

FMA Guidelines 2018/20 – Licence as a special-law auditing firm

Granting of a licence to operate as a special-law auditing firm in accordance with the Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (*Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG* – Banking Act; hereinafter referred to as the “BA”) and the Liechtenstein Ordinance of 22 February 1994 on Banks and Investment Firms (*Verordnung vom 22. Februar 1994 über die Banken und Wertpapierfirmen; Bankenverordnung, BankV* – Banking Ordinance; hereinafter referred to as the “BO”), the Liechtenstein E-Money Act of 17 March 2011 (*E-Geldgesetz vom 17. März 2011, EGG* – hereinafter referred to as the “EMA”) and the Liechtenstein E-Money Ordinance of 12 April 2011 (*E-Geldverordnung vom 12. April 2011, EGV* – hereinafter referred to as the “EMO”) as well as the Liechtenstein Payment Services Act of 17 September 2009 (*Zahlungsdienstegesetz vom 17. September 2009, ZDG* – hereinafter referred to as the “PSA”) and the Liechtenstein Payment Services Ordinance of 27 October 2009 (*Zahlungsdienstverordnung vom 27. Oktober 2009, ZDV* – hereinafter referred to as the “PSO”)

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1. General information

These Guidelines provide an overview of the procedure for obtaining a licence and the minimum requirements for the granting of a licence as a special-law auditing firm in accordance with the BA, EMA and PSA in Liechtenstein. These Guidelines are being issued to supplement the FMA Communication on the licensing of special-law auditing firms and their reporting duties (SRM), which can be accessed on the website of the Financial Market Authority Liechtenstein (hereinafter referred to as the “FMA”) as the [FMA Communication 2015/06](#). Decisions regarding individual cases will be made solely on the basis of legislative provisions, the FMA Communication 2015/06 and instructions issued by the FMA in the capacity of supervisory authority.

Please contact the FMA for further information.

Auditing firms and auditing associations which audit banks and investment firms, e-money institutions or payment institutions must hold a licence issued by the FMA to conduct this activity in accordance with Article 37 BA, Article 38 EMA and Article 38 PSA. The licence to operate as a special-law auditing firm will only be granted by the FMA if the requirements stated under the relevant special laws (the BA, EMA and PSA) as well as those stipulated under Article 28(2) and Articles 40 to 43 BO (in conjunction with Article 7 of the EMO and Article 6 PSO, as applicable) are met.

Below, reference is made solely to the provisions of the BA and the BO, whereby Articles 39 to 43 and Article 43b BO also apply to special-law auditing firms in accordance with the EMA and PSA based on the corresponding reference (Article 7(1) EMO and Article 6(1) PSO).

2. Definitions

The definitions provided under section 3 of the FMA Communication 2015/06 (SRM) are to be applied to these Guidelines.

3. Licensing requirements

A licence as a special-law auditing firm will only be granted by the FMA if all of the requirements listed below in accordance with Article 37(2) BA and Article 28(2) as well as Articles 40 to 43 BO are met. All of the requirements stipulated in the FMA Communication 2015/06 (SRM) must also be met.

4. Guarantee for the continuous and proper performance of audit mandates

The Executive Board, the lead auditors (at least two) and the organisational structure of the auditing firm must ensure that the audit mandates are performed continuously and appropriately (Article 37(2)(a) BA). To this end, the auditing firm must provide a precise description of its organisational structure in its articles of association and/or deed of partnership or in a set of regulations and have this account reviewed and approved by the FMA in advance (Article 40(2)(a) BO).

4.1 Organisational structure of the auditing firm

The auditing firm must be organised as a company limited by shares (*Aktiengesellschaft*) and have adequate share capital (Article 37(2)(b) BA). The licensing requirements for auditing firms stipulated under the FMA Communication 2015/06 (SRM) must also be complied with continuously (see section 4.1 of the FMA Communication 2015/06 in this regard).

In the case of auditing associations, at least 12 banks with own funds of no less than CHF 1 million or that have paid a deposit of CHF 1 million must be affiliated to them in accordance with Article 40(1)(a) BO. They must also have an organisationally independent internal audit unit.

For auditing firms that take the form of a company limited by shares, paid-up share capital of at least CHF 1 million is required in accordance with Article 40(1)(b) BO. If the auditing firms only audit investment firms, these must have share capital of at least CHF 200,000.00.

