FMA

Finanzmarktaufsicht
Liechtenstein

FMA Communication 2017/3 – Electronic reporting under due diligence law

Communication on electronic reporting under due diligence law according to Article 37b in conjunction with Article 37 of the Liechtenstein Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organized Crime and Terrorist Financing (*Verordnung vom 17. Februar 2009 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung; Sorgfaltspflichtverordnung, SPV*; hereinafter referred to as the Due Diligence Ordinance "DDO")

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Annexes:	Application examples in the area of money laundering and other financial intermediaries

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1. General information

This communication is aimed primarily at all entities subject to the due diligence requirements under Article 3(1)(a) to (l) and (n) to (t) and (2) of the Liechtenstein Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung; Sorgfaltspflichtgesetz, SPG*; hereinafter referred to as the Due Diligence Act "DDA") and provides information about electronic reporting according to Article 37b of the Liechtenstein Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organized Crime and Terrorist Financing (*Verordnung vom 17. Februar 2009 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung; Sorgfaltspflichtverordnung, SPV*; hereinafter referred to as the Due Diligence Ordinance "DDO") in conjunction with Article 37 of the DDO.

This communication is also aimed at entities which hold a licence from the FMA or which have notified the FMA of the commencement of activities according to Article 3(3) of the DDA, but which do not or no longer engage in activities subject to due diligence requirements (for this see the information under section 3.2.1 and section 5.7 on zero reports).

Lawyers and law firms as well as legal agents as defined in Article 3(1)(m) of the DDA that are required to report to the Liechtenstein Chamber of Lawyers are excluded from the scope of this Communication. Reports submitted to the FMA on the basis of activities under the other due diligence categories according to Article 3(1) of the DDA will however remain unaffected.

The content of this Communication corresponds to the interpretation and practice of the FMA in this context.

2. Background of electronic reporting according to Article 37 and 37b of the DDO

Due to the ever increasing scale of reporting obligations incumbent on Liechtenstein financial intermediaries and the FMA towards the European supervisory authorities, in 2015 a new electronic reporting platform (the e-Service portal) was created to make it easier to fulfil these reporting obligations.

The legal basis for electronic reporting under due diligence law is set out in Article 5 of the E-Government Act (*E-Government-Gesetz, E-GovG*; hereinafter referred to as the "E-GovA") on the one hand and in Article 37 and 37b of the DDO on the other. The e-Service portal is provided as a special form of transmission according to Article 4 of the E-GovA for reporting in accordance with this Communication. Reports as defined according to Article 37b(1)(a) in conjunction with Article 37 DDO should therefore be filed with the FMA in electronic form.

Otherwise, FMA Communication 2015/01 on Electronic Commerce (e-services) (www.fma-li.li/files/list/fma-mitteilung-2015-1.pdf) will apply accordingly (subject to section 4 of FMA Communication 2015/01 regarding non-electronic reports). FMA Communication 2015/01 sets out the general terms of the use of the e-Service portal and FMA e-services provided on it.

3. Reporting process

3.1 General information

The system requirements for the use of the e-Service portal are published on the website of the FMA (www.fma-li.li/de/e-service/support/systemvoraussetzungen.html). Entities subject to due diligence obligations must ensure that they have the technical requirements in place for access to the e-Service portal

of the FMA. This includes, in particular, obtaining the appropriate access authorisations (www.fma-li.li/en/) ahead of time and registering for the use of the FMA's e-services.

Reports must be submitted on time, in full, correctly and in the requested format. Entities subject to due diligence requirements should pay particular attention to the help text included in the electronic forms. Entities subject to due diligence obligations will also ensure that any individuals acting on their behalf are legally authorised to file reports for them. This ensures that the e-Service portal is only used by authorised users, thus ensuring that the data transmitted is protected against access by unauthorised third parties.

Any individual that has undergone the corresponding legitimisation using the means of authentication available and registered via the e-Service portal is deemed authorised by the FMA to legally file reports via the e-Service portal of the FMA on behalf of the entity subject to reporting. The entity subject to reporting is responsible for user management (authorisation and removal of authorisation for super-users, individuals entering data and submitters).

3.2 Principles of the reporting obligation

3.2.1 General information

The reporting obligation is aimed primarily at the individual or legal entity subject to due diligence. Thus, those individuals/entities subject to due diligence obligations according to Article 3(1)(a) to (l) and (n) to (t) and (2) of the DDA must each submit an independent report to the FMA.

The reporting obligation is designed in such a way that reporting is to be performed for each due diligence category. That means that the number of reports is determined on basis of the due diligence categories according to Article 3(1) of the DDO. It should be noted here that Article 3(1)(n) of the DDA is made up of two due diligence categories: members of tax-consulting professions on the one hand, and external accountants on the other.

For instance, an entity acting as a service provider for legal entities according to Article 3(1)(k) of the DDA, performing activities subject to due diligence in the role of both trust company and representative, need only submit one report because the duties all fall under the same due diligence category (see Figure 1 of the annex). Likewise, a TT service provider subject to due diligence requirements (letter r) which also provides services as a token issuer which is not subject to registration (letter s), or as the operator of a trading platform (letter t), need only submit one report to cover all its activities. The amalgamation of reports outside of this narrowly defined TT service area is not permitted. For instance, the activities of an e-money institution or a specialist institution should be reported separately from any report covering TT services.

Where activities of the same due diligence category are performed by different individuals or legal entities, one consolidated report should be submitted for this due diligence category. However, this only applies if the individual parties subject to due diligence obligations share legal or economic connections which make a consolidated report appropriate, such as a group relationship, an employment relationship, or the provision of joint services according to Article 15 of the DDA (see Figure 4 of the annex).

If activities falling under different due diligence categories are performed by one sole entity subject to due diligence, additional reports should generally be submitted to the FMA for each due diligence category. Each of the reports will contain the data and information attributable to the respective due diligence category according to Article 3(1) of the DDA (see Figure 3 of the annex).

One consolidated report for different due diligence categories is permitted in some cases if one sole entity subject to due diligence obligations is submitting the report or if legal or economic ties exist between several entities subject to due diligence (e.g. group relationship, employment relationship, provision of joint services

according to Article 15 of the DDA) which make a consolidated report appropriate and, provided the activities performed within the different due diligence categories bear a connection to one another, namely where the duties are performed for the same business relationships (see Figure 2 and 5 of the annex). A consolidated report for different due diligence categories is only possible for the due diligence categories according to Article 3(1)(f)(k) and (n) to (q) of the DDA (so-called other financial intermediaries).

Submitting a consolidated report to the FMA will not lead to an exemption from the reporting obligation. **In other words, even entities subject to due diligence requirements which do not report data and information themselves according to section 3.2.2 must at least report to the FMA via the e-Service portal that a consolidated report has been submitted by another entity subject to due diligence**. This also applies in the event that the same entity submits one consolidated report for different due diligence categories.

Individuals or legal entities licenced under the Professional Trustees Act or the law on the supervision of entities according to Article 180a of the Liechtenstein Persons and Companies Act (*Personen- und Gesellschaftsrecht, PGR*; hereinafter referred to as the "PGR") which have not performed any activities subject to due diligence requirements according to Article 3(1) of the DDA within the reporting period must file a zero report with the FMA. Zero reports may also be filed for other entities subject to due diligence requirements too.

Entities subject to due diligence according to Article 3(1)(r) to (t) of the DDA submit one report for all roles they perform within the scope of Article 3(1)(r) to (t) of the DDA.

3.2.2 Reported data and reporting period

Entities subject to due diligence requirements must report the data and information stated in Article 37(1)(a) to (g) as well as in (2) to (7) of the DDO to the FMA annually via the e-Service portal. You will find extensive insight into the individual factors of Article 37 of the DDO in section 5 of this Communication.

The reporting period covers the past calendar year to which the data refers (see Article 37b (2)(a) of the DDO).

3.2.3 Submission deadline and effective date of data

Entities subject to reporting under this Communication must file their report by 31 March of each year. The reports relate to data valid as at 31 December of the respective previous year (Article 37b(3) of the DDO). There is therefore a three-month submission period for the data to be reported.

The condition for being subject to the reporting requirement is a valid licence. This also applies to entities subject to due diligence obligations according to Article 3(3) of the DDO ("reporters") that hold a licence under the Liechtenstein Auditors and Auditing Companies Act (*Gesetz über die Wirtschaftsprüfer und Revisionsgesellschaften, WPRG*; hereinafter referred to as the "AACA") or a corresponding licence under the Liechtenstein Business Act (*Gewerbegesetz, GewG*; hereinafter referred to as the "Business Act") and have notified the FMA of the commencement of activities according to Article 3(3) of the DDA.

In some cases, the FMA can adjust the frequency of the reports on a case-by-case basis. However, such an adjustment will only be taken into consideration if the risk of one entity subject to due diligence reporting is considerably greater or lesser than the industry risk (Article 37b(4) of the DDO).

3.2.4 When to submit first report after obtaining licence or commencing activities

The first report should be submitted to the FMA the year after the licence has been obtained. For instance, if the licence is issued on 20 February, then the first report is due on 31 March of the following year, containing information valid as at 31 December of the previous year.

This principle also applies to entities subject to due diligence requirements according to Article 3(3) of the DDO ("reporters") that hold a licence under AACA or a corresponding licence under the Business Act and have notified the FMA of the commencement of activities. The first report should be submitted in the year following the commencement of activities.

3.2.5 Termination of licence or activity licenced under industry law

If an entity subject to due diligence reporting waives or otherwise loses the licence granted to them by the FMA, an additional, intra-year report is not necessary. This is provided that the last report was received in an orderly and timely manner by 31 March of the relevant year in which the loss of the licence took place.

Entities subject to reporting must generally file reports with the FMA as long as a valid licence is held. In some cases, the FMA may refrain from requesting a report.

If the loss of the licence takes place after 31 December and before 31 March of the following year, the data must be reported by 31 March at the latest and effective as at 31 December of the respective previous year.

The above statements also apply to entities subject to due diligence requirements according to Article 3(3) of the DDO ("reporters") that hold a licence under the AACA or a corresponding licence under the Business Act and that are in the process of terminating their activities in full (for this see statements to Article 37b(5) of the DDO under section 5.7).

3.2.6 Cancelling a report

After submitting the report, the data entered can be cancelled at the request of the entity subject to reporting. The cancellation will then be reviewed by the FMA. If the FMA grants the request to approve the cancellation, the entity subject to reporting requirements will be issued a request to report again. Once an already filed report is cancelled, the reporting obligation arises again within the original reporting time frame. As such, cancelling a report does not lead to the extension, suspension or disruption of the reporting period.

Alternatively, a report already submitted may be cancelled by the FMA, for instance if data which is obviously incorrect has been entered.

