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## Law of 21 October 1992 on Banks and Investment Firms (Banking Act)<sup>1</sup>

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

### I. Purpose, scope, and definition of terms<sup>2</sup>

#### Article 1<sup>3</sup>

##### *Purpose*

This Act covers the organisation and business activities of banks and investment firms and has the purpose of protecting their creditors and safeguarding confidence in the Liechtenstein monetary, securities, and credit system.

#### Article 2<sup>4</sup>

##### *Scope*

1) This Act shall apply to banks and investment firms.

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<sup>1</sup> Title of Act amended by LGBL 2007 No. 261.

<sup>2</sup> Title preceding article 1 amended by Liechtenstein Law Gazette LGBL 1998 No. 223.

<sup>3</sup> Article 1 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 2 amended by LGBL 2007 No. 261.

2) The provisions of this Act shall apply *mutatis mutandis* to branches established by foreign banks, financial institutions, and investment firms.

3) To the extent expressly provided by law, the Act shall also apply to the operation of regulated markets and multilateral trading facilities.

### Article 3

#### *Scope of business*<sup>1</sup>

1) Banks are undertakings that engage in the activities set out in paragraph 3 on a professional basis. Natural and legal persons that are not subject to this Act as a bank may not accept deposits or other repayable monies on a professional basis.<sup>2</sup>

2) Investment firms are undertakings that render investment services and ancillary services on a professional basis.<sup>3</sup>

3) Banking activities are:

- a) the acceptance of deposits and other repayable monies; in the case of an e-money transaction in accordance with subparagraph (f), the receipt of a sum of money shall not constitute an acceptance of deposits or other repayable monies if the received sum is directly exchanged against e-money;<sup>4</sup>
- b) the lending of third-party monies to an indeterminate circle of borrowers;<sup>5</sup>
- c) safekeeping transactions;<sup>6</sup>
- d) the provision of investment services and ancillary services referred to in Annex 2 Sections A and B as well as the execution of other bank-related off-balance-sheet transactions;<sup>7</sup>
- e) Repealed;<sup>8</sup>
- f) the issuing of electronic money in accordance with article 3(a) of the E-Money Act (e-money transaction).<sup>1</sup>

<sup>1</sup> Article 3 heading amended by LGBL 1998 No. 223.

<sup>2</sup> Article 3, paragraph 1 amended by LGBL 1998 No. 223.

<sup>3</sup> Article 3, paragraph 2 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 3, paragraph 3(a) amended by LGBL 2003 No. 110.

<sup>5</sup> Article 3, paragraph 3(b) amended by LGBL 1998 No. 223.

<sup>6</sup> Article 3, paragraph 3(c) amended by LGBL 1998 No. 223.

<sup>7</sup> Article 3, paragraph 3(d) amended by LGBL 2007 No. 261.

<sup>8</sup> Article 3, paragraph 3(e) repealed by LGBL 2007 No. 261.

4) Investment services and ancillary services are services referred to in Annex 2 Sections A and B.<sup>2</sup>

5) The Government shall specify further details by ordinance.<sup>3</sup>

#### Article 3a<sup>4</sup>

##### *Definition of terms*

1) The following definitions shall apply for the purposes of this Act:

1. branch: a place of business which is part of a bank, financial institution, or investment firm, which has no legal personality, and which carries out directly all or some of the transactions inherent in the business of a bank, financial institution, or investment firm and/or renders investment services for which the investment firm has been granted an authorisation; where a bank, financial institution, or investment firm whose registered office is in another Member State has established several places of business in one and the same Member State, these places of business shall be regarded as a single branch;
2. representative office: any part of the organisation of a foreign bank that neither concludes nor carries out activities nor arranges them for its own account;
3. authorisation: an instrument issued in any form by the authorities by which the right to carry on the business of a bank, financial institution, or investment firm is granted;
4. competent authority: the national authorities which are empowered by law and regulation to supervise banks, financial institutions, or investment firms;
5. home Member State: the EEA Member State in which a bank, financial institution, or investment firm is authorised;
6. host Member State: the EEA Member State in which a bank, financial institution, or investment firm has a branch or in which it provides services outside its home Member State;
7. third State: a State that is not an EEA Member State;

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<sup>1</sup> Article 3, paragraph 3(f) inserted by LGBL 2003 No. 110.

<sup>2</sup> Article 3, paragraph 4 inserted by LGBL 2007 No. 261.

<sup>3</sup> Article 3, paragraph 5 inserted by LGBL 2007 No. 261.

<sup>4</sup> Article 3a amended by LGBL 2007 No. 261.

8. qualifying holding: a direct or indirect holding in another undertaking which represents 10% or more of the voting rights or capital or which makes it possible to exercise a significant influence over the management of an undertaking in which that holding subsists. Article 4 of the Disclosure Act shall be applied to determine the voting rights;
9. parent undertaking: a parent undertaking within the meaning of the accounting rules of the Law on Persons and Companies (Personen- und Gesellschaftsrecht, PGR) and any undertaking that exercises a dominant influence on another undertaking;
10. subsidiary: a subsidiary undertaking within the meaning of the accounting rules of the Law on Persons and Companies and any undertaking on which a parent undertaking exercises a dominant influence. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent;
11. financial holding company: a financial institution, the subsidiary undertakings of which are either exclusively or mainly banks, financial institutions, or investment firms, at least one of such subsidiaries being a bank or investment firm, and which is not a mixed financial holding company within the meaning of article 5, paragraph 1(q) of the Financial Conglomerates Act;
12. mixed-activity holding company: a parent undertaking, other than a financial holding company, bank, financial institution, investment firm, or mixed financial holding company, the subsidiaries of which include at least one bank, financial institution, or investment firm;
13. undertaking with bank-related ancillary services: an undertaking whose main activities consist in the management of real estate, the operation of computing centres, or the execution of other activities that are ancillary services in relation to the core activities of one or more banks;
14. close links: two or more natural or legal persons are linked by:
  - a) participation, which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or
  - b) control, which means the link between a parent undertaking and a subsidiary, or an equivalent relationship between a natural or legal person and an undertaking; all subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent.

A link in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons;

15. reorganisation measures: measures with which the financial situation of a bank is intended to be secured or restored and which could adversely affect the existing rights of third parties, including measures that allow a suspension of payments, a suspension of execution measures, or a reduction of claims;
16. liquidation procedure: an overall procedure initiated by an administrative or judicial authority of an EEA Member State and subject to its supervision that has the objective of realising the assets under the supervision of the aforementioned administrative or judicial authority. This also includes procedures that are concluded under a composition agreement (articles 88 and 89 of the Bankruptcy Rules) or similar measures.
17. regulated market: a multilateral system which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract, in respect of financial instruments admitted to trading under its rules;
18. multilateral trading facility: a multilateral system which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract;
19. financial institution: an undertaking whose principal activity is to acquire participations or which, with the exception of accepting deposits and other repayable monies, trading information, and administering safe deposit box services, may do everything that a bank is also allowed to do;
20. parent investment firm in an EEA Member State: an investment firm which has a bank, investment firm, or financial institution as a subsidiary or which holds a participation in one or both such entities, and which is not itself a subsidiary of a bank, financial institution, or investment firm authorised in the same EEA Member State or of a financial holding company set up in the same EEA Member State;
21. EEA parent investment firm: a parent investment firm in an EEA Member State which is not a subsidiary of a bank, financial institution, or investment firm authorised in any EEA Member State or of a financial holding company set up in any EEA Member State;
22. parent bank in an EEA Member State: a bank which has a bank, investment firm, or financial institution as a subsidiary or which holds a participation in such an entity therein, and which is not itself

- a subsidiary of another bank or investment firm authorised in the same EEA Member State or of a financial holding company set up in the same EEA Member State;
23. EEA parent bank: a parent bank in an EEA Member State which is not a subsidiary of another bank or investment firm authorised in any of EEA country or of a financial holding company set up in any EEA countries;
  24. parent financial holding company in an EEA Member State: a financial holding company which is not itself a subsidiary of a bank or investment firm authorised in the same EEA Member State, or of a financial holding company set up in the same Member State;
  25. EEA parent financial holding company: a parent financial holding company in an EEA Member State which is not a subsidiary of a bank or investment firm authorised in any EEA Member State or of another financial holding company set up in any EEA Member State;
  26. group: a group of undertakings consisting of a parent undertaking, its subsidiary undertaking, and the undertakings in which the parent undertaking or its subsidiary undertakings have participations, as well as undertakings managed on a unified basis (pursuant to contractual provisions or provisions set out in articles of association, identical majority composition of the board of directors and/or general management, patronage declarations, and the like), without however having a connection in terms of capital; the undertakings within a group are the group companies;
  27. client: every natural or legal person, every company, trust, other collective or asset entity, for which a bank or investment firm provides services pursuant to this Act;
  28. professional client: a client with sufficient experience, knowledge, and expertise to make the client's own investment decisions and to adequately judge the associated risks. To be considered a professional client, a client must meet the criteria set out in Annex 1, item 2.
  29. non-professional client: a client according to Annex 1, item 3;
  30. eligible counterparty: a client according to Annex 1, item 1;
  31. tied agent: a natural or legal person who, under the full and unconditional responsibility of only one bank or investment firm on whose behalf it acts, promotes services pursuant to this Act to clients or prospective clients and/or provides advice to clients or prospective clients in respect of those services or financial instruments.
  32. financial instruments: all instruments referred to in Annex 2, section C.

2) On a supplementary basis, the definitions contained in the applicable EEA legal provisions, especially Directives 2004/39/EC, 2006/48/EC, and 2006/49/EC shall apply *mutatis mutandis*.

3) The designations of persons and functions contained in this Act shall apply to persons of female and of male gender.

## II. Business activities of banks and investment firms<sup>1</sup>

### Article 4

#### *Own funds*<sup>2</sup>

1) Banks and investment firms must have sufficient own funds. Their own funds shall not drop below the initial capital amount required by article 24.<sup>3</sup>

2) The own funds requirements must be met by every individual bank and investment firm subject to this Act as well as on a consolidated basis.<sup>4</sup>

3) The Government shall, by ordinance, specify the elements of the own funds, determine the minimum requirements according to the business activities, and circumscribe the undertakings to be included in the consolidated determination of own funds requirements as well as the scope and content of the consolidation.<sup>5</sup>

4) In justified cases, the FMA may ease or tighten any requirements as long as doing so does not contradict any legal provisions of the EEA.<sup>6</sup>

<sup>1</sup> Title preceding article 4 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 4 heading amended by LGBL 2006 No. 251.

<sup>3</sup> Article 4, paragraph 1 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 4, paragraph 2 amended by LGBL 2007 No. 261.

<sup>5</sup> Article 4, paragraph 3 amended by LGBL 2006 No. 251

<sup>6</sup> Article 4, paragraph 4 amended by LGBL 2006 No. 251.

## Article 5

*Liquidity*

1) The banks and investment firms shall provide for an adequate proportion between the short-term liabilities and the available means and easily realisable assets. The Government shall specify the minimum proportions by ordinance.<sup>1</sup>

2) Adequate liquidity within the meaning of article 4, paragraph 2 must be guaranteed on a consolidated basis.<sup>2</sup>

3) In justified cases, the FMA may ease or tighten the requirements.<sup>3</sup>

## Article 6

*Legal reserves<sup>4</sup>*

1) Banks and investment firms holding monies or financial instruments of clients or issuing financial instruments must allocate at least one twentieth of their annual net profits to the legal reserves, until the legal reserves amount to one fifth of the capital stock.<sup>5</sup>

2) Where the legal reserves do not exceed one half of the capital stock, they may only be used to cover losses.<sup>6</sup>

3) Any proceeds achieved upon the issue of shares or unit certificates exceeding the par value after cover of the issue costs shall be allocated to the capital reserves.<sup>7</sup>

## Article 7

*Deposit guarantee and investor protection<sup>8</sup>*

1) Banks and investment firms holding monies or financial instruments of clients shall ensure sufficient protection of deposits and investments by creating appropriate institutions or by participating in

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<sup>1</sup> Article 5, paragraph 1 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 5, paragraph 2 amended by LGBL 1998 No. 223.

<sup>3</sup> Article 5, paragraph 3 amended by LGBL 2004 No. 176.

<sup>4</sup> Article 6 heading amended by LGBL 1998 No. 223.

<sup>5</sup> Article 6, paragraph 1 amended by LGBL 2007 No. 261.

<sup>6</sup> Article 6, paragraph 2 amended by LGBL 1998 No. 223.

<sup>7</sup> Article 6, paragraph 3 amended by LGBL 1998 No. 223.

<sup>8</sup> Article 7 heading amended by LGBL 1998 No. 223.



foreign protection institutions.<sup>1</sup>

2) Credit balances which result from amounts remaining on an account or from interim positions within the framework of usual banking or securities transactions and which the bank must pay back pursuant to legal and contractual conditions, as well as debts secured by deeds which do not exceed a total amount of 100,000 francs for any individual depositor shall be deemed protected deposits.<sup>2</sup>

3) Monies or financial instruments which an investor has entrusted to a bank or investment firm in connection with investment services and which do not exceed a total amount of 30,000 francs for any individual investor shall be deemed protected investments.<sup>3</sup>

4) An auditor mandated by the FMA with a licence pursuant to article 37 of this Act shall review whether the protection institutions are lawful and proper and shall comment thereon in a comprehensive audit report.<sup>4</sup>

5) Banks and investment firms within the meaning of paragraph 1 may only provide banking or securities services if the provisions on deposit guarantee and investor protection are met. If a bank or investment firm fails to fulfil its obligations despite appropriate measures being taken, the FMA shall withdraw its licence.<sup>5</sup>

6) The deposit guarantee and investor protection shall also extend to branches of Liechtenstein banks and investment firms in other EEA Member States and in third States.<sup>6</sup>

7) Liechtenstein branches of banks or investment firms whose registered office is outside the European Economic Area may be made subject to Liechtenstein deposit guarantee and investor protection if the system of deposit guarantee and investor protection to which these branches belong is not equivalent to the Liechtenstein system.<sup>7</sup>

8) Depositors and investors may apply to the courts with respect to their compensation claims vis-à-vis the protection institutions. Protection institutions that make payments within the framework of deposit guarantee or investor protection shall be entitled to succeed to

<sup>1</sup> Article 7, paragraph 1 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 7, paragraph 2 amended by LGBL 2009 No. 188.

<sup>3</sup> Article 7, paragraph 3 amended by LGBL 2009 No. 188.

<sup>4</sup> Article 7, paragraph 4 amended by LGBL 2004 No. 176.

<sup>5</sup> Article 7, paragraph 5 amended by LGBL 2007 No. 261.

<sup>6</sup> Article 7, paragraph 6 amended by LGBL 2007 No. 261.

<sup>7</sup> Article 7, paragraph 7 amended by LGBL 1998 No. 223.

the rights of depositors or investors in liquidation procedures up to the amount of the payments made.<sup>1</sup>

9) The Government shall specify further details by ordinance, especially concerning the deposits that are exempt from the deposit guarantee under paragraph 2 and the investors that are exempt from paragraph 3.<sup>2</sup>

#### Article 7a<sup>3</sup>

##### *Risk management*

1) Banks and investment firms must govern the fundamentals of risk management as well as the competence and procedure for approving transactions carrying risk in a regulation or in internal directives. They must in particular assess, limit, and monitor market, credit, default, settlement, liquidity, concentration, securitisation, counterparty, interest rate, and image risks as well as operational and legal risks.

2) Banks and investment firms must have solid management control. This includes:

- a) a clear organisational structure with precisely delimited, transparent, and coherent areas of responsibility;
- b) effective procedures for determining, steering, monitoring, and reporting risks to which they are or could be exposed; and
- c) adequate internal control mechanisms, including administration and accounting procedures.

3) Banks and investment firms must have and maintain at a sufficiently high level solid, effective, and comprehensive strategies and procedures with which they can continuously evaluate the amount, composition, and distribution of their internal equity capital as they deem adequate to secure their current and any future risks both quantitatively and qualitatively.

4) The strategies and procedures referred to in paragraph 3 must be reviewed internally on a regular basis to ensure that they are always

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<sup>1</sup> Article 7, paragraph 8 amended by LGBL 1998 No. 223.

<sup>2</sup> Article 7, paragraph 9 amended by LGBL 1998 No. 223.

<sup>3</sup> Article 7a amended by LGBL 2007 No. 261.

appropriate to the type, scope, and complexity of the transactions of the bank or investment firm and do not ignore any aspect.

5) The internal control procedure as well as the administration and accounting of the banks and investment firms must be designed in a way that compliance with the provisions of this Act can be verified at any time.

#### Article 8

##### *Distribution of risks<sup>1</sup>*

1) The claims of a bank or investment firm vis-à-vis an individual client and holdings in an individual undertaking must be in an appropriate proportion to its own funds. The Government shall specify this proportion by ordinance, subject to paragraph 2.<sup>2</sup>

2) The qualifying holding of a bank in another undertaking outside the financial and insurance sector may not exceed 15% of its own funds. The total value of all such qualifying holdings may not exceed 60% of its own funds. The Government shall specify details and exceptions by ordinance.

3) The appropriate proportion under paragraph 1 and the thresholds under paragraph 2 shall be observed both by each bank and investment firm independently as well as on a consolidated basis, if and to the extent that the bank or investment firm is obliged to meet the own funds requirements on a consolidated basis.<sup>3</sup>

4) In justified cases, the FMA may ease or tighten any requirements as long as doing so does not contradict any legal provisions of the EEA.

<sup>1</sup> Article 8 heading amended by LGBl. 2006 No. 251.

<sup>2</sup> Article 8, paragraph 1 amended by LGBl. 2007 No. 261.

<sup>3</sup> Article 8, paragraph 3 amended by LGBl. 2007 No. 261.

*Duties in connection with the provision  
of investment services and ancillary services<sup>1</sup>*

Article 8a<sup>2</sup>

*a) Principle*

1) When providing investment services, banks and investment firms must act in a fair, honest, and professional manner in the best interest of their clients. In particular, they must act in accordance with articles 8b to 8h and preserve the reputation and respect of their profession through their conduct.

2) The Government shall specify further details by ordinance, especially with respect to the rules of conduct and the organisational demands, taking account of the different client classifications, financial instruments, and services.

Article 8b<sup>3</sup>

*b) Client categorisation*

1) Banks and investment firms must categorise each client to whom they provide an investment service or ancillary service according to Annex 1 and inform the client of this categorisation.

2) The Government shall specify further details on client categorisation by ordinance.

Article 8c<sup>4</sup>

*c) Documentation and information requirement*

1) Banks and investment firms must document both their client relationships and their securities transactions in an appropriate and traceable manner.

2) Appropriate information shall be provided in a comprehensible form to clients or potential clients about:

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<sup>1</sup> Heading preceding Article 8a inserted by LGBL 2007 No. 261.

<sup>2</sup> Article 8a amended by LGBL 2007 No. 261.

