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**Law**

of 11 December 2008

**on Professional Due Diligence to Combat Money Laundering,  
Organized Crime, and Terrorist Financing  
(Due Diligence Act; DDA)**

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

**I. General Provisions**

## Article 1

*Object and purpose*

1) This Act governs the application of due diligence in the professional exercise of activities covered by this Act. The Act serves to combat money laundering, organized crime, and the financing of terrorism within the meaning of the Criminal Code (§§165, 278 to 278d StGB).

2) It also serves:

- a) to implement Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial

system for the purpose of money laundering and terrorist financing (EEA Compendium of Laws: Annex IX – 23b.01);

- b) to implement Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of "politically exposed person" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (EEA Compendium of Laws: Annex IX – 23ba.01);
- c) to create the requisite measures to enforce Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (EEA Compendium of Laws: Annex IX – 23d.01).

## Article 2

### *Terminology and designations*

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

- a) "payment service provider" means a natural or legal person whose business includes the provision of transfer of funds services;
- b) "transfer of funds" means any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person;
- c) "business relationship" means a business, professional or commercial relationship which is connected with the professional activities of the

person subject to due diligence and which is expected, at the time when the contract is established, to have an element of duration;

- d) "occasional transactions" means cash transactions, especially money exchange, cash subscription of medium-term notes and bonds, cash buying or selling of bearer securities, and cashing of cheques, unless the transaction is carried out via an existing account or custody account;
- e) "beneficial owner" means a natural person on whose initiative or in whose interest a transaction or activity is carried out or a business relationship is ultimately constituted. In the case of legal entities, the beneficial owner is also the natural person in whose possession or under whose control the legal entity ultimately is situated. The Government shall provide further details by ordinance;
- f) "legal entity" means a legal person, company, trust, or other collective or asset entity, irrespective of its legal form;
- g) "shell bank" means a bank that has no physical presence in the domiciliary State and is not part of a group or conglomerate operating in the financial sector subject to consolidated supervision and Directive 2005/60/EC or equivalent regulation. The FMA shall issue a list of countries with equivalent regulations;
- h) "politically exposed persons" means natural persons who are or have, until a year ago, been entrusted with prominent public functions in a foreign country and immediate family members, or persons known to be close associates, of such persons. The Government shall provide further details by ordinance;
- i) "third State" means a State not a Member of the European Economic Area (EEA).

2) The designations used in this Act to denote persons, functions and professions include persons of male and female gender alike.

### Article 3

#### *Scope of application*

1) This Act shall apply to persons subject to due diligence. These are:

- a) banks and investment firms licensed under the Banking Act;
- b) e-money institutions licensed under the E-Money Act;
- c) management companies licensed under the Investment Undertakings Act;
- d) insurance undertakings licensed under the Insurance Supervision Act, to the extent they offer life insurance;
- e) the Liechtenstein Postal Service (limited company), to the extent it pursues activities beyond its universal service that must be notified to the FMA;
- f) exchange offices;
- g) insurance brokers licensed under the Insurance Mediation Act, to the extent they broker life insurance contracts and other services for investment purposes;
- h) payment service providers;
- i) asset management companies licensed under the Asset Management Act;
- k) professional trustees and trust companies licensed under the Professional Trustees Act, to the extent they pursue activities under article 7, paragraph 1 (a), (b), (e) or audit activities under (f) or activities under article 7, paragraph 2 of the Professional Trustees Act;

- l) casinos when granting admission to visitors, regardless of whether the visitor actually takes part in gaming activities or buys or sells gaming tokens;
- m) lawyers and law firms entered in the lists of lawyers or lists of law firms under the Lawyers Act as well as legal agents as referred to in article 67 of the Lawyers Act, to the extent they provide tax advice to their clients or assist in the planning or execution of transactions for their client concerning the:
  - 1. buying and selling of undertakings or real property;
  - 2. managing of client money, securities or other assets;
  - 3. opening or management of accounts, custody accounts or safe deposit boxes;
  - 4. organization of contributions necessary for the creation, operation or management of legal entities; or
  - 5. establishment of a legal entity on the account of a third party or acting as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or carrying out a comparable function on the account of a third party;
- n) natural and legal persons licensed under the Law on Auditors and Auditing Companies as well as audit offices subject to specialized legislation;
- o) holders of a certification under article 180a of the Law on Persons and Companies (PGR), to the extent that they act as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or carry out a comparable function on the account of a third party;