3.2.7 Liability

Under Article 21 of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz, FMAG*; hereinafter referred to as the "FMA Act") as well as Article 10 of the E-GovA, authorities cannot be held liable for any damages resulting from the use of electronic services, provided no demonstrably intentional or grossly negligent fault exists on the part of the authority.

3.2.8 Further information

You can find further information and support for the e-Service portal of the FMA and the e-services offered on the FMA's website (www.fma-li.li/de/e-service.html).

4. Risk-based due diligence supervision by the FMA

Article 23a of the DDA in conjunction with Article 37 to 37b of the DDO serve as a basis for implementing risk-based due diligence supervision. The starting point for this is the risk assessment by the FMA which is based on the factors listed in Article 37 of the DDO.

Further details concerning the implementation of risk-based due diligence supervision can be found in FMA Guidelines 2013/02.

5. The individual factors of Article 37 of the DDO explained

Below the FMA explains its interpretation of the factors outlined in Article 37 of the DDO where necessary.

General notice regarding the states available for selection in the report forms:

With regard to the states available for selection in the report forms, please note that these were defined based on international country data. In this respect it may be that some small states and islands in particular do not feature on the list of states that may be selected. This is due, among other things, to the fact that these states are officially part of another state or kingdom.

However, where such small states and islands are included in list A due to increased geographical risk (increased geographical risk as defined in Annex 2, section A(c) of the DDA – see FMA Guidelines 2013/01), or in Annex 4 to the DDO, these will be added to the selection in the report forms.

5.1 General factors (Article 37(1))

5.1.1 Products and services offered (Article 37(1)(a))

Entities subject to due diligence must report the products and services they offer in the respective electronic form, so as to clearly indicate the areas in which they are operational. The entity must also indicate which of these activities form part of their core business (where this is required in the respective reporting form).

The products and services listed in the report form are based on the respective special laws, the DDA, and the results of the national risk analysis. Therefore, the products and services stated are not restricted solely to activities subject to due diligence requirements according to Article 3(1) of the DDA. The reporting entity is therefore also given the opportunity to manually enter additional activities and additional comments.

Where a cross is placed next to activities on the report form that only trigger due diligence requirements under certain conditions (e.g. accounting and tax consultancy), then it should be indicated in the comment field whether or not these activities fall within the scope of Article 3 of the DDO.

5.1.2 Size of the entity subject to due diligence requirements (Article 37(1)(b))

5.1.2.1 Number of employees involved in business relationships (Article 37(1)(b)(1))

The number of employees involved in due diligence-relevant business relationships comprises the following people:

- Employees who establish these business relationships or act as legal signatory for the entity subject to due diligence requirements
- Employees who manage these business relationships on the boards operational within the legal entities, within clerical processing and/or as the client advisor
- Employees in compliance departments who fulfil overall legal due diligence duties that have a direct impact on the individual business relationships

Here it should be noted that the term “employee” also refers to members of the management according to Article 2(1)(r) of the DDA where these exercise one of the above-described activities. This applies equally to individuals that perform the activities described above on a freelance basis.

Given this broad definition of “employee”, the number of all employees should always be more than 0.00.

Any employees involved only indirectly in due diligence-relevant business relationships, such as archiving documents or simply carrying out secretarial tasks, are not relevant here.

In the case of casinos, the employees involved in due diligence-relevant business relationships and occasional transactions are defined as follows:

- Employees who handle money or deal with customers, but do not have a management or supervisory role, who establish business relationships or process occasional transactions
- Employees with a management or supervisory role and those responsible for the due diligence policy and compliance with it
- Employees who exercise in-house roles in accordance with due diligence law as well as their deputies

In casinos, employees who do not hold a management or supervisory function, do not handle money or deal with customers, and whose role is not subject to any duty to undergo training in due diligence law, such as cloakroom staff, housekeeping staff, cleaning and maintenance staff, catering staff, money counters or chauffeurs are not relevant.

The number of employees in the Compliance department should also be disclosed separately by the entity subject to due diligence requirements. If it does not have its own in-house Compliance department, and these duties are fulfilled by employees elsewhere, the number should be entered as 0.00.

The number should be specified in full-time equivalents in each case. If for instance the reporting entity has nine employees involved in business relationships, five of which are employed on a 50% basis and four of which are employed on a 60% basis, the number is to be given as 4.90 based on the equivalent full-time positions.

5.1.2.2 Number of business relationships (Article 37(1)(b)(2))

The number of due diligence-relevant business relationships is essentially reported in the same way as it was in the previous reporting via the control report as part of ordinary due diligence checks. In addition to the number of business relationships active as at the effective date, the reporting entity must also report the number of business relationships newly established and terminated in the reporting period.

Based on the definition of business relationship in Article 2(1)(c) of the DDA, the number of business relationships is determined by the number of legal entities under management, insurance policies or account masters. In the case of funds, share movements (number of share subscriptions or share redemptions as well as the number of shares in circulation) should be taken into account in reporting in addition to the business relationship to the subscribing entity. **This definition of business relationship is relevant for the entire reporting system.**

If a case where a case of application of Article 15(2) of the DDA (provision of joint services) exists, the entity subject to due diligence requirements not fulfilling the due diligence obligations itself must also disclose the number of business relationships affected by this separately. The entity subject to due diligence requirements not fulfilling the due diligence obligations itself does not need to report any further data of information in relation to these business relationships.

Casinos report the number of admissions registered in the reporting period in accordance with Article 25(1) of the Liechtenstein Gaming Act (*Geldspielgesetz, GSG*; hereinafter referred to as the “Gaming Act”). Here the casino must also indicate how many of these admissions were newly registered during the reporting period as well as the number of newly imposed gambling bans and gambling suspensions.

5.1.3 Number of (active) business relationships with simplified due diligence requirements (Article 37(1)(c))

The entity subject to due diligence must report the total number of active business relationships to which it has applied simplified due diligence requirements in accordance with Article 10 of the DDA and Article 22b of the DDO.

The entity subject to due diligence must then indicate the total number of business relationships with simplified due diligence requirements broken down by the type of lesser risk, thereby rendering the criteria for the assignment transparent. In the case of entities subject to due diligence to which only simplified due diligence requirements are applicable based on an individual risk assessment according to Article 10(1) of the DDA, the consolidated total amount is sufficient.

Further information concerning the application of simplified due diligence requirements is outlined in FMA Guidelines 2013/01.

5.1.4 *Number of (active) business relationships with regular due diligence requirements (Article 37(1)(d) bis)*

The entity subject to due diligence must report the total number of active business relationships to which it has applied regular due diligence requirements. The total number as defined in sections 5.1.3 to 5.1.5 must then reflect the total number of all business relationships.

5.1.5 Number of (active) business relationships with enhanced due diligence requirements (Article 37(1)(d))

The entity subject to due diligence must report the total number of active business relationships to which it has applied enhanced due diligence requirements in accordance with Article 11 of the DDA.

The entity subject to due diligence must then indicate the total number of business relationships with enhanced due diligence requirements broken down by the type of increased risk, thereby rendering the criteria for the assignment transparent.

If the assignment to the enhanced due diligence requirements was based on an individual risk assessment according to Article 11(1) of the DDA or Article 145(1) of the Liechtenstein Casino Ordinance (*Spielbankenverordnung, SPBV*; hereinafter referred to as the "SPBV"), the total may be entered as a consolidated number. Each statutory case of enhanced due diligence requirements (Article 11(4), (5) and (6) of the DDA and Article 145(3) of the SPBV) should be disclosed separately. If a business relationship meets the criteria for several types of increased risk according to Article 11 of the DDA (e.g. business relationship with a politically exposed person and complex structure), then this business relationship must be reported multiple times, each under the relevant increased risk. The total number of business relationships with enhanced due diligence requirements will be increased accordingly. This also applies to casinos where enhanced due diligence requirements are applicable to a business relationship due to several increased risks.

In the case of business relationships with contractual partners or beneficial owners resident in states with strategic shortcomings (Article 11(6)(b) of the DDA), the states in question should be indicated too. Only those states included in Annex 4 to the DDO as of the effective date are relevant to the report. As regards the contractual partner, in the case of business relationships according to Article 11(6)(b) of the DDA, the focus should be on the contractual partner at the time the legal entity was founded.

If a contractual partner or a beneficial owner is located in several states and if one of these states is a state with strategic shortcomings as defined in Annex 4 to the DDO, please note that the relevant business relationship is to be managed as one with enhanced due diligence requirements according to Article 11(6)(b) of the DDA with reference to the respective state and reported as such.

If several politically exposed persons are involved in the same business relationship, this will not result in the multiple reporting of this business relationship under the type of increased risk category "Business relationships with PEPs". A business relationship should therefore only be reported once, regardless of whether one or more politically exposed people are involved. This applies equally to business relationships in which several contractual partners and/or beneficial owners resident or based in the same or different states with strategic shortcomings are involved. If several contractual partners and/or beneficial owners resident or based in different states with strategic shortcomings are involved in a business relationship, then this business relationship is to be reported individually, listing all the states which are included in Annex 4 to the DDO.

Further information concerning the application of enhanced due diligence requirements is outlined in FMA Guidelines 2013/01.

5.1.6 Nationality and number of politically exposed persons (Article 37(1)(e))

The entity subject to due diligence requirements must report the total number of politically exposed persons according to Article 2(1)(h) and Article 11(4) of the DDA with whom it maintains active business relationships. Here, the total number is determined based on the people and not the business relationships in question. For instance, if the same politically exposed person is involved in five business relationships, then the number relating to this politically exposed person is to be reported as one, because these concern the same person.

The entity subject to due diligence requirements must then report the total number of politically exposed persons broken down by nationality. If one politically exposed person has several nationalities, then the citizenship of the state in which the important public office as defined in Article 2(1)(h) of the DDA is exercised is relevant in the report. In the exceptional case that of the several nationalities, none should correspond to the state in which the important public office is exercised, the state in which the public office is exercised should be entered.

Further information concerning the identification of politically exposed persons is described in FMA Guidelines 2013/01 and FMA Guidelines 2018/07.

5.1.7 Number of (active) business relationships whereby the members of the executive body have been identified as beneficial owners of corporate entities (Article 37(1)(f))

The entity subject to due diligence requirements must report the number of active business relationships whereby the members of the executive body have been identified as beneficial owners of corporate entities, including institutions with a corporate structure or trust companies, as well as companies without a legal personality as defined in Article 3(1)(a)(2) of the DDO.

Further information on identifying the beneficial owner in corporations is described in FMA Communication 2015/07.