<sup>3</sup> Article 8b inserted by LGBL 2007 No. 261.

<sup>4</sup> Article 8c inserted by LGBL 2007 No. 261.

- a) the bank or investment firm and its services;
- b) applicable conditions of contract and business;
- c) financial instruments, especially their opportunities and risks;
- d) execution venues and the principles of best execution of client orders in accordance with article 8e;
- e) costs and associated charges; and
- f) principles for preventing and dealing with conflicts of interest.

3) The information referred to in paragraph 2 may be provided in standardised form.

4) The Government shall specify further details by ordinance on the documentation and information requirement.

#### Article 8d<sup>1</sup>

##### *d) Suitability and appropriateness*

1) If a bank or investment firm provides investment advisory services or portfolio management, it shall obtain the necessary information on the financial circumstances and investment goals as well as the knowledge and experience of the client or potential client in investing, in order to recommend suitable investment services or financial services for the client. If a client fails to provide the information necessary for evaluating the suitability of investment services, ancillary services, or financial instruments, then the bank or investment firm shall not recommend investment services or financial instruments to the client.

2) If the case of investment services or ancillary services other than those referred to in paragraph 1, banks and investment firms shall obtain information from their clients and potential clients on their knowledge and experience in investing, in order to evaluate whether the investment services or financial instruments under consideration are appropriate for these clients. If a client fails to provide the information necessary for evaluating the appropriateness of the investment services, ancillary services, or financial instruments or provides them only insufficiently, or if the bank or investment firm determines on the basis of the information received that the product or service is not appropriate for the client, then

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<sup>1</sup> Article 8d inserted by LGBL 2007 No. 261.

the bank or investment firm shall warn the client accordingly. This warning may be made in standardised form.

3) In the case of professional clients and eligible counterparties as defined in Annex 1, the bank or investment firm may assume that the client has sufficient knowledge and experience with respect to all investment services or ancillary services and is able to bear the investment risk financially.

4) The Government shall specify further details by ordinance on the evaluation of suitability and appropriateness.

#### Article 8e<sup>1</sup>

##### *e) Best execution of client orders*

1) Banks and investment firms shall arrange for best execution of client orders in the interest of the client with respect to price, quantity, quality, and time, and shall take the requisite measures.

2) The Government shall specify further details by ordinance on the execution of orders.

#### Article 8f<sup>2</sup>

##### *f) Recording and reporting of transactions and preservation of market integrity*

1) Banks and investment firms that render investment services and ancillary services shall record the orders received and the transactions made on and outside of regulated markets for all financial instruments in a way that ensures compliance with the obligations of notification, reporting, and transparency, and which enable the FMA to reconstruct the individual transactions regardless of whether or not these transactions were made through a regulated market.

2) All relevant information in connection with investment services and ancillary services shall be kept available for the FMA for a period of at least five years, regardless of whether or not these transactions were made through a regulated market.

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<sup>1</sup> Article 8e inserted by LGBL 2007 No. 261.

<sup>2</sup> Article 8f inserted by LGBL 2007 No. 261.

3) The obligations of recording, reporting, and publication shall be subject to the provisions of Regulation (EC) No. 1287/2006 of the Commission of 10 August 2006 on the implementation of Directive 2004/39/EC.

4) Banks and investment firms that operate a trade with participation papers for clients in a systematic and organised way as parties contracting on their own behalf outside regulated markets and multilateral trading facilities shall be obliged to publish price offers or make such offers at the request the client.

5) The Government shall specify further details by ordinance on preserving market integrity.

#### Article 8g<sup>1</sup>

##### *g) Reporting duties*

1) Banks and investment firms shall report in a suitable form to their clients on the services provided to them.

2) The Government shall specify further details by ordinance on the duty to report.

#### Article 8h<sup>2</sup>

##### *h) Dealing with conflicts of interest and disclosure of inducements*

1) Banks and investment firms shall define suitable internal procedures to identify and deal with conflicts of interest and shall have an appropriate organisational structure and appropriate internal control mechanisms.

2) Banks and investment firms may only grant or accept fees, commissions, and non-monetary inducements offered in connection with the provision of investment services and ancillary services (inducements) in accordance with the conditions set out by ordinance.

3) Banks and investment firms must disclose the inducements in accordance with the ordinance. The disclosure of inducements may be in summary form and general in content, e.g. as part of the general or other

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<sup>1</sup> Article 8g inserted by LGBl. 2007 No. 261.

<sup>2</sup> Article 8h inserted by LGBl. 2007 No. 261.

pre-formulated conditions of business. Banks and investment firms are required to disclose other details if demanded by the client.

4) The Government shall specify further details by ordinance on identifying and dealing with conflicts of interest and on the disclosure of inducements.

#### Article 9

##### *Transactions with governing bodies*

Transactions by the bank with members of its governing bodies and independent auditor, with its controlling shareholders, and with persons and companies close to these three categories must conform to the generally acknowledged principles of the banking business.

#### Article 10

##### *Business report, consolidated business report, interim financial statement, consolidated interim financial statement<sup>1</sup>*

1) Banks and investment firms shall compile a business report for each business year, consisting of the annual statement of accounts and the annual report. The annual statement of accounts shall consist of the balance sheet, the income statement, and the annex.<sup>2</sup>

2) To the extent that they are obliged to do so, banks and investment firms shall also compile a consolidated business report for each business year, consisting of the consolidated annual statement of accounts and the consolidated annual report. The consolidated annual statement of accounts shall consist of the consolidated balance sheet, the consolidated income statement, and the consolidated annex.<sup>3</sup>

3) By ordinance, the Government shall specify which banks and investment firms shall also compile a cash-flow statement as an additional part of the annual statement of accounts, a consolidated cash-flow statement as an additional part of the consolidated annual statement of accounts, an interim financial statement, and a consolidated interim financial statement.<sup>4</sup>

<sup>1</sup> Article 10 heading amended by LGBL 1998 No. 223.

<sup>2</sup> Article 10, paragraph 1 amended by LGBL 2007 No. 261.

<sup>3</sup> Article 10, paragraph 2 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 10, paragraph 3 amended by LGBL 2007 No. 261.



4) The business report, the consolidated business report, the interim financial statement, and the consolidated interim financial statement shall be compiled in accordance with the provisions of the Law on Persons and Companies (Personen- und Gesellschaftsrecht, PGR) and the provisions of this Act. If the annual statement of accounts, the consolidated annual statement of accounts, the interim financial statement, and the consolidated interim financial statement are compiled in accordance with the international accounting standards of the IASB, then article 1139 PGR shall apply.<sup>1</sup>

5) The business report, the consolidated business report, the interim financial statement, and the consolidated interim financial statement shall be disclosed.<sup>2</sup>

6) By ordinance, the Government shall specify how the business reports, the consolidated business reports, the interim financial statements, and the consolidated interim financial statements shall be compiled and in what form, to what extent, and by what deadlines they shall be disclosed.<sup>3</sup>

7) The business reports, the consolidated business reports, the interim financial statements, and the consolidated interim financial statements, as well as the information necessary for the determination of monetary, credit, and currency policies and the compilation of banking statistics shall be submitted to the FMA.<sup>4</sup>

## Article 11

### *External audit requirement*

1) Each year, banks and investment firms must submit to an audit of their business activities by an independent auditor recognised by the FMA.<sup>5</sup>

2) At all times, banks and investment firms must grant the independent auditor access to the books, receipts, business correspondence, and minutes of the board of directors and the general management, they must keep all documents available that are usually required in the Liechtenstein banking business to determine and assess

<sup>1</sup> Article 10, paragraph 4 amended by LGBL. 2004 No. 265.

<sup>2</sup> Article 10, paragraph 5 amended by LGBL. 1998 No. 223.

<sup>3</sup> Article 10, paragraph 6 amended by LGBL. 1998 No. 223.

<sup>4</sup> Article 10, paragraph 7 amended by LGBL. 1999 No. 87 and LGBL. 2004 No. 176.

<sup>5</sup> Article 11, paragraph 1 amended by LGBL. 2007 No. 261.

the assets and liabilities, and they must provide all information necessary for fulfilling the audit requirement.<sup>1</sup>

3) The internal audit department shall submit its reports to the independent auditor and shall provide it with all information that the independent auditor needs to fulfil the audit requirements. The internal audit department and the independent auditor shall coordinate their audit activities. As far as possible, duplication should be avoided.<sup>2</sup>

#### Article 12<sup>3</sup>

##### *Repledges*

1) Banks or investment firms intending to repledge or carry over a pledge must obtain authorisation from the pledger by means of a specific deed for each individual case.

2) The bank or investment firm may only repledge or carry over a pledge for the amount for which the pledge is liable to the bank.

3) The bank or investment firm must obtain confirmation from the creditor in writing that

- a) the pledge serves exclusively to secure the claim related to the repledge or carryover transaction;
- b) no rights to the pledge are granted to third parties.

#### Article 13<sup>4</sup>

##### *Publicity*

1) Both in Liechtenstein and abroad, banks and investment firms shall abstain from misleading or obtrusive publicity, especially using their Liechtenstein domicile or Liechtenstein institutions. Publicity serving to market products or services must be recognisable as such.

2) The Government shall specify further details by ordinance.

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<sup>1</sup> Article 11, paragraph 2 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 11, paragraph 3 amended by LGBL 1998 No. 223.

<sup>3</sup> Article 12 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 13 amended by LGBL 2007 No. 261.

Article 14<sup>1</sup>*Banking secrecy*

1) The members of the governing bodies of banks and their employees as well as any persons otherwise working for such banks shall keep secret all facts that they are entrusted with or that become accessible by them as a result of the business relations with clients. The obligation of secrecy shall apply without any time limit.

2) Paragraph 1 is without prejudice to the legal provisions on the obligation to give testimony or information to the criminal courts and to supervisory bodies as well as the provisions on cooperation with other supervisory authorities.

3) The provisions of paragraphs 1 and 2 shall apply *mutatis mutandis* to the members of the governing bodies of investment firms and their employees as well as to any persons working for such investment firms.

Article 14a<sup>2</sup>*Outsourcing*

1) Banks and investment firms may outsource business areas within Liechtenstein and abroad.

2) Outsourcing of data processing within Liechtenstein and abroad is only permissible if:

- a) in the interest of the protection of confidentiality, adequate security precautions are complied with;
- b) the client is informed of the outsourcing when the data are transmitted.

3) The Government shall specify further details by ordinance, especially the conditions under which outsourcing in general is permissible as well as the additional conditions for outsourcing to third States.

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<sup>1</sup> Article 14 amended by LGBl. 2007 No. 261

<sup>2</sup> Article 14a amended by LGBl. 2007 No. 261.

Article 14b<sup>1</sup>*Appointment of tied agents*

1) Within the framework of investment services and ancillary services, banks and investment firms may appoint tied agents for the purposes of promoting their business, initiating new business relationships, and providing advice in respect of such investment services, ancillary services, and financial instruments offered by the bank or investment firm, as long as the tied agents are entered in the register referred to in article 35, paragraph 8.

2) Banks and investment firms that appoint tied agents must monitor them appropriately and are unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the bank or investment firm.

3) The Government shall specify further details concerning tied agents by ordinance, especially the preconditions for registering them or the demands placed on them.

**III. Authorisations<sup>2</sup>****A. Licences<sup>3</sup>****1. Principles<sup>4</sup>**

## Article 15

*Licensing requirements<sup>5</sup>*

1) Banks and investment firms shall require a licence issued by the FMA to take up their business activities.<sup>6</sup>

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<sup>1</sup> Article 14b inserted by LGBL 2007 No. 261.

<sup>2</sup> Title preceding article 15 amended by LGBL 1998 No. 223.

<sup>3</sup> Title preceding article 15 inserted by LGBL 1998 No. 223.

<sup>4</sup> Title preceding Article 15 amended by LGBL 2007 No. 261.

<sup>5</sup> Article 15 heading amended by LGBL 1998 No. 223.

<sup>6</sup> Article 15, paragraph 1 amended by LGBL 2007 No. 261.

2) If a bank or investment firm forms part of a foreign group working in the financial sector, the licence shall only be granted if, in addition to the preconditions set out in articles 18 to 25:<sup>1</sup>

- a) the group is subject to consolidated supervision comparable to Liechtenstein supervision;<sup>2</sup>
- b) the supervisory authority of the home country does not object to the establishment of a subsidiary.<sup>3</sup>

3) When considering the application for a licence, the economic needs of the market may not be taken into account.<sup>4</sup>

4) Operation of a domiciliary bank is prohibited. Domiciliary banks are banks that do not maintain a physical presence in the domiciliary country and that are not part of group operating in the financial sector that is subject to appropriate consolidated supervision and is governed by directive 2005/60/EC or equivalent regulation.<sup>5</sup>

#### Article 16

##### *Business names<sup>6</sup>*

1) Nomenclature indicating activities as a bank or investment firm may only be used in the business name, the designation of the purpose of the business, and business advertising of undertakings that have obtained a licence as a bank or investment firm.<sup>7</sup>

2) Banks, financial institutions, and investment firms whose registered office is in a foreign country may use their business names in Liechtenstein subject to paragraph 1. If there is a danger of confusion, an explanatory supplement may be required.<sup>8</sup>

3) Banks and investment firms may only use the name of a parent company in their own business name if the parent company exercises a dominant influence due to a majority holding. Moreover, if significant components of the name of a foreign bank or investment firm are used in

<sup>1</sup> Article 15, paragraph 2, introductory phrase amended by LGBL 2007 No. 261.

<sup>2</sup> Article 15, paragraph 2(a) amended by LGBL 1998 No. 223.

<sup>3</sup> Article 15, paragraph 2(b) amended by LGBL 1998 No. 223.

<sup>4</sup> Article 15, paragraph 3 amended by LGBL 1998 No. 223.

<sup>5</sup> Article 15, paragraph 4 inserted by LGBL 2009 No. 184.

<sup>6</sup> Article 16 heading amended by LGBL 1998 No. 223.

<sup>7</sup> Article 16, paragraph 1 amended by LGBL 2007 No. 261.

<sup>8</sup> Article 16, paragraph 2 amended by LGBL 2007 No. 261.

the business name, a differentiating supplement must be used which makes it clear that the company is a Liechtenstein subsidiary of a specific foreign bank or investment firm.<sup>1</sup>

4) The FMA shall review the permissibility of the business name from the perspective of supervision law. The business name may not be misleading, and in particular it may not give rise to any false assumptions concerning its scope of business activities.<sup>2</sup>

## 2. Preconditions<sup>3</sup>

### Article 17

#### *General preconditions and procedures<sup>4</sup>*

1) The licence for operating a bank or investment firm shall be granted if the preconditions set out in articles 18 to 25 are met.<sup>5</sup>

1a) Every application for granting of a licence must be accompanied by a business plan, setting out in particular the types of business envisaged and the organisational structure of the bank or investment firm.<sup>6</sup>

2) The FMA shall communicate every authorisation of a bank to the Standing Committee of the EFTA States and the EFTA Surveillance Authority. The FMA shall notify the Standing Committee of the EFTA States, the EFTA Surveillance Authority, and the competent authorities of the other Member States of every authorisation of a subsidiary with at least one parent undertaking subject to the law of a third country, as well as the acquisition of a holding in a bank by such a parent undertaking by virtue of which the bank becomes a subsidiary.<sup>7</sup>

3) Every refusal must be substantiated and notified to the applicant within six months after receipt of the application or, if the application is incomplete, within six months after the required information has been

<sup>1</sup> Article 16, paragraph 3 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 16, paragraph 4 amended by LGBL 1998 No. 223, LGBL 1999 No. 87 and LGBL 2004 No. 176.

<sup>3</sup> Title preceding article 17 inserted by LGBL 1998 No. 223.

<sup>4</sup> Article 17 heading amended by LGBL 1998 No. 223.

<sup>5</sup> Article 17, paragraph 1 amended by LGBL 2007 No. 261.

<sup>6</sup> Article 17, paragraph 1a inserted by LGBL 2007 No. 261.

<sup>7</sup> Article 17, paragraph 2 amended by LGBL 2007 No. 261.

submitted. In any event, a decision shall be made within twelve months after receipt of the application.<sup>1</sup>

4) Prior to granting a licence to a bank or investment firm, the FMA must consult the competent authorities of another EEA Member State if:

- a) a subsidiary or a subsidiary of the parent undertaking of a bank, financial institution, or investment firm authorised in another EEA Member State is to be established;
- b) the bank or investment firm to be established is controlled by the same natural or legal person as a bank, financial institution, or investment firm authorised in another EEA Member State.<sup>2</sup>

5) Shareholders with a qualifying holding must meet the demands placed in the interest of ensuring sound and prudent management of the bank or investment firm.<sup>3</sup>

6) Where paragraph 4 applies, the FMA shall in particular consult the competent authorities of other EEA Member States when assessing the suitability of the shareholder with qualifying holdings and the reputation and experience of persons also serving in management functions of other undertakings in the same group. The FMA shall exchange all information with the competent authorities of other EEA Member States concerning the suitability of the shareholders with qualifying holdings and the reputation and experience of persons entrusted with business management when such information is of relevance to the granting of an authorisation as well as the ongoing assessment of compliance with operating conditions.<sup>4</sup>

## Article 18

### *Legal form and registered office*<sup>5</sup>

1) Banks and investment firms may only be established in the legal form of a limited company or a European company (SE). In justified cases, the Government may permit exceptions.<sup>6</sup>

2) The registered office and the central administration must be situated in Liechtenstein.<sup>1</sup>

<sup>1</sup> Article 17, paragraph 3 amended by LGBL. 1998 No. 223.

<sup>2</sup> Article 17, paragraph 4(b) amended by LGBL. 2007 No. 261.

<sup>3</sup> Article 17, paragraph 5 amended by LGBL. 2007 No. 261.

<sup>4</sup> Article 17, paragraph 6 inserted by LGBL. 2007 No. 261.

<sup>5</sup> Article 18 heading amended by LGBL. 1998 No. 223.

<sup>6</sup> Article 18, paragraph 1 amended by LGBL. 2007 No. 261.

Article 19<sup>2</sup>*Guarantee of sound and proper business operation*

The professional and personal qualities of the persons entrusted with the governance or management of a bank or investment firm must always guarantee sound and proper business operation.

Article 20<sup>3</sup>*Incompatibility, close links*

1) The persons entrusted with the governance or management of a bank or investment firm may not be members of the FMA, the FMA Complaints Commission, or their governing bodies.

2) If close links exist between the bank or investment firm and other natural or legal persons, such links may not obstruct the proper supervision of the bank or investment firm.

3) The proper supervision of banks or investment firms may furthermore not be obstructed by legal or administrative provisions of a third State or by difficulties in their application to which natural or legal persons are subject that have close links with the bank or investment firm.

4) Upon request of the FMA, banks and investment firms must demonstrate that the provisions in paragraphs 2 and 3 are met.