Auditing firms of banks or investment firms that hold a licence in accordance with Article 37 BA do not require an additional licence for audit mandates with e-money institutions or payment institutions as per Article 38 EMA and Article 38 PSA. The auditing firm must provide the FMA with advance written notification of the first-time execution of its audit activities in accordance with the EMA and PSA.

4.2 Good reputation and thorough knowledge

The members of the Executive Board and the lead auditors must have a good reputation and predominantly possess thorough auditing, banking, financial or legal knowledge in accordance with Article 40(2)(b) and (c) BO.

The [FMA Communication 2013/07](#) applies.

4.3 Lead auditors

Lead auditors are always recognised for a specific auditing firm licensed under special law. The licensing of the latter depends on the special-law recognition of at least two lead auditors (see Article 37 BA).

4.4 Auditing licence

The auditing firm must hold a licence in accordance with the Liechtenstein Auditors and Auditing Companies Act (*Gesetz über die Wirtschaftsprüfer und Revisionsgesellschaften, WPRG* – hereinafter referred to as the “AACA”) (Article 37(2)(c) BA). Furthermore, lead auditors must hold a licence in accordance with the AACA and demonstrate to the FMA that they possess thorough knowledge of the banking and investment business as well as of the auditing of banks and investment firms (Article 40(2)(c) BO). In this context, the criteria listed under sections 4.2 and 5.1 of the FMA Communication 2015/06 (SRM) must be observed and adhered to.

4.5 Exclusivity of audit work

Auditing firms must exclusively devote themselves to audit work and immediately related business such as controls, liquidations and restructurings. They are not permitted to provide any banking, investment or asset management services (Article 37(3) BA). The auditing firm must therefore undertake in accordance with Article 40(2)(d) BO to limit its activities to services for third parties and to refrain from conducting business for its own account and at its own risk if this is not necessary for the running of the company (e.g. investment of own funds).

4.6 Professional indemnity insurance

The auditing firm must have professional indemnity insurance adequate for its business activities (Article 40(2)(e) BO). The FMA deems professional indemnity insurance coverage of at least CHF 5 million as adequate.

4.7 Independence

The auditing firms must be independent of the banks and investment firms to be audited (Article 37(4) BA and Article 9a AACA). Under Article 42(1) BO, an auditing firm may therefore neither take on management and accounting mandates for the bank or investment firm to be audited nor other tasks that are incompatible with the audit mandate. Furthermore, the annual fee income to be expected under normal circumstances from the mandates with one bank or investment firm and its affiliated companies must account for no more than 10% of the auditing firm’s total annual fee income. The FMA may approve exceptions on request in accordance with Article 42(2) BO.

The members of the Board of Directors and Executive Board and the employees of the auditing firm or the internal audit unit of an auditing association must also be independent of the bank or investment firm to be audited and its affiliated companies (Article 42(3) BO).

4.8 Protection of secrets

The auditing firm must keep secret the facts that become known to it in performing its audit work, with the exception of the competent governing bodies of the audited bank or investment firm and the FMA (Article 37(5) BA).

4.9 Foreign auditing firms

A foreign auditing firm will only be granted a licence if it undertakes also not to conduct any business abroad within the meaning of Article 1a of the BO (Article 41 BO).

Upon submitting a licence application for a foreign auditing firm, a mailing address located in Liechtenstein must be provided to the FMA.

5. Obligations of the auditing firm

Under Article 43(1) and Article 44 BO, the auditing firms are required to:

- Inform the FMA of any changes to their articles of association and regulations as well as any personnel changes in the composition of their governing bodies or the lead auditors reported to the FMA