5.1.8 Number of (active) business relationships as defined according to Article 35a of the DDA and volume of assets concerned (Article 37(1)(g))

The entity subject to due diligence requirements must report the number of active business relationships subject to a block according to Article 35a of the DDA. Here the number of business relationships should be given broken down into those subject to a block as defined in either (1), (2) or (3) of the stated provision. The entity subject to due diligence must also indicate the volume of the assets affected by the block in CHF.

5.2 Additional factors for banks and branches of foreign banks (Article 37(2))

5.2.1 The number and total volume of incoming and outgoing cash payments as well as non-cash incoming and outgoing payments per year, taking into account the residence of the beneficial owners (Article 37(2)(a))

The number of payments and the total amount of assets in CHF paid into and out of the institution in the financial year should be reported in each case. In a further step, this figure should be broken down by the residence and/or registered office of the beneficial owner. Here, countries to which less than CHF 1 million in transaction volume is attributable should be subsumed collectively under “Other countries”.

In line with the guidelines of the Liechtenstein Bankers Association on banks’ due diligence requirements with regard to the tax compliance of their clients, cash transactions refer to incoming and outgoing cash payments of banknotes or coins or the physical inward and outward delivery of securities or precious metals.

If several beneficial owners are assigned to a business relationship, the information should be assigned to the beneficial owner who presents the highest risk from a due diligence perspective. If such an assignment is not possible, a per capita assignment should be made subsequently and this should be indicated accordingly in the comments field of the report.

5.2.2 Number and total volume of incoming payments (including occasional transactions) by client’s country of origin

The report refers to the definition in the Money Transfer Regulation. The total volume and the number of all incoming transactions is to be reported. The number and total volume must then be reported broken down by the client’s country of origin.

5.2.3 Number and total volume of non-cash incoming and outgoing payments (including occasional transactions) by country of the ordering payment service provider and the beneficiary payment service provider.

All non-cash incoming and outgoing payments executed within the scope of a business relationship or an occasional transaction must be reported for all incoming payments as well as for all outgoing payments (netting prohibition). Compared to section 5.2.2, however, the breakdown is not according to the client themselves but according to the country of the counterparty, thus according to the country of the ordering payment service provider for incoming payments and according to the country of the beneficiary payment service provider for outgoing payments (inflow/outflow reporting).

5.2.4 Residence and managed client assets of the effective depositors and/or beneficial owners (Article 37(2)(b))

The entity subject to due diligence must report the effective depositors and/or beneficial owners according to Article 2(1)(e) of the DDA in conjunction with Article 3(1)(a)(1) and (b)(1) of the DDO with whom active business relationships are maintained. Here the number is to be determined based on the business relationships. For instance, if the same effective depositor is involved in five business relationships, then the number associated with this effective depositor is to be entered as five. And vice versa, one business relationship involving several effective depositors should be reported for each of these.

Here it is irrelevant whether these effective depositors are established in the same country of residence or different countries of residence. For instance, if 10 effective depositors are involved in the same business relationship, then the number relating to these effective depositors is to be entered as 10, regardless of whether the individual effective depositors have differing countries of residence.

The entity subject to due diligence must report the total number of the business relationships with

- individuals;
- corporations and companies without a legal personality as defined in Article 3(1)(a) of the DDO; and
- foundations and trust companies as defined in Article 3(1)(b) of the DDO.

Business relationships with corporations, including institutions with a corporate structure, or trust companies as well as companies without a legal personality:

In the case of corporations, including institutions with a corporate structure, or trust companies as well as companies without a legal personality, the total number of beneficial owners includes those individuals who, according to Article 3(1)(a)(1) of the DDO, ultimately directly or indirectly:

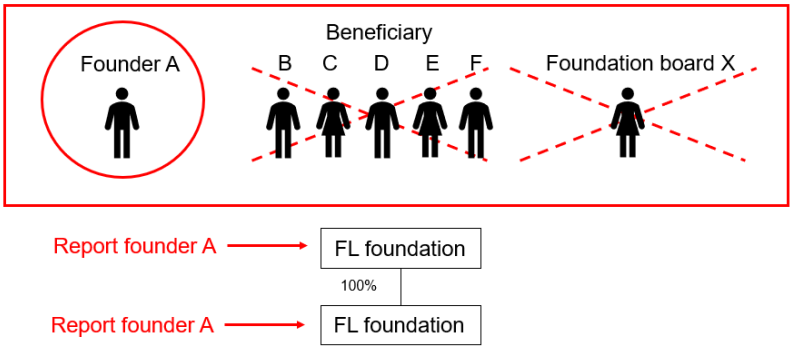
- hold or control a share or voting rights of 25% or more in these legal entities;
- have a 25% or more share of the profits of this legal entity; or
- exercise control over this legal entity in some other way.

For further information on the identification of beneficial owners, please refer to FMA Communication 2015/07.

Notice in relation to legal entities which are connected to one another due to the shareholding structure (multi-layer structures):

Based on the definition of business relationship outlined in section 5.1.2.2 of this Communication, each legal entity of a multi-layer structure is to be treated as an independent business relationship and should therefore be reported as such.

For instance, if a Liechtenstein foundation holds a 100% shareholding in a corporation, then both the beneficial owners of the corporation as well as the effective depositors (level 1) and/or beneficial owners (level 2) of the foundation – in accordance with the definitions of effective depositor and beneficial owners described in this Communication – are to be reported (provided a due diligence-relevant business relationship is maintained with both legal entities).



In this example, in the context of these reporting requirements, only the place of residence of the effective, non-fiduciary founder A according to Article 3(1)(b)(1) of the DDO needs be reported for each the foundation and the corporation. The other beneficial owners of the foundation do not need to be reported. If the foundation is a business relationship which could not yet be accounted for at level 2, then the place of residence of the effective, non-fiduciary depositor should be reported (level 1).

See below for information relating to level 1 and 2 as well as the definition of the effective depositors and/or beneficial owners in business relationships with foundations.

Business relationships with foundations, trusteeships as well as establishments with a structure similar to that of a foundation or trust companies:

In the case of foundations, trusteeships as well as establishments with a structure similar to that of a foundation or trust companies, a total number of effective depositors and/or beneficial owners should be reported for each of the following categories of individuals:

- Effective, non-fiduciary founders and/or settlors, irrespective of whether they exercise control over the legal entity after its establishment (Article 3(1)(b)(1) of the DDO – Documentation at stage of level 2: DDO as amended by LGBl No. 250, 2015)
- Effective depositors of discretionary legal entities (Article 12(1)(a) of the DDO(old) – Documentation at stage of level 1: DDO as amended by LGBl No. 249, 2015)
- Effective depositors of non-discretionary legal entities (Documentation at stage of level 1: DDO as amended by LGBl No. 249, 2015)

Deceased effective depositors and/or deceased founders and settlors are excluded from this report.

For further information on the identification of effective depositors and/or beneficial owners please refer to FMA Communication 2015/07.

The entity subject to due diligence requirements must also state the total number of beneficial owners broken down by place of residence:

In the case of foundations and trusteeships as defined in Article 3(1)(b) of the DDO, the transitional rules defined in II.(7) and 8 of the DDA as amended on 1 September 2017 (LGBl No. 161, 2017: up to 31 December 2018 and/or 31 December 2020) should be taken into account. The place of residence of the effective depositor may therefore still not be documented for some discretionary and non-discretionary legal entities. Such cases should be indicated in consolidated form in each case with the note “Place of residence not yet documented”. However, this applies solely to business relationships the documentation for which is still at what is referred to as level 1 (DDO as amended by LGBl No. 249, 2015). In such cases, entering the total number of business relationships is sufficient.

The place of residence of the effective depositor and/or beneficial owner currently documented in the due diligence files applies in each case. If an individual has several places of residence, then the place of tax residency is stated for the purposes of the reporting. If, in exceptional cases, an individual has more than one tax residency, then this effective depositor and/or beneficial owner is to be listed individually, along with all their tax residencies.

5.2.5 Number and type of business relationships according to Article 13 of the DDA and volume of assets concerned (Article 37(2)(c))

This includes the so-called “prohibited business relationships” and the amount of the managed assets under these “prohibited business relationships” in accordance with Article 13 of the DDA.

5.2.6 Number of business relationships according to Article 35 of the DDA and volume of assets concerned (Article 37(2)(d))

This item is to be used to report business relationships which were initiated before 1 January 2001 and which, under the law in effect at the time, did not require a business profile including the beneficial owner. The report includes the assets managed in these business relationships.

5.2.7 Volume of client assets under management by residence or registered office of the contractual partner (Article 37(2)(e))

Under this item, the volume in CHF of client assets managed domestically as of the effective date is to be stated. The overall volume should then be given by place of residence and/or registered office of the contractual partner too. Here, countries to which less than CHF 1 million in managed client assets are attributable should be subsumed collectively under “Other countries”. The report is filed with a breakdown of contracting parties for natural persons and legal entities.

5.2.8 Number of business relationships with funds (to which simplified due diligence requirements are applied – Article 22b of the DDO) and overall volume of the assets associated with these (Article 37(2)(f)

This report is included in the simplified due diligence requirements report on the electronic report form. This section is to be used to state business relationships with funds as defined in Article 22b(3) of the DDO as well as the assets associated therewith in CHF.

5.2.9 The number of “service accounts” (fiduciary receipt and forwarding) as well as the volume of the transactions processed through them

5.2.10 Back-to-back loans (loans in absolute terms and measured as a percentage of the total portfolio; contributions serving as collateral)

The number and volume of all back-to-back loans must be reported. In the reports, the latter are considered to be loans for which collateral is posted in the form of a contribution and which are deposited and/or contributed in a risk country according to List A.

5.2.11 *The number of the correspondent bank accounts (loro accounts) with the registered office of the respective respondent institution;*

In the report, the number of respondent institutions must be indicated.

5.2.12 Number of business relationships with "shell companies";

In the report, the number of all business relationships with “shell companies” must be indicated. “Shell companies” in this context are considered to be legal entities without real commercial business activities or a function, which are characterised in particular by having no substance and also not falling under classical asset management (receipt of family assets, succession planning, etc.).

5.3 Additional factors for life insurance companies (Article 37(3))

5.3.1 Number and volume of life insurance policies with single premiums as well as their share in the total premium volume (Article 37(3)(a))

The entity subject to due diligence requirements must report the total number of life insurance policies and their volume where payment took place in the form of a single premium as well as the share of the premium volume of these life insurance policies in the total premium volume. The net contribution/(total) premium volume is crucial here.

5.3.2 Number and volume of all life insurance policies with a ratable premium

The entity subject to due diligence must report the total number of life insurance policies as well as their volume, which include a ratable premium.

5.3.3 Number and volume of life insurance policies with difficult-to-value (so-called “illiquid) assets” (Article 37(3)(b))

The entity subject to due diligence requirements must report the total number and volume of life insurance policies that contain non-bankable assets, insofar as the investor risk is borne by the policyholders. .