## Article 21

1) The articles of association and regulations must precisely define the material and geographic business circle of the bank or investment firm.<sup>4</sup>

2) Activities other than banking or investment services must be expressly mentioned in the articles of association.<sup>5</sup>

3) The articles of association and the regulations shall require approval by the FMA to be valid.<sup>6</sup>

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<sup>1</sup> Article 18, paragraph 2 inserted by LGBL 1998 No. 223.

<sup>2</sup> Article 19 amended by LGBL 2007 No. 261.

<sup>3</sup> Article 20 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 21, paragraph 1 amended by LGBL 2007 No. 261.

<sup>5</sup> Article 21, paragraph 2 amended by LGBL 2007 No. 261.

<sup>6</sup> Article 21, paragraph 3 amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.



## Article 22

*Organisation*

1) Banks and investment firms must be organised in accordance with their business circle.<sup>1</sup>

2) Banks and investment firms shall require<sup>2</sup>

- a) a board of directors responsible for overall direction, supervision, and control,<sup>3</sup>
- b) a general management consisting of at least two members who perform their activities with joint responsibility and who may not simultaneously be members of the board of directors, and<sup>4</sup>
- c) an internal audit department that reports directly to the board of directors.<sup>5</sup>

3) In special cases, the FMA may approve an exception subject to conditions, as long as the exception does not contradict any EEA legal provisions.<sup>6</sup>

4) The distribution of functions between the board of directors and the general management must guarantee proper monitoring of business conduct.

5) By ordinance, the Government shall specify in which special cases a bank or investment firm may be exempted from the obligation under paragraph 2(c).<sup>7</sup>

## Article 23

*Responsibilities of the board of directors*

1) The board of directors shall be responsible for the overall direction, supervision, and control of the bank or investment firm.<sup>8</sup>

<sup>1</sup> Article 22, paragraph 1 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 22, paragraph 2, introductory phrase amended by LGBL 2007 No. 261.

<sup>3</sup> Article 22, paragraph 2(a) amended by LGBL 1998 No. 223.

<sup>4</sup> Article 22, paragraph 2(b) amended by LGBL 1998 No. 223.

<sup>5</sup> Article 22, paragraph 2(c) amended by LGBL 1998 No. 223.

<sup>6</sup> Article 22, paragraph 3 amended by LGBL 1998 No. 223, LGBL 1999 No. 87 and LGBL 2004 No. 176.

<sup>7</sup> Article 22, paragraph 5 amended by LGBL 2007 No. 261.

<sup>8</sup> Article 23, paragraph 1 amended by LGBL 2007 No. 261.

2) In particular, the board of directors shall have the following responsibilities that may not be transferred:

- a) specifying the organisation and issuing the necessary instructions;
- b) specifying the accounting system, financial control, and financial planning, inasmuch as required by the type and scope of the business activities;
- c) appointing and dismissing the persons entrusted with management and representation;
- d) supervising the persons entrusted with management, also with respect to compliance with the legal provisions, articles of association, and regulations, and with respect to the economic development of the undertaking;
- e) compiling the business report and approving the interim financial statements, as well as preparing the general meeting and executing its resolutions.<sup>1</sup>

#### Article 24<sup>2</sup>

##### *Initial capital*

1) The initial capital must be paid up in full and amount to:

- a) in the case of banks, at least ten million francs or the equivalent in euros or U.S. dollars;
- b) in the case of investment firms under this Act, at least one and a half million francs or the equivalent in euros or U.S. dollars.

2) Depending on the type and scope of the business circle, the FMA may require a higher initial capital.

3) The initial capital consists of the paid-up capital (with the exception of cumulative preference shares), including any issue premium and any reserves and accumulated profits.

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<sup>1</sup> Article 23, paragraph 2(e) amended by LGBL 1998 No. 223.

<sup>2</sup> Article 24 amended by LGBL 2007 No. 261.

Article 25<sup>1</sup>*Residence*

The residence of the members of the board of directors and of the general management must permit them to effectively perform their functions and responsibilities in a sound and proper manner.

## Article 26

*Notification requirement*

1) Banks and investment firms must notify or submit the following to the FMA:<sup>2</sup>

- a) the composition of the board of directors, the general management, and the head of the internal audit department;
- b) the articles of association and the regulations;
- c) the organisation;
- d) the subsidiaries, branches, and agencies;<sup>3</sup>
- e) any qualifying holdings in companies operating in the financial sector;<sup>4</sup>
- f) the ownership situation with respect to voting capital, to the extent it concerns qualifying holdings;<sup>5</sup>
- g) the independent auditor.

2) Banks and investment firms must notify the FMA of changes to the facts enumerated in paragraph 1 without delay. This notification must occur prior to any public announcement.<sup>6</sup>

3) Amendments to the articles of association and the regulations concerning the business circle, the capital stock, or the organisation, as well as any change of the independent auditor shall additionally require approval by the FMA. Any respective entries in the Public Registry shall only be permissible after approval by the FMA.<sup>7</sup>

<sup>1</sup> Article 25 amended by LGBL 2007 No. 175.

<sup>2</sup> Article 26, paragraph 1, introductory phrase amended by LGBL 2007 No. 261.

<sup>3</sup> Article 26, paragraph 1(d) amended by LGBL 1998 No. 223.

<sup>4</sup> Article 26, paragraph 1(e) amended by LGBL 2007 No. 261.

<sup>5</sup> Article 26, paragraph 1(f) amended by LGBL 2007 No. 261.

<sup>6</sup> Article 26, paragraph 2 amended by LGBL 2007 No. 261.

<sup>7</sup> Article 26, paragraph 3 amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

4) In the case of undertakings that must be included in the consolidation of own funds under article 4, paragraph 2, the provisions of paragraphs 1 and 2 shall apply *mutatis mutandis*.<sup>1</sup>

5) Banks and investment firms shall notify the FMA immediately in all cases where their counterparties in repurchase agreements and reverse repurchase agreements or securities-lending and commodities-lending transactions or securities-borrowing and commodities-borrowing transactions have not met their obligations.<sup>2</sup>

#### Article 26a<sup>3</sup>

##### *Qualifying holdings*

1) Any intended direct or indirect acquisition, any intended direct or indirect increase, and any intended sale of a qualifying holding in a bank or investment firm must be notified to the FMA.

2) The FMA shall consult the authority responsible for licensing the acquirer or the undertaking whose parent undertaking or controlling person intends to carry out the acquisition or the increase, if the acquisition or the increase of a holding referred to in paragraph 1 is intended by:

- a) a bank, investment firm, asset management company, or management company pursuant to the Investment Undertakings Act licensed in an EEA Member State;
- b) a parent undertaking of an undertaking referred to in subparagraph (a); or
- c) a natural or legal person controlling an undertaking referred to in subparagraph (a).

3) By ordinance, the Government shall specify further details concerning the procedure and the criteria for evaluating the acquisition, increase, or sale of qualifying holdings.

<sup>1</sup> Article 26, paragraph 4 inserted by LGBL 1998 No. 223.

<sup>2</sup> Article 26, paragraph 5 inserted by LGBL 2007 No. 261.

<sup>3</sup> Article 26a amended by LGBL 2009 No. 184.

### 3. Expiration, withdrawal, and revocation<sup>1</sup>

#### Article 27<sup>2</sup>

##### *Expiration of the licence*

- 1) Licences shall expire if:
  - a) business activities have not been initiated within one year;
  - b) business activities have no longer been undertaken for at least six months;
  - c) the licence is forgone in writing;
  - d) a final bankruptcy order has been issued; or
  - e) the business has been cancelled in the Public Registry.
- 2) The expiration of a licence shall be published in the official publication organs at the expense of the licence holder.

#### Article 28

##### *Withdrawal of the licence; termination and cancellation<sup>3</sup>*

- 1) Licences shall be withdrawn if:
  - a) the preconditions for granting the licence are no longer fulfilled;
  - b) the licence holder systematically and seriously violates the legal obligations; or
  - c) the licence holder fails to comply with the FMA's demands to restore a lawful state of affairs.<sup>4</sup>
- 2) In the case of banks and investment firms, the withdrawal of the licence entails termination and cancellation in the Public Registry.<sup>5</sup>

<sup>1</sup> Title preceding article 27 inserted by LGBL 1998 No. 223.

<sup>2</sup> Article 27 amended by LGBL 2007 No. 261.

<sup>3</sup> Article 28 heading amended by LGBL 1998 No. 223.

<sup>4</sup> Article 28, paragraph 1 amended by LGBL 2007 No. 261.

<sup>5</sup> Article 28, paragraph 2 amended by LGBL 2007 No. 261.

3) The withdrawal of the licence must be substantiated, communicated to the affected parties, and, upon becoming final, be published in the official publication organs at the expense of the licence holder. The FMA must notify every withdrawal to the Standing Committee of the EFTA States and the EFTA Surveillance Authority.<sup>1</sup>

4) A company whose registered office is in Liechtenstein or the Liechtenstein branch of a company whose registered office is abroad that performs activities under article 3 without a licence may be terminated by the FMA if the purpose of this Act so requires. In urgent cases, this may be done without prior warning and without imposing a deadline.<sup>2</sup>

5) The FMA shall take the measures necessary for liquidation and the performance of current transactions, and it shall issue the requisite instructions to the liquidator.<sup>3</sup>

6) The FMA shall monitor the liquidator.<sup>4</sup>

#### Article 29

##### *Revocation of the licence*<sup>5</sup>

1) The FMA may amend or revoke licences if the licence holder obtained the licence surreptitiously by providing false information or if the FMA was not aware of significant circumstances.<sup>6</sup>

2) The revocation of a licence shall be published in the official publication organs at the expense of the licence holder.<sup>7</sup>

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<sup>1</sup> Article 28, paragraph 3 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 28, paragraph 4 amended by LGBL 1998 No. 223 and LGBL 2004 No. 176.

<sup>3</sup> Article 28, paragraph 5 amended by LGBL 1998 No. 223 and LGBL 2004 No. 176.

<sup>4</sup> Article 28, paragraph 6 amended by LGBL 1998 No. 223, LGBL 1999 No. 87 and LGBL 2004 No. 176.

<sup>5</sup> Article 29 heading amended by LGBL 1998 No. 223.

<sup>6</sup> Article 29, paragraph 1 amended by LGBL 1998 No. 223 and LGBL 2004 No. 176.

<sup>7</sup> Article 29, paragraph 2 inserted by LGBL 2007 No. 261.

#### 4. Supervision taxes and fees<sup>1</sup>

Article 30<sup>2</sup>

##### *Principle*

Supervision taxes and fees shall be levied in accordance with the financial market supervision legislation.

#### B. Representative offices<sup>3</sup>

Article 30a

##### *Licence<sup>4</sup>*

1) The establishment of a representative office by a bank shall require a licence issued by the FMA.<sup>5</sup>

2) The licence shall be granted if:<sup>6</sup>

- a) the bank is subject to supervision in the country of its registered office or central administration comparable to Liechtenstein supervision;<sup>7</sup>
- b) the persons entrusted with management of the representative office guarantee sound and proper business operation;<sup>8</sup>
- c) the supervisory authority of the home country does not raise any objections against the establishment of the representative office.<sup>9</sup>

3) Within four months after the end of the business year, the representative office shall submit a summary activity report and the business report of the represented bank to the FMA, as well as within one month after the end of the business year a confirmation that the representative office has not engaged in any banking activities.<sup>10</sup>

<sup>1</sup> Title preceding article 30 amended by LGBL 2004 No. 176.

<sup>2</sup> Article 30 amended by LGBL 2004 No. 176.

<sup>3</sup> Title preceding article 30a inserted by LGBL 1998 No. 223.

<sup>4</sup> Article 30a title inserted by LGBL 1998 No. 223.

<sup>5</sup> Article 30a, paragraph 1 amended by LGBL 2007 No. 261.

<sup>6</sup> Article 30a, paragraph 2, introductory phrase inserted by LGBL 1998 No. 223.

<sup>7</sup> Article 30a, paragraph 2(a) amended by LGBL 2007 No. 261.

<sup>8</sup> Article 30a, paragraph 2(b) inserted by LGBL 1998 No. 223.

<sup>9</sup> Article 30a, paragraph 2(c) inserted by LGBL 1998 No. 223.

<sup>10</sup> Article 30a, paragraph 3 inserted by LGBL 1998 No. 223 and amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

4) The representative office must notify the FMA in advance of any change of staff in its management.<sup>1</sup>

## C. Relationship with the European Economic Area<sup>2</sup>

### 1. Establishment of branches and free movement of services<sup>3</sup>

#### Article 30b<sup>4</sup>

##### *Branches of Liechtenstein banks and investment firms*

1) Liechtenstein banks or investment firms which intend to establish a branch within the territory of another EEA Member State must notify this to the FMA.

2) The following information must be included in the notification under paragraph 1:

- a) the EEA Member State in whose territory the branch is to be established;
- b) a business plan indicating the type of the activities envisaged and the organisational structure of the branch;
- c) an address from which the documents of the bank or investment firm may be requested in the host Member State;
- d) the names of the responsible managers of the branch.

3) Within three months after the receipt of all the information, the FMA shall transmit the information under paragraph 2 to the competent authority of the host Member State, provided that in view of the intended activities, there is no reason to doubt the adequacy of the administrative structures and the financial situation of the bank or investment firm. The FMA shall notify the bank or investment firm of the transmission of the information.

4) Moreover, the FMA shall communicate the following information to the competent authority of the host Member State:

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<sup>1</sup> Article 30a, paragraph 4 inserted by LGBL 1998 No. 223 and amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

<sup>2</sup> Title preceding article 30b inserted by LGBL 1998 No. 223.

<sup>3</sup> Title preceding article 30b amended by LGBL 2007 No. 261.

<sup>4</sup> Article 30b amended by LGBL 2007 No. 261.



- a) in the case of a bank: the amount of the own funds and the sum of the own funds requirements as well as, where the applicant is a bank, detailed information on the deposit guarantee system to ensure protection of the bank's depositors;
- b) in the case of an investment firm: the amount of the own funds and the sum of the own funds requirements as well as, where the applicant is an investment firm, detailed information on the investor protection system to ensure protection of the branch's investors.

5) If the FMA refuses to transmit the information set out in paragraph 2 to the competent authority of the host Member State, it shall state the reasons to the bank or investment firm concerned within three months after receipt of all information. In the case of such refusal or lack of communication by the FMA, article 62 shall apply *mutatis mutandis*.

6) The bank or investment firm shall notify the FMA and the competent authority of the host Member State in writing of any changes to the content of the information set out in paragraph 2(b) to (d), banks also of any changes to the information set out in paragraph 4(a), second phrase, and investment firms also of any changes to the information set out in paragraph 4(b), second phrase, at least one month before they are executed. Paragraphs 3 and 5 shall apply *mutatis mutandis*.

7) The FMA shall notify the Standing Committee of the EFTA States and the EFTA Surveillance Authority of the number and type of cases in which it has refused to transmit the information pursuant to paragraphs 3 and 6 to the competent authority of the host Member State.

8) The use of tied agents situated in the territory of another EEA Member State shall be deemed equivalent to the establishment of a branch of an investment firm.

9) If a bank or investment firm with registered office in another EEA Member State has established several branches in one and the same Member State, these branches shall be considered as a single branch.

#### Article 30c<sup>1</sup>

##### *Free movement of services of Liechtenstein banks and investment firms*

1) Liechtenstein banks or investment firms intending to perform their activities in the territory of another EEA Member State by virtue of free

<sup>1</sup> Article 30c amended by LGBL 2007 No. 261.

movement of services for the first time must notify the FMA of the following:

- a) the EEA Member State in whose territory they intend to perform the activities;
- b) the activities they intend to perform;
- c) the name and address of any tied agents to be used in the territory of another EEA Member State who are situated in Liechtenstein.

2) The Government shall determine by ordinance the permissible business activities of a bank or investment company operating by virtue of free movement of services.

3) The FMA shall draw the attention of the competent authority of the host Member State to the notification referred to in paragraph 1 within one month of receipt.

4) Banks and investment firms must notify the FMA and the competent authority of the host Member State of any changes to the content of the information set out in paragraph 1(b) at least one month before they are executed.

#### Article 30d<sup>1</sup>

##### *Branches of banks, financial institutions, and investment firms from the European Economic Area*

1) The establishment of a branch of banks, financial institutions, and investment firms from the European Economic Area is permissible if they perform one or more of their permitted activities, are supervised by the competent authorities of the home Member State, and these authorities have transmitted to the FMA all information about:

- a) the bank pursuant to article 30b, paragraph 2(b) to (d) and paragraph 4(a);
- b) the financial institution pursuant to article 30b, paragraph 2(b) to (d) and paragraph 4(a), first phrase;
- c) the investment firm pursuant to article 30b, paragraph 2(b) to (d) and paragraph 4(b).

2) In addition to the information under paragraph 1(b), a confirmation issued by the competent authorities of the home Member

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<sup>1</sup> Article 30d amended by LGBl. 2007 No. 261.

State must be presented according to which the financial institution meets the following preconditions:

- a) the financial institution is a subsidiary of a bank or a joint subsidiary of several banks;
- b) the articles of association of the financial institution permit the activities mentioned;
- c) the parent undertaking(s) is/are authorised as a bank in the EEA Member State in which the registered office of the subsidiary is situated;
- d) the activities concerned are actually performed in the territory of the same EEA Member State;
- e) the parent undertakings(s) hold(s) at least 90% of the voting rights associated with the units or shares of the subsidiary;
- f) the parent undertaking(s) provide(s) the FMA with evidence of the prudent conduct of business of the subsidiary and, with the consent of the competent authority of the home Member State, vouch(es) jointly and severally for the liabilities assumed by the subsidiary;
- g) the subsidiary is included in supervision by the parent undertaking(s) on a consolidated basis, in particular with respect to the minimum own funds requirements, control of cluster risks, and limitation of holdings.

3) By ordinance, the Government shall determine the permissible business activities of the branch of a bank, financial institution, or investment firm.

4) Within two months after receipt of the information set out in paragraphs 1 and 2, the FMA shall inform the bank, financial institution, or investment firm concerned about the required notifications and conditions, including any rules of conduct, that apply to the exercise of activities in Liechtenstein on grounds of public interest.

5) After receipt of the communication under paragraph 4, but no later than after expiry of a time limit of two months, the bank, financial institution, or investment firm may establish the branch and take up business operations. The establishment of the branch may not be made dependent on either a national authorisation or an initial capital.

6) The bank, financial institution, or investment firm must notify the FMA in writing of any changes to the content of the information under paragraph 1 at least one month prior to their execution.

7) Every half year, the bank, financial institution, or investment firm must submit a report to the FMA about the branch's activities.

8) If the financial institution no longer meets the preconditions set out in paragraphs 1 and 2 and the competent authority has notified the FMA accordingly, the activities of the financial institution in Liechtenstein shall become subject to Liechtenstein provisions.

9) When fulfilling the responsibilities delegated to the FMA under this Act, the FMA may demand that the branches of the banks, financial institutions, and investment firms provide information necessary to monitor compliance with the provisions applicable to them.

