



FMA

Finanzmarktaufsicht
Liechtenstein

**FMA Guideline 2009/1 of 1
October 2009**

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

I. General provisions

1. Legal basis

The guideline is based on article 28, paragraph 1(a) of the Due Diligence Act (DDA)¹. 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 due diligence inspections pursuant to article 28, paragraph 1(c) in conjunction with article 25 DDA. Pursuant to article 40, paragraph 2 of the Due Diligence Ordinance (DDO)², the FMA shall specify in more detail the minimum content of the inspection reports.

2. Purpose

This guideline specifies in more detail the requirements for carrying out due diligence inspections pursuant to articles 24 to 27 DDA and articles 38 to 42 DDO.

3. Scope

This guideline applies to all auditors, audit companies, and audit offices subject to specialized legislation (due diligence auditors) mandated by the FMA to carry out ordinary or extraordinary due diligence inspections pursuant to article 24 DDA.

II. Due diligence inspections

1. Basis

The basis for ordinary and extraordinary due diligence inspections is provided by the DDA, the DDO, all FMA guidelines and communications further specifying the DDA and the DDO published on the FMA website in connection with due diligence regulation, and the special instructions defined in the FMA's audit mandate to due diligence auditors.

With respect to fact patterns and transactions that arose before entry into force of the new due diligence legislation on 1 March 2009, the versions of the DDA³ and DDO⁴ valid at the time and the corresponding old guidelines further specifying the DDA and the DDO⁵ apply.

¹ Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (Due Diligence Act; DDA).

² Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (Due Diligence Ordinance; DDO).

³ Law of 26 November 2004 on Professional Due Diligence in Financial Transactions (2004 DDA) and Law of 22 May 1996 on Professional Due Diligence in Financial Transactions (1996 DDA)

⁴ Ordinance of 11 January 2005 on the Due Diligence Act (2005 DDO), Ordinance of 5 December 2000 on the Due Diligence Act (2000 DDO), and Ordinance of 18 February 1997 on the Due Diligence Act (1997 DDO).

⁵ FMA Guideline 2005/1 on the Monitoring of Business Relationships and Guideline 2002/1 on the Monitoring of Business Relationships issued by the Due Diligence Unit.

2. Ordinary due diligence inspections

2.1. Audit process

2.1.1. Audit mandate

Pursuant to article 28, paragraph 1(b) in conjunction with article 24 DDA, the FMA assigns the mandate to carry out ordinary due diligence inspections of the persons subject to due diligence. Resignations of audit mandates must be communicated and justified to the FMA without delay.

In the case of banks and investment firms, e-money institutions, payment service providers, management companies, asset management companies, and life insurance undertakings, the audit office subject to specialized legislation carries out the ordinary due diligence inspections without a separate mandate by the FMA. If, in the case of management companies, the audit office subject to specialized legislation determines that an exemption under article 4(b) DDA applies, it notes this in the audit report issued pursuant to specialized legislation. In the case of the Liechtenstein Postal Service, insurance brokers, branches of foreign life insurance undertakings, branches of foreign banks, investment firms, e-money institutions, management companies, and payment service providers as well as other financial intermediaries⁶, the FMA assigns a separate mandate to a due diligence auditor to carry out 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 investment firms, e-money institutions, payment service providers, the Liechtenstein Postal Service, management companies, asset management companies, life insurance undertakings, and insurance brokers for life insurances are generally subject to a special audit. In the case of other financial intermediaries, two or more financial intermediaries subject to due diligence may be audited on a consolidated basis, if legal or economic links exist between them that make consolidated due diligence inspections appear sensible (e.g., same group, simple company, shared infrastructure, labor contract). If a person subject to due diligence has carried out transactions subject to due diligence solely in connection with an employment relationship, the person shall be audited as part of 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 investment firms, e-money institutions, payment service providers, management companies, asset management companies, life insurance undertakings, branches of foreign life insurance undertakings, and branches of foreign banks, investment firms, e-money institutions, management companies, and payment service providers, the ordinary due diligence inspection is carried out on an annual basis. The audit period generally covers the time from the end of the audit period of the last ordinary due diligence inspection until 31 December of the business year to be audited. If the end of the business year coincides with the end of the calendar year, the audit period is the time between the end of the last audit period and the end of the ordinary business year.