5.3.4 Number of (partial) redemptions in the reporting period and their share in the total premium volume (Article 37(3)(c)

The entity subject to due diligence requirements must report the total number of redemptions, partial redemptions and/or closures of life insurance policies which took place in the reporting period, as well as their share in the total premium volume.

5.3.5 Number of policyholder switches in existing life insurance policies in the reporting period (Article 37(3)(d))

The entity subject to due diligence requirements must report the total number of policyholder switches in existing life insurance policies which took place in the reporting period.

5.3.6 Residence and total premium volume of natural persons as defined in Article 3(1)(c) DDO (Article 37(3)(e))

The entity subject to due diligence requirements must disclose the total premium volume broken down by the place of residence of the natural persons who ultimately pay the insurance premiums in each case.

5.3.7 Number and total volume of the life insurance policies with legal entities

The entity subject to due diligence requirements must disclose the number and total premium volume broken down by the registered office of the legal entity which ultimately pays the insurance premiums in each case.

5.3.8 Number and volume of premiums paid in cash for life insurance policies

It is necessary to report the number of life insurance policies for which the premiums are paid in cash and the total premium volume paid in cash during the reporting period.

5.3.9 Number of life insurance contracts sold by own sales staff (sales representatives)

It is necessary to report all life insurance contracts that were concluded in the reporting period by own sales staff (sales representatives).

5.3.10 Number of life insurance contracts sold by external sales colleagues (brokers, agents, multiple agents, etc.)

It is necessary to report all life insurance contracts that were concluded in the reporting period by external sales colleagues (sales brokers, agents, multiple agents, etc.).

5.4 Additional factors for service providers for legal entities (Article 37(4))

5.4.1 Place of residence of the effective depositors and/or the beneficial owners (Article 37(4)(a))

The entity subject to due diligence must report the effective depositors and/or beneficial owners according to Article 2(1)(e) of the DDA in conjunction with Article 3(1)(a)(1) and (b)(1) of the DDO with whom active business relationships are maintained. Here the number is to be determined based on the business relationships. For instance, if the same effective depositor is involved in five business relationships, then the number associated with this effective depositor is to be entered as five. And vice versa, one business relationship involving several effective depositors should be reported for each of these.

Here it is irrelevant whether these effective depositors are established in the same country of residence or different countries of residence. For instance, if 10 effective depositors are involved in the same business relationship, then the number relating to these effective depositors is to be entered as 10, regardless of whether the individual effective depositors have differing countries of residence.
The entity subject to due diligence requirements must report the total number of effective depositors and/or beneficial owners in each case in respect of business relationships with

- individuals;
- corporations and companies without a legal personality as defined in Article 3(1)(a) of the DDO; and
- foundations and trust companies as defined in Article 3(1)(b) of the DDO.

Business relationships with individuals:

A business relationship with an individual is deemed to exist solely where services are provided directly for an individual, for instance as part of a tax consultancy service. In this case the beneficial owner is determined according to Article 2(1)(e) of the DDA.

If on the other hand a business relationship involves the management or overseeing of a legal entity, then this is not deemed to constitute a business relationship with an individual under this reporting system. Depending on the legal form, this is then deemed to be a business relationship with a corporation, company without a legal personality, foundation, trusteeship or trust company (see the information below).

Business relationships with corporations, including institutions with a corporate structure, or trust companies as well as companies without a legal personality:

In the case of corporations, including institutions with a corporate structure, or trust companies as well as companies without a legal personality, the total number of beneficial owners includes those individuals who, according to Article 3(1)(a)(1) of the DDO, ultimately directly or indirectly:

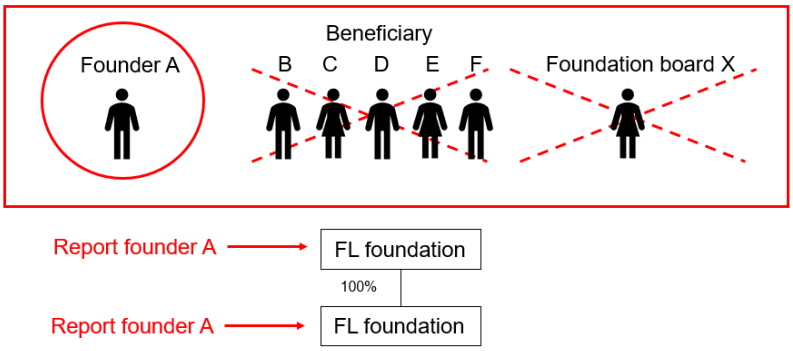
- hold or control a share or voting rights of 25% or more in these legal entities;
- have a 25% or more share of the profits of this legal entity; or
- exercise control over this legal entity in some other way.

For further information on the identification of beneficial owners please refer to FMA Communication 2015/07.

Notice in relation to legal entities which are connected to one another due to the shareholding structure (multi-layer structures):

Based on the definition of business relationship outlined in section 5.1.2.2 of this Communication, each legal entity of a multi-layer structure is to be treated as an independent business relationship and should therefore be reported as such.

For instance, if a Liechtenstein foundation holds a 100% shareholding in a corporation, then both the beneficial owners of the corporation as well as the effective depositors (level 1) and/or beneficial owners (level 2) of the foundation – in accordance with the definitions of effective depositor and beneficial owners described in this Communication – are to be reported (provided a due diligence-relevant business relationship is maintained with both legal entities).



In this example, in the context of these reporting requirements, only the place of residence of the effective, non-fiduciary founder A according to Article 3(1)(b)(1) of the DDO needs be reported for each the foundation and the corporation. The other beneficial owners of the foundation do not need to be reported. If the foundation is a business relationship which could not yet be accounted for at level 2, then the place of residence of the effective, non-fiduciary depositor should be reported (level 1).

See below for information relating to level 1 and 2 as well as the definition of the effective depositors and/or beneficial owners in business relationships with foundations.

Business relationships with foundations, trusteeships as well as establishments with a structure similar to that of a foundation or trust companies:

In the case of foundations, trusteeships as well as establishments with a structure similar to that of a foundation or trust companies, the total number of effective depositors and/or beneficial owners is made up of the following individuals:

- Effective, non-fiduciary founders and/or settlors, irrespective of whether they exercise control over the legal entity after its establishment (Article 3(1)(b)(1) of the DDO – Documentation at stage of level 2: DDO as amended by LGBl No. 250, 2015)
- Effective depositors of discretionary legal entities (Article 12(1)(a) of the DDOold – Documentation at stage of level 1: DDO as amended by LGBl No. 249, 2015)
- Effective depositors of non-discretionary legal entities (Documentation at stage of level 1: DDO as amended by LGBl No. 249, 2015)

As such, solely the effective depositor of the assets is to be reported. If the documentation is still at level 1, the relevant term “effective depositor” is used in the report form. If however documentation has moved to level 2, then the effective depositor is determined as the “effective, non-fiduciary founder and/or settlor” according to Article 3(1)(b)(1) of the DDO, and therefore the term “beneficial owner” is used.

Deceased effective depositors and/or deceased founders and settlors are excluded from this report.

For further information on the identification of effective depositors and/or beneficial owners please refer to FMA Communication 2015/07.

The entity subject to due diligence must also give the total number of effective depositors and/or beneficial owners by place of residence:

In the case of foundations and trusteeships as defined in Article 3(1)(b) of the DDO, the transitional rules defined in II.(7) and (8) of the DDA as amended on 1 September 2017 (LGBl No. 161, 2017: up to 31 December 2018 and/or 31 December 2020) should be taken into account. The place of residence of the effective depositor may therefore still not be documented for some discretionary and non-discretionary legal entities. Such cases should be indicated in consolidated form in each case with the note "Place of residence not yet documented". However, this applies solely to business relationships the documentation for which is still at what is referred to as level 1 (DDO as amended by LGBl No. 249, 2015).

If both beneficiaries with a legal claim (non-discretionary legal entity) as well as discretionary beneficiaries (without legal claim; discretionary legal entity) are provided for in a foundation, trusteeship, an establishment with a structure similar to that of a foundation or trust company, then the relevant legal entity qualifies as a discretionary legal entity as defined in Article 7a of the DDA (see section 7.3 of FMA Communication 2015/07) and should therefore be reported as such.

The place of residence of the effective depositor and/or beneficial owner currently documented in the due diligence files applies in each case. If an individual has several places of residence, then the place of tax residency is stated for the purposes of the reporting. If, in exceptional cases, an individual has more than one tax residency, then this effective depositor and/or beneficial owner is to be listed individually, along with all their tax residencies.

5.4.2 Number of (active) business relationships with bearer securities (Article 37(4)(b))

The entity subject to due diligence must report the number of active business relationships in which domestic or foreign bearer securities are used. All domestic and foreign bearer securities which qualify as bearer securities within the meaning of sections 73 and 95 SchlT PGR are relevant to the report here. In this context the term bearer securities should not be restricted to business relationships with corporations.

From a due diligence point of view, it should also be noted that blank assignations of shares, founders' rights, etc. fall under the category of bearer securities too.

5.4.3 Number of (active) business relationships in which external individuals or legal entities dispose of sole signing power or share collective signing rights among one another at bank level (Article 37(4)(c))

The entity subject to due diligence must report the number of active business relationships in which external individuals or legal entities dispose of sole signing power or share collective signing rights among one another at bank level.

The term external individual refers here to any person outside of the organisation of the entity subject to due diligence. Being within the "organisation of the entity subject to due diligence" is to be understood as having legal and economic connections with the entity subject to due diligence, this term generally being interpreted broadly. Such connections are deemed to exist for instance in a group/shareholding relationship, an employment relationship, or where joint services are provided according to Article 15 of the DDA. But the exercise of functions within the entity subject to due diligence, such as internal functions according to Article 22 of the DDA, is also attributable to the "organisation of the entity subject to due diligence". To fall within the "organisation of the entity subject to due diligence", the connection must extend beyond straightforward cooperation without any legal or economic basis.

As far as collective signing rights are concerned, it should be noted that these are significant to the respective report where exclusively external individuals have collective signing rights.

5.4.4 Number of (active) business relationships in which external individuals or legal entities dispose of sole signing power or share collective signing rights among one another at board level (Article 37(4)(d))

The entity subject to due diligence must report the number of active business relationships in which external individuals or legal entities dispose of sole signing power or share collective signing rights among one another at board level. The term “board level” has a broad interpretation. With this in mind, only the power of external individuals to act on behalf of the legal entity is relevant to the report, regardless of whether these people actually hold a role or a board position within the legal entity.