10) Paragraphs 1 to 9 apply *mutatis mutandis* to subsidiaries of financial institutions engaged in activities as a financial institution.

11) The appointment of tied agents domiciled in Liechtenstein shall be deemed equivalent to the establishment of a branch.

12) If a bank or investment firm with registered offices in another EEA Member State has established several business premises in one and the same Member State, these business premises shall be considered to constitute a single branch.

#### Article 30e<sup>1</sup>

##### *Free movement of services of banks, financial institutions, and investment firms from the European Economic Area*

1) A first-time activity in Liechtenstein by virtue of free movement of services of a bank, financial institution, or investment firm shall require notification by the competent authority of the home Member State to the FMA. This notification shall contain the following:

- a) information concerning the planned activities (business plan); these activities must be permissible activities in accordance with article 30d, paragraph 3;
- b) confirmation that the transmitting authority has authorised and supervises the bank, financial institution, or investment firm;
- c) confirmation that the planned activities are covered by the authorisation issued by the competent authority of the home Member State;
- d) the names and addresses of any tied agents not domiciled in Liechtenstein who may be appointed.

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<sup>1</sup> Article 30e amended by LGBL 2007 No. 261.

2) Upon receipt of the notification, the bank, financial institution, or investment firm may begin to provide the services in question.

3) In addition to the information under paragraph 1, a confirmation issued by the competent authorities of the home Member State must be presented, according to which the financial institution meets the following preconditions:

- a) the financial institution is a subsidiary of a bank or a joint subsidiary of several banks;
- b) the articles of association of the financial institution permit the activities mentioned;
- c) the parent undertaking(s) is/are authorised as a bank in the EEA Member State in which the registered office of the subsidiary is situated;
- d) the activities concerned are actually performed in the territory of the same EEA Member State;
- e) the parent undertakings(s) hold(s) at least 90% of the voting rights associated with the units or shares of the subsidiary;
- f) the parent undertaking(s) provide(s) the FMA with evidence of the prudent conduct of business of the subsidiary and, with the consent of the competent authority of the home Member State, vouch(es) jointly and severally for the liabilities assumed by the subsidiary;
- g) the subsidiary is included in oversight by the parent undertaking(s) on a consolidated basis, in particular with respect to minimum own funds requirements, control of cluster risks, and limitation of holdings.

4) The FMA shall communicate to the bank, the financial institution, or the investment firm the conditions, including any rules of conduct, that apply to the exercise of activities in Liechtenstein on grounds of public interest.

5) The bank, financial institution, or investment firm must notify the FMA in writing of any change to the content of the information referred to in paragraph 1 at least one month before the changes are carried out.

6) If the financial institution no longer meets the preconditions set out in paragraph 3 and the competent authority has notified the FMA accordingly, the activities of the financial institution in Liechtenstein shall become subject to Liechtenstein provisions.

7) The provisions of this article shall apply *mutatis mutandis* to subsidiaries of financial institutions engaged in activities as a financial institution.

8) Investment firms from EEA Member States shall have access to regulated markets, central counterparties, and clearing and settlement systems domiciled in Liechtenstein as banks.

## 2. Cooperation with competent authorities of EEA Member States in general<sup>1</sup>

### Article 30f<sup>2</sup>

#### *Principle*

Within the framework of its oversight, the FMA shall cooperate closely with the competent authorities of the other EEA Member States in accordance with this Act.

### Article 30g<sup>3</sup>

#### *Joint action against abuse*

1) If the FMA has justified reasons to assume that undertakings not subject to its supervision are violating or have violated provisions of Directive 2004/39/EC in the territory of another EEA Member State, then the FMA shall communicate these circumstances to the competent authority as precisely as possible.

2) If a competent authority of another EEA Member State communicates to the FMA that an undertaking is violating or has violated the provisions of this Act in Liechtenstein, then the FMA shall seize appropriate measures against that undertaking. The FMA shall notify the communicating authority of the measures seized and the procedure.

### Article 30h<sup>4</sup>

#### *Exchange of information*

1) The FMA shall transmit to a requesting competent authority of an EEA Member State all information which the latter needs to exercise its duties of supervision, provided that:

<sup>1</sup> Title preceding article 30f inserted by LGBL 2007 No. 261.

<sup>2</sup> Article 30f amended by LGBL 2007 No. 261.

<sup>3</sup> Article 30g amended by LGBL 2007 No. 261.

<sup>4</sup> Article 30h amended by LGBL 2007 No. 261.

- a) doing so does not violate the sovereignty, security, public order, or other substantial national interests of Liechtenstein;
- b) the recipients and the persons employed with and instructed by the competent authorities are subject to an obligation of secrecy equivalent to that of article 31a;
- c) it is guaranteed that the information given will only be used for the purpose of financial market supervision, in particular the supervision of banks, investment firms, or regulated markets; and
- d) information that comes from abroad is given with the express consent of the authority that disclosed that information, and if it is guaranteed that the information will only be forwarded, if at all, for the purpose to which such foreign authority has given its consent.

2) The FMA may request the competent authorities of other EEA Member States to transmit all information necessary to fulfil the duties pursuant to this Act. It may forward the information received to the offices listed in article 31. Except in those cases where adequate grounds are supplied, it may only forward such information to other offices or natural or legal persons in compliance with paragraph 1, subparagraph d *mutatis mutandis*. In that case, the FMA shall forthwith inform the authority that supplied the information.

3) The supervisory bodies, administrative authorities, offices, and natural and legal persons listed in article 31 who receive confidential information may use such information only for the following purposes in exercising their duties:

- a) to examine whether the licensing conditions for banks and investment firms have been met;
- b) to monitor the conduct of activities on an institute basis or consolidated basis, in particular as regards solvency, administrative and accounting organisation, internal control mechanisms, and the liquidity of banks and investment firms as well as that of branches of banks, financial institutions, and investment firms.
- c) to monitor the smooth functioning of regulated markets and multilateral trading facilities;
- d) to impose sanctions;
- e) in the course of proceedings on the contestation of decisions of the FMA pursuant to article 62; or
- f) in the course of extrajudicial proceedings for complaints by investors pursuant to article 62a.

4) This article as well as articles 14, 30n, 30o and 31a shall not prevent the FMA from transmitting confidential information for the performance of their duties to the central banks, the Swiss National Bank, the European System of Central Banks, and the European Central Bank in their capacity as monetary authorities as well as, where necessary, to any other national authorities entrusted with supervising payment systems; the mentioned provisions shall also not prevent these authorities or offices from transmitting to the FMA such information as is needed by the latter to perform its duties under this Act.

5) The Government shall specify further details by ordinance.

#### Article 30i<sup>1</sup>

##### *Monitoring, on-site inspection, and investigations*

1) The competent authority of an EEA Member State may request the FMA in matters concerning the law of supervision to cooperate in monitoring, in on-site inspections, or in an investigation.

2) If the FMA receives a request for an on-site inspection or for an investigation, it shall become active within the limits of its powers and in compliance with article 30h, paragraph 1 by:

- a) carrying out the inspections or investigations itself;
- b) permitting the requesting authority to carry out the inspection or investigation; or
- c) permitting independent auditors or experts to carry out the inspection or investigation.

3) If on-site audits are not carried out by the FMA itself, the inspectors shall be accompanied by employees of the FMA.

4) With regard to branches of banks, financial institutions, or investment firms in Liechtenstein subject to the supervision of competent foreign authorities, such authorities may, following prior notification of the FMA, examine the information necessary for supervision on site themselves or through persons appointed for that purpose.

5) Without prejudice to the provisions of this article, the FMA may within the framework of its duties under this Act carry out audits of branches of foreign banks, financial institutions, or investment firms in Liechtenstein or instruct chartered accountants or experts to do so.

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<sup>1</sup> Article 30i amended by LGBL 2007 No. 261.



6) The FMA may ask the competent authority of a Member State to cooperate in monitoring, in an on-site inspection, or in an investigation.

#### Article 30k<sup>1</sup>

##### *Refusal of cooperation*

1) The FMA may refuse a request for cooperation in carrying out an investigation, an on-site inspection, or monitoring pursuant to article 30i or for an exchange of information pursuant to Art. 30h only if:

- a) proceedings are already pending in a Liechtenstein court on the basis of the same acts and against the same person; or
- b) a final judgment has been rendered in Liechtenstein against the persons in question on the basis of the same acts.

2) In the event of refusal, the FMA shall inform the requesting authority accordingly and shall inform it about the reason for refusal.

#### Article 30l<sup>2</sup>

##### *Precautionary measures*

1) If the FMA has clear and demonstrable reason to assume that a bank, investment firm, or financial institution working in Liechtenstein by virtue of free movement of services or that a bank, investment firm, or financial institution with a branch in Liechtenstein violates the rules and conditions applicable pursuant to this Act and the associated ordinances, it shall inform the competent authority of the home Member State, unless jurisdiction for supervision has been transferred to the FMA.

2) If the bank, financial institution, or investment firm continues to behave in a way that is clearly detrimental to the interests of customers in Liechtenstein or to the due functioning of the markets despite measures taken by the competent authority of the home Member State or because such measures are insufficient, then the FMA shall after informing the competent authority of the home Member State take all suitable measures to ensure the protection of the clients and the due functioning of the markets. These measures include the option of prohibiting the bank, financial institution, or investment firm concerned from entering

<sup>1</sup> Article 30k amended by LGBl. 2007 No. 261.

<sup>2</sup> Article 30l amended by LGBl. 2007 No. 261.

into new business in Liechtenstein. The EFTA Surveillance Authority shall be informed of such measures forthwith.

3) If the FMA finds that a bank, a financial institution, or an investment firm with a branch in Liechtenstein does not comply with the legal provisions, rules of conduct, or professional guidelines, it shall call upon the bank, financial institution, or investment firm to end the situation that is in violation of the rules. If the bank, financial institution, or investment firm does not comply with such demand, the FMA shall take all suitable measures to ensure that the bank, financial institution, or investment firm concerned will end the situation that is in violation of the rules. The type of such measures shall be communicated to the competent authorities of the home Member State.

4) If the bank, financial institution, or investment firm continues to violate the provisions referred to in paragraph 3 despite the measures taken by the FMA, the FMA may after notifying the competent authorities of the home Member State take suitable measures to prevent or punish further violations; as far as necessary, it may also prohibit the bank, financial institution, or investment firm from carrying out new business in Liechtenstein. The EFTA Surveillance Authority shall be informed of such measures forthwith.

5) Paragraphs 3 and 4 shall also apply if the measures taken by the home Member State prove to be insufficient or if no measures have been taken.

6) In urgent cases, the FMA may before initiating proceedings pursuant to paragraphs 1 through 6 take the necessary measures for the protection of depositors, investors, or other recipients of services, in particular for the protection of the entrusted assets. The competent authorities of the EEA Member States concerned, the Standing Committee of the EFTA States and the EFTA Surveillance Authority shall be informed forthwith.

7) If the competent authority of the home Member State withdraws the authorisation of the bank, financial institution, or investment firm, the FMA shall take suitable measures so that the bank, financial institution, or investment firm will not carry out any new business in Liechtenstein and the interest of depositors and investors are preserved. If the FMA withdraws the authorisation of a bank, a financial institution or an investment firm, the competent authorities of the host Member States shall be informed.

8) Any measure pursuant to this article that includes sanctions or restrictions to the activities of a bank, financial institution, or investment

firm shall be issued with proper grounds, and the bank, financial institution, or investment firm concerned shall be informed.

9) The FMA shall inform the Standing Committee of the EFTA States and the EFTA Surveillance Authority of the number and nature of those cases in which measures pursuant to paragraphs 3 and 4 have been taken.

## D. Relationship with third States<sup>1</sup>

### 1. Formation of branches from third States<sup>2</sup>

#### Article 30m<sup>3</sup>

##### *Principle*

1) The formation of a branch of a bank or an investment firm outside the European Economic Area shall require a licence.

2) The licence shall be given by the FMA if:

- a) the bank or investment firm is subject to consolidated supervision comparable to Liechtenstein supervision;
- b) the bank or investment firm is sufficiently organised and has sufficient qualified personnel and financial means to operate a branch in Liechtenstein;
- c) the supervisory authority of the home State has no objections against the formation of the branch and declares that it will inform the FMA forthwith if circumstances occur that could seriously endanger the interests of the creditors;
- d) the other provisions of this Act and the associated ordinances have been complied with *mutatis mutandis*.

3) The FMA shall inform the Standing Committee of the EFTA States, the EFTA Surveillance Authority, and the European Banking Committee of authorisations of branches granted by it to banks with registered offices outside the European Economic Area.

<sup>1</sup> Title preceding article 30m inserted by LGBL 2007 No. 261.

<sup>2</sup> Title preceding article 30m inserted by LGBL 2007 No. 261.

<sup>3</sup> Article 30m amended by LGBL 2007 No. 261.

4) The branch shall publish its annual accounts together with the annual accounts of the foreign bank or investment firm within four months from the end of the business year and send them to the FMA together with the bank's business report.

5) The annual accounts of the foreign bank or investment firm shall be published in German in accordance with the accounting and classification rules applicable at its main office.

6) The branch's annual accounts shall include the claims and liabilities vis-à-vis the main office and the other branches of the bank or investment firm as well as vis-à-vis the companies from the banking and finance industry directly or indirectly controlled by the bank or investment firm. This shall also apply to contingent or pending business.

7) When starting and performing their activities, branches of banks or investment firms with registered offices in third States must not be put in a more favourable position than branches of banks and investment firms with registered offices within the European Economic Area.

## 2. Cooperation with the competent authorities of third States<sup>1</sup>

### Article 30n<sup>2</sup>

#### *Exchange of information, monitoring, on-site inspection, and investigations*

1) Within the framework of its duties of financial market supervision, the FMA shall closely cooperate with the competent authorities of a third State in monitoring, on-site inspections, investigations, or in the exchanging of information, articles 30h and 30i applying *mutatis mutandis*.

2) Subject to paragraph 1, the FMA may forward personal data to third States in accordance with article 8 of the Data Protection Act.

<sup>1</sup> Title preceding article 30n inserted by LGBl. 2007 No. 261.

<sup>2</sup> Article 30n amended by LGBl. 2007 No. 261.

Article 30o<sup>1</sup>*Cooperation agreements*

1) The FMA may enter into cooperation agreements on the exchange of information with the competent authorities of third States within the limits of this Act.

2) Also within the limits of this Act, the FMA may enter into cooperation agreements on the exchange of information with authorities, bodies, and natural or legal persons of third States who have the competence:

- a) to supervise banks, financial institutions, investment firms, insurance companies, or financial markets;
- b) to carry out proceedings for winding up, bankruptcy, and the like with banks, financial institutions, or investment firms;
- c) in exercising their duties of supervision, to carry out the mandatory audit of the accounting of banks, financial institutions, investment firms, and insurance companies or to manage compensation systems in exercising their duties;
- d) to supervise the offices involved in winding up and in bankruptcy proceedings or similar proceedings with regard to banks, financial institutions, or investment firms; or
- e) to supervise the persons who carry out the mandatory audit of the accounting documents of insurance companies, banks, financial institutions, or investment firms.

**IIIa. Regulated markets and multilateral trading facilities<sup>2</sup>**Article 30p<sup>3</sup>*Regulated markets*

1) Operation of a regulated market shall require a licence issued by the FMA. The licence shall be granted if:

- a) the regulated market has clear and transparent rules regarding the admission of financial instruments to trading;

<sup>1</sup> Article 30o amended by LGBL 2007 No. 261.

<sup>2</sup> Title preceding article 30p inserted by LGBL 2007 No. 261.

<sup>3</sup> Article 30p inserted by LGBL 2007 No. 261.

- b) transparent, non-discriminatory access to membership of the regulated market is guaranteed;
- c) effective systems exist for the smooth conclusion of transactions on the regulated market and the performance thereof; and
- d) fair and transparent trading on the regulated market and its oversight by the organs of the regulated market are ensured.

2) Only banks and investment firms that may also be operators of a multilateral trading facility may be operators of regulated markets.

3) Article 11, paragraphs 1 and 2, article 17, paragraph 2, and article 30e, paragraphs 1, 4, and 5 apply *mutatis mutandis* to operators of regulated markets.

4) The Government shall specify further details by ordinance, especially concerning the licencing conditions, the licencing procedure, and the operation of a regulated market.

#### Article 30q<sup>1</sup>

##### *Multilateral trading facilities*

1) Operation of a multilateral trading facility shall require a licence issued by the FMA. The licence shall be granted if:

- a) effective systems exist for the smooth conclusion of transactions via the multilateral trading facility and the performance thereof; and
- d) fair and transparent trading via the multilateral trading facility and its oversight by the organs of the multilateral trading facility are ensured.

2) Only banks and investment firms may be operators of a multilateral trading facility, but not asset management companies.

3) Article 30e, paragraphs 1, 4, and 5 apply *mutatis mutandis* to operators of multilateral trading facilities.

4) The Government shall specify further details concerning the licencing procedure and the operation of a multilateral trading facility by ordinance.

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<sup>1</sup> Article 30q inserted by LGBL 2007 No. 261.

## IV. Supervision<sup>1</sup>

### Article 31<sup>2</sup>

#### *Organisation and implementation*

The following bodies shall be mandated to implement this Act:

- a) the Financial Market Authority (FMA);
- b) the independent auditors;
- c) the Court of Justice.

### Article 31a<sup>3</sup>

#### *Official secrecy*

1) The governing bodies charged with executing this Act, any persons consulted by such bodies as well as all representatives of the authorities shall be subject to official secrecy without a time limit as regards the confidential information that becomes known to them during their official activities.

2) Subject to specific legal provisions, the information subject to official secrecy must not be disclosed.

3) If bankruptcy or liquidation proceedings have been initiated against a bank or investment firm by the decision of a court, confidential information that does not relate to third parties may be disclosed in civil or commercial law proceedings if this is necessary for the proceedings concerned.

4) Without prejudice to cases under criminal law, the FMA, all other administrative authorities and bodies, and all other natural and legal persons may only use confidential information received by them in accordance with this Act to carry out their responsibilities and duties within the scope of this Act or for the purposes for which the information was transmitted and/or in administrative or court proceedings that refer specifically to the performance of such duties. However, if the FMA or other administrative authority or body or person who transmits the information consents, the authority receiving

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<sup>1</sup> Title preceding article 31 amended by LGBl. 2007 No. 261.

<sup>2</sup> Article 31 amended by LGBl. 2004 No. 176.

<sup>3</sup> Article 31a inserted by LGBl. 2007 No. 261

the information may use it for other purposes of financial market supervision.

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

#### Article 31b<sup>1</sup>

##### *Cooperation with other domestic authorities*

1) Within the framework of its supervision, the FMA shall work together with other domestic authorities to the extent necessary for the fulfilment of its responsibilities.

2) The Office of Land and Public Registration shall notify the FMA of all changes to entries in the Public Registry concerning a bank or investment firm. The Office of Land and Public Registration shall also grant the FMA electronic access to the data in the Public Registry.