- Only entrust the management of bank audits to auditing firms who meet the necessary conditions and who have been reported to and approved by the FMA
- Notify the FMA of the mandate head and lead auditor prior to the commencement of auditing, whereby the mandate head and the lead auditor may only start their activities following the receipt of approval from the FMA
- Guarantee compliance with the requirements placed on lead auditors with respect to maintenance of special-law recognition in accordance with section 5 of the FMA Communication 2015/06 (SRM)
- Adhere to the reporting obligations stated under section 6 of the FMA Communication 2015/06 (SRM)
- Prepare a risk analysis of the bank or investment firm; on this basis, the auditing firm defines an audit strategy that specifies the audit depth and audit frequency of the individual audit areas
- Check and demonstrate that the business activities of the bank or investment firm correspond to Articles 4 to 14a of the BA, the articles of association and the relevant regulations, and that the conditions for the granting of a licence under Articles 15 to 26a BA are continuously met as well as that the bank or investment firm has taken adequate precautionary measures in accordance with Article 8i of the BA and Articles 25, 27 and 27b BO (supervision audit)
- Check and demonstrate that the form and content of the annual report and consolidated annual report comply with the applicable legal, statutory and regulatory requirements (accounting audit)
- Submit the annual report to the FMA every year
- Submit the audit report to the FMA every year and no later than six months after the conclusion of the financial year in question (see section II., 1.4, paragraph 1 of the FMA Guidelines 2016/2 on special-law auditing and reporting by auditing firms – Audit guidelines, RPR 2016)

Under Article 43(2) BO, the FMA can also request information on the reasons for the departure of members of the Executive Board and the lead auditors reported to the FMA.

6. Licensing procedure

During the licensing procedure, the FMA undertakes a thorough assessment of the applicant's circumstances. Initially, a draft version of the definitive licence application (application for preliminary review) can be submitted to the FMA without the original documents. The application for preliminary review must have the same fundamental structure and contain the same information and documents as the definitive licence application (please refer to section 8 of these Guidelines for specific requirements).

It is important to comment on each issue with reference to any relevant documents enclosed. A separate list of any enclosed documents must be provided, arranged in numerical order. The documents submitted will be checked carefully to ensure that the formal requirements are met. The FMA will inform the applicant of any matters that are unclear and need to be corrected.

The applicant should submit the definitive licence application (with or without an informal preliminary review), including all the documents referred to in section 8 of these Guidelines, by writing to the Financial Market Authority Liechtenstein (FMA), Banks Division, Legal Department, Landstrasse 109, P.O. Box 279, 9490 Vaduz, Liechtenstein.

If there are any changes in material facts during the licensing procedure, the relevant documents must be updated and submitted immediately. In the event of material or extensive changes in

licence-relevant facts (e.g. a change in the shareholders with qualifying holdings, name changes), the licence application must be resubmitted to the FMA in full.

All information provided by applicants will be treated as confidential and subject to professional confidentiality in accordance with Article 31a BA.

The duration of the licensing procedure will depend primarily on the coherence and completeness of the information and the documents provided in the application. All rejections must be communicated to applicants within six months of receipt of the application or, if the application is incomplete, within six months of the provision of the required details. In all circumstances, a decision must be made within 12 months of receipt of the definitive licence application (as per Article 17(3) BA).

7. Applying for and obtaining a licence

As a general principle, licence applications and the accompanying documents must be submitted in German. The FMA may permit exceptions to this rule.

The application to be submitted, including all the requisite documents that follow the structure outlined below (especially in accordance with Article 40 BO), must be sent to the FMA. Applicants should refer to supporting documents (appendices) where appropriate. The application is to be submitted to the FMA in both hard copy and electronic form.

8. Licence documents

The general application documents for a licence as an auditing firm in accordance with Article 37 BA and Article 28(2) as well as Articles 40 to 43 BO include, in particular:

8.1 General information

- Documents about the origin and basic ownership structure of the share capital as well as the form of its payment
- The purpose and object of the application
- The annual report
- Details on the planned business model for which a licence is being requested as well as information about the organisation of the auditing of financial intermediaries
- Excerpt from the Commercial Register
- Draft articles of association
- Draft versions of relevant regulations, guidelines and directives (independence, auditing, etc.)
- Description of the organisation (organisational chart and detailed description of the organisational structure) and the personnel budget of the auditing firm
- Personnel composition of the Board of Directors, the Executive Board and the lead auditors (at least two lead auditors)
- Evidence that the proper conduct of business is ensured by the Executive Board and the lead auditors in accordance with the FMA Communication 2013/07, and the documents named in its annex are to be submitted to the FMA with the application documents
- In the case of lead auditors, evidence of their audit experience at banks and investment firms in hours with a list of the respective institutions must be included
- List of the audit mandates including fee income during the past financial year and annual fee income to be expected in future