- p) real estate agents, to the extent that their activities cover the purchase or sale of real property;
- q) natural and legal persons trading in goods on a professional basis, to the extent that payment is made in cash in an amount of 25,000 francs or more, whether the transaction is executed in a single operation or in several operations which appear connected;
- r) natural and legal persons, to the extent that they provide a registered office, business address, correspondence or administrative address and other related services for a legal entity on a professional basis;
- s) natural and legal persons, to the extent that they act as a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with EEA law or subject to equivalent international standards, or to the extent that they provide the possibility for another person to carry out that function. The FMA shall issue a list of countries with equivalent regulations;
- t) natural and legal persons who, on a professional basis and on the account of a third party, act as a partner of a partnership or a governing body or general manager of a legal entity or carry out a comparable function on the account of a third party;
- u) natural and legal persons who, on a professional basis, accept or keep third-party assets or assist in the acceptance, investment, or transfer of such assets or who, on a professional basis, carry out external accounting and audits.

2) Liechtenstein branches of foreign undertakings referred to in paragraph 1 are also deemed persons subject to due diligence, to the extent such branches are permissible.

3) Persons subject to due diligence under paragraph 1 (f), (h), and (p) through (u) must immediately notify the FMA in writing that they have taken up business activities.

#### Article 4

##### *Exemptions from the scope of application*

This Act shall not apply to:

- a) institutions exclusively operating in the field of occupational old age, disability, and survivors' provision;
- b) contractual relationships of a management company of an investment undertaking which neither keeps unit accounts nor issues physical units and thus does not itself accept any assets;
- c) natural and legal persons who engage in activities referred to in article 3 only on an occasional or very limited basis and where there is little risk of money laundering or terrorist financing occurring, to the extent that they meet the following conditions:
  1. the activity is not the main activity;
  2. the activity is a supplementary activity directly connected with the main activity;
  3. with the exception of the activity referred to in article 3, paragraph 1(q), the main activity is not an activity referred to in article 3;
  4. the activity is only offered to contracting parties in connection with the main activity, but not to the general public; and
  5. the thresholds established by the Government in this connection are not exceeded.

## II. Due Diligence

### Article 5

#### *Scope of due diligence*

1) In the cases referred to in paragraph 2, the persons subject to due diligence shall meet the following obligations:

- a) identification and verification of the identity of the contracting party (article 6);
- b) identification and verification of the identity of the beneficial owner (article 7);
- c) establishment of a business profile (article 8); and
- d) risk-adequate monitoring of the business relationship (article 9).

2) Due diligence measures must be applied in the following cases:

- a) when establishing a business relationship;
- b) when carrying out occasional transactions amounting to 25,000 francs or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- c) when there are doubts about the veracity or adequacy of previously obtained data on the identity of the contracting party or the beneficial owner. The Government shall provide further details by ordinance;
- d) when there is suspicion of money laundering, a predicate offense of money laundering, organized crime, or terrorist financing, regardless of any derogation, exemption or threshold.

3) Where the due diligence requirements cannot be met:

- a) the person subject to due diligence may not establish the business relationship or carry out the desired transaction and must verify whether a report under article 17 is necessary. This provision is subject to article 18;
- b) the person subject to due diligence must discontinue the existing business relationship and keep sufficient documentation of the outflow of assets, unless the conditions for the reporting obligation under article 17 would be met.

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

#### Article 6

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

- 1) The persons subject to due diligence must identify the contracting party and verify the contracting party's identity by means of confirmatory documents.
- 2) If, over the course of the business relationship, doubts arise concerning the identity of the contracting party, the persons subject to due diligence must repeat the identification and verification of the identity of the contracting party.
- 3) The Government shall provide further details by ordinance.

#### Article 7

##### *Identification and verification of the identity of the beneficial owner*

- 1) The persons subject to due diligence must identify the beneficial owner.

2) By means of risk-based and adequate measures, they must verify the identity of the beneficial owner to satisfy themselves that this is actually the beneficial owner. In the case of a legal entity, this includes risk-based and adequate measures to determine the ownership and control structure of the contracting party.

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

4) The Government shall provide further details by ordinance.

## Article 8

### *Business profile*

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

2) They must ensure that the data and information contained in the business profile are kept up-to-date.

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

## Article 9

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

1) The persons subject to due diligence must carry out risk-adequate monitoring of their business relationships, including the transactions performed in the course of the business relationship, to ensure that they correspond to the business profile (article 8).

2) They must pay special attention to complex and unusual transactions as well as threats emanating from the use of new technologies.

3) They must carry out simple clarifications with reasonable effort when fact patterns or transactions occur that deviate from the business profile.

