (1) m) and n) or institutions from third countries, in which requirements equivalent to those of Directive (EU) 2015/849 apply, provided they carry out their professional activity, whether as an employee or not, within the same legal person or in a comprehensive structure to which the person belongs and which has common owners, or joint management, or have joint control with regard to compliance with the relevant provisions;
- c) persons subject to due diligence as referred to in Art. 3 (1) a) to i) and m) and n) in cases referring to the same client and the same transaction and in which two or more persons subject to due diligence are involved, provided these are persons subject to due diligence from an EEA Member State or institutions in a third country, in which requirements equivalent to those of Directive (EU) 2015/849 apply and provided they belong to the same professional category and are subject to obligations with reference to professional confidentiality and protection of personal data.

4) Persons subject to due diligence as referred to in Art. 3 (1) m) and n), who endeavour to prevent a client from committing an illegal act are not in breach of the ban on disclosure referred to in (1).

Art. 19<sup>87</sup>*Exclusion of criminal and civil liability*

1) The persons subject to due diligence, the supervisory authorities and the offices of the National Administration and their executive bodies and employees, who submit a report to the FIU pursuant to Art. 17 (1) shall be released from any civil and criminal liability, if this report should prove to be unjustified, provided that they did not act deliberately.

2) The following are also exempt from any civil liability:

- a) any person who does not execute a transaction as referred to in Art. 18 or Art. 18a, in spite of the fact that the contractual partner in respect of that transaction expressly requests that the transaction be executed; or
- b) any person who refrains from opening a business relationship, refuses to carry out the requested transaction or discontinues the existing business relationship pursuant to Art. 5 (3).

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<sup>87</sup> Art. 19 amended by LGBl. 2017 no. 161.

### IIIa. Disclosure of information for analytical and statistical purposes<sup>88</sup>

Art. 19a<sup>89</sup>

#### *Basic principle*

1) In the performance of its duties under Art. 4 of the FIU Act, the Financial Intelligence Unit may require persons subject to due diligence to provide information for analytical purposes, insofar as the information referred to in Art. 20 has been documented. The disclosure request from the FIU shall take precedence over all obligations of confidentiality recognised by the Government. This shall not include information that a lawyer has received from or about a party, if he is assessing the legal position for that party or is defending or representing him in connection with or in court proceedings.

2) In the performance of its duties under Art. 5 of the FIU Act, the Financial Intelligence Unit may for statistical purposes require persons subject to due diligence to provide non-personal data concerning business relationships. Statutory provisions on the protection of confidentiality are reserved.

3) The Financial Intelligence Unit may set an appropriate time limit for the provision of information. It may extend the time limit if warranted by the circumstances.

4) The ban on disclosure pursuant to Art. 18b and the exclusion of criminal and civil liability pursuant to Art. 19 shall apply *mutatis mutandis*.

### IV. Documentation, Data Protection and Internal Organisation<sup>90</sup>

Art. 20<sup>91</sup>

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<sup>88</sup> Heading before Art. 19a inserted by LGBL 2016 no. 33.

<sup>89</sup> Art. 19a inserted by LGBL 2016 no. 33.

<sup>90</sup> Heading before Art. 20 amended by LGBL 2017 no. 161.

<sup>91</sup> Art. 20 amended by LGBL 2017 no. 161.

*Documentation requirement*

1) The persons subject to due diligence shall keep a record of compliance with the duties of due diligence (Art. 5 to 16) and the reporting obligation (Art. 17) as provided in this Act. They shall establish and maintain due diligence files for this purpose. Client-related documents, business correspondence and vouchers are to be retained for ten years from the end of the business relationship and/or from execution of an occasional transaction, whereas transaction-related documents, business correspondence and vouchers shall be retained for ten years from conclusion of the transaction and/or from their issue. The Government may provide more specific regulations by Ordinance.

2) In cases of simplified due diligence (Art. 10) the persons subject to due diligence must record the reason for its application in the due diligence files.

Art. 20a<sup>92</sup>*Data protection*

1) Unless statutory regulations provide otherwise, persons subject to due diligence are permitted to process personal data on the basis of this Act exclusively for the purpose of preventing money laundering and financing of terrorism as defined in Art. 1 and may not further process such data in a way that is incompatible with this Act. The processing of data on the basis of this Act for other purposes, for example for commercial purposes, is prohibited.

2) Before commencing a new business relationship or executing occasional transactions the person subject to due diligence must provide the new customer with the information referred to in Art. 5 (2) of the Data Protection Act. This information shall include, in particular, a general reference to the statutory duties of the person subject to due diligence in connection with the processing of personal data.

3) The right of disclosure is subject to the provisions of Art. 11 and 12 of the Data Protection Act. The ban on disclosure provided in Art. 18b of this Act represents a restriction as referred to in Art. 12 of the Data Protection Act.

4) Persons subject to due diligence shall be obliged to delete personal data ten years from the end of the business relationship or from execu-

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<sup>92</sup> Art. 20a inserted by LGBl. 2017 no. 161.

tion of the occasional transaction. Specific statutory time limits are reserved.

5) The provisions of the Data Protection Act shall otherwise apply to the processing of data.

#### Art. 21

##### *Internal organisation*

1) The persons subject to due diligence shall take the necessary organisational measures and provide appropriate internal instruments of control and monitoring. They shall in particular issue internal instructions, arrange secure storage of the due diligence files, and arrange for training and development of their staff.

2) As appropriate to the circumstances and the individual risks, the internal organisation shall be structured according to the type and size of the enterprise as well as according to the number, type, and complexity of the business relationships. The effective fulfilment of the internal functions and due diligence requirements must be guaranteed at all times.<sup>93</sup>

3) Repealed<sup>94</sup>

4) The Government shall provide further details by ordinance.

#### Art. 22

##### *Internal functions*

1) The persons subject to due diligence shall appoint a contact person for the competent supervisory authority as well as persons or specialist units for the internal functions of compliance officers and investigating officers. They shall also appoint a member of the executive body to be responsible for ensuring compliance with this Act and the ordinances issued in association with it.<sup>95</sup>

2) Substitution shall be guaranteed at all times.

3) One person or a specialist unit, if applicable, may perform several functions, provided that the implementation of this Act is assured. The

<sup>93</sup> Art. 21 (2) amended by LGBl. 2017 no. 161.

<sup>94</sup> Art. 21 (3) repealed by LGBl. 2017 no. 161.

<sup>95</sup> Art. 22 (1) amended by LGBl. 2017 no. 161.

investigating officer and compliance officer functions may also be performed by persons appointed at executive level, provided the implementation of this Act is assured.<sup>96</sup>

4) The Government shall provide further details by ordinance.

## V. Oversight

### A. Supervisory authorities<sup>97</sup>

#### Art. 23<sup>98</sup>

##### *Responsibilities*

1) Responsibility for oversight and for the execution of this Act and the implementation of Regulation (EU) 2015/847 shall reside with:

- a) the FMA with reference to persons subject to due diligence referred to in Art. 3 (1) a) to l) and n) to q);
- b) the Liechtenstein Bar Association with reference to persons subject to due diligence referred to in Art. 3 (1) m).

2) The supervisory authorities shall take the measures required in order to ensure compliance with this Act and the implementation of Regulation (EU) 2015/847, subject to the authority of the FIU.

#### Art. 23a<sup>99</sup>

##### *Risk-based supervision*

1) The supervisory authorities shall adopt a risk-based approach to enable them to perform their supervision in accordance with this Act. In order to achieve this they need to obtain a clear understanding of the risks prevailing in Liechtenstein in respect of money laundering, organised crime and terrorist financing.