In the case of the Liechtenstein Postal Service, insurance brokers for life insurances, and other financial intermediaries, the ordinary due diligence inspection is as a rule carried out every three years, unless a shorter audit interval is necessary to inspect compliance with due diligence

⁶ For purposes of this guideline, "other financial intermediaries" are persons subject to due diligence referred to in article 3, paragraph 1(f) and (k) – (u) DDA.

requirements because of a special risk. The audit period generally 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 investment firms, e-money institutions, payment service providers, management companies, and asset management companies, the inspection reports must be submitted to the FMA on 30 June of the following year. Other submission deadlines may apply in cases where the end of the business year does not coincide with the end of the 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 the Liechtenstein Postal Service, branches of foreign banks, investment firms, e-money institutions, management companies, and payment service providers, insurance brokers for life insurances, and other financial intermediaries, the reports must be submitted to the FMA in accordance with the audit mandate. Any changes to the submission date must be approved by the FMA.

2.2. Object of the audit

2.2.1. Business relationships

Business relationships are verified in the form of a spot-check inspection with the help of the client register or the mandate list of the person subject to due diligence, using a 50/50 mix of random sampling and risk-oriented sampling. The risk-oriented approach requires that the due diligence auditor obtains a picture of the concrete circumstances of the person subject to due diligence before the inspection.

The basic set for the spot check consists of all existing business relationships and all business relationships cancelled since the last ordinary due diligence inspection.

In the case of banks and investment firms, e-money institutions, payment service providers, the Liechtenstein Postal Service, management companies, asset management companies, life insurance undertakings, branches of foreign life insurance undertakings, and branches of foreign banks, investment firms, e-money institutions, management companies, and payment service providers, the random sampling concentrates on all business relationships of a person subject to due diligence that have been taken up since the last ordinary due diligence inspection.

Under the risk-based approach to be described in detail in the inspection report, the due diligence auditor chooses the business relationships relevant to the spot-check in accordance with the risk situation of the person subject to due diligence, for instance using the following criteria:

- Criteria applicable to enhanced due diligence according to article 11 DDA;
- Individually determined risk criteria and measures for business relationships and transactions involving higher risks according to article 23 DDO;
- Indications of money laundering as set out in FMA Guideline 2005/1 on the Monitoring of Business Relationships; and
- Cases in which the beneficial owner as referred to in article 3 DDO cannot be determined or no beneficial owner exists as set out in article 12 DDO.

To the extent it appears necessary on organizational or technical grounds, the due diligence auditor should instead apply the enterprise-specific criteria and measures of the person subject to due diligence when making the selection.

When determining the total number of business relationships to be audited, the following requirements should be met.

For banks and investment firms, e-money institutions, payment service providers, the Liechtenstein Postal Service, management companies, asset management companies, life insurance undertakings, insurance brokers for life insurances, and branches of foreign life insurance undertakings, banks, investment firms, e-money institutions, management companies, and payment service providers:

Basic set	Sample size
Up to 300	8
300 to 3,000	15
3,001 to 30,000	25
30,001 to 75,000	50
More than 75,000	60

For other financial intermediaries:

Basic set	Sample size
Up to 50	10%
51 to 1,000	5%, at least 5
1,001 to 4,000	2.5%, at least 50
More than 4,000	100

The number of business relationships to be audited should be increased above the number indicated above if necessary in the view of the due diligence auditor to obtain a meaningful picture of the risk situation of the person subject to due diligence or if the number indicated above does not permit evaluation of proper business activities, compliance with legal provisions, and the overall risk of the person subject to due diligence.

