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Ordinance

of 20 December 2005

**on the Asset Management Act
(Asset Management Ordinance; AMO)**

Pursuant to articles 6, 7, 8, 10, 12, 14, 20, 23, 24, 25, 28, 35, 41, 43, 44, 53, 61, and 66 of the Law of 25 November 2005 on Asset Management (Asset Management Act; AMA), Liechtenstein Law Gazette LGBl. 2005 No. 278¹, the Government issues the following Ordinance:

I. General provisions

Article 1

Object

In particular, this Ordinance governs details concerning:

- a) the licenses for asset management companies;
- b) the rights and duties of asset management companies;
- c) the audit reports; and
- d) the extrajudicial arbitration body.

Article 2

Terminology

The terms designating persons and functions in this Ordinance shall apply to both female and male genders.

¹ LR 950.4

II. Licenses

A. Licensing conditions

Article 3

Business plans

The business plan must contain at least the following information:

- a) information concerning the persons entrusted with the governance and general management as well as the total number of employees, including the percentages of their employment, and the physical premises;
- b) information on the organization and the signing rules;
- c) information on the intended activities and the target markets (countries of activity, channels of distribution, any special risks); and
- d) budgeted balance sheet and income statement.

Article 4

Guarantee of sound and proper business operation

1) Documents providing evidence of guarantees for sound and proper business operation by the persons entrusted with governance and general management shall be submitted to the FMA, in particular:

- a) documented and signed curricula vitae;
- b) up-to-date criminal records; and
- c) written declarations on any pending criminal and administrative proceedings as well as freedom from enforcement and bankruptcy proceedings.

2) Amendments to the information provided under paragraph 1(c) must be communicated to the FMA without delay.

Article 5

Close links to persons domiciled in third States

If close links exist between an asset management company and a natural or legal person domiciled outside the EEA, then the legal and administrative provisions in the State in question or difficulties in applying them may not prevent the FMA from effectively performing its supervision function.

B. Own funds

Article 6

Calculation of own funds

1) Own funds shall be considered the sum of the paid-up capital, retained earnings, capital reserves, and profit carried forward, reduced by immaterial assets, own shares, loss carried forward, and the loss of the current year.

2) The own funds of an asset management company that is neither the parent undertaking nor the subsidiary of a bank, finance company, or asset management company shall be calculated on the basis of the annual accounts.

3) Additionally, the own funds shall be calculated on a consolidated basis if the asset management company:

- a) is a parent undertaking of a bank, finance company, or asset management company, or if it has a holding in such undertakings; or
- b) is a subsidiary of a finance holding company within the meaning of article 3a(1) of the Banking Act.

4) The provisions of articles 41a and 41b of the Banking Act shall apply *mutatis mutandis* to the consolidation of own funds under paragraph 3.

Article 7

Calculation of fixed operating costs

The fixed operating costs result from the sum of the personnel expenses, write-offs and value adjustments, other operating expenses, and write-offs on financial investments and value adjustments on securities of the working assets (article 1079, paragraph 1(A)(3) to (6) of the Law on Persons and Companies (Personen- und Gesellschaftsrecht, PGR) and article 1080, paragraph 1(6) to (8) and (12) PGR).

C. Qualifying holdings

Article 8

Acquisition and surrender of qualifying holdings

1) Every natural or legal person must notify the following to the FMA, with an indication of the holding amount:

- a) the intended acquisition or sale of a qualifying holding in an asset management company;
- b) the intended change to a qualifying holding, if:
 1. the threshold values of 22%, 33%, or 50% of the voting rights or of the capital are reached or crossed in either direction; or
 2. the asset management company becomes its subsidiary or no longer is its subsidiary.

2) Within three months of receipt of a notification under paragraph 1 and of all materials relevant to making a decision, the FMA may prohibit the intended change to the shareholder holding if the change to the holding structure could adversely affect prudent and solid management and conduct of business. If the intended acquisition is approved, a deadline may be fixed by which the acquisition must be completed.

3) The FMA shall consult the competent authorities of another Member State of the EEA prior to any prohibition of an acquisition pursuant to paragraph 2 if:

- a) the acquirer:
 1. is an investment firm, asset management company, bank, insurance undertaking, or management company within the meaning of the Investment Undertakings Act licensed in another Member State; or