### **A. Government**

#### Article 32<sup>2</sup>

##### *Scope of responsibilities and delegation*

Repealed

### **B. Banking Commission**

#### Article 33<sup>3</sup>

##### *Responsibilities*

Repealed

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<sup>1</sup> Article 31b inserted by LGBL 2007 No. 261

<sup>2</sup> Article 32 repealed by LGBL 2004 No. 176.

<sup>3</sup> Article 33 repealed by LGBL 2004 No. 176.



Article 34<sup>1</sup>*Composition*

Repealed

**C. FMA<sup>2</sup>**

## Article 35

*Duties and powers<sup>3</sup>*

1) The FMA shall supervise the execution of this Act and the associated ordinances and shall take the necessary measures directly, in cooperation with other supervisory bodies, or by complaint to the Office of the Public Prosecutor.<sup>4</sup>

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

- a) demand from all persons and entities subject to this Act and to the FMA's supervision and from their independent auditors all information and documents necessary for execution of this Act;<sup>5</sup>
- b) order or carry out extraordinary audits;<sup>6</sup>
- c) issue decisions and decrees for action, cease and desist, and declaration;<sup>7</sup>
- d) following prior threat to do so, publish final decisions and decrees if the party or parties concerned refuse to comply with those;<sup>8</sup>
- e) impose temporary prohibitions to practice a profession;<sup>9</sup>
- f) request the Office of the Public Prosecutor to apply for measures for securing the absorption of enrichment or the forfeiture of assets subject to the provisions of the Code of Criminal Procedure;<sup>10</sup>

<sup>1</sup> Article 34 repealed by LGBL 2004 No. 176.

<sup>2</sup> Title preceding article 35 amended by LGBL 2004 No. 176.

<sup>3</sup> Article 35 heading amended by LGBL 2007 No. 261.

<sup>4</sup> Article 35, paragraph 1 amended by LGBL 2007 No. 261.

<sup>5</sup> Article 35, paragraph 2(a) amended by LGBL 2007 No. 261.

<sup>6</sup> Article 35, paragraph 2(b) amended by LGBL 2007 No. 261.

<sup>7</sup> Article 35, paragraph 2(c) amended by LGBL 2007 No. 261.

<sup>8</sup> Article 35, paragraph 2(d) amended by LGBL 2007 No. 261.

<sup>9</sup> Article 35, paragraph 2(e) amended by LGBL 2007 No. 261.

<sup>10</sup> Article 35, paragraph 2(f) amended by LGBL 2007 No. 261.

- g) in justified exceptional cases, prohibit the bank or investment firm from making disbursements, receiving payments, or executing transactions with financial instruments.<sup>1</sup>

The associated costs shall be borne by the parties concerned, in accordance with article 26, paragraph 2 of the FMA Act.<sup>2</sup>

3) The FMA shall in particular be responsible for:<sup>3</sup>

- a) issuing, withdrawing, and revoking licences;<sup>4</sup>
- b) approving the articles of association and the regulations of the banks and investment firms and amendments thereto;<sup>5</sup>
- c) verifying audit reports;<sup>6</sup>
- d) granting licences to representative offices;<sup>7</sup>
- e) punishing infractions in accordance with article 63, paragraph 3.<sup>8</sup>

4) If the FMA learns of violations of this Act or of other abuses, it shall issue the orders necessary to bring about a lawful state of affairs and to remedy the abuses.<sup>9</sup>

4a) Should other measures alone fail to ensure that the relevant rules, procedures, mechanisms and strategies are improved sufficiently within a reasonable period of time, the FMA shall impose additional own funds requirements beyond the minimum capital resources upon at least the banks or investment firms that do not meet the requirements set out in article 7a, paragraphs 2 to 4 or the minimum requirements concerning cluster risks or the organisational requirements concerning investment services or if an unsatisfactory situation under article 4 and 8 has been identified with respect to those banks or investment firms.<sup>10</sup>

5) If there are grounds to assume that an activity subject to this Act is being conducted without a licence, the FMA may demand information

<sup>1</sup> Article 35, paragraph 2(g) inserted by LGBL 2009 No. 188.

<sup>2</sup> Article 35, final phrase amended by LGBL 2007 No. 261.

<sup>3</sup> Article 35, paragraph 3, introductory phrase amended by LGBL 2004 No. 176.

<sup>4</sup> Article 35, paragraph 3(a) amended by LGBL 2004 No. 176.

<sup>5</sup> Article 35, paragraph 3(b) amended by LGBL 2007 No. 261.

<sup>6</sup> Article 35, paragraph 3(c) inserted by LGBL 1998 No. 223.

<sup>7</sup> Article 35, paragraph 3(d) inserted by LGBL 1998 No. 223.

<sup>8</sup> Article 35, paragraph 3(e) inserted by LGBL 2004 No. 176.

<sup>9</sup> Article 35, paragraph 4 inserted by LGBL 1998 No. 223 and amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

<sup>10</sup> Article 35, paragraph 4a amended by LGBL 2007 No. 261.

and documents from the persons concerned as if these persons were subject to this Act.<sup>1</sup>

6) The FMA may assign an expert as its observer to a bank or investment firm if the claims of creditors appear endangered by serious grievances. The auditor appointed according to the Banking Act may be entrusted with this responsibility. The costs shall be borne by the bank or investment firm. The observer shall monitor the activities of the managing governing bodies, in particular the implementation of the measures ordered, and shall report to the FMA on an ongoing basis. The observer shall enjoy the unrestricted right to inspect the business activities and the books and files of the bank or investment firm.<sup>2</sup>

7) The FMA shall inform the Government of any general difficulties that Liechtenstein banks and investment firms have with respect to a branch or the provision of services under article 3 in a third State. The Government shall forward this notification to the EFTA Surveillance Authority.<sup>3</sup>

8) The FMA shall keep a publicly accessible register on the banks, investment firms, branches of foreign banks, financial institutions, and investment firms, tied agents, and the independent auditors authorised to audit banks, investment firms, and regulated markets. The register shall be updated monthly. It may be accessed via a retrieval procedure.<sup>4</sup>

9) The FMA shall compile a list containing all parent financial holding companies in EEA Member States that control banks or investment firms for whose supervision on a consolidated basis the FMA is responsible. The list shall be transmitted to the competent authorities in other EEA Member States, the Standing Committee of the EFTA States, and the EFTA Surveillance Authority.<sup>5</sup>

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<sup>1</sup> Article 35, paragraph 5 inserted by LGBL 1998 No. 223 and amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

<sup>2</sup> Article 35, paragraph 6 amended by LGBL 2007 No. 261.

<sup>3</sup> Article 35, paragraph 7 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 35, paragraph 8 inserted by LGBL 2007 No. 261.

<sup>5</sup> Article 35, paragraph 9 inserted by LGBL 2007 No. 261.

Article 36<sup>1</sup>*Data processing*

The FMA may process all data necessary to fulfil its responsibilities under this Act, including personal profiles and particularly sensitive data concerning administrative or criminal prosecutions and penalties imposed with respect to persons responsible for the governance and general management of a bank or investment firm or branch of a bank, financial institution, or investment firm.

Article 36a<sup>2</sup>*Disclosure*

1) The FMA shall publish the following information:

- a) the texts of the legal and administrative provisions and general guidelines adopted in Liechtenstein in the field of financial market supervision;
- b) the manner in which the options and areas of discretion granted by EEA law is used;
- c) the general criteria and methods of the supervisory verification procedure.
- d) aggregated statistical data on key aspects of implementation of the supervision framework provisions in the individual EEA Member States.

2) The information supplied under paragraph 1 must permit a meaningful comparison of the approaches taken by the various competent authorities of the EEA Member States.

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<sup>1</sup> Article 36 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 36a amended by LGBL 2007 No. 261.

## D. Independent auditors

### Article 37

#### *Recognition*

1) Independent auditors and audit associations that audit banks and investment firms shall require a licence issued by the FMA for such activities.<sup>1</sup>

2) The licence shall be granted to independent auditors if

- a) their general management, head auditors, and organisation guarantee that the audit mandates are performed continuously and properly, and
- b) they are organised as limited companies and dispose of adequate share capital.

3) The independent auditors shall dedicate themselves exclusively to audit activities and immediately related transactions such as inspections, liquidations, and reorganisations. They may not engage in banking transactions, investment services, or asset management.<sup>2</sup>

4) The independent auditors must be independent of the banks and investment firms to be audited.<sup>3</sup>

5) The independent auditor must maintain secrecy concerning all facts it has learned about in the course of the audit, except vis-à-vis the competent governing bodies of the bank or investment firm audited and the FMA.<sup>4</sup>

6) The Government shall specify further details by ordinance.<sup>5</sup>

### Article 38

#### *Responsibilities and audit report<sup>6</sup>*

1) The independent auditors shall verify whether

<sup>1</sup> Article 37, paragraph 1 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 37, paragraph 3 amended by LGBL 2007 No. 261.

<sup>3</sup> Article 37, paragraph 4 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 37, paragraph 5 amended by LGBL 2007 No. 261.

<sup>5</sup> Article 37, paragraph 6 inserted by LGBL 1998 No. 223.

<sup>6</sup> Article 38 heading amended by LGBL 1998 No. 223.

- a) the business activities of the bank or investment firm conform to the law, the articles of association, and the regulations,<sup>1</sup>
- b) the preconditions for granting the licence are continuously met, and<sup>2</sup>
- c) the form and content of the business report and the consolidated business report conform to the requirements of the law, articles of association, and regulations.<sup>3</sup>

2) The independent auditor shall summarise the results of the audits under paragraph 1 in a written audit report. By ordinance, the Government shall specify further details on the content of the audit report.<sup>4</sup>

3) The audit report shall be submitted simultaneously to the board of directors of the bank or investment firm, to the auditor appointed according to the Law on Persons and Companies, and to the FMA.<sup>5</sup>

#### Article 39

##### *Grievances*

1) If the independent auditor finds violations of legal provisions or other abuses, it shall impose an appropriate deadline on the bank or investment firm to bring about a lawful state of affairs. If the deadline is not met, the independent auditor shall report to the FMA.<sup>6</sup>

2) The independent auditor shall notify the FMA immediately if the imposition of a deadline appears useless, if it finds that the general management has committed punishable offences, or if other serious abuses exist that conflict with the purpose of this Act (article 1).<sup>7</sup>

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

- a) in the case of serious violations of the law and articles of association by the general management, especially in the case of violations of the preconditions for granting a licence and the provisions applicable to the exercise of business activities;

<sup>1</sup> Article 38, paragraph 1(a) amended by LGBL 2007 No. 261.

<sup>2</sup> Article 38, paragraph 1(b) amended by LGBL 1998 No. 223.

<sup>3</sup> Article 38, paragraph 1(c) amended by LGBL 1998 No. 223.

<sup>4</sup> Article 38, paragraph 2 amended by LGBL 1998 No. 223.

<sup>5</sup> Article 38, paragraph 3(b) amended by LGBL 2007 No. 261.

<sup>6</sup> Article 39, paragraph 1 amended by LGBL 2007 No. 261.

<sup>7</sup> Article 39, paragraph 2 amended by LGBL 1998 No. 223 and LGBL 2004 No. 176.

- b) in the case of facts or decisions that might adversely affect the continuation of the activities of the bank or investment firm;<sup>1</sup>
- c) in the case of facts or decisions that might lead to a rejection of the business report or the consolidated business report or to reservations in the audit report.<sup>2</sup>

4) A duty to report shall also subsist where, in the course of its audit activities, the independent auditor makes determinations in accordance with paragraph 3 with respect to undertakings closely linked with the bank or investment firm subject to the audit.<sup>3</sup>

5) Independent auditors bringing fact patterns to the attention of the FMA in good faith shall not thereby be deemed in breach of any contractual or legal restrictions on passing on information. Meeting the information requirement in this sense does not entail any adverse consequences for the independent auditor or person passing on the information.<sup>4</sup>

#### Article 40

##### *Audit costs*

1) The banks and investment firms shall bear the costs of the audit. The costs of the audit shall be calculated according to the rate issued by the Government by ordinance.<sup>5</sup>

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

<sup>1</sup> Article 39, paragraph 3(b) amended by LGBL 2007 No. 261.

<sup>2</sup> Article 39, paragraph 3 inserted by LGBL 1998 No. 223.

<sup>3</sup> Article 39, paragraph 4 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 39, paragraph 5 inserted by LGBL 2007 No. 261.

<sup>5</sup> Article 40, paragraph 1 amended by LGBL 2007 No. 261.

## E. Court of Justice

### Article 41

#### *Criminal jurisdiction*

The Court of Justice shall have criminal jurisdiction for the offences set out article 63, paragraphs 1 and 2.

## F. Supervision on a consolidated basis within the framework of the EEA Agreement<sup>1</sup>

### 1. General provisions<sup>2</sup>

#### Article 41a

##### *Principles<sup>3</sup>*

1) Any bank or investment firm which has a bank or investment firm as a subsidiary or which has a holding in a bank or investment firm shall be subject to supervision of the consolidated financial status in accordance with the provisions of this section.<sup>4</sup>

2) Any bank or investment firm whose parent undertaking is a financial holding company shall be subject to supervision of the consolidated financial status of the financial holding company in accordance with the provisions of this section.<sup>5</sup>

3) The inclusion of a bank, investment firm, or undertaking with bank-related ancillary services in the consolidation may be dispensed with if the undertaking to be included is of minor importance with respect to the consolidation.<sup>6</sup>

4) If the bank or investment firm is a parent undertaking, the FMA may exempt the bank or investment firm from the own funds

<sup>1</sup> Title preceding article 41a amended by LGBl. 2007 No. 261.

<sup>2</sup> Title preceding article 41a inserted by LGBl. 2007 No. 261.

<sup>3</sup> Article 41a heading inserted by LGBl. 1998 No. 223.

<sup>4</sup> Article 41a, paragraph 1 amended by LGBl. 2007 No. 261.

<sup>5</sup> Article 41a, paragraph 2 amended by LGBl. 2007 No. 261.

<sup>6</sup> Article 41a, paragraph 3 amended by LGBl. 2007 No. 261.



consolidation as long as the bank or investment firm is itself a subsidiary of a parent undertaking and is in turn subject to appropriate supervision.<sup>1</sup>

5) For all undertakings included in the consolidation under paragraphs 1 and 2, appropriate internal control procedures must be provided for the submission of information and responses that are useful for the consolidated supervision.<sup>2</sup>

6) Subsidiaries of a bank, an investment firm, or a financial holding company that are not included in the supervision on a consolidated basis shall, upon request by the FMA, provide the FMA with all information that is useful for supervision of the subsidiaries. The procedure pursuant to article 41k shall apply in this regard.<sup>3</sup>

7) For purposes of this article, a participation shall be deemed the direct or indirect ownership of 20% or more of the voting rights or capital of another undertaking.<sup>4</sup>

## 2. Competence<sup>5</sup>

### Article 41b<sup>6</sup>

#### *Competence arising from authorisation*

1) If the FMA has authorised a parent bank in an EEA Member State or a parent investment firm in an EEA Member State or an EEA parent bank or an EEA parent investment firm, then the FMA shall be responsible for supervision on a consolidated basis.

2) If the FMA has authorised a bank or investment firm whose parent undertaking is a parent financial holding company in an EEA Member State or an EEA parent financial holding company, then the FMA shall be responsible for supervision on a consolidated basis.

<sup>1</sup> Article 41a, paragraph 4 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 41a, paragraph 5 inserted by LGBL 1998 No. 223.

<sup>3</sup> Article 41a, paragraph 6 amended by LGBL 2007 No. 261.

<sup>4</sup> Article 41a, paragraph 7 inserted by LGBL 1998 No. 223.

<sup>5</sup> Title preceding article 41b inserted by LGBL 2007 No. 261.

<sup>6</sup> Article 41b amended by LGBL 2007 No. 261.

Article 41c<sup>1</sup>*Competence in connection with financial holding companies*

1) Where banks or investment firms authorised in Liechtenstein and other EEA Member States have as their parent the same parent financial holding company in an EEA Member State or the same EEA parent financial holding company, supervision on a consolidated basis shall be exercised by the FMA, provided the financial holding company was set up in Liechtenstein.

2) Where the parents of banks or investment firms authorised in Liechtenstein and other EEA Member States comprise more than one financial holding company with registered offices in different EEA Member States and there is a bank or investment firm in each of these EEA Member States, supervision on a consolidated basis shall be exercised by the FMA, provided that the FMA exercises supervision over the bank or investment firm with the largest balance sheet total.

3) Where more than one bank or investment firm authorised in the EEA has as its parent the same financial holding company and none of the banks or investment firms has been authorised in the EEA Member State in which the financial holding company was set up, supervision on a consolidated basis shall be exercised by the FMA, provided that the FMA has authorised the bank or investment firm with the largest balance sheet total. This bank or investment firm shall be considered, for the purposes of this Act, as the bank or investment firm controlled by an EEA parent financial holding company.

4) In particular cases, the FMA may by common agreement with the competent authorities of the other EEA Member States waive the criteria referred to in paragraphs 1 to 3 if their application would be inappropriate, taking into account the banks and investment firms and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. The EEA parent bank or EEA parent investment firm, the EEA parent financial holding company, or the bank or investment firm with the largest balance sheet total shall be given an opportunity to state its opinion prior to that decision.

5) The FMA shall notify the Standing Committee of the EFTA States and the EFTA Surveillance Authority of any agreement falling within paragraph 4.

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<sup>1</sup> Article 41c amended by LGBL 2007 No. 261.

Article 41d<sup>1</sup>*Scope of consolidation in special cases*

1) If a financial holding company under the supervision of the FMA consolidates its financial situation, the FMA is not required to supervise the financial situation on an individual basis as well.

2) When the competent authorities of an EEA Member State do not include a bank or investment firm subsidiary in supervision on a consolidated basis under one of the cases provided for in paragraph 3, the FMA may, provided that it exercises supervision over that subsidiary, ask the parent undertaking for information which may facilitate its supervision of that bank or investment firm.

3) Cases for purposes of paragraph 2 in which no inclusion in the consolidation is necessary are:

- a) the subsidiary is, in the opinion of the competent authorities, of negligible interest only with respect to the objectives of the supervision of banks or investment firms and in any event where the balance sheet total of the undertaking concerned is less than the smaller of the following two amounts:
  1. EUR 10 million; or
  2. 1% of the balance sheet total of the parent undertaking or the undertaking that holds the participation;
- b) in the opinion of the competent authorities, the consolidation of the financial situation of the undertaking concerned would be inappropriate or misleading as far as the objectives of the supervision of banks or investment firms are concerned.

4) The FMA may demand the information referred to in article 41k from the subsidiaries of a bank or investment firm of financial holding company that are not included in supervision on a consolidated basis. The procedures set out in article 41k for transmission and verification of the information shall apply.

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<sup>1</sup> Article 41d amended by LGBL 2007 No. 261.