2) The supervisory authorities shall draw up a risk profile for every person subject to due diligence. This risk profile must take into account

<sup>96</sup> Art. 22 (3) amended by LGBL 2017 no. 161.

<sup>97</sup> Heading before Art. 23 amended by LGBL 2017 no. 161.

<sup>98</sup> Art. 23 amended by LGBL 2017 no. 161.

<sup>99</sup> Art. 23a inserted by LGBL 2017 no. 161.



the following specific criteria in respect of the person subject to due diligence:

- a) the nature, size, complexity and predisposition to risk of the business;
- b) the arrangements for risk-appropriate monitoring as referred to in Art. 9;
- c) the internal risk assessment as referred to in Art. 9a;
- d) the internal organisational arrangements as referred to in Art. 21 and 22; and
- e) the results of previous inspections as referred to in Art. 24 and 25.

3) Provided that the risks in a particular sector are classified as minor or moderate in the national risk analysis referred to in Art. 29b, the supervisory authorities may take the decision not to draw up an individual risk profile and opt for a sector profile instead.

4) The frequency and depth of the ordinary inspections shall be governed both by the risk profile of the person subject to due diligence as referred to in (2) and the results of the national risk analysis referred to in Art. 29b.

5) The Government shall establish more specific rules by ordinance.

## B. Inspections

### Art. 24

#### *Ordinary inspections*

1) The supervisory authorities shall carry out ordinary inspections on a regular basis in the form of spot-checks on the compliance with the provisions of this Act, or they shall order such inspections to be conducted.<sup>100</sup>

2) Repealed<sup>101</sup>

3) The inspections shall encompass both formal inspection of compliance with the documentation obligation as well as material checks regarding the plausibility of the due diligence measures taken. In the course of their inspections, the supervisory authorities shall adequately

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<sup>100</sup> Art. 24 (1) amended by LGBl. 2017 no. 161.

<sup>101</sup> Art. 24 (2) repealed by LGBl. 2017 no. 161.

verify that the persons subject to due diligence are employing a risk-based approach. They shall in particular assess the adequacy of the following:<sup>102</sup>

- a) the risk assessment of the person subject to due diligence as referred to in Art. 9a (1); and
- b) the adequacy and implementation of the internal controls and supervisory measures referred to in Art. 9a (5).

4) A report is to be produced on the results of each inspection.

5) If the persons subject to due diligence have an audit office subject to special legislation at their disposal, their compliance with the provisions of this Act shall as a rule be verified at the request of the supervisory authority or by the supervisory authority itself.<sup>103</sup>

6) All other persons subject to due diligence shall be inspected for the verification of compliance with the provisions of this Act, by the supervisory authorities, or at the request of the supervisory authorities by auditors or auditing companies. The aforementioned persons subject to due diligence may submit two proposals for auditors or auditing companies to the supervisory authorities, indicating which they prefer. The supervisory authorities may take the proposals of the persons subject to due diligence into account in the selection process. The supervisory authorities may restrict the selection of auditors or auditing companies for individual categories of persons subject to due diligence, insofar as special expertise is required.<sup>104</sup>

7) The records and data of the inspections must be processed and stored exclusively in Liechtenstein.

8) The findings obtained in the course of the inspections may be used for the sole purpose of combating money laundering, predicate offences of money laundering, organised crime, and terrorist financing. This provision is without prejudice to Art. 34.

9) The costs of ordinary inspection procedures as well as the associated administrative costs within the meaning of this Act shall be borne by the inspected persons subject to due diligence. The costs of mandated third parties shall be based on the applicable fee schedule customary for the sector and must be proportionate to the purpose of the inspections.<sup>105</sup>

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<sup>102</sup> Art. 24 (3) amended by LGBL 2017 no. 161.

<sup>103</sup> Art. 24 (5) amended by LGBL 2017 no. 161.

<sup>104</sup> Art. 24 (6) amended by LGBL 2017 no. 161.

<sup>105</sup> Art. 24 (9) amended by LGBL 2011 no. 45.

10) The Government shall provide further details by ordinance, in particular concerning the procedure for conducting inspections.

Art. 25<sup>106</sup>

*Extraordinary inspections*

1) Subject to paragraphs (2) and (3), the provisions set out in Art. 24 shall apply mutatis mutandis to extraordinary inspections (Art 28 (1) c)).

2) If the supervisory authority instructs third parties to carry out an extraordinary inspection, these third parties must submit a budget to the supervisory authority for approval before commencing the procedure. The costs of mandated third parties shall be based on the applicable fee schedule customary for the sector and must be proportionate to the purpose of the extraordinary inspection.<sup>107</sup>

3) If the investigation detects a violation of supervisory provisions, the costs of the extraordinary inspections shall be charged to the inspected persons subject to due diligence. The costs shall be borne by the State in all other cases.

**C. Mandated auditors, auditing companies, and audit offices  
subject to special legislation**

Art. 26

*Conditions*

1) Unless the inspections are carried out by the supervisory authority itself, the mandate for the inspections may only be given to auditors, auditing companies, and audit offices subject to special legislation that:<sup>108</sup>

- a) hold a licence under the Law on Auditors and Auditing Companies or a licence as an audit office under special legislation;
- b) are independent from the persons subject to due diligence to be audited; and

<sup>106</sup> Art. 25 amended by LGBL 2011 no. 45.

<sup>107</sup> Art. 25 (2) amended by LGBL 2017 no. 161.

<sup>108</sup> Art. 26 (1) Introductory sentence amended by LGBL 2017 Nr. 161.

- c) provide proof of regular participation in external training and development.
- 2) The Government shall provide details concerning the preconditions set out in (1) by ordinance.

#### Art. 27

##### *Obligations*

1) By accepting the mandate, the auditor, auditing company, or audit office subject to special legislation commit themselves to

- a) comply with the basic principles governing inspection procedures and the conducting of inspections established by the supervisory authority and to supply the supervisory authority with all working documents drawn up in the course of inspections, on request, for quality control purposes;<sup>109</sup>
- b) report to the supervisory authority on their inspection activities. No significant facts may be withheld in the report. The information given in the report must be true;<sup>110</sup>
- c) maintain confidentiality in respect of the findings of their inspections. They shall be subject to official secrecy in the performance of their activities pursuant to this Act. This provision is without prejudice to b) and e) and Art. 28 (4);<sup>111</sup>
- d) process and store the records and data of the inspections exclusively in Liechtenstein; and
- e) provide all information to the supervisory authorities and communicate all records and copies that they will require to perform their oversight functions in accordance with this Act, on request.<sup>112</sup>

2) The supervisory authority shall set out more specific instructions concerning the minimum content of the inspection reports and the performance of inspections.<sup>113</sup>

<sup>109</sup> Art. 27 (1) a) amended by LGBL 2017 Nr. 161.

<sup>110</sup> Art. 27 (1) b) amended by LGBL 2017 no. 161.

<sup>111</sup> Art. 27 c) amended by LGBL 2013 no. 424.

<sup>112</sup> Art. 27 (1) e) amended by LGBL 2017 no. 161.

<sup>113</sup> Art. 27 (2) inserted by LGBL 2017 no. 161.