The business relationships actually audited may be communicated to the person subject to due diligence only upon beginning the ordinary due diligence inspection.

2.2.2. Organization of the person subject to due diligence

The internal organization of the person subject to due diligence necessary to fulfill due diligence requirements is also an object of the due diligence inspection. Both the operational and organizational structure of the person subject to due diligence must be described and the technical, staffing, and organizational circumstances discussed.

2.3. Audit content

The business relationships chosen for verification must undergo both a formal inspection in accordance with article 24, paragraph 3 DDA in conjunction with article 39, paragraph 1 DDO and a material inspection concerning the plausibility of the due diligence measures taken in

accordance with article 24, paragraph 3 DDA in conjunction with article 39, paragraph 2 DDO. In the case of business relationships where simplified due diligence as set out in article 10 DDA or enhanced due diligence as set out in article 11 DDA must be applied, this must be noted separately in the audit report. The minimum content is provided in the Sample Inspection Report to the Financial Market Authority (FMA) Liechtenstein on the Due Diligence Inspection (Annex 1).

2.4. Reporting

2.4.1. Inspection report

The due diligence auditor documents the results of the due diligence audit in the inspection report as set out in article 40 DDO. The due diligence auditor must evaluate whether proper conduct of business and impeccable management appear to be assured and whether the legal provisions have been complied with, and must evaluate and describe the overall risk, taking account of the main risks and the weaknesses of the person subject to due diligence. The due diligence auditor also lists qualifications, violations, and measures to restore a lawful state. The due diligence auditor may also make recommendations.

2.4.2. Qualifications

If the due diligence auditor observes fact patterns that represent violations of legal provisions or deficiencies with respect to the DDA, the DDO, or the FMA guidelines further specifying the DDA and the DDO, the due diligence auditor must qualify the report accordingly.

The reasons for the qualification must be described in detail. The fact pattern must be described in detail and as precisely as possible in the inspection report, so that the FMA or a third party with appropriate expertise can make a reliable judgment on the violation of the due diligence obligations in the concrete case without having to check back first 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. Listing of the violations is required for every fact pattern in which a suspicion arises that article 30 or 31 DDA applies.

Serious violations, e.g. systematic violations of formal or material due diligence requirements and every violation of the reporting obligation, shall be notified 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 40, paragraph 1(d) DDO.

2.4.4. Measures

In the inspection report, the due diligence auditors define concrete measures to restore and ensure a lawful state, including reasonable deadlines for remedying the qualifications. Where no concrete measures are possible or sensible, the due diligence auditors discuss this in their inspection report. The FMA may additionally order other measures where it deems necessary. It informs the due diligence auditors of such measures.

Upon expiry of the deadline specified in the inspection report or newly imposed by the FMA, the due diligence auditors on their own accord and without an additional mandate by the FMA verify

whether the person subject to due diligence has remedied the qualifications. The due diligence auditors shall immediately inform the FMA in writing of the result of this verification.

If, in exceptional cases, qualifications have not been remedied by the next ordinary due diligence audit, the due diligence auditor shall discuss this in the inspection report, so that the FMA can consider initiating measures pursuant to article 31, paragraph 1(b) DDA. Exempt from this rule are only qualifications that the FMA has expressly deemed settled or for which the FMA has expressly stated that no additional verification is necessary.

2.4.5. Recommendations

In the inspection report, the due diligence auditors make recommendations, which are not qualifications, to remedy weaknesses. The inspection report must include an explanation of whether and how the person subject to due diligence will implement and apply the recommendation or whether the recommendation has not been implemented and applied and for what reasons.

2.5. Participation of internal audit office

The due diligence auditor may agree with the person subject to due diligence to include the internal audit office in the audit activities. The inspection report must indicate to what extent and in which concrete audit activities the internal audit office has participated.

The due diligence auditor must nevertheless still prepare and sign the inspection report and remains responsible for the execution and results of the due diligence inspection.

