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**FMA Guideline 2006/2**

**Due diligence inspections  
conducted by mandated due  
diligence auditors**

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## **I. General provisions**

### **1. Legal basis**

This Guideline is issued pursuant to article 28, paragraph 1(a) DDA<sup>1</sup>. The FMA may have ordinary due diligence inspections carried out pursuant to article 28, paragraph 1(b) in conjunction with article 24 DDA and extraordinary inspections pursuant to article 28, paragraph 1(c) in conjunction with article 25 DDA. In addition, the FMA shall specify details concerning the minimum content of the inspection reports pursuant to article 36, paragraph 2 DDO<sup>2</sup>.

### **2. Purpose**

This Guideline concretizes the requirements for conducting due diligence inspections pursuant to articles 24 to 27 DDA and articles 34 to 37 DDO.

### **3. Scope of application**

This Guideline shall apply to all auditors, audit companies, and audit offices subject to special legislation that are appointed by the FMA to carry out ordinary or extraordinary due diligence inspections in accordance with article 24 DDA (due diligence auditors).

## **II. Due diligence inspections**

### **1. Basis**

The basis for the ordinary and extraordinary due diligence inspections is provided by the DDA, the DDO, the guidelines concretizing the DDA and the DDO<sup>3</sup>, and the special instructions defined in the audit mandate granted by the FMA to the due diligence auditors.

For facts and transactions that arose before entry into force of the new Due Diligence Act on 1 February 2005, the versions of the DDA<sup>4</sup> and the DDO<sup>5</sup> in force at the time and the corresponding guidelines concretizing the DDA and the DDO<sup>6</sup> shall apply.

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<sup>1</sup> Law of 26 November 2004 on Professional Due Diligence in Financial Transactions (Due Diligence Act, DDA).

<sup>2</sup> Ordinance of 11 January 2005 on the Due Diligence Act (Due Diligence Ordinance, DDO).

<sup>3</sup> Currently FMA Guideline 2005/1 on monitoring of business relationships.

<sup>4</sup> Law of 22 May 1996 on Professional Due Diligence in Financial Transactions (Due Diligence Act, oDDA).

<sup>5</sup> Ordinance of 18 February 1997 on the Due Diligence Act (Due Diligence Ordinance, ooDDO) and Ordinance of 5 December 2000 on the Due Diligence Act (Due Diligence Ordinance, oDDO).

<sup>6</sup> Guideline 2002/1 on monitoring of business relationships issued by the Due Diligence Unit and FMA Guideline 2005/1 on monitoring of business relationships.

## **2. Ordinary due diligence inspections**

### **2.1. Audit procedure**

#### **2.1.1. Audit mandate**

In accordance with article 28, paragraph 1(b) in conjunction with article 24 DDA, the FMA grants the due diligence auditors the mandate to conduct an ordinary due diligence inspection of the persons subject to due diligence. Any withdrawal from the audit mandate must be notified and justified to the FMA immediately.

In the case of banks, finance companies, investment undertakings, and life insurance undertakings, the audit office appointed pursuant to special legislation performs the ordinary due diligence inspection without a separate mandate by the FMA, as part of the audit required by the special legislation. In the case of asset management companies, the FMA grants a separate mandate to the audit office appointed pursuant to special legislation in order to determine whether financial transactions are being performed and, where necessary, to conduct the ordinary due diligence inspection within the framework of the audit required by the special legislation. In the case of branches of foreign banks and investment companies and Other Financial Service Providers<sup>7</sup>, the FMA grants a separate mandate to a due diligence auditor for purposes of conducting the ordinary due diligence inspection; the persons subject to due diligence may submit two proposals for auditors or audit companies to the FMA.

Banks and finance companies, branches of banks and investment firms, investment undertakings, asset management companies, and life insurance undertakings must in general be audited separately. In the case of Other Financial Service Providers, two or more financial service providers subject to due diligence may be audited on a consolidated basis, if legal or economic links exist between these two that make a consolidated due diligence inspection appear useful, e.g., a group relationship, unregistered partnership, joint infrastructure, employment contract, etc., and the demands on the independence of the due diligence auditors are thereby not interfered with. If a person subject to due diligence has conducted financial transactions exclusively within the framework of non-self-employed activity, this person must be included in the ordinary due diligence inspection of the person's employer subject to due diligence.