4) They must carry out special clarifications when fact patterns or transactions occur giving rise to suspicion that assets are connected with money laundering, predicate offenses of money laundering, organized crime, or terrorist financing. While these clarifications are being carried out, the persons subject to due diligence may not discontinue the business relationship.

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

6) The Government shall provide further details by ordinance.

## Article 10

### *Simplified due diligence*

1) With the exception of the cases under article 5, paragraph 2 (d), the persons subject to due diligence are exempt from due diligence under article 5, paragraph 1 where:

- a) the contracting party:
  - 1. is a listed company whose equity papers are admitted to trading on a regulated market within the meaning of Directive 2004/39/EC in one or more EEA Member States or a listed company from a third State with equivalent disclosure requirements; and
  - 2. is not acting in the interest of a third party;
- b) the contracting party is a domestic authority;
- c) the contracting party is a person subject to due diligence referred to in article 3, paragraph 1 (a) to (h) that:
  - 1. is subject to Directive 2005/60/EC or equivalent regulation and supervision; and
  - 2. is not acting in the interest of a third party;
- d) in the case of life insurance policies, the annual premium is no more than 1,500 francs or the single premium is not more than 4,000 francs;
- e) in the case of life insurance policies for pension schemes, there is no surrender clause and the policy cannot be used as collateral;
- f) in the case of insurances by way of old age provision benefits, the contributions are deducted by the employer and the beneficiaries cannot transfer their rights;

- g) a rental deposit account for rental property located in an EEA Member State or Switzerland is established, provided the deposit is not more than 25,000 francs;
- h) electronic money as defined in article 3 (a) of the E-Money Act is spent or managed, provided that:
  - 1. if the device cannot be recharged, the maximum amount stored in the device is no more than 250 francs; or
  - 2. if the device can be recharged, a limit of 4,000 francs is imposed on the total amount spent or managed in a calendar year, except when an amount of 1,500 francs or more is redeemed in that calendar year by the bearer as referred to in article 10, paragraphs 2 to 4 of the E-Money Act;
- i) the contractual relationship is in the form of an exclusive asset management mandate with limited power of attorney for an individual client bank account or custody account kept at a bank subject to Directive 2005/60/EC or equivalent regulation and supervision. A power of attorney is considered limited especially if both the possibility of direct investments and – except for charging reasonable management fees – debiting or closing the account or custody account is excluded by the principal;
- k) the transactions constitute external accounting and auditing with respect to a legal entity whose business relationships and transactions are already fully monitored by a person subject to due diligence under article 3, paragraph 1 (t) within the meaning of article 9.

2) Persons subject to due diligence under article 3, paragraph 1 (a) to (h) are exempt from the due diligence requirements under article 5, paragraph 1 (b) where the contracting party is a notary, lawyer, or legal agent domiciled in an

EEA Member State or Switzerland who, for the account of his clients, keeps an account or custody account within the scope of a forensic activity or in the capacity of an executor, escrow agent, or similar capacity.

3) Persons subject to due diligence are exempt from the due diligence requirements under article 5, paragraph 1 (a) where the contracting party has already been identified in an equivalent manner within the same undertaking, group, or conglomerate. In such a case, copies of the documents upon which the original identification were based must be included in the due diligence files.

4) By ordinance, the Government may make additional products or transactions with a low risk of money laundering or terrorist financing subject to simplified due diligence.

5) The FMA shall establish a list of countries with equivalent regulations as referred to in paragraph 1 (a), (c), and (i).

6) This article shall not apply in cases of enhanced due diligence (article 11).

## Article 11

### *Enhanced due diligence*

1) In their internal instructions, the persons subject to due diligence must establish criteria designating business relationships and transactions with higher risk and allocate the respective business relationships and transactions accordingly. In the cases referred to in paragraphs 3 to 5, business relationships and transactions must always be assumed to have higher risks. Business relationships with higher risks must be subject to more intensive monitoring.

2) In their internal instructions, the persons subject to due diligence shall establish additional measures to be taken in cases of higher risk as referred to in paragraph 1.

3) In business relationships where the contracting party was not personally present for identification, the identity of the contracting party must be proven by means of additional measures.

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

- a) employ adequate, risk-based procedures to determine whether the contracting party or the beneficial owner is a politically exposed person or not;
- b) obtain the approval of at least one member of the general management before establishing a business relationship with such a contracting party or beneficial owner or – where a contracting party or a beneficial owner is recognized as a politically exposed person in the context of an existing business relationship – before continuing the business relationship;
- c) each year, obtain the approval of at least one member of the general management in order to continue business relationships with politically exposed persons.