### 3. Special tasks and emergency situations<sup>1</sup>

Article 41e<sup>2</sup>

#### *Special tasks*

1) Where the FMA is responsible for supervision on a consolidated basis of EEA parent banks or EEA parent investment firms or of banks or investment firms controlled by EEA parent financial holding companies, it shall carry out the following tasks:

- a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations; and
- b) planning and coordination of supervisory activities in going concern as well as in emergency situations, including verification of regulations, strategies, procedures and mechanisms that the banks or investment firms have created, and evaluation of their current and any future risks. For this purpose, the FMA shall work together with the other competent authorities.

2) Where the FMA, as the authority responsible for supervision on a consolidated basis, is requested by an EEA parent bank or EEA parent investment firm or jointly by the subsidiaries of an EEA financial holding company for permission to use an Internal Ratings Based Approach (IRB Approach) or an institution-specific approach (AMA), the FMA shall decide in full consultation with the competent authorities of other EEA Member States whether or not to grant the permission sought and what terms and conditions, if any, such permission should be subject to.

3) The FMA shall do everything within its power to reach a decision on the application within six months. This decision shall be set out in a document containing the fully reasoned decision which shall be sent to the applicant by the FMA.

4) The period referred to in paragraph 3 shall begin on the date of receipt of the complete application by the FMA. The FMA shall forward the complete application to the other competent authorities without delay.

5) In the absence of a decision within six months, the FMA shall make its own decision on the application. The decision shall be set out in

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<sup>1</sup> Title preceding article 41e inserted by LGBL 2007 No. 261.

<sup>2</sup> Article 41e amended by LGBL 2007 No. 261.

a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six months period. The decision shall be provided to the applicant and the other competent authorities by the FMA.

6) Decisions referred to in paragraphs 3 and 5 taken by competent authorities of other EEA Member States shall be applied in Liechtenstein as a matter of principle.

7) The requirements referred to in paragraphs 2 to 6 shall also apply to the recognition of the market risk model approach.

#### Article 41f<sup>1</sup>

##### *Emergency situations*

Where an emergency situation arises within a banking or investment firm group which potentially jeopardises the stability of the financial system in any of the EEA countries where entities of the group have been authorised, the FMA shall, provided that it is responsible for supervision on a consolidated basis under article 41b, 41c, or 41e, paragraph 1, notify as soon as practicable the central banks, the Swiss National Bank, and other bodies with a similar function in their capacity as monetary authorities. Where possible, the FMA shall use existing defined channels of communication.

#### 4. Coordination and cooperation rules<sup>2</sup>

#### Article 41g<sup>3</sup>

##### *Arrangements*

1) In order to facilitate and establish effective supervision, the FMA and the other competent authorities of the EEA Member States responsible for supervision on a consolidated basis shall have written coordination and cooperation arrangements in place.

2) Under these arrangements, additional tasks may be entrusted to the competent authority responsible for supervision on a consolidated basis, and procedures for the decision-making process and for cooperation with other competent authorities may be specified.

<sup>1</sup> Article 41f amended by LGBL 2007 No. 261.

<sup>2</sup> Title preceding article 41g inserted by LGBL 2007 No. 261.

<sup>3</sup> Article 41g inserted by LGBL 2007 No. 261.

3) Where the FMA is responsible for authorising a subsidiary of a parent undertaking which is a bank or investment firm, it may, by bilateral agreement, delegate its responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they may assume responsibility for supervising the subsidiary. The Standing Committee of the EFTA States and the EFTA Surveillance Authority shall be informed of the existence and the content of such agreements.

#### Article 41h<sup>1</sup>

##### *Cooperation*

1) The FMA shall cooperate closely with the other competent authorities. In this regard, the FMA shall communicate on request all relevant information and shall communicate on its own initiative all essential information.

2) Information referred to in paragraph 1 shall be regarded as essential if it could materially influence the assessment of the financial soundness of a bank, investment firm, or financial institution in another EEA Member State.

3) In particular, the FMA shall, provided it is responsible for consolidated supervision of EEA parent banks or EEA parent investment firms or of banks or investment firms controlled by EEA parent financial holding companies, provide the competent authorities in other EEA Member States who supervise subsidiaries of these parents with all relevant information. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those EEA Member States shall be taken into account.

4) The essential information referred to in paragraph 1 shall include, in particular, the following items:

- a) identification of the group structure of all major banks or investment firms in a group (with all of the major banks or investment firms represented in this group), as well as of the competent authorities of the banks and investment firms in the group;
- b) procedures for the collection of information from the banks or investment firms in a group, and the verification of that information;

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<sup>1</sup> Article 41h inserted by LGBL 2007 No. 261.

- c) adverse developments in banks or investment firms or in other entities of a group, which could seriously affect the banks or investment firms; and
- d) major sanctions and exceptional measures taken by the FMA in accordance with this Act, including the imposition of an additional own funds requirement under article 35, paragraph 4a and the imposition of any limitation on the use of the Advanced Measurement Approach (AMA) for the calculation of the own funds requirements.

5) Where the FMA is responsible for supervision of a bank or investment firm controlled by an EEA parent bank or an EEA parent investment firm, it shall whenever possible contact the competent authority responsible for supervision on a consolidated basis when it needs information regarding the implementation of approaches and methodologies that may be available to that competent authority.

6) The FMA shall, prior to its decision, consult the other competent authorities of EEA Member States with regard to the following items, where these decisions are of importance for the supervisory tasks of another competent authority:

- a) changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorisation of competent authorities; and
- b) major sanctions or exceptional measures taken by competent authorities, including the imposition of an additional own funds requirement under article 35, paragraph 4a and the imposition of any limitation on the use of the Advanced Measurement Approaches (AMA) for the calculation of the own funds requirements.

7) For the purposes of paragraph 6(b), the competent authority responsible for supervision on a consolidated basis shall always be consulted. However, the FMA may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decision. In this case, the FMA shall, without delay, inform the other competent authorities.

## 5. Management of financial holding companies<sup>1</sup>

Article 41i<sup>2</sup>

### *Qualifications*

Persons who effectively direct the business of a financial holding company must be of sufficiently good repute and have sufficient experience to perform these duties.

## 6. Mixed-activity holding companies<sup>3</sup>

Article 41k<sup>4</sup>

### *General control of mixed-activity holding companies*

1) Where the parent undertaking of one or more banks or investment firms is a mixed-activity holding company, the FMA may, provided that it authorised those banks or investment firms or is responsible for their supervision, by approaching the mixed-activity holding company and its subsidiaries either directly or via bank or investment firm subsidiaries, require them to supply any information which would be relevant for the purpose of supervising the bank or investment firm subsidiaries.

2) The FMA may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in article 41n may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in an EEA Member State other than that in which the bank or investment firm subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in article 41o.

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<sup>1</sup> Title preceding article 41i inserted by LGBL 2007 No. 261.

<sup>2</sup> Article 41i inserted by LGBL 2007 No. 261.

<sup>3</sup> Title preceding article 41k inserted by LGBL 2007 No. 261.

<sup>4</sup> Article 41k inserted by LGBL 2007 No. 261.



Article 41l<sup>1</sup>*Monitoring of transactions of mixed-activity holding companies*

The FMA shall require banks and investment firms to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. The FMA shall require the reporting by the banks and investment firms of any significant transaction with these entities in addition to the notification of cluster risks.

These procedures and significant transactions shall be subject to overview by the FMA. Where these intra-group transactions are a threat to the financial situation of a bank or investment firm, the FMA shall take appropriate measures.

**7. Exchange of information<sup>2</sup>**Article 41m<sup>3</sup>*Principles*

1) The FMA shall transmit to the competent authorities of other EEA Member States any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise, provided that:

- a) doing so does not violate the sovereignty, security, public order, or other substantial national interests of Liechtenstein;
- b) the recipients and the persons employed with and instructed by the competent authorities are subject to an obligation of secrecy equivalent to that of article 31a;
- c) it is guaranteed that the information given will only be used for the purpose of financial market supervision, in particular the supervision of banks, investment firms, or regulated markets; and

2) The exchange of information relevant for supervision on a consolidated basis between the group companies subject to consolidated supervision shall be permissible.

<sup>1</sup> Article 41l inserted by LGBL 2007 No. 261.

<sup>2</sup> Title preceding article 41m inserted by LGBL 2007 No. 261.

<sup>3</sup> Article 41m inserted by LGBL 2007 No. 261.

Article 41n<sup>1</sup>*Special cases*

1) Where a parent undertaking and any of its subsidiaries that are banks or investment firms are situated in different EEA Member States, the FMA shall communicate to the competent authorities of every EEA Member State all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

2) Where the FMA, as the competent authority for a parent undertaking situated in Liechtenstein, does not itself exercise supervision on a consolidated basis, it may be invited by the competent authority of the EEA Member State responsible for supervision on a consolidated basis to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to that authority.

3) In the case of financial holding companies, financial institutions, or ancillary services undertakings, the collection or possession of information alone shall not imply that the FMA is required to play a supervisory role in relation to those institutions or undertakings standing alone.

4) The FMA may exchange the information referred to in article 41k on the understanding that the collection or possession of information does not imply that the FMA plays a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not banks or investment firms, or to subsidiaries of the kind covered in article 41d, paragraph 4.

5) Where a bank, investment firm, financial holding company, or mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the FMA and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely.

6) Where in a group to which no banks belong an investment firm, a financial holding company, or a mixed-activity holding company controls one or more subsidiaries which are insurance undertakings, the FMA and the authorities entrusted with the public task of supervising insurance undertakings shall cooperate closely.

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<sup>1</sup> Article 41n inserted by LGBL 2007 No. 261.

Article 41o<sup>1</sup>*Verification*

1) If the FMA is requested by another competent authority of an EEA Member State within the framework of supervision on a consolidated basis to carry out a verification with respect to a bank, an investment firm, a financial holding company, an ancillary services undertaking, a mixed-activity holding company, a subsidiary of the kind covered in article 41k, or a subsidiary of the kind covered in article 41d, paragraph 4 situated in Liechtenstein, it shall act upon that request either by carrying out the verification itself, by allowing the authority who made the request to carry it out, or by allowing a chartered accountant or expert to carry it out. The competent authority which made the request may, if it so wishes, participate in the verification when the FMA does not carry out the verification itself.

2) When the FMA wishes to verify information concerning institutions within the meaning of paragraph 1 situated in another EEA Member State, the FMA may request the competent authority of that EEA Member State to carry out a verification.

**8. Measures against financial holding companies and mixed-activity holding companies<sup>2</sup>**Article 41p<sup>3</sup>*Principle*

1) The FMA shall take measures against financial holding companies and mixed-activity holding companies or their effective managers that violate articles 41a to 41o.

2) In this regard, the FMA shall cooperate closely with other competent authorities.

<sup>1</sup> Article 41o inserted by LGBL 2007 No. 261.

<sup>2</sup> Title preceding article 41p inserted by LGBL 2007 No. 261.

<sup>3</sup> Article 41p inserted by LGBL 2007 No. 261.

## 9. Relationship with third States<sup>1</sup>

### Article 41q<sup>2</sup>

#### *Principle*

1) Where a bank or investment firm, the parent undertaking of which is a bank or investment firm or a financial holding company, the registered office of which is in a third country, is not subject to consolidated supervision under articles 41c and 41d, the FMA shall verify together with the other competent authorities of the EEA Member States affected by this constellation of undertakings whether the bank or investment firm is subject to consolidated supervision by a third-country competent authority which is equivalent to that governed by the principle laid down in this Act.

2) The FMA shall carry out the verification at the request of the parent undertaking or of any of the regulated entities authorised in the European Economic Area or on its own initiative, provided that it would be responsible for consolidated supervision if paragraph 4 were to apply. The FMA shall consult the other competent authorities involved.

3) When carrying out the verification referred to in paragraph 1, the FMA shall take into account the guidance of the European Banking Committee. For this purpose, the FMA shall consult the Committee before taking a decision.

4) If no supervision or no equivalent supervision exists, the FMA shall apply the provisions of this Act *mutatis mutandis* to the bank or investment firm. The FMA may instead apply other appropriate supervisory techniques provided they achieve the objectives of supervision on a consolidated basis of banks and investment firms.

5) The supervisory techniques referred to in paragraph 4 shall, after consultation with the other competent authorities of the EEA involved, be agreed upon by the competent authority which would be responsible for consolidated supervision.

6) The FMA may, upon consultation with the other competent authorities of the EEA Member States, in particular require the establishment of a financial holding company which has its registered office in the European Economic Area, and apply the provisions on

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<sup>1</sup> Title preceding article 41q inserted by LGBL 2007 No. 261.

<sup>2</sup> Article 41q inserted by LGBL 2007 No. 261.

consolidated supervision to the consolidated position of that financial holding company.

7) The supervisory techniques shall be notified to the other competent authorities of the EEA Member States involved, the Standing Committee of the EFTA States, and the EFTA Surveillance Authority.

8) For purposes of supervision on a consolidated basis, articles 41m and 41o shall apply *mutatis mutandis* to cooperation with competent authorities of third States.

## IVa. Capital reduction<sup>1</sup>

### Article 41r<sup>2</sup>

#### *Repayment of capital*

1) With respect to banks and investment firms, the provisions of the Law on Persons and Companies shall apply to the reduction of share capital by repayment of shares, subject to the following provisions. These provisions shall apply *mutatis mutandis* also with respect to banks and investment firms that have not been established in the legal form of limited companies.

2) If a bank or investment firm intends to reduce its share capital without simultaneously replacing it with new, fully paid-up capital up to the previous level, the general meeting must decide on a corresponding amendment of the articles of association. This decision must be made by a majority of two thirds of the votes represented.

3) The general meeting may only decide to reduce the capital if a special audit report of the independent auditor appointed according to the Banking Act has determined that the claims of creditors are fully covered and liquidity is guaranteed despite the reduction of the share capital.

4) The decision to reduce the capital shall be published once in the official publication governing bodies and also in the form provided in the articles of associations. The creditors shall be notified that they may

<sup>1</sup> Title preceding article 41r inserted by LGBl. 2007 No. 261.

<sup>2</sup> Article 41r inserted by LGBl. 2007 No. 261.

demand satisfaction or security if they file their claims within two months calculated from the time of the announcement.

5) The capital reduction may be executed after the expiry of two months from the day when the decision containing the invitation for creditors to file claims is announced, and after those creditors who have filed their claims within this time period have been paid off or secured.

6) The creditors whose claims were established before the decision is announced must be provided security if they report for that purpose within two months after the third announcement, to the extent that they may not demand satisfaction. The creditors shall be notified of this right in the announcement. Creditors shall not be entitled to demand security if they already have adequate security or if adequate security is not required in view of the company assets.

7) Payments to the shareholders may be made only pursuant to the reduction of the capital stock and only after expiry of the time limit established for the creditors and after the claims filed by creditors have been satisfied or secured. A release of the shareholders from the obligation to make deposits shall likewise not take effect before the time designated and not before the satisfaction or securing of those creditors who have filed their claims on time.

8) Any book profits resulting from the capital reduction shall be allocated to the capital reserves.

9) In no case may the capital stock of banks or investment firms be reduced to less than their respective initial capital (article 24).

## **V. Reorganisation and liquidation**

### **A. Moratorium**

#### Article 42

##### *Preconditions and application*

1) A bank that is unable to meet its liabilities on time may apply to the Court of Justice for a moratorium.

2) The bank must simultaneously submit a statement of affairs, its latest annual statement of accounts, its latest interim balance sheet, and its latest audit report to the Court of Justice.

3) Any legal acts that the bank undertakes after closing its counters or after submitting the application and prior to the appointment of the interim commissioner shall not be valid vis-à-vis its creditors. Any legal acts in connection with participation in systems pursuant to the Final Settlements Act shall be in accordance with the provisions of the Final Settlements Act, in particular article 15.<sup>1</sup>

#### Article 43

##### *Approval*

1) After having heard the FMA, the Court of Justice shall grant a moratorium for the duration of one year, unless the bank is overindebted. In justified cases, the moratorium may be extended for an additional year.<sup>2</sup>

2) The moratorium shall be publicly announced by edict.<sup>3</sup>

3) The FMA shall be notified without delay about decisions of the Court of Justice granting a moratorium with respect to a participant of a system pursuant to the Final Settlements Act.<sup>4</sup>

#### Article 44

##### *Interim commissioner*

1) The Court of Justice shall appoint an interim commissioner who shall have the same powers as the ordinary commissioners until a decision has been reached on the application or until bankruptcy proceedings are initiated.

2) The independent auditor appointed according to the Banking Act may be designated as interim commissioner.

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<sup>1</sup> Article 42, paragraph 3 amended by LGBL 2002 No. 162.

<sup>2</sup> Article 43, paragraph 1 amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

<sup>3</sup> Article 43, paragraph 2 amended by LGBL 2002 No. 162.

<sup>4</sup> Article 43, paragraph 3 inserted by LGBL 2002 No. 162 and amended by LGBL 2004 No. 176.

## Article 45

*Commissioner*

1) If the Court of Justice grants the moratorium, it shall appoint respectable, reliable, and knowledgeable persons as commissioners for the bank. A bank or trust company may also be appointed commissioner.

2) If several commissioners are appointed, one commissioner must be put in charge.

3) Shareholders and former shareholders who have withdrawn from the undertaking during the year prior to initiation of bankruptcy proceedings may not be appointed commissioners.

4) The commissioner shall be subject to supervision by the Court of Justice and may be dismissed by the Court of Justice on important grounds.

## Article 46

*Responsibilities of the commissioner*

Immediately after his or her appointment, the commissioner shall determine the financial situation of the bank together with the independent auditor, report on the financial situation to the Court of Justice and the bank, and take the measures necessary to maintain operations.

## Article 47

*Conduct of business*

1) During the moratorium, the bank shall continue its business operations under the supervision of the commissioner and in accordance with the commissioner's instructions.

2) The bank may not undertake any legal acts that adversely affect the legitimate interests of the creditors or that favour individual creditors to the disadvantage of others.

3) The bank shall grant the Court of Justice and the commissioner access to all books and records and shall provide all requested information.

4) The commissioner shall be invited to all negotiations of the governing bodies of the banks; the commissioner may also order such negotiations to be held.



## Article 48

*Payments to creditors*

- 1) Payments to creditors may only be made with the consent of the commissioner.
- 2) The commissioner is authorised to order payments to be made to the creditors from receipts from due claims of the bank according to the commissioner's best judgment. The interests of creditors privileged by legal transaction or law as well as the interests of small creditors shall be appropriately taken into account.
- 3) These payments may not exceed one half of the amounts for which cover is available in accordance with the assets as determined by the commissioner.

## Article 49

*Additional measures*

- 1) After having heard the FMA, the Court of Justice may take further measures called for by the circumstances and in the interest of the bank or the creditors at any time during the moratorium.<sup>1</sup>
- 2) In particular, the Court of Justice may order that the conclusion of new transactions, the alienation of real estate, the pledging of chattels, or the assumption of guarantees shall require the consent of the commissioner to be valid.
- 3) The Court of Justice shall publish such orders.