The term external individual refers here to any person outside of the organisation of the entity subject to due diligence. Being within the “organisation of the entity subject to due diligence” is to be understood as having legal and economic connections with the entity subject to due diligence, this term generally being interpreted broadly. Such connections are deemed to exist for instance in a group/shareholding relationship, an employment relationship, or where joint services are provided according to Article 15 of the DDA. But the exercise of functions within the entity subject to due diligence, such as internal functions according to Article 22 of the DDA, is also attributable to the “organisation of the entity subject to due diligence”. To fall within the “organisation of the entity subject to due diligence”, the connection must extend beyond straightforward cooperation without any legal or economic basis.

As far as collective signing rights are concerned, it should be noted that these are significant to the respective report where exclusively external individuals have collective signing rights.

5.5 Additional factors for casinos and providers of online gambling (Article 37(5))

5.5.1 Number of occasional transactions according to Article 143(3) of the SPBV (Article 37(5)(a)) registered in the past calendar year

The entity subject to due diligence requirements must report the total number of occasional transactions as defined in Article 143 (3) of the SPBV registered in the past calendar year.

5.5.2 Number of occasional transactions with simplified due diligence requirements (Article 37(5)(b))

The entity subject to due diligence requirements must report the total number of occasional transactions registered in the past calendar year which it has categorised under simplified due diligence requirements according to Article 10(1) of the DDA following an individual risk assessment. Casinos report the number of registered occasional transactions which, by their estimation and taking into consideration the factors outlined in Annex 1, section A of the DDA, pose a minor risk (risk category C).

Further information concerning the application of simplified due diligence requirements is outlined in FMA Guidelines 2013/01.

5.5.3 Number of occasional transactions with enhanced due diligence requirements (Article 37(5)(c))

The entity subject to due diligence must report the total number of occasional transactions registered in the past calendar year to which it has applied enhanced due diligence requirements according to Article 11 of the DDA in conjunction with Article 145 of the SPBV. In this section casinos report the number of registered occasional transactions which, by their estimation and taking into consideration the factors outlined in Annex 2, section A of the DDA, pose a moderate (meets one risk criteria or risk category B) or high risk (meets two or more risk criteria or risk category A).

The entity subject to due diligence must then indicate the total number of occasional transactions with enhanced due diligence requirements broken down by the type of increased risk, thereby rendering the criteria for the assignment transparent.

If the assignment to the enhanced due diligence requirements was based on an individual risk assessment according to Article 11(1) of the DDA in conjunction with Article 145(1) of the SPBV, the total may be entered as a consolidated number. Each statutory case of enhanced due diligence requirements (Article 11(4), (5) and (6) of the DDA in conjunction with Article 145(3) of the SPBV) should be disclosed separately. If an occasional transaction meets the criteria for several types of increased risk according to Article 11 of the DDA in conjunction with Article 145 of the SPBV (e.g. occasional transaction by a politically exposed person and transaction of unusual size), then this occasional transaction must be reported multiple times, each under the relevant increased risk.

In the case of transactions with contractual partners or beneficial owners resident in states with strategic shortcomings (Article 11(6)(b) of the DDA), the states in question should be indicated too. Only those states included in Annex 4 to the DDO as of the effective date are relevant to the report.

If a contractual partner or a beneficial owner is based in several states and if one of these states is a state with strategic shortcomings as defined in Annex 4 to the DDO, please note that the relevant occasional transaction is to be managed as one with enhanced due diligence requirements according to Article 11(6)(b) of the DDA in conjunction with Article 145(3) of the SPBV with reference to the respective state and reported as such.

Further information concerning the application of enhanced due diligence requirements is outlined in FMA Guidelines 2013/01.

5.6 Additional factors for agents as defined in Article 3(2) of the DDA of e-money institutions and payment service providers (Article 37(6))

5.6.1 Number of business relationships and occasional transactions with simplified due diligence requirements (Article 37(6)(a))

Please refer to section 5.1.3 of this Communication for information regarding this item of reporting.

5.6.2 Number of business relationships and occasional transactions with enhanced due diligence requirements (Article 37(6)(b))

Please refer to section 5.1.4 of this Communication for information regarding this item of reporting.

5.6.3 Number and total volume of incoming payments by country of origin and outgoing payments by recipient country (Article 37(6)(c))

The number of the transactions and the total volume of the incoming and outgoing funds is to be reported in CHF in each case. This figure should then be broken down by country of origin and/or recipient country as the case may be.

5.6.4 Number and total volume of incoming payments (including occasional transactions) by client's country of origin

The report refers to the definition in the Money Transfer Regulation. The total volume and the number of all incoming transactions is to be reported. The number and total volume must then be reported broken down by the client's country of origin.

5.6.5 Number and total volume of non-cash incoming and outgoing payments (including occasional transactions) by country of the ordering payment service provider and the beneficiary payment service provider.

All non-cash incoming and outgoing payments executed within the scope of a business relationship or an occasional transaction must be reported for all incoming payments as well as for all outgoing payments (netting prohibition). Compared to section 5.2.2, however, the breakdown is not according to the client themselves but according to the country of the counterparty, thus according to the country of the ordering payment service provider for incoming payments and according to the country of the beneficiary payment service provider for outgoing payments.

5.7 Factors for entities subject to due diligence according to Article 3(3) of the DDA ("reporters") (Article 37(7) in conjunction with Article 37b(2) and (5))

These provisions are aimed at entities subject to due diligence according to Article 3(3) of the DDA that have notified the FMA of the commencement of activity subject to due diligence requirements. This excludes entities subject to due diligence requirements in connection with TT services which must take into account the additional factors listed in section 5.8. These entities subject to due diligence generally just report the number of business relationships per due diligence category (balance, new and ended) as of 31 December of the previous year as well as the occasional transactions transacted during the reporting period.

The FMA may however request further information according to Article 37(1) and (4) of the DDO where it deems this necessary. This is determined primarily on the basis of the number of business transactions and/or occasional transactions reported.

If an entity subject to due diligence according to Article 3(3) of the DDA is no longer managing business relationships or processing occasional transactions, a zero report should be filed until the activity has been ceased or until activity subject to due diligence is resumed.

If entities subject to due diligence according to Article 3(3)(a), (b) and (d) to (g) of the DDA have a legal or economic connection (e.g. group relationship, employment relationship, provision of joint services according to Article 15 of the DDA) to trustees and trust companies or individuals licenced under the law on the supervision of entities according to Article 180a of the PGR and have submitted a consolidated report to the FMA or have decided to do so (for this see the information under section 3.2.1), then the consolidated report must include the data listed in Article 37(1),(4) and (7) of the DDO. This also applies in cases where trustees and trust companies or individuals according to Article 180a of the PGR fulfil additional duties as defined in Article 3(3)(b) of the DDA. In this respect the number of occasional transactions should also be given if any have been transacted in the past calendar year.

Otherwise the remarks under section 3.2.1 on consolidated reporting apply mutatis mutandis here.

Trustees and trust companies which only fulfil duties subject to due diligence according to Article 3(1)(n) of the DDA may, by way of exception, avail themselves of the reduced reporting obligation according to Article 37(7) of the DDO.

Furthermore, it is important that entities subject to due diligence according to Article 3(3) of the DDA with a relevant licence under the Business Act notify the FMA immediately in writing of their intention to cease the exercise of their activities, i.e. the termination of their FMA professional licence (Article 37b(5) of the DDO). This will ensure that the relevant entity subject to due diligence is exempted from its reporting obligation according to Article 37b of the DDO.

5.8 Additional factors for TT service providers and entities subject to due diligence requirements in connection with TT services

5.8.1 General information

There are several different TT services which are to be assessed differently from the perspective of due diligence law. The following seeks to explain exactly which factors should be raised and reported in each case and, above all, which factors should be reported by which service providers in each case. An explanation of which service providers are affected is given in the e-service report form too. The only factors which should be filled in are those which relate to the service provider due to its respective TT services. “N/a” should be entered for all other factors. I.e. if a service provider provides several TT services, then data should be reported cumulatively for all TT services. Accumulating data relating to TT services with data relating to any DDA-relevant services outside of TT services (e.g. fiduciary services) is not permitted. Any DDA-relevant services outside of TT services should be included in a separate report.

The following TT service providers (Article 3(1)(r) of the DDA) are subject to the reporting obligation:

- Token issuers subject to registration (I)
- TT key depositaries (II)
- TT token depositaries (III)
- VT protectors (IV)
- Physical validators (V)
- TT exchange service providers (VI)

The following entities subject to due diligence requirements in connection with TT services are subject to the reporting obligation:

- Token issuers not subject to registration which exceed the thresholds according to Article 3(1)(s) of the DDA (VII)
- Operators of trading platforms for virtual currencies or tokens according to Article 3(1)(t) of the DDA (VIII)

All values entered should be stated in CHF. The exchange rate of 31 December of the previous year should be used. Where this is not available, the last available traded rate should be used and, if this is not available, a plausible estimated value[1]. The reporting date is 31 December of the previous year. The reporting period covers the entire preceding calendar year. Where the business model was not adopted until after 1 January or not terminated until after this date, a report should be filed for the period restricted by this.[2]

5.8.2 Type and form of TT service (Article 37(6a)(a))

The reporter must detail the TT services which are provided. Here it must report using multiple choice whether

- tokens are issued;
- TT keys are held for safekeeping;

[1] It is important that the plausibility of the estimated value is verifiable at a later date. For that reason documentation is very important. The estimated value should be derived from comparable currencies, property rights, etc. The valuation may for instance be based on an average of three comparable currencies, which might be deemed comparable in that the currencies have roughly the same underlying market capitalisation, a similar TPS rate and are therefore similarly scalable, with similar acceptance and a similar TT system. For instance, the estimated tax value could be used to value a tokenised property/real estate. For a work of art, estimated values from public sources could be used.

[2] The first report on 31 August 2020 is excluded from the reporting date. The reporting date for this report is 30 June 2020. The reporting period runs from 1 January 2020 to 30 June 2020. The subsequent report is subject to the provisions mentioned above.

- tokens are held for safekeeping;
- fiat is exchanged into virtual currency;
- virtual currency is exchanged into virtual currency;
- tokens or virtual currencies are held on a fiduciary basis;
- the contractual enforcement of rights to property represented in tokens is guaranteed as defined by property law on TT system; or
- a trading platform for trading in tokens or virtual currencies is provided.

TT exchange service providers and token issuers must also indicate how transactions are initiated and which third parties can dispose of the private key individually.

Token issuers must indicate whether only restricted trading is permitted for instance as a result of a whitelisting or whether unrestricted trading in tokens is enabled after this.