5) In respect of cross-border correspondent banking relationships with respondent institutions from a third State, persons subject to due diligence under article 3, paragraph 1 (a) to (h) must ensure that they::

- a) have sufficient information about the respondent institution to understand the nature of the respondent's business and to determine from publicly

available information the reputation of the institution and the quality of supervision;

- b) assess the respondent institution's anti-money laundering and anti-terrorist financing controls;
- c) obtain approval from at least one member of the general management before establishing new correspondent banking relationships;
- d) document the respective responsibilities with respect to fulfillment of due diligence requirements by the two institutions involved.

6) The Government shall provide further details by ordinance.

#### Article 12

##### *Information on the payer accompanying wire transfers*

Payment service providers must provide sufficient information on the payer accompanying transfers of funds. The Government shall provide further details on the required information by ordinance.

#### Article 13

##### *Prohibited business relationships*

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

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

3) They may not keep passbooks, accounts, or custody accounts payable to bearer.

4) They may not keep anonymous accounts, passbooks, or custody accounts or accounts, passbooks, or custody accounts under fictitious names.

#### Article 14

##### *Delegation of due diligence*

1) To the extent fulfillment of the requirements under this Act is guaranteed, the persons subject to due diligence may delegate due diligence measures referred to in article 5, paragraph 1(a) to (c) to:

- a) another person subject to due diligence; or
- b) a natural or legal person abroad that is subject to Directive 2005/60/EC or equivalent regulation and supervision.

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

3) The FMA shall issue a list of countries with equivalent regulations for the purposes of paragraph 1.

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

5) The Government shall provide further details by ordinance.

## Article 15

### *Rendering of joint services*

1) If several persons subject to due diligence render services to the same contracting party using joint billing and the same business name, then the due diligence measures referred to in article 5, paragraph 1 may be carried out by the person subject to due diligence who is in charge of the mandate, provided that the business relationship is the same. This shall also apply if several persons subject to due diligence using joint billing and the same business name operate in the function of a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or in a comparable function on the account of the same third-party legal entity within the meaning of article 3, paragraph 1 (t).

2) If several persons subject to due diligence which do not use joint billing and the same business name operate in the function of a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or in a comparable function on the account of the same third-party legal entity within the meaning of article 3, paragraph 1 (t), then it shall be permissible to have the due diligence measures referred to in article 5, paragraph 1 be carried by one of these function owners. The persons subject to due diligence which do not personally carry out these obligations nevertheless remain responsible for compliance with the obligations.

3) Persons subject to due diligence that do not personally carry out the obligations enumerated in paragraph 1 or 2 must ensure that they are granted access to the due diligence files on request at any time.

## Article 16

### *Global application of due diligence standards*

1) Persons subject to due diligence under article 3, paragraph 1 (a) to (i) must ensure that their branches and majority-owned subsidiaries in a third State apply measures to combat money laundering, organized crimes, and terrorist financing that are at least equivalent to those laid down in this Act with regard to due diligence relating to contracting parties and record keeping, to the extent permitted under the law of that third State.

2) If a branch or subsidiary as referred to in paragraph 1 is unable to apply the required measures to combat money laundering, organized crime, and terrorist financing due to limitations by the law of the third State, then the persons subject to due diligence under article 3, paragraph 1 (a) to (i) shall inform the FMA. In such cases, the persons subject to due diligence under article 3, paragraph 1 (a) to (i) shall take additional measures to effectively handle the risk of money laundering, organized crime, or terrorist financing.

3) Banks with branches abroad or that lead a financial group with foreign companies must, at a global level, assess, limit, and monitor their risks connected with money laundering, organized crime, and the financing of terrorism. The Government shall provide further details by ordinance.

### **III. Reporting obligations**

#### Article 17

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

1) Where suspicion of money laundering, a predicate offense of money laundering, organized crime, or terrorist financing exists, the persons subject to due diligence must immediately report in writing to the Financial Intelligence Unit (FIU). Likewise, all offices of the National Administration and the FMA are subject to the obligation to report to the FIU. By ordinance, the Government shall specify the procedure for submitting reports.

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

- a) from or on a client in the course of ascertaining the legal position for their client; or
- b) performing their task of defending or representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received before, during, or after such proceedings.