2. is a parent undertaking of an investment firm, asset management company, bank, insurance undertaking, or management company within the meaning of the Investment Undertakings Act licensed in another Member State; or
 3. is a person who controls an investment firm, asset management company, bank, insurance undertakings, or management company within the meaning of the Investment Undertakings Act licensed in another Member State; and
- b) the asset management company in question would become a subsidiary of the acquirer or would be controlled by the acquirer as a consequence of the acquisition.
- 4) Asset management companies must immediately inform the FMA of any acquisition or any sale of holdings that causes the threshold values set out in paragraph 1(b)(1) to be crossed in either direction as soon as they gain knowledge thereof.
 - 5) At least once each year, asset management companies must inform the FMA of:
 - a) the identity of the shareholders with qualifying holdings; and
 - b) the holding amounts of the shareholders referred to in subparagraph (a), in particular as determined on the occasion of the annual general meeting of the shareholders.
 - 6) If there is a danger that the influence exercised by the owner with the qualifying holding does not meet the requirements necessary to fulfill the interest of ensuring solid and prudent management and conduct of business of the asset management company, then the FMA may, in order to ward off this danger or to bring such a situation to an end, take the necessary measures, in particular suspension of the voting rights of the holdings of the person in question.
 - 7) The FMA shall take the necessary measures against the persons mentioned in paragraph 1, if such persons no longer fulfill their obligations to notify the FMA in advance or if they acquire a holding in violation of a prohibition according to paragraph 2. The voting rights for the holdings of the persons in question shall be suspended. Any exercise of voting rights shall be invalid.

III. Rights and duties

Article 9

Delegation of activities

1) On application of an asset management company, the FMA shall approve the delegation of main activities to third parties domiciled in Liechtenstein or abroad if:

- a) supervision by the FMA continues to be ensured and the interests of the clients do not appear to be endangered;
- b) the head office continues to be situated in Liechtenstein;
- c) taking into account the type of the delegated responsibilities, the delegatee has the necessary qualifications and is able to perform the activities in question without reproach;
- d) there are no conflicts of interest that could arise if multiple activities are delegated, and there are no additional business risks; and
- e) the quality of the internal control of the asset management company is not adversely affected to any significant extent by the delegation.

2) Main activities within the meaning of paragraph 1 are activities referred to in article 3, paragraph 1 of the Act, as long as they are not merely performed on an assistance basis.

3) The asset management company shall take measures that effectively secure monitoring of the delegation at all times. It may give instructions to the delegatee at any time or withdraw the delegation with immediate effect.

Article 10

Organizational demands

1) The asset management company shall make effective and appropriate organizational arrangements in order to:

- a) ensure that the company itself and its tied agents comply with the legal requirements;
- b) prevent that conflicts of interest within the meaning of article 20 of the Act damage client interests;
- c) guarantee the continuity and regularity of the provision of its services;
- d) ensure proper administration and accounting, the installation of internal control mechanisms, efficient procedures for risk identification and

- assessment, effective control and safety measures for data processing systems, and the protection of client data;
- e) ensure that it can at all times calculate the financial situation of the company with sufficient accuracy;
 - f) ensure that sufficient records of all its services and transactions are kept that enable third parties with sufficient expertise to verify compliance with the requirements of the Act and this Ordinance and, especially, to satisfy themselves that the asset management company has met all obligations vis-à-vis clients or prospective clients;
 - g) meet the requirements with respect to substitution and delegation.

2) In the case of branches of asset management companies, the FMA shall be responsible for verifying compliance with paragraph 1(f) with respect to the transactions performed by the branch, without prejudice to the possibility of the competent authority of the home Member State to gain direct access to the records.

3) The FMA may demand that an asset management company submit rules of organization and business, especially if this appears necessary due to the client structure, the amount of the client assets under management, or the number of employees.

Article 11

Asset management contracts

1) Asset management companies must conclude written agreements with their clients covering the applicable rights and duties and any other conditions (asset management contracts).

2) In particular, asset management contracts shall include:

- a) the exact name of the asset management company and of the client;
- b) the banking relations involved;
- c) the explicit mandate and the authorization to manage the assets;
- d) the scope of the asset management authorization;
- e) the type of investments to be made, in particular with respect to the permissible investments;
- f) the correct structure of reporting and accounting by the asset management company;
- g) the form of instructions to the asset management company by the client;

- h) the compensation of the asset management company, in particular the treatment of retrocessions; and
- i) the procedure for amending or canceling the asset management contract.

Article 12

Professional clients

In the case of professional clients, the asset management companies may omit the disclosure set out in article 16 of the Act, if the asset management contract contains the following points in a highlighted location:

- a) a notice that the contract is a contract with a professional client; and
- b) an explicit waiver of disclosure by the client.

Article 13

Duty to keep records

1) The asset management company must ensure that records of the transactions it performs are kept that allow a third party with sufficient expertise to form a reliable judgment on the transactions and business relationships and on compliance with the legal provisions and the asset management contract.

2) These records must be archived in Liechtenstein and must be organized in such a way that the audit office or the FMA is able to verify them at any time.