## Article 50

*Executions*

- 1) For the duration of the moratorium, execution may be levied against the debtor only until attachment and rating.
- 2) Petitions for realisation or bankruptcy may not be granted.
- 3) The time limits for the submission of the applications for realisation shall be extended by the duration of the moratorium. Likewise, the liability of the mortgage of the interest on the land charge (article 290, paragraph 1(3) of the Property Act) shall be extended by the duration of the moratorium.

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<sup>1</sup> Article 49, paragraph 1 amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

## Article 51

*Extrajudicial reorganisation*

1) If the bank aims at an extrajudicial reorganisation or a composition agreement, the commissioner shall assess its applications addressed to the company's governing bodies, the creditors, or the Court of Justice.

2) If, during the moratorium, the bank proves to be able to effect an extrajudicial reorganisation, the Court of Justice may extend the moratorium for an additional six months on an exceptional basis.

## Article 52

*Revocation of moratorium*

1) Upon application of the commissioner or a creditor, the Court of Justice shall revoke the moratorium if the bank:

- a) obtained the moratorium on the basis of false information;
- b) contravenes the instructions of the commissioner;
- c) adversely affects the legitimate interests of the creditors;
- d) favours individual creditors to the disadvantage of others.

2) The Court of Justice shall publish the revocation of the moratorium.

## Article 53

*Lapse of the moratorium*

1) The Court of Justice may declare the moratorium lapsed upon application of the commissioner if the moratorium is no longer necessary in the best judgment of the commissioner.

2) The Court of Justice shall publish the lapse of the moratorium.

## B. Special provisions on bankruptcy

### Article 54

#### *Initiation of bankruptcy*

1) If the bank proves to be overindebted during the moratorium or if it results that after expiry of the moratorium it will not be able to meet its liabilities on time or to effect an extrajudicial reorganisation, the Court of Justice shall instruct the commissioner, after having heard the FMA, to apply for immediate initiation of bankruptcy proceedings, unless the bank initiates composition proceedings.<sup>1</sup>

2) The bankruptcy may not be postponed.

3) Any claims shown in the books of the bank shall be deemed filed.

### Article 55

#### *Bankruptcy administrator*

1) The Court of Justice shall appoint a bankruptcy administrator. The bankruptcy administrator may be appointed from among the ordinary commissioners.

2) The bankruptcy administrator shall exercise all rights.

### Article 56

#### *Privilege*

1) In the event of bankruptcy of a bank, deposits not in the name of the bearer – including medium-term notes deposited in the name of the depositor at the bank – shall be deemed in the third class up to an amount of 100,000 francs.

2) Vested pension benefits in accordance with article 12, paragraph 2 of the Occupational Pensions Act shall be deemed privileged in the third class independently of other deposits of the individual client up to the maximum amount set out in paragraph 1.<sup>2</sup>

<sup>1</sup> Article 54, paragraph 1 amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

<sup>2</sup> Article 56 amended by LGBL 2009 No. 188.

Article 56a<sup>1</sup>*Seperation in the event of bankruptcy*

1) Financial instruments owned by a client and held or kept in safekeeping by the bank or investment firm in the name and for the account of a client shall, in the event of bankruptcy of the bank or investment firm, not be deemed part of the bankruptcy assets, but rather shall be separated out for the client's benefit, subject to all claims by the bank or investment firm vis-à-vis the client.

2) If the bank or investment firm undergoing bankruptcy is itself a depositor with a third party, it shall be assumed that the custody account values are held by the custody clients of the bank or investment firm; the values shall be separated out in accordance with paragraph 1.

**C. Special provisions on composition proceedings**

## Article 57

*Application; interim trustee*

1) If a bank applies for a composition moratorium, the Court of Justice shall appoint an interim trustee who shall have the same powers as the ordinary trustee until the decision on the application has been made or bankruptcy proceedings have been initiated.

2) The independent auditor appointed according to the Banking Act may be designated as interim trustee.

## Article 58

*Trustee*

If the Court of Justice grants the application for a composition moratorium, it shall appoint a definitive trustee unless a commissioner has already been appointed as trustee.

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<sup>1</sup> Article 56a inserted by LGBl. 2009 No. 188.

## Article 59

*Composition moratorium*

- 1) The composition moratorium shall last for six months. If necessary, it may be extended by a further six months.
- 2) Any claims shown in the books of the bank shall be deemed filed.
- 3) Any legal acts that the bank undertakes after closing its counters or after submitting the application and prior to the appointment of the interim trustee shall not be valid vis-à-vis their creditors.

## Article 60

*Composition agreement*

- 1) The creditors shall be publicly called upon to assert any objections to the draft composition agreement made available for their inspection. No creditors' meeting shall be held.
- 2) The composition agreement shall be approved if the amount offered is in the proper proportion to the ancillary means of the debtor, the execution of the composition agreement and the complete satisfaction of the recognised privileged creditors are secured, and, after examination of all circumstances, it results that the interests of the body of creditors are safeguarded better by the composition agreement than by liquidation in bankruptcy.
- 3) The claims covered by pledges may be granted reasonable moratoria in the composition agreement.

## Va. Cross-border insolvency proceedings<sup>1</sup>

### A. General provisions<sup>2</sup>

#### Article 60a<sup>3</sup>

##### *Scope of application*

Articles 60b through 60z shall be applied to banks to which a licence has been granted in a Member State of the European Economic Area.

#### Article 60b<sup>4</sup>

##### *International competence*

The Court of Justice shall only have jurisdiction to grant a moratorium or composition moratorium and to initiate bankruptcy proceedings if the bank has been granted a licence in Liechtenstein.

#### Article 60c<sup>5</sup>

##### *Information requirement and publication abroad*

1) The Court of Justice shall inform the FMA without delay of a decision to grant a moratorium or composition moratorium or to initiate bankruptcy proceedings and the specific consequences of these measures. The FMA shall inform the competent authorities of the host Member State without delay of this decision.

2) The Court of Justice shall furthermore issue an edict without delay for publication of the moratorium, the composition moratorium, or the initiation of bankruptcy proceedings in the Official Journal of the European Union and in two cross-regional newspapers of each of the Member States of the European Economic Area in which the bank has a branch or provides cross-border services, in the official language or the official languages of the affected Member States. In particular, the

<sup>1</sup> Title preceding article 60a inserted by LGBL 2005 No. 13.

<sup>2</sup> Title preceding article 60a inserted by LGBL 2005 No. 13.

<sup>3</sup> Article 60a inserted by LGBL 2005 No. 13.

<sup>4</sup> Article 60b inserted by LGBL 2005 No. 13.

<sup>5</sup> Article 60c inserted by LGBL 2005 No. 13.

publication shall include the object and legal basis of the decision, the time limits for legal remedies, and especially an easily understandable indication of the end of these time limits as well as the precise address of the court where legal remedies are to be lodged and of the court that is to decide on the legal remedies. For purposes of the publication, the relevant document shall be sent to the EFTA Secretariat in Brussels and the two cross-regional newspapers of each of the affected Member States without delay and by the most appropriate means.

3) Article 60h shall apply to the filing of claims.

#### Article 60d<sup>1</sup>

##### *Activities abroad*

1) Upon request of the trustee, the appointment certificate shall be issued to the trustee in one or more languages of the Member States of the European Economic Area.

2) The trustee may appoint persons who support the trustee's activities abroad.

## **B. Bankruptcy<sup>2</sup>**

#### Article 60e<sup>3</sup>

##### *Bankruptcy estate*

The bankruptcy proceedings shall also extend to the immoveable property of the bank located in other Member States of the European Economic Area.

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<sup>1</sup> Article 60d inserted by LGBL 2005 No. 13.

<sup>2</sup> Title preceding article 60e inserted by LGBL 2005 No. 13.

<sup>3</sup> Article 60e inserted by LGBL 2005 No. 13.

Article 60f<sup>1</sup>*Delivery of the decision on the composition moratorium and additional information provided to the creditors*

1) A copy of the bankruptcy edict shall be sent to the creditors whose habitual abode, residence, or domicile is in another EEA Member State, even if the conditions in article 1, paragraph 5 of the Bankruptcy Code are met. The edict shall be accompanied by instructions under the heading "Call for filing of a claim. Please observe deadlines!" translated into all official languages of the EEA, indicating the court at which the claim must be filed and whether the preferred creditors or secured creditors must file their claims.

2) The bankruptcy administrators shall also regularly inform the creditors, especially about the progress of realisation.

Article 60g<sup>2</sup>*Payments after initiation of bankruptcy*

1) A person making payments to a bank that is not a legal person and against whose assets bankruptcy proceedings have been initiated in another EEA Member State shall be released from the person's obligations if the person did not know of the initiation of bankruptcy proceedings.

2) If the payment is made prior to publication under article 60c, it shall be assumed until proven otherwise that the payor did not know of the initiation of bankruptcy proceedings. If the payment is made after such publication, it shall be assumed until proven otherwise that the payor knew of the initiation of bankruptcy proceedings.

Article 60h<sup>3</sup>*Assertion of claims*

1) Every creditor whose residence, habitual abode, or domicile is in another EEA Member State shall indicate in the filing the type, time of recognition, and the amount of the claim, and furthermore whether the creditor can assert priority, collateral security, or retention of title and

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<sup>1</sup> Article 60f inserted by LGBL 2005 No. 13.

<sup>2</sup> Article 60g inserted by LGBL 2005 No. 13.

<sup>3</sup> Article 60h inserted by LGBL 2005 No. 13.



which assets are the object of a security. The creditor shall include a copy of any receipts with the filing.

2) Every creditor whose residence, habitual abode, or domicile is in another EEA Member State may file the claim in the official language of this State. In this event, the filing must be made under the heading "*Anmeldung einer Forderung*" (Filing of a Claim) in German. The court may, however, demand that the creditor provide a translation of the filing.

### C. Recognition of foreign proceedings<sup>1</sup>

#### Article 60i<sup>2</sup>

##### *Principle*

The decision of a EEA Member State on reorganisation measures and the initiation of proceedings for the liquidation of a bank shall be recognised in Liechtenstein irrespective of the conditions contained in article 5, paragraph 2 of the Bankruptcy Code. The decision shall be effective in Liechtenstein as soon as the decision becomes effective in the State in which the proceedings are initiated. This shall also apply when such a reorganisation measure is not envisaged in Liechtenstein.

#### Article 60k<sup>3</sup>

##### *Powers of foreign administrators and liquidators*

1) Foreign administrators and liquidators may, without any additional formalities, exercise all powers in Liechtenstein that they have been accorded in the territory of the home Member State. The application of coercive measures or the right to adjudicate legal disputes or other conflicts shall be excluded.

2) When exercising their powers in Liechtenstein, the administrators and liquidators shall observe Liechtenstein law, in particular with respect to the way in which assets are realised and employees are informed.

<sup>1</sup> Title preceding article 60i inserted by LGBL 2005 No. 13.

<sup>2</sup> Article 60i inserted by LGBL 2005 No. 13.

<sup>3</sup> Article 60k inserted by LGBL 2005 No. 13.

3) The administrators and liquidators and the persons that represent them or otherwise support their work shall be subject to Liechtenstein banking secrecy (article 14) and the associated penal provisions. Information falling within the scope of banking secrecy need only be made accessible to the administrators and liquidators if:

- a) the information is connected to the reorganisation measure or liquidation proceedings and is actually necessary for the realisation thereof; and
- b) the administrator or liquidator, any representative of the administrator or liquidator, and the administrative or judicial authorities responsible for their supervision in the home State shall be subject to a confidentiality requirement equivalent to Liechtenstein banking secrecy (article 14).

4) The information obtained pursuant to paragraph 3 may only be used for execution of the reorganisation measure or the liquidation proceedings.

5) The administrator and the liquidator shall provide evidence of their appointment by means of a certified copy of the decision by which they were appointed or by means of another certification issued by the administrative or judicial authority of the home Member State. A translation into German may be demanded.

#### Article 60l<sup>1</sup>

##### *Comments*

1) Upon application of the administrator or liquidator or upon request of any administrative or judicial authority of the home Member State, the Court of Justice shall arrange for comments pursuant to article 12 of the Bankruptcy Code.

2) If the bank has a branch or assets in Liechtenstein, then the administrator or the otherwise competent authority must submit an application in accordance with paragraph 1.

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<sup>1</sup> Article 60l inserted by LGBL 2005 No. 13.

## D. Branches<sup>1</sup>

### Article 60m<sup>2</sup>

#### *Information requirement*

If the FMA believes that the execution of one or several reorganisation measures are necessary for banks operating in Liechtenstein by way of a branch, then it shall notify this to the competent authorities of the home Member State.

### Article 60n

#### *Banks whose registered office is outside the European Economic Area<sup>3</sup>*

1) If a bank whose registered office is outside the European Economic Area has branches in at least two EEA Member States, then the Court of Justice must also inform the FMA without delay of the decision to grant a moratorium or composition moratorium or to initiate bankruptcy proceedings and the specific consequences of such decision. The FMA shall without delay communicate such decision and the withdrawal of the licence to the competent authorities of the other host Member States in which the bank has established branches and which are included in the list published annually in the Official Journal of the European Union pursuant to article 14 of Directive 2006/48/EC.<sup>4</sup>

2) Where possible, the competent administrative and judicial authorities and liquidators shall coordinate their actions.<sup>5</sup>

<sup>1</sup> Title preceding article 60m inserted by LGBL 2005 No. 13.

<sup>2</sup> Article 60m inserted by LGBL 2005 No. 13.

<sup>3</sup> Article 60n heading inserted by LGBL 2005 No. 13.

<sup>4</sup> Article 60n, paragraph 1 amended by LGBL 2007 No. 261.

<sup>5</sup> Article 60n, paragraph 2 inserted by LGBL 2005 No. 13.

## E. Applicable law<sup>1</sup>

### Article 60o<sup>2</sup>

#### *Principle*

1) Unless otherwise provided in articles 60p through 60z, the law of the State in which the proceedings are initiated shall apply to the moratorium, the composition moratorium, and the bankruptcy proceedings.

2) In particular, the following shall be subject to the law of the State in which proceedings are initiated:

- a) which assets belong to the estate and how the assets obtained by the bank after initiation of the proceedings shall be treated;
- b) the respective powers of the bank and the administrator or the liquidator;
- c) the preconditions for admissibility of an offset;
- d) how the initiation of proceedings affects ongoing contracts;
- e) how the initiation of proceedings affects the legal actions of individual creditors, with the exception of the effects on pending proceedings pursuant to article 60z;
- f) which claims must be filed and how claims are to be dealt with that arise after the proceedings have been initiated;
- g) the filing, review, and determination of claims;
- h) the distribution of the proceeds from the realisation of the assets, the ranking of the claims, and the rights of the creditors that have been partially satisfied after initiation of the proceedings on the basis of collateral security or as the consequence of an offset;
- i) the preconditions and consequences of termination of the proceedings, especially pursuant to a composition moratorium;
- k) the rights of the creditors after termination of the proceedings;
- l) who must bear the costs of the proceedings, including expenses;
- m) which legal acts are invalid, contestable, or ineffective as between the parties because they disadvantage the body of creditors.

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<sup>1</sup> Title preceding article 60o inserted by LGBL 2005 No. 13.

<sup>2</sup> Article 60o inserted by LGBL 2005 No. 13.

Article 60p<sup>1</sup>*Effects on certain contracts and rights*

With respect to the effects of a moratorium, composition moratorium, and bankruptcy:

- a) the law of the State applicable to labour contracts shall be applied exclusively to a labour contract and an employment relationship;
- b) the law of the State in which the immovable object in question is located shall apply exclusively with respect to a contract granting entitlement to use or purchase an immovable object;
- c) the law of the State responsible for supervision of the register in question shall apply exclusively to the rights of the bank with respect to an immovable object, a ship, or an aircraft subject to entry in a public register.

Article 60q<sup>2</sup>*In rem rights of third parties*

1) The *in rem* right of a creditor or a third party with respect to physical or non-physical, moveable or immovable objects of the bank – both with respect to specified objects and with respect to a majority of non-specified objects with a changing composition – that are located in the territory of another EEA Member State at the time the proceedings are initiated shall not be affected by the initiation of the proceedings.

2) Rights within the meaning of paragraph 1 shall include in particular:

- a) the right to utilise the object or arrange for the utilisation of the object and to obtain satisfaction from the proceeds or the utilisation of this object, especially pursuant to a lien or mortgage;
- b) the exclusive right to collect a claim, especially pursuant to a lien on a claim or pursuant to assignment of the claim for security;
- c) the right to demand the surrender of the object from someone holding or using the object against the will of the rights-holder;
- d) the *in rem* right to collect the fruits of an object.

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<sup>1</sup> Article 60p inserted by LGBL 2005 No. 13.

<sup>2</sup> Article 60q inserted by LGBL 2005 No. 13.

3) A right entered into a public register and effective against everyone to obtain an *in rem* right within the meaning of paragraph 1 shall be equivalent to an *in rem* right.

4) Paragraph 1 shall not stand in the way of the invalidity or contestability of a legal act or the ineffectiveness of a legal act as between the parties pursuant to article 60o paragraph 2(m).

#### Article 60r<sup>1</sup>

##### *Reservation of ownership*

1) The initiation of proceedings concerning the assets of the purchaser of an object shall not affect the rights of the purchaser arising from a reservation of ownership, if, at the time the proceedings are initiated, this object is located in the territory of a different Member State of the European Economic Area than where the proceedings are initiated.

2) The initiation of proceedings concerning the assets of the seller of an object after delivery of the object shall not justify the dissolution or termination of the purchase contract and shall not stand in the way of the purchase of ownership by the purchaser, if this object is located in the territory of a different Member State of the European Economic Area than where the proceedings are opened.

3) Paragraphs 1 and 2 shall not stand in the way of the invalidity or contestability of a legal act or the ineffectiveness of a legal act as between the parties pursuant to article 60o, paragraph 2(m).

#### Article 60s<sup>2</sup>

##### *Offset*

1) The capacity of a creditor to offset a claim by the bank with the creditor's claim shall not be affected by the initiation of proceedings, if this offset is permissible according to the law applicable to the claim of the bank.

2) Paragraph 1 shall not stand in the way of the invalidity or contestability of a legal act or the ineffectiveness of a legal act as between the parties pursuant to article 60o, paragraph 2(m).

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<sup>1</sup> Article 60r inserted by LGBL 2005 No. 13.

<sup>2</sup> Article 60s inserted by LGBL 2005 No. 13.

Article 60t<sup>1</sup>*Lex rei sitae*

For the exercise of property rights or other rights relating to instruments whose existence or transfer requires their entry into a register or account kept in a EEA Member State or at a central depository, the law of the State shall apply in which the register, account, or central depository is situated in which the rights in question have been entered.

Article 60u<sup>2</sup>*Offset and debt conversion agreements*

The law applicable to offset and debt conversion agreements shall apply to such agreements exclusively.