#### **2.1.2. Audit period**

In the case of banks and finance companies, branches of banks and investment firms, investment undertakings, asset management companies, and life insurance companies, the ordinary due diligence inspection shall be conducted once a year, as long as financial transactions have been conducted. In principle, the audit period covers the time from the end of the audit period of the last ordinary due diligence inspection until the 31st of December of the business year to be audited. If the end of the business year coincides with the end of a calendar year, then the audit period shall be the time between the end of the last audit period and the end of the ordinary business year.

In the case of Other Financial Service Providers, the ordinary due diligence inspection must take place every three years as a rule, unless an earlier audit date appears necessary on

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<sup>7</sup> In this Guideline, "Other Financial Service Providers" shall mean persons subject to due diligence pursuant to article 3, paragraph 1(f)-(n) and paragraph 2 DDA.

grounds of a special risk. In principle, the audit period covers the time between the end of the audit period of the last ordinary due diligence inspection and the audit date.

### 2.1.3. Submission deadline

In the case of banks and finance companies, branches of banks and investment firms, investment undertakings, and asset management companies, the inspection reports must be submitted to the FMA by 30 June of the following year. This is without prejudice to a different submission deadline for cases in which the end of the business year does not coincide with the end of a calendar year. In the case of life insurance undertakings, the reports must be submitted by 30 April of the following year. In the case of Other Financial Service Providers, the reports must be submitted to the FMA depending on the audit mandate. Any change to the submission deadline must be approved in advance by the FMA.

## 2.2. Object of the audit

### 2.2.1. Financial transactions

The due diligence inspections extend to financial transactions pursuant to article 4 DDA that are conducted by persons subject to due diligence pursuant to article 3 DDA.

The audit of the financial transactions shall be conducted in the form of a sample survey based on the client register or the mandate list of the person subject to due diligence, with a half-half mix of risk-oriented approach and random sampling.

The basic set for the sample selection consists of all existing business relationships of a person subject to due diligence and all business relationships deleted since the last ordinary due diligence inspection. According to a risk-oriented approach described in the inspection report, business relationships shall be filtered out of this basic set that are associated with a higher risk. According to a random sampling method described in the inspection report, business relationships shall be chosen from the remaining basic set. This requires that the due diligence auditors form a picture in advance of the actual situation prevailing with respect to the person subject to due diligence.

When determining the number of business relationships to be audited in total, the following requirements shall be observed:

In the case of banks, finance companies, branches of banks and investment firms, investment undertakings, asset management companies, and life insurance undertakings:

Number of DDA-relevant business relationships (=basic set)	Number of business relationships to be audited
< 300	8
300 to 3,000	12 to 15
3,001 to 30,000	20 to 25
> 30,000	40 to 50

In the case of Other Financial Service Providers:

Number of DDA-relevant business relationships (=basic set)	Number of business relationships to be audited (in % of the basic set)
< 50	> 10%
50 to 4,000	2.5% to 10%
> 4,000	< 2.5%

An increase in the number of business relationships to be audited beyond the required number shall be at the discretion of the due diligence auditor and must be justified.

The business relationships that are actually audited may only be communicated to the person subject to due diligence on site at the commencement of the ordinary due diligence inspection.

Within the business relationship, facts and transactions are audited that took place within the audit period. If the primary point of contact of a case was within the audit period, then facts and transactions arising outside the audit period must also be audited if this is necessary and useful for the overall consideration of the case. In addition, financial transactions outside the audit period may be audited on an exceptional basis if the due diligence auditor believes it necessary or useful from the perspective of risk considerations.

### **2.2.2. Organization**

The required internal organization of the entity for purposes of due diligence shall also be an object of the due diligence inspection. The organizational structure and processes of the entity subject to due diligence must be described, and attention must be paid to the technical, staffing, and organizational circumstances.

### **2.3. Audit content**

The business relationships chosen for the audit must be subjected to a formal inspection in accordance with article 24, paragraph 3 DDA in conjunction with article 35, paragraph 1 DDO and to a material inspection concerning the plausibility of the due diligence measures taken in accordance with article 24, paragraph 3 DDA in conjunction with article 35, paragraph 2 DDO. The requirements are indicated in the "Sample Inspection Report to the Financial Market Authority (FMA) Liechtenstein on the Due Diligence Inspection" (Annex 1).

### **2.4. Inspection report**

#### **2.4.1. Reporting**

The results of the due diligence inspection must be documented in the inspection report. The due diligence auditors shall ensure that they use the current version of the inspection report. In the case of banks and finance companies, investment undertakings, asset management companies, and life insurance undertakings, the inspection report may be integrated into the ordinary audit report.