## Article 18

### *Prohibition on executing suspicious transactions and terminating business relationships; prohibition of disclosure*

1) The persons subject to due diligence may not execute any transactions which they know or suspect to be related with money laundering, predicate offenses of money laundering, organized crime, or terrorist financing. Where to refrain in such a manner is impossible or would frustrate efforts to pursue a person suspected of being involved in money laundering, predicate offenses of money laundering, organized crime, or terrorist financing, then the persons subject to due diligence shall submit a report to the FIU pursuant to article 17, paragraph 1 immediately after executing the transaction. Where the conditions for submitting a report apply, the persons subject to due diligence may not terminate the business relationship.

2) Until an order from the responsible prosecution authority arrives, but at most until the conclusion of five business days from receipt by the FIU of the report pursuant to article 17, paragraph 1, the persons subject to due diligence shall refrain from all actions that might obstruct or interfere with any orders pursuant to §97a of the Code of Criminal Procedure (StPO), unless such actions have been approved in writing by the FIU.

3) The persons subject to due diligence may not inform the contracting party, the beneficial owner, or third parties – with the exception of the FMA – that they have submitted a report to the FIU pursuant to article 17, paragraph 1. If several persons subject to due diligence pursuant to this Act or equivalent requirements are involved in one and the same fact pattern and if they are subject to equivalent obligations with respect to professional secrecy, they may mutually inform each other.

## Article 19

### *Exclusion of criminal and civil liability*

1) Where persons subject to due diligence or their general managers or employees submit a report to the FIU pursuant to article 17, paragraph 1 and it turns out that this report was not justified, then they shall be exempt from all civil and criminal liability, provided that they did not act willfully.

2) Likewise, a person is exempt from all civil liability who:

- a) fails to carry out a transaction under article 18, paragraph 1 or 2, even though his contracting party expressly desires execution of the transaction;  
or
- b) fails to open a business relationship under article 5, paragraph 3, fails to carry out the desired transaction, or discontinues the existing business relationship.

## **IV. Documentation and Internal Organization**

### Article 20

#### *Documentation requirement*

1) The persons subject to due diligence must document their compliance with the due diligence requirements (articles 5 to 16) and the reporting obligation (article 17) in accordance with this Act. For that purpose, they must keep and maintain due diligence files. Client-related records and receipts shall be kept for at least ten years from the end of the business relationship or conclusion of the occasional transaction; transaction-related records and receipts, on the

other hand, for at least ten years from the conclusion of the transaction or from their preparation. The Government shall provide further details by ordinance.

2) In cases of simplified due diligence (article 10), the person subject to due diligence must document the reason for exemption from due diligence in the due diligence files.

## Article 21

### *Internal organization*

1) The persons subject to due diligence must take the necessary organizational measures and ensure suitable internal instruments of control and monitoring. They shall in particular issue internal instructions, provide for the secure storage of the due diligence files, and ensure the basic and continuing training of their staff.

2) As appropriate to the circumstances, the internal organization must be structured according to the type and size of the enterprise as well as according to the number, type, and complexity of the business relationships. The effective fulfillment of the internal functions and due diligence requirements must be ensured at all times.

3) The persons subject to due diligence must prepare an internal annual report in which an overview is given of the measures that have been taken to implement this Act during the preceding calendar year.

4) The Government shall provide further details by ordinance.

## Article 22

### *Internal functions*

1) The persons subject to due diligence must appoint a contact person for the FMA as well as persons or expert bodies for the internal functions of compliance officers and investigating officers.

2) Substitution must be ensured at all times.

3) One person or, if applicable, one expert body may carry out several functions, provided that the implementation of this Act is ensured.

4) The Government shall provide further details by ordinance.

## **V. Supervision**

### **A. Executing Authority**

## Article 23

### *Competence*

The FMA shall supervise the execution of this Act, without prejudice to the powers of the FIU.

## **B. Inspections**

### Article 24

#### *Ordinary inspections*

1) The FMA shall carry out ordinary inspections on a regular, spot-check basis with respect to compliance with the provisions of this Act, or it shall have such inspections carried out.

2) The frequency and intensity of inspections shall depend on the type, scope, complexity, and risk level of the business activities undertaken by the persons subject to due diligence.

3) The inspections shall encompass both formal inspection concerning compliance with the documentation obligation as well as material inspection concerning the plausibility of the due diligence measures taken.

4) A report shall be drawn up in each case about the results of the inspections.

5) If an audit office subject to specialized legislation is at the disposal of the persons subject to due diligence, their compliance with the provisions of this Act shall as a rule be verified by that audit office at the request of the FMA or by the FMA itself.

6) All other persons subject to due diligence shall be inspected by the FMA or at the request of the FMA by auditors or auditing companies with respect to compliance with the provisions of this Act. The aforementioned persons subject to due diligence may submit two proposals for auditors or auditing companies

stating their preference. The FMA shall as a rule mandate the preferred auditor or auditing company.