## D. Measures

### Art. 28

#### *Supervisory measures*

1) The supervisory authority shall take the necessary measures in the course of its supervision of the persons subject to due diligence. It may in particular:<sup>114</sup>

- a) issue orders, guidelines, and recommendations;
- b) conduct ordinary inspections within the meaning of Art. 24 or order them to be conducted;
- c) conduct extraordinary inspections or order them to be conducted if there are reasons to doubt that the due diligence requirements are being met or if circumstances exist that appear to endanger the reputation of the financial centre;
- d) prohibit the commencement of new business relationships for a limited period of time in the event of repeated, systematic or serious violations of individual provisions of this Act or Regulation (EU) 2015/847 and to prevent further violations;<sup>115</sup>
- e) request the competent authority to undertake appropriate disciplinary measures. The disciplinary authority shall periodically update the supervisory authority on the status of the ongoing proceedings;<sup>116</sup>
- f) order the discontinuation of a practice that violates the provisions of this Act or Regulation (EU) 2015/847;<sup>117</sup>
- g) publicly disclose decisions in accordance with Art. 31b in the event of repeated, systematic or serious violations of individual provisions of this Act or Regulation (EU) 2015/847;<sup>118</sup>
- h) temporarily prohibit the performance of the activity it has authorised under special legislation in the event of repeated, systematic or serious violations of individual provisions of this Act or Regulation (EU) 2015/847;<sup>119</sup>

<sup>114</sup> Art. 28 (1) introductory sentence amended by LGBl. 2017 no. 161.

<sup>115</sup> Art. 28 (1) d) amended by LGBl. 2017 no. 161.

<sup>116</sup> Art. 28 (1) e) amended by LGBl. 2017 no. 161.

<sup>117</sup> Art. 28 (1) f) inserted by LGBl. 2017 no. 161.

<sup>118</sup> Art. 28 (1) g) inserted by LGBl. 2017 no. 161.

<sup>119</sup> Art. 28 (1) h) inserted by LGBl. 2017 no. 161.

- i) withdraw the authorisation it has granted under special legislation in the event of repeated, systematic or serious violations of individual provisions of this Act or Regulation (EU) 2015/847;<sup>120</sup>
- k) in the event of repeated, systematic or serious violations of individual provisions of this Act or Regulation (EU) 2015/847 temporarily prohibit members of the executive body and other natural persons, who pursuant to Art. 33 (1) can be held responsible for the violation, from performing the executive functions it has authorised or taking up such functions yet to be authorised.<sup>121</sup>

1a) If the supervisory authority receives information about violations of this Act, the ordinances issued in association with it or Regulation (EU) 2015/847, it shall take the necessary measures to restore the lawful state of affairs.<sup>122</sup>

1b) If there is reason to assume that activities specified in Art. 3 (1) are being conducted without an authorisation under special legislation or without a notification as referred to in Art. 3 (3), the supervisory authority may request information and records from the persons concerned, as well as third parties, in the same way as from persons subject to the provisions of this Act.<sup>123</sup>

2) The supervisory authorities shall inform the persons subject to due diligence about their measures and procedures.<sup>124</sup>

3) The supervisory authorities may issue guidelines interpreting the provisions of this Act and the implementing ordinances as appropriate to each industry sector.<sup>125</sup>

4) The persons subject to due diligence shall provide all information to the supervisory authorities on request and communicate all records and copies to the supervisory authorities that they will require to perform their oversight functions in accordance with this Act. This obligation shall take precedence over all obligations of confidentiality recognised by the Government. Art. 17 (2) shall apply *mutatis mutandis*.<sup>126</sup>

<sup>120</sup> Art. 28 (1) i) inserted by LGBL 2017 no. 161.

<sup>121</sup> Art. 28 (1) k) inserted by LGBL 2017 no. 161.

<sup>122</sup> Art. 28 (1a) inserted by LGBL 2017 no. 161.

<sup>123</sup> Art. 28 (1b) inserted by LGBL 2017 no. 161.

<sup>124</sup> Art. 28 (2) amended by LGBL 2017 no. 161.

<sup>125</sup> Art. 28 (3) amended by LGBL 2017 no. 161.

<sup>126</sup> Art. 28 (4) amended by LGBL 2017 no. 161.

**D<sup>bis</sup>. Notifications<sup>127</sup>**Art. 28a<sup>128</sup>*Reporting of unlawful acts*

1) The FMA shall establish an effective, reliable reporting system by means of which potential or actual violations of the provisions of this Act and the ordinances issued in association with it, Regulation (EU) 2015/847 or other laws that serve to prevent money laundering, organised crime and terrorist financing, can be reported via a publicly accessible, secure reporting channel.

2) The reporting system shall comprise as a minimum:

- a) special procedures for receiving reports of violations referred to in (1) and their follow-up;
- b) appropriate arrangements to protect employees of persons subject to due diligence who report violations committed internally within that entity as referred to in (1) from retaliatory measures, discrimination and other forms of unfair treatment, at the very least;
- c) appropriate protection for the accused person;
- d) protection of personal data in accordance with the Data Protection Act, both for the person reporting the violation and the person who is alleged to be responsible for the violations referred to in (1);
- e) clear rules that guarantee that confidentiality will be assured in all cases with reference to the reporting person, unless a disclosure of the information is necessary in connection with a prosecution, judicial proceedings or proceedings under administrative law.

3) Persons subject to due diligence having 100 employees or more who are involved with business relationships, must have appropriate procedures in place through which their employees can report violations as referred to in (1) internally via a special independent and anonymous channel.

4) A report made by employees of persons subject to due diligence is not to be considered as a violation of a contractual or statutory obligation of confidentiality and will not render that person liable in that regard, unless another person is deliberately disadvantaged by that report without proper cause.

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<sup>127</sup> Heading before Art. 28a inserted by LGBL 2017 no. 161.

<sup>128</sup> Art. 28a inserted by LGBL 2017 no. 161.

5) Where such matters do not fall within the remit of the FMA, it shall forward reports as referred to in (1) to the competent authorities.

6) The Government may establish more specific relations by ordinance.

## E. Legal remedies

### Art. 29

#### *Administrative appeal*

1) Decisions and orders by the FMA may be appealed to the FMA Complaints Commission within 14 days from service.

2) Decisions and orders by the FMA Complaints Commission or the Managing Board of the Bar Association may be appealed to the Administrative Court within 14 days from service.<sup>129</sup>

## Va. National Risk Assessment<sup>130</sup>

### Art. 29a<sup>131</sup>

#### *Basic principle*

1) The authorities responsible for the drafting of the national risk assessment, in particular the Public Prosecution Service, the FMA, the FIU, the National Police and other authorities engaged in the prevention of money laundering, organised crime and terrorist financing, shall take appropriate measures to identify, assess, understand and reduce the risks of money laundering and terrorist financing existing in this connection. The risk assessment must be updated at regular intervals.

2) The results of the risk assessment carried out by the European Commission for the Single Market must be taken into consideration in the drafting of the national risk assessment.

<sup>129</sup> Art. 29 (2) amended by LGBL 2017 no. 161.

<sup>130</sup> Heading before Art. 29a inserted by LGBL 2017 no. 161.

<sup>131</sup> Art. 29a inserted by LGBL 2017 no. 161.



Art. 29b<sup>132</sup>*Purpose*

1) The purpose of the national risk assessment is to improve the system for the prevention of money laundering and terrorist financing, in particular in any areas in which the persons subject to due diligence are bound to apply enhanced due diligence, to identify and if applicable announce measures.

2) Where applicable it will identify sectors or areas with a lower or higher risk of money laundering and terrorist financing.

3) It will form the basis for the allocation and prioritisation of resources for the prevention of money laundering and terrorist financing and for ensuring that appropriate regulations are put in place to address the risks of money laundering and terrorist financing for every individual sector or area.

Art. 29c<sup>133</sup>*Information for the persons subject to due diligence*

The supervisory authorities and the FIU shall immediately provide the persons subject to due diligence with appropriate information to assist them in their own assessment of the risk of money laundering and terrorist financing.

Art. 29d<sup>134</sup>*Duties of the supervisory authorities*

1) In the performance of its supervision the supervisory authority shall collect the non-personal information and data from the persons subject to due diligence that is required for the production of the national risk analysis.