5.8.3 TT systems and IT-based systems used according to Article 21 of the DDO per year (Article 37(6a)(b))

The TT systems used are of particular relevance to traceability. Reporters must therefore indicate whether it is a private or public TT system and/or which client software and which log versions were used in the reporting period or in the course of providing services, such as Bitcoin Core 0.19.0.1.

It should also be disclosed whether and which extensions or applications are used or provided by the reporter on the TT system (e.g. which DApps or DAOs are used on Ethereum).

It should also be disclosed whether and which TT system mixing services or other anonymity boosting services are used.

For service providers that execute, process or undertake transactions, the tools used to perform a chain analysis should be reported too.

The service providers must also disclose all public keys used during the reporting period for each TT system held by the TT service provider in its own name and for its own account. TT exchange service providers acting in their own name and for their own account when providing exchange services do not need to disclose any public keys.

5.8.4 Virtual currencies or tokens used (Article 37(6a)(c))

The overall volume of incoming and outgoing transactions in CHF should be given for the reporting period for each TT system used, each virtual currency used[3] and each token type used[4]. The overall volume should then be broken down by country of origin or recipient country as the case may be.

Furthermore, the volume held and/or kept for safekeeping in CHF on the reporting date should be given for each TT system used, for each virtual currency used and for each token type used.

For cryptocurrency exchanges it is particularly important to report the volume of incoming and outgoing transactions per asset and the average number of transactions executed per asset.

[3] Virtual currency is defined in Article 2(1)(z^{bis}) of the DDA.
[4] Token is defined in Article 2(1)(c) of the Blockchain Act/Token & TT Service Provider Act (*Token- und VT-Dienstleister-Gesetz, TVTG*; hereinafter referred to as the "TVTG"). Within the context of this reporting requirement, all tokens that do not fall under the definition of virtual currency should be reported as tokens.

5.8.5 For business relationships according to Article 2(1)(c) of the DDA: the number and the respective volume of transactions per year taking to account the place of residence or registered office of the contractual partner as well as the beneficial owners (Article 37(6a)(d))

The number of business relationships and the overall volume of incoming, outgoing and internal transactions in CHF should be given for each TT system used, for each virtual currency used and for each token type used. The number of business relationships and the overall volume should then be reported categorised by the place of residence or registered office of the contractual partner as well as by the place of residence or registered office of the beneficial owner. If more than one beneficial owner is present, the volume should be allocated to these on a prorated basis.

5.8.6 For occasional transactions according to Article 2(1)(c) of the DDA: the number and the respective volume of occasional transactions per year taking into account the place of residence or registered office of the contractual partner as well as the beneficial owners (Article 37(6a)(d))

The number of occasional transactions and the overall volume of these in CHF should be given for the reporting period, categorised by TT system used, the virtual currency used and by the token type used. The number of occasional transactions should then be broken down by the place of residence or registered office of the client. Both active and passive transactions undertaken, executed or transacted by the TT service provider within the TT system should be reported, even if these do not constitute direct payments to the client.

5.8.7 Number of TT keys held as well as the overall volume of assets over which a right of disposal exists due to the TT key held per year taking into account the place of residence or registered office of the contractual partner as well the beneficial owners *(Article 37(6a)(f))*

The volume held in CHF for all business relationships as of the reporting date should be reported, once again broken down by the place of residence or registered office of the contractual partner as well as the place of residence or registered office of the beneficial owner as well as by the TT system used, the virtual currency used and the token type used.

It should also be indicated whether or not the TT keys are held physically. As well as the TT key depository, this question also applies to the TT protector.

5.8.8 Number of TT tokens held in safekeeping including the corresponding overall value per year taking into account the place of residence or registered office of the contractual partner as well as the beneficial owners *(Article 37(6a)(g))*

The volume held or safeguarded in CHF for all business relationships as of the reporting date should be reported, once again broken down by the place of residence or registered office of the contractual partner as well as the place of residence or registered office of the beneficial owner as well as by the TT system used, the virtual currency used and the token type used.

It should also be indicated whether or not the tokens are held physically. As well as the TT token depository, this question may also apply to the TT protector.

5.9 Additional factors for life insurance brokers (Article 37(3))

5.9.1 Total premium volumes of the life insurance policies:
The entity subject to due diligence must report the total premium volume of all life insurance premiums.

5.9.2 Number and volume of life insurance policies with single premiums as well as their share in the total premium volume

The entity subject to due diligence requirements must report the total number of life insurance policies and their volume where payment took place in the form of a single premium as well as the share of the premium volume of these life insurance policies in the total premium volume. The net contribution/(total) premium volume is crucial here.

5.9.3 Number and volume of all life insurance policies with a ratable premium

The entity subject to due diligence must report the total number of life insurance policies as well as their volume, which include a ratable premium.

5.9.4 Number and volume of life insurance policies with difficult-to-value (so-called "illiquid") assets

The entity subject to due diligence requirements must report the total number and volume of life insurance policies that contain non-bankable assets, insofar as the investor risk is borne by the policyholders.

5.9.5 Number of (partial) redemptions in the reporting period and their share in the total premium volume

The entity subject to due diligence requirements must report the total number of redemptions, partial redemptions and/or closures of life insurance policies which took place in the reporting period, as well as their share in the total premium volume.

5.9.6 Number of policyholder switches in existing life insurance policies in the reporting period

The entity subject to due diligence requirements must report the total number of policyholder switches in existing life insurance policies which took place in the reporting period.

5.9.7 Residence and total premium volume of natural persons within the meaning of Article 3(1)(c) DDO

The entity subject to due diligence requirements must disclose the total premium volume broken down by the place of residence of the natural persons who ultimately pay the insurance premiums in each case.

5.9.8 Number and total volume of the life insurance policies with legal entities

The entity subject to due diligence requirements must disclose the number and total premium volume broken down by the registered office of the legal entity which ultimately pays the insurance premiums in each case.

6. Choice of auditor or audit company

Under Article 24(6) of the DDA, entities subject to due diligence which do not dispose of their own audit department under special law may, in relation to the ordinary checks under the DDA, suggest two auditors or audit companies to the FMA, citing their preference. The FMA may take the suggestions of the entity into account in the selection.

In the interests of a comprehensive and efficient use of the electronic reporting system, in future the relevant entities subject to due diligence will be able to submit their suggestions to the FMA via the annual electronic report. Submitting preferences is not mandatory. If no suggestions have been made, the choice of auditor or audit company will be at the full discretion of the FMA.

Furthermore, the FMA is entitled to conduct the due diligence check itself irrespective of any auditor or audit company chosen.

The last suggestions submitted to the FMA will be referred to in each case.

7. Change directory

On 14 February 2018, the following clarifications were added to chapter 5:

5.1. General factors

- Section 5.1.1: The products and services to be reported are not restricted solely to activities subject to due diligence requirements according to Article 3(1) of the DDA.
- Section 5.1.2.1: Only those employees involved in due diligence-relevant business relationships should be reported. Furthermore, a definition of employees involved in business relationships and occasional transactions has been included for casinos.
- Section 5.1.2.2: Only the number of due diligence-relevant business relationships is to be reported. This definition of business relationship given there is relevant for the entire reporting system.
- Section 5.1.5: If one politically exposed person has several nationalities, then the citizenship of the state in which the important public office as defined in Article 2(1)(h) of the DDA is exercised is decisive in the report.
- Section 5.1.6: This relates to the number of business relationships whereby the beneficial owners have been identified according to Article 3(1)(a)(2) of the DDO.

5.2 Additional factors for banks and branches of foreign banks

- Section 5.2.2: If an individual has several places of residence, then the place of tax residency is stated for the purposes of the reporting. Furthermore, explanatory statements were made concerning the distinction between level 1 and level 2 and updated legal references added.

5.4 Additional factors for service providers for legal entities

- Section 5.4.1: If an individual has several places of residence, then the place of tax residency is stated for the purposes of the reporting. Furthermore, explanatory statements were made concerning the distinction between level 1 and level 2 as well as updated legal references added.
- Section 5.4.3: Further details were added in relation to the term “organisation of the entity subject to due diligence” to allow for the clear definition of external individuals.
- Section 5.4.4: Further details were added in relation to the term “organisation of the entity subject to due diligence” to allow for the clear definition of external individuals.

On 30 October 2018, the following more specific explanations were added to chapters 3 and 5:

3.2 Principles of the reporting obligation

- Section 3.2.1: A consolidated report for different due diligence categories is only possible for the due diligence categories according to Article 3(1)(f)(k) and (n) to (q) of the DDA (so-called other financial intermediaries).
- Section 3.2.2: A definition of the reporting period was inserted.
- Section 3.2.3: The explanations in this section related to the initial report in 2018 and were removed due to the fact that they were no longer relevant.

5. The individual factors of Article 37 of the DDO explained

A general notice regarding the states available for selection in the report forms was incorporated at the beginning of chapter 5.

5.1 General factors

- Section 5.1.1: Where a cross is placed next to activities on the report form that only trigger due diligence requirements under certain conditions, then it should be indicated in the comment field whether or not these activities fall within the scope of Article 3 of the DDO.
- Section 5.1.2.1: The term “employee” also refers to members of the management according to Article 2(1)(r) of the DDA where these are involved in due diligence-relevant business relationships. This applies equally to individuals that perform such activities on a freelance basis. Given this broad definition of “employee”, the number of all employees should always be more than 0.00.
- Section 5.1.2.2: Casinos report the number of admissions registered in the reporting period according to Article 25(1) of the Gaming Act. In doing so the casino must also indicate how many of these admissions were newly registered during the reporting period as well as the number of newly imposed gambling bans and gambling suspensions.
- Section 5.1.4: If a business relationship meets the criteria for several types of increased risk according to Article 11 of the DDA, then this business relationship must be reported multiple times, each under the relevant increased risk.
  Various additions were also made concerning business relationships with contractual partners or beneficial owners in states with strategic shortcomings:
  - As regards the contractual partner, in the case of business relationships with contractual partners or beneficial owners resident in states with strategic shortcomings, the focus should be on the contractual partner at the time the legal entity was founded.
  - If a contractual partner or a beneficial owner is resident in several states and if one of these states is a state with strategic shortcomings as listed in Annex 4 to the DDO, the relevant business relationship is to be managed as one with enhanced due diligence requirements according to Article 11(6)(b) of the DDA with reference to the respective state and reported as such.
  - If several contractual partners and/or economic beneficiaries resident or based in different states with strategic shortcomings are involved in a business relationship, then this business relationship is to be reported individually, listing all the states which are included in Annex 4 to the DDO.
- Section 5.1.5: In the exceptional case that a politically exposed person has several nationalities and none correspond to the state in which the important public office is exercised, the state in which the public office is exercised should be entered.