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

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

9) The costs for the inspection activities and the associated administrative costs for purposes of this Act shall be borne by the inspected persons subject to due diligence.

10) The Government shall provide further details by ordinance, especially the procedure for carrying out inspections.

## Article 25

### *Extraordinary inspections*

Article 24 shall apply mutatis mutandis to extraordinary inspections (article 28, paragraph 1 (c)).

**C. Mandated Auditors, Auditing Companies, and Audit Offices Subject to Specialized  
Legislation**

Article 26

*Preconditions*

Unless the inspections are carried out by the FMA itself, only auditors, auditing companies, and audit offices subject to specialized legislation may be mandated which:

- a) hold a license under the Law on Auditors and Auditing Companies or a license as an audit office under specialized legislation;
- b) are independent from the persons subject to due diligence to be audited;  
and
- c) provide proof of regular participation in external basic and continuing training.

2) The Government shall provide details concerning the preconditions set out in paragraph 1 by ordinance.

Article 27

*Obligations*

By accepting the mandate, the auditor, auditing companies, or audit office subject to specialized legislation commit themselves to:

- a) comply with the basic principles determined by the FMA on inspection activities;

- b) report to the FMA on their inspection activities. No significant facts may be withheld from the report. The information given in the report must be true;
- c) keep silent about the findings of their inspection activities. Within the scope of their activities pursuant to this Act, they shall be subject to official secrecy. This provision is without prejudice to (b) and article 28, paragraph 4; and
- d) process and store the records and data of the inspections exclusively in Liechtenstein.

#### **D. Measures**

##### Article 28

##### *Supervisory measures*

1) The FMA shall take the necessary measures in the framework of its supervision of the persons subject to due diligence. It may in particular:

- a) issue orders, guidelines, and recommendations;
- b) carry out ordinary inspections within the meaning of article 24 or have them carried out;
- c) carry out extraordinary inspections or have them carried out if there are indications for doubts as to fulfillment of due diligence requirements or if circumstances exist that appear to endanger the reputation of the financial center;
- d) as a result of repeated or serious violations of individual provisions of this Act and to prevent further violations, prohibit the initiation of new business relationships for a limited period of time;

e) request the responsible authority to undertake appropriate disciplinary measures. The disciplinary authority shall periodically inform the FMA on the status of the ongoing proceedings.

2) The FMA shall inform the persons subject to due diligence on its practice.

3) On recommendation of the business associations, the FMA may, after hearing the views of the Financial Intelligence Unit, issue instructions interpreting the provisions of this Act and the implementing ordinances as appropriate to each industry.

4) The FMA may demand from the persons subject to due diligence as well as from those mandated to inspect pursuant to article 24, paragraph 5 or 6 all information and records it requires to fulfill its supervisory activities for the purposes of this Act.

## **E. Legal Remedies**

### Article 29

#### *Administrative appeal*

1) Decisions and orders by the FMA shall be subject to appeal to the FMA Complaints Commission within 14 days from service.

2) Decisions and orders by the FMA Complaints Commission shall be subject to appeal to the Administrative Court within 14 days from service.

**V. Penal Provisions, Administrative Measures, Business Measures, and  
Administrative Assistance**

**A. Penal Provisions**

Article 30

*Misdemeanors*

1) The Court of Justice shall punish with imprisonment of up to six months or with a monetary penalty of up to 360 daily rates for a misdemeanor anyone who willfully:

- a) fails to identify and verify the identity of the contracting party pursuant to article 6;
- b) fails to identify and verify the identity of the beneficial owner pursuant to article 7;
- c) fails to repeat the identification and verification of the identity of the contracting party and the beneficial owner pursuant to article 6, paragraph 2 or article 7, paragraph 3;
- d) fails to undertake special clarifications, in violation of article 9, paragraph 4;
- e) maintains a business relations in violation of article 13, paragraph 1, 2, or 4;
- f) as a person subject to due diligence as referred to in article 3, paragraph 1 (a) to (h) opens passbooks, accounts, or custody accounts payable to bearer in violation of article 13, paragraph 3 or, at the time of entry into force of this Act, fails to dissolve existing contractual relationships as referred to in article 13, paragraph 3 in accordance with the provisions set out in article 39, paragraph 7;