3. Extraordinary due diligence inspections

3.1. Audit process

Pursuant to article 28, paragraph 1(c) in conjunction with article 25 DDA, the FMA assigns the mandate for carrying out an extraordinary due diligence inspection of persons subject to due diligence 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.

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

3.2. Reporting

The due diligence auditor shall immediately report to the FMA on the results of its inspection pursuant to the audit mandate.

4. Cost of due diligence inspections

According to article 24, paragraph 9 DDA in conjunction with article 26, paragraph 2 of the Financial Market Authority Act (FMA Act), the costs for the inspection activities and the associated administrative costs shall be borne by the inspected persons subject to due diligence.

The usual hourly rates for the profession as set out in the fee guidelines of the Liechtenstein Association of Auditors⁷ shall be taken into account when determining the fees of the due diligence auditors. Flat-rate fees are not permissible, nor are contingency fees that depend on a certain audit result.

5. Safekeeping in Liechtenstein

According to article 27(d) DDA, the records and data gathered during the due diligence inspection must be processed and stored exclusively in Liechtenstein.

According to article 4, paragraph 1 DDO, the working papers prepared during due diligence inspections and all associated documents and data storage media must be kept at a location within Liechtenstein in such a way that requests from the responsible domestic authorities can be fully met within a reasonable period of time. For this purpose, the working papers prepared during the due diligence inspection must be stored in Liechtenstein and kept accessible to the due diligence auditor.

According to article 41, paragraph 2 DDO, the working papers, documents, and data storage media must be kept for a period of ten years following completion of the inspections concerned.

In the inspection report, the due diligence auditors must confirm processing and storage of the documents and data in Liechtenstein.

6. Independence

According to article 26(b) DDA in conjunction with article 42, paragraph 2 DDO, the due diligence auditors, especially also those persons participating in the due diligence inspection, must be independent of the person subject to due diligence with respect to legal, economic, and personal aspects. For further specification of such independence, the independence requirements of the Law on Auditor and Audit Companies⁸ must be taken into account.

If objective independence does not exist in accordance with the criteria mentioned above, or if the due diligence auditors otherwise do not consider themselves subjectively independent, the due diligence auditors shall refuse the audit mandate. The due diligence auditor shall immediately inform the FMA of interference with or violations of independence.

In the inspection report, the due diligence auditors shall confirm their independence from the person subject to due diligence.

7. Basic and continuing training

The due diligence auditors, especially also the persons participating in the due diligence audit, must supply proof of participation in external basic and continuing training courses for at least half a day per calendar year pursuant to article 26(c) DDA in conjunction with article 42, paragraph 1 DDO.

The external basic and continuing training courses must impart knowledge according to article 32(a) and (b) DDO for the purpose of preventing and combating money laundering, predicate offenses of money laundering, organized crime, and terrorist financing. The requirements of the

⁷ Fee Guidelines of the Liechtenstein Association of Auditors (WPV) of 1 May 2003.

⁸ Until entry into force of the Law on Auditors and Audit Companies, the independence requirements set out in the Independence Guidelines 2007 of the Swiss Chamber of Auditors and Tax Consultants of 12 December 2006, in force since 1 January 2008, must be taken into account.

continuing training guideline of the Liechtenstein Association of Auditors⁹ must be met in this regard. Preferably, the relevant basic and continuing training courses offered in Liechtenstein, especially in accordance with the continuing training guideline of the Liechtenstein Association of Auditors, should be attended. On an exceptional basis, basic and continuing training courses offered abroad may be attended. Participation in basic and continuing training courses must be documented in writing.

In the inspection report, the due diligence auditors must confirm their participation in external basic and continuing training courses and must supply proof 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 4 September 2009 and enters into force on 1 October 2009.

This guideline replaces Guideline 2006/2 on Due Diligence Inspections by Mandated Due Diligence Auditors.

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

⁹ Continuing Training Guideline of the Liechtenstein Association of Auditors of 1 May 2007.