Article 14

Reporting

1) Domestic asset management companies and domestic branches of foreign asset management companies must submit a report every half year as of 30 June and 31 December in accordance with the form in the Annex, and they must submit this report to the FMA within two months of each reporting date.

2) Audit offices of domestic branches of foreign asset management companies must verify once each year that the branches comply with the Code of Conduct referred to in article 14 of the Act and with the duty to keep and retain records set out in article 22 of the Act, and they must submit the

corresponding report to the FMA at the latest six months after the end of the business year.

IV. Audit report

Article 15

Content of the audit report

- 1) In particular, the audit report must contain:
- a) a summary of the complaints and restrictions at the beginning of the report, with an indication of the corresponding sources;
 - b) information on whether the licensing conditions, in particular those set out in article 6, paragraph 1(b) to (e) and (g) as well as article 10 of the Act, continue to be met;
 - c) information on whether the requirements on business activities set out in article 16 have been complied with;
 - d) information on whether the duty to keep records set out in article 22 of the Act and article 13 of this Ordinance has been complied with;
 - e) a declaration by the responsible auditor whether he has received all necessary information and materials from the asset management company in accordance with article 27 of the Act; and
 - f) the signature of the auditor responsible for the audit.
- 2) If further questions appear important to the audit office, it shall expand the audit and report on this expansion.

Article 16

Review of business activities

The review of the business activities shall encompass the following points in particular:

- a) compliance with the minimum requirements on the amount and composition of the own funds;
- b) properness of the business report and, where applicable, of the consolidated business report with respect to form and content in accordance with article 28 of the Act;

- c) compliance with the Code of Conduct and the ethical rules governing the profession declared by the FMA to be binding in accordance with article 14 of the Act; and
- d) compliance with notification requirements.

V. Extrajudicial arbitration body

Article 17

Appointment

The Government shall appoint an arbitration body by decision.

Article 18

Jurisdiction

1) The arbitration body shall be called upon to settle disputes between a client and an asset management company that concern the scope of application of the Act.

2) The arbitration body may not be called upon:

- a) to clarify questions of general business and fee policies;
- b) to clarify abstract legal and economic questions;
- c) in cases that are already the object of administrative or judicial proceedings;
- d) to consider circumstances whose treatment exclusively or predominantly falls within the jurisdiction of foreign authorities.

3) The arbitration body may refrain from conducting arbitration proceedings if the complexity of a case appears to make judicial proceedings more appropriate.

Article 19

Procedure

1) The arbitration body shall draft rules of procedure to be approved by the Government.

2) The rules of procedure must be based on general principles of procedure, especially the principles of independence, impartiality, transparency, adversarial proceedings, efficiency, lawfulness, freedom of action, and representation.

3) The rules of procedure shall also include information on the cost of the proceedings.

Article 20

Obligation of secrecy

1) The members of the arbitration body shall be subject to official secrecy and must comply with the provisions of the Data Protection Act.

2) Where experts are consulted, they shall be required to maintain confidentiality and they must submit a written declaration to this effect.

Article 21

Accountability

The arbitration body shall inform the Government at least once each year on its activities and practice. For this purpose, it shall compile statistics with information especially on the number of new, completed, and pending cases, the type of cases, the manner of resolution, the duration until resolution, and the domiciliary State of the parties involved.

VI. Transitional and final provisions

Article 22

Transitional provisions

For trusts holding a license pursuant to the Professional Trustees Act at the time of entry into force of the Asset Management Act, the FMA shall ease the requirement set out in article 3(d).

Article 23

Entry into force

This Ordinance shall enter into force simultaneously with the Asset Management Act on 25 November 2005.

The Government:
signed *Otmar Hasler*
Prime Minister

Annex

(Article 14, paragraph 1)

Form for the half-yearly report

Name of the asset management company:

Contact person:

Telephone / fax / e-mail of the contact person:

Information as of: 30 June ... 31 December ...

1 Information on the asset management company

- 1.1 Number of employees (persons and employment percentages)
- 1.2 Number of tied agents (including name and address)
- 1.3 Amount in dispute of pending proceedings and potential losses

2 Information on the client base

- 2.1 Number of all client relationships (total / number with asset management contracts)
- 2.2 Number of new clients in this period
- 2.3 Number of terminated client relationships in this period

3 Information on assets under management

- 3.1 Total assets under management pursuant to asset management contracts (total / assets invested in banks in Liechtenstein)
- 3.2 Accrual of new assets of new clients since the last reporting date
- 3.3 Outflow of assets due to terminated client relationships since the last reporting date
- 3.4 Comments on substantial changes of assets under points 3.2 and 3.3