2) The supervisory authority will also use the data that is already available, obtained in the course of prudential oversight and the supervision in accordance with this Act, that is relevant to the production of the national risk analysis pursuant to Art. 29b.

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<sup>132</sup> Art. 29b inserted by LGBL 2017 no. 161.

<sup>133</sup> Art. 29c inserted by LGBL 2017 no. 161.

<sup>134</sup> Art. 29d inserted by LGBL 2017 no. 161.

3) Where necessary, the supervisory authority will also make the relevant information and data referred to in (1) and (2) available to the other authorities referred to in Art. 29a (1) for the purposes of drawing up the national risk analysis pursuant to Art. 29b.

## VI. Penal provisions, administrative measures, measures in business transactions and administrative assistance

### A. Penal provisions

#### Art. 30

#### *Offences and infringements*<sup>135</sup>

1) The Princely Court of Justice shall impose a custodial sentence of up to six months or a fine of up to 360 daily units for an offence on any person who wilfully:<sup>136</sup>

- a) violates the reporting obligation referred to in Art. 17 (1) line 1;
- b) carries out transactions contrary to Art. 18;
- c) violates the obligation to freeze assets pursuant to Art. 18a;
- d) violates the ban on disclosure specified in Art. 18b (1).

2) Repealed<sup>137</sup>

2a) The Princely Court of Justice shall impose fines of up to 100 000 Francs for an infringement on any person who in breach of their obligation to the FIU fails to provide the information referred to in Art. 19a (1) or provides untrue information or withholds significant facts in this connection.<sup>138</sup>

2b) The Princely Court of Justice shall impose fines of up to 10 000 Francs for an infringement on any person who refuses to provide the FIU with the reports and information referred to in Art. 19a (2)<sup>139</sup>

3) The limitation period shall be three years.<sup>140</sup>

<sup>135</sup> Art. 30 subject heading amended by LGBL 2016 no. 33.

<sup>136</sup> Art. 30 (1) amended by LGBL 2017 no. 161.

<sup>137</sup> Art. 30 (2) repealed by LGBL 2017 no. 161.

<sup>138</sup> Art. 30 (2a) inserted by LGBL 2016 no. 33.

<sup>139</sup> Art. 30 (2b) inserted by LGBL 2016 no. 33.

<sup>140</sup> Art. 30 (3) inserted by LGBL 2013 no. 39.

4) The liability of legal persons for offences and infringements shall be governed by §§ 74a et seq. StGB (Criminal Code).<sup>141</sup>

#### Art. 31

#### *Administrative Offences*<sup>142</sup>

1) The supervisory authority shall impose fines of up to 200 000 Francs for an administrative offence on any person who wilfully:<sup>143</sup>

- a) refuses to give information or makes incorrect statements to the supervisory authority, an auditor, an auditing company, or an audit office subject to special legislation, or withholds significant facts from them;<sup>144</sup>
- a<sup>bis</sup>) fails to make periodic reports, submits reports that do not comply with the provisions, are incomplete or submits the reports late;<sup>145</sup>
- b) fails to comply with an order to restore the lawful state of affairs or any other order issued by the supervisory authorities in their enforcement of this Act;<sup>146</sup>
- c) fails to identify or verify the identity of the contracting party in accordance with Art. 6 or fails to repeat the process;<sup>147</sup>
- d) fails to identify or verify the identity of the beneficial owner pursuant to Art. 7 or fails to repeat the process or fails to meet the additional obligations referred to in Art. 7a and 7b;<sup>148</sup>
- e) fails to establish and update the profile of the business relationship in accordance with Art. 8;<sup>149</sup>
- f) fails to carry out risk-appropriate monitoring of a business relationship in accordance with Art. 9;<sup>150</sup>
- f<sup>bis</sup>) fails to undertake the risk assessment referred to in Art. 9a;<sup>151</sup>

<sup>141</sup> Art. 30 (4) inserted by LGBL 2017 no. 161.

<sup>142</sup> Art. 31 subject heading amended by LGBL 2016 no. 33.

<sup>143</sup> Art. 31 (1) introductory sentence amended by LGBL 2017 no. 161.

<sup>144</sup> Art. 31 (1) a) amended by LGBL 2017 no. 161.

<sup>145</sup> Art. 31 (1) abis) inserted by LGBL 2017 no. 161.

<sup>146</sup> Art. 31 (1) b) amended by LGBL 2017 no. 161.

<sup>147</sup> Art. 31 (1) c) amended by LGBL 2017 no. 161.

<sup>148</sup> Art. 31 (1) d) amended by LGBL 2017 no. 161.

<sup>149</sup> Art. 31 (1) e) inserted by LGBL 2013 no. 39.

<sup>150</sup> Art. 31 (1) f) inserted by LGBL 2013 no. 39.

<sup>151</sup> Art. 31 (1) fbis) inserted by LGBL 2017 no. 161.

- f<sup>ter</sup>) applies simplified due diligence contrary to Art. 10;<sup>152</sup>
- g) fails to meet the enhanced due diligence obligations in accordance with Art. 11;<sup>153</sup>
- h) maintains a prohibited business relationship in violation of Art. 13 (1), (3) and (4) or fails to take appropriate measures in accordance with Art. 13 (2);<sup>154</sup>
- i) delegates the fulfilment of due diligence obligations to third parties in violation of Art. 14 (1) to (3) or outsources it in violation of Art. 14 (4);<sup>155</sup>
- i<sup>bis</sup>) fails to meet the obligations referred to in Art. 15 (3);<sup>156</sup>
- k) fails to ensure global application of due diligence standards in accordance with Art. 16;<sup>157</sup>
- l) fails to establish or maintain due diligence files in accordance with Art. 20;<sup>158</sup>
- m) fails to establish internal organisation in accordance with Art. 21;<sup>159</sup>
- n) fails to establish internal functions in accordance with Art. 22;<sup>160</sup>
- o) as an auditor, an auditing company, or an audit office subject to special legislation, fails to meet the obligations referred to in Art. 27 a) or b), specifically makes false statements in its audit report or withholds material facts, fails to submit its audit report properly or on time or fails to follow the auditing guidelines established by the supervisory authority;<sup>161</sup>
- p) as an auditor, an auditing company, or an audit office subject to special legislation is in breach of the obligation of confidentiality required under Art. 27 c);<sup>162</sup>
- q) as an auditor, an auditing company, or an audit office subject to special legislation fails to process and store the records and data concerning inspections in Liechtenstein contrary to Art. 27 d);<sup>163</sup>