At least the topic areas envisaged in the inspection report must be audited completely. If the due diligence auditor is unable to answer certain topic areas or if they are not applicable to a

person subject to due diligence, then this must be explained briefly in the appropriate place in the report.

According to article 36 DDO, the due diligence auditors shall describe any complaints and violations in the inspection report, order measures to restore a lawful state of affairs, and evaluate whether, in view of the outcome of the inspections, proper business conduct and impeccable management required by the Act appear to be assured. In addition, the due diligence auditor may make recommendations (see 2.4.5.).

#### **2.4.2. Complaints**

The due diligence auditors shall list the complaints in the inspection report. The listing of complaints is required for every situation in which a violation of the DDA, the DDO, or the FMA guidelines concretizing the DDO and the DDA exists.

The reasons for the complaint must be described in detail. Business relationships where the audit does not result in any complaints shall not be described in the inspection report. However, in the case of business relationships where the audit results in complaints, the facts must be described thoroughly and precisely in the inspection report. The information must be sufficiently comprehensive for the FMA or a third party with appropriate expertise to make a reliable judgment on the violation of due diligence obligations in the concrete case without having to check back with the due diligence auditor, request a statement from the person subject to due diligence, or review the files and records in question.

#### **2.4.3. Violations**

The due diligence auditors shall list the violations in the inspection report. The listing of violations is required for every situation in which a suspicion of an occurrence under article 30 DDA arises.

Serious violations, e.g. systematic or structural deficiencies or violations of the reporting obligation must be communicated to the FMA immediately, especially if such violations call into question the guarantee of proper business conduct and impeccable management within the meaning of article 35, paragraph 2(d) DDO.

#### **2.4.4. Measures**

The due diligence auditors shall specify concrete measures in the inspection report, including appropriate deadlines for remedying the complaints and restoring and securing a lawful state of affairs. The measures shall be expressly and unambiguously designated as such. The due diligence auditor shall conduct follow-up inspections in this regard.

The FMA may order other measures if it believes them to be necessary. The FMA shall inform the due diligence auditor accordingly. The due diligence auditor shall conduct follow-up inspections in this regard.

If no concrete measures are possible or useful, the due diligence auditors shall comment on this fact in the inspection report.

If, in an exceptional case, complaints or violations are not remedied by the next ordinary due diligence inspection, the due diligence auditor shall comment on this in the inspection report so that the FMA can consider whether to take measures in accordance with article 31, paragraph 1(b) DDA. Complaints that the FMA has expressly designated as settled or for which the FMA has expressly waived a follow-up audit are the only exception to this rule.

#### **2.4.5. Recommendations**

In the inspection report, the due diligence auditors shall submit recommendations on how to remedy weaknesses that do not constitute complaints or violations. The inspection report shall contain comments on each recommendation by the audited person subject to due diligence in which he explains how he will implement/apply the recommendation.

#### **2.4.6. Follow-up inspections**

Immediately after expiry of the deadline specified in the inspection report or imposed by the FMA, the due diligence auditor shall, on his own initiative and without a further mandate by the FMA, verify that the complaints and violations have been remedied by the person subject to due diligence and shall immediately inform the FMA in writing of the outcome of the verification.

#### **2.5. Inclusion of the internal audit department**

The due diligence auditor may arrange with the person subject to due diligence to include the internal audit department in the audit activities. The inspection report must describe to what extent and for which concrete audit activities the internal audit department has been included.

The due diligence auditor shall, however, in all cases write the inspection report and continue to be responsible for the performance and outcome of the due diligence inspection.

### **3. Extraordinary due diligence inspections**

#### **3.1. Audit procedure**

The FMA shall grant the due diligence auditors the mandate in accordance with article 28, paragraph 1(c) in conjunction with article 25 DDA to conduct an extraordinary due diligence audit of persons subject to due diligence if there are indications for doubts as to fulfillment of due diligence obligations or if circumstances exist that appear to endanger the reputation of the financial center.

In the audit mandate, the FMA shall specify the audit period, the object of the audit, and the audit content.

#### **3.2. Reporting**

The due diligence auditor shall immediately report to the FMA on the outcome of its inspection in accordance with the audit mandate.

### **4. Costs of the due diligence inspections**

The costs for the inspection activities and the associated administrative costs within the meaning of the Act shall be borne by the inspected persons subject to due diligence in accordance with article 24, paragraph 9 DDA in conjunction with article 26, paragraph 2 of the FMA Act.