Article 60v<sup>3</sup>*Pension transactions*

Without prejudice to article 60t, the law applicable to pension transaction agreements shall apply to such agreements exclusively.

## Article 60w

*Regulated markets<sup>4</sup>*

1) Without prejudice to article 60t, the law of the State applicable to transactions on a regulated market shall apply to such transactions exclusively.<sup>5</sup>

2) Paragraph 1 shall not stand in the way of the invalidity or contestability of a legal act or the ineffectiveness of a legal act as between the parties pursuant to article 60o, paragraph 2(m).<sup>6</sup>

<sup>1</sup> Article 60t amended by LGBL 2007 No. 261.

<sup>2</sup> Article 60u inserted by LGBL 2005 No. 13.

<sup>3</sup> Article 60v inserted by LGBL 2005 No. 13.

<sup>4</sup> Article 60w heading inserted by LGBL 2005 No. 13.

<sup>5</sup> Article 60w, paragraph 1 amended by LGBL 2007 No. 261.

<sup>6</sup> Article 60w, paragraph 2 inserted by LGBL 2005 No. 13.

Article 60x<sup>1</sup>*Contesting*

Article 60o shall not apply if the person who benefited from a legal act disadvantaging the body of creditors demonstrates that

- a) the law of a different State applies to this act and
- b) in this case, the act can in no way be contested according to this law.

## Article 60y

*Protection of third-party purchasers<sup>2</sup>*

If, pursuant to a legal act undertaken after the initiation of proceedings and in return for compensation, the bank has at its disposal:<sup>3</sup>

- a) an immoveable object;<sup>4</sup>
- b) a ship or aircraft subject to entry into a public register;<sup>5</sup>
- c) financial instruments;<sup>6</sup>

then the effectiveness of this legal act shall be subject to the law of the State in which this immoveable object is located or to the supervision of which the register, account, or depository is subject.<sup>7</sup>

Article 60z<sup>8</sup>*Pending legal disputes*

The law of the State in which the legal dispute in question is pending shall apply exclusively to the effects of the proceedings on a legal dispute concerning an object or a right pertaining to the estate.

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<sup>1</sup> Article 60x inserted by LGBL 2005 No. 13.

<sup>2</sup> Article 60y heading inserted by LGBL 2005 No. 13.

<sup>3</sup> Article 60y, introductory phrase inserted by LGBL 2005 No. 13.

<sup>4</sup> Article 60y(a) inserted by LGBL 2005 No. 13.

<sup>5</sup> Article 60y(b) inserted by LGBL 2005 No. 13.

<sup>6</sup> Article 60y(c) inserted by LGBL 2007 No. 261.

<sup>7</sup> Article 60y, final phrase inserted by LGBL 2005 No. 13.

<sup>8</sup> Article 60z inserted by LGBL 2005 No. 13.



## VI. Procedures, legal remedies, and extrajudicial settlement of disputes<sup>1</sup>

### Article 61

#### *Decisions and orders*

If violations of provisions of this Act or of the ordinances issued in connection herewith are found, and if the situation is not remedied despite warnings and the imposition of deadlines, the competent authority shall issue the appropriate decisions and decrees.

### Article 62

#### *Legal remedies*

1) Decisions and orders of the FMA may be appealed within 14 days of service to the FMA Complaints Commission.<sup>2</sup>

1a) If no decision is made within six months of receipt of an application for a licence as a bank or investment company, even though the application contains all necessary information, a complaint may be lodged with the FMA Complaints Commission.<sup>3</sup>

2) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service to the Administrative Court.<sup>4</sup>

3) In the interest and/or on the initiative of the clients, the Office of Commerce and Transport shall have all legal remedies at its disposal to ensure that the provisions on the rendering of investment services are applied.<sup>5</sup>

<sup>1</sup> Title preceding article 61 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 62, paragraph 1 amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

<sup>3</sup> Article 62, paragraph 1a inserted by LGBL 2007 No. 261.

<sup>4</sup> Article 62, paragraph 2 amended by LGBL 2004 No. 33 and LGBL 2004 No. 176.

<sup>5</sup> Article 62, paragraph 3 inserted by LGBL 2007 No. 261.

Article 62a<sup>1</sup>*Extrajudicial arbitration board*

1) To settle disputes between clients and banks, financial institutions, or investment firms concerning investment services rendered, the Government shall issue an ordinance appointing an arbitration board.

2) The responsibility of the arbitration board shall be to mediate disputes between the parties in a suitable manner and in this way to bring about agreement between the parties.

3) If no agreement between the parties can be reached, the parties shall be referred to the ordinary legal process.

4) The Government shall specify further details by ordinance, in particular the organisational structure, composition, and procedure.

**VII. Penal provisions**

## Article 63

*Misdemeanours and infractions*

1) The Court of Justice shall punish with imprisonment of up to one year or with a monetary penalty of up to 360 daily rates for committing a misdemeanour anyone who:<sup>2</sup>

- a) as a member of an governing body of, an employee of, or any other person acting on behalf of a bank or investment firm, or as an auditor or member of the FMA Complaints Commission or employee or mandatary of the FMA violates secrecy obligations or who induces such a violation or attempts to induce it;<sup>3</sup>
- b) performs an activity within the meaning of article 3 without a licence;<sup>4</sup>
- c) operates a representative office within the meaning of article 30a without a licence;<sup>5</sup>
- d) operates a branch within the meaning of article 30o without an authorisation;<sup>1</sup>

<sup>1</sup> Article 62a inserted by LGBl. 2007 No. 261.

<sup>2</sup> Article 63, paragraph 1, introductory phrase amended by LGBl. 2007 No. 261.

<sup>3</sup> Article 63, paragraph 1(a) amended by LGBl. 2007 No. 261.

<sup>4</sup> Article 63, paragraph 1(b) amended by LGBl. 1998 No. 223.

<sup>5</sup> Article 63, paragraph 1(c) amended by LGBl. 1998 No. 223.

- e) operates a branch of a bank, financial institution, or investment firm before the preconditions set out in article 30d are met;<sup>2</sup>
- f) repealed;<sup>3</sup>
- g) fails to meet the requirements on deposit guarantee or investor protection.<sup>4</sup>

The punishments may be combined.<sup>5</sup>

2) The Court of Justice shall punish with imprisonment of up to six months or with a monetary penalty of up to 180 daily rates for committing a misdemeanour anyone who:<sup>6</sup>

- a) violates conditions imposed in connection with a licence;<sup>7</sup>
- b) violates the prohibition against using nomenclature that indicates activities as a bank or investment firm;<sup>8</sup>
- c) fails to make the stipulated allocations to legal reserves;<sup>9</sup>
- d) repledges or carries over pledges contrary to the provisions of article 12;
- e) gives false information to the FMA or the independent auditor;<sup>10</sup>
- f) does not keep account books properly or does not retain account books and receipts;
- g) as an auditor, grossly violates his or her responsibilities, in particular by making untrue statements in the audit report or withholding significant facts, by failing to make required requests to the bank or investment firm, or by failing to submit required reports and notifications.<sup>11</sup>
- h) engages in activities by virtue of the free movement of services before the preconditions set out in article 30e have been met;<sup>12</sup>
- i) outsources data processing to foreign countries without observing the conditions set out in article 14a;<sup>13</sup>

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1 Article 63, paragraph 1(d) amended by LGBL 1998 No. 223.

2 Article 63, paragraph 1(e) amended by LGBL 2007 No. 261.

3 Article 63, paragraph 1(f) repealed by LGBL 2007 No. 261.

4 Article 63, paragraph 1(g) amended by LGBL 1998 No. 223.

5 Article 63, paragraph 1, last sentence amended by LGBL 1998 No. 223.

6 Article 62, paragraph 2, introductory phrase amended by LGBL 2007 No. 261.

7 Article 63, paragraph 2(a) amended by LGBL 1998 No. 223.

8 Article 63, paragraph 2(b) amended by LGBL 2007 No. 261.

9 Article 63, paragraph 2(c) amended by LGBL 1998 No. 223.

10 Article 63, paragraph 2(e) amended by LGBL 1999 No. 87 and LGBL 2004 No. 176.

11 Article 63, paragraph 2(g) amended by LGBL 2007 No. 261.

12 Article 63, paragraph 2(h) amended by LGBL 2007 No. 261.

13 Article 63, paragraph 2(i) amended by LGBL 2007 No. 261.

- k) makes false statements or conceals significant facts in the periodic reports or notifications;<sup>1</sup>
  - l) does not have sufficient own funds as set out in article 4.<sup>2</sup>
- 3) The FMA shall punish with a fine of up to 100,000 francs for committing an infraction anyone who:<sup>3</sup>
- a) fails to compile or publish the business report, the consolidated business report, the interim account statement, or the consolidated interim account statement as required;<sup>4</sup>
  - b) fails to have the ordinary audit or an audit stipulated by the FMA conducted;<sup>5</sup>
  - c) fails to fulfil his or her responsibilities vis-à-vis the independent auditor;
  - d) fails to submit the required notifications to the FMA in a proper and timely manner;<sup>6</sup>
  - e) fails to comply with a demand to bring about a lawful state of affairs or with any other order by the FMA;<sup>7</sup>
  - f) engages in misleading or obtrusive publicity, especially using his or her Liechtenstein domicile or Liechtenstein institutions;
  - g) fails to comply with the rules of conduct (article 8a to 8h) and the professional guidelines declared binding by the FMA;<sup>8</sup>
  - h) fails to take or maintain effective organisational and administrative measures to prevent negative influencing of client interests by conflicts of interest;<sup>9</sup>
  - i) violates his obligations in the appointment of tied agents;<sup>10</sup>
  - k) violates his obligations as a tied agent;<sup>11</sup>
  - l) fails to comply with a final decree by the FMA.<sup>12</sup>

<sup>1</sup> Article 63, paragraph 2(k) inserted by LGBl. 2007 No. 261.

<sup>2</sup> Article 63, paragraph 2(l) inserted by LGBl. 2007 No. 261.

<sup>3</sup> Article 63, paragraph 3, introductory phrase amended by LGBl. 2007 No. 261.

<sup>4</sup> Article 63, paragraph 3(a) amended by LGBl. 1998 No. 223.

<sup>5</sup> Article 63, paragraph 3(b) amended by LGBl. 1999 No. 87 and LGBl. 2004 No. 176.

<sup>6</sup> Article 63, paragraph 3(d) amended by LGBl. 2007 No. 261.

<sup>7</sup> Article 63, paragraph 3(e) amended by LGBl. 1999 No. 87 and LGBl. 2004 No. 176.

<sup>8</sup> Article 63, paragraph 3(g) inserted by LGBl. 2007 No. 261.

<sup>9</sup> Article 63, paragraph 3(g) inserted by LGBl. 2007 No. 261.

<sup>10</sup> Article 63, paragraph 3(i) inserted by LGBl. 2007 No. 261.

<sup>11</sup> Article 63, paragraph 3(k) inserted by LGBl. 2007 No. 261.

<sup>12</sup> Article 63, paragraph 3(l) inserted by LGBl. 2007 No. 261.

4) If the offences are committed negligently, the maximum penalties shall be reduced by half.

5) The general part of the Criminal Code shall apply *mutatis mutandis*.<sup>1</sup>

6) The FMA may publicise the imposition of final punishments and fines, if this helps to realise the purpose of this Act and is proportionate.<sup>2</sup>

7) Sentences under this article shall not be binding on civil judges with respect to the assessment of fault and illegality or determination of damages.<sup>3</sup>

#### Article 64

##### *Responsibility*

If the violations are committed in the business operations of a legal person, a general partnership, a limited partnership, or a sole proprietorship, then the penal provisions shall apply to the persons that acted or should have acted on their behalf, but with joint and several liability of the legal person, the company, or the sole proprietorship for the fines and costs.

#### Article 65<sup>4</sup>

##### *Information requirement of the Office of the Public Prosecutor*

Repealed

<sup>1</sup> Article 63, paragraph 5 amended by LGBL 2007 No. 261.

<sup>2</sup> Article 63, paragraph 6 amended by LGBL 2007 No. 261.

<sup>3</sup> Article 63, paragraph 7 inserted by LGBL 2007 No. 261.

<sup>4</sup> Article 65 repealed by LGBL 2004 No. 176.

## VIII. Transitional provision

### Article 66

#### *Concessions*

Concessions to operate a bank or financial institution which do not meet the requirements of this Act or the ordinances issued in connection herewith shall be adjusted to the new law within one year after the relevant enactments have entered into force or, if necessary, they shall be withdrawn or revoked.

## IX. Final provisions

### Article 67<sup>1</sup>

#### *Implementing ordinances*

The Government shall issue the ordinances necessary to implement this Act.

### Article 68

#### *Repeal of existing law*

The following enactments are hereby repealed:

- a) the Law of 21 December 1960 on Banks and Savings Banks, Liechtenstein Law Gazette LGBL 1961 No. 3;
- b) the Law of 18 November 1964 amending the Law on Banks and Savings Banks, LGBL 1965 No. 3;
- c) the Law of 10 July 1975 amending the Law on Banks and Savings Banks, LGBL 1975 No. 41.

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<sup>1</sup> Article 67 amended by LGBL 2007 No. 261.

Article 69

*Entry into force*

This Act shall enter into force on 1 January 1993.

signed *Hans-Adam*

signed *Hans Brunhart*  
Prime Minister

**Annex 1<sup>1</sup>**

(Article 3a, paragraph 1(28)-(30))

**Client classifications****1. Eligible counterparties**

1) The following shall be considered eligible counterparties per se and with respect to all investment services and ancillary services:

- a) clients referred to in item 2, paragraph 1(a) to (c);
- b) undertakings which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;

2) Undertakings referred to in item 2, paragraph 2 which meet two of the three conditions set out in item 2, paragraph 1(b) may request to be considered eligible counterparties. They shall only be deemed eligible counterparties with respect to the investment services and ancillary services for which they can also be treated as professional clients.

**2. Professional clients**

1) The following shall be considered professional clients per se and with respect to all investment services, ancillary services, and financial instruments:

- a) entities which are authorised or which are required to be regulated to operate in the financial markets, namely:
  - aa) banks and financial institutions;

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<sup>1</sup> Annex 1 inserted by LGBL 2007 No. 261.



- bb) investment firms and asset management companies;
  - cc) other institutions of the financial sector, notably tied agents dealing on own account;
  - dd) insurance undertakings;
  - ee) investment undertakings and their management companies;
  - ff) pension funds and their management companies;
  - gg) commodity and commodity derivatives dealers; or
  - hh) other institutional investors;
- b) large undertakings meeting two of the following size requirements on a company basis:
- aa) balance sheet total: equivalent of EUR 20,000,000;
  - bb) net turnover: equivalent of EUR 40,000,000;
  - cc) own funds: equivalent of EUR 2,000,000;
- c) governments, municipalities, public bodies that manage public debts, central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB, and other similar international organisations;
- d) other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

2) Persons who have requested to be classified and treated as professional clients in accordance with the ordinances issued to implement this Act shall only be considered professional clients with respect to the investment services, ancillary services, and financial instruments specified in the request.

### 3. Non-professional clients

All clients who are not eligible counterparties or professional clients shall be considered non-professional clients.

**Annex 2<sup>1</sup>**

(Article 3, paragraphs 3 and 4, article 3a, paragraph 1(32))

**Investment services, ancillary services, and financial instruments****Section A****Investment services**

1) Investment services are the following activities in relation to one or more financial instruments referred to in Section C:

1. reception and transmission of orders;
2. execution of orders;
3. dealing on own account: dealing with financial instruments on own account, provided and to the extent that the transactions are executed by banks and investment firms or as market making or if dealing occurs outside a regulated market or multilateral trading facility on an organised, frequent, and systematic basis, by providing a system accessible to third parties serving to conclude contracts on financial instruments;
4. portfolio management: managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;
5. investment advice in the sense of a recommendation personally addressed to an investor or potential investor or his authorised agent that is not exclusively public or distributed via information channels, concerning the purchase, sale, subscription, redemption, transfer, or holding of a financial instrument or the exercise or non-exercise of a right of purchase, sale, exchange, subscription, or redemption of a financial instrument;
6. underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;

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<sup>1</sup> Annex 2 inserted by LGBl. 2007 No. 261.

7. placing of financial instruments without a firm commitment basis;
  8. operation of multilateral trading facilities.
- 2) The activities referred to in articles 2 and 3 of Directive 2004/39/EC do not constitute investment services.

## **Section B**

### **Ancillary services**

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;
2. granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
3. advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
4. foreign exchange services where these are connected to the provision of investment services;
5. investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
6. services relating to underwriting;
7. investment services and activities as well as ancillary services of the type included under Section A or B of this Annex related to the underlying of the derivatives included under Section C, items 5, 6, 7 and 10, where these are connected to the provision of investment or ancillary services.

## Section C

### Financial instruments

1. Transferable securities of all classes which are negotiable on the capital market, such as
  - a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, including depositary receipts in respect of such securities;
  - b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
  - c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, or other indices or measures;
2. money-market instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;
3. units in collective investment undertakings;
4. options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
5. options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
6. options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility;
7. options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in item 6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether,

- inter alia*, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
8. derivative instruments for the transfer of credit risk;
  9. financial contracts for differences; or
  10. options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or multilateral trading facility, are cleared and settled through recognised clearing houses or are subject to regular margin calls



## Transitional provisions

### 952.0 Banking Act

**Liechtenstein Law Gazette**

Year 1998

No. 223

published on 30 December 1998

**Law**  
of 19 November 1998  
**amending the Law on Banks and Investment  
firms (Banking Act)**

...

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

1) Branches and representative offices that already existed prior to entry into force of this Act<sup>1</sup> shall not require a new licence.

2) Existing concessions and licences that do not conform to the provisions of article 14a shall be adjusted within one year after entry into force of this Act<sup>1</sup>.

3) Nomenclature that does not conform to the provisions of article 16, paragraphs 1 and 3 shall be adjusted within two years after entry into force of this Act<sup>1</sup>.

4) Concessions and licences that do not meet the requirements of this Act and the ordinances issued in connection herewith shall be adjusted to the new law within one year after the relevant enactments have entered into force or, if necessary, they shall be withdrawn or revoked.

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<sup>1</sup> Entry into force: 1 January 1999.



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## Liechtenstein Law Gazette

Year 2005

No. 13

published on 24 January 2005

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### Law of 26 November 2004 amending the Banking Act

...

#### III.

##### Transitional provision

This Act shall apply to proceedings that are initiated after its entry into force.<sup>1</sup>

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<sup>1</sup> Entry into force: 24 January 2005.

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**Liechtenstein Law Gazette**

Year 2007

No. 261

published on 31 October 2007

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**Law**  
of 20 September 2007  
**amending the Banking Act**

...

**III.**

**Transitional provision**

The new law shall apply to proceedings pending at the time of entry into force<sup>1</sup> of this Act.

...

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<sup>1</sup> Entry into force: 1 November 2007.