- Evidence that the annual fee income to be expected under normal circumstances from the mandates of an audit client within the meaning of Article 42(2) BO and its affiliated companies consolidated within the same group does not account for any more than 10% of the auditing firm's total annual fee income
- Annual financial statements for the past three years (individual and, where applicable, consolidated financial statements)
- Annual reports including auditors' reports for the past three years or since the company's foundation if it was founded within this period
- The budget for the first three years

8.2 Other relevant information and details

- Documents evidencing the existence of professional indemnity insurance with confirmation from the insurance company that this insurance contract is still valid and will remain valid until further notice, and that the planned business activities as an auditing firm for the category (categories) of financial intermediary (intermediaries) listed in the application are included
- Summary of current activities and services in the banking or financial sector performed by the company (internal audit, advisory and IT services, etc.) with details of their scale as well as the associated revenues and mandates
- Summary of the contractual and financial relationships with companies in the national and international association, and account of the extent to which the company can call on a global network (education and further training, work papers, etc.) for its auditing activities in the financial sector

It should be noted that the FMA may request additional documents where required.

9. Charges

9.1 Licensing fee

A fee of CHF 20,000.00 is payable for the granting of a licence as a special-law auditing firm (Article 30 in conjunction with Annex 1(A)(1)(m) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz, FMAG* – hereinafter referred to as the "FMA Act").

9.2 Taxes

General information on the taxation of auditing firms may be obtained from the Liechtenstein Tax Administration (www.stv.li).

10. Revocation of the licence

The FMA will revoke the auditing firm's licence in accordance with Article 39(2) BO if the legal requirements are no longer met or if the auditing firm is guilty of gross negligence in breaching its legal obligations.

11. 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: <https://www.fma-li.li/de/fma/datenschutz/fma-information-zum-datenschutz.html>

12. Entry into force

These Guidelines will enter into force on 1 March 2016.

Annex 1 - Legal basis

Annex 2 - Licence checklist for special-law auditing firms in accordance with the BA, EMA and PSA

Annex 1 – Legal basis

- Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (*Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG – Banking Act, BA*)
- Liechtenstein Ordinance of 22 February 1994 on Banks and Investment Firms (*Verordnung vom 22. Februar 1994 über die Banken und Wertpapierfirmen; Bankenverordnung, BankV – Banking Ordinance, BO*)
- Liechtenstein E-Money Act of 17 March 2011 (EMA) (*E-Geldgesetz vom 17. März 2011, EGG*)
- Liechtenstein E-Money Ordinance of 12 April 2011 (EMO) (*E-Geldverordnung vom 12. April 2011, EGV*)
- Liechtenstein Payment Services Act of 17 September 2009 (PSA) (*Zahlungsdienstegesetz vom 17. September 2009, ZDG*)
- Liechtenstein Payment Services Ordinance of 27 October 2009 (PSO) (*Zahlungsdiensteverordnung vom 27. Oktober 2009, ZDV*)
- Liechtenstein Auditors and Auditing Companies Act (AACA) (*Gesetz über die Wirtschaftsprüfer und Revisionsgesellschaften, WPRG*).
- Liechtenstein Law of 18 June 2004 on the Financial Market Authority (*Gesetz vom 18. Juni 2004 über die Finanzmarktaufsicht; Finanzmarktaufsichtsgesetz, FMAG – Financial Market Supervision Act, FMA Act*)
- Liechtenstein Persons and Companies Act of 20 January 1926 (*Liechtensteinisches Personen- und Gesellschaftsrecht vom 20. Januar 1926, PGR*)
- FMA Communication 2013/07 – Guarantee in respect of the proper conduct of business (*FMA-Mitteilung 2013/07 – Gewähr für einwandfreie Geschäftstätigkeit*)
- FMA Communication 2015/06 – Communication on the licensing of special-law auditing firms and their reporting duties (SRM) (*FMA-Mitteilung 2015/06 – Mitteilung betreffend die Bewilligung spezialgesetzlicher Revisionsstellen sowie deren Meldepflichten*)
- FMA Guidelines 2016/2 – Guidelines on special-law auditing and reporting by auditing firms – Audit guidelines (RPR 2016) (*FMA-Richtlinie 2016/2 – Richtlinie betreffend die spezialgesetzliche Prüfung und Berichterstattung durch Revisionsstellen – Revisionsprüfungsrichtlinie*)

Annex 2 – Licence checklist for special-law auditing firms in accordance with the BA, EMA and PSA