152 Art. 31 (1) fter) inserted by LGBL 2017 no. 161.

153 Art. 31 (1) g) inserted by LGBL 2013 no. 39.

154 Art. 31 (1) h) inserted by LGBL 2013 no. 39.

155 Art. 31 (1) i) inserted by LGBL 2013 no. 39.

156 Art. 31 (1) ibis) inserted by LGBL 2017 no. 161.

157 Art. 31 (1) k) inserted by LGBL 2013 no. 39.

158 Art. 31 (1) l) inserted by LGBL 2013 no. 39.

159 Art. 31 (1) m) inserted by LGBL 2013 no. 39.

160 Art. 31 (1) n) inserted by LGBL 2013 no. 39.

161 Art. 31 (1) o) amended by LGBL 2017 no. 161.

162 Art. 31 (1) p) inserted by LGBL 2017 no. 161.

163 Art. 31 (1) q) inserted by LGBL 2017 no. 161.

- r) as an auditor, an auditing company, or an audit office subject to special legislation fails to meet the obligation to provide information or communicate records and copies pursuant to Art. 27 e);<sup>164</sup>
- s) fails to have the inspection pursuant to Art. 28 (1) b) or c) conducted as a whole or with regard to individual aspects of due diligence;<sup>165</sup>
- s<sup>bis</sup>) fails to establish an internal reporting system pursuant to Art. 28a (3);<sup>166</sup>
- t) permits outflow of assets contrary to Art. 35 or 35a;<sup>167</sup>
- u) is in violation of Regulation (EU) 2015/847, in the course of transfers of funds, by:<sup>168</sup>
  - 1. failing to provide or verify the information concerning the payer and payee contrary to Art. 4, 5 or 6;
  - 2. contrary to Art. 7 (1) and (2) failing to establish effective procedures to detect missing information on the payer or payee, or failing to implement them properly;
  - 3. contrary to Art. 7 (3) to (5) failing to verify the accuracy of the information concerning the payee;
  - 4. contrary to Art. 8 (1) and (2) failing to establish effective risk-based procedures for dealing with transfers of funds with missing or incomplete information concerning the payer or payee, or failing to implement them properly;
  - 5. contrary to Art. 10 failing to ensure that the information concerning the payer or the payee that accompanies a transfer of funds is retained with the transfer;
  - 6. contrary to Art. 11 (1) and (2) failing to establish effective procedures to detect whether information concerning the payer or the payee is missing or failing to implement them properly;
  - 7. contrary to Art. 12 (1) and (2) failing to establish effective risk-based procedures for dealing with transfers of funds with missing or incomplete information concerning the payer or the payee or failing to implement them properly;
  - 8. contrary to Art. 16 failing to retain the records of the information referred to in Art. 4 to 7 concerning the payer and the payee for five years.

<sup>164</sup> Art. 31 (1) r) inserted by LGBL 2017 no. 161.

<sup>165</sup> Art. 31 (1) s) inserted by LGBL 2017 no. 161.

<sup>166</sup> Art. 31 (1) sbis) inserted by LGBL 2017 no. 161.

<sup>167</sup> Art. 31 (1) t) inserted by LGBL 2017 no. 161.

<sup>168</sup> Art. 31 (1) u) inserted by LGBL 2017 no. 161.

2) The supervisory authority shall impose fines of up to 100 000 Francs for an administrative offence on any person who wilfully fails to meet the reporting obligation referred to in Art. 3 (3).<sup>169</sup>

3) If an administrative offence as referred to in (1) c) to n) or u) nos. 1, 4, 6 to 8 is substantially, repeatedly or systematically committed by a person subject to due diligence as referred to in Art. 3 (1) a) to i), the following fines shall be imposed:<sup>170</sup>

- a) for legal persons, up to 5 000 000 Franc or up to 10 % of their total annual turnover, based on the last available annual financial statements ratified by the executive body, insofar as this amount exceeds 5 000 000 Francs; if the person subject to due diligence is a parent company or the subsidiary of a parent company that is obliged to draw up consolidated annual accounts in accordance with Art. 22 of Directive 2013/34/EU, the relevant annual turnover is the total annual turnover or the equivalent income category specified in the relevant accounting guidelines, disclosed in the last available consolidated accounts, respectively, approved by the executive body of the ultimate parent company at the head of the group; or
- b) for natural persons, up to 5 000 000 Francs.

4) If an administrative offence as referred to in (1) c) to n) is substantially, repeatedly or systematically committed by a person subject to due diligence as referred to in Art. 3 (1) k) to q), the following fines shall be imposed:<sup>171</sup>

- a) up to 1 000 000 Francs; or
- b) up to twice the amount of profits achieved as a result of the administrative offence, insofar as this figure can be determined and exceeds the amount referred to in a).

5) The supervisory authority shall impose fines as referred to in (3) a) or (4) on legal persons if the administrative offences are committed in the course of business and in line with the aim of the legal person (predicate offences) by natural persons, who either acted alone or as a member of the executive body of the legal person and hold a management position within the legal person, on the basis of which such persons:<sup>172</sup>

- a) are empowered to represent the legal person towards third parties;
- b) exercise supervisory powers within the legal person; or

<sup>169</sup> Art. 31 (2) amended by LGBL 2017 no. 161.

<sup>170</sup> Art. 31 (3) amended by LGBL 2017 no. 161.

<sup>171</sup> Art. 31 (4) inserted by LGBL 2017 no. 161.

<sup>172</sup> Art. 31 (5) inserted by LGBL 2017 no. 161.

c) are empowered to make decisions in the name of the legal person.

6) The supervisory authority shall also impose fines as referred to in (3) a) or (4) on legal persons if administrative offences are committed by employees of the legal person, even if they are not culpable, and these offences were made possible or considerably facilitated by the fact that the persons referred to in (5) omitted to take the necessary and reasonable measures to prevent such predicate offences.<sup>173</sup>

7) The responsibility of the legal person for the predicate offence and the culpability of the persons referred to in (5) and (6) for the same offence are not mutually exclusive. The supervisory authority may refrain from imposing a penalty on a natural person, if a fine has already been imposed on the legal person for the same offence and there are no particular circumstances that would make it imperative to impose a penalty.<sup>174</sup>

8) No penalty shall be imposed pursuant to (1), (3) and (4) on a person who does not personally perform the due diligence pursuant to Art. 5 (1) under the provisions of Art. 15 (1) or (2), if that person:<sup>175</sup>

- a) has appointed a person subject to due diligence to perform the duties on the basis of a written agreement; and
- b) checks that the duties are being performed properly.

9) The limitation period shall be three years.<sup>176</sup>

#### Art. 31a<sup>177</sup>

##### *Proportionality and efficiency rule*

1) When imposing the penalties referred to in Art. 30 and 31 the Court of Justice and the supervisory authorities shall take into consideration:

- a) with reference to the offence in particular:
  1. its severity and duration;
  2. the amount of the profits achieved through the offence or losses prevented, insofar as a figure can be determined;

<sup>173</sup> Art. 31 (6) inserted by LGBL 2017 no. 161.

<sup>174</sup> Art. 31 (7) inserted by LGBL 2017 no. 161.

<sup>175</sup> Art. 31 (8) inserted by LGBL 2017 no. 161.

<sup>176</sup> Art. 31 (9) inserted by LGBL 2017 no. 161.

<sup>177</sup> Art. 31a inserted by LGBL 2017 no. 161.

3. the losses incurred by third parties, insofar as a figure can be determined;
- b) with reference to the persons responsible for the offence in particular:
  1. the degree of culpability;
  2. financing standing;
  3. willingness to cooperate;
  4. previous offences.
- 2) In other respects the General Section of the Criminal Code shall apply *mutatis mutandis*.

Art. 31b<sup>178</sup>

*Publication of decisions*

1) The supervisory authorities shall publish legally binding decisions imposing penalties for offences referred to in Art. 31 (3) and 4 and imposing measures as referred to in Art. 28 (1) h) to k) immediately after the person concerned has been informed of the penalty and the measure. The publication shall contain:

- a) information concerning the nature and character of the offence; and
- b) the name or company name of the natural or legal person on whom the sanction has been imposed.

2) If publication of the identity information referred to in (1) b) were to be disproportionate or likely to jeopardise the stability of the financial markets or ongoing investigations, the supervisory authority may:

- a) elect not to publish the decision until the reasons for not publishing it have ceased to apply;
- b) publish the decision in an anonymous form; or
- c) refrain from publishing the decision if the options referred to in a) and b) are not deemed sufficient to guarantee that:
  1. the stability of the financial markets will not be jeopardised;
  2. the publication of such decisions would be proportionate in the case of penalties or measures that are deemed to be minor.

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<sup>178</sup> Art. 31b inserted by LGBl. 2017 no. 161.



3) The supervisory authority may defer publication in accordance with (2) b) for a reasonable period of time, if the reasons for anonymous publication can be expected to become irrelevant within that period.