5.2 Additional factors for banks and branches of foreign banks

- Section 5.2.2: The explanations in this section were divided up using headings for the respective business relationships in the interests of better clarity.
  The following additions were made too:
  - Further information was included concerning the reporting of business relationships involving several effective depositors.
  - With regard to legal entities connected to one another on the basis of shareholding structures (multi-layer structures), a notice and graphic representation were added to make clear which people were relevant to the report.
  - If, in exceptional cases, an individual has more than one tax residency, then this effective depositor and/or beneficial owner is to be listed individually, along with all their tax residencies.

5.4 Additional factors for service providers for legal entities

- Section 5.4.1: The explanations in this section were divided up using headings for the respective business relationships in the interests of better clarity.
  The following additions were made too:
  - Further information was included concerning the reporting of business relationships involving several effective depositors.
  - With regard to legal entities connected to one another on the basis of shareholding structures (multi-layer structures), a notice and graphic representation were added to make clear which people were relevant to the report.
  - In relation to foundations, trusteeships as well as establishments with a structure similar to that of a foundation or trust companies where both beneficiaries with a legal claim and discretionary beneficiaries (without legal claims) are provided for, a note on the qualification of such legal entities has been included with reference to FMA Communication 2015/07.
  - If, in exceptional cases, an individual has more than one tax residency, then this effective depositor and/or beneficial owner is to be listed individually, along with all their tax residencies.
- Section 5.4.2: Further details have been included on the qualification of bearer securities.
- Section 5.4.4: Further details have been added in relation to the term “board level” to allow for the clear definition of external individuals.

5.5 Additional factors for casinos and providers of online gambling

- Section 5.5.1: It was clarified that the occasional transactions registered (formerly: transacted) in the past calendar year according to Article 143(3) of the SPBV are to be reported.
- Section 5.5.2: This section now contains further details relating to the circumstances under which occasional transactions should be reported with simplified due diligence requirements.
- Section 5.5.3: The following additions were made:
  - This section now contains further details relating to the circumstances under which occasional transactions should be reported with enhanced due diligence requirements.
  - If an occasional transaction meets the criteria for several types of increased risk according to Article 11 of the DDA in conjunction with Article 145 of the SPBV, then this transaction must be reported multiple times, each under the relevant increased risk.
  - Only those states included in Annex 4 to the DDO as of the effective date are relevant to the report.
  - If a contractual partner or a beneficial owner is based in several states and if one of these states is a state with strategic shortcomings as defined in Annex 4 to the DDO, please note that the relevant occasional transaction is to be managed as one with enhanced due diligence requirements according to Article 11(6)(b) of the DDA in conjunction with Article 145(3) of the SPBV with reference to the respective state and reported as such.

On 27 February 2020, the following additions and clarifications were made:

1. General information

- The circle of entities subject to due diligence has been expanded to include TT service providers and entities subject to due diligence requirements in relation to TT services.

3. Reporting process

- Section 3.2.1: The circle of entities subject to due diligence has been expanded to include TT service providers and entities subject to due diligence requirements in relation to TT services.
- Section 3.2.9: A transitional rule was added for an interim report in 2020 for TT service providers and entities subject to due diligence requirements in relation to TT services.

- **5.1 General factors**

- Section 5.1.1: The products and services to be reported are not restricted solely to activities subject to due diligence requirements according to Article 3(1) of the DDA.
- Section 5.1.4: New addition of reporting for all business relationships with normal due diligence requirements. This has caused sections 5.1.4 to 5.1.7 to shift to sections 5.1.5 to 5.1.8.

5.7 Factors for entities subject to due diligence according to Article 3(3) of the DDA

- Inclusion of exception for entities subject to due diligence requirements in relation to TT services because the additional factors for these are illustrated in section 5.8.

5.8 Additional factors for TT service providers and entities subject to due diligence with regard to TT services

- Addition of entire new section 5.8

The following changes were made on 15 December 2020:

3. Reporting process

- Section 3.1: Change in the login for the e-service portal (eID instead of lilog/lisign)
- Section 3.2.1: Clarification that TT service providers only have to submit one report for all roles.
- Section 3.2.9: Retraction of transition rule for TT service providers

5.1 General factors

- Section 3.1.4: Change in term from “normal” due diligence requirements to “regular” due diligence requirements

5.2 Additional factors for banks and branches of foreign banks

- Section 5.2.1: Expansion to include the number of transactions and request for beneficial owners.
- Section 5.2.2: New adoption of the number and total volume of incoming payments by client’s country of origin

- Section 5.2.3: Adoption of the number and total volume of non-cash incoming and outgoing payments (including occasional transactions) by country of the ordering payment service provider and the beneficiary payment service provider.
- Section 5.2.4: Expansion to include managed client assets

- Section 5.2.5: Expansion to include the amount of the affected assets
- Section 5.2.9: Adoption of the reporting factor in regards to “service accounts”
- Section 5.2.10: Adoption of the reporting factor in regards to “back-to-back loans”
- Section 5.2.11: Adoption of the reporting factor “registered office of the respondent institution”
- Section 5.2.12: Adoption of the reporting factor “shell companies”

5.3 Additional factors for insurance companies

- Section 5.3.1: Expansion to include the volume
- Section 5.3.2: Adoption of the reporting factor “life insurance policies with a ratable premium”
- Section 5.3.3: Expansion to include the volume
- Section 5.3.4: Expansion to include the share of total premium volume
- Section 5.3.6: Expansion to include total premium volume
- Section 5.3.7: Adoption of the reporting factor “life insurance policies with legal entities”
- Section 5.3.8: Adoption of the reporting factor “insurance premiums paid in cash”
- Section 5.3.9: Adoption of the reporting factor “own sales”
- Section 5.3.10: Adoption of the reporting factor “sales by third parties”

5.6 Additional factors for agents within the meaning of Article 3(2) DDA of e-money institutions and payment service providers

- Section 5.6.3: Expansion to include the number
- Section 5.6.4: New adoption of the number and total volume of incoming payments by client’s country of origin
- Section 5.6.5: Adoption of the number and total volume of non-cash incoming and outgoing payments (including occasional transactions) by country of the ordering payment service provider and the beneficiary payment service provider.

5.9 Additional factors for insurance brokers

Adoption of section 5.9.

8. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) and in line with applicable data protection law.
Information regarding the processing of personal data, including details about the purpose of processing, the data controller and the rights of data subjects can be found in the FMA Privacy Policy.

9. Entry into force

This Communication came into effect on 29 November 2017.

The changes of 14 February 2018 came into effect on the same day.

The changes of 30 October 2018 came into effect on the same day.

The changes of 27 February 2020 came into effect on the same day.

The change of 22 December 2020 came into effect on the same day.

Please contact the FMA for further information.
Telephone: +423 236 73 73
E-mail: info@fma-li.li
Last updated: 22 December 2020

Annex Application examples in the area of money laundering prevention and other financial intermediaries