The hourly rates usual in the industry shall be taken into account with respect to the fee amounts of the due diligence auditors, in accordance with the fee guidelines of the Liechtenstein Association of Auditors.<sup>8</sup> Lump-sum compensation shall not be permissible. Similarly, no contingency fees depending on a certain audit result shall be permissible.

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<sup>8</sup> Fee guidelines of the Liechtenstein Association of Auditors (WPV) of 1 May 2003.

## **5. Storage in Liechtenstein**

The records and data of the due diligence inspections shall be processed and stored in Liechtenstein exclusively, in accordance with article 27(d) DDA.

According to article 37, paragraph 1 DDO, the working papers prepared in the context of the due diligence inspection and all related documents and data carriers must be kept in Liechtenstein in a way ensuring that any requests from the responsible domestic authorities can be complied within an appropriate period of time. The working papers prepared pursuant to the due diligence inspection must be stored in Liechtenstein and kept accessible to the due diligence auditor.

According to article 37, paragraph 2 DDO, the working papers, documents, and data carriers must be kept for a period of ten years after the completion of the due diligence inspection.

The due diligence auditors shall confirm in the inspection report that the documents and data are processed and stored in Liechtenstein.

## **6. Independence**

The due diligence auditors, and in particular also the persons involved in the due diligence audit, must be legally, economically, and personally independent of the person subject to due diligence according to article 26(b) DDA in conjunction with article 38, paragraph 2 DDO. In this respect, the following points at a minimum must be taken into account:

- The due diligence auditors may not be an employee of the person subject to due diligence or of an undertaking legally, economically, or personally linked with this person;
- the due diligence auditor may not participate directly or indirectly in the profit of the person subject to due diligence or of an undertaking legally, economically, or personally linked with this person;
- in relation to the total fee revenue of the due diligence auditor, the share of the fee paid by the person subject to due diligence or the group of persons subject to due diligence with a central management may not exceed 10%; and
- the due diligence auditor may not be a close relative (especially parent, grandparent, child, grandchild, sibling, parent-in-law, brother/sister-in-law, uncle/aunt, cousin) of the person subject to due diligence or its organs, nor may the due diligence auditor be the person mandated by the person subject to due diligence to perform internal functions within the meaning of article 22 DDA (contact person, compliance officer, and investigating officer).

If the above criteria do not indicate objective independence or if the due diligence auditors do not otherwise subjectively consider themselves independent, then the due diligence auditors shall decline the audit mandate. The due diligence auditors shall immediately inform the FMA of interference with or violations of their independence.

The due diligence auditors shall confirm their independence from the person subject to due diligence in the inspection report.

## **7. Basic and continuing training**

The due diligence auditors, and in particular also the persons involved in the due diligence inspection, must provide proof of regular participation in external basic and continuing training of at least half a day per calendar year, in accordance with article 26(c) DDA in conjunction with article 38, paragraph 1 DDO.

The external basic and continuing training courses must convey skills relating to article 28(a) and (b) DDO for purposes of preventing and combating money laundering, predicate crimes of money laundering, organized crime, and financing of terrorism. In this regard, the requirements contained in the continuing training guideline of the Liechtenstein Association of Auditors must be observed.<sup>9</sup> Preferably, the relevant basic and continuing training courses offered in Liechtenstein, especially those in accordance with the continuing training guideline of the Liechtenstein Association of Auditors, should be used. On an exceptional basis, basic and continuing training courses offered abroad may also be attended. Participation in basic and continuing training must be documented in writing.

In the inspection report, the due diligence auditors shall confirm their participation in external basic and continuing training events and shall provide evidence to the FMA upon request.

### **8. Completeness**

The due diligence auditors shall obtain a declaration of completeness from the person subject to due diligence that the person subject to due diligence has submitted all information and documentation necessary for the inspection.

In the inspection report, the due diligence auditors shall confirm that the person subject to due diligence has submitted the declaration of completeness.

### **III. Final provisions**

#### **Entry into force**

This Guideline was approved by the Board of the FMA on 15 December 2006 and shall enter into force on 1 January 2007.

Annex 1: Sample Inspection Report to the Financial Market Authority (FMA) Liechtenstein on the Ordinary Due Diligence Inspection

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<sup>9</sup> Continuing training guideline of the Liechtenstein Association of Auditors of 10 April 2000.