4) The supervisory authority shall ensure that the publication of the decision is retrievable on its website five years from its publication. In this connection the personal data may only continue to be published as long as it does not fulfil one of the criteria referred to in (2).

5) Publication in accordance with (1) is to be ordered by the supervisory authority and shall take place after this order has become legally enforceable; this does not apply to publications that have been issued in an anonymous form in accordance with (2) b).

#### Art. 31c<sup>179</sup>

##### *Reporting to the European supervisory authorities*

The FMA shall inform the European supervisory authorities of all legally enforceable penalties pursuant to Art. 31 (3) and measures pursuant to Art. 28 (1) g) to k) that have been imposed on persons subject to due diligence as referred to in Art. 3 (1) a) to i). Art. 31b (5) shall apply *mutatis mutandis*.

#### Art. 32

##### *Applicability of other criminal law provisions*

The possibility of criminal liability arising from other criminal law provisions shall be reserved.

#### Art. 33<sup>180</sup>

##### *Responsibility*

1) If the violations are committed in the course of the business operations of a legal person, the penal provisions shall apply to the members of the executive body and other natural persons who acted or should have acted on behalf of that legal person, but the legal person shall however be jointly and severally liable for financial penalties, fines and costs.

<sup>179</sup> Art. 31c inserted by LGBL 2017 no. 161.

<sup>180</sup> Art. 33 amended by LGBL 2017 no. 161.

2) If a financial penalty or fine is imposed on the legal person, the joint and several liability of the legal person referred to in (1) shall lapse.

## B. Administrative measures

### Art. 34

#### *Reservation of additional measures*

The possibility of additional measures against the persons subject to due diligence in accordance with applicable special legislation shall be reserved.

## C. Measures in business transactions

### *Lack of information<sup>181</sup>*

### Art. 35

#### *a) Business relationships prior to 1 January 2001<sup>182</sup>*

1) If persons subject to due diligence still maintain accounts or custody accounts in connection with business relationships which were opened before 1 January 2001, and which under the law applicable at the time did not require a business profile that included information on the beneficial owner, they shall not permit any outflow of assets as long as the requisite information and records are not available.

2) The outflow of assets shall be permissible on an exceptional basis if:

- a) the balance of assets of the business relationship does not exceed 25,000 Francs;
- b) no suspicion of connection with money laundering, predicate offences of money laundering, organised crime, or terrorist financing exists;
- c) the name of the person to whom the assets are to be transferred is evident from the due diligence files;

<sup>181</sup> Subject heading before Art. 35 inserted by LGBL 2017 no. 161.

<sup>182</sup> Art. 35 Subject heading amended by LGBL 2017 no. 161.

- d) the assets are transferred in a way that allows the authorities to trace them;
- e) the business relationship is immediately terminated once the assets have been transferred.

Art. 35a<sup>183</sup>

*b) Business relationships prior to 1 January 2016*

1) If persons subject to due diligence have not recorded the identification of the beneficial owners or effective contributors in business relationships existing prior to 31 December 2015, in accordance with the due diligence legislation applying as at 31 December 2015, by 31 December 2016, they may not permit any outflow of assets as long as the requisite information and records are not available.

2) If persons subject to due diligence have not repeated the identification and verification of the identity of the beneficial owner in business relationships existing prior to 1 January 2016, which are subject to enhanced due diligence in accordance with Art. 11, in accordance with the due diligence legislation applying as at 1 January 2016, by 31 December 2018 at the latest, they may not permit any outflow of assets as from 1 January 2019, as long as the information and records required in accordance with the provisions of this Act are not available.

3) If persons subject to due diligence have not repeated the identification and verification of the identity of the beneficial owner in business relationships existing prior to 1 January 2016, which are not subject to enhanced due diligence in accordance with Art. 11, in accordance with the due diligence legislation applying as at 1 January 2016, by 31 December 2020, they may not permit any outflow of assets as from 1 January 2021 as long as the information and records required in accordance with the provisions of this Act are not available.

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<sup>183</sup> Art. 35a inserted by LGBL 2017 no. 161.

## D. Administrative assistance

### Art. 36<sup>184</sup>

#### *Cooperation between domestic authorities*

1) The domestic authorities, in particular the courts, the Public Prosecution Service, the FMA, the Liechtenstein Bar Association, the FIU, the National Police and other authorities responsible for the prevention of money laundering, organised crime, and terrorist financing are required to work together in close cooperation, to provide each other with all information and transmit to one another all records that are necessary for the enforcement of this Act.

2) In proceedings relating to §§ 165, 278 to 278d StGB (Criminal Code), the Public Prosecution Service shall inform the supervisory authorities and the FIU whenever such proceedings are initiated and discontinued; the courts shall transmit copies of the relevant judgments. In addition, the persons subject to due diligence that have submitted a report pursuant to Art. 17 shall be informed of the outcome of the relevant proceedings.

3) Furthermore, the Public Prosecution Service shall inform the supervisory authorities of the initiation and discontinuation of proceedings in connection with Art. 30 and the courts shall transmit copies of the relevant judgments.

### Art. 37

#### *Cooperation with foreign authorities*

1) The following provisions shall apply insofar as cooperation with foreign authorities is not regulated by special legislation.

2) The FMA shall transmit all information to a requesting competent foreign financial market supervisory authority which that authority requires to fulfil its supervisory responsibilities if:

- a) this is not detrimental to sovereignty, security, public order or other significant national interests;
- b) the recipients and the persons employed and mandated by the recipient are subject to a statutory obligation of confidentiality in respect of information acquired in the course of their official business

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<sup>184</sup> Art. 36 amended by LGBl. 2017 no. 161.

and this obligation continues to apply after their employment service has ended;<sup>185</sup>

- c) it is guaranteed that the transmitted information will only be used to verify compliance with due diligence requirements as referred to in this Act;
- d) in the case of information originating from abroad, express consent of the authority having transmitted the information has been given and it is guaranteed that, should the occasion arise, the information will only be disclosed for the purposes to which these authorities have consented.

3) The supervisory authorities may request foreign financial market supervisory authorities to transmit all information necessary for fulfilment of the responsibilities under this Act. They may forward the information received to competent domestic authorities.<sup>186</sup>

4) Information received from foreign authorities may be used by the competent domestic authorities for the following purposes only:

- a) to verify compliance with due diligence requirements;
- b) to impose sanctions;
- c) in connection with administrative proceedings concerning the appeal of decisions of a competent authority; or
- d) in connection with judicial proceedings.

5) The supervisory authorities shall work with the competent financial market supervisory authorities of an EEA Member State, in which branches, agencies, representative offices or subsidiary undertakings of the person subject to due diligence are authorised or notified in order to ensure effective oversight.<sup>187</sup>

6) The competent financial market supervisory authorities of an EEA Home State shall have the option of carrying out inspections locally in Liechtenstein in the business premises of their branches, agencies, representative offices or subsidiary undertakings or having such inspections carried out by a person appointed for that purpose. The financial market supervisory authority of the EEA Home State shall coordinate an intended inspection with the competent supervisory authority beforehand; the competent supervisory authority may participate in the inspection. The financial market supervisory authority of the EEA Home State may

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<sup>185</sup> Art. 37 (2) b) amended by LGBL 2017 no. 161.

<sup>186</sup> Art. 37 (3) amended by LGBL 2017 no. 161.

<sup>187</sup> Art. 37 (5) inserted by LGBL 2017 no. 161.

only use the results and findings of the inspections and the associated documentation obtained under the provisions of (2) and (4) in order to fulfil its supervisory responsibilities.<sup>188</sup>

Art. 37a<sup>189</sup>

*Cooperation with the European supervisory authorities*

The FMA shall provide the European supervisory authorities with all information that they require to perform their duties in accordance with Directive (EU) 2015/849.