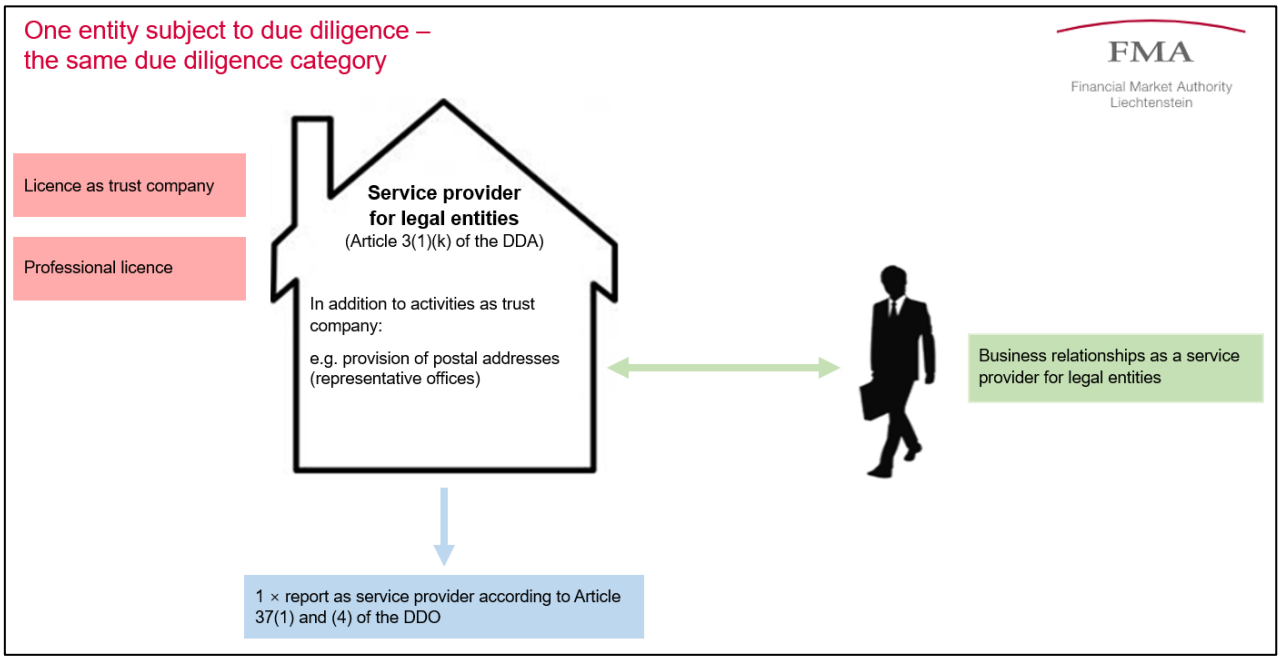


Figure 1: One entity subject to due diligence – the same due diligence category

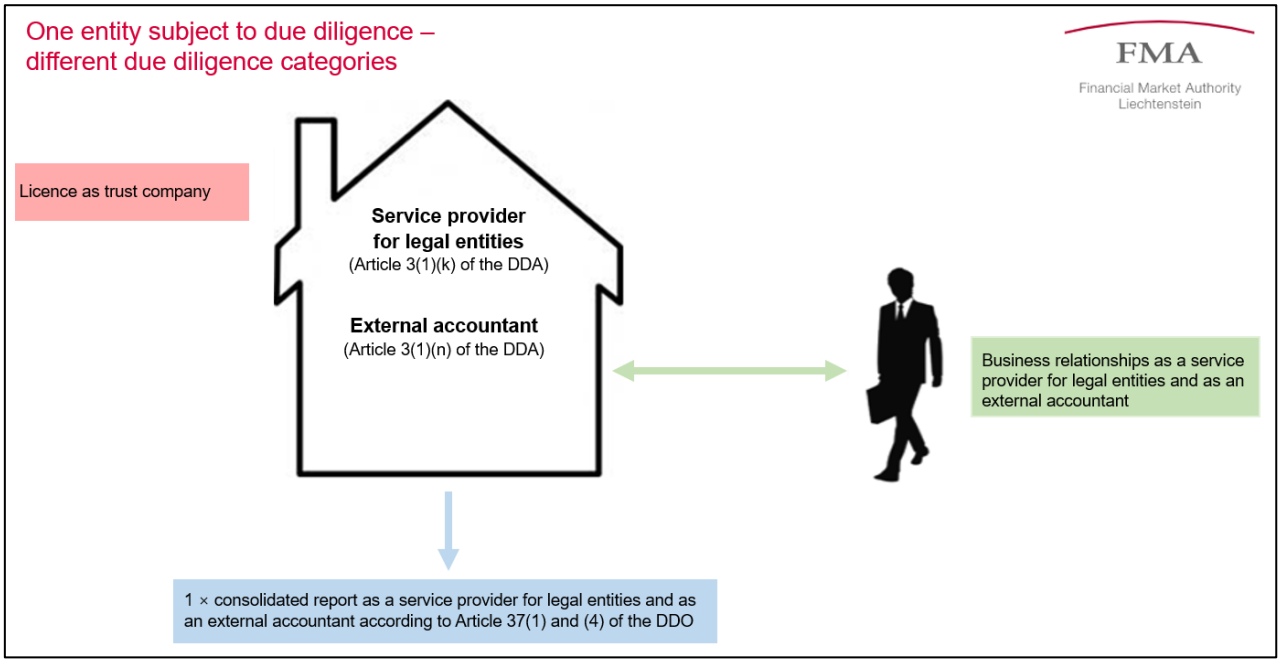


Figure 2: One entity subject to due diligence – different due diligence categories

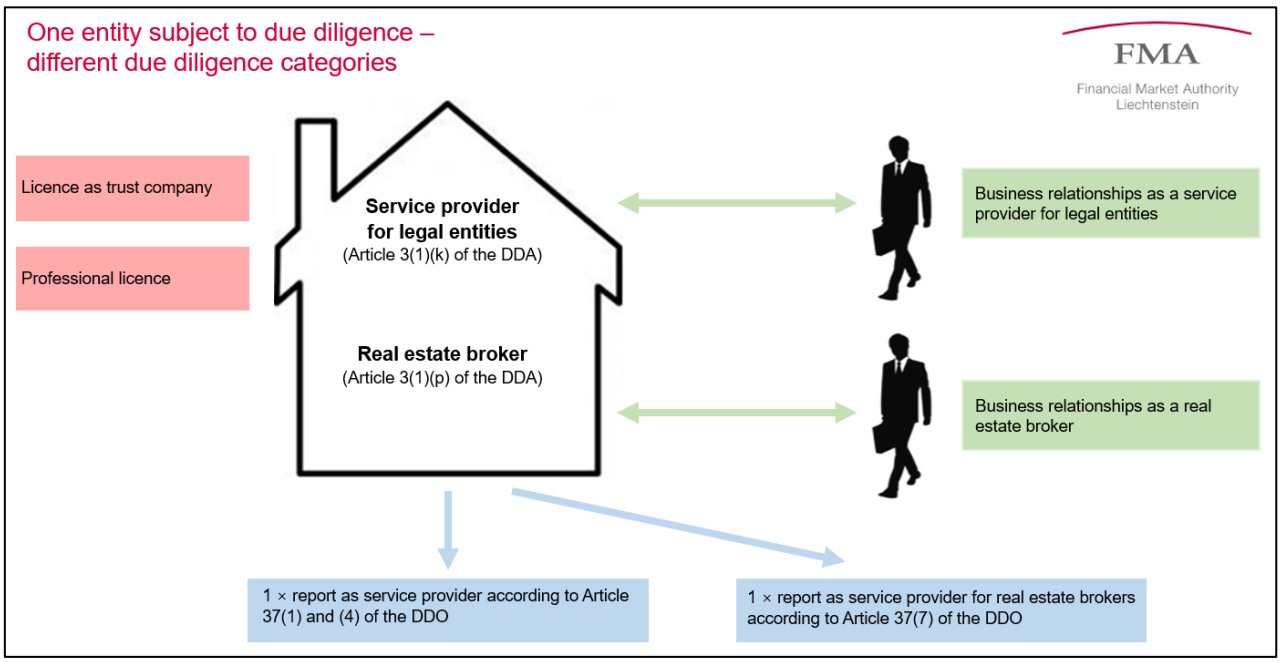


Figure 3: An entity subject to due diligence – different due diligence categories

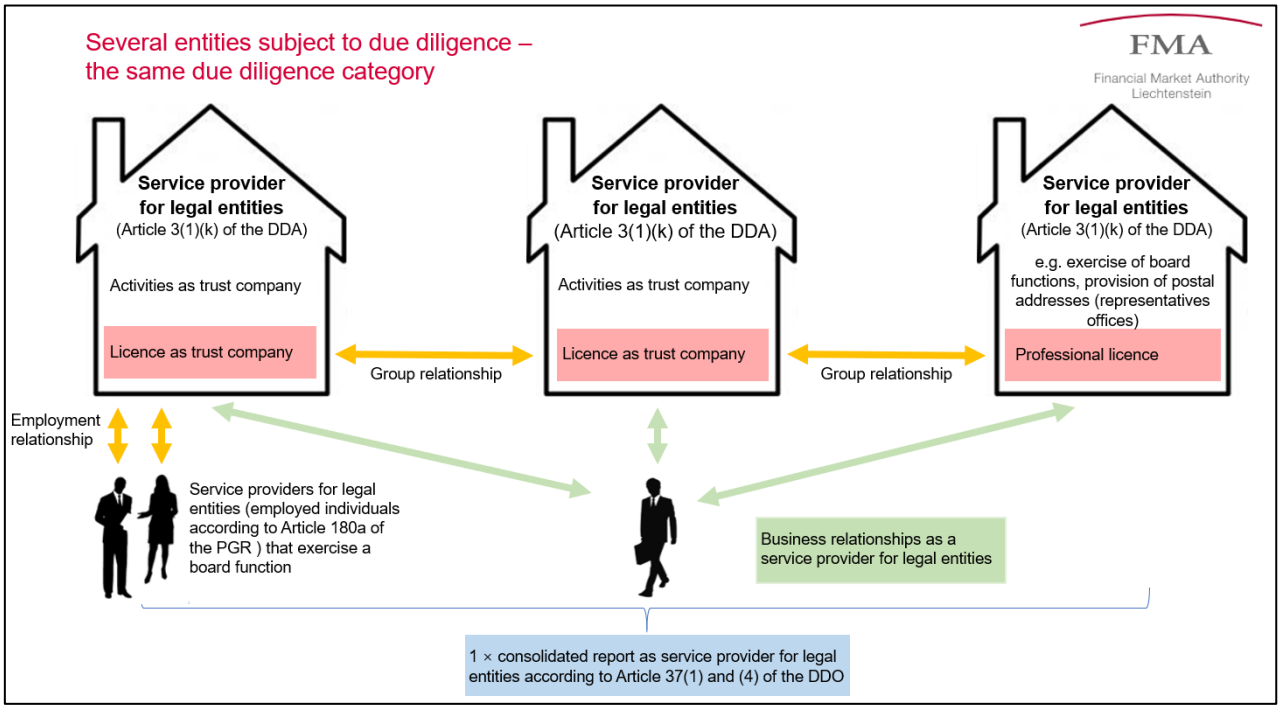


Figure 4: Several entities subject to due diligence – the same due diligence category

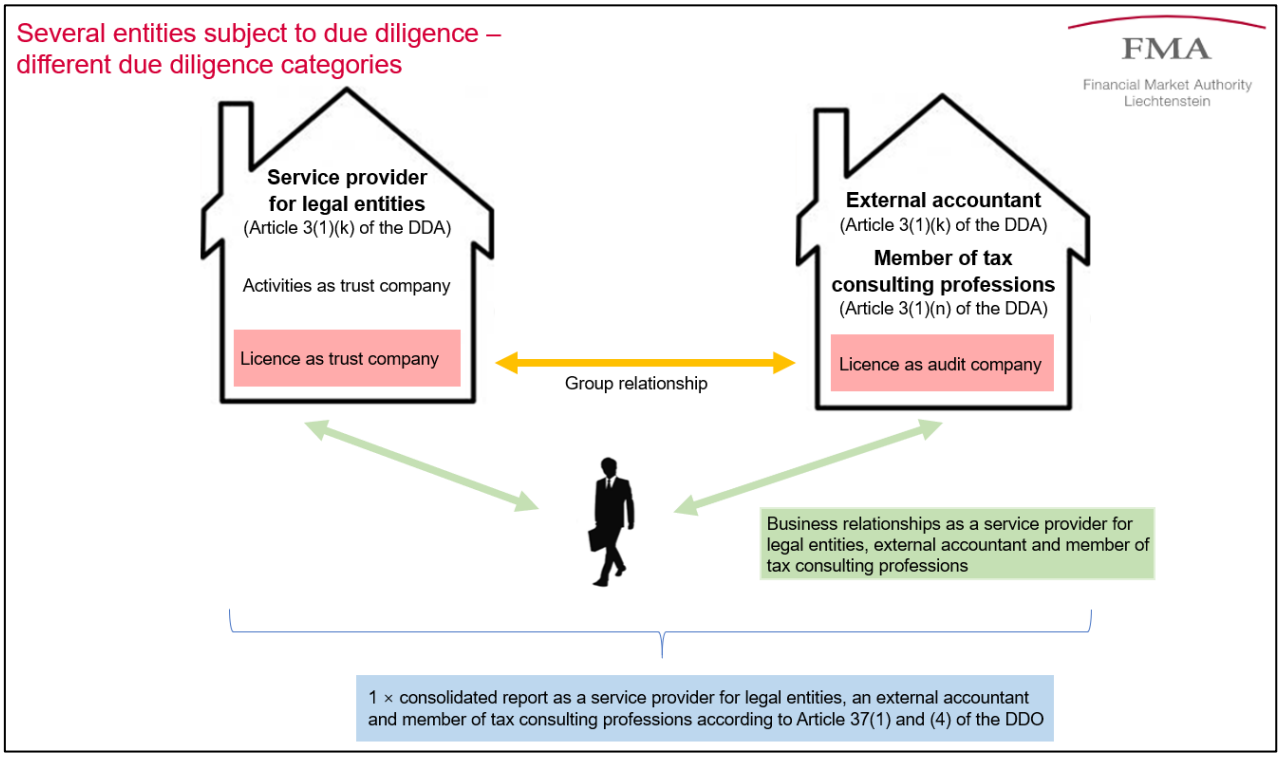


Figure 5: Several entities subject to due diligence – different due diligence categories