- g) fails to submit a report to the FIU pursuant to article 17, paragraph 1;
- h) discontinues a business relationship in violation of article 18, paragraph 1;
- i) fails to refrain from actions specified in article 18, paragraph 2 that might obstruct or interfere with any orders pursuant to §97a StPO, without such actions having been approved in writing by the FIU;
- k) violates the obligation not to disclose information specified in article 18, paragraph 3;
- l) fails to create or keep due diligence files required by article 20, paragraph 1;
- m) as an auditor, auditing company, or audit office subject to specialized legislation, commits a gross violation of the obligations contained in article 27 (b), especially by making incorrect statements in the audit report or by withholding significant facts;
- n) as an auditor, auditing company, or audit office subject to specialized legislation, violates the obligation of secrecy required by article 27 (c);
- o) as an auditor, auditing company, or audit office subject to specialized legislation, processes or stores inspection records and data outside Liechtenstein, in violation of article 27 (d);
- p) fails to have the inspections pursuant to article 28, paragraph 1 (b) or (c) carried out at all or with respect to individual areas of due diligence.

2) A person shall not be punished pursuant to paragraph 1 (a) to (d) who does not personally fulfill the corresponding obligations, in accordance with the preconditions of article 15, paragraph 1 or 2, if the person:

- a) has by written agreement determined a person subject to due diligence to fulfill such obligations; and

- b) appropriately verifies proper fulfillment of the obligations.

#### Article 31

##### *Administrative offenses*

1) The FMA shall punish by a fine of up to 100,000 Swiss francs for committing an administrative offense anyone who:

- a) refuses to give information, makes incorrect statements, or withholds significant facts vis-à-vis the FMA, an auditor, an auditing company, or an audit office subject to special legislation;
- b) fails to comply with an order to restore the lawful state or any other order issued by the FMA in the course of enforcing this Act;
- c) permits the outflow of assets, in violation of article 35;
- d) in violation of articles 5 to 14 of Regulation (EC) No. 1781/2006 fails to collect, keep, verify, or transmit the required information, carries out or receives transfers of funds, or breaches record-keeping or reporting duties.

2) Anyone who fails to submit a report in accordance with article 3, paragraph 3 or article 39, paragraph 2 shall be punished by the FMA for committing an administrative offense with a fine of up to 10,000 Swiss francs.

#### Article 32

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

The provisions of this Act are without prejudice to criminal liability arising from other criminal law provisions.

## Article 33

### *Responsibility*

If the violations are committed in the course of the business operations of a legal person or a trust, the penal provisions shall apply to the persons who acted or should have acted on behalf of such legal person or trust; the legal person or the trust fund shall, however, be jointly and severally liable for criminal fines, administrative fines, and costs.

## **B. Administrative Measures**

## Article 34

### *Reservation of additional measures*

The provisions of this Act are subject to additional measures against the persons subject to due diligence in accordance with applicable specialized legislation.

## **C. Business-related Measures**

## Article 35

### *Lack of disclosure*

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

- 2) The outflow of assets shall be permissible on an exceptional basis if:
- a) the balance of assets of the business relationship does not exceed 25,000 Swiss francs;
  - b) no suspicion of connection with money laundering, predicate offenses of money laundering, organized crime, or the financing of terrorism exists;
  - c) the name of the person to whom the assets are to be transferred is evident from the due diligence files;
  - d) the assets are transferred in a way that allows the authorities to trace them;
  - e) the business relationship is immediately terminated once the assets have been transferred.

#### **D. Administrative Assistance**

##### Article 36

##### *Cooperation between domestic authorities*

1) The domestic authorities, in particular the courts, the Office of the Public Prosecutor, the FMA, the FIU, the National Police, and other authorities responsible for combating money laundering, organized crime, and the financing of terrorism are required to provide all information and transmit all records to each other that are necessary for the enforcement of this Act.

2) In proceedings relating to §§ 165, 278 to 278d StGB, the Office of the Public Prosecutor shall inform the FMA and the FIU whenever such proceedings are initiated and discontinued, and the courts shall transmit copies of any judgments rendered in such proceedings. In addition, the persons subject to due

diligence that have submitted a report pursuant to article 17 shall be informed of the outcome of the corresponding proceedings.

3) In addition, the Office of the Public Prosecutor shall inform the FMA on the initiation and discontinuation of proceedings in connection with article 30, and the courts shall transfer copies of any judgments rendered in such proceedings.

### Article 37

#### *Cooperation with foreign authorities*

1) The following provisions shall apply to the extent that cooperation with foreign authorities is not regulated by special legislation.