## VII. Transitional and final provisions

Art. 38

*Implementing ordinances*

The Government shall issue the ordinances necessary to implement this Act, in particular with regard to:

- a) the definition of beneficial owner (Art. 2 (1) e))
- b) the definition of politically exposed person (Art. 2 (1) h));
- c) the thresholds referred to in Art. 4 c) no. 5;
- d) the procedure to be adopted in the event of doubts about the authenticity or adequacy of data concerning the identity of the contracting party or the beneficial owner (Art. 5 (2) c));
- e) the procedure for cases in which the information and documents required to identify and verify the identity of the contracting party and the beneficial owner are not fully available upon establishing the business relationship (Art. 5 (4));
- f) the procedure for identifying and verifying the identity of the contracting party as well as the confirmatory nature of documents (Art. 6 (3));
- g) the procedure for identifying and verifying the identity of the beneficial owner (Art. 7 (4));
- h) the establishment of the business profile (Art. 8 (3));

<sup>188</sup> Art. 37 (6) inserted by LGBL 2017 no. 161.

<sup>189</sup> Art. 37a inserted by LGBL 2017 no. 161.

- i) the form of the risk-appropriate monitoring of business relationships as well as the content and scope of investigations (Art. 9 (6));
- i<sup>bis</sup>) the establishment of the risk profile (Art. 9a (7));<sup>190</sup>
- k) the details concerning the simplified due diligence (Art. 10 (4));<sup>191</sup>
- l) the details concerning enhanced due diligence (Art. 11 (7));<sup>192</sup>
- m) more specific details concerning implementation of Regulation (EU) 2015/847;<sup>193</sup>
- n) the delegation of due diligence (Art. 14 (5));
- o) the global application of the due diligence standard (Art. 16 (5));<sup>194</sup>
- p) the procedure for submitting a report (Art. 17 (1));
- q) details concerning the documentation requirement, internal organisation, and internal functions (Art. 20 (1), Art. 21 (4) and Art. 22 (4));
- q<sup>bis</sup>) the establishment of the risk profile of the persons subject to due diligence and the implementation of risk-based supervision (Art. 23a (5));<sup>195</sup>
- r) details and the procedure for conducting inspections (Art. 24 (10));
- s) details concerning the conditions for appointing auditors, auditing companies, and audit offices subject to special legislation (Art. 26 (2));
- t) the reporting of violations of the law (Art. 28a (6)).<sup>196</sup>

Art. 39<sup>197</sup>

Repealed

Art. 40

*Repeal of existing law*

The following are hereby repealed:

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<sup>190</sup> Art. 38 (ibis) inserted by LGBL 2017 no. 161.

<sup>191</sup> Art. 38 (k) amended by LGBL 2017 no. 161.

<sup>192</sup> Art. 38 (1) amended by LGBL 2017 no. 161.

<sup>193</sup> Art. 38 (m) amended by LGBL 2017 no. 161.

<sup>194</sup> Art. 38 (o) amended by LGBL 2017 no. 161.

<sup>195</sup> Art. 38 (qbis) inserted by LGBL 2017 no. 161.

<sup>196</sup> Art. 38 (t) inserted by LGBL 2017 no. 161.

<sup>197</sup> Art. 39 repealed by LGBL 2017 no. 161.

- a) Law of 26 November 2004 on Professional Due Diligence in Financial Transactions (Due Diligence Act, SPG), LGBl. 2005 No. 5;
- b) Law of 25 November 2005 amending the Due Diligence Act, LGBl. 2005 No. 281;
- c) Law of 17 May 2006 amending the Due Diligence Act, LGBl. 2006 No. 129;
- d) Law of 24 November 2006 amending the Due Diligence Act, LGBl. 2007 No. 15;
- e) Law of 20 September 2007 amending the Due Diligence Act, LGBl. 2007 No. 270.

Art. 41

*Entry into force*

Subject to expiration of the referendum period without a referendum being called, this Act shall enter into force on 1 March 2009, otherwise on the day of its promulgation.

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

signed *Otmar Hasler*  
Head of the Princely Government





## **Factors and possible indicators of a potentially lower risk and measures for the application of simplified due diligence**

### **A. Factors and possible indicators of a potentially lower risk**

The following in particular are appropriate for consideration as factors and possible indicators of a potentially lower risk as defined in Art. 9a and 10:

- a) Customer risk factors:
  1. public companies listed on a stock exchange and subject to disclosure requirements (either through stock exchange rules, or by law, or through enforceable instruments), which impose requirements to guarantee adequate transparency in respect of the beneficial owners;
  2. public administrations or enterprises;
  3. beneficial owners domiciled in lower risk geographical areas as set out in c);
  4. minor value assets and limited scope of transactions executed;
  5. obvious commercial purpose of a business relationship;
  6. long-standing business relationship;
- b) Product, service, transaction or distribution channel risk factors:
  1. life insurance policies for which the premium is low;
  2. whole life risk insurance policies without a surrender value;
  3. insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;

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<sup>1</sup> Annex 1 inserted by LGBL 2017 no. 161.

4. pension schemes or plans, or similar systems that provide retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a beneficiary's rights;
  5. financial products or services that provide appropriately defined and limited services to certain types of customers, for the purpose of improved access to the financial system ("financial inclusion");
  6. products where the risks of money laundering and terrorist financing are managed by other factors such as electronic purse limits or transparency of ownership (e.g. certain types of electronic money);
- c) Geographical risk factors:
1. EEA Member States;
  2. third countries having well functioning systems for the prevention of money laundering and terrorist financing;
  3. third countries identified by credible sources as having a low level of corruption or other criminal activity;
  4. third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements for the prevention of money laundering and terrorist financing consistent with the 2012 FATF Recommendations and effectively implement those requirements; these third countries shall be recorded by the FMA in a list.

#### **B. Measures for the application of simplified due diligence**

The following in particular are worthy of consideration as measures for the application of simplified due diligence as defined in Art. 10:

- a) verification of the identity of the contracting party and the beneficial owner after commencing the business relationship;
- b) reduction of the level of detail required in the drafting of the business profile in accordance with Art. 8 (1);
- c) reduction in the frequency of updates to the business profile in accordance with Art. 8 (2);
- d) reduction in the depth of the ongoing supervision and the frequency of checking transactions by setting appropriate thresholds.

**Annex 2<sup>1</sup>**  
(Art. 9a and 11)

**Factors and possible indicators of a potentially higher risk and additional measures for the application of enhanced due diligence**

**A. Factors and possible indicators of a potentially higher risk**

The following in particular are appropriate for consideration as factors and possible indicators of a potentially higher risk as defined in Art. 9a and 11:

a) Customer risk factors:

1. unusual circumstances of the business relationship;
2. beneficial owners, recipients of distributions as referred to in Art. 7a or beneficiaries as referred to in Art. 7b, who are resident in higher risk geographical areas as set out in c);
3. legal entities that are personal asset-holding vehicles;
4. companies that have nominee shareholders or shares in bearer form;
5. cash intensive businesses;
6. given the nature of the company's business, the ownership structure of the company appears unusual or excessively complex;
7. high value assets or high amount of transactions executed;
8. unclear or dubious purpose of a business relationship;
9. relatively new business relationship;
10. qualification of the contracting party, the beneficial owner, the distribution recipient as referred to in Art. 7a or the beneficiary as referred to in Art. 7b as a former politically exposed person;

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<sup>1</sup> Annex 2 inserted by LGBL 2017 no. 161.

- b) Product, service, transaction or distribution channel risk factors:
  - 1. banks offering private banking services;
  - 2. products or transactions that might favour anonymity;
  - 3. non-face-to-face business relationships or transactions, without certain safeguards, such as electronic signatures;
  - 4. payments received from unknown or unassociated third parties;
  - 5. new products and new business models, including new distribution mechanisms, and the use of new or developing technologies for both new and pre-existing products;
- c) Geographical risk factors:
  - 1. States with strategic deficiencies and other states identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having adequate systems for the prevention of money laundering and terrorist financing;
  - 2. third countries identified by credible sources as having significant levels of corruption or other criminal activity;
  - 3. countries that are subject to sanctions, embargos or similar measures issued by, for example, the European Union or the United Nations;
  - 4. countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.

#### **B. Additional measures for the application of enhanced due diligence**

The following in particular are worthy of consideration as additional measures to deal with higher risk business relationships and transactions as defined in Art. 11:

- a) clarification by means of additional documents, data or information with reference to:
  - 1. the identity of the contracting party and the beneficial owner;
  - 2. the origin of the assets of the beneficial owner;
  - 3. the origin of the funds employed in the course of the business relationship or transaction;
  - 4. the intended purpose of funds withdrawn;
  - 5. the professional and business activity of the contractual partner and the beneficial owner;

- b) obtaining the consent of a member of the executive body before a business relationship is commenced or continued;
- c) obtaining information concerning the commercial purpose of intended transactions or transactions that have been processed;
- d) more frequent updates to the business profile referred to in Art. 8 (2);
- e) more intensive ongoing supervision and more frequent checking of transactions by setting appropriate thresholds and appropriate transaction patterns which require closer inspection.



## **Transitional and Implementation Provisions**

### **952.1 Due Diligence Act (SPG)**



**Liechtenstein Legal Gazette**

2011

no. 45

issued on 1 February 2011

**Law**  
of 15 December 2010  
**amending the Due Diligence Act**

...

**II.****Transitional provision**

The new law shall apply to the enforcement of reimbursement of costs for inspections conducted prior to the entry into force<sup>1</sup> of this Act.

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<sup>1</sup> Entered into force: 1 February 2011.

## Liechtenstein Legal Gazette

2013

no. 39

issued on 31 January 2013

### Law of 20 December 2012 amending the Due Diligence Act

...

#### II.

##### Transitional provisions

1) For business relationships existing at the time of entry into force of this Act<sup>1</sup> the new law shall be applicable with effect for the future as from the date of entry into force.

2) Persons subject to due diligence referred to in Art. 3 (1) v) who have already commenced their business prior to entry into force of this Act shall notify the FMA that they are conducting their business within three months from entry into force of this Act.

3) The persons subject to due diligence shall modify the internal documents relevant in connection with this Act, in particular internal instructions, guidelines, and forms, within three months of entry into force of this Act.

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<sup>1</sup> Entered into force: 1 February 2013.

**Liechtenstein Legal Gazette**

2017

no. 161

issued on 30 June 2017

**Law**  
of 4 May 2017  
**amending the Due Diligence Act**

...

**II.****Transitional provisions**

1) Persons subject to due diligence referred to in Art. 3 (3) a), c) to e) and g), who have already commenced their business prior to entry into force of this Act<sup>1</sup> shall notify the competent supervisory authority that they are conducting their business within three months from entry into force of this Act.

2) The persons subject to due diligence shall conduct the risk assessment as referred to Art. 9a, including the associated classification of the individual business relationships and transactions by 1 March 2018.

3) The new law shall apply to persons subject to due diligence as referred to in Art. 3 (1) c) who were excluded from the scope of the Due Diligence Act in accordance with the previous law, as from 1 April 2018.

4) Persons subject to due diligence referred to in Art. 3 (1) i) who were exempt from due diligence obligations under the previous Art. 10 (1) i) must perform the duties referred to in Art. 5 (1) b) in connection with Art. 7 as from 1 April 2018.

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<sup>1</sup> Entered into force: 1. September 2017.

5) Subject to (6) to (9) the new law shall apply to business relationships existing at the time of entry into force of this Act as from 1 June 2018.

6) If the identification and verification of the identity of the beneficial owner has to be repeated in respect of existing business relationships commenced prior to the entry into force of this Act, the persons subject to due diligence shall accomplish this in accordance with the new law.

7) The identification and verification of the identity of the beneficial owner in existing business relationships that were commenced prior to 1 January 2016, and to which enhanced due diligence as referred to in Art. 11 is applicable must be repeated no later than 31 December 2018, in accordance with the due diligence legislation applying since 1 January 2016.

8) The identification and verification of the identity of the beneficial owner in existing business relationships that were commenced prior to 1 January 2016 and to which enhanced due diligence is not applicable pursuant to Art. 11, must be repeated no later than 31 December 2020 in accordance with the due diligence legislation applying since 1 January 2016.

9) For existing business relationships commenced before the entry into force of this Act and to which simplified due diligence as referred to in the previous Art. 10 could be applied, the due diligence obligations set out in Art. 5 (1) must be met by 31 December 2018 at the latest.

10) Existing contractual relationships as referred to in Art. 13 (3) (bearer savings books, accounts or deposits) shall be dissolved as soon as the relevant documents have been presented to the bank or the postal institution. Outflows of assets are only permitted if the relevant contractual relationships are dissolved at the same time. In this connection the bank or the postal institution must identify and verify the identity of the holder of the relevant document and the beneficial owner as set out in Art. 6 and 7 before transferring the assets.

11) The written agreement referred to in Art. 15 (3) b) is to be obtained by persons subject to due diligence who do not personally perform the duties referred to in Art. 15 (1) or (2) by 1 September 2018. The circumstances referred to in Art. 15 (3) b) must be verified as soon as the written agreement is available.

12) The Princely Court of Justice shall remain competent for proceedings that are pending upon the coming into force of this Act. The penal provisions amended by this Act shall not be applied in criminal cases in which the judgement in the first instance was pronounced before

they came into force. If such a judgement is however set aside as a result of a properly conducted appeal or another legal remedy, the procedure referred to in §§ 1 and 61 of the Criminal Code is to be followed.

13) Until the conclusion of the harmonisation of the Swiss payment system to ISO 20022, funds transfers in respect of which all payment service providers involved in the payment process have their registered office in Switzerland or in Liechtenstein, are deemed to be funds transfers as defined in Art. 5 of Regulation (EU) 2015/847, insofar as compliance with Art. 4 of Regulation (EU) 2015/847 is not possible for technical reasons.

### III.

#### Reference to Directive (EU) 2015/849 and Regulation (EU) 2015/847

1) If in this Act or the Ordinances issued in association with it, reference is made to provisions of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, amending Regulation (EU) no. 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC or to provisions of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EU) no. 1781/2006, these shall apply until their incorporation in the EEA Agreement as national legislation.

2) The full wording of Directive (EU) 2015/849 and Regulation (EU) 2015/847 is published in the Official Journal of the European Union at <http://eur-lex.europa.eu>; it can be obtained from the FMA website at [www.fma-li.li](http://www.fma-li.li).

### IV.

#### Entry into force

1) Subject to (2) and (3) and subject to expiration of the referendum period without a referendum being called, this Act shall enter into force on 1 September 2017, otherwise on the day of its promulgation.

2) Art. 10, Art. 11 (1), (2) and (7) and Art. 22 (1) line 2 and (3) shall enter into force on 1 March 2018.

3) Art. 16, 20 and 20a shall enter into force on 1 June 2018.

4) Art. 1 (3) shall enter into force at the same time as the Decision of the EEA Joint Committee concerning the adoption of Directive (EU) 2015/849.

5) Art. 1 (4) shall cease to apply when the Decision of the EEA Joint Committee concerning the adoption of Regulation (EU) 2015/847 enters into force.

...