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

- a) the sovereignty, security, public order, or other essential interests of the State are not violated;
- b) the recipient and the persons employed and mandated by the competent authority are subject to a confidentiality requirement equivalent to article 23 of the FMA Act;
- c) it is guaranteed that the transmitted information is only used to verify compliance with due diligence requirements as referred to in this Act;
- d) in the case of information originating from abroad, express consent of the authority that transmitted the information has been given and it is guaranteed that the information will only be transmitted for the purposes to which these authorities have consented.

3) The FMA may request foreign financial market authorities to transmit information necessary for fulfillment of the responsibilities under this Act. The FMA may forward the information received to competent domestic authorities.

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

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

## **VII. Transitional Provisions and Final Clauses**

### Article 38

#### *Implementing ordinances*

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

- a) the definition of beneficial owner (article 2, paragraph 1 (e));
- b) the definition of politically exposed person (article 2, paragraph 1 (h));
- c) the thresholds referred to in article 4 (c) (5);
- d) the procedure in cases of doubts about the veracity or adequacy of data on the identity of the contracting party or the beneficial owner (article 5, paragraph 2 (c));

- e) the procedure for cases in which the information and documents needed to identify and verify the identity of the contracting party and the beneficial owner upon establishing the business relationship are not fully available (article 5, paragraph 4);
- f) the procedure for identifying and verifying the identity of the contracting party as well as the confirmatory nature of documents (article 6, paragraph 3);
- g) the procedure for identifying and verifying the identity of the beneficial owner (article 7, paragraph 4);
- h) the establishment of the business profile (article 8, paragraph 3);
- i) the design of risk-adequate monitoring of business relationships as well as the content and scope of clarifications (article 9, paragraph 6);
- k) any additional products or transactions with a low risk of money laundering or terrorist financing (article 10, paragraph 4);
- l) details concerning enhanced due diligence (article 11, paragraph 6);
- m) information on the payer for electronic payment orders (article 12);
- n) the delegation of due diligence (article 14, paragraph 5);
- o) the global application of the due diligence standard (article 16, paragraph 3);
- p) the procedure for submitting a report (article 17, paragraph 1);
- q) details on the documentation requirement, internal organization, and internal functions (article 20, paragraph 1, article 21, paragraph 4, and article 22, paragraph 4);
- r) details and the procedure for carrying out inspections (article 24, paragraph 10);

- s) details concerning the preconditions for mandating auditors, auditing companies, and audit offices subject to specialized legislation (article 26, paragraph 2).

## Article 39

### *Transitional provisions*

1) Subject to the following paragraphs, the new law shall apply to business relationships existing at the time of entry into force of this Act from the time of entry into force for the future.

2) Persons subject to due diligence referred to in article 3, paragraph 3 who have already taken up business prior to entry into force of this Act shall notify their pursuit of business to the FMA within three months of entry into force of this Act.

3) For existing business relationships, the due diligence files must be supplemented in the course of carrying out special clarifications pursuant to article 9, paragraph 4.

4) To the extent that due diligence can no longer be delegated under this Act, these obligations must be carried out within three months of entry into force of this Act by the person subject to due diligence.

5) Global application of due diligence under article 16 must be implemented within one year of entry into force of this Act.

6) The designation of business relationships and transactions with higher risks under article 11, paragraph 1 and the establishment of additional measures under article 11, paragraph 2 as well as the requisite adjustment of internal

instructions must be carried out within one year of entry into force of this Act. The FMA may, on the basis of a justified request, extend this deadline by an additional year.

7) Existing contractual relationships as referred to in article 13, paragraph 3 (passbooks, accounts, or custody accounts payable to bearer) must be dissolved immediately as soon as the relevant bank or postal institution records are presented. Outflows of assets are only permissible if the associated contractual relationships are dissolved at the same time. In such cases, the bank or postal institutions must identify and verify the identity of the bearer of the relevant records and the beneficial owner pursuant to articles 6 and 7 before transferring the assets, if the balance exceeds 25,000 francs.

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

#### Article 40

##### *Repeal of existing law*

The following acts are hereby repealed:

- a) Law of 26 November 2004 on Professional Due Diligence in Financial Transactions (Due Diligence Act, DDA), LGBl. 2005 No. 5;
- b) Law of 25 November 2005 amending the Due Diligence Act, LGBl. 2005 No. 281;
- c) Law of 17 Mai 2006 amending the Due Diligence Act, LGBl. 2006 No. 129;

- d) Law of 24 November 2006 amending the Due Diligence Act, LGBl. 2007 No. 15;
- e) Law of 20 September 2007 amending the Due Diligence Act, LGBl. 2007 No. 270.

#### Article 41

##### *Entry into force*

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